

**MINUTES OF THE COTTONWOOD HEIGHTS CITY
BOARD OF ADJUSTMENT MEETING**

Thursday, February 7, 2013

6:00 p.m.

**Cottonwood Heights City Council Room
1265 East Fort Union Boulevard, Suite 250**

ATTENDANCE

Board Members:

Bob Wilde
James Adinaro
Don Antczak
James Holtkamp
Noor Ul-Hasan

City Staff:

Community and Economic Development Director,
Brian Berndt
Planner, Larry Gardner
Planning Technician, Mike Johnson
City Attorney, Shane Topham

Others Present:

Jeffrey Abbott

BUSINESS MEETING

1.0 WELCOME/ACKNOWLEDGMENTS

Chair Bob Wilde called the meeting to order at 6:00 p.m.

2.0 ACTION ITEMS

2.1 (Project #BOA 13-001) Action on a Request from Jeffrey and Michelle Abbott for a Front Yard Set Back Variance and a Permit to Reconstruct a Non-Complying Building Located at 1545 East Creek Road

Planner Larry Gardner reported that the applicant currently resides in the home on the subject property which is in a residential neighborhood on Creek Road. He presented the site plan to the Board and explained that there is a private driveway that provides access to several homes. All of the homes located on the private driveway have a Creek Road address which becomes a public safety issue when homes not actually on Creek Road are given Creek Road addresses. The applicants would like to remove the existing home on the property and rebuild. The new structure will have roughly the same setback and be approximately 20 feet from Creek Road. An irrigation ditch is located at the back of the property causing the relocation of the home to be non-complying and the applicants have submitted what they believe to be the best option. Staff's recommendation is to approve the application allowing the variance for the property and to approve a permit to reconstruct as all ordinance requirements are met.

The applicant Jeffrey Abbott stated that there are several homes on Creek Road where the orientation of the home has been switched. Most face a public road but the applicants' road is private. He indicated that the plans are based on other homes in the area with similar distances.

Board Member James Adinaro asked if the side yard setback falls within the required limits.

Mr. Gardner confirmed that it meets all requirements.

Board Member James Adinaro asked if it is intended to attach the rebuild to the existing private driveway.

Mr. Abbott indicated that a separate entrance will be constructed.

Board Member Ul-Hasan asked if the six-foot masonry wall would be on the side of Creek Road.

Mr. Abbott reported that the wall would be on the side of Creek Road and will resemble other walls in the area.

***Motion:** Board Member Holtkamp moved to approve the request subject to findings of recommendations in the staff report.*

Staff recommends approval for the permit to reconstruct a non-complying building with the following findings:

1. The reconstruction of the home at 1545 East Creek Road as proposed will not negatively affect the health, safety, convenience, order, prosperity and welfare of the present and future inhabitants of the city because the use is the same as now exists.
2. The reconstruction of the home at 1545 East Creek Road as proposed will not create any additional congestion in the streets or roads.
3. The reconstruction of the home at 1545 East Creek Road as proposed will not create a fire safety issue. The new home will be constructed according to modern building codes.
4. The reconstruction of the home at 1545 East Creek Road as proposed will not affect air flow or block natural light from adjoining properties.
5. The reconstruction of the home at 1545 East Creek Road as proposed is a land use type permitted in the RR-1-21 zone and is the same land use type as surrounding properties, and will positively affect the city's tax base.
6. The reconstruction of the home at 1545 East Creek Road as proposed will not place any type of unreasonable burden upon neighboring properties.
7. Reconstruction of the home at 1545 East Creek Road as proposed is in keeping with the intent of this title.

Staff recommends approval for the request for a front setback variance with the following findings. The board may grant a variance only if:

1. Literal enforcement of the zoning ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the zoning ordinance; literal enforcement of a front yard setback is not necessary to carry out the general purpose of the zoning ordinance. The purpose of the ordinance is to segregate uses and control distances between buildings for life and safety issues. The use as a single family home is a permitted use in the zone. The new house will not be any closer to adjacent structures and is essentially in the same location as the existing home. The new home will in fact face east therefore Creek Road could be interpreted as the new home's side yard and not front yard, if the house could be approved as drawn the setbacks would be in compliance. However, the ordinance defines and interprets the front yard to be facing Creek Road. Literal enforcement of the ordinance is causing a hardship for the applicants.
2. There are special circumstances attached to the property that do not generally apply to other properties in the same district; this property has an irrigation ditch and easement running through the rear Two thirds of the property making it impossible to relocate the house differently on the lot.

3. Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same district; a variance will make it possible for the applicant with a growing family to construct a home that can house them. The existing home is nearly 100 years old and could be said that it has outlived its usefulness. Not being able to construct a new home that is a permitted use on a legally owned lot for a lack of ten feet that in reality is serving no good purpose is stifling a substantial property right.
4. The variance will not substantially affect the general plan and will not be contrary to the public interest; the general plan has 1545 East Creek Road as large lot single family residential. A variance will not be out of harmony with the general plan. There are not any plans to widen Creek Road at the location so there will not be any future conflicts if the variance is granted.
5. The spirit of the zoning ordinance is observed and substantial justice is done. The spirit of the zoning ordinance is to organize uses in a safe and compatible manner. Granting a variance for a single family home in a single family neighborhood based on what the applicant is asking for will not negatively affect anyone. Justice is done by the fact that the applicant wishes to reconstruct a new house that is impacted by an easement, a right for someone else to enjoy. When the ditch was placed there, probably well over a hundred years ago it was placed there based on topography and not land use and whoever placed it there had no idea it would affect a future property owner in such a negative way. Justice is in fact done by a variance to the front set back rules. The property owner is able to use their property and the owners of the irrigation easement are not affected by trying to move a ditch, if it could be done, away from its historic course and lastly the city is not impacted negatively in anyway by granting this variance.

Board Member Ul-Hasan seconded the motion. All present voted in favor of the motion.

2.2 Approval of February 7, 2013, Minutes

Chair Wilde stated that the Board Members should review the minutes from tonight's meeting when they are made available. He reminded the group that if there are no modifications submitted they will be automatically approved.

3.0 ADJOURNMENT

The Board of Adjustment Meeting adjourned at 6:11 p.m.