

BOARD OF ADJUSTMENT MINUTES
September 14, 1999

Present: Chairman Bud Neslen, Vice-Chairman Ron Barlow, Brent Wynn, Gordon Thomas, City Prosecutor J.C. Ynchausti, Planning Commission Director Blaine Gehring, Recording Secretary Connie Feil.

Absent: Planning Commission Representative Dean Thurgood, Kevin Murray and Dean Holbrook..

Bud Neslen welcomed all those present and had the Board Members introduce themselves. Gordon Thomas made a motion to approve the minutes for July 13, 1999 as written. Brent Wynn seconded the motion and voting was unanimous.

1. Consider a side yard variance for James Ferraro at 99 E. 3300 S.

James and Terri Ferraro, applicants, were present.

The following is the memo that Blaine Gehring sent to the Board members concerning this request:

The City's Code Enforcement Officer received a complaint a few weeks ago about a small storage shed addition to a house at 99 E. 3300 S.. After a field inspection, the Code Enforcement Officer saw an addition on the west side of the garage which had been built without a building permit and was within 2 feet of the property line. The Officer sent Mr. Ferraro a letter informing him of the violation to the zoning ordinance at which time Mr. Ferraro contacted me. He said he had applied for a variance in 1990 while still part of unincorporated Davis County but because of what he understood as a problem with a quorum for voting purposes, he was not sure of what had actually happened with that request.

Mr. Gehring called the Davis County Planning Office. Mr. Ferraro did apply in August of 1990 for a 4-foot variance to enclose a carport on the west side of the property. Mr. Gehring asked for and received a copy of the minutes of the August 23, 1990 meeting of the Davis County Board of Adjustment. On a vote of three votes for to one against, the variance was denied on the basis that a majority of four affirmative votes. What was interesting in those minutes was the discussion regarding the hardship. While one Board member "felt there may be a hardship due to the fact that it is a corner lot and the setback requirements are greater on a corner lot . . .," others "felt Mr. Ferraro had other options and there was no significant hardship in this case," And, another member "stated he did not feel the corner lot constitutes a hardship, because all corner lots have the same setback requirements."

Mr. Ferraro is asking for a 6-foot variance to the required 8 foot side yard so he can keep the shed he has built.

In analyzing this variance request, Mr. Gehring refers to Section 10-9-707 of the Utah Code.

Under Section (2)(a) of the Section it sets forth five requirements which have to be met in order for the Board of Adjustment to grant a variance. Based on those five requirements, Mr. Gehring offers the following:

1. *“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.”* And, further, in finding that the zoning ordinance would cause an unreasonable hardship, *the hardship may not be self-imposed or economic and comes from circumstances peculiar to the property and not from conditions that are general to the neighborhood.*

Mr. Ferraro, as stated, lives on a corner lot which requires a front yard setback of 30 feet, a street side yard setback of 20 feet, an opposite side yard of 8 feet, and a rear yard of 20 feet. These are the requirements for all corner lots in Bountiful and are, therefore, not unique to Mr. Ferraro’s lot. The setback from property line to the front of the house on 3300 South is 33 feet 7 inches. The street side yard setback from 100 East is 21 feet. Neither of those existing setbacks are excessive in terms of the ordinance. The slope of the property is not unique in this area or several other areas in Bountiful where slopes equal to or exceeding 8 ft. are common. And, as to being self-imposed and economic, Mr. Ferraro built the addition having been denied a variance by a prior jurisdiction, without the necessary permits, and in violation of the ordinance and is now seeking a variance to avoid the financial loss of tearing it down.

2. *“There are special circumstances attached to the property that do not generally apply to other properties in the same district.”* There are no unusual circumstances attached to this property which are not found elsewhere in many areas of the city, including this neighborhood. In terms of the slope of the property, excavation and a retaining wall can be undertaken to provide access to other parts of the lot as seen on numerous lots throughout Bountiful. This is not a unique problem to Mr. Ferraro’s lot and, as stated in State Law, cannot be considered a hardship if it is too expensive to do.
3. *“Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same district.”* Unfortunately, the right to park a RV on a residential lot is not a given property right, especially with the size some of them are becoming. But, the question is not of whether a RV can be parked, but can an additional storage shed be built in the requested variance area. If there were no other room on the property for such an addition, there may be an argument here. However, Mr. Ferraro shows a second shed in the rear yard and adequate rear yard area to place the shed, or a modified plan of it, in the rear yard. He is not being denied a property right possessed by others in the same district. Anyone on a similarly sized and located lot would face the same requirements.
4. *“The variance will not substantially affect the general plan and will not be contrary to the public interest.”* As stated in the definitions chapter of the Zoning Ordinance, a variance should be a “minor variation in the required terms” of the

ordinance. This request is for a 6 ft. variance to an 8 ft. side yard. That represents 75% of the requirement. That is not a minor variance request and would be substantially out of the norm.

5. *“The spirit of the zoning ordinance is being upheld and substantial justice done.”* Again, a variance for up to 75% of the ordinance requirement is not in keeping with the spirit of the zoning ordinance, especially where other options under the ordinance are available.

