

CITY OF STEVENSON BOARD OF ADJUSTMENT MEETING
January 28, 2009 at 7:00 PM

MEMBERS PRESENT: Kari Fagerness, Rocky Cowart, Gary Daubenspeck,
Mary Repar, Julie Mayfield

STAFF PRESENT: Ben Shumaker, Ken Woodrich, Candace Ford,
Lizbeth Hermansen

PURPOSE: R & D Short Plat Variance (VAR2009-01)

APPLICANTS: Greg and Deborah Stafford

CALL TO ORDER: Mary Repar called the meeting to order at 7:02 PM

Introductions were made by board members and staff. Ken Woodrich gave an over-view of the purpose of tonight's meeting and the Board of Adjustment's (BOA's) role in the process. Brief instruction was given on how a determination was to be arrived at. A variance from minimum lot size and setback requirements in the R1 Single Family District is being requested tonight. Ken called for appearance of fairness issues and disclosures from the board and the applicants. No disclosures were made. No members from the public were in attendance.

Presentation by Staff - Ben Shumaker

The applicants have applied for a short plat. Stevenson Municipal Code (SMC) does not allow for it as one lot is below the minimum lot size of 6,000 square feet. The Stafford's original proposal to divide the property included two lots, one measuring 9,583 square feet and one measuring 6,002 square feet. This proposal could not be approved because the neighbor to the east has a "presumptive prescriptive right" to use a gravel driveway which crosses the southeastern portion of the Stafford's lot. This prescriptive right, or right-by-use, exists because the driveway has apparently existed for longer than ten years without legal contestation. The easement could not be included in the lot size thereby causing one lot to be 0.12 acres or 5,227 square feet which is below the minimum lot size. Certain criteria must be met to allow the variance as referenced in staff's report. Set-back issues are at hand and staff suggests consideration of a side yard set-back or a front-yard set-back. Staff's recommendation is to approve the variance based on Findings of Fact and meeting the 6 conditions as presented prior to approval of final short-plat.

Mary Repar inquired about the Critical Areas Ordinance and the relevant application to the proposed short plat. Ben stated that a neighboring stream does not show up on the critical areas map nor does it cross Lot 2 of the short plat. A SEPA review was conducted and Washington Department of Fish & Wildlife (WDFW) was contacted regarding the stream. An e-mail was

received from WDFW which stated “If Lot 2 extends to the type 4 (Np) water, we recommend a no-entry buffer on both sides of the seasonal stream that includes all riparian vegetation. Department of Ecology also responded and recommended applicants go through the critical areas process, define the seasonal stream and its associated buffer and provide notification if contaminants are found. Ben clarified that the BOA was not authorized to consider this issue and that if the variance is approved, a critical areas permit, as recommended by the Department of Ecology would be required prior to final approval.

The Staffords provided a map to the board entitled “R&D Short Plat” drafted by Trantow Surveying. The map showed the ultimate plan for the property division and included moving the driveway. Erosion issues are taking place on the hillside causing the driveway to continuously move. Ken clarified if the BOA’s decision is based on specific documents they must be identified and be included in the record. The Stafford’s indicated that they would submit a copy of this map for the record.

Rocky Cowart asked if larger exhibits were available for reference. The map of the original short plat requested by the Staffords was provided as a comparison to the map presented tonight dated 1/26/09. Ben stated that the road right of way is not fully developed and is in the process of being surveyed; most of the gravel roadway is not publicly owned and is not developed to City standards. Public Works has commented regarding access for emergency services. Mr. Stafford has talked with emergency responders who indicate there may be alternatives.

Mary Repar asked for clarification on lot sizes including set-backs. Ben stated that the easement tract takes away from the overall size. Mary asked for a definition of prescriptive right of use to the driveway. Ken Woodrich provided a definition for “inchoate” or shadow rights and differentiated between this type of right and adverse possession. If the easement was not of issue the lot size would be acceptable. Ken clarified that there is not a recorded right to the easement and that another access to the neighboring lot might be available.

Mr. Stafford presented a letter from Suzi Tittle (neighbor) written for the prior Planning Commission meeting which voiced her concern regarding continued access. Rocky Cowart asked to have the letter incorporated into the record. Ben clarified that he had notified all neighbors prior to the meeting, and that this letter was already part of the record based on that notification.

Mary Repar asked what the extraordinary hardship was relevant to this proposal. Ken stated that it was financial due to the Stafford’s not being able to develop the lot. A neighbor has detracted from their use by using their driveway. Mary inquired about set-back determinations. Ben stated that the front set-back would remain at 20’ and the side set-backs should be 5’ from the easement tract. Ben asked the board to make a determination of the sides and front of the lot. No variance to critical areas is at issue. Mary asked for clarification on the critical areas buffers. Ken referred to the comprehensive plan. Rocky Cowart questioned the BOA’s role in legalizing the neighbor’s access and voiced concerns over making a determination that could possibly have impact on a court decision, should it go that far. Ken clarified that the BOA’s determination does not

establish a record right. An access tract is at issue as to how the tract is maintained and developed. The Staffords will need to address that.

