

BOARD OF ADJUSTMENT MINUTES
November 10, 1998

Present: Vice-Chairman Verlon Duncan, Bud Neslen, Ron Barlow, Gordon Thomas, Planning Commission Representative Lois Williams, City Attorney Rusty Mahan, Planning and Redevelopment Director Blaine Gehring, Recording Secretary Connie Feil.

Absent: Kevin Murray and Brent Wynn.

Verlon Duncan welcomed all those present and had the Board Members introduce themselves.

Gordon Thomas asked if the wording in the minutes for October 13, 1998 covers the conditions that Brent Wynn made his motion on? The wording does cover the request. Ron Barlow made a motion to approve the minutes for October 13, 1998 as written. Bud Neslen seconded the motion and voting was unanimous.

1. Consider granting a 7 ft. variance to a required 8 ft. side yard setback at 560 East 1200 North, Joseph W. Poirer, applicant.

Mr. and Mrs. Joseph Poirer, applicants, were present. Joseph Poirer explained that he and his wife bought their home in 1983 and in 1988 he built the existing carport on the west side of the property. At the time he built the carport he was unaware that a building permit was required. Mr. Poirer talked to the neighbor on the west side about the new carport before building it. The previous owner built a room above the garage leaving only a 6 ft. 2 in. clearance to park a vehicle. The Uniform Building Code requires a 7 ft clearance so this does not meet the code. Mr. Poirer can park his car in the garage but not his explorer. This is the reason for building the carport so his wife can park out of the weather.

Mr. Poirer explained that on his application he did not mention that he has two vehicles. He stated that he does not have useable garage space like other home owners. Every home in the neighborhood has at least one single garage and a carport or a double garage. Some homes have a detached garage in the rear of their property. These existing garages have a 7 ft. clearance which Mr. Poirer has only 6 ft. 2 in.

Mr. Poirer read the memo from Blaine Gehring which states that Mr. Poirer has room for a 12 ft. driveway on the east side of his property which would allow for a detached garage in the back yard. Mr. Poirer presented an architect drawing that shows 12 ft. from the house to the property line. Mr. Poirer measured from his house to the neighbor's fence and has only an 11 ft side yard. Mr. Poirer has three additional reasons he does not want a driveway on the east side of his house. First: Mr. Poirer feels that this would be esthetically ugly. He already has a driveway on the west side of his house and this would be too much cement. Second: Mr. Poirer has Weber and culinary water mains within 12 ft. from the property line. Third: There is a large pine type tree that was brought from Washington and planted when the home was built in 1958. This tree, which is on the east side, will have to be removed if a driveway is placed on the east side of the

house. Mr. Poirer feels that placing a driveway on the east side of his property is not an option.

Mr. Poirer feels that he has special circumstances that do not apply to the neighborhood. Mr. Poirer does not have the 7 ft clearance required by ordinance and he does not have the 12 feet in the side yards that is required for a driveway. He also feels that he is being deprived use of his property because he cannot park his Ford Explorer in the garage because of the height of the ceiling in the garage. Mr. Poirer realizes that a 7 ft. variance to an 8 ft. side yard is 87% of the requirement for a variance and this percentage is huge.

Mr. Poirer also feels that this is not substantially affecting the general plan or someone would have said something about his carport. The carport has been up for 10 years and nothing has been said until now. He was unaware of having a building permit for the carport until he applied for a building permit to remodel his home. At this time he was told he could have a building permit but the carport will have to come down. At this point Mr. Poirer applied for the variance.

As far as the spirit of the zoning ordinance, especially where other options are available, Mr. Poirer feels that he has to live with a 6 ft. 2 in. garage, apply for a variance to build an 8 ft. driveway that requires 12 ft. on the west side, apply for a variance to build an 11 ft. driveway that requires 12 ft. or apply for a variance to keep the existing carport. Mr. Poirer would like the Board to see this his way so he can keep his existing carport.

There was a discussion on the use of the garage, the size of the side yards, tearing the carport down and replacing with driveway and building the garage in the rear. Mr. Poirer parks his car in the garage and Mrs. Poirer parks her explorer under the carport. The side yards meet the requirements for side yards but not a driveway. A variance would have to be granted to allow for a 12 foot driveway for a garage in the rear.

Mrs. Poirer mentioned that placing a driveway on the east side of the house would disrupt the placement of the house. She also mentioned that placing a garage in the back of their home would cause the removal of four trees and too much existing landscaping. Mr. Poirer mentioned that placing the garage in the back would be taking out the existing landscaping and the cost for all of this would be too expensive.

Mr. Poirer mentioned that he has three neighbors in favor of the variance. It was explained that what the neighbors feel or want has no impact on what the law states and the decisions of this Board. The law does not allow for special privileges nor can economics be an issue. Mr. Poirer feels that he has an unreasonable hardship because his neighbors have full use of their garage and he does not.

Rusty Mahan explained that the underlying situation needs to be confronted. Is this situation self- imposed? The Poirer's have a lawful use of their property with the house and garage on the lot that they have. There has been no denial for these uses. It is for the Board to decide if this situation has been self-imposed. As far as special circumstances attached to the property that does not apply to other properties in the same district. There is a house and a garage on this lot just like other properties have. Is it essential to the enjoyment to the substantial property right?

There is an existing substantial property right and Mr. Mahan feels it is not essential. It is important but not essential. The issue still remains, is this self- imposed?

Lois Williams explained that sometimes the decisions made are not what is wanted. The people elect the Mayor and City Council to uphold the zoning ordinances. The Board of Adjustment has to uphold the zoning ordinances as well as the State Law. Lois made a motion to deny the variance. Gordon Thomas seconded the motion and the motion past by majority vote. Verlon Duncan voted no. He feels that nothing is being accomplished by trading one request for a variance for another variance. To remove large trees to build in the back doesn't feel right.

Mr. Gehring mentioned that it would be appropriate to have the Board grant a 2 ft. variance for the driveway tonight. This would give the Poirer's the option to use it in the future without coming back to the Board of Adjustment for another hearing.

Mrs. Poirer mentioned that putting the garage in the back will not enhance the house and there would be too much landscaping to be removed. This is not acceptable.

Ron Barlow made a motion to adjourn the meeting. Bud Neslen seconded the motion and voting was unanimous.

Meeting adjourned at 7:30 p.m.