

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

September 13, 2012
12:15 p.m.

City Annex Building, Council Chambers
680 Park Avenue

Members Present: Stephanie Austad; Jake Cordova; Alex Creek; Steve Davies; Len Stenzel; and James Wyatt.

Members Absent: Richard Lee.

Staff Present: Renee Magee, Director; Brian Tomsett, Residential Plans Examiner; and Debra Petty, Recording Secretary.

Also Present: Fred Springman; Brock Merrill; and family members.

Changes to Agenda: Cordova noted the discrepancy in the description of the variance request for 180 Morningside Drive on the agenda. The applicant is asking for a 19' reduction of the required side yard, not 1'.

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

Minutes: **May 10, 2012.** Motion by Cordova, seconded by Davies, to approve the minutes of May 10, 2012, as presented.

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

Nay:

Abstain:

Public Hearings: **Variance**
Lot 9, Block 1, Hughes Imperial Estates, Division No. 2
180 Morningside Drive

Tomsett, Plans Examiner, described the request as outlined in the staff report, a part of the public record. He noted the following in regard to the project:

- The request is to reduce the required side yard in an RP zone from 20' to 1' for the construction of a 10'x12' shed in the rear side yard.
- Characteristics of the RP zone are large, open, level lots with a minimum lot size of 10,000 square feet.
- Access to the garage is from Rogers Street.
- Staff is proposing an alternate location on the east side of the lot next to the home.
- The proposed location is compliant with the setback requirements.
- Seven (7) similar side yard reduction requests have been made in Hughes Imperial Estates, six of which the Board of Adjustment denied (see attached map).
- At the time of construction, 1968, a variance was granted for this property allowing an encroachment of 9' into the required 25' rear yard.
- The 9' encroachment pushed the building envelope on the lot to its maximum.
- Staff measured 19' from the sidewall of the house to the fence, a discrepancy of 1' to the required 20' side yard.

- It is not known if the fence is located 1' inside the survey lined and cannot be confirmed without a proper survey.
- The shed will not be visible from Rogers Street.
- A 5' utility easement is located along the east property line.
- The lot is not unique and has no special limitations.
- Staff recommends denial of the variance request due to requirements of the RP zone.

Tomsett confirmed for Davies only one other variance was granted in Hughes Imperial for a reduction to the side yard for construction of a garage. The variance was never utilized.

Chair Stenzel opened the hearing to public comment.

Fred Springman, 180 Morningside Drive, Idaho Falls, ID. (Mr. Springman's written comments are part of the record and located in the file as Exhibit 1). Mr. Springman said a shed could be placed in his front yard, but it is not a desirable location. A shed in the "compliant" portion of the rear yard will place it in the driveway blocking vehicle access to the garage. His hardship is based on having a home that fronts Morningside with access to the driveway from Rogers Street. Three other properties backing Tautphaus Park have the same configuration. Mr. Springman said if he located the shed in the location proposed by staff, it would not fit under the eaves of his home, is more visible to the public, and will take up more yard space used for play by his children. He presented additional photos which he presented as Exhibits 7, 8, & 9. The photos demonstrate the loss of open space.

Mr. Springman does not believe the history of variance requests in Hughes Imperial has any bearing on his request. All requests should be considered on its own merit. The home does take full advantage of the 40% lot coverage. The location of the home and driveway existed prior to purchase of their home. The situation is not of his creation, is not economic in nature, nor will it cause harm to the neighborhood.

Mr. Springman told Cordova his lot is 11,000 square feet. Wyatt said there is nothing unique about the lot, but the built environment is and was manmade. Creek concurs there is nothing unique about the lot.

Chair Stenzel closed the hearing to public comment.

Brian told Cordova the proposed location by staff is for compliance with setback requirements. If located to the east, the eaves of the shed would be 4' from the wall of the home. Davies said the applicant makes a good case for the request due to the location of the home. It fronts Morningside with access to the garage in the rear. He said there is a concern access around the property is important especially for emergency personnel. The board does evaluate variance requests on their own merits and precedence set with past requests. Creek said the request does not meet the three criteria for approval. Cordova said it is a large home on a large lot of approximately 11,000 square feet.

Austed said the applicant has demonstrated there is a physical limitation because of the two front yards and is not created by the owner. Davies said there is another location the shed can be located without the need for a variance of 19'. Cordova said requests for reduction in required setback are usually this extreme. A storage shed is for protection of items from the elements and may not be in a convenient location for the homeowner. The request is considerable and may cause issues for any future owners of the property. This zone is quite restrictive and does not allow for small home businesses as other residential zones. This is another reason to protect the zone.

Motion by Davies, seconded by Creek, to deny the request for a variance to reduce the required side yard as there is another location on the lot for a shed that is not conflicting with zoning regulations. Motioned passed.

Aye: Jake Cordova; Alex Creek; Steve Davies; Len Stenzel; and James Wyatt.

Nay: Stephanie Austad.

