

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

**Tuesday, July 17, 2007**

**7:00 p.m.**

**Council Chambers**

**4580 South 2300 East**

***ATTENDANCE***

**Planning Commission Members:**

Barbara Dunn, Vice Chair

Carrie Greenberg

Wayne Janssen

Dominic Welch

Morissa Rich, Alternate

**City Staff:**

Paul Allred, Community Development Director

**Excused:** Michael Blackham  
Michael Pusey, Alternate

**1. Agenda Items – Welcome and Introductions – Barbara Dunn, Vice Chair/Acting Chair.**

(18:02:07) Vice Chair Barbara Dunn served as the Acting Chair and called the meeting to order at 6:00 p.m. Vice Chair Dunn reported that new Board Member, Michael Blackburn who represents District 4, was absent.

**1.1 Election of New Board Chair.**

Vice Chair Dunn reported that because former Chair, Henry Kesler's term had expired, a new Board Chair and Vice Chair needed to be elected.

*Board Member Janssen believed the intent of the Vice Chair was to train to be the Chair. For that reason, he nominated Barbara Dunn to serve as Chairman of the Board of Adjustment. Board Member Rich seconded the motion.*

Vice Chair Dunn remarked that she could not take Chair Kesler's place well, but agreed to try.

(18:04:05) *Board Member Welch moved to nominate Carrie Greenberg to serve as Vice Chair. Board Member Janssen seconded the motion.*

*Board Member Janssen moved to cease the nominations and elect by acclamation. Board Member Rich seconded the motion.*

*Vote on motion: Barbara Dunn-Aye, Carrie Greenberg-Aye, Wayne Janssen-Aye, Dominic Welch-Aye, Morissa Rich-Aye. The motion passed unanimously.*

Community Development Director, Paul Allred, clarified that the Chair and Vice Chair were elected by acclamation.

2. **Staff Report on Application - Radd and Andrea Berrett – 5985 S. Tolcate Lane – Request for special exemption from Section 13.04.472 of the Holladay City Zoning Ordinance regarding how setbacks are measured. Applicants wish to measure front setback not their front property line, but rather from what would normally be considered the property line except for existence of wide, unused strip of land owned by UDOT adjacent to Tolcate Lane.**

(18:07:40) Mr. Allred presented the staff report and stated that the application was somewhat unusual as it was not a variance request. He remarked that typically the Board meets on variances, however, they are empowered by law to hear special exceptions/exemptions as well.

The Board could rule on the matter without having to apply the five-part test. He took the liberty of reminding the Board of those five parts because they were a good rule of thumb in determining whether something should be considered an exception/exemptions or variance from the code

(18:09:40) Mr. Allred explained that the applicants would like to measure the front setback of their home differently than normal. He referred to code Section 13.04.472 that stated that the required front setback is measured from a specific lot line, front lot, or right-of-way line. In this case, UDOT had an extra wide piece of property there. Tolcate Lane is 90 feet wide and a dead end road. He saw no reason for the extra right-of-way width. When staff spoke to the applicants about where they could place their home, it became apparent that the extra wide width was useless. Since it dead-ends, staff thought it was unfair to apply the setback from the road. The City's Public Works Director, Tosh Kano, approached UDOT who was not aware of the wide right-of-way, to see if UDOT would give the property to the City or the abutting property owner. UDOT instead opted to sell it. As a City, staff did not think requiring the setback of the home to be so far back was necessary to carry out any public purpose. .

Mr. Allred reported that generally, setbacks are measured about 12 ½ feet behind the asphalt surface. In staff's opinion, that was where the defacto property line was located. He explained that if they were going to have curb, gutter, sidewalk, and park strip and then one foot behind that, it would measure 12 ½ feet. He clarified that the applicants were not asking for a front setback variance, but rather that they be released from the requirement that they measure their setback from the actual right-of-way line from UDOT. The reasoning behind staff's suggestion was due to the fact that UDOT would not use the additional width for road widening. As a result, staff saw no harm to the public or general plan by allowing the home to be built closer to the asphalt. The applicants were asking to be exempted from the rule and allowed to move their home about 25 ½ feet closer to the roadway. That would still put them about 37 feet back.

(18:14:57) Mr. Allred reported that the way setbacks are measured in the area had changed. Now staff goes to an area and looks at the setbacks of two homes on either side of a property. In this case, there were not two homes on either side. There was one home to the south and two to the north. The home to the south was extremely close to the edge of the asphalt if the same standard were used. The home to the north was set way back. If the two were averaged, the result would be very similar to what was proposed. He explained that the proposed setback would be allowed if the property line were 12 ½ feet back. The proposed setback would be 37 ½ feet from the edge of the asphalt, which staff felt was appropriate.

Mr. Allred stated that UDOT's intent was to sell off the unused right-of-way property. Chair Dunn questioned why anyone would purchase the strip from UDOT. Mr. Allred responded that when staff began meeting with the Berretts, he wondered if it was acceptable for him to sign off on the setback administratively. He spoke to the City Attorney who preferred that that not be done. Instead he suggested an exception rather than a variance be requested. Mr. Allred's feeling was that the property would not be used for a right-of-way. It was within UDOT's right to try to sell it, but Mr. Allred thought it seemed like extortion to require property owners to build their home further back because they technically own the property. He thought this was a nice way for the City to acknowledge that it would never be used as a right-of-way and there was no reason to measure the setback so far into the property.

Mr. Allred remarked that there were other things about the property that were interesting as well. One was that the property was fairly narrow in the back with a canal, which made for a small backyard and large, deep front yard. Most property owners want to reverse that. The proposed change would result in a 45 to 50 foot backyard and a 37-foot front yard. The benefit would be a better yard area for the applicants, keeps them away from the canal, and eliminates the large setback from the roadway.

