

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

**Tuesday, May 22, 2007
7:00 p.m.
Council Chambers
4580 South 2300 East**

ATTENDANCE

Board of Adjustment Members:

Henry Kesler, Chairman
Barbara Dunn
Carrie Greenberg
Wayne Janssen
Dominic Welch
Michael Pusey, Alternate
Morissa Rich, Alternate

City Staff:

Paul Allred, Community Development Director
Alma Haskell, City Planner

1. Agenda Items – Welcome and Introductions – Henry Kesler, Chairman.

(19:10:13) Chairman Henry Kesler called the meeting to order at 7:10 p.m. A prepared statement was read.

2. Staff Report on Application - Michael and Debbie Tempest – 4944 S Marilyn Drive – Request for approximately 4-foot height variance from Section 13.14.070 of the Holladay City Zoning Ordinance to allow construction of garage at 24 feet in height restricted area.

Community Development Director, Paul Allred, reported that the application was a variance request from Michael and Debbie Tempest for their property on Marilyn Drive. The purpose of the request was to ask for an intrusion into the building corridor or building envelope area, also known as the rear yard. Staff provided a cross section of the area. Mr. Allred reported that the rules were adopted in January and public feedback was received indicating that perhaps some changes were in order.

(19:14:17) The applicants wanted to push their home further back as shown on the drawing displayed. In the zone they were allowed to have a home that is 40 feet tall. They were proposing to build a home that would be approximately 35 feet tall. The intent was to have the garage portion of the home, which was approximately 25 feet in height, be constructed in an area restricted only to 20 feet. Mr. Allred explained that a building corridor was located behind the building envelope. He noted that the greatest height should be within the building envelope. In the area behind the envelope, however, it must drop to no more than 20 feet. That was a rule the City Council implemented when they adopted the ordinance the previous January. It was also known as the “Cooley Rule”, which was what began the monster home debate. The purpose of the rule was to limit how tall a home could be on a very long, narrow lot. What was presented

was exactly what the rule was designed for. The applicants were asking for a height variance of approximately 4 feet for a distance of approximately 20 feet into the area behind the mass of the home.

In analyzing the request, the applicant pointed out that there were good reasons to move the home further back on the property. They had gone through another long, drawn out process on another parcel and then on this one to get the home built as desired. They believed the architecture of the home would be better if they were allowed to build it as proposed. Staff worked through a series of scenarios with the applicants and made suggestions. In the end, the applicants opted to approach the Board. The reasoning for the rules was described. Mr. Allred explained that when the Planning Commission and City Council considered the issue of monster homes, there were a variety of issues discussed. One of them was height and bulk. In the end, staff believed the ordinance tended to push the height and bulk of homes closer to the street and left more area behind for views.

(19:18:53) Mr. Allred remarked that there was a bonus given under the rule in how the front setback is figured. In considering the minimum front yard, the average of the two homes on either side would determine where the back line of the house could be at the maximum height. The ordinance required new homes to fit into the neighborhood. In calculating the setback for the home, it determined where the back of the house should be. The applicants wanted to go back further than that because there was a tree on the site that they wanted to preserve. They believed the bulk of the home would be more appropriate further back since it will be taller and larger than the homes on either side of it. They believed pushing it back would reduce the impact of the home. Mr. