

BOARD OF ADJUSTMENT MINUTES
August 6, 2002

Present: Dean Holbrook, Leon Thurgood, Al Hess, Planning Commission Representative Dick Dresher, Representing City Attorney Dave Peters, Assistant City Engineer Mark Franc, Planning Director Blaine Gehring, Recording Secretary Connie Feil.

Absent: Bud Neslen.

Acting Chairman Al Hess welcomed all those present and introduced all Board Members. Dean Holbrook made a motion to approve the minutes for May 7, 2002 as written. Leon Thurgood seconded the motion and voting was unanimous. Dick Dresher abstained from voting.

Election for Chairman and Vice-Chairman for 2002 - 2003.

Dean Holbrook made a motion to elect Bud Neslen for Chairman. No other motions were made and voting was unanimous. Dick Dresher made a motion to elect Dean Holbrook for Vice-Chairman. No other motions were made and voting was unanimous.

Dean Holbrook conducted the remaining of the meeting. Scout Troop 1776 were also welcomed.

1. Consider granting a variance to allow portions of a driveway to exceed 15% slope in the R-1-12 (F) Zone, Kimberly Construction, applicant.

Ed Casperson, Kimberly Construction, Malcom Campbell, Architect, and Pierre VanDamme, owner, were present. Ed Casperson explained that on the site plans the driveway was shown to have a slope of 12.6%. As Mr. Casperson laid out the plans he took an average of the slope which, by his calculations, was 12.2%. Mr. Casperson admitted that this was a mistake on his part because he went by an average as he believes Salt Lake City does.

Ed Casperson presented diagrams of the finished driveway with his calculations and one from the Engineering Department. The two diagrams are different. Mr. Casperson mentioned that an inspector from the City told his foreman that the bottom of the driveway should be scooped out so access could be negotiable by cars. Mr. Casperson felt that the top of the driveway should be rounded off rather than at an angle and this change was made. After the driveway was completed, it was found that there are slopes that exceed 15%. It was not realized how bad some of the areas were until the City did an inspection. Mr. Casperson feels that the existing driveway is the best solution. If the driveway has to be redone, it would be at the cost of more than \$30,000.00. Mr. Casperson feels this is an excessive amount to replace when he feels the driveway is adequate and safe and meets the intent of the ordinance.

Dean Holbrook mentioned that at the last meeting Mr. Casperson was asked to meet with the Engineering Department to discuss the changes necessary to meet the ordinance. Mr. Holbrook

asked if this has been done? Ed Casperson mentioned that he has not met with Engineering but has talked to Paul Rowland on the phone. On the phone, Mr. Rowland said the driveway needs to be torn out and replaced to meet the 15% slope from the approach to the garage. Mr. Casperson mentioned that in the last meeting it was discussed about removing and flatten out an area. But no discussion has been made with the Engineering Department to see if this is acceptable.

Mark Franc explained that his understanding of the conversations between Mr. Casperson and Paul Rowland related to removing and replacing the portions of the driveway which are in violation of code. The Engineering Department did a survey and measured the slope of the driveway. This existing survey shows that the driveway could and can be built to meet code. In the conversations with the Engineering Department there has been no effort to make the problem better. When a site plan has been approved, the City expects that the construction will be done in compliance with the site plan. When that does not occur there are potential code violations. For this reason the site plans are reviewed. If there is a change during construction, from the site plan, there is a danger of being in violation of codes.

Malcom Campbell explained that his understanding is that any solution to the problem is to tear out some or all of the driveway. The purpose of this meeting is to avoid any reconstruction and that is the reason for no more discussions.

Al Hess and Dean Holbrook mentioned that Mr. Casperson was invited to meet with the Engineering Department to discuss a revision of the driveway. It was understood that this meeting would occur. Mark Franc explained that a revised site plan that can be in substantial compliance, will need to be submitted for review.

Dick Dresher pointed out that from the contractor's view a variance should be given, but from the City's view it needs to be in compliance with the ordinance. In the previous meeting it was understood to meet with the Engineering Department and bring the driveway into compliance. If the driveway cannot be in compliance then apply for a variance. Mr. Franc said that the submitted site plan shows that it can be done and it is obvious that it can be done to comply.

Malcom Campbell mentioned again that it seems pointless to meet with the Engineering Department now. The purpose of this meeting is to avoid any reconstruction. There is a \$30,000.00 expense that will have other negative impacts. The purpose of this meeting is to avoid this expense. So to discuss what happened at previous meetings is pointless.

Al Hess mentioned that nothing has changed since the last meeting. The powers of the BOA are constricted. There are five conditions that have to be met. The Board does not have the power to rule unless all five conditions are met. Mr. Hess read the five conditions. This property is not any different from any other property in terms of requirements. Had the plans been executed properly there would not be an issue.

There was a lengthy discussion on the five conditions which the Board feels cannot be met. Mr. Campbell believes that the five conditions can be met. The discussions continued about the site

plan submitted complied with the ordinances and codes but were not followed. There are not any special circumstances to this property. The site plan met all codes and ordinances. A construction error does not constitute a special condition on a property. Self imposed or economic issues may not be used in finding an unreasonable hardship. The house was built at a higher elevation than by the site plan and there is also a retaining wall not built to comply with the plans.

Dave Helm, property owner, has some interest in the outcome of this meeting because his property is also steep. Mr. Helm is surprised that a building permit was issued and not followed. He feels that if the property in question can get away with not complying with codes he should be able to do the same thing. Wells Cannon, a friend of Mr. Helm, was also present.

Mark and Susan Noyce, residing at 1785 E. Maple Hills Dr., are in favor of granting the variance. Susan Noyce does not want the driveway ripped out and cause more construction on this street. Mrs. Noyce feels that the driveway is in compliance and meets code. It was mentioned that a house next door was built too close to property and the City let it pass because it would be too costly to remove. Why does one individual have to comply and another does not?

Dave Helm appreciates the comments from the Board Members and wants to compliment them on their convictions and the manner in which they are presented. Mr. Helms questions other homes built in Bountiful if they are in compliance with the ordinances and codes.

Mark Franc explained that the building inspectors check for the building codes and life safety issues. They are not required to check elevations nor do they have the equipment to do so. Dick Drescher mentioned that it is assumed that the builder is building it correctly.

Blaine Gehring explained that since Mr. Casperson feels that there has been a lack of communication between himself and Staff about what the Board expected the first time, table this for a few weeks. Rather than make a motion for denial or approval, give the builders an opportunity to meet with Paul Rowland. Bring in some engineered plans with the items that were expected from the Board. Unless the builders want a decision tonight.

Mark Franc explained that a decision of whether a variance is not going to be granted will not give affect the ability of Engineering to work with the contractor. From an Engineering point of view, to be substantially in compliance, the driveway needs to be no more than 15%. Mr. Franc feels that it will not hurt to have a decision on whether or not a variance is going to be granted. Blaine Gehring mentioned that discussing this with the City Attorney some sections of the driveway could be no more than 16%, which is minor, and be accepted as substantial compliance. Anything over the 16% would require a variance. There are sections of this driveway that is 9% over the ordinance which is not a minor variance.

Dave Peters explained that the application for this variance being presented is for the driveway as built (as it now exists). If the Board denies the variance, the applicant has the right to appeal the decision. If the Board grants the variance, the applicants do nothing. If the Board wishes to table the variance to allow the applicants to revise the plans to bring into substantial compliance

a variance could be granted for sections of 16%.

Marc Franc mentioned that the requirements for a variance are not to grant something that is not within the State Law. The code requires not more than 15%, if more than 15% this is in violation of the code. In order to grant a variance the five conditions have to be met regardless. If the applicant comes back with revised plans at 19% rather than 24%, the requirements for the BOA are the same.

