

CITY OF IDAHO FALLS
BOARD OF ADJUSTMENT
P.O. BOX 50220
IDAHO FALLS ID 83405-0220
(208) 612-8276

February 12, 2009
12:15 p.m.

City Annex Building, Council Chambers
680 Park Avenue

Members Present: Stephanie Austad; Jake Cordova; Alex Creek; Steve Davies; Hal Latin; Richard Lee; Kendall Phillips; Vice-chair, Kurt Roland, and Chair, James Wyatt.

Members Absent: None.

Staff Present: DaNiel Jose, Current Planner, and Deb Petty, Recording Secretary.

Also Present: Applicant(s) and 3-4 concerned citizens.

Call to Order: The meeting was called to order at 12:15 p.m. by Wyatt.

Minutes: November 4, 2009.

Motion by Cordova, seconded by Creek to approve the minutes of November 4, 2009 as presented. Motion passed 9, 0, 0.

Public Hearings: Variance Request
688 N. Holmes

Jose described the request as outlined in the staff report, part of the public record. She noted the following in regard to the project:

- There are two parcels under consideration; the former Sato's restaurant, and the location of the proposed parking lot.
- Request is for a variance to reduce the required parking from 34 spaces to 33 spaces, reduce the landscaping from 15-feet to 7-feet along May Street, and elimination of the required trees at 40-foot centers.
- Overflow parking for the former Sato's restaurant was in a lot kitty-corner to the site and is no longer available for use.
- Staff recommends that the applicant still provide the required trees whether the reduction in parking and landscaping is approved.
- The applicant is requesting that a location to the east of Stagecoach Remodeling be purchased by the owner of the restaurant and used for a parking lot.
- Some large trees will be removed to accommodate the parking.
- The Engineering Department wanted access for the lot provided to May Street, but there is a stone wall that is part of the history of the property and it is preferable to preserve that element, so access is from the alley.

Jose confirmed for Cordova that the new owner of the vacant restaurant wants to reopen. However, the owner needs to provide the required parking or receive a variance to reduce the required parking.

Wyatt opened the hearing to public comment.

DeWayne McCulloch
Stagecoach Remodeling
600 N. Holmes
Idaho Falls, ID

- Stagecoach remodeling operates out of the neighborhood and they want to preserve the integrity of the neighborhood.
- He would like the parking lot to be alley fed as the stone wall provides a good buffer and reduces the amount of traffic on May Street.
- The existing street trees in the median will remain so long as the stone wall remains intact.
- The owner will pave the alley from Holmes to the end of the proposed parking lot.
- The restaurant can reopen only if the off-site parking is approved.
- Research has proven there are no other parking options in the nearby neighborhood.
- The new location is far less dangerous than the previous parking located across the street from the former restaurant.
- A deed restriction would prevent future sale of the restaurant without the parking lot in order to prevent this issue from arising again.

The applicant told Creek that Stagecoach Remodeling consists of nine (9) lots going east from Holmes adjacent to May Street. The first five (7) lots are zoned C-1(Limited Retail Business) and that the back two lots are zoned R-3A (Apartments & Professional Business). Cordova shared a brief history of the site noting that the Planning Commission insisted on the R-3A zoning in order to buffer the adjacent residential use which is the apartment complex.

Mr. McCulloch told Davies that there are a number of structures on the site consisting of an old garage with and attached lean to and a bully barn shed that will be removed when the parking lot is constructed. He confirmed that as long as the stone wall remains in place they will provide a 7-foot landscape buffer measuring from the wall to the north. The remodeling office will access their property via the alley as will the restaurant.

Chair Wyatt entered a letter of opposition by Jackie Standley, 522 College, as “Exhibit A”. She believes there are too many cars/traffic and there is no access to the apartments through the alley. Cordova said Ms. Standley’s opposition is not clear and asked the Mr. McCulloch for clarification. He said he is not certain, but believes that the garages for the apartments are alley access. Wyatt said ~~will~~ **with** all the uses accessing the alley ~~that~~ it is being made into a street.

