

BOARD OF ADJUSTMENT MINUTES

August 26, 2004

Minutes of the Roy City Board of Adjustment Meeting held in the City Council Room of the Roy City Municipal Building on August 26, 2004, at 6:07 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	Mark Larson, Planner
Dale Evans	Michelle Drago, Secretary
Jennifer Streker	
Darrell Thompson	

Excused: Karlene Yeoman

Others present were: Greg Seegmiller.

Pledge of Allegiance: Dale Evans

1. APPROVAL OF JULY 22, 2003, MINUTES

Jennifer Streker moved to suspend reading the minutes and to approve the minutes of July 22, 2003, as written. Dale Evans seconded the motion. Board members Evans, Hislop, Steker, and Thompson voted "aye." The motion carried.

2. PUBLIC HEARING TO CONSIDER A VARIANCE REQUEST FROM GREG AND PAMELA SEEGMILLER TO RCC 10-5C-4(C-2-a-2) TO ALLOW AN ENCROACHMENT INTO THE MINIMUM SIDE YARD SET BACK OF 8 FEET LOCATED AT APPROXIMATELY 4057 WEST 5950 SOUTH

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

Mark Larson stated that in RCC 10-5C-4 the minimum side yard set back in an R-1-8 Zone was defined as 8 feet. The proponent, Greg Seegmiller, was requesting that he be allowed to reduce the 8-foot side yard set back on property he owned be 4057 West 5950 South.

Notices for the variance request had been placed in the *Standard Examiner* and sent to adjoining property owners. The staff had not received any response from the adjoining property owners.

Mark Larson stated that a large North Davis Sewer easement ran diagonally from the northeast to the southwest was in place prior to the subdivision of Aland of Honey Subdivision No. 11. The easement affected the placement of the home on Mr. Seegmiller's lot. In order to avoid the easement, the home was built with a 35-foot front yard set back rather than the normal front yard set back of 25 feet. The side yard set back on the west side of Mr. Seegmiller's property was 9.83 feet, which exceeded the minimum set back of 8 feet. On the east side of Mr. Seegmiller's home there was a 25-foot side yard with a 7-foot public utility easement.

Mark Larson explained that Mr. Seegmiller's home was built without a garage. In order to keep the home in the buildable area, a concrete pad was poured on the east side of the home. The concrete pad was 18 feet wide. The pad allowed for two side-by-side parking spaces. However, an 18-foot parking pad was not large enough to build a two-car garage on. Mr. Seegmiller wanted to build a 21'x26.5' attached garaged on the east side of his home. A garage of that size would leave a 5-foot side yard set back at front east corner and a 6.3-foot side yard at the back east corner. According to the Roy City Building Official, if a structure was five feet or more from a property line there were no special requirements for fire protection. All of the lots east of Mr. Seegmiller faced east. Mr. Seegmiller's reduced side yard would be against their back yards.

Mark Larson stated that Mr. Seegmiller and the staff had discussed the possibility of putting a detached garage in his back yard. Mr. Seegmiller didn't feel a detached garage would be practical. Because of his large front yard, the back yard was smaller to begin with.

Chairman Hislop asked for a clarification of the set back requirements for a detached garage. Mark Larson said a detached garage had to be at least 10 feet behind the dwelling. It could be three feet from the side and rear property lines if no public utility easements were involved. An attached garage was considered part of the main building. It had to be 25 feet from a front property line, 30 feet from a rear property line, and at least 8 feet from the side property line.

Mark Larson reviewed the State's statutes regarding variances with the Board of Adjustment.

Mark Larson stated that Greg Seegmiller felt a hardship had been created by the North Davis Sewer easement. Because of the easement, he had a small back yard. Mr. Larson pointed out that there was a 7-foot public utility easement on the east side of Mr. Seegmiller's property. In order to build on an easement, a property owner was required to obtain a release from all of the utility companies. Mr. Seegmiller had complied with that requirement. He had provided Roy City with releases from all of the utility companies. He could build on the public utility easement in his side yard if he received a variance from the Board of Adjustment.

Darrell Thompson stated that it did not appear that an attached, two-car garage could have been built if Mr. Seegmiller's home had been placed at the normal 25-foot front yard set back. There wasn't enough room. He asked if all of Mr. Seegmiller's neighbors had two-car garages. Jennifer Streker said that according to Mr. Seegmiller's application, 82% of his neighbors had two-car garages.

