BOARD OF ADJUSTMENT OF
THE TOWN OF DEWEY-HUMBOLDT
REGULAR MEETING
Friday, May 20, 2011, 2:00 P.M.

BOA REGULAR MEETING **COUNCIL CHAMBERS, TOWN HALL**
2735 S. HWY 69 **DEWEY-HUMBOLDT, ARIZONA**

AGENDA

The issues that come before the Board of Adjustment are often challenging and potentially divisive. In order to make sure we benefit from the diverse views to be presented, the Board believes that the meeting be a safe place for people to speak. With this in mind, the Board asks that everyone refrain from clapping, heckling and any other expressions of approval or disapproval. Please turn off all cell phones. The Board meeting may be broadcast via live streaming video on the internet in both audio and visual formats. A majority/quorum of the Dewey-Humboldt Town Council may be in attendance at this meeting, but no Council deliberation will occur. During recess of a BOA Hearing, a BOA Member shall not communicate with any BOA Member or applicant, witness or the Planning Administrator. **NOTICE TO PARENTS:** Parents and legal guardians have the right to consent before the Town of Dewey-Humboldt makes a video or voice recording of a minor child. A.R.S. § 1-602.A.9. Dewey-Humboldt Council Meetings are recorded and may be viewed on the Dewey-Humboldt website. If you permit your child to participate in the Council Meeting, a recording will be made. You may exercise your right not to consent by not permitting your child to participate or by submitting your request to the Town Clerk that your child not be recorded.

1. **Call To Order**
2. **Pledge of Allegiance**
3. **Roll Call.** Board Members Odis Brockman, Jack Hamilton, Vice Chair Bob Bowman, and Chair Lydia Chapman. Prospective new member(s) Robert Ellis, Judy Davidson, and Frank Davidson.
4. **Swearing in of new Board Member(s)**
5. **Consent Agenda.**

   5.1. Approval of minutes from the April 15, 2011 meeting.
6. **Study Session Agenda**

   5.1 Discussion of three cases following instruction on procedure. Members will be working through these scenarios as if these were actual cases with help from volunteers.
7. **Comments and Recommendations for Future Meetings**

   6.1 Comments from Members – Brief discussion of Zoning. (At future hearings, the specific recommendation topic must be described on the agenda)

   6.2 Schedule date for next meeting – possible continuation if cases are not completed..

THIS CONCLUDES THE LEGAL ACTION PORTION OF THE AGENDA.

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8. **Comments from the Public**. The Board wishes to hear from Citizens at each meeting. Those wishing to address the Board need not request permission or give notice in advance. For the official record, individuals are asked to state their name. Public comments may appear on any video or audio record of this meeting. Please direct your comments to the Board. Comments are accepted regarding any services or individuals in Town government or about others doing business or who might do business with or for the Town. Topics can include all services the Town provides or could provide under State Law. At the conclusion of Comments from the Public, Board Members may

respond to criticism made by those who have addressed the public body, may ask Town staff to review a matter, or may ask that a matter be put on a future agenda; however, Board is forbidden by law from discussing or taking legal action on matters raised during the Comments from the Public unless the matters are properly noticed for discussion and legal action. The total time for Comments from the Public is ***20*** minutes. No time limit is imposed on individuals within this total. The audience is asked to please be courteous and silent while others are speaking.

9. Planner's Report

10. Adjourn.

For Your Information:

Next Town Council Special Study Session: Tuesday, May 24, 2011 at 2:00 p.m.
Next Town Council Meeting: Tuesday, June, 7, 2011 at 6:30 p.m.
Next Planning & Zoning Commission Meeting: Thursday, June, 9 2011 at 6:00 p.m.

If you would like to receive Town Council agendas via email, please sign up at AgendaList@dhaz.gov and type Subscribe in the subject line, or call 928-632-7362 and speak with Judy Morgan, Town Clerk.

Certification of Posting

The undersigned hereby certifies that a copy of the attached notice was duly posted at the following locations: Dewey-Humboldt Town Hall, 2735 South Highway 69, Humboldt, Arizona, Chevron Station, 2735 South Highway 69, Humboldt, Arizona, Blue Ridge Market, Highway 69 and Kachina Drive, Dewey, Arizona, on the _____ day of _____, 2011, at _____ p.m. in accordance with the statement filed by the Town of Dewey-Humboldt with the Town Clerk, Town of Dewey-Humboldt.

By: _____, Town Clerk's Office.

TOWN OF DEWEY-HUMBOLDT
BOARD OF ADJUSTMENT
REGULAR MEETING MINUTES
APRIL 15, 2011, 2:00 P.M.

A REGULAR MEETING OF THE DEWEY-HUMBOLDT BOARD OF ADJUSTMENT WAS HELD ON THURSDAY, APRIL 15, 2011, AT DEWEY-HUMBOLDT LIBRARY 2735 CORRAL STREET, HUMBOLDT, ARIZONA. CHAIR LYDIA CHAPMAN PRESIDED.

1. **Call To Order.** The meeting was called to order at 2:00 p.m.
2. **Pledge of Allegiance.** Made.
3. **Roll Call.** Board Members Odis Brockman, Jack Hamilton; and Chair Lydia Chapman were present.

   Vice Chair Bob Bowman arrived at 2:25 p.m. Board Member Doyle Wiste resigned.
4. **Consent Agenda.**

   4.1. Approval of minutes from the January 27, 2011 meeting. Board Member Brockman made a motion to approve 4.1. Minutes from the January 27, 2011 meeting. Board Member Jack Hamilton seconded the motion. It was approved unanimously.
5. **Study Session Agenda.** Chair Chapman began with Agenda Item 5.2.

   5.1. Continuation of the discussion involving the Powers and Limitations of the Board of Adjustment from the previous meeting. Review of Video. Chair Chapman discussed points from the video that the Board Members had been given. She spoke on the powers and limitations not applying to changing the zoning but to vary the zoning; the power to interpret; acting for perpetuity; and looking how it affects surrounding properties.

   Board Member Brockman left the meeting at 2:27 p.m. and returned at 2:29 p.m.

   5.2. Review of Key Points in Planning and Zoning Handbook. Chair Chapman discussed item 5.2 first. She read from her notes and spoke on constructive knowledge; BOA not changing zoning ordinances or uses; self-imposed hardships; the Town Council acting as the BOA; right of appeal; and the difference between count and municipality. There was discussion on the qualifications of a Hearing Officer.

   5.3. Brief discussion of Arizona Rules of Civil Procedure, the Arizona Rules of Evidence and the Arizona Rules of Civil Appellate Procedure as are referenced in Town Code Section 31.22 Board of Adjustment. There was discussion on Town Code §31.22 and ARS 9.462.06; and ex parte communication.

   Board Member Bowman left the meeting at 2:49 p.m. and returned at 2:50 p.m.

   5.4. Board of Adjustments: Conduct and Procedure of a Public Hearing. Discussion and handout. There was discussion on the procedure for a Public Hearing.

6. **Comments and Recommendations for Future Meetings**

   6.1 Comments from Members. There was discussion on the mock hearings; David Hiles and Nancy Wright volunteering for the hearings; and needing 2 model cases for the mock hearing.

   6.2 Schedule date for next meeting. The next meeting will be on May 20, 2011 at 2P.M.

   Board Member Brockman left the meeting at 3:21 p.m. and returned at 3:25 p.m.

7. **Comments from the Public**. Public comment was received.

   Glendene Hamilton asked if the BOA Members were covered under liability against being sued.

8. **Planner's Report.** Planner Price spoke on the Planning Conference being held possibly in Tucson this year.

9. **Adjourn.** The meeting was adjourned at 3:30 p.m.

_____

Lydia Chapman, Chair

ATTEST:

_____

Linda M. Baker, Records Manager/Admin Assistant

TOWN OF DEWEY-HUMBOLDT
P.O. BOX 69
HUMBOLDT, AZ 86329
Phone 928-632-8562 ▪ Fax 928-63

BOARD OF ADJUSTMENTS

May 20, 2011 2:00 p.m. Town Council Meeting Chambers

Agenda Item #5.1. Study Session
To: Board of Adjustments
From: Dennis Price, Community Development Director

Date Submitted: May 12, 2011

Agenda Item: Discussion – Study Session

Summary:

Over the past months the laws, duties and procedures associated with being a member of the Board of Adjustment have been addressed. This next meeting we will look at two or three cases in which you will apply your knowledge to make determinations. Based upon the criteria by which you will make your decisions you may see that he cases presented may not play-out as they might in Dewey-Humboldt. Please bring your procedure outlines.