Davies questioned the dimension of the parking stalls at 180 square feet and what the parking requirement is for the restaurant. Jose said the size of the parking stalls are in compliance with code. She said the former owner of Sato’s did not use the entire square footage of the building for a restaurant thus reducing the amount of required parking. The current owner would need sixty-four (64) parking spaces if calculations were based on the entire square footage, but he has agreed to take the end for office space. The reason it is being considered in the same manner is that it is a new owner, but the use remains the same.

Davies asked if the owner made a commitment to the total square feet for the restaurant use. Jose said staff has reviewed the requirement with the applicant, but there is no formal agreement regarding square footage in relation to parking. She believes enforcement of the required parking would be handled through the zoning enforcement process. She said if a permit is necessary a final inspection is required, or if there is a change in use a site plan is submitted for review by staff.

Creek said a number of remodels are done without permits. Cordova said that if it is not a visible violation, the City relies upon citizen complaints. Wyatt said that point is a general restriction on the amount of space used for the restaurant may be needed for approval. Davies suggested when the motion for approval is made that a restriction on the square footage of the restaurant be incorporated. The applicant said the owner will use 1,200 square feet for office/play land use and the remaining square feet would be for the restaurant. Jose did not know the present square footage of the building. Austad said the motion could be phrased as to limit the dining space to what it was for the previous restaurant.

Chair Wyatt closed the hearing to public comment.

Cordova believes the staff recommendations are clear and suggested a motion be entertained.

Motion by Austad, seconded by Cordova to approve a variance to reduce the required parking from 34 spaces to 33 spaces with the condition the square footage of the restaurant remain the same as under the previous ownership and reduce the landscaping from 15-feet to 7-feet with the condition the required trees not be eliminated for the following reasons:

- 1. There is undue hardship related to the unique physical limitations of the site, and**
- 2. The request is not economic in nature, and**
- 3. Granting the variance is consistent with the character and development of the neighborhood.**

Aye: Austad, Cordova, Creek, Davies, Latin, Lee, Phillips, Roland, and Wyatt.

Nay:

Abstain:

**Variance Request
165 Constellation Drive
The Gardens Assisted Living, Phase I**

Jose described the request as outlined in the staff report, part of the public record. She noted the following in regard to the project:

- The site is located south of W. Broadway and east of Old Butte Road and zoned R-3A (Apartments & Professional Office).
- Request is for a freestanding triplex that does not front a public street, and for a reduction in the required rear yard setback from 25-feet to 6-feet in a development that is already approved for assisted living.
- The request for a triplex changes the dynamics of the development and therefore requires access to a public street.
- Placement of the triplex encroaches into the southern 25-foot setback for Unit 3.
- Location of the proposed triplex cannot be moved further to the south due to the location of the utilities.
- There is potential to condominiumize the building and sell them as individual units.
- Staff recommends denial as the variance does not meet the criteria for approval:
 - ~ The property is not unique, and

- ~ The hardship was created by the developer as the triplex is an afterthought and placement could have been accomplished with realignment of the units and/or infrastructure, or created a planned unit development with the original plan, and
- ~ Although providing a needed use in the community, staff believes the request is for financial gain and could set precedence for similar requests in the future.

Creek informed the Chair that he is a member of the Holy Rosary School Endowment Fund that previously owned property adjacent to the project. He believes there is no conflict of interest and will participate in the vote. Davies asked for clarification regarding the setbacks for Unit 3 and the proposed triplex. Jose said the request is to reduce the southern 25-foot setback depicted for Unit 3 to accommodate the proposed triplex. The proposed unit will meet all the required setbacks so long as the front yard for Unit 3 is reduced from 25-feet to 6-feet.

Cordova questioned the possibility of attaching the triplex to Unit 3 for compliance to the setbacks. Jose said that if they change the use and reduce the size of the building it might be possible, but there would be setback conflict with Unit 5. She told Creek that Unit 3 and the proposed triplex front a parking lot that is accessed via a private street off W. Broadway.

Wyatt opened the hearing to public comment.

Bob Utterbeck
3351 Charleston Lane
Idaho Falls, ID

- The project is a campus style assisted living development with single/private rooms for every tenant.
- Randy Robinson is a tenant with a unique situation who is requesting housing for couples desiring privacy consisting of a double room with two beds who are at the low end of Medicaid.
- They would lease to Mr. Robinson who would be tenant/operator renting units to Medicaid patients/tenants.
- The proposed units would not be sold individually.
- This is an afterthought, but something that is affordable and needed in the community.
- Mr. Robinson was interested in construction larger than a triplex, but there was not ample room so he would like to construct a second triplex.

