

BOARD OF ADJUSTMENT MINUTES

August 23, 2001

Minutes of the Roy City Board of Adjustment Meeting held in the City Council Room of the Roy City Municipal Building on August 23, 2001, at 6:00 p.m.

The meeting was a special meeting. Notice of the meeting was provided to the *Standard Examiner* at least 24 hours in advance and to all adjacent property owners. A copy of the agenda was posted.

The following members were in attendance:

Larry Miller, Chairman
Lance Hislop
Jennifer Russett
Darrell Thompson
Karlene Yeoman

Mark Larson, Planner
Michelle Drago, Secretary

Others present were: Mayor Roger Burnett; David Vitek; Candlario Garcia; Teresa Garcia; George Frey; Eileen Frey; Quy Ong; Darwin Anderson; Tony Giordano; and Ray Barker.

1. SWEARING IN OF NEW MEMBERS

Mayor Roger Burnett swore in Lance Hislop, Jennifer Russett, and Darrell Thompson as new members of the Board of Adjustment.

2. PUBLIC HEARING TO CONSIDER A VARIANCE REQUEST FROM ALPINE HOMES TO RCO 34-15-4(3) [B]{I2} TO ALLOW A SIDE YARD LESS THAN 8 FEET IN AN R-1-7 ZONE AT APPROXIMATELY 5303 SOUTH 4050 WEST

Karlene Yeoman moved to open the public hearing at 6:01 p.m. Darrell Thompson seconded the motion. Board members Hislop, Miller, Russett, Thompson, and Yeoman voted "aye." The motion carried.

Mark Larson stated that Alpine Homes had constructed a home at 5303 South 4050 West. They were not aware that the survey stake for the lot was not in the correct place until the home was built. When they discovered the error, they found that the house was only 5 feet 3 inches from the interior side yard rather than the 8 feet required by the Zoning Ordinance.

Karlene Yeoman asked if the error was discovered after the foundation had been poured. Mr. Larson said the home was ready for a final inspection when the incorrect side yard was found. Mrs.

Yeoman asked if the footings and foundations were inspected. Mr. Larson said they were. The Building Inspector measured 8 feet from the survey stake to the footing and foundation. He didn't know the survey stake wasn't in the correct place and thought the home had the proper side yard.

Darrell Thompson asked if Alpine Homes had sold the home. David Vitek, from Alpine Homes, stated that it had not. The buyers for the home had been given another lot.

David Vitek stated that when the excavation for the home was done, the contractor ran a string line from the front of the lot to the back and measured in 8 feet for the footing. At a much later date, the neighboring property owner was trying to locate his property line and found that the survey stake was in the wrong place. Alpine Homes had the real property line located and ran a new string line. That was when they found that the home only had a 5 foot 3 inch side yard. The home was 90% complete at that time. Mr. Vitek said they didn't know how the original pin, or stake, was mispositioned. It could have been a survey error, or it could have been people riding around on ATV's.

Chairman Miller asked what caused the neighboring property owner to question the location of the property line. Mr. Vitek said he was putting in a sprinkling system and RV pad and asked for Alpine Home's help in locating his rear yard pin. Chairman Miller asked why the excavation contractor had not measured from the foundation of the neighboring home when the footings for the home at 5303 South 4050 West were dug. Mr. Vitek said that the contractor always measured from the property line because adjoining homes were not always built right on set back lines.

Lance Hislop asked if there was 18 feet between the home at 5303 South 4050 West and the adjoining lot. Mr. Vitek said there was.

Darrell Thompson said there was 18 feet because the adjoining property owner wanted extra room for an RV pad. Because of the 18 feet the homes appeared to be the same distance apart as the other homes in the neighborhood. In this case, the neighbor just happened to own most of it. He asked if a 5 foot 3 inch side yard would cause the new owner to have a hardship. David Vitek did not feel it would because there was still enough room for landscaping and irrigation. Mr. Thompson said that the homes were garage to garage. There weren't living quarters right next to each other.