Malcom Campbell believes that he can give the Board information to meet the five conditions required. If this driveway is torn out and rebuilt no one gains anything and nothing is any better. No progress is being made by tearing something out for the sole purpose of complying with the letter of the law. If the Board can grant this variance, Mr. Campbell believes, it can be worked out legally. Within the existing circumstances enough information can be given to satisfy the five conditions. What is built is serving the client well and will into the future. Tearing the driveway out does not make Bountiful a better city.

Pierre VanDamme, mentioned that Kimberly Construction is not in great financial shape. If this driveway has to be torn out it will fall onto Mr. VanDamme and his family. Mr. VanDamme can't afford to put in a new driveway. Mr. VanDamme is unemployed. A mistake was made but not intentional. This is putting a lot of stress onto the family.

Dean Holbrook mentioned that he can understand the situation but this problem was brought to the attention of the contractor before the driveway was poured. Mr. VanDamme explained that he did not know until the driveway was finished. The foreman of Kimberly Construction was an excellent carpenter but for the rest, he had a mind of his own and now Mr. VanDamme is paying for his actions.

Ed Casperson explained that his foreman no longer works for him and Mr. Casperson cannot find him for questioning. Mr. Casperson can't verify about his foreman's knowledge of the driveway.

Mark Franc explained that the codes in zoning, set by the City Council, says that the maximum slope is 15%. From an engineering point it is to require compliance with the ordinance. This is a safety issue adopted and approved by the City Council. The Staff reviews the site plans and requires that they are in compliance with code and are built to code. When the codes are not met, it is required to be fixed to comply. The Engineering Department has no authority to say a builder can go steeper than the 15%. It is required, as an employee and part of the Staff, to enforce and require compliance of the codes and ordinances. It is expected of the contractors to do the work right or redo it. The BOA is bound to the five conditions previously discussed. The Engineering Department is willing to work with the contractors to bring into compliance with the codes. If the variance is granted then the contractors can walk away. If the variance is denied, the contractor will have to meet with Staff to make changes. Mr. Franc recommends that the variance be denied and be brought into compliance. He doesn't want to appear uncaring, unfeeling or uncompassionate but the City has rules that have been set to live by. Some are codes, ordinances, State and City laws which we are required to live by. Everyone is

bound by laws and ordinances.

Blaine Gehring explained that maybe four of the conditions could be met but one cannot and cannot be argued about, that is being self-created. All five conditions cannot be met. The original site plan was in compliance and Mr. Rowland has shown that it can be in compliance now.

Susan Noyce feels that if Kimberly Construction cannot financially redo the driveway the financial burden is placed on the VanDamme family. Mr. Vandamme did not create the problem so it is not self-imposed. The financial hardship should carry a great deal of weight in regards to tearing out a driveway to gain a certain percentage. The driveway is workable and the Board needs to look at the hardship.

There was a discussion about the Foothill Ordinance and why it was put into place. The Foothill Ordinance applies to this piece of property. The definition of substantial compliance was also discussed.

Ed Casperson mentioned that he can't believe that a City Board or Commission would not look at economics for being too great or not too great. To look at this and say a variance can't be allowed because economics are not allowed, is unreasonable. Mr. Casperson did not understand that he was to meet with Paul Rowland before applying for a variance.

Mark Franc read a memo from Paul Rowland in opposition of this variance. It is not valid because it is self-imposed. The City will work with the contractor to bring this into compliance. A variance is not in order.

Leon Thurgood made a motion to table this issue for no more than three months. During such time the applicant will meet with Paul Rowland and Mark Franc to bring into compliance. Al Hess seconded the motion and voting was unanimous.

2. Consider granting side yard variance of 7 feet at 1812 S. Bountiful Boulevard, Barnes Banking Co., applicant.

This item was pulled off the agenda by the applicant.

Meeting adjourned at 8:40 p.m.