

BOARD OF ADJUSTMENT MINUTES

July 22, 2003

Minutes of the Roy City Board of Adjustment Meeting held in the City Council Room of the Roy City Municipal Building on July 22, 2003, at 6:05 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 parties of interest. A copy of the agenda was posted.

The following members were in attendance:

Lance Hislop, Chairman	Tony Reynolds, Community
Jennifer Streker	Development Services
Darrell Thompson	Mark Larson, Planner
Karlene Yeoman	Michelle Drago, Secretary

Excused: Dale Evans

Others present were: Brock Litanski; John Reeve, Reeve & Reeve Engineer; Tony Persi; and Denise Persi.

Pledge of Allegiance: Karlene Yeoman

1. SELECTION OF NEW CHAIR PERSON

Mark Larson stated that the Board's previous chairman, Larry Miller, had moved out of Roy City. The Board needed to appoint a new chair person.

Darrell Thompson nominated Lance Hislop to serve as chairman of the Board of Adjustment. Karlene Yeoman seconded the nomination. Board members Hislop, Streker, Thompson, and Yeoman voted "aye." The motion carried.

2. APPROVAL OF DECEMBER 11, 2001, MINUTES

Darrell Thompson moved to approve the minutes of December 11, 2001, as written. Jennifer Streker seconded the motion. Board members Hislop, Streker, Thompson, and Yeoman voted "aye." The motion carried.

3. PUBLIC HEARING TO CONSIDER A VARIANCE REQUEST FROM WHITE ROCK CONSTRUCTION TO RCO 34-15-4(1)[C] TO ALLOW A LOT LESS THAN 7,000 SQUARE FEET IN AN R-1-7 ZONE LOCATED AT APPROXIMATELY 5342 SOUTH 4200 WEST

Karlene Yeoman moved to open the public hearing at 6:10 p.m. Darrell Thompson seconded the motion. Board members Evans, Hislop, Streker, Thompson, and Yeoman voted "aye." The motion carried.

Mark Larson stated that in 1996, John Clark of Tri J Properties received approval for the preliminary layout of Bridal Veil Estates Subdivision. The entire subdivision was zoned R-1-7, which required a minimum lot size of 7,000 square feet. Phase No. 2 was recorded in January of 1998. Mr. Clark completed Phase No. 1 and part of Phase No. 2 before going bankrupt. After some time, another developer came in and finished the remainder of the subdivision. However, he bypassed Phase Nos. 3 and 4 and began with Phase No. 5. Phase No. 5 was recorded in September of 1999. The developer completed Phase No. 5 and moved on to Phase No. 6. In June of 2003, Phase No. 3 was recorded. The boundaries of each phase were checked before they were recorded. They all closed. However, there was an overlap of 208 square feet on Lot No. 84 of Phase No. 5 and Lot No. 61 of Phase No. 3. The overlap was not discovered until the corners of Lot No. 61 were marked for construction. Without 208 square feet, Lot No. 61 did not have the required 7,000 square feet for the R-1-7 Zone.

Karlene Yeoman asked if the whole subdivision was laid out in the very beginning. Mark Larson said the overall preliminary was shown to the Planning Commission and approved by the City Council. The overall preliminary plan showed all of the lots. Ms. Yeoman was confused about how the engineer, Reeve and Reeve, could borrow land from Lot No. 84 to make sure Lot No. 61 had 7,000 square feet. Mark Larson said that many times adjustments had to be made to preliminary plans after the property was actually surveyed.

Mark Larson stated that White Rock Construction, the current owner of Lot No. 61, was requesting a variance to RCO 34-15-4(1)[c] to allow Lot No. 61 to have less than 7,000 square feet. There was a home under construction on Lot No. 61. It would be ready for occupancy in a few weeks. White Rock Construction did not create the problem. They didn't feel that removing 208 square feet from Lot No. 61 would hurt the lot. The home under construction met all of the set back requirements of the R-1-7 Zone.

Tony Reynolds stated that the owners of Lot No. 61 needed to file a lot line adjustment and quit claim the 208 square feet to the owners of Lot No. 84. In order to do that they needed a variance from the Board of Adjustment.

Karlene Yeoman asked if there were any problems with the home on Lot No. 61. Mark Larson said there was not.

Mark Larson stated that the staff would not be opposed to a decision to grant the variance.

Brock Litanski, White Rock Construction, stated that he had met with the buyers of Lot No. 61. They had signed an addendum agreeing to a credit for the loss of acreage.

Chairman Hislop asked who White Rock Construction had purchased Lot No. 61 from. Mr. Litanski said he purchased it from Mark Higley and Allan Russell. Mark Larson stated that after John Clark went bankrupt, Mark Higley stepped in and finished Bridal Veil Estates. He sold Lot No. 61 to White Rock Construction.

Darrell Thompson asked when the overlap was discovered. Mark Larson said the City's building inspector required property lines to be staked so that he could determine if a home had the proper set backs. Tony Reynolds said the potential buyers discovered the problem when they were inspecting the property and determining where a fence would go.

Chairman Hislop stated that it appeared that whoever designed Lot No. 61 realized it did not have enough acreage and needed to pull it from somewhere. Tony Reynolds said that whoever originally laid out the subdivision did that. However, the phases were recorded out of sequence, and the opportunity to adjust the property lines in Phase No. 5 to accommodate Lot No. 61 was lost.

