

BOARD OF ADJUSTMENT MINUTES
August 11, 1998

Present: Vice Chairman Verlon Duncan, Brent Wynn, Gordon Thomas, Ron Barlow, City Prosecutor J. C. Ynchausti, Planning and Redevelopment Director Blaine Gehring, Recording Secretary Connie Feil.

Absent: Kevin Murray, Bud Neslen and Planning Commission Representative Lois Williams.

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

Elections for chairman and vice-chairman was tabled for next meeting.

Ron Barlow made a motion to approve the minutes with a name change. Gordon Thomas seconded the motion as amended and voting was unanimous.

1. Consider a 5 foot variance for a 30 foot front setback on a flag lot at 362 N. 1000 E., John Alley, applicant.

John Alley was present. Mr. Alley feels that he qualifies for a variance as far as a hardship goes with this being a unique piece of property. The piece of property is a flag lot which abuts another flag lot which already has been built on. After purchasing the property, water was discovered from an existing well. Mr. Alley contacted a Civil Engineer for some direction. A report from AGRA Earth & Environmental has indicated that groundwater was detected on the eastern portion of the property which could cause groundwater infiltration problems for a foundation. Two test pits were dug on the property. One of these pits detected groundwater about 6 feet down. The engineers recommend shifting the home five feet to the west which will put the footing elevation about 30 inches above the water table. This should eliminate any water problems.

During the excavation of the home to the south of this property, which Mr. Alley built, there was no water found. Mr. Alley is a builder and has not had a water problem before. He also talked to the surrounding neighbors and found no water problems on their properties. Mr. Alley feels that this piece of property is unique in that it is the only piece of property in this area with the water.

The engineers from AGRA have suggested to Mr. Alley that a variance be granted for as much extra property as possible. The further west the home could be built on the better. Mr. Alley feels that asking for 5 feet, which is the minimum amount needed, would fit better with the neighborhood. Mr. Alley has submitted a petition with signatures for approval for the variance.

There is a surface drain that runs out to 400 North. It has been recommended to Mr. Alley to use a french drain around the foundation. The attempt is to build above the water table.

Ron Glaittli, residing at 425 N. 1000 E., is in support of the variance.

Ron Barlow made a motion for approval for a 5 foot variance for a 30 foot front setback on a flag lot at 362 N. 1000 E. Brent Wynn seconded the motion and voting was unanimous.

2. Consider granting a 10 foot variance to a required 20 foot driveway requirement at 2848 S. Cave Hollow Way, Kent Swenson, applicant.

Kent Swenson, applicant, was present. Scott Peterson, legal council, was also present. Mr. Peterson explained that the City approved the Maple Hills Subdivision in 1976 showing a 20 foot right-of-way, 10 feet on both sides of lots 93 and 94 and 20 feet along lot 98. Since this subdivision was approved the Foothill Ordinance has been adopted requiring a minimum of 20 feet for proper fire access. The approval for the subdivision and the easements were reserved, however, when the plat was recorded the 10 foot corner of lot 97 was not recorded.

The upper portion of this property (lot 98) is steep with slopes of 50% which can't be built on. The middle and lower portion of the property is flat and can be used. Mr. Swenson is asking for 10 foot variance to the lower portion of the property so he can have access to his property. The reason for this variance is that the owner of lot 97, Robert Hellinger, disputes the 10 foot corner of ground. Mr. Hellinger claims that this section is his property and it is not part of the right-of-way or easement. Mr. Peterson feels that this is the right-of-way and is a recording error. Mr. Peterson would like to work with the City and the property owners for the actual meets and bounds for the property.

Scott Peterson explained that the Swensons are asking for the variance to be granted now so they can have access to the property as the right-of-way suggests. This will allow the Swensons to build on their property now rather than waiting for litigation for the right-of-way. Mr. Swenson is willing to expand the 11 foot driveway to 17 feet at his own expense. Mike Barfuss, Fire Marshall, has agreed to a 17 foot driveway rather than the required 20 foot driveway. If this variance is not granted it will cause a hardship for the Swensons because they will have to return with another variance to have their home built on a 30% slope which will be very costly. This is a unique circumstance because of the placement of the easement. The layout of the land required the easement through the bottom part of the property. This variance is essential for the enjoyment for the use of the lot.