Provided Information:

1. Shelton Wetherington – Virginia Beach
2. William P. Ramey – Salt Lake City
3. Charles and Debra Ward – Town of Cary

Vision Criteria:

Active Citizenship – each Dewey-Humboldt citizen has the right and responsibility to participate in the governance of the Town.	Volunteering as a member of the Board of Adjustments allows a citizen to participate in Town government and contribute to the betterment of the community.
Sustainable Development – the land regulated by the Town should be developed such that it remains at least as valuable in future generations as it is today, *ceteris paribus*, with no additional external resources.	
Creating Community – Town activities should tend to create mutual respect and understanding between citizens; shared resources like air, the river, the mountains, and the feeling of openness should be preserved by governance, public investment, and celebration.	
Self-Reliance – whenever civil, each person should earn the benefits and bear the burdens of his or her own actions.	
Efficient Public Services – the few services of the Town should be delivered as efficiently and fairly as possible, with strong fiscal discipline.	
Limited Public Services – the Town should only deliver those public services that cannot be efficiently provided by the private sector.	

Budget: Undetermined Cost
Attachments: See above Provided Information.

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TOWN of CARY

07-V-02

ZONING BOARD OF ADJUSTMENT HEARING
CASE NO. 07-V-02
APRIL 9, 2007
VARIANCE WORKSHEET

IN THE MATTER OF:

TOWN OF CARY

STATE OF NORTH CAROLINA

APPLICANT NAME(S) AND ADDRESS OF SUBJECT PROPERTY:
Charles V. and Debra D. Ward
205 Barons Glenn Way
Cary , NC 27513

PROPERTY OWNER NAME(S)/ADDRESS (if different from above): n/a

STAFF REPRESENTATIVE:
Lawrence Hardee, Zoning Compliance Supervisor
phone: (919) 462-3885
e-mail: lawrence.hardee@townofcary.org

PRESENT ZONING/SETBACKS:
Zoning: PDD (PDD Equivalent R-12)
Front: 25'
Rear: 20'
Side: Min. 10' Aggregate 15'
Side St. : 20'

VICINITY MAP

REQUEST: The applicants, Charles V. Ward and Debra D. Ward, are also the owners of the property which consist of a detached single family residence at the above stated address. The applicants are requesting a variance to encroach 14' into a 15' required Buffer setback. The encroachment would be as shown on the attached survey.

THE VARIANCE PROCESS is intended to provide limited relief from the Land Development Ordinance (LDO) in those cases where strict application of a particular requirement will create a practical difficulty or unnecessary hardship prohibiting the use of land in a manner otherwise allowed under the LDO. Variances are not intended, and should not be used, to remove inconveniences or financial burdens that the requirements of the LDO may impose on property owners in general. Instead, a variance is intended to be used to provide relief where the requirements of the LDO render land difficult or impossible to use because of some unique physical attribute or the property itself or some other factor unique to the property for which the variance is requested. Neither state nor federal law requirements may be varied by the Town. [3.20.1]

Only the following standards are eligible for a variance [3.20.2]:

- Lot width, setback, height, building coverage, or structure spacing standards set forth in Chapters 6 and 7;
- Buffer width standards set forth in Section 7.2.3 when the Minor Modification procedures are unable to address the hardship;
- Off-street parking and loading standards set forth in Section 7.8 when the Minor Modification procedures are unable to address the hardship;
- Setback standards for real estate signs in Section 9.3.2 (R)
- Square footage standards of wall signs in Section 9.3.2 (W) and (X)
- Signage requirements in Town Center area set forth in Section 9.6 provided the request has been reviewed and recommended for approval by the Town Center Review Commission

The Board may not grant a variance to allow a use expressly or by implication prohibited under the LDO for the zone district containing the property for which the variance is sought [3.20.4(E)]. The Board may not grant a variance from any written conditions attached by the Council to its approval of a Special Use, subdivision plat or site plan, conditional use district, or aspect of an approved planned development master plan [3.20.4(F)]. There may be no variance from the Overlay District regulations unless specifically permitted in Section 4.4. There may be no variance that modifies the thoroughfare buffer or vegetation [4.4.4(E)].

BACKGROUND: The house located at 205 Barons Glenn Way was built in 1995. The setback requirements shown on the recorded plat were: Front – 25', Rear – 20', Side aggregate. – 15', Side Minimum – 10', Corner side – 20', Buffer (Building) – 15', Buffer (All other structures) – 5'. The house was approved for construction with the house being shown 9.37' from the buffer and the deck being shown 1' from the buffer. Our foundation survey requirement we have today, that would catch this sort of error, did not take effect until March 2000. Sometime before the Ward's purchased the property, an addition was added to the house without a permit. Furthermore, when they purchased the property in June 2006 they were not aware of the setback problem. It was not until Mr. Ward came in to apply for a Building Permit to correct some code violations in the added addition that he learned of the setback issues. Mr. Ward was unable to get the permit due to the setback violation.

UNDISPUTED FACTS:

1. The application for a variance was filed by all the owners for the land affected by the variance;
2. The applicant took part in the pre-application conference required by LDO Section 3.20.3 (B).
3. The property is described as follows:
Site Address: 205 Barons Glenn Way
PIN: # 0743868625
Lot: # 25
Subdivision: Avalon II
Total lot/tract size: .32 acres
Existing Zoning District: PDD with R12 equivalent
4. The property is located in a Planned Development District (PDD).
5. The property is improved with a detached single-family dwelling unit.
6. The variance requested is 14' into a required 15' Buffer set back, which has been in existence since 1995. The property is currently an illegal structure and will continue to be so without a variance. The applicants/owners will not be eligible for a permit required prior to correcting the existing code violations without the variance.
7. Minor Modification procedures were unable to address the hardship.
8. Homeowner's Association approval has been obtained and a copy is attached.
9. There are no written zoning conditions or conditions that are part of a special use permit, a PDD approval, or subdivision or site plan approval that will be varied by this request.
10. A Survey of the variance requested is attached.

The Board May Approve the Variance ONLY if it Finds that ALL of the Criteria Below Have Been Met [Section 3.20.5 of Town of Cary Land Development Ordinance states]:

3.20.5 Approval Criteria

A. Special circumstances or conditions exist *(e.g., narrowness, exceptional topographic conditions, or the shape of the property) that are not common to other areas or buildings that are similarly situated* ***and practical difficulty may result from strict compliance*** *with the LDO standards, provided that the requested variance will not have the effect of nullifying or impairing the intent and purposes of either the specific standards, the LDO, or the Comprehensive Plan.* ***In determining "practical difficulty", the Board shall consider the following factors:***

1. *Where there can be any beneficial use of the property without the variance; and*
2. *Whether the essential character of the neighborhood would be substantially altered or whether the adjoining properties would suffer a substantial detriment as a result of the variance; and*
3. *Whether the variance would adversely affect the delivery of public services such as water and sewer; and*
4. *Whether the applicant purchased the property with knowledge of the requirement; and*
5. *Whether the applicant's predicament can be mitigated through some method other than a variance.*

B. *No variance shall be granted if the conditions or circumstances affecting the applicant's property are of so general or recurrent a nature as to make reasonably practicable the formulation of a general regulation for such conditions or situations.*

C. *If authorized,* ***the variance shall represent the least deviation*** *from the regulations that will afford relief.*

Therefore, if you are inclined to GRANT the variance request, follow this route (you must find ALL of the following):

11. Special circumstances or conditions exist that are not common to similarly situated areas or buildings.

Applicants' Position: Property built prior to buffer requirements, previous owner failed to get proper permits to build the addition, I simply seek a variance to bring the addition into code.

Staff's Position: There are 10 out of 86 total lots in the Avalon II Subdivision that back up to Cary Parkway . These 10 lots are the only ones that have a 50' buffer. The owners were unaware of the set back issues and the fact that the addition was constructed without a permit until they came into the Inspections and Permits Department to get a permit to fix some code violations. They could not get the permit due to the set back violation.

12. Practical Difficulty may result from strict compliance with the Ordinance's standards.

(The Board must consider the following to determine if there a Practical Difficulty may result.)

a. Whether there can be any beneficial use of the property without the variance.

Applicants' Position: If I fail to get improvements made with variance, damage will result to existing structure and civil liability would result from my selling this property.

Staff's Position: Since the lot is developed with a single family dwelling there is beneficial use of the property; however, the house is an illegal structure since it does not comply with the setback requirements.

b. Whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer a substantial detriment as a result of the variance.

Applicants' Position: No

Staff's Position: No changes are proposed to the existing structure. The house is existing and has not met the required setbacks on the recorded plat since it was built. The character of the neighborhood would not be substantially altered and the adjoining property owners would not suffer a substantial detriment as a result of the variance.

c. Whether the variance would adversely affect the delivery of public services such as water and sewer.

