



BOARD OF ADJUSTMENT
January 20, 2010 – 7:00 PM
Council Chambers

Board Member in attendance: Ron Fakler; Blaine Hadley; Robert Freeman and Tom Wroe (7:04)

Board Members excused: Don Olsen

Staff in attendance: Planner Brandon Snyder; Secretary Darlene Gray and Legal Counsel John Penrod (7:26)

Council Representative: Dean Olsen

Call to Order

Chairperson Fakler called the meeting to order at 7:00 PM. He asked Board Member Freeman to offer the invocation.

Approval of Meeting Minutes - November 18, 2009

BM Fakler indicated that the minutes for the November 18, 2009 meeting had been approved by the Board Members via email.

BM Fakler explained that the Board of Adjustment operated as a quasi-judicial board. If the applicant disagrees with the Board's decision they must appeal within 30 days to the court and not the City Council. He reported that staff would present information and then there would be questions addressed to staff by the Board members. The Board would then ask the petitioner to present any additional information or comments. The meeting would then be closed to any other comments during discussion by the Board members.

Michael Czys seeking a variance for the property located at 687 N. Main Street to reduce the 50 foot setback along Little Spring Creek to 30 feet; Springville City Code, Title 11 Section 11-6-130(3).

Planner Snyder approached the Board members and presented an over view of the site. He reviewed the Municipal Code, Section 11-6-130(3), Protection of the Creek Corridors. He explained the variance request adding that the property information had been provided. The property is 1.43 acres in the CC – Community Commercial zone and the General Plan Land Use designation is for commercial use. Planner Snyder stated that the Property Owners Consent form had been submitted. Planner Snyder stated that the Board members were specifically looking at the setback of buildings and structures from the creek corridor. He explained that there is a vacant home on the property and that City utility records indicate that there is a water meter on site, but utilities have not been hooked up since 2000.

Planner Snyder informed the Board Members that there is no flood map for Little Spring Creek and it is not within the 100-year flood plain for Hobble Creek. Planner Snyder reviewed what

could be within the setback; e.g. a parking lot, etc. He stated that there was no direction from City Engineer Anderson regarding covering any part of the creek. BM Fakler asked if the creek were enclosed, would that abolish the 50 foot setback; but stated that was not the issue tonight. If the petitioner petitions to the City Engineer to enclose the creek the decision tonight would be irrelevant. Planner Snyder stated that he understood that the entire creek would not be closed so the Board's decision would stand. BM Fakler questioned if the Board members would make their determination as if the petitioner had not asked the City to enclose the creek. Planner Snyder reported that enclosing the creek was an internal discussion that had not been initiated by the petitioner. He stated that the City did not want to set a precedence of enclosing waterways. BM Hadley questioned why the City would not enclose the entire creek. Planner Snyder responded that he could not make that decision. BM Wroe stated that the Board members were not asking for a decision, but if the applicant chose to enclose or pipe the stream the precedence has already been established by other properties who have enclosed the creek. Planner Snyder stated that the City Engineer; Legal Counsel, Public Works Director and Community Development Director decided that creeks would not be enclosed. The Irrigation Company indicated this Little Spring Creek was not an irrigation facility however water from the creek has been used for irrigation in the past. BM Fakler stated that spring to the east is currently piped. Planner Snyder stated that the creek originates in the Wildhorse Subdivision, is piped out to the town homes directly east of Sonic, turns and heads west under Main Street. BM Fakler questioned if the pipe could hold enough water to flood all the way to the 50 foot setback. Planner Snyder stated that he did not have those calculations. BM Fakler stated that other than protecting the Code, why was the City asking Mr. Czys to build 50 feet back. Planner Snyder because the waterway was determined to be a creek, the creek protection ordinance would apply. BM Fakler questioned why stating that there is a three foot pipe there and that would never flood. Planner Snyder stated that the bottleneck is the 30 inch pipe that comes under Main Street. He indicated that once the water leaves the Main Street property, it travels west to the storage units, is piped underground and bubbles up at the railroad tracks at 400 West. BM Freeman asked what the distinction was between a creek and a stream and if a professional hydrologist had been consulted. Planner Snyder stated that this had been debated amongst staff. He reviewed the definition and section of ordinance and stated that it was determined that Little Spring was a creek and not an irrigation ditch so that was the direction taken. He indicated that a hydrologist had not been consulted. Planner Snyder stated that there were several options and possible actions including further research.

Legal Counsel Penrod in attendance at 7:26 PM.