Kent Swenson explained that he bought the property in 1992 knowing about the Foothill Ordinance. Mr. Swenson talked to some engineers, architects, and the City all agreeing that the access will be from the right-of-way. Mr. Swenson did not know that the access easement had not been recorded until he turned his plans over to the City for plan check.

Mike Barfuss, Bountiful City Fire Marshall, mentioned that proper access for fire to all homes is the Fire Department biggest concern. The current code requires a 20 foot driveway but there are provisions in the code that will allow a 17 foot driveway. If the driveway is extended to 17 feet, this will be within the provisions of the code that will allow for modifications by the Fire Chief for existing conditions. Mr. Barfuss is totally opposed to the 10 foot driveway.

Public Hearing was opened for those with concerns or comments. Susan Noyce, residing at 1785 E. Maple Hills Drive, explained that she was granted a variance to build from the top part of her property on a 30% slope. If she had to do it again she would ask for a variance to build from the lower section. If this variance is not granted she has no way to have access to the lower part of her property, therefore, she is in favor of the variance. She feels that the intent was to continue the easement from lot 97 to lots 98 and 99. This easement is essential for the use of her back yard.

Mark Noyce also feels that the intent was with an easement on the lower part of the property. All sewer stubs for these lots are on the lower section of the lots. It has always been the intent for this access to be at the bottom.

Robert Hellinger, residing at 2850 S. Cave Hollow Way, explained that when he bought his property the easement was clearly defined as a 10 foot easement. Mr. Hellinger asked the real estate agent about the building of lot 98. He was informed that lot 98 could only be built from the top part of the property. Mr. Hellinger also went to the City to look at the plats which shows an access only to build. Mr. Hellinger feels that the Swensons are only asking for the variance because they do not want to build from the top portion of their property. Last year when Mr. Hellinger talked with the City Engineer he was told that there isn't an easement and the Swensons will have to build from the top. The easement that is being questioned is paved and part of Mr. Hellinger's driveway. He feels that this is his property and not an easement.

Wayne Tolmachoff, residing at 2836 S. Cave Hollow Way, purchased his property in 1996 and at this time he was told that lot 98 would have to build from Maple Hills Drive. The deed of trust that the Swensons have show the address from Maple Hills Drive not Cave Hollow Way. When the Swensons came to him and explained that they were going to build from Cave Hollow Way, Mr. Tolmachoff checked with the City Engineer to find that a site plan had been submitted. Last year Mr. Tolmachoff had a discussion with the Fire Chief and was told that building from the lower part of lot 98 could result in many fire violations. One being not having a 20 foot driveway, having a driveway slope greater than 15% and not having an adequate turn around for fire access. Mr. Tolmachoff has concerns with fire protection. He also feels a retaining wall should be required if the access is to be widened which would make the access smaller than the existing 10 feet, construction equipment turning to lot 98 could slip or cause the ground to slip onto his property, traffic will increase, decrease value of his home and the possibility of vegetation slipping onto his property.

Jeff Child, residing at 2858 S. Cave Hollow Way, has some concerns with traffic, water run off, and the steep grade of the road. There could be some safety issues in the winter with ice on the road and shoveled snow to the side of the road. Mr. Child feels that the original intent for the 10 foot access was for construction not for a driveway. The address for lot 98 is for Maple Hills Drive not Cave Hollow Way. Mr. Child has no problem with the building on lot 98 if built from Maple Hills Dr.

Richard Christensen, residing at 2814 S. Cave Hollow Way, has some concerns with water

drainage from lots 98 and 99 since they are so steep. Since the Noyces built their home there has been considerable water drainage into the Christensen's back yard. This water drainage and possible vegetation will increase and cause more damage to his property.

