

Minutes of a Board of Adjustment hearing held at City Hall, August 11, 1988,
at 7:00.P.M.

Present were new Chairman Eldon McMurray, members Ed Westover and Grant Pay. Also present were Mr. and Mrs. Dennis Brandon. Minutes were recorded on the tape recorder and later transcribed by Lynn Smith. Sherman Jones was also present.

The Brandon contractor was also present.

Mr. McMurray called the meeting to order. He explained the need to establish "undue hardship". He pointed out that the Brandons property was already non-conforming because it is only 82½ feet deep. He went on to explain the three parameters that the Board makes its judgements on.

1. The plights of the owner of the land must be due to unique circumstances. If the hardship is common to several properties the variance can not be granted. The proper remedy under such circumstances is a zoning amendment.
2. The hardship must result from the application of the zoning ordinance not from the operation of a deed restriction or some other disability of the property.
3. The modification will not alter the essential character of the area and should be in conformance with the comprehensive plan. (In other words devalue the value of the property in the City.)

Mr. McMurray felt that since the property was purchased before zoning ordinance the Brandons would be applying under #1. Mr. McMurray then turned the time over to the Brandons.

Mrs. Brandon explained that they want to add a family room to the rear of their home and that by improving their home they were increasing the property taxes which would help the City. She mentioned that they had tried to purchase more property from the neighbor behind them and that she had been unwilling to sell.

The Brandon's contractor also pointed out that there was no particular reason he could see, mentioning fire and building codes, and the rural area, that an 18' backyard would cause problems.

Mr. Westover explained that the Board of Adjustment didn't set the yard requirements but that they come from the Planning commission.

Mr. McMurray read from Section 14 item 2 "The Board of Adjustment may authorize upon appeal variances from the terms of this ordinance pertaining to area and width, . . . of lot, size of yard and size of building where, owing to special conditions peculiar to the property a literal enforcement of the provisions of this ordinance would result in a hardship unnecessary in carrying out the intent of this ordinance. Before any variance can be granted, however, it must be shown the variance will not substantially effect the City plan." Mr. McMurray emphasized the following "Because of said special circumstances property covered by the application is deprived but privileges possessed by homeowners in the same zone. and the granting of a variance is essential to the enjoyment of a substantial property right enjoyed by other property in the same zone." He went on to say that upon investigating the neighborhood, he found several of the Brandons neighbors to be in variance with this city ordinance. He then asked if the Brandons felt their privileges were being infringed on.

Mrs. Brandon expressed her surprise that there was any problem in the first place. They only wanted to improve their home. Mr. Brandon pointed out that

the only neighbors affected by the addition were the neighbors to the back, Mrs. Robbins, and that there would probably never be any thing there but a feild because there was insufficient width for a building lot.

Mr. McMurray then excused the Brandons.

Just in closing, the contractor expained that the plan proposed was also based on the septic system being in the way if the addition were rearranged. Roof pitch was also a consideration.

Mr. Westover pointed out that the Board had the power to grant only minor variances and both he and Mr. McMurray expressed concern about the size of variance requested, 12'.

Mrs. Brandon said she was not willing to shorten the addition and wondered if the City maybe ought to change the 30' requirement to 25' which is what the State requires according to their' contractor.

Mr. McMurray explained that the Board acts as the publics advocate to make the laws work for the community, but that they are bound by law.

The Brandons left at this point and Mr. Westover asked what the point was to the 30' figure. Since Mr. Pay was not on the Planning Commission when that particular figure was decided on he could not say for certain but assumed it was mainly to provide space between neighbors.

Mr. McMurray eplained that there was no way there could be any building on the lot behind and the Board agreed that this was the determining factor and since there was no way the Brandons could buy from Mrs. Robbins as the property has been willed to her children. He went on to say that according Section 14 item 2c already mentioned the Brandons were deprived of privileges enjoyed by their neighbors, it seemed the variance should be granted.

Mr. McMurray felt that the spirit and intent of the ordinance was the key. Mr. Jones explained that the Board must determine how granting a particular variance will effect the neighboring properties. If more harm will be done to them by granting the variance then would be done to the applicant by denying it the variance should be denied.

Again the question of what minor variance is. Since the Brandons have no rear neighbors, can not make the addition any shorter because of appearance and septic systems the variance seemed justified.

The variance was granted with the stipulation that if any neighbor had greivances they would deny the variance. Mr. Pay moved to grant the variance and the vote was unanimous.

For the record, all neighbors were contacted and none had any argument against the Brandons addition.