

**BOARD OF ADJUSTMENT MINUTES**  
**October 10, 2000**

Present: Chairman Bud Neslen, Vice-Chairman Ron Barlow, Brent Wynn, Dean Holbrook, City Prosecutor J.C. Ynchausti, City Engineer Paul Rowland, Chief Building Official M.J. Squire, Planning Director Blaine Gehring, Recording Secretary Connie Feil.

Absent: Kevin Murray, Leon Thurgood, Planning Commission Representative Mark Green.

Bud Neslen welcomed all those present and had the Board Members introduce themselves. Dean Holbrook made a motion to approve the minutes for July 11, 2000 with one spelling correction. Bud Neslen seconded the motion and voting was unanimous.

Dean Holbrook made a motion to approve the minutes for July 19, 2000 as written. Bud Neslen seconded the motion and voting was unanimous.

Brent Wynn asked if someone could explain how 15 degrees computes to 27%. Paul Rowland explained by drawing an example on the board.

1. Consider an appeal of an administrative decision regarding the variance granted to Brandon and Julie Crossley at 744 N. Eagle Ridge Drive.

Brandon and Julie Crossley, applicants, were present. Douglas Griffith, attorney representing the Crossleys, was present.

Douglas Griffith explained that the Crossleys are not appealing the decision of the BOA but the position that the Crossleys are taking is they feel that they have complied with the Findings of Fact and Conclusions of Law. As a consequence of complying, based on what the BOA stated they would do, the Crossleys are seeking an occupancy permit. If the City is taking the position that the Crossleys have not complied, a clarification or explanation is needed to explain why not.

J.C. Ynchausti explained to Mr. Griffith that one of the items on the variance application was a request for an occupancy permit. It is Mr. Ynchausti understanding that the driveway was not the only item that needed to be taken care of before an occupancy permit could be given. The issue of occupancy came up in the hearing and is addressed in the first paragraph under Conclusions of Law. Mr. Griffith was asked if he is here for the Board to give occupancy or decide if the Crossleys have complied with the Boards decision?

Mr. Griffith explained that, in his letter to the City, he indicated that as far as the driveway problem, it has been resolved. Mr. Griffith feels that the Crossleys are in compliance with the Findings of Fact and Conclusions of Law taken from the July 11<sup>th</sup> meeting. If there are other issues unrelated to the slope of the driveway, holding the occupancy permit, they will be dealt with outside of this meeting. The Crossleys are not here asking for an occupancy permit but asking the Board to clarify whether or not the Findings of Fact and Conclusions of Law have

been met. The letter does request that the City give a list of items that need to be taken care of, besides the driveway, for the occupancy permit to be given.

Bud Neslen mentioned that he has visited the site and noticed that the black top was just covered up with rocks and bark. Mr. Neslen asked Mr. Crossley if this has changed the slope of the driveway? Mr. Crossley explained that by covering this section with landscaping it is no longer part of the driveway. Mr. Crossley feels that he has corrected the requirements from the BOA.

Paul Rowland introduced M.J. Squire, Chief Building Official, who has done some of the inspections on the Crossley home. Mr. Rowland mentioned that Mr. Neslen asked if he would go with him and Mr. Gehring to the Crossleys' home for an inspection of the driveway? Mr. Crossley had indicated to Mr. Neslen that he felt that he had complied with the requirements for the variance. Mr. Rowland mentioned that he saw the same thing as Mr. Neslen. At the lower inside corner of the driveway some rocks and bark had been placed over the existing asphalt.

Mr. Rowland used a "smart level" that will measure angles directly rather than a level. This piece of equipment measures in degrees as well as percent slope. When measuring a slope it is easier to measure by percentage. The lower section of the driveway was measured from the center and measured around 25 + %. Mr. Rowland drew a picture of the existing driveway for a better picture of the grades. Mr. Rowland explained that a driveway is always measured from the center line because the outside edges have steeper grades.

Brent Wynn explained that based upon the meeting on July 11<sup>th</sup> the driveway was looked at in sections which each section was measured at a different grade. There were two sections that were at 17% and one at 29%. The variance was granted for the sections with 17% to remain if the 29% was corrected and brought into compliance and did not exceed 17%. The driveway was to be reinspected to make sure it passed and was in compliance with the variance. The variance was not for an overall average of 17%. The 29% was to be removed to 17%.

Mr. Griffith referred to the Paragraph 8 of Findings of Fact: That, if the twenty-nine and one-half percent (29½ %) grade were reduced to a lower grade the total average grade of the Crossleys' access road and/or driveway would be approximately seventeen percent (17%).

