

A Special Meeting
of the Planning Commission

7:30 PM, Thursday

Council Chambers

June 5, 1986

The meeting was called to order by Chairman Roger Veatch.

Members Present:

John Englebrecht	Ken Overton
Bryce Fendall	John Lyda
Kathy Kelso	Roger Veatch
Jack Kriz	

Staff Present:

Clay Moorhead, Planning Director
Rick Faus, City Attorney
Alan Barnes, Building Official
James Reitz, Associate Planner
Barb Mingay, Recording Secretary

Citizens Present:

40 citizens

Public Hearing A:

RE: An appeal of the Newberg Planning Director's decision which granted a variance to the front yard setback requirements of the Newberg Zoning Ordinance. Specifically, the applicants are requesting denial of a variance to allow a house to be located 12 ft. 8 inches from a front property line where a 15 ft. setback is normally required. This variance deals only with a front yard setback. The setback requirements to all side and rear property lines conform to all City development code requirements.

Location: 308 Donald Lane
Tax Lot No: 3207DC-5500
Applicant: Samuel Zemke
File No: V-2-86/Appeal

No abstentions or exparte contact were indicated; none were requested.

Staff Report:

Planning Director Moorhead presented the staff report and identified the site on a map.

Proponent:

Sam Zemke, 312 Donald Lane, appellant, distributed photos showing impact of new construction on his home. He indicated he feels that his property value is diminished by the adjacent construction. He indicated that, even

though the City is not required to uphold the CCR's of the subdivision, they were approved by the City when the subdivision was initially created. He feels that the builder should be required to provide a resolution to the problem.

Proponent:

Joe Brugato, 301 Donald Lane, a property owner in the neighborhood, identified himself as the original developer of the subdivision as a planned unit development with specific CCR's. He indicated that if this portion of the CCR's were disregarded, then the potential for other portions of the CCR's to be ignored was a possibility. He questioned whether the builder moved the forms after the City identified the correct position of the home on the lot, or whether a mistake had been made when the forms were put in place. Additionally, he questioned whether the builder blatantly disregarded the City's letter identifying that CCR's were being violated.

He also objected to the \$100 fee required for filing an appeal. He feels that an appeal fee should not be required and action should be taken by the City to remove this fee requirement in the future.

Proponent:

Sam Whitney, 313 Donald Lane, identified that an accurate measurement to identify the front radius of the property was not impossible and how such a major discrepancy could occur was hard to comprehend. He commented that continued disregard of City restrictions and subdivision CCR's was not tolerable.

Proponent:

Robert Uren, 303 Donald Lane, stated that the violation was produced by the building and not the lot dimensions. He felt that a building could be properly designed to fit on the existing lot.

Proponent:

Ed Johnston, 508 Buckley Lane, stated his agreement with previous proponents. He indicated his concern that the builder did not take CCR's into consideration when constructing the house. He considered it hard to believe that the builder could not easily determine setbacks and feels the variance should be denied.

Questions to Proponent:

John Carson, owner of Carson Construction Co. asked the proponents what he could do at this point to placate the neighborhood.

The hearing continued after audience comment that both sides should have the opportunity to be heard.

Opponent:

Joe Young, 1808 Carol Avenue, identified that he is currently the developer of the remaining lots in the subdivision. He indicated his desire to make the development an attractive place for people to live. To implement this goal, he has placed a deed restriction on the remaining vacant sites to allow only single family residences to be constructed. In addition he installed a brick screening fence along the eastern boundary of the subdivision and installed sidewalks along Park Court which had not been required by the City. He further indicated that he had not been contacted by the appellant as to his concerns about the site and finally he initiated a conversation with Mr. Zemke to resolve the problem. He feels the Commission should approve the variance.

Opponent:

John Carson, Carson Construction Co., identified that a curve radius such as this property has, is hard to determine. He felt that human error resulted in the existing problem. He pointed out that the exact property line on the radius was not clearly identified until the foundation was installed and the property was surveyed to satisfy bank requirements. He identified that the developer is responsible for the CCR's and any changes that have occurred have been approved by the developer. He stated he was willing to work out any type of arrangements to rectify the problem with the neighbors.

