

Minutes of a Board of Adjustment hearing held on March 31, 1983, 7:00 P.M. in City Hall.

Present were Mr. Kelley Darley who was applying for the variance, Howard Fuller, Jack Hudson, Steven Porter, Galen Kidd, Kay Higginson and Ramona Rosenlund, secretary.

Meeting was called to order at 7:07 P.M. by Chairman Jack Hudson and prayer was by Mr. Porter.

Mr. Hudson said the variance being requested by Mr. Darley is for a five foot sideyard rather than eight feet as is required by the zoning ordinance. He then read from the ordinance regarding these requirements. Also, the ordinance states nothing can be added to enlarge anything existing on a non-conforming lot, which his is, therefore he is requesting two variances.

Mr. Hudson explained to Mr. Darley that the Board of Adjustment is set up and governed by law in order to grant minor departures from the ordinance providing other guidelines are met, but they are limited as to what can be granted. He stated they have six questions which need to be considered before granting a variance and he quoted as follows:

"1. Does the zoning ordinance lead to practical difficulties or undue hardships on the part of the property owner in the use of this property?

2. Is the hardship unique to this property?

3. Is the hardship caused by actions on the part of the land owner? (Self-created hardship).

4. Is the land owner unable, at a reasonable cost, to acquire adjacent land so as to meet the dimensional standards of the ordinances?

5. Will the proposal alter the essential character of the area?

6. Is the proposal in conformance with the spirit and intent of the zoning ordinance?"

Mr. Darley said that all the neighbors had the same problem, that west of him they had built right on the property line, the drugstore across the street was on the line, the neighbor to the south was only off three feet and Tischner's across the street north were off the line only two feet. Mr. Hudson replied that these were all built prior to the 1979 when the present zoning ordinance became effective. Mr. Darley said he started building in 1978 and now he wants to finish. Mr. Kidd asked what he wanted to finish and Mr. Darley replied the east and west walls of his garage, and that the east wall was put in then with the intention that it would be for a garage. When he sold off the property to the West to Howard Riley, he had an agreement with him that he, Mr. Darley, could go onto Riely's property for use of a sideyard for the garage, thinking at that time the requirement for a sideyard was five feet.

There was some discussion as to what the requirements were at that time and Mrs. Rosenlund was asked to get a copy of the previous zoning ordinance #147. This was done and it was found that the requirements for a sideyard were the same as in the present ordinance.

Mr. Fuller asked if this five feet was only an easement and if Mr. Darley actually owned the five feet in question. Mr. Darley replied that he could not acquire any more property and so that was why he had the easement.

Mr. Kidd asked if Mr. Darley planned to do any more building on the almost finished carport he now has up and Mr. Darley replied he had purchased a door and the back to make it into a garage which he needed to store his furniture in. He stated he was transferred to Nevada and he had some bad renters in his home here. His sister-in-law and her husband were now living in the house. They are staying in one room until the sister-in-law and her family moves in about a months time and until then his furniture was stored on the porch.

Mr. Hudson asked who owns the five feet of property shown on Mr. Darley's drawing, he or Mr. Riely. Mr. Darley replied that Mr. Riley had the deed for the five feet on a contract for 25 years. Mr. Fuller asked if he could change the dimensions of the garage in anyway and Mr. Darley replied no, he only has one and one and a half feet on the sides of the door. He said he did not think that three feet was such a big deal, it was originally planned for five so this should be enough room for a sideyard on a corner lot. Mr. Kidd said this was compounding the problem as his lot is non-conforming. Mr. Kelly replied that the city changed his zone to a commercial one and doubled his property tax. There was a short discussion of this comparing his taxes to those of someone in a residential zone and it was found there was very little difference.

Mr. Fuller asked what was on the adjoining property to the South and West. Mr. Darley explained that he had originally owned all the full acre but had sold off the apartments to the south and a duplex to the west and there was little or no side yard on either one and the wall on the west between his and Mr. Rileys property has been up for some time. When asked if there was any way he could acquire additional property so as to conform Mr. Darley replied no.

Mr. Kidd asked why Mr. Darley had started to build without a permit and Mr. Darley replied that his philosophy was a man's property is his own business. Mr. Kidd said but you knew you had to have it and Mr. Darley replied yes, but he feels the city was sold bill of goods. That at the time when the first zoning ordinance was passed the city said they would only pass it so the county wouldn't shove something down their throats and they weren't going to enforce it but then they did. He went on to say he didn't see the difference was between five and eight feet and what good does this requirement do as there won't be any additional buildings there. Mr. Hudson said three feet is not minor according to the ordinance and Mr. Fuller stated that it is still the law.

Mr. Hudson explained that if the variance was denied, Mr. Darley had the choice of appealing it to District Court or asking the City Council to change the Zoning Ordinance. Mr. Darley said this seems ridiculous and asked what hardship is. Mr. Hudson said it is more than ordinary inconvenience and that the courts have interpreted it to mean that the property owner must be able to show, if he complies with the provisions of the ordinance, he cannot make any reasonable use of his property.