Planner Snyder reviewed State Code and indicated that all five criteria would have to be met. He indicated that he researched the existing home and found that it was not on the Historic Registry. The applicant could register the home, but the historic status could be lost with the new restaurant construction. He reviewed each criteria and staff's finding. He indicated that other possible actions could be for the Board to deny the variance request; continue the item to a future date which would be February 17, 2010; or the Board could approve the request, but the Board Members must explain their decision.

BM Freeman stated the he felt criteria number 2, 4 and 5 were not an issue. He questioned what might have generated interest in the historic preservation of the property adding that the home was built in 1943. Planner Snyder indicated that the home might be older, but County assessments only started in 1943. BM Freeman stated that the age of home seemed to be a non-issue. He

referred to the hardship being self-imposed, purely economic in nature and whether an economic hardship constitutes a right of reasonable enjoyment. Planner Snyder indicated that clarification was provided by State and City Code stating that the hardship could not be self-imposed by the applicant or be economic; either/or. He stated that it appeared there was some economic value in using the existing home so the hardship would be self-imposed and economic in nature. BM Hadley questioned if there alternatives other than the plans that have been presented. He stated that removing the building would be another alternative. Planner Snyder indicated that the applicant was not pressing on preserving the existing structure. BM Wroe stated that it had already been determined that the home was not on the Historical Register so there was no historical value and the applicant could remove the home. Planner Snyder stated that they could not rule out the possibility that there could be historical value.

BM Fakler stated that the Utah Code Annotated allowed variances only in three situations; topography; security and extreme special circumstances. He questioned if this situation rose to the level of extreme and special circumstances. Planner Snyder reviewed the City Code. BM Fakler stated that the City Ordinance was predicated on what the State allows. BM Hadley asked how far it was from the culvert to the enclosed pipe. Planner Snyder stated that it was within the first ten feet. Planner Snyder displayed slides of the site to include the creek and the existing home.

BM Fakler thanked Planner Snyder for his presentation of the information. BM Wroe stated that the Board members might recall Planner Snyder if they had other questions.

BM Fakler invited Mr. Czys to approach the Board members.

Michael Czys, 241 N. Main Street, Springville. Mr. Czys referred to the slide showing the setbacks. He stated that he had been misled because he would have asked for a 30 foot reduction of the initial setback. He stated that one issue he has is with item #1 regarding unreasonable hardship. Mr. Czys stated that all indications were that the City would be opposed to any covering of the stream. BM Fakler stated that he did not know, but it would have been nice to have a decision regarding the stream in advance. Mr. Czys stated that one option would be to maintain the integrity of the stream. He stated that he did not want to cover the stream because that option would cause him a definite financial burden because it would cost more to landscaping around the stream versus covering it. Mr. Czys stated that he took issue with the hardship clause. He stated that he was moving out of the current "Yummy's" location because the City required the space for new construction. With regard to the 25,000 square foot available building site, it would be unreasonable to set the restaurant way back from the street. BM Fakler asked why Mr. Czys would not tear down the house. Mr. Czys stated that he did not know if there would be enough frontage to get in and out the lot because of the terrain. He stated that they would have to use a single entry which would work okay, but their intent was to keep the house not from a historical aspect, but the house would tie in for the use as an antique store that their daughter operates. Mr. Czys reiterated that their intent was not to preserve the house as a historical site, but it ties into a particular use that they would like to have.

Mr. Czys stated that after listening to Planner Snyder's presentation, he understands that there is only a 30 inch pipe there. He stated that he thought it was a 36 inch pipe and if there any concerns about flooding, the elevation of the property could be raised. Even if the pipe is cleaned, there is not that much water that flows through the pipe from under the highway (Main Street). Mr. Czys

stated that there was no determination that this is really a creek, other than its name. He questioned if a spring-fed waterway would be defined as a creek or just a ditch, adding that it was unknown at this time. BM Fakler stated that he thought ditches were dug by men.

Mr. Czys referenced item #3 and stated that not having the room to construct a new building in a visible location makes his intent much more difficult. He stated that he would prefer preserving the stream rather than covering it, partially for safety reasons. He would do stream bank restoration and landscaping because he wanted to incorporate the stream into what he would do with the frozen custard business. The public would be able to enjoy the waterway, which he added might be a selfish way of looking at it.

