



Springville

Board of Adjustment
March 21, 2012- 7:00 PM
Council Chambers

Board Members in attendance: Don Olsen, Michael Jex, Jose Inclan and Karen Ellingson
Board Members excused: Ron Fakler
Council Representative in attendance: Dean Olsen
Staff in attendance: Planner Brandon Snyder, Legal Counsel John Penrod and Secretary Darlene Gray

Legal Counsel Penrod indicated that Chairperson Fakler was not in attendance and the first item of business would be to nominate a chair for this meeting. BM Jex nominated BM Olsen as the chair for this meeting. BM Ellingson seconded the motion. The vote was unanimous.

Call to Order

BM Olsen called the meeting to order at 7:01 PM and identified the members in attendance.

Approval of Agenda

BM Olsen asked if the board members had reviewed the agenda and called for any comments or changes. With none, BM Jex moved to approve the agenda as presented. BM Inclan seconded the motion. The vote to approve the agenda was unanimous.

Minutes: November 16, 2011

BM Jex indicated that he submitted his corrections and moved to approve the November 16, 2011 meeting minutes with the modification submitted. BM Ellingson seconded the motion. The vote to approve the corrected minutes was unanimous.

Roice Krueger seeking a variance to Section 11-4-404, Configuration Requirements, to reduce the required rear thirty (30) foot building setback for the home located at 1768 E. Town and Country Road.

BM Olsen explained that staff would present a report relative to the application and then the applicant would be invited to approach the board members. Following the applicant, the board members would hear any comments from those in attendance. Following that, the board members would have a closed discussion, ask questions to staff or the applicant and then render their decision. He invited Planner Snyder to approach the board members.

Planner Snyder approached the board members and thanked them for being present. He explained that Mr. Krueger was not able to attend the meeting, but did have representation. Planner Snyder reviewed the staff report and indicated that the board members would be reviewing whether the variance request met City Code.

Planner Snyder reported that the City sent a letter to the Kruegers stating that it did not appear that the setback requirements had been met. Consequently, the applicant has applied for a variance. He reported that this is a single family dwelling built in 1999 in the R1-10 zone. The rear property line runs along the Springville / Mapleton boundary. Planner Snyder reported that the Springville City Code mirrors State Code and indicated that the five criteria were listed in the staff report. Planner Snyder displayed pictures, plat maps, etc. for the board members.

BM Olsen stated that he noticed a park easement and asked if that factors into the setback, or was the City blind to that. Planner Snyder indicated that the picture shows that the addition would not intrude into the park easement. He reported that there were no notations on plat specific to what the easement would be for.

Planner Snyder reviewed the five criteria indicating whether or not they were met. He reported that criteria points 1 and 3 had not been met; concluding that the request did not meet all five criteria and should therefore be denied.

Planner Snyder explained the options to either: 1) continue the item to April 18, 2012 or 2) approve the requested variance with new contingencies or findings. He explained that in granting a variance, the Board of Adjustment member must state their findings and may impose additional requirements on that applicant that would mitigate any harmful effects of the variance, or serve the purpose of the standard or requirement that is waived or modified. Planner Snyder explained the appeal process.

BM Jex asked if the addition would encroach on the 100-year flood plain and asked if Planner Snyder had any additional information. Planner Snyder indicated that was one of the items addressed. He reported that a letter dated January 31, 2012 indicated that some items that were missing were the park easement, the plot plan for the rear setback, the 50-foot setback from the creek for the floodplain, etc. He indicated that the engineer confirmed the 100-year floodplain with the regional FEMA representative. Planner Snyder reviewed the City's floodplain ordinance.

BM Olsen asked the board members if they had any other questions for Planner Snyder. With none, he invited the applicant or applicant's representative to approach.

Mitch McCuiston (801-420-4500) approached the Board Members and identified himself as representing Mr. Roice who was in Japan. He expressed his appreciation to Planner Snyder for the thorough report. He indicated that Mrs. Pat Krueger was present. Mr. McCuiston stated that they were aware of the floodplain and that one-foot above that was non-habitable. He clarified that the habitable area of the addition was 23-feet wide with a 12-foot deck. Mr. McCuiston stated that the deck could be adjusted by not extending it all the way to the end. He stated that he would like to review items 1 - c and 3. BM Jex stated that he would appreciate Mr. McCuiston focusing on those two items.