He was asked whether the footings were approved before the rest of the house was constructed. He indicated they were inspected. He commented that he has been building since 1964 and has built approximately 20 other homes on similar sites. He normally doesn't survey the site until the foundation is installed. He had a waiver from Joe Young, the developer, on the setback requirements. He identified he could alter the foundation by cutting it back and cantilevering the house out but he would prefer to have the variance approved and he would like to resolve the problem with the neighboring property.

Neighborhood Groups:

Bob Emmerich, 319 Peacock Court, indicated that the previous and current developer have control over the CCR's and can make changes to them. He indicated that he would like the current developer of the subdivision to explain the current covenants. He would like to see a long term resolution to the CCR problem.

Questions to Opponent:

Ed Johnston questioned Mr. Carson about the need for a variance if the six inch encroachment into the setback were corrected. Mr. Carson indicated that the 6 inches is beyond any adjustment that can be authorized by the City.

Joe Brugato encouraged the Commission to postpone a decision in order to allow the neighborhood groups to meet and resolve the problems.

Opponent and Proponent Rebuttal:

Joe Young indicated he would be willing to discuss the CCR's but would encourage a decision on the variance at this meeting.

John Carson indicated he would do anything reasonable to alleviate the problem with the adjoining property owner. He is not trying to detract from the property values at all.

Sam Zemke indicated that it seemed a "red flag" should have appeared to draw attention to the need for a survey before the foundation was set, especially when two survey stakes were found within 18 inches of each other on the site. That would seem to indicate some kind of a problem with the property dimensions.

Russ Pack, 516 Buckley Lane, identified he was concerned about the delay being caused the new homeowner but felt that the error should have been discovered earlier. He would also like clarification of the CCR's currently in existence for the subdivision.

Laurie Williams, 205 E. Park Court, identified the house appeared to be oversized for the lot. She suggested that a survey be required on future development of lots in the subdivision prior to the foundation being laid.

No letters were received; no public agencies commented.

Staff Recommendation:

Planning Director Moorhead stated that a great deal of testimony has been received relating to the subdivision CCR's and to the variance request. He stated that the CCR's were placed on the subdivision by the developer to further enhance the City requirements, but that the CCR's were not enforceable by the City. He commented that there are two alternatives: To authorize the variance, or to require that the house foundation be altered to comply with City codes. He stated that the staff recommendation would be that the Planning Commission authorize the variance based on the findings as presented by Mark and Cynthia Heintz and Carson Construction, together with a condition that Carson Construction build a privacy screen to the satisfaction of the Zemke's.

Hearing closed.

A general discussion among Commission members then occurred as to the benefits of either alternative. The consensus of the Commission was that the error should have been caught earlier in the construction phase and that no apparent benefit would be derived by requiring that the foundation be broken back at this point in time. The issue of the enforcement of CCR's was briefly discussed with the conclusion that CCR's were not enforceable by the City but the responsibility of the developer. Commissioner Kriz questioned whether the Zoning Ordinance section pertaining to projecting building features would apply to this application. The Planning Director commented that a projecting building feature could be authorized to extend into the setback area.

Motion: Englebrecht-Overton to grant the variance based on those findings identified within the Staff Report as well as the Heintz/Carson findings of fact, with a notation that the variance is approved subject to the condition that the applicant, Carson Construction, install privacy fencing

and shrubbery satisfactory to the appellant, and further, that the variance approval is based on testimony heard at this special meeting. Vote on Motion: Aye: Englebrecht, Fendall, Kelso, Lyda, Overton, Veatch. Nay: Kriz. Motion carried 6-1.

The Planning Director identified that the decision of the Planning Commission was final; however, if anyone desired to appeal the decision, it would then be referred to Council.

The meeting was adjourned.