Greg Seegmiller, 4057 West 5950 South, stated that there were five questions the Board of Adjustment had to address. He reviewed his response to those questions which he provided on his application. Because of the sewer easement, his yard had a 35-foot front yard set back and a 9.83 foot side yard set back on the west side. If the house had been built with a normal 25-foot front yard set back and an 8-foot side yard on the west side, there would be enough room for a garage on the east side of his home. The sewer easement affected the placement of the home on the lot. He hoped the Board of Adjustment would grant the variance.

Darrell Thompson asked how Greg Seegmiller arrived at a width of 21 feet for his garage. Greg Seegmiller stated that the standard width of a door for a double-car garage was 16 feet. The building code required that the sheer wall on either side of the door be no less than 2 feet. That was a width of 20 feet. He added another foot for a door. He could live without the extra foot.

Dale Evans asked if there were other homes in the area that did not have double car garages because of the easement. Greg Seegmiller said the property owner west of him was affected.

Chairman Hislop asked how the North Davis Sewer easement prevented Mr. Seegmiller from having a double car garage. Greg Seegmiller stated that the builder placed the home as close to the easement as he could without going over it. The builder also left just enough room for an 18-foot parking pad on the east side of the lot. If the home could have been scooted more toward the backyard and closer to the west property line, there would be enough room for an attached garage on the east side of his home.

Darrell Thompson asked what the purpose of the 8-foot set back was. Mark Larson stated that part of its purpose was aesthetic. Set backs provided livable areas on each lot without encroaching on the privacy of adjoining properties. Set backs helped prevent fires from spreading from building to building. Roy City's forefathers felt 8 feet was a suitable distance between a home and the property line.

Darrell Thompson stated that Mr. Seegmiller would have to pour additional concrete for a longer driveway if a garage were built in the backyard. He felt the additional expense of concrete might be a hardship.

Greg Seegmiller felt losing the back yard would be impact the resale value of his property. There wasn't much usable yard space.

Mark Larson stated that the Zoning Code allowed only 25% of a back yard to be covered with accessory buildings.

Darrell Thompson asked about a single-car garage versus a double. Greg Seegmiller felt a single-car garage would deter the resale value of his home. The majority of the homes in the vicinity had double-car garages. A lot of newer homes had three-car garages. Mr. Seegmiller said he had spoken with his neighbors. The three with back yards along his east property line did not have a problem with his variance request. The spirit of the Zoning Code was commonality of homes.

Darrell Thompson stated that the Board of Adjustment could not consider a hardship if it was economic. He didn't feel Mr. Seegmiller's hardship was self-imposed. He felt the Board of Adjustment could consider Mr. Seegmiller's property right to enjoy his back yard. A detached garage would deprive Mr. Seegmiller of the enjoyment of his back yard.

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

Jennifer Streker moved to close the public hearing at 6:50 p.m. Darrell Thompson seconded the motion. Commission members Evans, Hislop, Steker, and Thompson voted "aye." The motion carried.

Chairman Hislop asked the Board of Adjustment to review five requirements beginning with No. 5.

No. 5 - The spirit of the Zoning Ordinance is observed and substantial justice done. All of the Board of Adjustment members agreed that the spirit of the Zoning Ordinance would allow a double car garage. Mr. Seegmiller's request was not violating the spirit of the Zoning Ordinance.

No. 4. - The variance will not substantially affect the General Plan and will not be contrary to the public interest. All of the Board of Adjustment members agreed that Greg Seegmiller's efforts to obtain clearances from all of the utility companies and checking to make sure the garage would comply with Building and Fire Codes showed the variance would not affect the General Plan.

No. 3 - Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same district. Jennifer Streker and Darrell Thompson felt that most of the homes in this area had double-car garages. Granting Mr. Seegmiller a variance would allow his home to fit better with the neighborhood. Chairman Hislop and Dale Evans did not feel that the variance was essential. Darrell Thompson stated that everyone else in the neighborhood had both a double-car garage and a back yard.

No. 2 - There are special circumstances attached to the property that do not generally apply to other properties in the same district. All of the Board of Adjustment members, except Dale Evans, agreed that one special thing about the property was the North Davis Sewer easement and where the house had been placed to avoid the easement.