Abstain:

Chair Stenzel told the applicant the request is denied. The decision of the board may be appealed to City Council or select and alternative location for the shed.

Variance

**East 10' lot 34, Lots 35-38, W 10' Lot 39, Brodbeck's Addition
345 E 25th Street**

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

- The request for a variance is to reduce the required front setback in an R-1 zone from 30' to 24' to construct an enclosed porch.
- The existing home is slightly elevated in comparison to neighboring homes, but the lot is level and large (15,000 square feet) with no physical limitations.
- Nearly all homes in the neighborhood have porches; many do not entirely cover the steps.
- Other neighboring properties have snow and ice issues.
- The only argument for approval is that it is front porch enclosure is the only encroachment and does not run the entire length of the front façade.
- The applicant did not apply for a building permit prior to construction of the porch.
- The request must be considered as a new build.
- If approved, the applicant will need a building permit for a structure that may not to be built to code.
- The additional porch cover has the same code issues, but does not encroach into the required front yard.
- Staff recommends denial.

Magee said the building inspector discovered the construction of the porch cover. Creek suggested cantilevering the structure for extension of the eaves. He believes it is a matter of health and safety. Magee told Creek although a possible health and

safety issue it is not one of the criteria for approval. Magee told Wyatt the home is setback the required 30' from the front property line. However, she did not confirm the 6' setback through an onsite visit.

Chair Stenzel opened the hearing to public comment.

Brock Merrill, 345 E 25th Street, Idaho Falls, ID. Mr. Merrill believes the issue is one of safety and is trying to prevent others from falling on the icy stairs. His home has multiple steps leading to the front door which the neighboring properties do not have. He removed large pine tree an attempt to expose the steps to the sun and mitigate the danger with snow and ice. This action did not resolve the problem. The melting ice freezes as the temperature drops in the evening. Mr. Merrill believed the property line was measured from the curb instead of behind the sidewalk and as the structure did not exceed a certain size a building permit was not required.

Mr. Merrill said his home is setback further than other adjacent homes and hopes this will be a consideration in making the final decision. He has received many complements from neighbors and they support his request. He realizes there will be some building code issues with the construction. He had the construction assessed by XXX who believes it will not be difficult to pour footings under the already constructed porch cover. If he has to take the structure down a portion of the roof will need to be reconstructed. He told Wyatt he does not plan to put a door in at this time and would plans for a brick exterior; however, he does not know what issues there may be with the footings. If not, they plan to use a type of concrete siding to add interest.

Rachel Merrill, 345 E 25th Street, Idaho Falls, ID. Mrs. Merrill said children and adults both have fallen on the stairs. It is a constant worry with guests and elderly parents coming to their home. As a massage therapist she deals with a number of clients with joint issues. Often a fall results in injuries that can be permanent. With her husband in the insurance business, they are well aware of the liability as homeowners. She said as a working couple as hard as they try, it is challenging to stay on top of snow and ice removal.

Mr. Merrill told Davies they did have rain gutters until construction began on the covered porch. They did not use heat tape. It is not possible to cantilever the porch cover.

Chair Stenzel closed the hearing to public comment.

Creek said there is nothing unique about the property, but is one of health and safety. He sees no harm in granting the variance. Davies understands the confusion regarding the location of the property line. Wyatt said this type of variance is troubling because they are asking for forgiveness. The previous variance request was denied by a property owner attempting to do things correctly. He doesn't necessarily disagree with what the applicant is requesting, but it does not meet the criteria for approval. Davies said this request is much less than 19' out of 20'. Staff told Cordova removing the side walls will not change the need for the variance.

Motion by Creek, seconded by Austad, to approve the variance request to reduce the required 30' setback by 6' because the height and number of the stairs is different from neighboring properties, confusion with the location of the property line, there is no undue hardship to the neighborhood and is not economic in nature, and if approved will require a building permit and compliance with code. Motioned passed.

Aye: Stephanie Austad; Jake Cordova; Alex Creek; Steve Davies; and James Wyatt.

Nay: Len Stenzel.

Abstain:

Business:

Findings of Fact and Conclusions of Law for Lot 10, Block 19, Holmes Addition.

Motion by Davies, seconded by Cordova, to approve the Findings of Fact and Conclusions of Law for 467 Constitution Way.

Aye: Stephanie Austad; Jake Cordova; Alex Creek; Steve Davies; and James Wyatt.

Nay: Len Stenzel.

Abstain:

Miscellaneous:

Creek asked about the variance granted the Whinery. He said it was granted with the condition the seating area not be increased. The new owner has provided additional outdoor seating and outdoor activities. There have been numerous complaints by neighboring properties. Stenzel referenced the minutes May 10, 2012 which stated the variance was granted for a specific use which has changed. The board was unanimous in their decision to require the new owner to find the required parking, or submit a variance request.

Adjourn:

Meeting adjourned at 1:50 p.m.

Richard Lee, Chair and/or
Len Stenzel, Vice Chair