

BOARD OF ADJUSTMENT MINUTES
May 12, 1998

Present: Vice Chairman Verlon Duncan, Bud Neslen, Brent Wynn, City Attorney Rusty Mahan, Planning and Redevelopment Director Blaine Gehring, Recording Secretary Connie Feil.

Absent: Chairman Paul Summers, Kevin Murray and Planning Commission Representative Ken Cutler.

Verlon Duncan welcomed all those present and had the Board Members introduce themselves. Bud Neslen made a motion to approve the minutes for September 9, 1997 as written. Brent Wynn seconded the motion and voting was unanimous.

Election for Chairman and Vice-Chairman for 1998

Verlon Duncan opened the floor for nominations for Chairman. Bud Neslen made a motion to nominate Paul Summers for Chairman. Verlon Duncan seconded the motion and voting was unanimous. Brent Wynn made a motion to nominate Verlon Duncan for Vice -Chairman. Bud Neslen seconded the motion and voting was unanimous.

1. Consider granting a 14 foot variance to a required 20 foot rear yard at 798 E. 2300 S., Merton Aldredge, applicant.

Merton and Ann Aldredge were present. Dick and Karen Duncan, neighbors, were also present. Merton Aldredge explained that he and his family have been in this home for 18 years. When they moved into the home a fence already existed along the back which was installed by Weber Water Basin. Mr. Aldredge assumed that this was his property line but in fact it belongs to Weber Basin. Mr. Aldredge has talked with Mark Anderson, from Weber Basin, and there are two other lots to the west that are shorter in depth because of the Weber Basin property line. All three lots have been landscaped and maintained by the owners for more than 20 years. Mark Anderson mentioned to Mr. Aldredge that he would not will the land to him nor will he give a letter giving permission to build on it but will not oppose if he wants to build.

Mr. Aldredge is requesting a variance to add a family room onto the rear of his home. He feels that there are unusual circumstances with his lot because there is no backyard without adding the area that belongs to Weber Basin. This puts a hardship on him and his family because they cannot enjoy the use of his property as others in the neighborhood. The surrounding neighbors have been able to build onto their homes. This will not put an impact on the neighbors nor will it encroaches on any ones' property. There are not and will not be any homes abutting their back yard because of the reservoir. The only neighbors that would see this addition would be the Duncan's living on the west. Dick and Karen Duncan are in favor of the variance.

Verlon Duncan had some concerns about the size of the utility easement. Mr. Gehring mentioned that this is a 7-foot utility easement and cannot be built on. The easement will have

to be vacated in order to build. Mr. Duncan explained to the Aldredge's that with the size of the addition it would encroach on the easement which cannot be done.

Blaine Gehring mentioned that based on the requirements in State Law, he cannot recommend that this variance be granted. This information is based on the following memorandum given to the Board of Adjustment Members:

There are two items on the plat that Mr. Gehring believes come into play with this variance request. First Mr. Aldredge is asking to be able to place his addition within 6 feet of the recorded rear property line. There is a recorded 7-foot wide utility easement across the rear lot line which such an addition would encroach on. The City would not be able to grant a building permit for the addition anyway.

Second, this lot has already received special consideration at the time it was platted. Note that a 25' setback was granted and placed on the plat. This allowed a home on this lot to be built at a 25' setback rather than the required 30' setback. That setback was used as shown on Mr. Aldredge's site plan.

Next, there is a discrepancy between Mr. Aldredge's request and his site plan. The addition is 18 feet and he shows a 22 foot existing rear yard rather than 24. Thus, Mr. Gehring believes the variance to actually be 16 feet rather than 14 feet.

In reviewing a request for a variance, The Board of Adjustment must look to State Law for guidance. Section 10-9-707 (2)(a) of the State Code states:

“The board of adjustment may grant a variance only if:

- (i) literal enforcement of the zoning ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the zoning ordinance;
- (ii) there are special circumstances attached to the property that do not generally apply to other properties in the same district;
- (iii) granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same district;
- (iv) the variance will not substantially affect the general plan and will not be contrary to the public interest; and
- (v) the spirit of the zoning ordinance is observed and substantial justice is done. (*Italics added*)

The italics Mr. Gehring has included allude to some key points that are then referred to in the subsequent section of the law. First, all five of the items mentioned must be found by the Board of Adjustment in order for the variance to be granted. Second, with reference to unreasonable

hardship, the law states that:

“(2)(b)(i) In determining whether or not enforcement of the zoning ordinance would cause unreasonable hardship under Subsection (2)(a), the board of adjustment may not find unreasonable hardship unless the alleged hardship:

(A) is located on or associated with the property for which variance is sought; and

(B) come from circumstances peculiar to the property, not from conditions that are general to the neighborhood.

