

BOARD OF ADJUSTMENT MINUTES

September 16, 2004

Minutes of the Roy City Board of Adjustment Meeting held in the City Council Room of the Roy City Municipal Building on September 16, 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	
Karlene Yeoman	

* Jennifer Streker participated electronically by phone

Others present were: Greg Seegmiller; Pam Seegmiller; Michael Stokes; Mrs. Michael Stokes; and Luann Tracy.

Pledge of Allegiance: Darrell Thompson

1. APPROVAL OF AUGUST 26, 2004, MINUTES

Darrell Thompson moved to suspend reading the minutes and to approve the minutes of August 26, 2004, as written. Karlene Yeoman seconded the motion. Board members Evans, Hislop, Streker, Thompson, and Yeoman 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

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 the staff had sent letters regarding Greg Seegmiller's variance request to the adjoining neighbors and the

newspaper. Chairman Hislop had asked that the Board of Adjustment meet to consider Mr. Seegmiller's request from scratch. Mr. Larson reviewed Mr. Seegmiller's request. Greg Seegmiller owned the property at 4057 West 5950 South. There was a 20-foot North Davis Sewer easement that ran diagonally across Mr. Seegmiller's lot and the lot to the west. The easement was in place prior to the subdivision. Due to the easement, Mr. Seegmiller's home was built with a 35-foot front yard setback rather than the normal 25 feet. The contractor who built the home placed an 18'x20' parking pad on the east side of the home, which met the City's minimum parking pad requirement. That left the 8-foot required side yard. When the Seegmiller's wanted to construct a garage on the parking pad, they found there wasn't enough room. The Seegmiller's needed at least two more feet to have enough room for a two-car garage. They were requesting that they be allowed to encroach three feet into the required side yard.

Chairman Hislop asked about the legal requirement for a parking pad. Mark Larson said the Zoning Ordinance required that a single-family home have two side-by-side parking spaces where a future garage could be built. The Zoning Ordinance defined a parking space as 9'x20'.

Chairman Hislop stated that he had asked that Mr. Seegmiller's petition be considered again because he felt Mr. Seegmiller deserved an actual vote on his petition. He didn't feel the voting that occurred at the last meeting was appropriate.

Greg Seegmiller, 4057 West 5950 South, stated that there were five statutory requirements for a variance. His response to those requirements was included on his application. At the last meeting there was discussion about substantial property rights. One substantial property right he would like to have was a two-car garage. The majority of the homes in his vicinity had attached two-car garages. All of the homes in his vicinity had back yards for recreation and gardens. He would like the ability to store items in his garage. His family was getting larger, and the storage in the garage would be nice. It would be nice to not have to leave the main structure to get into the garage. A garage would help with privacy between his property and the neighbor to the east. The neighbor to the east wasn't able to attend the meeting. He had written a letter, which Mr. Seegmiller presented to the Board of Adjustment (copy filed for record). He asked for the Board's consideration of his request.

Darrell Thompson asked if Jennifer Streker (participating electronically) had a copy of the letter. Ms. Streker said she did not, but didn't feel she needed it at the time.

Chairman Hislop asked how Greg Seegmiller arrived at the 82% figure. Mr. Seegmiller said he took a map of his neighborhood and recorded who had garages. All of the newer homes to the west had two to three-car garages.

Karlene Yeoman asked if Mr. Seegmiller was the second owner of the home. Mr. Seegmiller said he was. Mrs. Yeoman asked if Mr. Seegmiller was made aware of the setback problem when he purchased his home. Mr. Seegmiller said he really couldn't remember. He thought he was told he could build a garage.

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

Luann Tracy, 4061 West 5950 South, stated that she lived in the home immediately west of Seegmiller's. She was in favor of their variance request. A garage would make the Seegmiller's home look better. She planned to have a garage and felt everyone who wanted one should have one.

Darrell Thompson asked if Ms. Tracy's property had a North Davis Sewer easement. Ms. Tracy said it did. She had been told by Weber County that the easement had been abandoned.

Mark Larson stated that when the home on Ms. Tracy's lot was built, the contractor received a variance to have a 20-foot front yard set back. North Davis Sewer may have abandoned the line, but the easement was still on the County's records. In order for the easement to be vacated, it would be necessary to go through a public hearing process. Vacating the easement would help Ms. Tracy, but it would not help the Seegmiller's.