Applicants' Position: No.

Staff's Position: The variance would not adversely affect the delivery of public services such as water and sewer.

d. Whether the applicant purchased the property with knowledge of the requirement.

Applicants' Position: No

Staff's Position: The property owners did not know about the setback problem until they came in to get a building permit to correct the building code violation for an addition that had been built without a permit.

e. Whether the applicants' predicament cannot be mitigated through some method other than a variance.

Applicants' Position: No

Staff's Position: The applicant cannot get approval of their building permit with out the variance being granted.

AND

13. The requested variance will not have the effect of nullifying or impairing the intent and purposes of the specific standards, the Ordinance or the Comprehensive Plan.

Applicants' Position: None

Staff's Position: Since the encroachment is in the rear of the house and is between the house and a 50' buffer that runs parallel to Cary Parkway , the intent of ordinance to protect the adjoining neighbors remains in tact.

AND

14. The conditions or circumstances found to affect the applicant's property are not of so general or recurrent a nature as to make reasonably practicable the formulation of a general regulation to address the conditions or circumstances.

Applicants' Position: None

Staff's Position: The house was built prior to foundation surveys being required by the Town. There is no regulation that can be created to alleviate the predicament. This is a situation where the house was built and does not conform to the required setbacks, therefore making it an illegal structure.

AND

15. The variance shall represent the least deviation from the regulations that will afford relief.

Applicants' Position: None

Staff's Position: The existing house encroaches 14' into the 15' required buffer setback. The house will still be illegal if the variance is denied.

If you desire to attach conditions to the grant of the variance:

Requiring certain conditions to be met will alleviate the problems with granting the variance. Conditions:

a.

b.

c.

If you are inclined to DENY the variance request, follow this route (You need only find ONE of the following):

16. No special circumstances or conditions exist that are not common to other similarly situated areas or buildings.

OR

17. There is no practical difficulty that may result from strict compliance with the Ordinance's standards (*The Board must consider the following to determine if there a Practical Difficulty may result).*

a. Whether there can be any beneficial use of the property without the variance.

Applicants' Position:

Staff's Position:

b. Whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer a substantial detriment as a result of the variance.

Applicants' Position:

Staff's Position:

c. Whether the variance would adversely affect the delivery of public services such as water and sewer.

Applicants' Position:

Staff's Position:

d. Whether the applicant purchased the property with knowledge of the requirement, and;

Applicants' Position:

Staff's Position:

e. Whether the applicant's predicament can be mitigated through some method other than a variance.

Applicants' Position:

Staff's Position:

OR

18. The requested variance will have the effect of nullifying or impairing the intent and purposes of the specific standards, the Ordinance or the Comprehensive Plan. The purpose of a variance to the LDO is to provide relief to a property owner who has a parcel whose physical characteristics make development impossible or nearly so.

Applicants' Position:

Staff's Position:

OR

19. The conditions or circumstances found to affect the applicant's property are of so general or recurrent a nature as to make reasonably practicable the formulation of a general regulation to address the conditions or circumstances.

Applicants' Position:

Staff's Position:

OR

20. The variance does not represent the least deviation from the regulations that will afford relief.

Applicants' Position:

Staff's Position:

MOTION TO GRANT VARIANCE WITH/WITHOUT CONDITIONS

After conducting a duly advertised public hearing and reviewing the application materials, testimony and evidence, and the approval criteria of Section 3.20.5, I move that we grant the variance

_____ with/without conditions for the following reasons:

_____

_____

RESOLUTION

Based on the application, testimony and evidence, the general purposes of the LDO, and the above findings, the Board finds proposed findings 1-10 and 11-15 and concludes that the applicant meets each of the approval criteria set forth for a variance in Section 3.20.5 of the Town of Cary LDO.

2. The applicant is hereby granted a variance to

3. This variance is conditioned upon:

____ a fence being constructed _____

____ a buffer to be installed _____

____ other_____

MOTION TO DENY VARIANCE

After conducting a duly advertised public hearing and reviewing the application materials, testimony and evidence, and the approval criteria of Section 3.20.5, I move that we deny the variance request for the following reasons:

_____

_____

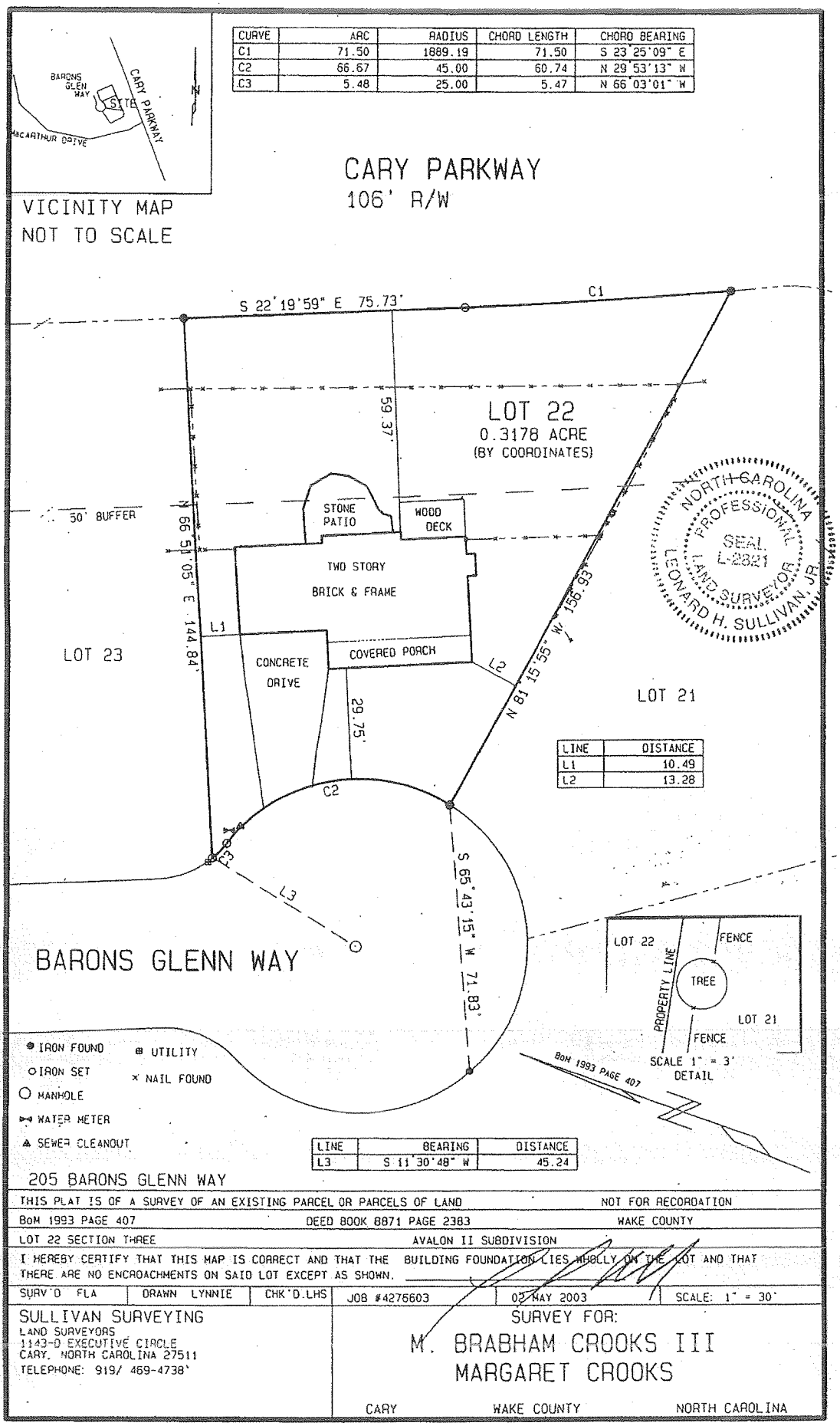
_____

_____

RESOLUTION
Based on the application, testimony and evidence, the general purposes of the LDO, and the above findings, the Board finds proposed findings 1-10 and 11-15 and concludes that the applicant has not met the approval criteria set forth for a variance in Section 3.20.5 of the Town of Cary LDO, and the application is DENIED.