Mr. Gehring empathizes with Mr. Ferraro, but based on the criteria the Board of Adjustment must use under State Law to find a variance and unreasonable hardship, this request does not meet that criteria. The variance should not be granted and the addition should be removed.

James Ferraro explained that his understanding is that on a corner lot it is required to have a side yard of 20 ft. Where that is measured from Mr. Ferraro is not sure. On the east side of the property there is a side yard of 29 ½ feet and Mr. Ferraro feels that the house was misplaced on the lot, therefore, depriving him of 10 feet on the west side of his property. Also, the property is 8 feet higher than all other adjacent property’s creating a hardship for a right-of-way on the property.

In August of 1990, Mr. Ferraro applied for a variance with the Davis County Board of Adjustment. Three members of the Board came to inspect the property. These members gave Mr. Ferraro the impression that a variance could be granted. Mr. Ferraro attended the meeting but left before finding the results from the hearing. Mr. Ferraro did not check with Davis County to find the results from the hearing he assumed that it was approved. The variance was denied by lack of a majority vote.

Mr. Ferraro closed off and built an addition onto his carport, assuming that the variance had been approved. The addition was also built without a permit which Mr. Ferraro did not think he had to have one to close off a carport. Mr. Ferraro feels that this addition is not impacting the surrounding properties. The addition is not against any homes or blocking any driveways. Mr. Ferraro presented pictures of homes with sheds, garages, etc., built on the property line. Mr. Ferraro would like to know why these existing sheds, garages, etc. can remain but not his.

Brent Wynn explained that it is unfortunate about the existing sheds, etc. but they do not have any bearing in this case. When doing any kind of building a permit is required. Mr. Ferraro should have known he needed to have a building permit.

Gordon Thomas mentioned that Mr. Ferraro has created his own hardship by his own negligence. J. C. Ynchausti explained that the Utah State Legislature has decided that there are certain provisions that need to be explained to the Cities. One being, the Board of Adjustment with rules that are to be followed to grant a variance. Section 10-9-707 sets forth the rules for the Board of Adjust to grant a variance. Under Section 2 the Legislature and Cities recognize that there will be times when the zoning ordinances may have a negative affect on a property owner. If the requirements are met by the property owner then a variance can be granted. The

memorandum, which Mr. Gehring has given, explains the obligations to the Board which pertains to State Law. The Board of Adjustment has to take each application on a case by case basis. The information that Mr. Ferraro has presented about other properties, may or may not be in violation of the ordinances, have no bearing on this case. Mr. Ferraro's application has to be decided on its own. This does not create a precedent for other properties. It does not say that in the future a variance will or will not be granted.

Robert and Tami Merrill, residing at 3279 S. 75 E., were present. Mr. and Mrs. Merrill are in support of the variance. They have no concerns with the addition. It is not close to their home and there are no windows to impact them.

Ron and Carol Jessup, residing at 3413 S. 100 E., were present. Mr. and Mrs. Jessup also support the variance. They feel that the addition has given a better appearance to the home and has increased the value of the home and the neighborhood.

Blaine Gehring presented a letter from Floyd and Rose Ratcliffe, residing at 3257 S. 75 E., to the Board. The Ratcliffes have some concerns with flooding and erosion on their property. Mr. Gehring mentioned that he has looked at the property and feels that this letter has no relevance to this issue.

Ron Barlow feels that it was the responsibility of Mr. Ferraro to find the results from the variance hearing 10 years ago. Mr. Ferraro understood that a variance was needed to use the 8-foot side yard at that time and should have checked before starting this project. Mr. Ferraro should have known to check about the variance and obtain a building permit. Side yard minimums are critical and asking for 6- feet of an 8-foot side yard is 75% of the requirements. Mr. Barlow feels that Mr. & Mrs. Ferraro have created their own hardship and Mr. Barlow will not support the variance.

Gordon Thomas made a motion to deny a side yard variance for James Ferraro due to the fact that it has been denied before and was created by himself. Ron Barlow seconded the motion and voting was unanimous.

James Ferraro asked if the City was going to file a complaint against the home owners that he has given pictures of? J.C. Ynchausti asked Mr. Gehring to explain the procedure that is followed in regards to complaints and ordinance enforcement.

Mr. Gehring explained that when the City receives a complaint someone goes out and checks to make sure it is a legitimate violation. If there is a violation the property owner is informed of the ordinance. The City does not drive around looking for violations they are done on a complaint basis. If Mr. Ferraro wants to file a complaint on the individuals he may do so. The reason for the law being changed was because there were too many people asking for a variance because they did not like or agree with the ordinances. State wide most of these variances were granted. The Legislature decided that there were too many and the ordinances needed to be enforced. The new guide lines have been created by State Law and the Board of Adjustment have to follow them.

Mr. Ferraro asked if he could appeal this decision? Mr. Gehring explained that there is an appeal process that he can apply for with the District Court.

Meeting adjourned at 7:46 p.m.