Mark Larson stated that the Uniform Building Code had extra fire protection requirements if a building was less than 5 feet from a property line. The home at 5303 South 4050 West had more than 5 feet so it was in the same category as a home built at 8 feet.

Darrell Thompson asked if the smaller side yard would prevent the adjoining property from using his RV pad. Mr. Larson said the neighbor's lot would not be affected.

Mark Larson stated that Alpine Homes had tried to purchase some property from the adjoining property owner because of his extra side yard, but that would have reduced the neighboring lot below the required square footage for the zone.

Chairman Miller asked if the home met all other zoning and building code requirements. David Vitek said it did.

Mark Larson stated that the spirit of the Zoning Ordinance was to have 16 feet between the homes. In the case there was 18 feet.

Chairman Miller asked if the neighboring property owner had any concerns about the requested variance.

Tony Giordano stated that he did not. He had the 13 foot side yard he wanted.

Darrell Thompson moved to close the public hearing at 6:20 p.m. Jennifer Russett seconded the motion. Board Members Hislop, Miller, Russett, Thompson, and Yeoman voted "aye." The motion carried.

There was discussion among the Board members. Lance Hislop asked if this was an isolated incident. Mr. Thompson felt it was.

Darrell Thompson felt that whoever purchased the lot needed to be aware they were purchasing a lot with a reduced side yard. David Vitek said Alpine Homes was required by law to inform the buyer when they entered into a contract.

Karlene Yeoman moved to approve the variance to RCO 34-15-4(3)[b]{i2} requested by Alpine Homes to allow a 5 foot 3 inch interior side yard at 5303 South 4050 West based upon the following findings:

1. Would literal enforcement of the Zoning Ordinance cause an unreasonable hardship? Yes. The home was nearly complete when Alpine Homes discovered the survey stake had been moved;
2. Were there special circumstances attached to the property that did not apply to other properties in the City? Yes. The home was nearly complete when Alpine Homes discovered the survey stake was not in the correct place;
3. Was the variance essential to the enjoyment of a substantial property right? Yes. The home appeared to look the same as the rest of the neighborhood;
4. Would the variance substantially affect the General Plan? No. There was more than 16 feet between home at 5303 South 4050 West and the adjoining home; and
5. Was the spirit of the Zoning Ordinance being observed? Yes. The distance between the two homes was greater than the minimum distance of 16 feet.

Jennifer Russett seconded the motion. Board members Hislop, Miller, Russett, Thompson, and Yeoman voted "aye." The motion carried.

3. PUBLIC HEARING TO RECONSIDER THE BOARD OF ADJUSTMENT'S DECISION REGARDING A VARIANCE REQUEST FROM QUY ONG TO RCO 34-15-4(1) [C] TO ALLOW TWO LOTS LESS THAN 7,000 SQUARE FEET IN AN R-1-7 ZONE AT APPROXIMATELY 4778 AND 4788 SOUTH 4125 WEST

Chairman Miller stated that the staff had checked the legality of the Board reversing a previous decision. It was possible for the Board to do so if there was a majority vote. It took three members of the Board voting in the affirmative to pass anything. Chairman Miller explained that in the past, the staff and Board had been under the impression that the chairman only voted in case of a tie. The staff had searched the State code and determined that was not the case. The chairman could vote on all matters. Dale Evans, a member of the Board was not in attendance. However, Lance Hislop, the Board's alternate member gave the Board a full quorum. Chairman Miller felt that Quy Ong's request should be reheard because there were too many gray areas.

Darrell Thompson moved to rescind the Board's vote on July 31, 2001, to deny Quy Ong's variance request and allow it to be reheard. Lance Hislop seconded the motion. Board members Hislop, Miller, Russett, Thompson, and Yeoman voted "aye." The motion carried.

Karlene Yeoman moved to open the public hearing at 6:27 p.m. Lance Hislop seconded the motion. Board members Hislop, Miller, Russett, Thompson, and Yeoman voted "aye." The motion carried.

