

February 12, 2009

Minutes of the Alpine City board of Adjustment meeting held February 12, 2009 at Alpine City Hall. The meeting was called to order at 7:00 pm by Chairman Bill Sidwell. The following board members were present and constituted a quorum:

Chairman Bill Sidwell

Lynn Armitstead, Mike Crossley, Dan Hauser

Staff: April Riley

Others: Doug Seale, Dan Pierson, Karen Pierson

Mike Crossley offered the prayer.

Dan and Karen Pierson at 380 N. Country Manor Lane requested a variance of 5 feet to the rear yard setback requirements as set forth in the Alpine City Development Code, Section 3.4.5.2 item #4 regulating the rear setback for an accessory structure of their property located at 380 N. Country Manor Lane in the CR-40,000 zone.

During the construction of their home at 380 N. Country Manor Lane in Alpine, Dan and Karen Pierson had also applied for a building permit for a detached garage on the same lot. The site plan for the entire lot showed a rear setback of 7 feet and a side setback of 7 feet for the detached garage. Section 3.4.5.2 of the Alpine City Development Code required a rear setback of 15 feet and a side setback of 10 feet for an accessory building. For whatever reason, the building inspector at the time, Ellis Robinson, did not note the deficiency in setbacks, but he did note that the height of the garage exceeded the limit of 20 feet, and sent the applicants to the Board of Adjustment to apply for a height variance.

The Board of Adjustment met on March 21, 2002 and approved a variance of 23 inches to the height requirement for the garage. There was no mention that the garage was shown to be too close to the property lines. A building permit was issued for the garage and construction began. Three inspections were made: a footing, foundation and underground plumbing. The Piersons then decided to postpone the completion of the garage and no more work was done.

Six years later in October of 2008, the Piersons decided to finish the garage and applied for another building permit since the original permit had expired. (A building permit expires after 6 months if no inspections are done.) It was then that it was noted that the setbacks for the garage did not meet ordinance. Measurements were taken and it was found the actual setbacks were greater than the 7 feet shown on the site plan. The side setback was 10 feet which complied with the ordinance. The rear setback was 10 feet which was 5 feet short of the required 15 feet. The Development Review Committee then referred the matter to the Board of Adjustment.

April Riley reviewed the following Findings of Fact:

**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.**

The Board of Adjustment may not find an unreasonable hardship unless the alleged hardship is located on or associated with the property for which the variance is sought; and comes from circumstances peculiar to the property, not from conditions that are general to the neighborhood.

- The alleged hardship is not associated with the land. The alleged hardship seems to be presented as the City issued a building permit for the detached garage and inspections were done and the setbacks were never questioned and the cost would be

considerable to tear the foundation out and start over.

The Board of Adjustment also may not find an unreasonable hardship if the hardship is self-imposed or economic.

- The alleged hardship is self-imposed and economic.

As the request does not meet each criteria outlined by state law to be deemed an unreasonable hardship, the literal enforcement of the zoning ordinance would not cause an unreasonable hardship.

**2. There are special circumstances attached to the property that do not generally apply to other properties in the same zone.**

In determining whether or not there are special circumstances attached to the property, the Board of Adjustment may find that special circumstances exist only if the special circumstances relate to the hardship complained of; and deprive the property of privileges granted to other properties granted in the same zone.

- The only special circumstance that may exist is the permit was approved and inspections done with the existing setbacks. The special circumstance, however, is not attached to the property.
- The property is not being deprived of privileges granted to other properties in the same zone. All properties in this zone can build detached building and are held to the same setback requirements.

**3. Granting the variance is essential to the enjoyment of a substantial property right possessed by other property owners in the same zone.**

Granting the variance is not essential to the enjoyment of a substantial property right. The property owner is not being denied the use of his property. Other property owners in the same zone would have to meet the same requirements. A detached garage is not a substantial property right.

**4. The variance will not substantially affect the general plan and will not be contrary to the public interest.**

The variance will not substantially affect the general plan and is not contrary to public interest.

**5. The spirit of the zoning ordinance is observed and substantial justice is done.**

The spirit of the zoning ordinance would not be observed and substantial justice would not be done as a substantial property right is not being denied.

There was a discussion about what constituted a hardship. April Riley explained that it had to be something that was unique to the lot such as topography or shape that was not generally applicable to other lots in the same zone. In response to a question from Doug Sealy, April Riley said it was a corner lot but that was not a characteristic that was unique to the lot.

April Riley said the recommendation from staff was to deny the variance because it did not meet all the criteria listed in the state code, but on the other hand, a site plan had been approved by the City. She said she had talked to City Attorney David Church who felt the situation could be argued either way, and either granting or denying the variance could be justified. He had said the City was not liable for past mistakes of employees. Also, the Board of Adjustment was not bound

by precedent. She said that as a planner, she felt a decision could be made either way, and in talking to the City Attorney, she got the sense that he felt the same way.

Bill Sidwell asked the applicant why they wanted the variance.

Mr. Pierson responded that it was because they had already started it. When asked why they had done any work on it for seven years, he said it was because of money. He showed the elevations of the garage that was approved earlier.

Bill Sidwell asked if the neighbors had been contacted and they had. There was no response.

Mr. Pierson said the neighbors would like to see it completed. Mr. Pierson said the garage was started at the same time as the home. An aerial photograph showed the lot, giving them some idea of the relationship of the garage to the neighboring homes.

Mike Crossley said that if they'd dealt with the first variance that was granted in 2002, after the attorney talked to them, they'd probably had a different answer to the first request. However, if you can't trust what you're told, right, wrong, good, bad or indifferent, the City had said everything was fine when they inspected it. It was difficult to come back now and say it was wrong.

Dan Hauser said that maybe for the record they could say that the hardship was city-imposed. And whether they were talking about it being a precedent or not a precedent, they could say the city caused it. It was kind of a gray area.

**MOTION:** Mike Crossley moved to approve the variance of 5 feet to the rear yard setback for the detached garage located at 380 N. Country Manor Lane. Lynn Armitstead seconded. Ayes: 4 Nays: 0. Motion passed unanimously.

#### **APPROVE MINUTES OF JULY 10, 2008**

**MOTION:** Mike Crossley moved to approve minutes of July 10, 2008 and adjourn. Lynn Armitstead seconded. Ayes: 3 Nays: 0. Motion passed. Dan Hauser was not present at the meeting and abstained.

The meeting was adjourned at 7:24 pm.