Larry Reinhart
1740 Bramble Lane
Idaho Falls, ID

- With the donation of 80-feet of green space, by him, to the City in the '90's his project no longer has adequate space for access to public streets.
- If he still owned the land he would not need a variance, but because he gave something to the City he is before the Board.
- The project has 30% landscaping in addition to the 80 feet of green space donated to the City.

- He said if the plans were not for an assisted living complex and he were renting the proposed triplex as an apartment to three individual couples it would be compliant.
- He does not understand the distinction.
- It comes down to the fact that staff believes the units will be sold off separately.
- It should be treated in the same manner as an apartment.
- It has no impact to others offsite, fencing was constructed so the neighbors would be isolated from old people, and they have provided twice the required parking.
- If people weren't in these units they would be sitting on the sidewalk.
- It is completely subsidized and they put up no money themselves.
- He doesn't understand how anything cannot be economic, but it creates housing for couples that cannot find it elsewhere.
- Having no access to public roads and reduction in setbacks does not seem unrealistic.

Reinhart told Wyatt when asked about considering another type of structure more conducive to the site that he doesn't like the rules and believes they should change. It doesn't make sense from a living standpoint why folks in these units are any different than those living in an apartment. Wyatt said the intention is a good gesture, but the Board needs to be able to justify approval of the request. Reinhart doesn't understand why there is another set of criteria for setbacks for assisted living and how if it were an apartment he would be in compliance. Wyatt said the difference between the two is not for the Board to decide and suggested a zoning amendment before City Council is an option.

When asked by Wyatt if Reinhart were to reduce the size of the triplex, Jose said if they reduced to the size of a duplex it would be very small and there would still be issues regarding the setback, and compliance to the provision requiring frontage on a public street. She clarified that large apartment complexes have direct access to a public street, but they are proposing access is to a private drive and then to a public street. Reinhart referenced the property he donated to the City and said it is the reason he cannot provide a public street as required for the triplex. He made the donation to enhance the community and he is being told that because he donated something he doesn't comply. He is an honest man and is asking for some relief.

Davies asked for clarification regarding the requirements for access. Jose said the assisted living units are not required to have access to a public street, but the triplex is and the access road for the site begins where the 80-foot landscape strip terminates and his property begins. She said the assisted living units do not fit the definition of a dwelling, but the proposed triplex does.

Creek asked Mr. Reinhart if he installed bike paths as he has done in other developments. He said that he has.

Robert Marshall
180 Donna Drive
Idaho Falls, ID

- His home is located east of and in close proximity to the assisted living center and is in opposition to the requested variance.
- He would like clarification regarding a second proposed triplex per a discussion with planning staff.

Chair Wyatt told Mr. Marshall that the Board could not entertain his question regarding a second triplex, as it is not part of the request for a variance.

- He has no questions related to setbacks, but is concerned that the request is based on altruism and not for the access to a public street.
- Expressed concern that a covered patio depicted on the original plans for use by the residents is being eliminated in lieu of additional housing.
- He is not convinced that the developer/owner would not gain financially as it is additional income.
- Believes there is potential harm to the neighborhood without access to a public street.

Steven Stuart
300 Donna Drive
Idaho Falls, ID

- He questioned the placement of the required fence by the developer as it is located 5 houses to the north of his home on Donna Drive and is only a partial fence.

Chair Wyatt told Mr. Stuart that the Board is not considering a fence as part of the variance request.

- The project has already been approved and believes this is an unnecessary afterthought, even in difficult economic times.
- If reductions are made in an effort to generate more tax it should be of benefit to the entire community and not just the economic gain of the developer.
- It will create the need for more city services and traffic.

Austad asked about the second triplex. Jose said the variance is for one triplex and not for two. A second triplex has been suggested and according to their plan it would meet the setback requirement, but would still require access to a public street. Wyatt said if there is a second unit they should entertain the concerns of Mr. Stuart. The Recording Secretary confirmed the legal notice was for a single freestanding triplex. Jose said a separate hearing would be necessary for a second triplex.

