

**MINUTES OF THE HOLLADAY CITY
BOARD OF ADJUSTMENT MEETING**

Tuesday, December 11, 2007

6:00 p.m.

City Council Chambers

4580 South 2300 East

ATTENDANCE

Board Members:

Barbara Dunn, Chair
Michael Blackham
Wayne Janssen
Morissa Rich, Alternate
Dominic Welch

City Staff:

Paul Allred, Community Development Director

REGULAR SESSION

1. Welcome, introductions, and opening statement – Barbara Dunn, Chair.

Chair Barbara Dunn called the meeting to order at 6:10 p.m. and read the Chair statement.

2. Staff Report on Variance Request – Request for minimum area variance from the R-1-43 Zone for property located at 2121 East Walker Lane. Applicants request approximately 6700 square-foot variance from Section 13.14.041 of the Holladay City Code. Applicants, Terry Rushton, Joan Clive.

(18:12:35) Community Development Director, Paul Allred, identified the applicants as Terry Rushton and Joan Clive. The property is located in the R-1-43 zone on the north side of Walker Lane. Two pieces of property were involved with the lower portion comprising 1.94 acres. He noted that the matter was scheduled as a public hearing and public comment should be encouraged and allowed. He provided information to the Board that staff had received from the public in writing. Mr. Allred received one phone call in opposition to the variance and another that involved questions on the proposal. A third phone call was received from a neighbor in the area who asked that the five-part test be applied.

Mr. Allred reported that staff had met with Terry Rushton over the course of the year about the property. The applicants wanted an additional building lot on the property. Based on the history of the property, they believed they had a right to an additional lot. He stated that one-acre minimum lots were required in the area. At the present time, there was not enough acreage to meet the minimum requirement. The variance request was to release the applicants from the one-acre minimum requirement. Staff had spent a great deal of time working with the applicant. Their feeling was that the property may or may not have complied even with the rules prior to the City being incorporated. To Mr. Allred's knowledge, one acre would have been required at that time as well. The property was never recorded as a separate piece and was, therefore, not grand fathered in. When the property became incorporated into the City of Holladay, because it was not recorded with less than one acre, it did not have a prior non-conforming right. The only

way it could conform with the ordinance would be to obtain additional land and join it to the existing property or obtain a variance.

(18:16:15) Mr. Allred stated that the applicant was encouraged to work with other property owners to obtain land but was unable to do so. He believed Mr. Rushton had explored every possible option with staff. His last resort was to pursue a variance.

Mr. Allred referred to a legal opinion from Craig Hall, City Attorney, that was attached to the staff report. In previous discussions with Mr. Rushton, other issues arose at the staff level about whether or not the doctrine of substantial compliance could be applied. The City Attorney provided a legal opinion on the matter, which stated that there was no case law in Utah to support substantial compliance. As a result, he did not believe substantial compliance could be used as a rule in this case.

Mr. Allred explained that the two major issues were the one-acre minimum as well as the road dedication issue. The two combined equated to a shortage of about .15 acre or 6,700 square feet. Reference was made to the five-part test as required by state law and city ordinance for the granting of a variance. Staff's opinion was that the request did not meet the five-part test.

Public noticing issues were discussed. Mr. Allred stated that staff received a phone call from a citizen who did not receive a notice. He was unsure how far away from the property the individual lived. As a result, it was possible that they did not qualify to receive notice. He stated that notices were sent to everyone within 500 feet of the property.

(18:21:50) Mr. Allred made the Board Members aware that the property had an odd shape. The layout of the property was described. He explained that if a new lot were created, the area that goes through the lot for a driveway cannot be counted toward the area and would have to be subtracted out of the total acreage. The zoning rules state that in creating a subdivision, the driveway that serves the lot would have to be deducted from the area.

Mr. Allred pointed out that a variance could be granted but a subdivision would still have to be approved by the Planning Commission. He explained that a subdivision would have to be established to create the new lot. The intent was to put the Planning Commission in a situation where they would not have to require a variance on the area.

(16:29:25) The applicant, Terry Rushton, reported that he was a resident of Reno, Nevada. His sister, Joan Clive, resided at 2115 Walker Lane, shown as the upper right one-acre parcel on the map. Both were trustees of their father's trust, which owned the 1.94 acres in question. He thanked the Board for their efforts. Mr. Rushton identified what he considered to be two errors in the staff report. He remarked that they were dealing with 1.94 acres. Mrs. Clive's separate one-acre piece only came into play as they were trying to find additional land to meet the minimum standards. Mrs. Clive's piece was deeded in 1970 and she had lived there since that time.

Mr. Rushton commented that staff acknowledged in their report "good intentions to record the land into two separate lots years ago that might have avoided the need for the request". He stated that deeds were duly executed, filed, and recorded with the county three times prior to the

City's incorporation that divided the 1.94 acres into one acre and the rest with an existing home on it. It was the applicants' position that the deeds should be recognized. The initial deeds were processed in 1993 when their parents deeded the two parcels to Mr. Rushton and Mrs. Clive. In 1997, they deeded the property separately back to their father who deeded them into the trust for estate planning purposes. On three occasions the county recorded the deeds. They were never challenged and the applicants were never told to do anything different. Mr. Rushton stressed that they acted in good faith and exercised due diligence.

