

MINUTES OF BOARD OF ADJUSTMENT

June 5, 2004

PRESENT: Larry G. Miller
Dave Blackwell
Lee Kimball
Leon Nelson
Winifred Jensen, City Recorder

EXCUSED: Richard Sudweeks

Larry Miller called the meeting to order at 8:00 a.m. The meeting was called as a scheduled meeting, and notice of the time, place, and agenda had been posted at the Highland City Offices, Strasburg Park, and Heritage Park, and faxed to the *Deseret News*, *Daily Herald*, and *Salt Lake Tribune* on May 26, 2004. Minutes of the meeting held May 3, 2004 were approved by motion from Dave Blackwell. Motion was seconded by Leon Nelson, and it passed by unanimous vote.

1. Request for Variance from 15' to 11'16" for Side Yard Setback for Lot 2, Thornton Heights

Background: The developer of Lot 2, Thornton Heights, had his footings, basement, and four-way inspections before learning he was off on his side yard setback. He is asking for a variance from 15' to 11'16".

Discussion: J. Brad Morgan met with the Board of Adjustment and reported he had a surveyor check the setbacks and found the foundation is 12' from property line. He noted the lot is on a cul-de-sac and he wanted as much parking on the south side as he could get, and the excavator set the footings. He noted the building inspector checked the setback and said it was fine. He did the footings, foundation, and sub plumbing inspection and passed it. Nothing was said. A neighbor, Adam Fritze, thought the foundation was too close to the property line, and the project was stopped. During the process they had the lot surveyed. He believed the code permitted a 10' side setback. He indicated he talked to the developers of the project and they had no heartburn with the 11'6" setback. He noted the adjoining landowners on Lot 3 and Lot 1 did not sign the application letter. He also indicated he didn't think the setback would hurt property values, violate any city ordinance by affecting the public utility easement, but it doesn't meet the requirements in the CC & R's.

Dave Blackwell clarified the process with Mr. Morgan wherein Mr. Morgan agreed everyone had missed on the setback until the landowner to the north felt they were building too close.

Lee Kimball indicated the building inspector doesn't always check for side yard clearances. The inspection was to see that the footings were set ready to pour. He explained it is the owner and contractor's responsibility to make sure the house is properly placed.

Larry Miller indicated Jay Haws explained to him the adjoining property owner came into the office and made the City aware of the problem with the setbacks for the foundation. The builder stopped after this was learned and he scheduled the Board of Adjustment meeting. Larry further indicated he learned from Jay Haws that Matt Zeigler had done the inspections and, upon talking to Matt, he learned the excavation had been piled on the property line. In most cases, unless the contractor has drawn a chalk line from hub to hub so the City can inspect the side yard clearance, the inspector puts on the inspection card the inspection was per contractor's marking and notes the city inspector didn't inspect the setbacks. This was the case with this inspection, and it was noted on the card. He also indicated it is the builder's responsibility to measure the setbacks, and with a large pile of dirt it is difficult to measure the side yard. Without a chalk line, the inspector, Matt Zeigler, was not able to guarantee a side yard clearance. Larry Miller indicated he also learned from Jay Haws the builder had moved the house from where it was originally submitted on the plot plan.

Mr. Morgan indicated there is 60' side setback on the other side of the house to make room for parking. He also indicated he thought the side setbacks were 10' and 15'. He further indicated the CC & R's specify side setbacks as 14' and 10'. Lee Kimball clarified the side setbacks should be 15' from both sides and the 10' and 15' side setbacks only applies to non-conforming lots. Wini Jensen clarified the setbacks should be 15' from both sides as the R-1-40 ordinance requirement was in effect when Thornton Heights was approved.

Upon discussing solutions to the problem, Mr. Morgan indicated the owner of Lot 1 wants \$25,000 to \$30,000 to acquire property to make the correct setbacks possible, and this would entail needing to re-do the construction loan. Lee Kimball indicated he didn't know if the adjoining property owner could sell a parcel of his lot as it would make his lot a non-conforming lot. He also indicated Mr. Morgan couldn't force his neighbor to sell him some of his lot. Larry Miller suggested a solution would be shaving off the corner of the house which encroaches on the setback and cantilever.

Mr. Morgan indicated he received a letter from the Architectural Committee as it had a side yard of 10', but the City caught it and said the setback should be 15'. Lee Kimball explained the CC& R's aren't allowed to be less than the City's ordinance. Mr. Morgan indicated he plans to sell the lot. He had originally planed to live in it, but has chosen to remain in Elk Ridge. Lee Kimball further explained the parameters under which the Board of Adjustment can function, and he indicated he had discomfort recommending a variance for this lot.

Discussion ensued.

Motion: Leon Nelson moved that the request for a variance from 15' to 11'6" side yard set back for Lot 2, Thornton Heights, be denied due to the fact this would violate the rights of the adjoining property and it is possible to correct this, even though it would create a monetary cost to the homeowner. Lee Kimball requested an amendment to the motion that it was denied because it doesn't meet City Code. Leon Nelson accepted the amendment. Lee Kimball seconded the motion, and it passed by unanimous vote.

Mr. Morgan indicated if he hadn't been told the side setbacks were 10' and 15' he wouldn't have called the meeting. Lee Kimball further noted the CC & R's don't meet the building code of the City.

2. Adjournment

Meeting adjourned at 9:00 a.m.