Mark Larson stated that Quy Ong was requesting a variance to RCO 34-15-4(1) [c] to allow Lot No. 3 of the Chelle Cove Subdivision at approximately 4778 and 4788 South 4125 West to be divided into three lots instead of two. In order to have three lots, the two interior lots would be slightly less than the 7,000 square feet required by the R-1-7 Zone. Mr. Ong originally owned property from 4800 South to the City boundary to the north. When Len Herrerra wanted to develop the Chelle Cove Subdivision, he purchased the majority of Mr. Ong's property. Len Herrerra was supposed to have left Mr. Ong with enough land for three lots. Len Herrerra was no longer with the company that developed the Chelle Cove Subdivision and could not be reached. Mr. Larson said that when Quy Ong tried to divide his property into three lots he found that he didn't legally have quite enough property. The subdivision proposed by Mr. Ong would have a corner lot of 8,000 square feet and two interior lots with 6,881 and 6,900 square feet. Mr. Ong had tried

to purchase additional property from the lot to the north. However, the lot to the north didn't have any square footage to spare. The two interior lots would meet the minimum 65 foot lot width requirement. Mr. Larson said that Mr. Ong only needed a total of about 22 inches of additional frontage, or 11 inches a lot, to have conforming lots.

Lance Hislop stated that it appeared there could be two non-conforming lots or one non-conforming corner lot. Which did the City feel more comfortable with? Mark Larson stated that the staff preferred to see two slightly smaller interior lots than a smaller corner lot due to the corner lot set back requirements.

Darrell Thompson asked if lots larger than 7,000 square feet were allowed in an R-1-7 Zone. Mark Larson said they were. Lots in an R-1-7 Zone could not be less than 7,000 square feet.

Jennifer Russett asked if two larger lots would change the appearance of the neighborhood. Mark Larson said that was one of the applicant's arguments. The applicants would also argue that the increased cost of two lots versus three would mean smaller homes.

Darwin Anderson stated that he and Ray Barker were working with Quy Ong to subdivide Lot No. 3. When they laid out the three lots, they discovered there wasn't quite enough land. If they could only have two 10,500 square foot lots, there would be a gap between the homes, and the lots wouldn't look the same as the rest of the neighborhood. If they were able to have three lots, they could afford to put an extra 100 square feet in each home. Mr. Anderson felt it would be better for the City to have three lots rather than two. They felt that the original developer was run out of the company for being unscrupulous and that Quy Ong had been misrepresented.

Darrell Thompson stated that he had spoken with the adjoining property owner. The adjoining property owner was more concerned about the lot being full of weeds than slightly smaller lots.

Lance Hislop asked Mr. Anderson why he felt the Board had denied Quy Ong's last variance request. Darwin Anderson stated that the request had been denied on a vote of 2 to 1. Board member Evans felt that the 7,000 square foot lot requirement should stand.

Lance Hislop asked how the staff felt about Mr. Ong's variance request. Mark Larson said the staff really tried to screen and discourage requests for variances. In this case, both lots were so close he felt the Board should hear Mr. Ong's request.

Darwin Anderson stated that the homes would meet the set back requirements for the R-1-7 Zone. They would be the same as the rest of the neighborhood.

Mark Larson stated that at the last meeting Mr. Lawrence, a neighbor to the east, was opposed to Mr. Ong's variance request. He did not like the density. The staff notified all adjoining property owners that the Board was going to reconsider Mr. Ong's request. However, Mr. Lawrence was not at this meeting.

Chairman Miller asked if there were any comments from the audience.

Teresa Garcia, 4109 West 4800 South, was concerned about the value of the homes proposed by Mr. Ong in comparison to hers. Darwin Anderson stated that they planned to build homes that would appraise for about \$135,000. The homes would have two bathrooms on the main level and brick and stucco on the exterior.

George Frey, 4121 West 4800 South, stated that he did not appreciate the current appearance of Mr. Ong's lot.

There was further discussion between Darwin Anderson and the adjoining property owners.

Chairman Miller stated that the Board of Adjustment could only act on Mr. Ong's variance request. It could not do anything about drainage, maintenance, or consider building plans.