(18:33:35) Mr. Rushton remarked that the only challenge from the county on any of the deeds was a notice from the County Recorder that said there was a problem with the legal description. The deeds were recorded and the taxes were paid. There was never any indication that they needed to go any further or do anything else to make the deeds valid and recognized. This was all done prior to the incorporation of the City of Holladay . Their position was that the deeds pre-dated the City's incorporation and should be recognized. Mr. Rushton stated that for years they had had a single share of Green Ditch Water available for each of the three parcels. As a result, there was no need for them to obtain an additional water share.

Mr. Rushton stated that a plat map of the area was obtained from that county that showed at least 14 pieces of property within a 500-foot radius that were well under one-acre in size. Because of that, he did not feel that what was requested was unreasonable. Mr. Rushton and his sister wanted to be treated fairly and equitably. They had done everything within their power to meet the letter of the law.

Mr. Rushton referred to the first of five criteria and stated that a hardship existed. Other property owners in the area with parcels of less than one acre were not being denied their right to use their land as intended. Also, property owners in the area with existing deeds were not being required to deed their easements to the City. Other property owners in the area were not being denied recognition of prior recorded deeds. He thought it was an unreasonable hardship to ask the Rushtons to be the only property owners in the area to meet the criteria.

The second criteria pertained to special circumstances. Mr. Rushton stated that his family had owned the property since before the existence of the City, the County, and the State of Utah. He viewed that as a special circumstance.

The third criteria was that granting the variance was essential to the enjoyment of a substantial property right possessed by other property owners in the same district. Mr. Rushton stated that it was essential since other properties that were not as close to an acre were recognized and people were able to exercise their property rights.

(18:38:29) The fourth criteria was that the variance should not affect the general plan and be contrary to the public interest. Mr. Rushton stated that granting the variance would not impact the public. Close neighbors had smaller lot sizes than they were asking for. He stated that street condemnation would affect many properties along Walker Lane much more severely in terms of percentage of land that is taken by the City than theirs would be.

The fifth criteria of upholding the spirit of the title would be observed and granting the variance would do substantial justice. He believed that each of the five criteria included the word “substantial”.

(18:43:30) Board Member Welch asked Mr. Rushton if the property was deeded to him and his sister individually or jointly. Mr. Rushton responded that it was deeded individually. His sister was deeded the northernmost full acre and he was deeded the southernmost partial acre with the house on it.

Joan Clive gave her address as 2115 Walker Lane. She stated that she was told that her acre could not be sold off without her brother’s property. Mr. Allred explained staff’s perspective and stated that in one of the early letters received from Mr. Rushton they disagreed fundamentally with the idea that the deeds were legal. What was recorded were a total of two pieces of property, not three. The City could technically recognize that because in the county it was not recorded as three parcels. The City can only do what is legal according to its ordinances. The law requires an applicant to show that there was a legally recorded parcel prior to the City being incorporated. It was not shown on the official Salt Lake County plat maps. With regard to other non-conforming parcels in the area, he confirmed that that was true. Part of the reason the City incorporated was to control land use. There was no question in his mind that there were numerous properties throughout the community that were zoned one way but don’t meet the minimum in the zone. His understanding was that that was deliberate on the part of the Planning Commission and City Council at the time to control the subdividing of property.

Chair Dunn opened the public comment.

(18:51:42) Ruth Larson gave her address as 5267 South 2110 East. She stated that the Rushton property was located to the southeast of her property. The situation was unfortunate but she did not want to see any new variance granted that would cause a domino effect sometime in the future. She agreed that the zoning should be enforced at one unit per acre. She was opposed to any new variance.

(18:53:20) Bob Harrington gave his address as 2209 East Walker Lane. He reported that he served on the first Planning Commission in the City and spent four arduous years putting the codes together. He also had the privilege of serving as the zoning compliance officer. He expressed admiration for the Rushtons who were good neighbors. He stated that the neighbors would be hurt if they had offended the applicants in any way. He realized the matters were delicate and hoped their comments had not been taken personally. They all wanted to be good neighbors. In his experience, a deed can be recorded on anything since the county does not go into the substance of those matters all the time. He stated that there were some exceptions to that. He was aware that there were many instances where property is subdivided without the county’s acquiescence. As a result, that was not something the City could rely on in making a decision. In looking at the law, one of the critical issues was how others around the property would be affected. One of the major issues in the state was the notion of reliance. All of the neighbors in the area had relied on the one-acre zoning for years. He thought the desires of the neighbors should be considered. That to him was what it meant to be a good neighbor.

Mr. Harrington explained that as a compliance officer he had to make findings of fact and conclusions of law. Findings of fact were difficult because they must articulate the facts upon which they rely in making their decision. He believed that in this case there were none. He thought the applicants were concerned that they might not make as much money on their property. He thought the Rushtons would be as well off with a bigger lot to sell instead of two smaller lots. They may or not make more money but it was just as likely that they would. He understood that the situation was highly economic but he wanted to make sure both the neighbors and the Rushtons were treated fairly.