Additional surveys

Photo of patio (from side)

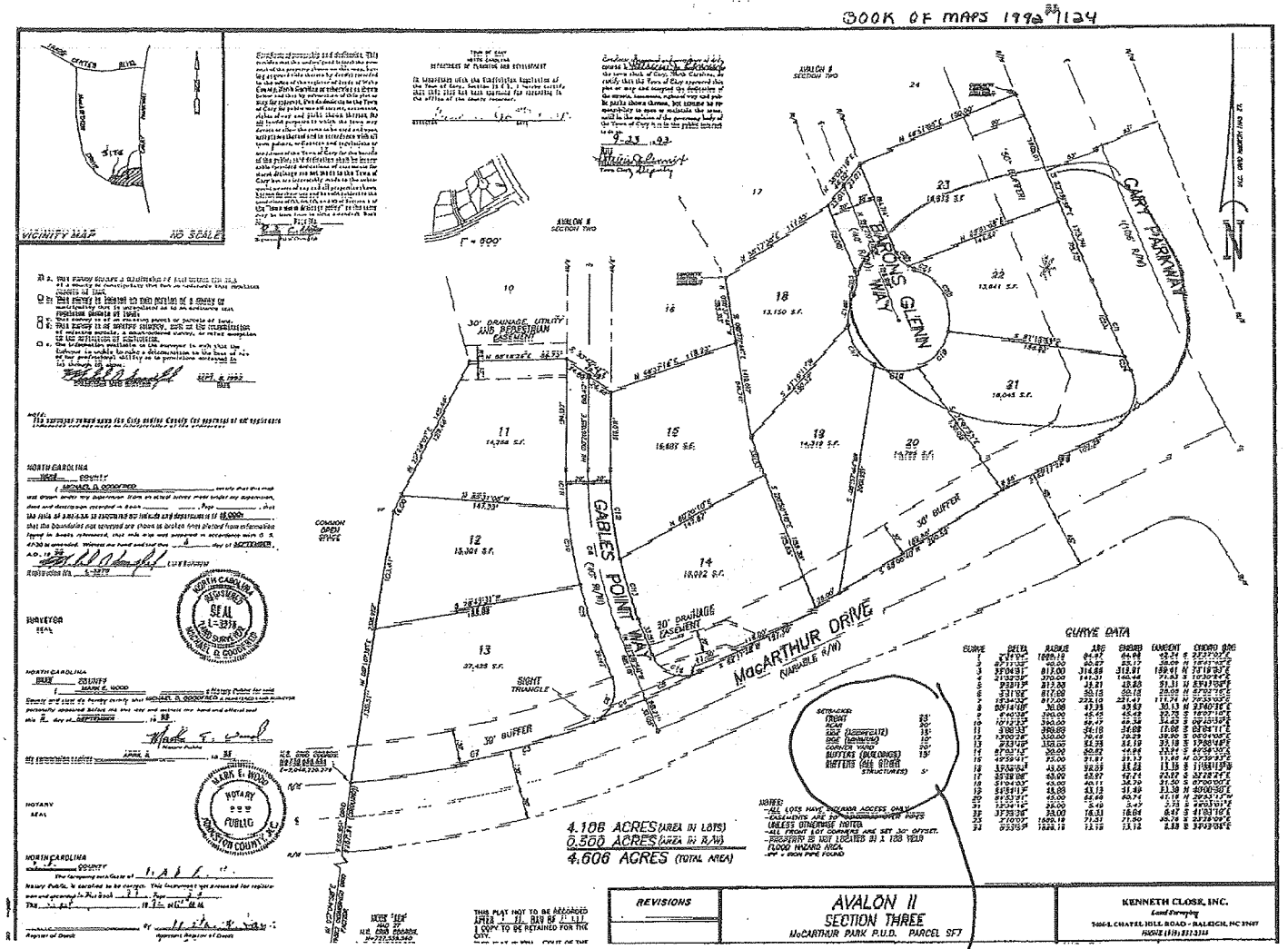


CURVE	ARC	RADIUS	CHORD LENGTH	CHORD BEARING
C1	71.50	1889.19	71.50	S 23°25'09" E
C2	66.67	45.00	60.74	N 29°53'13" W
C3	5.48	25.00	5.47	N 66°03'01" W

LINE	DISTANCE
L1	10.49
L2	13.28

LINE	BEARING	DISTANCE
L3	S 11°30'48" W	45.24

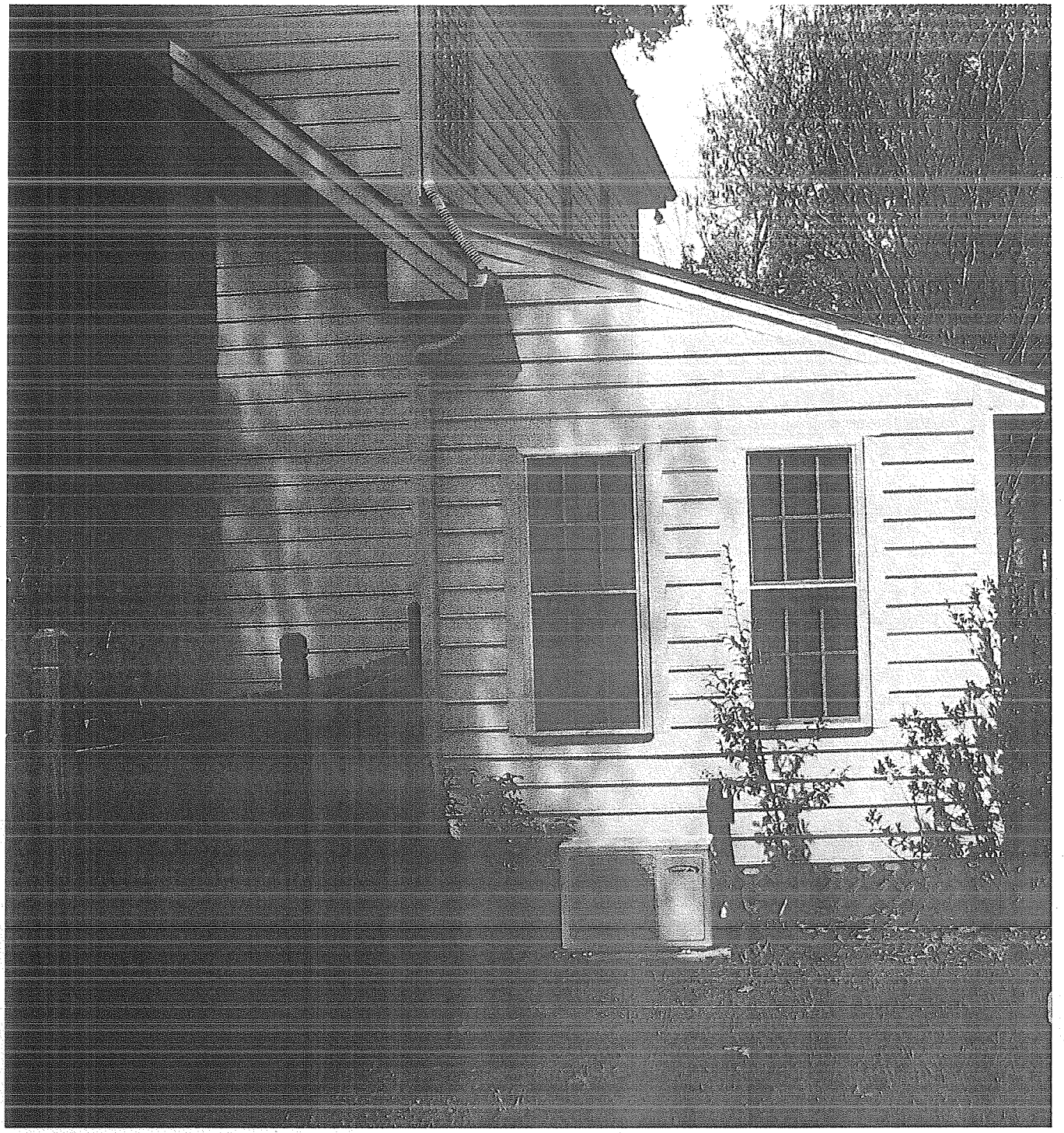
BOOK OF MAPS 1992 PG 124



UPO

Set backs

Front	25'
Rear	20'
Side Agr.	15'
Side Min.	10'
Corner yrd	20'
10' — Buffer (Building)	15'
5' — Buffer (All other Structures)	5'



BOARD OF ADJUSTMENT STAFF REPORT
CASE #2134-B
February 26, 2007

Petitioner: William P. Ramey

Address: 38 South 1000 East

Request: **SPECIAL EXCEPTION** to allow a ground mounted central air conditioning compressor in the required side yard setback in an R-2 Zoning District. (Section 21A.36.020B)

PLANNING OBJECTIVE

Yard areas are devoted primarily to landscaping in order to foster aesthetically pleasing developments, which will protect and preserve the appearance, character, health, safety, and welfare of the community.