Mr. Wynn reviewed the paragraph and interpreted it as each section is not to exceed 17%. Mr. Rowland explained that the reason for this meeting is to determine the interpretation of the motion from the BOA. Mr. Rowland drew another picture showing how the average grade is measured.

Mr. Ynchausti presented the map, that was given to the BOA, showing the nine sections and grades that were measured by Staker Paving to Mr. Griffith. Mr. Ynchausti explained that the numbers from this map are what reflects in Paragraph 6 of the Findings of Fact.

Mr. Griffith asked Mr. Rowland to explain what needed to be done in order for the Crossleys to comply with what the Engineering Department wants to happen. Mr. Rowland explained that the lower section of the driveway is 27 + % and needs to be brought into compliance with the

17%. In order to do this, the lower section needs to be removed and lowered down. As one comes out of the driveway, one has to drive over a hump which is about a 20 to 30 ft. area. This area needs to be removed and leveled out. In order to do this more than the 30 ft. will have to be removed to make it level.

Mr. Wynn mentioned again that the intention of the variance was to remove the section of 29% and make it so that none of the sections were more than 17%.

Mr. Griffith mentioned that in order to remove this section the Crossleys would have to remove one-half of their driveway. This would be prohibitively expensive to excavate and remove. Mr. Griffith asked the BOA to look at the language in Paragraphs 7 & 8 of Findings of Fact. What it says is the total average of the driveway be approximately 17%.

M. J. Squire, Chief Building Official, explained that he has worked for the City for 15 years. Mr. Squire has to enforce the codes uniformly with everyone who builds in the City. No one wants to be treated differently or a law suit could happen. The ordinance specifies that there will not be any slopes greater than 15% measured on the center line. The Engineering Department interpreted that the variance was granted for no slope greater than 17% which is 2% higher than what the ordinance allows. Mr. Squire has made several contractors remove driveways, twice as long as this one, in order to comply with the ordinance. The plans submitted to the City by the Crossleys' showed a uniform driveway with a slope less than 15% which complied with the ordinance. If the Crossleys' had followed these plans, there would not be a problem. Mr. Squire feels that nothing was torn out to change the driveway. Rocks were placed on top of the asphalt with a little bit of bark on top of that. The slope of the driveway has not been taken out. The driveway does not comply now with the ordinance.

Bud Neslen stated from the minutes of the July 11<sup>th</sup> meeting "Brandon said that he would take out the 29½ % himself and replace with landscaping and if necessary, for drainage, would build up the curb or place some type of drain out the side." Mr. Neslen feels that this was not done.

It was asked if Staker Paving knew what the grade should have been? Mr. Squire explained that Brandon told him that part of the problem was Mountain Fuel had a service line which came under the driveway to the house. The line was not placed deep enough and would take four weeks for Mountain Fuel to lower the gas line. Brandon, as owner builder, made the decision to let Staker Paving pave the driveway at that time rather than wait for the fuel line to be lowered. This is the reason the hump was placed where it is and it has changed from a conforming to a non-conforming driveway.

Mr. Ynchausti explained to the Board that their job is to determine if the Findings of Fact and Conclusions says what they think they say and if it supports the Crossleys' position with what has been done or supports the Staff's position in what was recommended. What do the Findings and Conclusions mean?

There was a lengthy discussion and it was decided that the Crossleys have not met the requirements of the variance. The variance was granted for the sections of the driveway with the

17%. The sections with 17% can remain but the section at 29½ % has to be removed and leveled to no more than 17% slope. Under Conclusions of Law, Paragraph 2 , it states “That the section of the Crossleys’ access road and/or driveway that has a grade of approximately twenty-nine and one-half percent (29½ %) be brought into conformity with the ordinance, that there is no erosion problem created by the correction to this section of the access road and/or driveway, and the access road and/or driveway be approved by the time that a final inspection is performed.” The Crossleys have not met these requirements. Mr. Griffith asked if the variance has not complied with the requirements, then state what the reasons are and what has to be done.

Brent Wynn made a motion that the Crossleys’ have not brought the driveway into compliance so Mr. Wynn proposes that the appeal be denied. The driveway has not been brought into total compliance with the intentions and has not passed the inspection.

Dean Holbrook seconded the motion. Mr. Ynchausti asked if he could modify the motion to represent what Mr. Griffith asked that the Staff or Engineering notify the Crossleys about where the problem is.

Mr. Wynn modified his motion with the addition that the technicalities be left up to Mr. Rowland to define the sections that have not been brought into compliance at 17%. Dean Holbrook seconded the motion and voting was unanimous.

Meeting began at 6:00 p.m. and adjourned at 7:08 p.m.