

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

April 22, 2010
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; Len Stenzel; Kendall Phillips; and James Wyatt.

Members Absent: None.

Staff Present: Renee Magee, Director; DaNiel Jose, Current Planner; and Debra Petty, Recording Secretary.

Also Present: The applicants and 2 interested citizens.

Changes to Agenda: None.

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

Minutes: **January 14, 2010.**

Motion by Davies, seconded by Cordova, to approve the minutes of January 14, 2010, as presented.

Motion passed 7, 0, 0.

Austad and Phillips arrived at the meeting.

Public Hearings: **Variance Request
Lot 13, Block 2, 1st Amended Anderson-Jeppson
1494 Juniper Drive**

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 request is for a variance to reduce the required side yard setback for an existing covered patio.
- There was a smaller, existing, covered patio on the home when purchased by the owner in 1964.
- A 1964 aerial shows a covered patio on the south side of the home.
- The original covered patio was damaged in the 70's.
- Current aerial shows an addition that appears to go all the way to the property line.
- No permits were issued when the damaged patio was replaced with a larger patio that encroached into the side yard.
- The encroachment was brought to the attention of staff by a zoning enforcement.
- The encroachment is 4-feet into the required 5-foot setback.
- The addition is tied in to the roof of the existing home.
- The lot size is standard for the neighborhood.
- The patio is being used for storage.
- Staff recommends denial as it doesn't meet the criteria for approval.
- If the board approves the request, it must be brought up to fire code.

Creek believes there are 5 homes in close proximity that also encroach into the required setback. Jose said she walked the neighborhood and did not see any other violations in the immediate area and although the original structure was replaced in the 70's there was a required 5-foot side yard setback.

Wyatt opened the hearing to public comment.

Donna Storer
1494 Juniper Drive
Idaho Falls, ID

Mrs. Storer said the patio was there when she purchased in 1964, but it was not as large as it is today. An adjustment to the patio cover would require some expense. The patio is used for storage and cooking.

Kelly Davis, Son-in-law
3135 Ross
Ammon, ID

Mr. Davis concedes they are in the required side yard. He will move the structure 5-feet from the fence, but would like to maintain the current style. The neighbor was not able to have a permit for the same type of structure as it would encroach into the setback and he wants to be fair. Accommodations for access to the side yard from the patio and front yard must be made for his mother-in-law. He believes the original structure conformed to the zoning ordinance.

Jose said if the structure is moved back 5-feet, construction may remain the same. However, they must fireproof the roof. If a variance is granted, the entire structure must be fireproofed.

Wyatt closed the hearing to public comment.

Discussion by the Board:

Davies said he struggles to make a ruling that would require changing the structure as it has been in place for forty (40) years. He believes there must be a statute of limitation. Creek is of the same opinion. Wyatt said they will be required to fire rate or fireproof the structure if the variance is granted and this could be more costly than starting from scratch. He noted the neighbor was denied a permit for a similar structure and fears setting precedence. Davies believes the neighbor knew of the structure when they moved into their home and based their complaint on denial of their request for a similar structure/encroachment.

Motion by Creek, seconded by Latin to approve the request for a variance to reduce the required 5-foot side yard setback to 1-foot, as the structure has been in existence for forty (40) years.

Aye: Stephanie Austad; Alex Creek; Jake Cordova; Steve Davies; Hal Latin; Kendall Phillips; Len Stenzel; and James Wyatt.

Nay: Richard Lee.

Abstain:

Wyatt explained to the applicant the variance was approved, but they may find fireproofing the structure is cost prohibitive. Magee clarified that there is no statute of limitations on a structure.

Business:

Action by Board for the January 14, 2010 public hearing regarding Lot 1, Block 4, Old Fashion Way (2344 Plaza Street).

Magee said the Illum's are appealing the decision of the Board to Council. She explained there are two options for doing this due to the action, or more specifically lack of action by

the Board. She can present to Council as a failure by the Board to take action, or the board may make a new motion by the attending members so the merits of the case may move forward to council. Cordova stated the vote was split; 4 to 3. That alone should be some guidance to Council as to the position of the board.

Magee said in the past the board revised their motion until they had 5 concurring votes and asks they do the same in the future. It is much easier for staff to write Findings of Fact and Conclusions of Law when there an actual decision by the Board. A split vote only means the motion failed and a failure by the Board to act on the request. As a result the decision making authority of the board is being passed to council.

Fairness is built into the Zoning Ordinance, and there are times when Council must have a majority vote plus one when taking action similar to the granting of a variance. The basis of the zoning ordinance is fairness. The requirements are the same for the entire neighborhood unless there is something unique about a property. She said staff struggles to write findings as it is not apparent what the findings were.

Creek asked if they could make another motion as there is more material before them. Magee said to do this would require a new public hearing. Davies said he did not understand the expectation was to have 5 votes one way or another and the issue is not that they made a motion to deny and they failed to approve a denial, but that the motion failed. Magee concurred, but said there was also confusion regarding how some members voted.

Magee said per the information from City Attorney Storer, a structure illegal at the time of construction is still illegal if the Board has not changed the status quo. In order for the structure to be legal, a variance must be granted. In this case the Board did not take action so it is left to Council. Essentially, the matter is not really going forward as an appeal, but is going to council as new request.

Motion by Creek, seconded by Phillips to approve the request for a variance to reduce the required setback from 30-feet to 20-feet as it is not onerous to the neighborhood and it has been some time since it was constructed.

Aye: Alex Creek; and Richard Lee.

Nay: Stephanie Austad; Steve Davies; Hal Latin; Kendall Phillips; and Jake Cordova.

Abstain:

Miscellaneous:

Election of Officers:

Motion by Austad, seconded by Davies to approve Richard Lee as Chair and Kendall Phillips as Vice-Chair. Motion by Cordova, seconded by Davies to cease nominations.

Aye: Stephanie Austad; Alex Creek; Jake Cordova; Steve Davies; Hal Latin; Richard Lee; Kendall Phillips; Len Stenzel; and James Wyatt.

Nay:

Abstain:

Adjourn:

Meeting adjourned at 1:10 PM.