Central air conditioning compressors may be allowed as a special exception in the required side yard located closer than four feet (4') from a property line and shall comply with applicable Salt Lake County health department noise standards.

BACKGROUND

The Planning Division approved a special exception to allow a pre-existing air conditioner compressor within four feet from a side yard property line on June 14, 2006. Staff approved the compressor in its current location based on the fact that Building Services issued mechanical permit number 199163 on March 4, 2005 (Exhibit E). The Planning Staff incorrectly approved the air condition compressor as a Routine & Uncontested Matter. Staff does have the ability to approve this type of request, but since the abutting property owner did consent to the air conditioning unit in the side yard, this matter shall be reviewed by the Board.

The existing site conditions as shown on Exhibit B (Photos) shows that the air conditioning unit and the adjacent property's driveway restricts the abutting property owner's ability to freely open a car door, and the abutting property owner has indicated that the existing location of the air conditioner unit is located too close to the property line, and therefore, creates too much noise because of its current location.

Request
The applicant is requesting that the Board of Adjustment approve an existing air condition compressor in its current side yard location. As indicated on the site plan (Exhibit A), the existing compressor is approximately one foot to the side property line.

GENERAL STANDARDS OF REVIEW

The standards of review for a special exception are set forth in Section 21A.52.060 of the Salt Lake City Zoning Ordinance. The standards are as follows:
Standard A. Compliance With Ordinance and District Purposes: The proposed use and development will be in harmony with the general and specific purposes for which this title was enacted and for which the regulations for this district were established.
Analysis: *Table 21A.36.020B, allow ground mounted air conditioning compressor in the required side yard setback provided that a routine and uncontested matter application is complete and approved by the Planning Division. The required setback for an air conditioner compressor requires a minimum four foot setback if a routine and uncontested matter (signatures of abutting owners) is not obtained. In this case, the Planning Staff approved a pre-existing air condition unit that was allowed under a previous building inspection/mechanical permit that was issued in 2005. Generally, if a routine and uncontested matter application does not obtain the signatures of the abutting property owner(s), staff should not administratively approve such a request. In this matter, the air condition compressor was pre-existing and staff approved the request without the proper signatures. Staff finds that the applicant could have located the compressor in another location on the property that would have not impacted the abutting property owner, but due to the previous building inspection approval and Planning Division approval, the applicant is requesting that the Board of Adjustment consider approving the location of the existing air condition unit.*

Standard B. No Substantial Impairment of Property Value: The proposed use and development will not substantially diminish or impair the value of the property within the neighborhood in which it is located.

Analysis: *Staff has no evidence that current location of the air conditioner compressor will substantially diminish or impair the value of the abutting properties, but the neighboring property owner states that the compressor is too loud due to the close proximity of her home and that any servicing of the unit would require a maintenance worker the use of her property due to the location of the unit and relationship to the side yard property line.*

Standard C. No Undue Adverse Impact: The proposed use and development will not have a material adverse effect upon the character of the area or the public health, safety and general welfare.

Analysis: *Staff finds that the character of the area would not be adversely affected because the request would allow the existing air conditioner compressor to remain in its*

current location. However, the abutting property owner is concerned that the compressor is a possible fire hazard and does not meet the general manufactures specifications and installation requirements for an upright air conditioner compressor.

Standards D. Compatible with Surrounding Development: The proposed special exception will be constructed, arranged and operated so as to be compatible with the use and development of neighboring property in accordance with the applicable district regulations.

Analysis: *The required side yard setback for an air conditioner compressor is four feet to a side property line. Since the applicant did not obtain the required signature that would allow the compressor to be located closer to the side property line, staff finds that the existing compressor would not be compatible with the neighboring property.*

Standards E. No Destruction of Significant Features: The proposed use and development will not result in the destruction, loss or damage of natural, scenic or historic features of significant importance.

Analysis: *Staff finds that the proposed use and development will not result in the destruction, loss or damage of natural, scenic or historic features of significant importance.*

Standard F. No Material Pollution of Environment: The proposed use and development will not cause material air, water, soil or noise pollution or other types of pollution.

Analysis: *Staff finds that the proposed use and development will not cause material air, water, soil or noise pollution or other types of pollution.*

Standard G. Compliance with Standards: The proposed use and development complies with all additional standards imposed on it pursuant to Section 21A.52.100 of this Chapter.

Analysis: *The specific standards imposed upon the requested compressor have been addressed above.*

POTENTIAL MOTIONS

Denial

From the evidence, testimony, and plans presented, I move that the Board deny the special exception to allow an air conditioner compressor within the required side yard at 38 South 1000 East in an R-2 zoning district because because:

> The proposal does not meet the general standards of approval for a special exception because the use and location of the air condition compressor is not compatible with the surrounding neighborhood and would have a material adverse effect upon the character of the area and abutting property owner.

Approval
From the evidence, testimony and plans presented, I move that the Board grant the special exception to allow an air conditioner compressor within the required side yard at 38 South 1000 East in an R-2 zone because:

1. The proposal will be in compliance with ordinance and district purposes;
2. The proposal will not diminish neighboring property values;
3. The proposal will not have a material adverse effect upon the character of the area;
4. The proposal will be compatible with surrounding development;
5. There are no significant features that will be destroyed or any material pollution of the environment.

Exhibits
A. Site Plan
B. Photographs
C. Applicant's letter
D. Abutting property owner's letter
E. Mechanical Permit

Kevin LoPiccolo
Program Manager

BOARD OF ADJUSTMENT

February 26, 2007

The regular meeting of the Board of Adjustment on Zoning for Salt Lake City, Utah, was held on Monday, February 26, 2007 at 5:45 p.m. at the City and County Building, 451 South State Street, in Room 326. Members present were Julee Attig, Tom Berggren, Catherine Dunn, Michael F. Jones (Chairperson), Gary Jones and Rex Olsen. Douglas L. Wheelwright (Deputy Planning Director), Kevin LoPiccolo (Zoning Administrator) and Nole Walkingshaw (Senior Planner) were also present.

Chairperson Jones called the meeting to order and explained the procedures of the meeting. He informed those present that the Members of the Board have visited the properties and the testimony given during the meeting is recorded. Mr. Jones further explained that three concurring votes (or a simple majority vote in some cases) are necessary to pass or defeat a motion. All decisions of the Board of Adjustment are made effective immediately and may be appealed to the Third Judicial District Court within 30 days after Findings and Orders of the cases have been mailed.

ADMINISTRATIVE SESSION

Approval of the minutes for the meeting held January 22, 2007.

Mr. Olsen moved to approve the minutes as presented. Mr. Berggren seconded the motion, all voted *aye*; motion passed.

Report by the Planning Director.

Mr. Wheelwright had nothing to report at this time.

PUBLIC SESSION

Case 2875-B (Re-advertised) by Liza Hart representing Tracey Bushman and Christian Gurholt at 667 North Wall Street for a variance to allow a new single-family dwelling that does not maintain the required front yard and rear yard setbacks, and to allow a reduction of the parking requirement in an SR-1A zoning district and Historic Preservation Overlay District. (Section 21A.24.080 and 21A.44) (Staff – Janice Lew at 535-7625)

This case was postponed.

Case ZA 2134 (Reopened & Re-advertised) by William P. Ramey III at 38 South 1000 East for a special exception to allow an air conditioning condenser within four feet of the side property line in an R-2 Zoning District. (Section 21A.36.020B) (Staff – Kevin LoPiccolo at 535-6003)

(This case was heard at 5:51:29 p.m.)

Brook Millard was present to represent William P. Ramey III.

LYBIA:

Mr. LoPiccolo noted an error in the staff report explaining that it states "the abutting property owner did consent" and it should state "the abutting property owner did *not* consent". He then explained that in June 2006, Planning Staff granted a special exception to allow the subject air conditioning condenser in the required side yard. Noting the exhibits included in the staff report, Mr. LoPiccolo explained that the application was approved based on an inspection revealing that other encroachments existed along the north side yard, and that the condenser was preexisting. Installation of the air conditioning condenser was approved by a mechanical permit issued in December 2004 with a final inspection in March 2005. Thus, Staff approved the application as a Routine and Uncontested Matter, but failed to recognize that the abutting property owner did not consent to the request. Mr. LoPiccolo said that Staff is appropriately presenting the special exception request to the Board of Adjustment and per Mr. Ramey's request to have the case heard by the Board.