Mary asked who had ownership of the easement road? Ben replied that the Staffords owned the property and they are trying to avoid court action. The road is being eroded by the stream and if it completely erodes a new critical areas boundary would need to be established. The responsibility would be borne by the owners of both properties. Mary voiced concerns about the BOA being involved in neighbor issues.

The public hearing opened at 8:14 PM. The Staffords were the only public in attendance. Greg Stafford informed the BOA that they were trying to not be a burden on the neighborhood, but worsening conditions with their neighbors caused them to decide to not build another house on their property. They wish to sell the lot to get more distance between the neighbors and themselves. Rocky Cowart clarified the mandate as to hardship. He asked if hardship was a factor. The Staffords felt it was. They stated the neighbors try to run them over in their own yard. Their preference would be to stay but they have found it very difficult. Mr. Stafford referenced the odd size of the property and the home placement. He is making this application in an effort to avoid a court battle. He clarified that if they lost the court case they would still have the right to bring this back to the board. **There being no other public in attendance the public hearing was closed at 8:25 PM.**

Board Discussion

Rocky Cowart asked if a determination was made to approve the proposal what would ensure an agreement between property owners? Ben stated the agreement would be made a condition of the BOA's decision. Mary Repar referenced part 2 of staff's recommended action regarding the hardship issue. The BOA is being asked to change set-backs and allow a smaller lot size but does not feel it's the BOA's role to resolve neighbor disputes. She feels it is a self imposed hardship. Staff clarified that the hardship was actually having a lot that is smaller than the legal lot size. Rocky Cowart was struggling with the hardship issue also. Is it self-induced or city imposed? Staff clarified that the hardship is the use of the road which must be subtracted from the lot size. Deborah Stafford added that the undefined city road has created issues.

Ken clarified that requiring a road maintenance agreement would eliminate the road issue. Ben stated that the hardship requirement was met because the owners are deprived from the use of their land. If the road issue was not there, the Staffords would be able to meet the minimum lot size. Rocky Cowart voiced concern about setting precedent. Ben stated that special circumstances pertain. Mary Repar does not wish to make a decision on a road that could disappear. Why not take a portion of one lot to make the other lot legal? Ben stated that the odd shape of the lots would not allow for it. Kari Fagerness felt that the Stafford's hardship was not self imposed. The city's code created the problem and does not allow for the property division. There are a number of lots below the minimum 6,000 square feet. She does not feel it's detrimental to the neighborhood and based her opinion on her review of the code. Gary

Daubenspeck asked if the Staffords researched this when they bought the property? The Staffords purchased the lot in 2005 and inquired with the county. The easement did not show on the title search or maps. The general response given was “the road is there”. Kari Fagerness asked if the Staffords at the time they purchased the property knew that this road would bring the lot below legal lot size? Mary Repar asked if the Staffords would suffer a financial hardship if they cannot divide. They responded yes. The property was not surveyed at the time of purchase. Ben clarified that part of the original sub-division has been vacated. The assessor’s maps erroneously showed five existing lots, when there is actually only one lot.

Rocky Cowart clarified that the first issue is will we allow the variance and the second is how to apply the set-backs. Ben stated that only the portion along the private access tract should be looked at. A 5’ side yard set-back would comply and referenced attachment 3 Setback Overview in his staff report

Mary Repar called for board questions and if there were none asked if the board was ready to take action. Staff alternatives were reviewed for consideration. Discussion was had regarding staff’s Findings of Fact and Conditions. The following changes were recommended:

FINDINGS OF FACT

1. The Board of Adjustment finds that Lot 6 of Block 5, Roselawn Extension **has asserted** a prescriptive right to use a gravel driveway crossing over a portion of the proposed R&D Short Plat, by virtue of a long-established use of this driveway.
2. The Board of Adjustment finds that this **asserted** prescriptive right **together with the unique size and shape present special circumstances and hardships** which if SMC 16.02.190 and SMC 17.18.040 are strictly applied, would deprive the subject property of the rights and land division privileges enjoyed by other property in the vicinity and under identical zoning district classifications.
3. The Board of Adjustment finds that the granting of this variance to minimum lot size and clarification of applicable setback standard, as conditioned, will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity and zoning district in which this proposal is situated.
4. The Board of Adjustment finds that the granting of this variance to minimum lot size, and clarification of applicable setback standard as conditioned, will not be detrimental to the purposes of SMC 17, and will not conflict with the goals and policies of the Stevenson Comprehensive Plan.
5. The Board of Adjustment finds that neighbor’s **asserted** prescriptive use of the gravel driveway is not a self-imposed hardship **on the applicants** and that the lot size requested is as large as it **functionally** can be **due to its unique size and shape** considering the need to accommodate the prescriptive use.
6. The Board of Adjustment finds that the following conditions are necessary to ensure that this proposal is not detrimental or injurious to the purposes of SMC 17 and the Stevenson Comprehensive Plan, the neighborhood, the R1 Zone, the public welfare or the public

transportation system.