The Board of Adjustment asked about the location of the North Davis Sewer line. Mark Larson stated that it was located in 5950 South, it crossed Lot Nos. 343 and 344 in the Aland of Honey Subdivision and extended south to 6000 South.

No. 1 - Literal enforcement of the Zoning Ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the Zoning Ordinance. Darrell Thompson stated that 82% of Mr. Seegmiller's neighbors got to have a double-car garage and a back yard. Literal enforcement of the Zoning Code would cause Mr. Seegmiller an unreasonable hardship that wasn't necessary to carry out the general purpose of the Zoning Code. Jennifer Streker agreed. Chairman Hislop and Dale Evans disagreed. Chairman Hislop didn't feel it was a hardship to choose between a double-car garage or a larger single-car garage. Dale Evans felt Mr. Seegmiller was creating the hardship by requesting a double-car garage.

Jennifer Streker stated that a detached garage might take up more than 25% of Mr. Seegmiller's back yard. Chairman Hislop asked for a calculator, which Michelle Drago provided. He calculated the approximate size of Mr. Seegmiller's backyard and determined that a double-car garage of the size he was proposing would not take up more than 25% of the space in his backyard.

Mark Larson explained that the Zoning Code required a single-family residence to have two side-by-side parking spaces. If Mr. Seegmiller built an attached, single-car garage, he would still have to provide a parking space for an additional vehicle on the east side of his home. Chairman Hislop said that given that information, Mr. Seegmiller's options were receive a variance or build a detached garage.

Darrell Thompson pointed out that Mr. Seegmiller had received clearances from the utility companies, and the Building Code said a five-foot side yard would be sufficient. Due to the unique nature of this property and other homes in the area, he felt it would be unreasonable to deny the variance. The variance would provide Mr. Seegmiller with the opportunity to use his property as he saw fit.

The Board of Adjustment discussed whether a two-car garage was a substantial property right in this neighborhood. Jennifer Streker and Darrell Thompson felt it was. They also felt the use of a backyard in a starter-home neighborhood was substantial. The Board of Adjustment also discussed what an unreasonable hardship was.

Dale Evans felt Mr. Seegmiller had the right to have a garage, but the Board of Adjustment was fixed with the decision of making sure the garage met the Zoning Ordinance.

Chairman Hislop wasn't convinced that choosing between a garage and a back yard was an unreasonable hardship.

Darrell Thompson moved to approve a variance to RCC 10-5C-4(C-2a-2) requested by Greg Seegmiller, which would allow a three-foot encroachment into the minimum side yard set back at 4057 West 5950 South, 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. Greg Seegmiller had provided clearances from the utility companies, and the Building Code said it was okay to reduce the side yard and use the utility easement. The general purpose of the Zoning Ordinance was still being met with a five foot side yard. Zoning Ordinances were to keep homes and properties in conformity. Most people had the opportunity to choose a two-car garage and a backyard. Greg Seegmiller was being forced to choose one or the other. That was not congruent with what everyone else had.
2. Were there special circumstances attached to the property that did not generally apply to other properties in the same district? Yes. There was a North Davis Sewer easement which caused the home to have a 35-foot front yard set back versus the normal 25 feet. That 10-foot difference became critical in looking at the location of a garage.
3. Was granting the variance essential to the enjoyment of a substantial property right possessed by other property in the same district? Yes. The essential right to be able to have a garage and a back yard.
4. Would the variance substantially affect the General Plan and be contrary to the public interest? No. None of Mr. Seegmiller's neighbors were protesting the requested variance. None of Mr. Seegmiller's neighbors were being denied any safety features by granting the variance.
5. Was the spirit of the Zoning Ordinance being observed and substantial justice done? Yes. The spirit of the Zoning Ordinance was observed. There was still a side yard of five feet, which allow separation for fire protection. The home would be in conformance with 82% of those with

garages. Justice was being done by allowing Mr. Seegmiller to have the same property rights as others.

Jennifer Streker seconded the motion. Board members Streker and Thompson voted "aye." Board members Evans and Hislop abstained. The motion was defeated.

3. ADJOURN

Jennifer Streker moved to adjourn at 7:55 p.m. Darrell Thompson seconded the motion. Board members Hislop, Streker, Thompson, and Yeoman voted "aye." The motion carried.

Lance Hislop
Chairman

Attest:

Michelle Drago
Secretary

dc:bjul2203