

MINUTES OF BOARD OF ADJUSTMENT

December 20, 2004

PRESENT: Larry G. Miller
Dave Blackwell
Leon Nelson
Richard Sudweeks
Winifred Jensen, City Recorder

EXCUSED: Lee Kimball

OTHERS PRESENT: Dex Andrews, Patty Andrews, Michael Cosgrave, Cindy Cosgrave, Scott Jones

Larry Miller called the meeting to order at 9:00 p.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 December 16, 2004. Minutes of the meeting held December 13, 2004 were approved by motion from Leon Nelson. Motion was seconded by Dave Blackwell, and it passed by unanimous vote.

1. Request for 3' Side Yard Variance on Lot 7, Sierra Hills

Background: Dex and Patricia Andrews are requesting a 3' side yard variance on Lot 7 of Sierra Hills.

Discussion: Larry Miller reported the Board of Adjustment received a summary concerning the meetings and development issues of Sierra Hills, which was prepared by Highland City's Assistant Director of Planning and Zoning, Larry Crowell. He reported he had gone over the issues with Lonnie, and the concern he had was to make certain there wasn't an injustice done to the applicant, Dex and Patty Andrews. Larry Miller explained the location of the 9560 North Street had been part of the plans for the Sierra Hills Subdivision since January, 2004. He further noted the City had checked with the County to learn that Mr. and Mrs. Andrews were not the owners of record of Lot 7 of Sierra Hills. Mr. Andrews indicated they had taken ownership about two weeks ago (December 10). Mrs. Andrews indicated she had been to all the City meetings while the development was discussed. Larry Miller indicated he had hoped the creation of the road had caused a hardship, but it was apparent the Andrews were aware of the road issues back in January, and the uniqueness is the test the Board of Adjustment has to apply. Mrs. Andrews noted the City required the road in the first place and it made the lots narrower and that was what they had tried to discuss with the Board of Adjustment in the December 13th meeting. Larry Miller further clarified statutorily the Board of Adjustment can't grant a variance unless there is a hardship to the lot. He further clarified if the road had gone straight, Lot 7 would still have a problem by being deficient by 3', so the curvature didn't cause the problem. Mrs. Andrews indicated the curvature of the road caused part of the problems for Lot 7.

It was clarified the Sierra Hills Subdivision plat was recorded November 18. Larry Miller called for input from the Board of Adjustment. Dave Blackwell indicated his position remained the same as it was discussed last week which was that he felt there was an option to turn the home 90 degrees on the lot; otherwise to do otherwise was a stretch.

Richard Sudweeks felt the minutes shed a different light from what the Board of Adjustment was working with last week, that the issue extended over a period of months, and the purchaser knew of the uncertainty of the situation. He indicated he had a hard time justifying granting the variance.

Larry Miller indicated he didn't see uniqueness to Lot 7 from the information received from city staff. He felt it was specific in the motion, and it was evident from the minutes there was adequate knowledge the road was going to change, which also changed the lot, as early as January, and that took

away his justification for granting a variance.

Mr. Andrews indicated he was asking for a variance of 2' in order to build a third car garage. He thought the Board of Adjustment could see without the extra garage it would affect the neighborhood. He indicated the way they planned to build the house it would not affect the aesthetics or safety, and the home is on a dead end street that may never be developed. He indicated if they have to build their house without the garage, or turn the house, the whole area would be diminished. He felt the Board was trying to look at the right thing to do, rather than the letter of the law, and it would consider those things and not the violation of the ordinance. He asked if the Board couldn't grant a 3' variance if it could grant a 1' variance.

Larry Miller explained the guidelines under which the Board of Adjustment can function as is set by state law wherein the Board isn't given the power to re-write ordinances and their charge is that they can't grant a variance which could be applied to any other lot in the City, whether it is 1' or 50'. They can only apply a variance based on the test of uniqueness. Mr. Andrews indicated there was a slight curve for the road and with the changes made in the October 19th meeting the road was changed further which took 23 linear ft. and 1,000 s.f. from the lot they later purchased.

