

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

March 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.

Members Absent: Vice-chair, Kurt Roland; and Chair, James Wyatt.

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

Also Present: Applicant(s) and 2 concerned citizens.

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

Minutes: February 12, 2009.

Motion by Creek, seconded by Latin to approve the minutes of February 12, 2009 with the following corrections:

Page 2, Paragraph 3, Last Sentence
Change “will” to “with”, and delete “that”.

Page 8, Vote on Motion
Strike “and Mr. Reinhart is a good friend” to “and is a good friend”.

Motion passed 7, 0, 0.

Public Hearings: Variance Request
5640 Gleneagles Drive

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

- The request is for a variance to reduce the required rear yard setback by 3’10” for the addition of a sunroom.
- The property is zone R-1 (Residential Single-family).
- Future land map identifies the parcel as park-recreation.
- The lot is over 17,000 square feet and is as large as or larger than other lots in the subdivision.
- There is an existing concrete pad that extends into the rear yard by 10-feet and it is here that the applicant would like to construct the addition.
- There are approximately 21-feet from the concrete pad to the back property line.
- The permit for construction of the home identified a front setback of 36-feet and a rear setback of 25-feet, but when Jose measured the site the front setback was at 29-feet and the rear setback was at 31-feet.
- The home must have been pulled forward 6-feet during construction in order to have the additional 6-feet to the rear of the home.
- The building envelope denotes adequate space for placement of the sunroom in another location on the lot for compliance, but would require that it be a detached structure.
- The applicant would incur additional expense by changing the proposed location.

- Two letters were submitted by neighbors in support of the sunroom addition.
- Staff is recommending denial of the variance request as there is nothing unique about the property, it may be considered economic in nature, and is the creation of the owner.

Jose told Chair Cordova the required minimum lot size in an R-1 zone is 5,000 square feet. Chair Cordova entered a letter from Cecil and Sally Smith into the record as Exhibit A and a letter from Don Edwards as Exhibit B. Both letters side in favor of approval of the variance request.

Chair Cordova opened the hearing to public comment.

**Carol Vilord
5640 Gleneagles Drive
Idaho Falls, ID**

Mr. Vilord said her husband could not be in attendance as he is caring for an ill sister. She will do her best to address the questions/concerns of the Board, but relies upon Mr. Vilord to answer questions of a technical nature. She made the following statements in addition to the addendum provided by her husband:

- In 1996 they approached two of their neighbors with the idea of purchasing unsold Lot 10 and dividing among the three of them in order to create larger side yards and adequate space for an enclosed sunroom on their property in the future.
- They were told by their real estate agent that the City denied their request for the replat, but in actuality she never made the request and did not want to be involved.
- As a result of their agent's actions, they were unable to acquire enough land and had to reposition the home in order to meet the rear yard setback.
- They made a good faith effort to be in compliance during the initial construction of their home.
- To make an argument for undue hardship, the addition of the sunroom will not negatively impact to the neighbors, and the need for the variance is unreasonable.
- Three blueprints were submitted to the building department for review and They detail the 1996 cross section that includes a roof over the terrace area, but it is not certain that it is a copy approved by the building department.

Staff will make a copy of the blueprint and is entered as Exhibit C for the record. Creek was told by Jose that building plans are only kept for 2 years, so there is no record of the plans that were approved.

- The plans show modifications in red ink and clearly indicate a future sunroom.
- Changes to the roof structure over the terrace were made as it was always their intent to construct an enclosed sunroom.
- They did not want to deconstruct the roof in order to create the sunroom.
- There was never anything in writing from staff or explained to them at the time regarding plans for the future sunroom and it does not make sense to have to prove something from 15 years ago.
- The encroachment is a violation of their creation but they believe it will only enhance their home and the surrounding area.
- Staff did indicate in the staff report that the request is of no harm to the public interest.

- A detached structure would require grading, a concrete floor, electrical work, and removal of their sidewalk and they would not be able to enjoy the sunroom year round.
- The best interest of the surrounding area is an attached 150 square foot sunroom addition requiring a 3'10" variance that to construct a large storage shed on the property line.
- The addition does not violate the comprehensive plan and protects property values.

Cordova said that many neighborhoods have an architectural review board and if submitted plans do not conform to the subdivision ordinance of the City the board does not approve them. Mrs. Vilord said her husband was on their subdivision board for many years, but over time residents began to ignore the rules and she believes the board is no longer in existence. Mrs. Vilord presented plans for the proposed sunroom for consideration by the Board. The plans are entered into the record as Exhibit D.

Davies questioned Mrs. Vilord regarding the loss of 5 feet due to a discrepancy in the plat. Mrs. Vilord said it is a technical question that should be answered by her husband. However, they did reposition the home at the time of construction to create more room at the rear of the yard. She does not exactly know how or when the discrepancy occurred. Davies noted that based on staff comments it appears the house was repositioned contrary to the approved construction plans. Mrs. Vilord said it was not known to them the home was positioned so far off on the approved site plan. The home was inspected several times by staff and nothing was ever said to them.