Darrell Thompson moved to close the public hearing at 6:27 p.m. Karlene Yeoman seconded the motion. Board members Evans, Hislop, Streker, Thompson, and Yeoman voted "aye." The motion carried.

Karlene Yeoman stated that when a homeowner built a house, they knew the set back requirements. Mr. Seegmiller was the second owner of this home. When homes were side by side, both needed an 8-foot side yard to create the needed distance for privacy and emergency access. In this case, Mr. Seegmiller's side yard was against his neighbor's back yard. It was a different set of

circumstances. She felt that the spirit of the Zoning Ordinance would be met by allowing Mr. Seegmiller to encroach three feet into the required side yard.

Darrell Thompson asked about the definition of the spirit of the Zoning Ordinance. Was it to create a residential area where homes were congruent with each other?

Dale Evans disagreed with Mr. Seegmiller's argument that the easement had created a hardship. The easement actually helped improve the situation for an attached garage. If Seegmiller's home had been built with a 25-foot setback, there would not have been enough room for an attached garage. He felt the easement was a non-issue.

Darrell Thompson felt the easement was a factor. Because of the easement, Mr. Seegmiller's home was constructed ten feet further back on the lot. That meant he had a smaller backyard than his neighbors. A detached garage would further decrease the size of his back yard.

Chairman Hislop agreed that the easement had caused the Seegmiller's home to be constructed further back on the lot.

Dale Evans stated that the Board of Adjustment could not tell Greg Seegmiller how to use his property. He did not see an impairment issue.

Chairman Hislop stated that in life one had to make decisions. Greg Seegmiller could have a two-car garage and not violate the Zoning Ordinance.

Darrell Thompson felt it was important to realize that the Board of Adjustment could not change the Zoning Ordinance. Karlene Yeoman agreed the Board could not change the Zoning Ordinance, but it could act on the spirit of the Zoning law. Darrell Thompson felt the Zoning Ordinance was for the benefit of the people in the community.

In response to a question from Dale Evans, Mark Larson stated that the Board of Adjustment could hear three types of cases: Appeal a decision of the staff; special exceptions; and variances. Mr. Seegmiller's request was a variance.

Dale Evans stated that he driven around this neighborhood. The homes in this neighborhood with garages were designed to fit on a narrower lot. Most of the garages were set forward. It appeared Mr. Seegmiller had the biggest lot in the neighborhood yet he couldn't have an attached two-car garage because the style of his home was different. The problem wasn't just the placement of the home on the lot, it was the style of the home.

Jennifer Streker disagreed. The variance shouldn't be based on the design of the home.

Karlene Yeoman didn't feel the 82% figure made a difference.

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's request would not cause a safety concern because he was still meeting the minimum set back allowed by the Building Code, and none of his neighbors were protesting the variance. This was an opportunity to grant a variance to give the Seegmiller's a property right enhancement. The variance did not hurt anyone. There was also a lack of square footage in the back yard. Greg Seegmiller was being forced to choose a back yard or a garage. The variance would allow him to have both without hurting anyone. Mr. Seegmiller had letters from all of the utility companies allowing him to use the utility easement on the east side of his property.
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. The 10-foot difference became critical when trying to put in 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 have both a garage and a back yard.

4. Would the variance substantially affect the General Plan and be contrary to the public interest? No. The Board of Adjustment had received a letter from Mr. Seegmiller's neighbor supporting his request, and another neighbor had provided verbal testimony in favor of the variance. None of Mr. Seegmiller's neighbors had protested his variance request.
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 5-foot separation between the home and the property line for fire protection. The Seegmiller home would be in conformance with 82% of the homes in the neighborhood. Justice would be done by allowing the Seegmiller's to have the same property rights as others.

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

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3. ADJOURN

Darrell Thompson moved to adjourn at 6:50 p.m. Karlene Yeoman seconded the motion. Board members Evans, Hislop, Streker, Thompson, and Yeoman voted "aye." The motion carried.

Lance Hislop
Chairman

Attest:

Michelle Drago
Secretary

dc:bsep1604