With regards to item 1 – c; Mr. McCuiston stated that Mr. Krueger paid a surveyor and the intent of the deeds was to pull right to the center point of creek. He indicated that the Kruegers would need a seven-foot, three-inch variance in order to construct the addition. He stated that if the spur in the property line was moved back seven-feet, eight-inches, they would meet the 30-foot setback

requirement, adding that if the boundary line had been continuous they would not have a setback issue. Mr. McCuiston reported that the Kruegers had contacted the property owner to the south, but the challenge is that the property owner, Mr. Porter, has not allowed them to do anything with the property. Mr. Krueger has offered to purchase the property, but Mr. Porter has not been receptive to Mr. Krueger's offers. Mr. McCuiston indicated the Mr. Krueger would continue to negotiate with Mr. Porter, but in the meantime, they would like to proceed with the addition. He stated that the addition would accomplish some purposes which were private to the Kruegers. Mr. McCuiston commented that the neighbors have room to add on and reducing the Krueger's addition from 25-feet to 17-feet would not accomplish what they want to do.

Mrs. Pat Krueger (801-489-1977) approached the Board members. She explained that Mr. McCuiston was not only their builder, but a trusted friend. Mrs. Krueger indicated that she would like to speak to the heart of the Board members. She reported that the addition was not just to expand the house, but they have their twelfth grandchild due in week and half. They also have a grandchild with problems. She stated that they were attempting to bring their family together as much as possible so they could be a good influence. Mrs. Krueger stated that they currently have to divide the family into several different rooms, but she felt the best way to reach children in the family would be gather them around the dinner table, but they cannot do that at this point. Mrs. Krueger indicated that they were asking for a small portion that would not affect anyone. She stated that she knew the Board members went by the *letter of the law*, but she was asking them to go by the *spirit of the law*. Mrs. Krueger reported that she tries to bring everyone together about every other month because their intent is to help family members become the type of citizen that can give back to the community. She added that they did not know how many more years they had left, but they would like to take that opportunity. Mrs. Krueger expressed her appreciation to the Board members for listening to her and hoped the members would consider their request.

Mr. McCuiston addressed item 1-c, Self-imposed Hardship. He stated that from the Krueger's standpoint the hardship was created by the piece of property in Mapleton that they have been dealing with. He indicated that they would like to shave off the point of spur. He stated that this was a peculiar piece of property; the separation would still be there by the creek and he did not see how doing this would create an issue with the adjacent property owner.

BM Olsen asked the Board members if they had any questions. BM Jex thanked Mrs. Krueger for her taking the time to address the Board members. BM Olsen referred to requirement #3; *Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zoning district* and stated that the Krueger's expansion would be denied on that basis. Mr. McCuiston explained that the neighbors could add on and if the Krueger's rear property line were consistent and not irregular, they would be able to enjoy the same right as the neighbors. Mr. McCuiston thanked the Board members for their time and consideration.

BM Olsen asked if there was anyone else who would like to address the Board.

Jacob Adams who resides at 910 North 900 East Apt 110, Provo 84604, approached the Board members. He reported that he came to the meeting as part of a school, class project. He expressed his sympathy to the applicant because he came from a large family and family gatherings can be difficult.

BM Olsen indicated that he would entertain a motion to close the public comment portion of the meeting. BM Ellingson moved to close the public comment portion of the meeting. BM Jex seconded the motion. The vote to close the public comment portion of the meeting was unanimous. BM Ellingson asked Legal Counsel Penrod if the word 'hardship' could apply to the property itself; the property line being the hardship versus the addition. Legal Counsel Penrod responded that the applicant wanted to do an addition and the setback requirement cannot be met. He asked if the spur in the property line was causing the hardship or the addition. He answered that would be the determination that the Board members had to make. Planner Snyder stated that the addition could be smaller and added that there were good arguments on both sides.