Creek said if the property line was straight and not a "dog leg" most likely they would be in compliance. Cordova stated that many times changes are made to the approved plans during construction and that inspections are focused on the building code and not for setbacks. Creek said that there are times when survey pins are placed incorrectly. Mrs. Vilord said her husband is an engineer and very concerned with compliance to regulations.

Mrs. Vilord said that in her review of the ordinance there is almost always an exception to a given rule or regulation. She believes their application falls under a number of those exceptions. The purpose of boundaries (setbacks) is to preserve and promote the safety, peace, and general welfare of the inhabitants. Their addition is not in violation of these purposes and protects property values. The placement of the addition will not inhibit the maintenance of the property, or access of safety vehicles. A variance of approximately 4-feet is more practical than an out-of-the-way addition.

Mrs. Vilord is baffled by regulations that allow the placement accessory structures up to and on the property line, but regulations prohibit the construction of an addition within 21-feet of the property line. She said the criteria for a non-conforming use to a conforming use applies to their request for a variance and does not believe their home should be compared with other homes of a different circumstance. The fact that the addition is obscure from the neighbors and that the golf course is in their rear yard that judgment should be based on the fact that it has no negative impact on the surrounding area and a lovely sunroom is more appealing than the existing concrete pad.

A packet consisting of additional information to the Board for consideration was entered into the record as Exhibit E. The staff report indicated the request was for a conditional use permit. Mrs. Vilord based additional comments on Section 5-8-1 related to approval or denial of a conditional use permit. She said the evidence

provided and pictures submitted of their home prove their request meets the objectives and characteristics of the zone. Her written comments were submitted into the record as Exhibit F.

Cordova suggested that staff respond to the comments made by Mrs. Vilord regarding the conditional use permit. Jose said the Board is has authority to grant certain conditional use permits, but a reduction in setbacks requires a variance. The request is for a variance and not a conditional use permit. She said the reference to a conditional use permit was an error in the staff report and confirmed it was properly advertised as a variance request.

Jose said the deed and subdivision plat call out the property line as the “dog leg” and GIS technology measurements indicate even if the line were straight it would falls short by less than a foot. She said the measurement was done from the eave to the property line and that it is not 100% accurate. Jose told Lee that accessory buildings may be constructed on the property line if they are located 12-feet from the main structure.

Sally Smith
5610 Gleneagles Drive
Idaho Falls, ID

Mrs. Smith referenced the letter submitted by her husband and expressed her personal approval of the request.

Carol Vilord
5640 Gleneagles Drive
Idaho Falls, ID

Mrs. Vilord said if the Board required additional information for making their decision, she would be happy to wait until the return of her husband.

Chair Cordova closed the hearing to public comment.

Davies said he is somewhat concerned that most of the statements made by the applicant addressed property value and not enjoyment and that changes made by the builder to locate the home closer to the street may have worked in their favor. He believes there are some unique circumstances as not all homes are located on a golf course. He believes that a 3’10’ encroachment into the required setback is better than a 12-foot by 12-foot shed located on the property line. He is in favor of approval.

Lee concurs with comments by Davies and as there will be no homes constructed behind the home due to the location of the golf course would vote in favor of approval. Latin concurs with comments by Davies and Lee, but doesn’t understand why they were able to enjoy the home for 12 years without a sunroom and are now asking for a variance. Davies said it was always their intent to construct the sunroom. Creek doesn’t believe the addition of the 150 square foot sunroom will create a significant economic advantage and is in favor of the addition.

Motion by Davies, seconded by Creek to approve the variance request for 5640 Gleneagles Drive for the following reasons:

- 1. The property is somewhat unique due to its location on the golf course and there will be no additional homes constructed to the rear of the property, and**
- 2. Any economic gain would be minimal, and**
- 3. There is no conflict with the public interest.**

Aye: Austad, Creek, Davies, Latin, Lee, Phillips.

Nay:

Abstain: Cordova.

Business:

- 1. Findings of Fact and Conclusions of Law for 688 Holmes Avenue (formerly Sato's Restaurant).**

Motion by Latin, seconded by Creek to approve the Findings of Fact and Conclusions of Law for 688 Holmes Avenue.

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

Nay:

Abstain: Cordova.

- 2. Findings of Fact and Conclusions of Law for 165 Constellation Drive (The Gardens Assisted Living).**

Motion by Latin, seconded by Creek to approve the Findings of Fact and Conclusions of Law for 165 Constellation Drive.

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

Nay:

Abstain: Cordova.

Miscellaneous:

- 1. The next meeting of the Board will be held April 26, 2009.**

Adjourn:

Meeting adjourned at 1:10 PM.

Debra Petty, Recording Secretary
Board of Adjustment