

CITY OF DELTA, UTAH
BOARD OF ADJUSTMENT MEETING
NOVEMBER 5, 2009

PRESENT

Gayle Bunker	Mayor
Robert Banks	Council Member
Kiley Chase	Council Member
Bruce Curtis	Council Member
John Niles	Council Member
Betty Jo Western	Council Member

ABSENT

Gregory Jay Schafer	City Recorder
Alan Riding	Public Works Director

ALSO PRESENT

Ken Clark	Assistant Public Works Director
Kaela Jackson	City Attorney
Karen Johnson	Assistant City Recorder
Robert Jeffery	City Resident
Howard Western	City Resident

Mayor Bunker called the Board of Adjustment meeting to order at 6:30 p.m. He stated that notice of the meeting time, place and agenda had been posted at the City Building, on the Utah Public Notice web site and had been provided to the Millard County Chronicle/Progress and to each member of the City Council at least two days prior to the meeting.

BUSINESS

ROBERT L. JEFFERY, HERITAGE CABINETS AND CUSTOM FURNITURE, LLC: REQUEST FOR VARIANCE TO CONSTRUCT AN ADDITION TO THE EXISTING STRUCTURE ON PROPERTY LOCATED AT APPROXIMATELY 65 WEST 200 NORTH

Mayor Bunker noted that this matter had been discussed at a Board of Adjustment meeting two weeks ago and was rescheduled to allow publication of legal notice with corrected information. Mr. Jeffery is requesting a variance to construct an addition on the south end of his existing structure which will result in the building being located within two feet of the property line. The property is zoned for residential use but the property is being used as a business and is therefore a non-conforming use.

City Attorney Kaela Jackson stated that, after reviewing the information presented by Mr. Jeffery at the previous meeting with the criteria required for issuance of a variance and researching case law, her opinion was that he cannot satisfy the requirements for issuance of a variance. The way the legislature has written the law makes the criteria for a variance very narrow and case law has shown that if the Board of Adjustment or appeal authority is interpreting it correctly, a request for variance would be denied 99% of the time. It is extremely difficult to establish all five criteria for the variance.

Council Member Robert Banks asked which criteria Mr. Jeffery would not satisfy. City Attorney Jackson indicated that the first criteria is that "literal enforcement of the ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the land use ordinance." City Attorney Jackson felt that because this is a business located in a residential zone, we cannot extend his ability to operate the business in the residential zone because it should not be in a residential zone. City Attorney Jackson indicated that this criteria is one that could be interpreted in different ways and could be answered either yes or no as far as meeting the criteria. The second criteria is that "there are special circumstances attached to the property" and City Attorney Jackson did not feel there were special circumstances attached to this property. The legislature indicates that "special circumstances" could be a topographical issue which limits the use of the property and no other lot in the same zone has the same characteristics. The third criteria is "granting the variance is essential to the . . . substantial property right." City Attorney Jackson felt that this is not essential to Mr. Jeffery's substantial property right. The fourth criteria is that "the variance will not substantially affect the general plan." Mrs. Jackson felt that interpretation of this criteria could be either yes or no but also felt that the general goal of the plan is to be uniform in the way the zoning ordinance is applied. City Attorney Jackson indicated that granting a variance could affect the general plan or be contrary to public interest because we are allowing a variance where specific set backs have been set for the specific zone. The fifth criteria is whether "the spirit of the land use ordinance is observed and substantial justice is done." City Attorney Jackson felt that this one could be interpreted either yes or no but felt that the point of this statute is that if even one of these criteria cannot be met, a variance should not be issued. City Attorney Jackson indicated that Council Members may feel that Mr. Jeffery's request meets the requirements but City Attorney Jackson felt that Mr. Jeffery's request appears to be in his economical best interest and his neighbors agree with his plan. City Attorney Jackson stated that we need to look at our ordinance and the way it is written and presume that it is a valid ordinance, which is our law, and if we want to vary from that ordinance, the City Council needs to look at changing the ordinance but the Board of Adjustment cannot vary from the ordinance unless Mr. Jeffery can satisfy all of the elements required for issuance of a variance.

Council Member Kiley Chase asked if the size of the building being a safety factor would make any difference. He asked this question because he had previously worked at a shop of this type with power saws and power sanders and felt that Mr. Jeffery's building, as it currently stands, is not safe because products must be stacked on top of saws and equipment. If one of those saws were accidently turned on while someone was walking past it could propel objects into or onto whoever

happens to be in the area. Mr. Jeffery recognizes the safety factor and plans to stack products in the area to be constructed so as to remove them from the area where power equipment is located. Allowing the addition to the building will make the business safer for the employees and is a necessary improvement. Council Member Chase asked if this information changes City Attorney Jackson's opinion on issuance of a variance. City Attorney Jackson agreed that, in practicality, the addition would make a great improvement but, as far as the legislature drafted the requirements for issuance of a variance statute, that is not something to be considered in the list of criteria.