(18:18:49) Board Member Rich asked if there was a chance that UDOT would contest what was proposed. Mr. Allred stated that they could, but he thought they actually just wanted to get as much money as possible out of the property.

Chair Dunn's assumption after having dealt previously with UDOT was that they have other properties that could be added that are buildable. If they gave away property, it would start a precedent. She noted that they own a tremendous amount of property.

(18:24:25) Andrea Berrett, the applicant, showed photos that illustrated more clearly what they were proposing. By setting the home back 30 ft from the lot line, they would have 68 ft in front of their home to the asphalt. The size of the backyard was also shown if they were to measure the setback from the lot line. The request was to measure the setback not from the actual lot line but from the front lot and/or right-of-way lines. The exemption would result in them still having a large front yard, but they would have 20 additional feet in the backyard, which would be usable space. Ms. Berrett reported that they changed the original plans when they saw what the back would look like. The home was reduced in size and a basement was not proposed. The lot was long and narrow. There was a curve in the canal, and in the area where it curves, Mr. Kano said there could be a potential for water. As a result, the home was moved as far forward as possible to the north. In that location, UDOT had a larger piece of land measuring 38 feet in the area in front of the home.

(18:28:52) Ms. Berrett remarked that they did not approach UDOT to purchase the property. In the original conversation Mr. Kano had with UDOT, he was told that UDOT did not have a problem with turning over the property. By the time Mr. Kano spoke to UDOT again, the gentleman who had been working on it had retired and the matter was turned over to someone else. The new person stated that they would consider selling the property rather than turning it over to the City. Encroachment issues were discussed.

Chair Dunn opened for public comment.

(18:31:30) Andrea Clark -5893 Tolcate Road. They were in favor of the exception being granted. She thought it would be the highest and best use of the land for the Berretts to be able to place their home further forward on the lot.

Ken Keller remarked that he had known the Berretts for years. They asked him a few years back to build their home. He had been involved in the process with them from the beginning. He thanked the Board Members for taking time to serve the City. He also expressed appreciation to Mr. Allred. He loved building in Holladay due in part to Mr. Kano and Mr. Allred.

There were no other public comments and the public portion of the meeting was closed.

(18:34:44) Board Member Welch felt what was proposed met the old ordinance and qualified for the exemption.

Board Member Rich thought the questions identified by Mr. Allred were good things for the Board to consider. Mr. Allred remarked that staff's job was to provide the Board with information and facts. He developed the questions over a period of time in an attempt to get staff and the Board to focus on what they should be asking. It was staff's opinion that the special exception should be granted. Mr. Allred described how it differed from a variance. Variances involve blind justice with a five-part test. Because the special exception does not require the application of the five-part test, he felt free to offer his opinion. It was, however, not his nature to give a recommendation or take a position on an action.

Board Member Greenberg was impressed that the applicants were considering the canal and knew what the ordinance was for the canal. Mr. Allred responded that it was not a City ordinance, but rather a requirement of the canal company. The City ordinance stated that backing onto a perennial stream there is a minimum 100-foot setback requirement that can be reduced upon recommendation from the City Engineer. The canal was not a perennial stream or an ephemeral stream, which was seasonal and has a 50-foot setback requirement.

Board Member Janssen remarked that he watered and mowed approximately 8-feet of City-owned property on a regular basis and as a result, understood the position of the applicant.

***(18:40:00) Board Member Janssen moved to allow the exemption to use the 12 ½-foot defacto right-of-way line from the edge of the pavement. He could see no public need or good that would come from holding the applicants to the letter of the law. The applicants would be allowed to place the front setback approximately 25.5 feet into the UDOT right-of-way, which would be about 12 ½ feet back from the edge of the asphalt road. Board Member Greenberg seconded the motion.***

Mr. Allred believed the law would allow a condition be attached to the motion, if desired. He was unsure anything else needed to be added. He did not expect a neighbor would appeal it. It was most likely to be appealed by UDOT assuming they have a strenuous objection. There was an appeal period in which that could be done.

Board Member Greenberg thought it was important to point out that there were no unforeseeable problems. Chair Dunn assumed UDOT would have been represented tonight if they had objections.

Mr. Allred remarked that a reasonable condition could be added that the setback allowed was applicable minus the 25 ½ feet. He wanted it to be clear that the applicants would not be granted a reduction in the setback that they were already planning.

(18:45:35) Mr. Allred's concern was that the setback shown to the edge of the right-of way line, which the Board would grant an exception to the motion is approved, would simply reduce it by 25 ½ feet. It would still be the same measurement, just closer to the road. Chair Dunn agreed that that was what was proposed.

***Vote on motion: Barbara Dunn-Aye, Carrie Greenberg-Aye, Wayne Janssen-Aye, Dominic Welch-Aye, Morissa Rich-Aye. The motion passed unanimously.***

**3. Other Board Business.**

(18:47:09) The November and May meeting minutes were in the process of being produced and would be available at the next meeting.

**4. Adjourn.**

***Chair Dunn moved to adjourn. Board Member Rich seconded the motion. Vote on motion: Wayne Janssen-Aye, Carrie Greenberg-Aye, Dominic Welch-Aye, Henry Kesler-Aye, Barbara Dunn-Aye. The motion passed unanimously.***

The Board of Adjustment Meeting adjourned at 6:51 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, May 22, 2007.*



---

Teri Forbes  
T Forbes Group, Inc.  
Minutes Secretary

Minutes approved: 9-11-07