

BOARD OF ADJUSTMENT MINUTES
August 10, 1993

Present: Frances Spencer, Gene Bangerter, Kirk Heaton; Mick Johnson, Planning Commission Representative; Blaine Gehring, Planning and Redevelopment Director; Shirley Chevalier, Recording Secretary

Excused: Chairman

K D. Simpson.

Frances Spencer chaired the meeting.

Petition 93-5 Permission to construct a 6 ft. high fence along the sidewalk on the 500 South Street side of a corner lot at 510 South Larsen Drive, and along the west property line, with zero setback. Ordinance requires a setback of 20 ft. Michael B. Wilde, owner.

Mr. Wilde stated the sole purpose of this fence is for the safety of his family. Traffic is constant on 500

South, both night and day. His driveway is off 500 South into his side yard. Cars that are waiting to turn north toward the hospital are passed on the right by vehicles continuing up the hill to the east; people turn into his driveway to turn around because they miss the street to the hospital, sometimes driving over the mow strip. Most vehicles travel well over the speed limit of 30 mph. Several houses on 500 South have rock walls or 6 foot wood fences. He is asking for the same privileges the other people have to secure their property for the safety of their families.

In 1988, the ordinance was changed for corner lot fences to require that both street sides have a 20 ft. setback. With the adoption of the new zoning ordinance, it now allows fences in side yards to go all the way to the sidewalk with one exception: If there is a driveway within 15 ft., it needs to be held back 10 ft. so people coming out of that adjoining driveway can still have a view of the street as they are backing out, which would apply in this case. Instead of 20 ft., it is a 10 ft. variance based on the new ordinance. Mr. Gehring said he scaled it off from Mr. Wilde's drawing, and it would still leave him at least 20 ft. in front of his garage and in his driveway to be able to park cars and use the driveway and garage space. Although he cannot use 10 ft. of his yard, safety factors also apply to those people coming out of their adjacent driveway who need to see up 500 South as they are trying to back out.

It was mentioned that this fence was put up without a permit. Mr. Wilde said he realizes he should have done that but he felt the safety of his children was his first concern. He would not have bought the home if he had realized the traffic was this bad. He purchased the home in December, and it has been for sale the last 6 months. No one wants to purchase the home with the traffic and noise.

Kirk Heaton said the Board cannot grant a variance if there are no unique circumstances attached to this property that are different from all the property in the vicinity. They are all subject to the same traffic flow. The property owner has to prove that due to unique circumstances, he is being deprived of privileges that other people in the same zone enjoy.

Paul Barron, 508 E. 500 So., property owner immediately west of Mr. Wilde, said his driveway is within 15 ft. of the fence. He is concerned for the safety of the people using the sidewalk and street. People ride bikes and rollerblade down the sidewalk. Shawn Acerson, co-owner at 508 E. 500 So., estimates visibility has been reduced 100 ft. with the fence. Both Mr. Barron and Mr. Acerson oppose the fence.

Kirk Heaton made a motion to deny the variance for petition 93-5; seconded by Frances Spencer: voting was unanimous. Mr. Heaton felt that no unique circumstances exist on this property.

Petition No. 93-6 Permission for a driveway to be located on property that is over 30% slope with grades up to 18%; ordinance allows a maximum grade of 15% for driveways, and does not allow driveways to be located on 30% slope. Property is lot 151, Plat 2F, Maple Hills Subdivision, (1857 E. 2475 So.), owned by David Coats.

Three plans were presented, "A" being the preferred plan as proposed, needing the requested variances; "NB" and "C" are alternate plans, but there are more cuts and fills and more rock retaining walls would be required. Mr. Wayne Belka, architect, developed site plan "A" and was present at the hearing. Mr. Coats stated the drive is 260' lineal distance, but the closest corner of the house is only 180 ft. from the driveway and 125 lineal feet from an existing fire hydrant. There is no building on the no-build 30% area, but the driveway is partly located on the no-build zone because it can follow the natural contours of the lot with less disturbance of vegetation and less excavation to the hillside, which follows the intent of the ordinance. The slope of the driveway as proposed averages less than 15% with some areas 10-12% and some 18%. The intent is to disturb the least amount of the hill while maintaining safe grades; however, they can grade this to a constant 15% slope with just slightly more cuts and fills.

Mr. Coats had two engineering firms evaluate the site plans, one of which investigated the subsoils in nearby construction sites, and it was their recommendation that they follow plan "A" which follows the natural contours of the hillside. It allows the house to be built in the safest-flattest area. They acknowledge that it results in a longer driveway but does not damage the hillside and has the least environmental impact. Extreme excavating could cause disturbance to the natural subsoil drainage system. The least amount of rock

retaining wall with the least disturbance to the natural contours would be best. The alternate plan, while meeting the requirements of road length and not traversing the no-build area, would create an excavation into the hillside that would cause a lot of construction problems. In an attempt to build a home on this property, Plan "C" would comply but it would result in large cuts and fills, would have a garage a whole level lower than the house requiring quite a number of steps to the house, which would be very undesirable, and in doing so the intent of the hillside ordinance would be defeated. Plan "A" would also provide a much better vantage point along the ridge for fighting a fire.

Mick Johnson asked if it was the intent of the ordinance, when limiting the access roads to 200 ft., to allow a fire truck to the structure. Mr. Gehring said it was his understanding that it was the intent for a fire truck to be able to get up to the front of the house in some of these longer driveways. If the road goes beyond 200 ft., it would require a sprinkling system in the house or a fire hydrant installed. Mr. Coats said at the nearest point of the house it is well under 200 ft., and there is a fire hydrant close by. Mr. Johnson said it appeared to him they would have better fire protection if house plan "A" was built. It would allow easier access to fire fighting along the ridge.

Mr. Gehring mentioned that staff approves plans on a regular basis where there is a small corner of the house or a small portion of the driveway that cuts across the 30% slope. The City Council approves subdivisions that go across small portions of 30% where it is necessary. This case, however, was felt to be excessive to the standards that usually apply. There is the spirit and intent, and the letter. He feels it is within the Board's purview to rule on intent as well as letter. If the Board granted the variance for the driveway to go into the 30% area and be above 15% grade, it would then have to go to City Council to grant the exception on the 200 ft. length.

Gene Bangarter made a motion to grant the variances for plan "A", with the City Council having to give final approval on the length of the driveway; Mick Johnson seconded the motion. Kirk Heaton proposed an amendment to the motion that it include the condition that there be a 15% continuous grade throughout the complete driveway, and subject to the City Council's approval of the excess of 200 linear feet for the driveway; Mick Johnson seconded the amended motion; voting was unanimous. It was the consensus of the Board that by approving the variances for plan A, there will be less damage to the hillside.

Meeting adjourned at 8:05 PM.