Leon Nelson inquired of the Andrews when they committed to the lot in March, 2004, what did the commitment include? Mr. Andrews indicated they had given the developer \$1,000, and it was refundable if they couldn't build on the lot. Mrs. Andrews indicated it was the issue of the equestrian trail and the property owners in the gully that prevented the subdivision from being finalized and recorded sooner. Discussion ensued.

Motion: Larry Miller moved, in light of what the Board was looking for from the last meeting, that the variance be denied since the back up shows it did not support the request from last week. Motion was seconded by Dave Blackwell. Motion did not pass since the vote was tied with Larry Miller and Dave Blackwell voting in favor, and Leon Nelson, and Richard Sudweeks voting against the motion.

Richard Sudweeks prefaced his motion by noting that lots to the east are not part of the City and the developer worked hard to meet a city goal for the trail, which caused a change in the location of the road twice. He wanted to understand what happened before he makes a decision. He didn't feel the property owners adjacent to Sierra Hills had been at all cooperative, yet they have no other access to their property, they can't develop their property without cooperation from the City of Highland, and yet they have expected the City and the developer of Sierra Hills to be the only ones to exercise flexibility.

Mrs. Andrews indicated the developer of Sierra Hills paid \$17,500 to the adjoining property owners to the east in order to gain the other location for an equestrian trail.

Motion: Richard Sudweeks made the same motion as was done at the December 13, 2004 meeting, which was to recess until the Board of Adjustment can look at the minutes of the Planning Commission and City Council meetings when Sierra Hills was discussed, except that the Board would not meet the next Monday. (In other words, the previous motion was still standing.)

Larry Miller indicated he would talk to Lonnie Crowell, the Chairman of Planning and Zoning, and Mayor Adamson to see what kind of information can be obtained on the change of the road in October as to what happened. He will share this information with Wini Jensen and reconvene at a later time, but not December 27.

2. Request for Extension of Side Yard Setback on Lot 4 in Amber Meadows

Background: Michael and Cynthia Cosgrave are requesting that the side yard setback on the east side of their home be extended south so the house can be moved toward the front of the property and still preserve the front set back on 10620 North and the majority of the front setback on the cul-de-sac.

Discussion: Scott Jones, the builder for the Cosgrave's home, explained Lot 4 in Amber Meadows on 10620 North shows a 30' setback on the front, 15' on the side, 30' on the back, and 15' on the side which jumps to 30' on the corner. He further noted the Cosgraves want to bring the house forward 25' from the back of the sidewalk, and want the side set back to come to the arc of the cul-de-sac so the home is not so far from the street. He indicated they would be 24' or 25' back of the sidewalk and are asking the south part of the lot be the front and the north part of the lot be the back, with the side yards being on the west and east sides.

Richard Sudweeks felt the property has a unique cul-de-sac layout, plus a corner lot. Leon Nelson asked if it may be a non-conforming lot due to the narrowness to the cul-de-sac and west boundary, and there could be the option for the side setback to be less where the neighbor to the west (Hodges) has a 15' side yard then Cosgraves could have 10'. Wini Jensen, City Recorder, indicated this lot would not be considered a non-conforming lot since it was developed under the R-1-40 zone and non-conforming lots in the City Ordinance pertain generally to lots in the Alpine Country Club.

Larry Miller wondered about running the driveway off the front street.

Scott Jones indicated he would like a variance to permit a 15' setback around the side, and suggested it could be approved based on the uniqueness of the cul-de-sac plus a corner lot as this doesn't happen very often. He explained the plan is over 6', or else they would need to shove the house way back on the lot.

Motion: Richard Sudweeks moved that the petitioner's request for a variance be granted so that the 15' side yard setback, which parallels the straight boundary on the east side of their lot north of the cul-de-sac, be extended south until it meets an arc that is 10' from the edge of the cul-de-sac and that the side yard setback that surrounds the cul-de-sac be 15' instead of 30' because of (1) the unique configuration of the lot in relation to the cul-de-sac, (2) the fact that the home the petitioner's plan to build will face to the south of 10620 North, and (3) that compliance with the 15' arc requirement would force them to have an unusually large front setback on 10620 North that would position their home out of context with neighboring homes. Motion was seconded by Leon Nelson, and it passed by unanimous vote.

3. Adjournment

Meeting adjourned at 10:05 p.m.