BM Fakler reviewed items discussed by Mr. Czys's, indicating that Mr. Czys did not want to cover the creek, keep the old house, which would push the proposed new building between the creek and the old house. BM Wroe stating that in reviewing the information and the site plan, he would like to know the definition of what a *creek* is as opposed to a *spring*. He stated that the Provo River was forged by springs and it comes down to what a historical flow is. He questioned if it should be called a creek or a spring stating that the definition was not identified in the Code. He stated that there was nothing to work with other than staff calling the waterway a creek. He added that this might be something for Mr. Czys to pursue through the Planning Commission. He commented that this was a complicated issue because all five criteria must be met before approval is granted. BM Wroe reviewed criteria item #1 stating that he was not sure Mr. Czys met the literal enforcement of the Code regarding hardship. He stated that Mr. Czys suggested the possibility of clarifying the definition of a creek and also stated that he had suggested several options to reinforcing the creek bank. Mr. Czys stated that his only concern would be the amount of flow that comes through the pipe. The creek was at least four feet below the existing grade and there would be no way that enough water would be coming through the pipe. BM Wroe stated that it appeared that there was standing water. Mr. Czys stated that the definitions were not known for inland waterways, creeks, rivers, etc. so if the waterway did not meet the requirements of a creek, the zoning ordinance would not apply. BM Wroe stated that staff deemed that it had, but suggested Mr. Czys go back and talk to staff. He stated that it was the goal of the City that if there was a way to make things work within the rules that he would want Mr. Czys to do that. He added that he takes the staff analysis very seriously.

BM Freeman stated that he appreciates the good Mr. Czys has done for the community.

BM Fakler reiterated that Mr. Czys wants the creek bed to remain, even to the point if the board decides on the 50 foot setback that Mr. Czys would tear down the house. Mr. Czys stated that he did not want to tear down the house.

BM Hadley stated that the plot plan shows parking right to the bank edge. Mr. Czys stated that setbacks do not apply to parking. He reiterated that his intent would be to preserve the edge along the stream. BM Fakler asked how much parking the City would require for "Yummy's". Planner Snyder stated that the analysis was not complete. BM Fakler questioned if Mr. Czys operated the antique shop and "Yummy's" if there would be adequate parking. Mr. Czys explained that the proposed plot layout with parking was based on the requirements for the number of parking spaces for a restaurant which could either be by square footage or number of tables. The parking for the antique store would be based on square footage or about 700 square feet or eight spaces. He stated that the proposed parking plan surpasses the parking requirement for both businesses.

Planner Snyder reported that there was no definition in the City Code for a spring, creek or ditch.

Legal Counsel Penrod was excused at 8:04 PM.

Planner Snyder explained that Mr. Czys had been compensated for the existing site that the City would be using for a new library. The proposed site is zoned CC – Community Commercial which gives the option of zero to five feet off the front property line, so the applicant could pull his business up to the street, but the applicant wants to keep the existing house for the antique store. The City still has control of the access and based on his frontage, Mr. Czys would be allowed only one access. The existing home and drive is only 17 feet in width and the City Engineer has determined that 17 feet is not sufficient. Also the determination by the City Attorney, City Engineer, City Public Works Director and Community Development Director was that this is a creek. Planner Snyder concluded by stating that after review of all the criteria, staff recommends denial of the variance request.

BM Wroe thanked Planner Snyder for clarifying some points. BM Fakler stated that there was no one from the public who wanted to comment. He stated that the meeting would be closed from any further public comments and indicated that the Board Members would discuss the issues.

BM Fakler stated that he wished there had been more of a thought process, but indicated that Planner Snyder had cleared up several questions regarding the variance request. He commented that any changes would be systemic changes. BM Fakler stated that as it stands, he could not see where the applicant has satisfied all the requirements and the only way he could see this happening would be for the house to be removed to meet the requirements and the applicant has not demonstrated that. BM Hadley agreed that the house is the problem. BM Freeman stated that he had concerns with points one and three and recommended that in the future with matters of this kind, that the city should undertake some kind of consultation with a hydrologist or similar expert. With respect with the home, the only indication is that the home was built in 1943. The applicant would like to preserve the building, but in another context it would have been important to know its historical value. With no further discussion, BM Fakler called for a motion.

BM Wroe moved to deny the applicant a variance request. BM Hadley seconded the motion. The vote to deny the variance request was unanimous.

With nothing further to discuss, BM Fakler called for a motion to adjourn. He thanked the applicant for coming. BM Hadley moved to adjourn the meeting. BM Wroe seconded the motion. BM Fakler adjourned the meeting at 8:14 PM.