

MINUTES OF BOARD OF ADJUSTMENT

March 21, 2005

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

EXCUSED: Dave Blackwell

OTHERS PRESENT: Andy Finsand

Larry Miller called the meeting to order at 9:05 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, and faxed to *New Utah* on March 17, 2005. Minutes of the meeting held January 10, 2005 were approved by motion from Leon Nelson, subject to approval by either Dave Blackwell or Richard Sudweeks (members of the Board of Adjustment who were not in attendance at this meeting, but were present at the January 10, 2005 meeting. Wini Jensen was directed to contact one of them to concur with the motion approving the minutes as written). Motion was seconded by Larry Miller, and it passed by unanimous vote. Note: Wini Jensen contacted Dave Blackwell and he concurred with the approval of the minutes, as written.

1. Request for 3' Side Yard Variance on Lot 5, Greens at the Highlands

Background: Newline Construction is requesting a 3' variance on the east side of Lot 5, Greens at the Highlands on behalf of Mary Finsand.

Discussion: Andy Finsand indicated there needs to be 25' between two houses in the Highlands on the Greens. When they measured the two foundations they were off 2 ½ feet. He reported his partner spoke with the Assistant Director of Planning and Zoning, Lonnie Crowell, wherein Mr. Crowell informed him there was a utility easement maintained by Highland City on the west side and they felt the variance should be requested for the east property line and not next to the parkway detail. He further explained the lot is a small lot for the building envelope and they had a hard time finding plans to fit on the lot, and especially with the easement it was harder; thus the request for a variance. He further explained Wini Jensen contacted him to inform him they needed to have the homeowners committee sign off on the application. They had thought it was the City which needed to sign off on the application.

Larry Miller explained when the subdivision was approved CC & R's were recorded with the subdivision and they may be more restrictive, which he felt was the case with this application, and he further indicated when that happens the Board places allegiance to the CC & R's and the more restrictive requirements are the ones which become the norm for the subdivision. He further explained to the applicant the Board of Adjustment needs to know who are the owners of the homeowners association, and the Board needs to know the committee is OK with the request because the CC & R's are more restrictive than the City ordinance. Mr. Finsand didn't understand that and further explained had he more time he would have had the homeowners association sign off on the application.

Leon Nelson inquired who had signed off on the sheet attached to the application. Mr. Finsand indicated the property owners adjacent to his property and those to the east and west. It was at this point in the discussion the Board of Adjustment came to understand the background information from Lonnie Crowell was for Lot 1 and not Lot 5 of the Highlands on the Greens.

Lee Kimball indicated the setbacks are to be 10' on one side and 15' on the other side, and even though the house was closer on one side than 15', it still conforms. He recommended to the applicant that he have the corners surveyed 30' from the lot line.

Larry Miller felt the problem is in the CC & R's and they are recorded with the plat. Further, he was concerned about protecting the applicant by his obtaining written approval from the property owners and he explained the form signed by the adjoining property owners was not meaningful because there was no statement as to what they were signing. He asked him to re-do the form and describe the variance and have the property owners sign off so it if comes back at a future time it can be acknowledged.

Motion: Lee Kimball moved to dismiss the request for the variance on the grounds the proposed plot plan does not encroach on the side yard requirement of the City and the Board of Adjustment would not take any action. Also, the recommendation to the property owner that since the application doesn't comply with the CC & R's with the distance between the foundation of 25' that the property owner take steps to secure legal approval by the architectural committee (the legal body representing the subdivision). Motion was seconded by Leon Nelson, and it passed by unanimous vote.

2. Adjournment

Motion: Leon Nelson moved to adjourn. Motion was seconded by Lee Kimball and the motion passed by unanimous vote.

The meeting adjourned at 10:10 p.m.

Addendum: Discussion continued after the meeting over some points brought up in the meeting. This included whether the City required 25' between lots in the Greens in the Highlands. It was noted Wini Jensen had called Barry Edwards on the telephone during the meeting and had asked him if the setbacks for the Greens at the Highlands was in fact 25' setbacks between lots and he indicated it was. This information was relayed to the Board of Adjustment during the meeting. The Board of Adjustment members felt there needs to be some official records wherein the setbacks for the various subdivisions are readily disclosed. Lee Kimball had referenced in Article 4.8, 3-4806: (19) that setbacks in the open space density bonus were 30' front and rear, side yard 15' on each side with 30' on side abutting a corner. For this reason it was the Board of Adjustments' assumption that the setbacks for this development were in the CC & R's.