When asked for clarification regarding the two uses, Jose explained that the triplex was submitted as more of an apartment and therefore cannot be classified as assisted living. Essentially they are two different uses. Today they may be apartments, but there is latitude to condominiumize in the future and sell them off individually.

Creek questioned designating the product as assisted living for approval of the variance so that it eliminates the opportunity to sell them off as individual units. Jose suggested it more appropriate to state they are not for individual sale. However, condominium plats do not come before the City for approval and this leaves the potential for the change to take place without the knowledge of the City. Creek said the variance is the same as the previous hearing item for the restaurant and the Board could make a similar condition for approval to take that use out. Jose said it was up to the body to decide if they want to do that.

Wyatt closed the hearing to public comment.

Mr. Marshall asked to make additional comments

Wyatt opened the hearing to public comment.

Robert Marshall
180 Donna Drive
Idaho Falls, ID

Mr. Marshall asked staff what the criteria for granting a variance is. Jose said the Board must find the property is unique in nature, that the need is not economic in nature nor is it the creation of the owner, and it is not in conflict with public interest.

Wyatt closed the hearing to public comment.

Mr. Utterbeck asked for the opportunity to make a clarification.

Wyatt opened the hearing to public comment.

Bob Utterbeck
3351 Charleston Lane
Idaho Falls, ID

Mr. Utterbeck stated the units are not being built to be sold individually and not designed to be condominiumized. They are intended to be assisted living “apartments” and are for couples. He said they are single-story; low-profile housing that does not impact the neighbors anymore than anything else they have done in the area.

Wyatt closed the hearing to public comment.

Latin said that he believes the request for the variance is economic in nature as it generates additional revenue and the need is the creation of the owner. Creek said that any development is economic in nature as there has to be some return on investment or there wouldn't be development. He does not find a conflict with public interest and he would vote in favor of the variance. Wyatt said you cannot argue the fact that situation was created by the owner. Creek said it was created by the owner, but he contributed a large amount of prime land to the city, as he is that type of developer. If he could take his land back he would be able to provide the public road. Wyatt said he appreciates generosity of the developer. However, it doesn't put anyone above the law. Creek said the purpose of a variance is to review requests on a point by point basis to allow some leeway.

Cordova said that consideration must be given to the entire wording of the 3 criteria for approval of a variance. At one time there were 5 criteria and in some respects made it easier to make a decision. He read the criteria in their entirety and stated the request is before the Board because it is in conflict with the public interest as it is defined as a dwelling and does not front a public street.

Davies is struggling to understand why the unit is different than the other units in the development. Jose said the all of the single occupancy units have individual bedrooms, but share a common area (kitchen, living/recreational area). Rest homes or assisted living does not meet the definition of a dwelling. The triplex is called out as three individual units or dwellings. Again, the assisted living or rest home is not classified

as a dwelling and do not require to access to a public street. Under the provision of the ordinance, a dwelling must have direct access to a public street.

When questioned by Austad about the ordinance, Jose stated she is not the author of the ordinance and cannot give exact reasons for the provision. She confirmed for Wyatt that the definitions are a part of the zoning ordinance. He suggested that the definition limits the design of an assisted living complex.

Austad said her opinion regarding the criteria for the variance is that the hardship was created when the developer donated land to the City. However, it was a donation and he most likely had a tax write off. She struggles with the conflict of public interest due to the testimony given by citizens. She too believes that a modification to the ordinance may better address this type of situation.

Motion by Latin, seconded by Phillips to deny the variance request as it is economic in nature and is the creation of the owner.

Aye: Davies, Latin, Lee, Phillips, and Wyatt.

Nay: Austad, Creek, Roland.

Abstain: Cordova (A close friend in the insurance industry handles the insurance for Mr. Reinhart, and ~~Mr. Reinhart is also a~~ they are good friends).

Wyatt informed the applicant the variance is denied, but he has the option to appeal the decision to City Council.

Miscellaneous:

Web Training Videos.

Videos are available for review by the board members

Next scheduled meeting of the Board.

The next Board of Adjustment meeting will be held March 12, 2009.

Adjourn:

Meeting adjourned at 1:50 PM.

Debra Petty, Recording Secretary
Board of Adjustment