BM Inclan asked Ms. Krueger if they had moved into the home in 2004. Ms. Krueger indicated that they had.

BM Ellingson asked Planner Snyder if the variance would apply to the basement as well as the upper lever. Planner Snyder referred to page one of the staff report and stated that the City Code indicated that the setback was measured from the property line to the building. He indicated that the basement and the main floor were contiguous and the applicant would not be able to push one level out. He added that the wall and foundation were where the variance would apply.

BM Olsen asked if there was any discussion. BM Jex stated that the challenge ties back to the limited authority of the Board. He indicated that the role of the Board was to not necessarily look at the purpose of the addition and determine if the variance would be granted because of their desire to build out, but if justice would be served. He added that the burden of proof was on the Kruegers to show why this hardship was not self-imposed. BM Jex stated that he was struggling with whether or not the substantial use of the property met with the present structure as well as how their decision to build out was not self-imposed. He asked the other Board members for their input. BM Ellingson agreed with BM Jex.

BM Olsen stated that variances were harder than a conditional use permit and he did not know that he has ever seen a 'black and white' variance black and white. He added that it was a steep hill to meet all the State criteria.

BM Jex stated that he understood that the Board needed to base their findings not on the preponderance of evidence and asked Legal Counsel Penrod if that was a correct interpretation. Legal Counsel Penrod stated that BM Jex was correct that all criteria must be met. He indicated that this was a tough situation because the applicants could lessen their addition; so yes, this would be self-imposed. Legal Counsel Penrod indicated that the Board members had to look at the standard and make sure all five criteria were met. In looking at all criteria, question on 1C would be whether this was self-imposed or not. BM Jex indicated that in his opinion, item three was also in question. He added that the existing home was a substantial home, but stated that the question was the addition and property line.

BM Inclan stated that after he reviewed his packet, he wondered about the neighbors to south, but that had been addressed. On the other hand, he stated that the property information sheet from the County website displayed a map from 1997. The map showed the irregularity of the block and the front page indicated that the owner as Hunter Valley LLC. He stated that the information had been available for

many years prior to the Kruegers purchasing the property. BM Inclan indicated that might be a point for the Board members to consider when making their determination.

BM Olsen reminded the Board members that when they make their motion, it was not only to move relative to the action, but also to the adoptions of findings.

BM Jex referred to Legal Counsel Penrod's point regarding item 1C and stated that this was a difficult thing for him to get around. He stated that while he would enjoy the opportunity to grant a variance in this case and the purpose of the addition, the burden of proof that this was not self-imposed had not been met. BM Jex moved to deny the request for a variance. BM Olsen asked if the finding would be that item 1C had not been met. BM Jex stated that BM Olsen was correct. BM Inclan seconded the motion. The vote was as follows:

BM Olsen – Aye
BM Jex – Aye
BM Inclan – Aye
BM Ellingson – Nay

Legal Counsel Penrod explained that it took only three votes to either deny or approve the request. The motion to deny the request for a variance carried.

BM Olsen asked if there were any other items for the board to address. Planner Snyder reported that Council Representative Olsen had been working to fill the empty seats on the board. He also reported that a training session would be held after the Board was complete.

BM Jex addressed Planner Snyder and asked about bringing back the information from the District Court regarding changes to the accessory apartment ordinance. Legal Counsel Penrod responded that the Planning Commission and City Council had addressed accessory apartments. He explained that an applicant had come before the board requesting a variance. The evidence was not there and the board denied the request. Legal Counsel Penrod reported that the Planning Commission had made a recommendation to the City Council allowing accessory apartments city-wide. The City Council did not take action and the item died from the lack of a motion. He indicated that the item would come back before the Board of Adjustment by remand from the court. Legal Counsel Penrod reported that the item was still at the District Court level.

With nothing further to discuss, BM Olsen called for a motion to adjourn the meeting. BM Jex moved to adjourn. BM Ellingson seconded the motion. BM Olsen closed the meeting at 8:00 PM.