

**BOARD OF ADJUSTMENT MINUTES**  
**March 9, 2004**

Present: Vice-Chairman Dean Holbrook, Al Hess, Michael Allen, Assistant City Attorney J.C. Ynchausti, Planning Director Aric Jensen and Recording Secretary Connie Feil.

Absent: Chairman Bud Neslen and Leon Thurgood.

Bud Nelsen welcomed all those present and had all those present introduce themselves.

Al Hess made a motion to approve the minutes for January 13, 2004 as written. Dean Holbrook seconded the motion and voting was unanimous.

1. Consider a variance to allow a 25 foot front yard setback where a 30 foot setback is required at 984 N. 725 E., Country West Construction, applicants.

Don & Ellen Warner, residing at 716 E. 1050 N., were present.

Brent Hadlock, owner of property, was present. Mr. Hadlock explained that his builder, Country West Construction, submitted this application but has the flu so he is filling in. Mr. Hadlock thought that the only thing pending is the setback which is a 25 foot setback. The two homes across the street have 20 foot setbacks approved before they started building. Mr. Hadlock would like to set his home back 25 feet because this is a very small lot. If the home is setback 30 feet, they would have a smaller back yard. The home will be 1,700 sq. ft.

Aric Jensen explained that the State Code has specific findings that the Board has to name in order to approve a variance. Rusty Mahan, City Attorney, stated in a previous discussion that an argument could be made to support the variance. Mr. Jensen's personal opinion is that it doesn't meet the strict criteria of the State. If the Board determines that a variance is warranted, they need to make sure that the motion includes findings as to how it meets the criteria.

Michael Allen asked how was it possible that the other lots were granted a 20 foot setback? Mr. Jensen explained that was an interpretation to the Board of Adjustment. They were the ones who decide if they meet the criteria.

Aric Jensen mentioned that Paul Rowland, City Engineer, said that some of the setbacks were approved during the subdivision process. Some of the lots have a 20 foot setback on the plat. One met the ordinance which allows a 20 foot setback if the slope changes 10 feet within the first 50 feet of the property. This lot does not qualify under the ordinance and that is why they are applying for the variance.

There was a discussion about the surrounding lots having 20 foot setbacks and why. With a 25 foot front yard, that would give a 27 foot backyard. If not granted, the home will have only a 22

foot backyard. The owner prefers to have a larger backyard rather than a large front yard.

Michael Allen asked the Warners if they objected to the variance? Mr. Warner mentioned that it is only five feet, and that the other lots have 20 feet. Mr. Warner is concerned about lot #4, because this lot could crowd up against his house. They have three side yards which makes it tight.

Dean Holbrook explained that the Board needs to define if the circumstances here are peculiar to this property and different from those in the neighborhood. You can argue both ways. This is the smallest lot in this subdivision. In that context it is different from anything else in the neighborhood.

Michael Allen asked Mr. Ynchausti if he had anything to add to the Staff? Is there an argument for approving the variance?

J. C. Ynchausti explained that if one house is set at 20 feet and the house next door is at 30 feet, the 30 foot setback will have their front yard in the 20 foot backyard. Mr. Ynchausti mentioned that Aric is right with the element of the statue need to be considered by the Board. Once considered the Board can approve or deny it.

There was another discussion. This plat had 20 foot setback exceptions placed during the subdivision approval process. The conditions have been created by the way the lots have been platted. What is considered a reasonable size house? This is not a really big house. The Board of Adjustment has granted this type of request. Mr. Jensen gave arguments for granting the variance as well as his memo against the variance. Specifically, that the irregular jog in the road created an uneven frontage that was unique to this proposal and not a self imposed hardship.

Al Hess explained that a 1,700 sq. ft. home is not an excessive expectation. It would seem unreasonable to force someone into a home that is 300 sq. ft. smaller. What is being asked here is only 5 feet. It doesn't seem like much. In the context of it all Mr. Hess feels that it fits.

Dean Thurgood mentioned that the houses across the street and in this neighborhood are huge. The three homes across the street have 2,300 sq. ft. and 2,400 sq. ft. on the main floor. Mr. Thurgood's opinion is that it does meet all the criteria of the Utah Code that has to be met.

Michael Allen agrees with Mr. Hess and the Mr. Thurgood on their opinions.

J.C. Ynchausti explained that what is needed is a motion, a second and a vote.

Al Hess made a motion to grant a variance because the petition meets the standards set for granting one with the following findings:

1. Not granting would be an unreasonable hardship forcing a smaller home.
2. The circumstances do not apply to other properties because of the irregular shape

of the front yard.

3. Not granting the variance would deprive the owner of substantial property rights and enjoyment of his property that are enjoyed others in this district.
4. Granting the variance would not effect the general plan in a contrary way.
5. The variance does not violate the spirit of the zoning ordinance.

It also meets the additional State criteria as listed in the memo.

Dean Thurgood seconded the motion and voting was unanimous.

Meeting adjourned at 7:35 p.m.