Karl Quilter, residing at 2764 S. Cave Hollow Way, went through a similar process when he tried building on his property. When Mr. Quilter submitted his plans for his home he was told that he would not be able to build because the slope was too steep. A variance would not be given because he could arrange the home differently on the property. Mr. Quilter has no access to the back of his property and he feels that it is not right for others to have a special access. Paving the access will create some safety issues like water control, long driveway, snow removal, extra garbage cans at the bottom of the driveway and safety for the children. Mr. Quilter is opposed to the variance.

Kurt Gentry, residing at 2794 S. Cave Hollow Way, would like to know that once the access is granted what kind of impact is going to be put on the remainder easement? The purpose for the existing easement was for utilities not common use or traffic. If this easement is opened for lots 98 and 99, the easement will be used as a main drive through every day. This causes some concerns with water flow from the deforesting from these lots. There has been a substantial increase in water flow since the Noyce's built their home and removed the vegetation. In the subdivision covenants it states that there will be no unnecessary removal of vegetation. Mr. Gentry feels that this has been violated.

David Dickson, residing at 2880 S. Cave Hollow Way, was against the variance given to the Noyce family and he is against this one also. It goes against the Foothill Ordinance particularly when dealing with a steep slope. Mr. Dickson is strongly opposed to the variance and has submitted a letter with signatures from surrounding neighbors asking to keep in force the Foothill Ordinance.

Val Neuenschwander, residing at 2885 S. Cave Hollow Way, mentioned that there are some advantages and disadvantages with living in this area. It is difficult and expensive to build a home in the back yards of other neighbors and then make a driveway into a roadway. Mr. Neuenschwander suggested building from Maple Hills Drive as was the intent for this lot. Mr. Neuenschwander is opposed to the variance.

Clair Chilton, residing at 2831 S. Cave Hollow Way, has concerns with safety. The driveway is maintained by the home owners and in the winter it can get very icy. Cars slide down the road now and additional cars will make it even more dangerous. In the winter there are large snow banks on the sides of the driveway and one car can barely drive down it. When garbage cans are put out it makes it even worse. Water is also an issue and safety for the children.

Mary Jane Child, residing at 2858 S. Cave Hollow Way, has a copy of the purchase agreement for lot 98 and it has an address off of Maple Hills Drive. Mrs. Child feels that when the Swensons purchased the property they knew that the home was to be built from Maple Hills Drive not Cave Hollow Way. There is a safety issue for the children with the current cars and now construction vehicles using the driveway. This driveway is very narrow in the winter with

the snow. There is a water drainage problem now by adding another home the problems will increase. The intent for the access of lot 98 is from Maple Hills Drive and should be kept there. The access from Cave Hollow was not intended for continual use but for utilities.

Robert Dewey, original architect for Maple Hills Subdivision, explained that in the planning stages of this subdivision lots 97,98 and 99 were very steep at the top part of the property. There is buildable property on the lower section of these lots. With the buildable portion at the lower part of the properties a 20 foot driveway easement, not utilities, was allowed for access to the lower buildable lots. A 20 foot driveway easement was the design and intent for these lots.

Scott Peterson explained that without this variance the Swensons will suffer an unreasonable hardship and will not be able to enjoy their property as surrounding neighbors. There is special circumstance with the 30% plus grade at the top portion of their property. Mr. Peterson is asking the Board to grant the variance for access as the intent of the plat. If the access is not allowed, the owner is not able to enjoy the same property right as the surrounding neighbors. The Swensons have the same right to use the access as the neighbors. The general plan was to have access to the lower section of the property and should be granted.

Verlon Duncan asked the Swensons if they wish to have a decision made tonight or have this tabled until the legal issues can be done? There was a five minute recess for the Swensons to discuss the issue with their attorney. A decision was made to have a decision made tonight.

Ron Barlow made a motion to deny a 10 foot variance to a required 20 foot driveway requirement at 2848 S. Cave Hollow Way. Gordon Thomas seconded the motion and voting was unanimous.

Meeting adjourned at 9:00 P.M.