Chairman Hislop stated that the Board of Adjustment's powers were limited. Hardships could not be self-imposed or based on economics. He felt that whoever drew up Lot No. 61 needed extra land to make the lot work so they took it. He asked if that was accurate. Brock Litanski said he did not know. He didn't know if the overlap was an intentional mistake.

Chairman Hislop asked if there was room to have moved lot lines to the north to give more land to Lot No. 61. Mark Larson said that surveys were not required for preliminary plans. When subdivisions

were surveyed, it was quite common to adjust the lots to make the proposed subdivision fit. Chairman Hislop asked if there was enough room to have moved property lines to the north. Tony Reynolds said the other lots in Phase No. 3 didn't have enough acreage to lend to Lot no. 61. Chairman Hislop felt the overlap on Lot No. 61 appeared to have been done deliberately.

Darrell Thompson stated that if the Board did not grant this variance, the home on Lot No. 61 would remain unoccupied. He didn't feel the overlap had been done deliberately. The Board did need to make sure the new homeowners were aware of what they were getting. Not granting the variance would hurt the neighborhood.

Chairman Hislop asked for comments from the audience. There were none.

Chairman Hislop had two concerns. Did the owners of Lot No. 61 create the hardship? He still wasn't convinced the overlap wasn't deliberate. His other concern was economics. He asked if Brock Litanski had attempted to purchase 208 square feet from the owner of Lot No. 84. Mr. Litanski said he had not, but Reeve and Reeve Engineering had.

John Reeve, Reeve and Reeve Engineering, stated that the overlap was created when Phase No. 5 was recorded before Phase No. 3. They discovered the error when they surveyed the lot. Everyone had missed it - themselves, the City, the County Recorder, and the title company. They made an offer to the owner of Lot No. 84, Mr. Persi, but he said he wasn't interested. Mr. Persi then proceeded to fence and landscape his property. At that point, Reeve & Reeve contacted the owners of Lot No. 61.

Brock Litanski stated that this was one of the last homes to be built in this subdivision.

Chairman Hislop asked what would happen if the Board did not grant a variance. Tony Reynolds said the City would have to stop construction on the home. It would not be able to issue a Certificate of Occupancy. The home would become a public nuisance, which the City would have to remove. That would mean tearing down the home and returning to property to a vacant lot.

Chairman Hislop stated that he had spoken with Tony Persi, the owner of Lot No. 84. Darrell Thompson said he had spoken with Mr. Persi as well.

Tony Persi, owner of Lot No. 84, stated that Reeve and Reeve did offer a couple of hundred dollars for the 208 square feet. He said the least amount he would take was \$3,000. Reeve and Reeve said the most they would pay was \$1,000. Mr. Persi told them he wasn't interested. Losing 208 square feet would throw off his property line. He had a gorgeous backyard. Mr. Persi felt granting a variance for Lot No. 61 was in everyone's best interest. The sooner the vacant lots were built on the better it would be for the neighborhood.

Chairman Hislop stated that economics appeared to be involved when there was an offer made and not followed through on. Brock Litanski said he had tried to stay out of it because he felt it was Reeve and Reeve's mistake.

Karlene Yeoman stated that neither Reeve and Reeve nor the Board of Adjustment could force Mr. Persi to sell his property if he didn't want to.

Chairman Hislop wanted to make sure the hardship wasn't created by the owner or had economic reasons. If it failed in either of those areas, the Board had to turn down the request, even if it was in the best interest of the neighborhood.

Darrell Thompson was concerned that the new owner did not get stuck with something less than they wanted. Mr. Litanski said he had met with the buyers. They had signed an addendum agreeing to the loss of acreage.

Jennifer Streker moved to close the public hearing at 6:56 p.m. Darrell Thompson seconded the motion. Board members Hislop, Streker, Thompson, and Yeoman voted "aye." The motion carried.

Darrell Thompson moved to approve a variance to RCO 34-15-4(1)[c] requested by White Rock Construction, which would allow a lot less than 7,000 square feet in an R-1-7 Zone at 5342 South 4200 West based on the following findings:

- 1. Would literal enforcement of the Zoning Ordinance cause an unreasonable hardship for the applicant that was not necessary to carry out the general purpose of the Zoning Ordinance? Yes. Less than 3% of the total lot would be lost. It made sense to allow the lot to be used as long as the new buyers were happy.**

2. Were there special circumstances attached to the property that did not generally apply to other properties in the same district? Yes. The overlap was created by the way the phases were recorded. There wasn't any property available to fix the mistake when it was discovered. The property had been sold several times from the original owner.
3. Was granting the variance essential to the enjoyment of a substantial property right possessed by other property in the same district? Yes. The new buyers could not occupy the home without a variance, and other homeowners in the area were interested in having the vacant lot finished.
4. Would the variance substantially affect the General Plan and be contrary to the public interest? No. The property would be continue to have a single-family use. The home met the set back requirements of the R-1-7 Zone. No one was unhappy about the variance or being harmed by it.
5. Was the spirit of the Zoning Ordinance being observed and substantial justice done? Yes. The best thing to do to limit the situation and give justice was to grant the variance and move forward with plans for the property.

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

4. ADJOURN

Jennifer Streker moved to adjourn at 7:02 p.m. Darrell Thompson seconded the motion. Board members Hislop, Streker, Thompson, and Yeoman voted "aye." The motion carried.

Lance Hislop
Chairman

Attest:

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Michelle Drago
Secretary

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