Mayor Bunker noted that Mr. Jeffery has adequate property to construct an addition on the east side of the existing building, but it is still a non-conforming structure. City Attorney Jackson felt that the ordinance could be changed to allow building on to a non-conforming structure as long as the addition conforms to set back requirements in the zone where it is located. Mayor Bunker said that our ordinance needs to be changed to allow this type of construction because we have several areas in the city where residents are prohibited from adding on to their home and meeting current set back requirements. Mayor Bunker felt that Council Members should think about amending the zoning ordinance to add some conditions which will allow people to add to their homes or structures as long as they do not encroach any further on set back requirements. Mayor Bunker stated that we need to have businesses and what they offer in our community but we also need to follow our ordinances. Council Member Bruce Curtis stated that he has cabinets in his home which were constructed by Mr. Jeffery and they are top quality. If there is any way possible to allow Mr. Jeffery to continue his business in the current location, Council Member Curtis was in favor of making that possible so we do not lose the business. City Attorney Jackson stated that perhaps Council Members had heard different things than she had based on the criteria for granting a variance and she had stated her opinion based on what she heard at the last meeting.

Council Member Betty Jo Western agreed with Council Member Curtis regarding the quality of work done by Mr. Jeffery and felt that we do not want to hinder Mr. Jeffery in his business but did not feel that Mr. Jeffery would shut down his business if the variance were not granted. Council Member Western could not, based on the variance criteria, see how the variance could be granted without going against our ordinance.

Mayor Bunker asked if we could allow an addition to the existing structure in a different configuration. City Attorney Jackson and Council Members agreed that we could not allow an addition to an existing non-conforming structure according to our ordinance.

Mr. Jeffery came into the meeting and Mayor Bunker asked City Attorney Jackson to repeat the information she had provided for Council Members earlier in the meeting. Following City Attorney Jackson's information, Mr. Jeffery stated he believes what he is attempting to do, as an end result, has the least impact on the neighbors and the area around his business. Mayor Bunker advised Mr. Jeffery that the legislature has adopted a law which includes more strict guidelines for granting a variance than what has been required in the past.

Council Member Kiley Chase asked Mr. Jeffery if he had received a copy of the requirements for a variance. Mr. Jeffery stated that he had received a letter but the requirements which were read at the last meeting were not included in the letter. Mr. Jeffery understood what City Attorney Jackson had stated but felt that each of the requirements could be interpreted in different ways depending upon who was reading them and felt that his situation does meet those requirements. He did not decide to operate a business in a residential district, rather he had a hobby which turned into a profitable business that has outgrown his facility but has not grown to the point where relocating the business is possible.

Council Member Western advised Mr. Jeffery that none of the Council Members want to inhibit Mr. Jeffery's business but they need to abide by the requirements set by the legislature. Mayor Bunker noted that it was almost time to begin City Council meeting and asked Council Members whether they wanted to approve the variance, deny the variance, or delay a decision until a later date.

Council Member Robert Banks stated that he believed that he could agree with Mr. Jeffery's interpretation of the requirements for variance and would be willing to grant the variance. Council Member Robert Banks MOVED to grant the variance requested by Robert Jeffery for construction of an addition to an existing structure on property located at approximately 65 West 200 North. The motion was SECONDED by Council Member Bruce Curtis. Mayor Bunker asked if there were any comments or questions regarding the motion. Council Member Betty Jo Western questioned whether the reasons for granting the variance need to be included in the motion. Council Member Robert Banks MOVED to amend his motion to grant the variance requested by Robert Jeffery for construction of an addition to an existing structure on property located at approximately 65 West 200 North under the following qualifications: 1) literal enforcement of the ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the land use ordinance: Mr. Jeffery indicated that literal enforcement of the zoning ordinance would cause an unreasonable hardship in that it would cause him to limit growth of his business and affect the safety of his employees; 2) there are special circumstances attached to the property that do not generally apply to other properties in the same zone: Mr. Jeffery has a business located in a residential zone which differs from other properties in the same zone; 3) granting a variance is essential to the enjoyment of a substantial property right possessed by other property in the same zone: Not granting a variance will deny Mr. Jeffery the right to enjoy the same property right that other property owners in the zone currently enjoy and structures on adjacent property are constructed on the property line; 4) the variance will not substantially affect the general plan and will not be contrary to the public interest: Granting the variance will not be contrary to the public interest and the general plan may designate residential growth in that zone but the extension of the existing building will not affect the general plan; 5) the spirit of the land use ordinance is observed and substantial justice is done: Council Member Banks felt that granting this variance would observe the spirit of the land use ordinance and would do justice to Mr. Jeffery's property right. Council Member Banks' philosophy is that we should do whatever is possible to assist business people and, if it comes down to interpretation of laws, we should interpret for the benefit of the people of Delta. The amended motion was SECONDED by Council Member Bruce Curtis. Mayor Bunker asked if there

were any additional comments or questions regarding the motion. Council Member Betty Jo Western agreed with Council Member Banks' comments but felt that the criteria for granting a variance were not met in this request. Mayor Bunker asked if there were any other comments or questions regarding the motion. There being none, he called for a vote. The motion passed with Council Members Robert Banks, Kiley Chase and Bruce Curtis voting in favor, Council Member Betty Jo Western voting against and Council Member John Niles abstaining.

Mayor Bunker declared the meeting adjourned at 7:13 p.m.



GAYLE BUNKER, Mayor



GREGORY J. SCHAFER, MMC, City Recorder

MINUTES APPROVED: RCCM 11-19-09