HIRES

Mr. Millard explained that Mr. Ramey purchased the subject property on August 10, 2005 relying upon certification including the inspection report dated March 4, 2005. Mr. Ramey has since taken employment in Houston, Texas and now wants to sell the property. Selling the property has been problematic in that a Notice of Noncompliance relating to the air conditioning condenser has been filed against it. Mr. Millard said they find it interesting that Mr. Ramey as a bona fide purchaser is required to seek a second special exception approval of which the first one was previously approved. The Applicants contend that the encroachment was approved per the March 2005 inspection, and this special exception should not be required because it has already been granted. Mr. Millard then explained that Mr. Ramey has filed a request for Temporary Restraining Order in Third District Court. Rather than denying the request, Mr. Ramey would ask that the Board table the case until the Court had an opportunity to address the issue as to whether or not he had the right to rely upon approvals already granted. Should the Board decide to grant the special exception, there would be no need to proceed in Court.

Eve Furse, Salt Lake City Attorneys Office, confirmed that the City is named in the Temporary Restraining Order.

BOX

Mr. Olsen questioned the benefit to the Applicant should the Board hold the case pending determination by the Court, and Mr. Berggren voiced concern about the Court determining that the Applicant has not exhausted administrative remedies. Mr. Millard explained that he does not believe there are issues relating to exhausting administrative remedies in that the Restraining Order is to block the Notice of Noncompliance, and other allegations within the Court action are not related to the special exception request per se. Anyone objecting to the permit was required to file a timely appeal; and failing to do so, redress was sought through a Notice of Noncompliance. Mr. Millard reiterated that the inspectors issued the Notice of Noncompliance after they granted the special exception permit.

BOA

Chairperson Jones advised Mr. Millard that building inspectors do not have the authority to grant special exceptions.

GENERAL

It was noted that Cindy Cromer submitted written comments to the Board. Ms. Cromer then explained that she owns properties within two blocks of the subject property and she wished to relay her personal experience with the manner in which the Planning Division handles side yard encroachments. First of all, she strongly believes that the air conditioning condenser is not located entirely on the Applicant's property, and the Applicant has not submitted any documentation stating otherwise. From visual inspection, it appears that the condenser extends beyond the brass marker placed in the sidewalk, and it is her experience that old historic brass

markers located in public sidewalks are extremely accurate. She believes the City behaved recklessly authorizing the permit because there is a question regarding the property line, and City ordinances do not give inspectors authority to approve encroachments onto abutting owners' land. She asked that the Board require a survey before making a decision on this request. Ms. Cromer then noted Section 21A.52.060 explaining that granting a special exception must show that the proposal is appropriately located. The condenser has been placed out of sight for the property owner and the north wall of his house serves as a sound barrier imposing all the noise upon the next door neighbor. The subject property has a huge rear yard and has plenty of space to locate the compressor elsewhere. Ms. Cromer said she believes granting the special exception is unnecessary and she does not understand why the City would approve unnecessary special exceptions that undermine the intent of the Ordinance. Ms. Cromer explained that the proposal imposes on the abutting property owner (Rebecca Doersam) unnecessarily over her consistent objections. Ms. Doersam is a long-term resident, and the value of her property is her continued use of it. The installation of the air conditioning condenser with its erratic annoying noise impairs Ms. Doersam's enjoyment of her property. Also, the neighborhood is approximately 100 years old, and condensers in side yards are not consistent with the character of the neighborhood. Ms. Cromer noted that the City paid for the National Register nomination for this neighborhood, so now the City has an investment in the character and the maintenance of it. Ms. Cromer added that she is not looking to prohibit air conditioning in the neighborhood, but it should be located out of sight where ever possible in order to maintain the character.

NBNY Rebecca Doersam, 34 South 1000 East, outlined the chain of events for the Board of Adjustment:

- Late February 2005, the owners of the subject property (38 South) raised the height of a window well and installed the central air conditioning compressor at the north property line because both the front and back yards are entirely fenced. The contractor also used her driveway without her permission to perform the work. Noticing that the air conditioning compressor protruded into her driveway and over the property line, she called the City's Building Services and Licensing Division. She was informed that it was against zoning regulations to have the unit within four feet of the property line, so it would not pass inspection and it would need to be relocated.

- Ms. Doersam called again in late April 2005 because the unit was still not relocated. She was told at that time that the unit had passed inspection, and she asked to speak to a supervisor and was referred to Larry Wiley, Construction Inspectors Supervisor. Mr. Wiley said he would review the matter and get back to her.

- In early June 2005, Mr. Wiley called Ms. Doersam apologizing for the delay and explaining that the situation would be resolved. At that time, Ms. Doersam expressed to Mr. Wiley that she had concerns because the property was for sale. Mr. Wiley told her not to worry because it would go against the property title.

- Late July 2005, Mr. Ramey, perspective buyer, and a realtor were in her driveway and Ms. Doersam discussed with them the problem she had with the air conditioning compressor. Mr. Ramey indicated that he was made aware of the problem from the previous owner and stated that it was the City's problem.

- September 2005, the unit was still not relocated and she called Mr. Wiley again. Mr. Wiley seemed surprised and told her the unit was supposed to have been moved. He told her that he would send another letter to the current owner, Mr. Ramey. Mr. Ramey became angry with her and retaliated by filing a complaint with animal control against her and dumping mulch on her property.

- Late April 2006, Ms. Doersam again called Mr. Wiley because the unit was still not relocated. Mr. Wiley said he would send another letter to the property owner.

- On May 8, 2006, Mr. Ramey offered to purchase an easement from Ms. Doersam for $200 because he was trying to sell his house. During Mr. Ramey's offer to purchase an easement, he made belittling comments to her and said that he would construct a fence in her driveway. She told Mr. Ramey that she would not discuss it further and would seek advisement. Ms. Doersam then went to the City and obtained copies of the permit history. She also met with Randy Isbell, Housing Specialist, and he informed her that a Certificate of Noncompliance was attached to the property. Mr. Isbell also advised her that it was illegal for her neighbor to trespass onto her property in order to construct a fence and to call the police if he attempted it.

- In mid-June 2006, she spoke again to Mr. Isbell and he informed her that a special exception had been requested and explained that it would go before the Board of Adjustment for a public hearing and she would be notified.

- In late June 2006, Ms. Doersam called Kevin LoPiccolo to find out when the case would be scheduled before the Board, but he never returned her phone call. Ms. Doersam said that she vigilantly searched the City's website to see if the case was ever posted.

- In October 2006, she called Mr. Isbell for the status of the case and found out that it had been administratively approved. Mr. Isbell told her to call Mr. LoPiccolo which she did on October 16 and left a message. Mr. LoPiccolo returned her call October 19, and he made arrangements to visit the property on October 20. She requested to review the file, and Mr. LoPiccolo informed her that he would bring it the next day when he visited the property. Mr. LoPiccolo forgot the file when he made his site visit on October 20.

Ms. Doersam noted that she submitted a packet to the Board expressing her concerns and emphasized that the noise of the unit is very much a problem for her. She said that Section 21A.52.100(I) of the Zoning Ordinance states that ground mounted air conditioning units located closer than four feet from lot lines must comply with Salt Lake Valley Health Department noise standards. The noise standard for air conditioning units located within four feet of property lines may not exceed 55 decibels during the day and may not exceed 50 decibels at night. According to the Carrier manufacture brochure (included in her packet), Mr. Ramey's unit operates at approximately 68 decibels. The brochure also explains that the condenser could be located anywhere; on the ground, on a roof or balcony, under a deck or mounted to an outside wall. Ms. Doersam said that she has been struggling all along to get action, but feels as if nothing has been complied with every step of the way. She understands that 30 days for appeal has lapsed, but she was never informed that the request was submitted and approved as a Routine and Uncontested Matter. Ms. Doersam said that she has absolutely no objections to the property having air conditioning, but she is opposed to the noise and heat exhaust directed toward her property. The subject property has a very large back yard and the unit could be located within that yard area, placed under the deck on the south side of the property, mounted on the roof or

any of the locations recommended by the manufacturer. Ms. Doersam concluded by saying that the special exception should have been granted before the unit was installed, not after the fact.

Melinda Main, Co-chairperson for the Bryant Neighborhood and a long-time acquaintance of Ms. Doersam, explained that the side yard of the subject property is substandard and she believes it was never the intent of the City Council for mechanical structures to be located in such yards, especially when other locations are available. Ms. Main said she does not see a hardship in this case because alternative locations are available on the property.

Nancy Saxton, City Council Member for Council District Four and also a neighbor in the neighborhood, explained that she has had many conversations with Ms. Doersam, and Ms. Doersam has been more than vigilant over the last 1 ½ years in resolving this issue. The City Council is very much concerned about quality of life issues, but not at the expense of neighbors and neighborhoods, and they prefer taking advantage of other options where available. Ms. Saxton said she also becomes concerned when a property owner loses trust in ordinances and guidelines that are put in place to protect the public. Ms. Doersam did everything she possibly could, and Ms. Saxton believes that the City has failed her because reasonable ordinances and guidelines were not followed nor was the situation handled in a timely manner. She understands that mistakes have been made, but Ms. Doersam needs immediate remediation.

Esther Hunter, Chairperson for the University Neighborhood, spoke in opposition to granting the special exception. Ms. Hunter voiced concerns about using building codes and inspections as an approval process for special exceptions. Her research of the case indicates that the March 4, 2005 inspection was an overall mechanical system inspection, and a building inspector would not know to check zoning issues. Ms. Hunter noted that on September 29, 2006, Mr. Wiley took away the final and reactivated the permit.

Lori Gutierrez, Co-chairperson for the Bryant Neighborhood, also spoke in opposition to granting the special exception. She added that Ms. Doersam should not have to bear the brunt of the City's mistakes. Ms. Gutierrez said she believes that if the unit is over the property line, the City has engaged in eminent domain, and Ms. Doersam is not getting any recompense if the condenser is allowed to stay.

Mr. Millard said that he believes Ms. Doersam had actual notice in October and she failed to follow the proper procedures and protocol to appeal the decision. He contended that Mr. Ramey was a bona fide purchaser of the subject property with a preexisting condition of which he reasonably relied upon; and furthermore, a special exception was granted in June 2006.

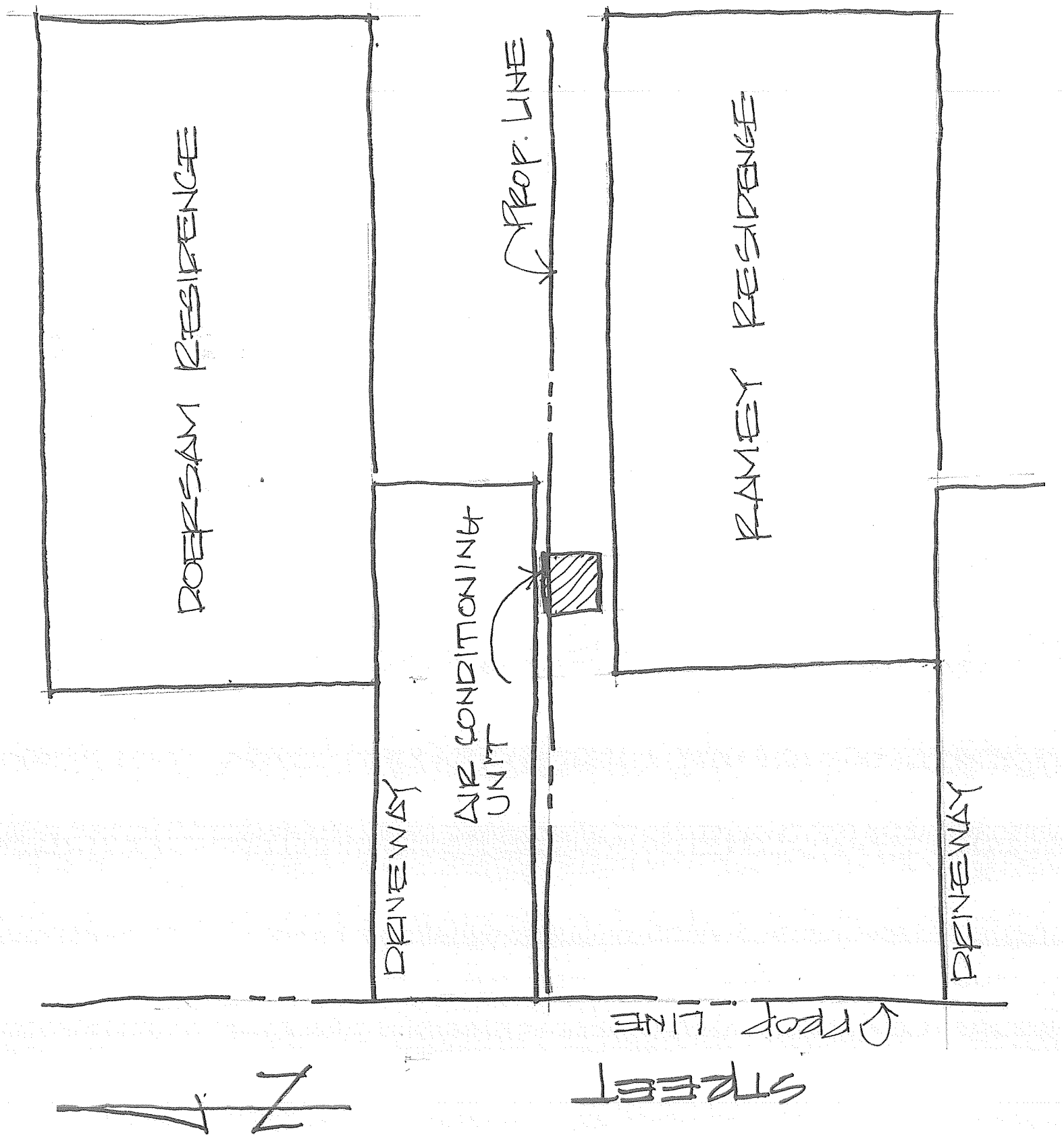
Chairperson Jones, Mr. Olsen and Mr. Berggren collectively explained to Mr. Millard that the special exception granted in June 2006, was granted wrongfully in that Ms. Doersam's signature of consent was not sought which is one requirement for administrative approval as a Routine and Uncontested Matter.

It was noted that Mr. Ramey would consider relocating the compressor if he were compensated for it and that issue is part of the claim under the case in Third District Court.

The meeting was closed to public comment.

Mr. Wheelwright reassured the Board that Planning Staff recognizes granting the special exception as a Routine and Uncontested Matter was in error. He also said that they recognize many errors have been made, but all the blame should not be placed on Staff. The Applicant

had responsibility in submitting a complete application with an adequate site plan. He agreed that a survey should be submitted as a condition should the Board approve the special exception.


ROBERSAM RESIDENCE
DRIVEWAY
AIR CONDITIONING UNIT
PROP. LINE
RAMEY RESIDENCE
DRIVEWAY
PROP. LINE
STREET
N

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Case #1
Shelton Wetherington
May 7, 2008

PREPARED BY: KAREN LASLEY

DESCRIPTION OF REQUEST: requests a variance to a 21 foot front yard setback (South side) and to a 9 foot rear yard setback (North side) instead of 30 feet each as required and to a 9 foot side yard setback (West side) instead of 10 feet as required and to allow 38.31% lot coverage instead of 35% in lot coverage as allowed and to allow 38.5 feet in building height instead of 35 feet in building height as allowed (Proposed Single Family Dwelling)

LOCATION: ***5068 Lauderdale Avenue***
Lot 11, Chesapeake Park
Bayside District #4

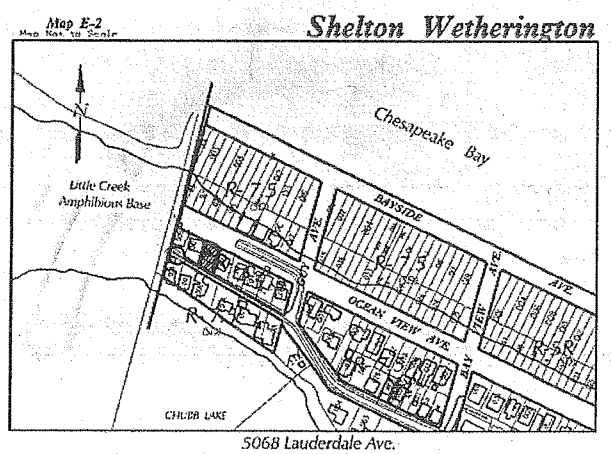
GPIN: 1570-33-8414

ZONING: R-7.5, RMA/RPA

YEAR BUILT: Proposed new construction

AICUZ: Less than 65 db DNL

HISTORY: The request was deferred by the BZA on April 16, 2008 with no new fee due to an error in the advertising.