(ii) In determining whether or not enforcement of the zoning ordinance would cause unreasonable hardship under Subsection (2)(a), the Board of Adjustment may not find an unreasonable hardship if the hardship is self-imposed or economic. ;

In this particular instance, the property line was not established after Mr. Aldredge purchased and built on his lot. As you can see from the subdivision plat, the lot was established with the subdivision plat and thus existed as it now is when Mr. Aldredge purchased it. Yes, the shorter depth of his lot is peculiar or unique to this specific property but it is not necessarily peculiar or unique to similar lots within the R-1-8 zoning district, which is what the law specifies. The measure of other properties similarly located is within the zoning district classification and not the surrounding neighborhood. And last, the need for the variance is because of the addition proposed by the property owner or in other words self-imposed. The lot and house exist legally and are conforming under the zoning ordinance.

As to special circumstances attached to the property, again the law states:

“(2)(c) In determining whether or not there are special circumstances attached to the property under Subsection (2)(a), the Board of Adjustment may find that special circumstances exist only if the special circumstances:

(i) relate to the hardship complained of; and

(ii) deprive the property of privileges granted to other properties in the same district.”

Again, the measure against other properties is in the same R-1-8 zoning district and there are many lots which are less than 1– ft in depth or which have a home built to the minimum 20 foot setback. The existing homes of these lots are close enough that substantial additions to the homes would not be allowed under the ordinance without violating the 20 feet required rear yard setback.

Going back to Subsection (2)(a), items (i) dealing with unreasonable hardship and (ii) dealing with special circumstances, in this instance Mr. Gehring feels they cannot be found by the Board of Adjustment.

There is no fence along the actual lot line and, according to Mr. Aldredge he has taken care of

that extra property since he owned the home not knowing it was not his. That does not change the fact that the actual property line exists and that is what the Board must measure its decision from. Based on the requirements in State Law, Mr. Gehring cannot recommend that this variance be granted.

Dick Duncan, residing at 786 E. 2300 S., feels that when the government built the reservoir they took more property than was needed. The government does not maintain the property the home owners do. The government is not planning on using this property for any future use. The utility easement also is not being used. Sometimes the government make mistakes and in this situation too much property was taken and not used. The government does not object to building on this property. Mr. Duncan feels that sometimes the government sticks to rules that don't pertain to the situation and it would be a mistake not to grant the variance.

Verlon Duncan mentioned to Mr. Aldredge that there are special rules that the Board has to follow and could he explain the unreasonable hardship that would be on him if the variance is not granted.

Mr. Aldredge explained that his family is growing and he would like to have a family room big enough to enjoy his family. The surrounding neighbors have had this opportunity to build onto their homes. Mr. Aldredge does not have this because of the water basin in his back yard.

Rusty Mahan explained that the Board of Adjustment has very tight rules that have to be followed by State Law. Mr. Mahan read the State Law in Section 10-9-707 (same as in memorandum). The Board can only grant a variance if the hardship is not self imposed. In this case the house already exists without a variance. The expansion of the house will require a variance, which is a self-imposed hardship.

Ann Aldredge feels that they do meet the hardship because of the reservoir. The expansion will not impose on anyone rights nor will it encroach on another property.

Mr. Mahan disagrees because the plotted subdivision has been the same since before their purchase of it. The lot size has not changed and has been the same for many years. This lot is not the same size as other lots but it is a legal size lot. Mr. Mahan can't recommend, just for the purpose of sympathy, to disregard State Law that applies. However, if the Board finds that this meets State Law their decision can be made from that.

Brent Wynn mentioned that he works for the Government and he has seen some of the rules and laws challenged. It is hard to write a rule or law that is to fit all situations all the time. Mr. Wynn feels that this situation could be challenged. Government can get hung up on the text book interpretation of the rules.

Mr. Gehring mentioned that he has received two letters from neighbors that are in favor of the variance.

Bud Neslen made a motion to grant a 16-foot variance to a required 20 foot rear yard at 798 E.

2300 S. with the condition that proof of the utility easement has been released and given to the City. Brent Wynn seconded the motion and voting was unanimous.

Mr. Mahan suggested, to the Board Members, to state their findings of fact for their decision. Their statements are as follows:

Bud Neslen has interpreted that there is an unreasonable hardship on the Aldredge's by not granting the variance.

Brent Wynn feels that the Aldredge's family has expanded and needs more room. It seems to be more practical and reasonable to take advantage of the special circumstances with the 31 feet that they have been maintaining of as if it were part of their property.

Verlon Duncan believes that there is an unreasonable hardship in that the family has grown and there is a need for the extra space. There are special circumstances peculiar to this property that are not from conditions general to the neighborhood. This property and two others in the neighborhood have the same circumstances. From Mr. Duncan's perspective this is not a self imposed unreasonable hardship. There are special circumstances that apply to this property being the shape of the lot and the fact that the back property will never be used because of the reservoir. Other property owners in this same district have the substantial property right to build and expand. Mr. Duncan believes that in no way shape or form does this violate the spirit of the zoning ordinance. One reason being two structures being too close together and another with concerns of fire.

Verlon Duncan mentioned that the variance has been approved but a building permit will not be issued until a release of the utility easement has been approved and given to the City.

Meeting adjourned at 8:00 P.M.