CONDITIONS

1. The gravel driveway on the proposed Lot 2 shall be **relocated** into a separate “private access tract” **and identified on the face of the final plat.**
2. Access to the proposed Lot 2 shall only be allowed from the private access tract, and this requirement shall be added as a note on the face of the plat.
3. For the purposes of calculating density and dimensional standards the common lot line between the private access tract and the proposed Lot 2 shall be considered a side lot line **without projections otherwise allowed under SMC 17.38.080,** and an explanatory note shall be added to the face of the plat.
4. The Staffords shall reach an agreement with the owners of Lot 6, Block 5, Roselawn Extension to develop a shared access and maintenance agreement for the private access tract. This agreement shall be for the exclusive benefit of the proposed Lot 2 and Lot 6, Block 5, Roselawn Extension. Such agreement must be filed for record with the Skamania County Auditor and referenced on the face of the plat prior to final approval.
5. To accommodate the provision of emergency services, access to the private access tract must be unrestricted to emergency vehicles, and no gate shall restrict such access without providing the City with a key or combination to any locks. **This requirement shall be included in the road maintenance agreement.**

Rocky Cowart still voiced concerns regarding establishing precedence. Ben felt that this was a good precedent to set considering that a neighbor is using the land. He felt it was not detrimental. Ken agreed that a variance is a good policy to set when it relieves tension between property owners.

Mary Repar does not want to set a precedent to solve problems with neighbors. The court should be doing that. Julie Mayfield asked if this could be viewed as a step before going to court? Ken distinguished between intervening between neighbors and a City process. When the City has a process to accommodate a use to help neighbors going into court then it should be used. Rocky Cowart felt that neighbors might unnecessarily see this as the City imposing moving the driveway. The City has also created a hardship by saying the Stafford’s can’t use the corner of their property because of the tract.

Mary would like to know how much the creek will impact development. Ben stated the Staffords will get a written determination of tonight’s meeting. He will then set up critical areas criteria. Gary Daubenspeck asked if the unique dimensions would have impact on tonight’s decision? Mary suggested including moving the back property line to be in compliance in the Findings of Fact. Ben stated that the unique shape could be considered.

Kari Fagerness asked for clarification on procedure as to the Findings of Fact. Mary Repar called

for a motion regarding staff's Findings of Fact. It was agreed to address one at a time.

1. Kari Fagerness made a motion to adopt the Findings of Fact with the above noted changes in bold and underlined. A second was made by Julie Mayfield. Four in favor; Mary Repar opposed.
2. Julie Mayfield moved to adopt the Findings of Fact with the above noted changes in bold and underlined. A second was made by Kari Fagerness. Four in favor; Mary Repar opposed.
3. Julie Mayfield moved to adopt the Findings of Fact. A second was made by Rocky Cowart. Four in favor; Mary Repar opposed.
4. Kari Fagerness moved to adopt the Findings of Fact. A second was made by Rocky Cowart. Four in favor; Mary Repar opposed.
5. Kari Fagerness moved to adopt the Findings of Fact with the above noted changes in bold and underlined. A second was made by Gary Daubenspeck. Four in favor; Mary Repar opposed.
6. Rocky Cowart moved to adopt the Findings of Fact based on the above noted conditions with changes made in bold and underlined. A second was made by Kari Fagerness. Four in favor; Mary Repar opposed.

LOT SIZE AND SETBACKS

A motion was made by Kari Fagerness to approve the request to vary the minimum lot size to 5,227 square feet based on the findings-of-fact and conditions of approval previously established. A second was made by Rocky Cowart. Four in favor; Mary Repar opposed.

Rocky Cowart moved to approve the request to vary setbacks by clarifying that the common lot line between the proposed Lot 2 and the shared access tract shall be considered a side lot line, however projections will not be permitted within the setback. A second was made by Kari Fagerness. Four in favor; Mary Repar opposed.

Mary Repar gave her reasons for opposing, stating that, eventually this matter should go to court and that the BOA's role is not to resolve neighborhood disputes. Our City code specifies 6,000 square feet and this request does not meet the requirements. She also has concerns about the creek.

Ben asked board members to contact him with suggestions on procedure.

Meeting adjourned at 10:25 PM.