5068 Lauderdale Ave.

SUMMARY OF PROPOSAL: The subject site contains approximately 4000 square feet and is currently developed with two nonconforming single-family homes. The applicant desires to demolish the two homes and construct one new, single-family dwelling. The lot has double frontage with access from Lauderdale Avenue and it backs up to undeveloped Ocean View Avenue. This nonconforming lot is zoned R-7.5 Residential District and five variances are being requested as follows:

1. **A variance to allow a 21-foot front yard setback from Lauderdale Avenue, rather than 30-feet as required.**
2. **A variance to allow a 9-foot rear yard setback from the Ocean View Avenue right-of-way. Ocean View Avenue is undeveloped at this location.**
3. **A variance to allow a 9-foot side yard setback on the west side, rather than 10-feet as required. In the R-7.5 District one side yard setback is 10-feet and the other is 5-feet. The 5-foot side yard setback has been met on the east side.**
4. **A variance to allow 38.31% lot coverage, rather than the maximum 35% permitted.**
5. **A variance to allow a height of 38.5-feet, rather than the maximum of 35% allowed. The architectural elevation submitted shows that the home has a height of 35-feet. The need for this variance is caused by the topography of the lot, which has an elevation of approximately 6-feet in the front and 9-feet in the rear.**

The architectural elevation shows a three-story home with a small front porch and two garage doors facing Lauderdale. Floor plans show a full kitchen on the third floor and a "kitchnette" on the first floor. Zoning regulations do not allow two kitchens in a single-family home. A kitchen is defined as a stove and a 220 outlet. Staff is concerned about this proposed second kitchen, which often leads to duplex use in beach neighborhoods where rental units are in demand.

STAFF COMMENTS: Staff finds that the proposed house plan does not work well on this constrained site and staff is opposed to the variance request. If all setbacks are met, only a 700 square foot building footprint would be permitted and staff feels that some relief is warranted from the rear. Ocean View Avenue is not improved and environmental constraints should prevent it from ever being developed. It is also noted that none of the existing homes on this block meets the required rear yard setback.

However, side yard setbacks in the R-7.5 District are fairly minimal and can be met with a lot width of 50-feet.The width of the proposed home would only have to be reduced by 1'. Regarding front yard setbacks, the existing nonconforming home closest to Lauderdale on this site has a 25' front yard setback and all of the other homes on the north side of this block have at least a 25' front yard setback with four out of the eight homes having a front yard setback of 30' or more. It would be out of character for this block and contrary to the public interest to reduce the front yard setback to 21'. If the size of the foot print is reduced to be more in harmony with the intended spirit of the setback regulations and character of the block, lot coverage should meet the maximum allowed.

The proposed structure has a height of 35' and the need for the height variance is caused by the topography of the site. Staff is not opposed to the height variance.

APPROVAL

In accordance with Virginia Code Section 15.2-2309, I move for the **approval** of the variance as stated in Case _____ of the agenda, with the conditions as stated in the Staff Report, for property located at _____, based upon the following criteria: **(ALL)**

1. **That the strict application of the ordinance would produce undue hardship**; and
    1. Exceptional narrowness, shallowness, size or shape of a specific piece of property.
    2. By reason of exceptional topographic conditions.
    3. Other extraordinary situation or condition of the piece of property.
    4. Of the condition, situation, or development of property immediately adjacent thereto.
    5. *NOT special convenience or privilege.*

2. **That the hardship is not shared generally by other properties in the same zoning district and the same vicinity**; and

    a. Not of so general or reoccurring a nature as to make reasonably practicable the formulation of a *general regulation to be adopted as an amendment to the ordinance.*

3. **That the authorization of the variance not be of substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the variance**; and

4. **That the granting of the variance is in harmony with the intended spirit and purpose of the ordinance.**

DENIAL:

In accordance with Virginia Code Section 15.2-2309, I move for the denial of the variance as stated in Case _____ of the Agenda, for property located at _____, based upon the following **(At Least One)**

1. **That there has been no evidence produced that the strict application of the ordinance would produce undue hardship; or**
    1. Exceptional narrowness, shallowness, size or shape of a specific piece of property.
    2. By reason of exceptional topographic conditions.
    3. Other extraordinary situation or condition of the piece of property.
    4. Of the condition, situation, or development of property immediately adjacent thereto.
    5. *Is a special convenience or privilege.*

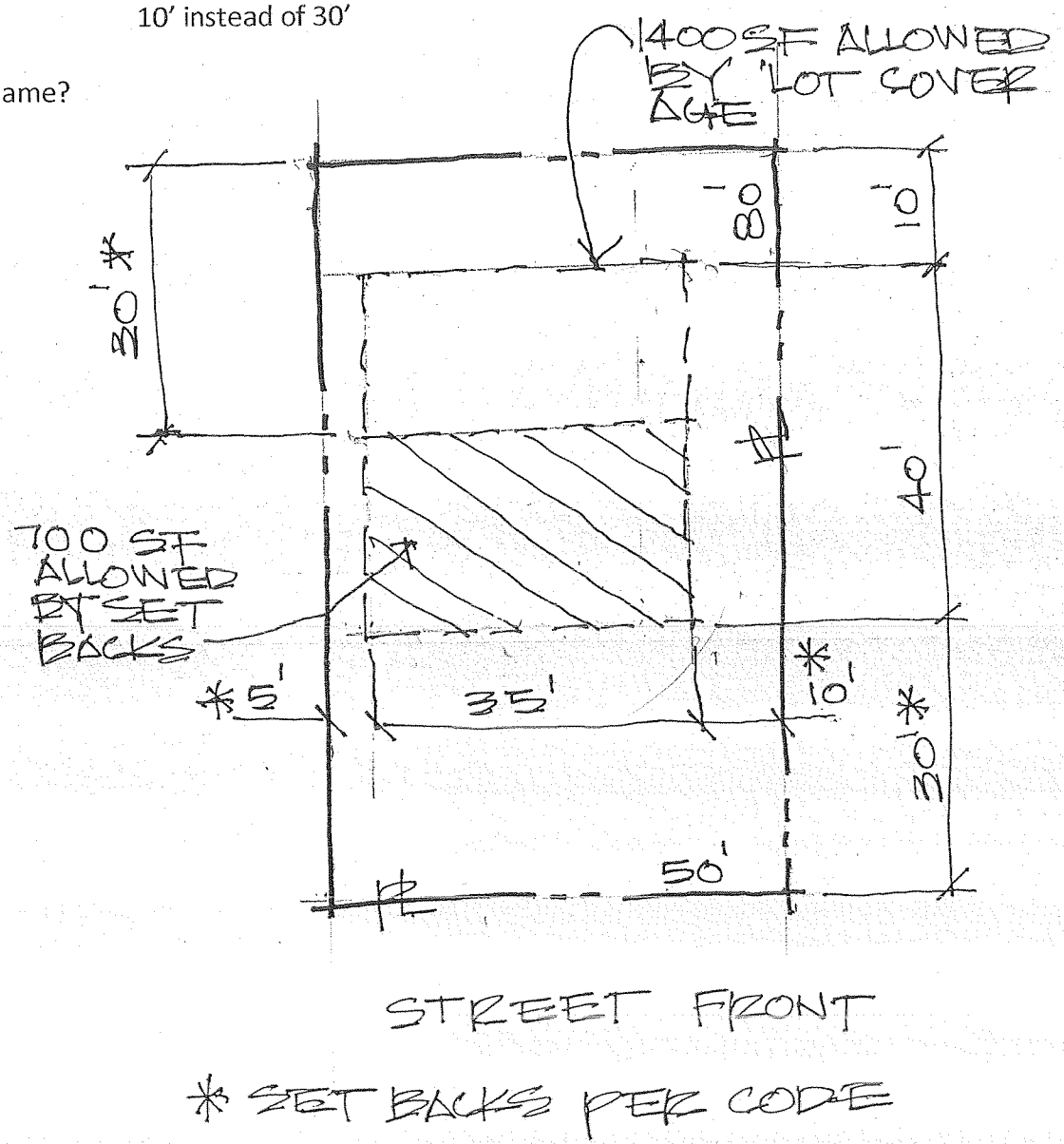
2. **That the hardship is shared generally by other properties in the same zoning district and the same vicinity**; or
    1. Is of so general or recurring a nature as to make reasonably practicable the formulation of a *general regulation to be adopted as an amendment to the ordinance.*

3. **That the authorization of the variance will be of substantial detriment to adjacent property and that the character of the district will be changed by the granting of the variance**; or

4. **That the granting of the variance is not in harmony with the intended spirit and purpose of the ordinance.**

From the information provided, what do we know?

Lot Area:	4,000 square feet
Lot Dimensions:	50' X 80'
Maximum lot coverage:	35% or 1,400 sf
Setbacks per code:	
Front and Rear	30'
Sides	5' & 10'
Foot print for maximum Lot coverage:	35' X 40'
Maintain 30' Front yard and 5' and 15' side yards	
Max. Variance for Rear yard Setback:	10' instead of 30'

What's the dog's name?

Coverage
35% sq allow
over-all area
of lot