Mr. Kidd asked what if he had gotten a building permit in the first place and Mr. Porter said he would have found out he could not build the garage if he had requested a permit before starting. Mr. Darley said it is private property and there is no safety problem, he is just stuck in red tape, and that there are a lot of things built around town that are not conforming and they are still there. Mr. Fuller said lots of things are done that are not right but if it is not brought to the attention of the people who need to deal with it, there is nothing they can do about it. Also, that the variance request tonight falls under self-created hardship.

Mr. Darley said Mr. Riley does not have the deed to the property he sold him on contract, so legally Mr. Riley does not own it yet and so it is actually conforming. Mr. Kidd said he felt this was a legal question and that it most likely would not hold up. Mr. Hudson said if they allowed variances on something like this every John Doe could say he wants the same thing and we couldn't deny him so what good is an ordinance. Mr. Darley said why not allow them all or throw the ordinance out and consider each individual case. Mr. Kidd said he felt the city would be liable if something went wrong and Mr. Darley said if a variance was granted it would be legal. Mr. Porter said the whole city with the public hearing passes the ordinances and the Board is not the law.

Mr. Kidd asked Mr. Darley how much he had into the building now and Mr. Darley said \$1,000.00. Miss Higginson asked if it was finished and Mr. Darley said no, it is just a carport but he has bought the door to make it a garage. He also went to say someone on the other side of the street had built a garage right on the property line and over a ditch and he was not made to conform. Mr. Hudson said if it was not turned in, there was nothing the Board can do if it does not come to them.

Mr. Darley asked who turned him in and Mr. Kidd said he thought that was irrelevant. Mr. Hudson said Mr. Darley knew he needed a permit.

Mr. Kidd asked what would happen if the Board ruled against the variance and Mr. Hudson said the building inspector will talk with Mr. Darley who must comply or tear the building down. He then quoted Section 29 Item 3 of the Ordinance which states "Any person convicted of violating or refusing to comply with any of the provisions of this ordinance shall be punished by a fine in any sum not exceeding \$299.00 or by imprisonment in the county jail for a period of not longer than six months or by both. Any structure made or existing and any use of land in violation of any provision of this ordinance is a public nuisance and may be abated by appropriate proceedings." Also, Section

29, Item 1, was quoted, "Administration and enforcement of this ordinance shall be the responsibility of the Building Inspector, but the City Council may from time to time entrust the administration and enforcement of some part or the whole of this ordinance to any officer of the City of Santaquin." Mr. Hudson also read from Section 23, Item 4, "All dwellings built in a commercial zone must meet the area and frontage regulations of the Residential Zone RA-2".

Mr. Porter asked if Mr. Darley could move the garage back six feet to the rear of the house and so conform as an accessory building and Mr. Darley replied no, the lot was designed for it to be where it is and the wall was up. He then asked what if Mr. Riley would give him three more feet, could they table the meeting and then go from there? There was a discussion as to the size of the lot and a previous building permit issued to Mr. Darley in 1978, showed a different size. Mr. Hudson said they could not accept the five foot easement as part of the lot as it did not belong to Mr. Darley and he would need to acquire eight feet more of deeded property in order to conform to the sideyard requirement. Mr. Darley said Mr. Riley wouldn't sell it to him as it would put his property in a mess.

There was another short discussion as to other buildings in town that do not meet the requirements of the ordinance and it was again pointed out to Mr. Darley these are not the responsibility of the Board. Mr. Darley asked again what would happen if the variance request is denied and he was told he could request the City Council change the ordinance or appeal it to the District Court and the building inspector will require compliance. Mr. Darley said he felt the Board had already shown what their decision is. Mr. Fuller said the real force was the law already adopted by the City Council.

Mr. Darley was excused from the meeting and told that he would be notified by mail of the decision of the Board. Mr. Darley left at 7:56 P.M.

There followed a discussion by the Board with Miss Higginson saying she hates to fine him and cause trouble but what he has done is against the law. Mr. Kidd said he thought it would be nice if they could grant him the right to keep the carport just as it is now as it will probably get sticky and he wished it could be avoided. Mr. Hudson said the frontage, sideyard and size of the lot are all non-conforming and he knew he needed a building permit and so it would not be right to allow it. Mr. Porter said if he had applied for a building permit, he would have been told he could not build and there would have been no problem. Mr. Fuller said it was a self-created hardship and so they could not grant it.

Mr. Hudson made a motion that the request for a variance be denied. Mr. Porter seconded the motion. Mr. Fuller voted for denial. Mr. Kidd and Miss Higginson voted to grant the variance. Motion for denial passed.

Mr. Kidd said he wanted in the record that the reason he voted for granting the variance was because he feels he wants to avoid problems

that would effect families and Miss Higginson said she felt the same way.

Meeting adjourned at 8:20 P.M.

Ramona Rosenlund
Secretary