Darrell Thompson stated that the developer only had so much money to spend on the land and the houses. The developer would be able to spend more home on the homes if he was able to have three lots instead of two. He felt Mr. Ong's variance should be granted, and that the Board should require him to clear off the lot.

Darwin Anderson did not feel that anyone would be able to tell that the two interior lots were 11 inches smaller than other lots in the neighborhood.

Mark Larson stated that the essence of Mr. Ong's hardship was not economic. He intended to have three lots, but ended up a few feet

short, and the original developer was not around to work it out with.

Chairman Miller explained that the State code required the Board to consider and answer five questions before granting a variance. He asked if there were further comments from the audience. There were none.

Darrell Thompson moved to close the public hearing at 7:03 p.m. Karlene Yeoman seconded the motion. Board members Hislop, Miller, Russett, Thompson, and Yeoman voted "aye." The motion carried.

Lance Hislop did not feel 11 inches per lot would be noticeable. He felt two large lots would stand out more, and larger lots meant more yard work. Three smaller lots would mean the yards would be easier to take care of.

Jennifer Russett agreed that three lots would be less noticeable. It came down to 22 inches between three lots. She asked if the staff had considered making each of the three lots 7 inches smaller. Mark Larson said the staff preferred to see the corner lot remain 8,000 square feet so that there wouldn't be a problem having the home meet set back requirements.

Darrell Thompson stated that it was not the Board's job to zone property. It was the Board's job to see that the spirit of the Zoning Ordinance was met. He felt the spirit of the Zoning Ordinance would be met if Mr. Ong's variance request was allowed. There wasn't enough of a difference in the lot sizes proposed by Mr. Ong and those across the street to warrant denying the variance. He did feel the Board should require Mr. Ong to clean up the property to show good faith.

Karlene Yeoman agreed that the variance should be granted.

There was discussion about dividing the 22 inches among three lots versus two. Mark Larson explained the corner lot set back requirements. There was less room to build a home on a corner lot. The staff felt the corner lot should remain 8,000 square feet.

Darrell Thompson moved to approve the variance to RCO 34-15-4(1) [c] requested by Quy Ong to allow two interior lots smaller than 7,000 square feet and one corner lot at 8,000 square feet at

approximately 4778 South and 4788 South 4125 West based upon the following findings:

1. Would literal enforcement of the Zoning ordinance cause an unreasonable hardship? Yes. The original developer did not follow through on the deal he made with Quy Ong, and Quy Ong could not get redress;
2. Were there special circumstances attached to the property that did not apply to other properties in the City? Yes. The developer was not available to help solve the problem;
3. Was the variance essential to the enjoyment of a substantial property right? Yes. The homes across the street and in the neighborhood were all about 7,000 square feet. Three lots would fit the appearance of the neighborhood;
4. Would the variance substantially affect the General Plan? No. The developer had explained that he wanted to build better homes. The homes would meet the set back requirements for each lot; and
5. Was the spirit of the Zoning Ordinance being observed? Yes. The Zoning Ordinance required that lots in the R-1-7 Zone be 7,000 square feet. These lots were only slightly below the required size. It would be against the spirit of the Zoning Ordinance to split hairs over such a small difference.

Karlene Yeoman seconded the motion. Board members Hislop, Miller, Russett, Thompson, and Yeoman voted "aye." The motion carried.

Mark Larson reminded Quy Ong that a variance was only good for six months. He needed to do something within that time frame to show he was proceeding.

4. APPROVAL OF JULY 31, 2001, MINUTES

Karlene Yeoman moved to approve the minutes of July 31, 2001, as written. Jennifer Russett seconded the motion. Board members Hislop, Miller, Russett, Thompson, and Yeoman voted "aye." The motion carried.

5. ADJOURN

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Karlene Yeoman moved to adjourn at 7:15 p.m. Lance Hislop seconded the motion. Board members Hislop, Miller, Russett, Thompson, and Yeoman voted "aye." The motion carried.

Larry Miller
Chairman

Attest:

Michelle Drago
Secretary

dc:baug2301