(18:58:25) Owen “Hank” Duffy gave his address as 2195 East Walker Lane. He felt a degree of compassion for his neighbors and had lived next door to Joan Clive for many years. He stated that the aesthetics of the property called for no more than two building lots. It was a long, narrow piece of property that hour glasses in the middle such that it is only 93 feet across. A fair amount of it was taken up by a dirt lane to get back to Mrs. Clive’s home. He felt as a neighbor that three building lots would overwhelm the property. He stated that it could be tastefully built on by bisecting the property in some fashion to remain two lots. To try to squeeze in another building lot there would not work. He expressed opposition to the variance request.

(19:01:15) Debra Weingard gave her address as 2205 Walker Lane. She stated that she purchased her home because of the one-acre zoning. She thought that if smaller lots were permitted, that trend would continue. She stated that smaller lots would impact the value of her property. She was sympathetic to the Ruston family and recognized that they wanted to maximize the value of their inheritance. She thought it would be better for all involved for the lots to remain one acre.

(19:02:20) Melvin Knight gave his address as 5327 South 2110 East. He was opposed to the variance due to the fact that it did not meet the required one-acre lot size.

Chair Dunn read the letter from Barry Topham, which was made part of the record. Mr. Topham thought the R-1-43 zoning should be treated as a sacred concept in Holladay and that variances not be granted for parcels less than one acre. He was concerned that once the standard is broken others with less than a full acre will expect and perhaps even legally demand equal treatment. Mr. Topham was the owner of 1.93 acres of property and would not expect or request a variance on his near second acre. If he wanted to develop it, he would attempt to purchase additional land from an adjoining parcel to bring it to at least one acre. He asked that the City deny requests to develop on less than one acre in R-1-43 zoning areas. He asked that the zoning standard be preserved.

There were no further public comments. .

A question was raised with regard to the road that would need to be cut from Walker Lane through the three parcels. Mr. Allred explained that there was an existing driveway traversing the length of the two existing parcels. It would need to be deducted from the existing acreage under the subdivision ordinance if a new subdivision were created since the new law deducted land for driveways from the minimum lot size. He explained that it would negatively impact the existing homes on the property. When creating a new lot, the applicant must comply with the new law. Emergency access issues were also discussed.

(19:10:15) Mr. Rushton asked how lay people were expected to know the required steps. Mr. Allred stated that the issue was that sometimes people in good faith, think they have properly taken care of a situation when in reality they have not. Many properties in the City were in a similar situation. He explained that there was no possible way for the City to let everyone know what all the rules are all the time. Citizens must make themselves aware of the rules. He suspected that what was recorded with the county was in fact not legal and the City could not recognize it because it was not shown as being recorded on the official Salt Lake County maps.

Chair Dunn noted that the Board had turned down other variance requests for downsizing on Walker Lane and 2300 East.

(19:16:15) ***Board Member Welch moved to deny the variance request, as “substantial compliance” with city ordinances could not be applied on the property under the opinion of the City Attorney. Board Member Rich seconded the motion. Vote on motion: Morissa Rich-Aye, Michael Blackham-Aye, Wayne Janssen-Aye, Dominic Welch-Aye, Barbara Dunn-Aye. The motion passed unanimously.***

3. Review and Approval of Minutes.

(19:17:40) ***Board Member Janssen moved to approve the minutes of October 24, 2007, as written. Board Member Rich seconded the motion. Vote on motion: Morissa Rich-Aye, Michael Blackham-Aye, Wayne Janssen-Aye, Dominic Welch-Aye, Barbara Dunn-Aye. The motion passed unanimously.***

4. Other Board Business.

(19:19:50) Chair Dunn commented that at a previous meeting group field trips were discussed. It was determined that field trips were appropriate and beneficial to be taken as a group. They also talked about the possibility of doing two groups so that the schedules of various Board Members could be accommodated. Mr. Allred thought field trips were very beneficial. He stated that it was required that accommodations be made for anyone who wants to attend a field trip. He stressed that field trips must be completely open to the public. Procedural issues were discussed. Mr. Allred explained that if the Board is discussing certain requests and forming opinions on site without the presence of the applicant or the public, it could be argued that they were not being objective.

Chair Dunn referred to the City of Holladay Board of Adjustment Rules of Ethical Conduct. She explained that private meetings, such as discussions on site, were prohibited. Mr. Allred explained that the Board did not have much leeway in making decisions like legislative bodies did. The Board has a five-part test that must be applied when making a variance decision.

5. Adjourn.

Board Member Welch moved to adjourn. Board Member Janssen seconded the motion. Vote on motion: Morissa Rich-Aye, Michael Blackham-Aye, Wayne Janssen-Aye, Dominic Welch-Aye, Barbara Dunn-Aye. The motion passed unanimously.

The Board of Adjustment Meeting adjourned at 7:33 p.m.

I hereby certify that the foregoing represents a true, accurate, and complete record of the Holladay City Board of Adjustment Meeting held Tuesday, December 11, 2007.



Teri Forbes
T Forbes Group, Inc.
Minutes Secretary

Minutes approved: 4-18-08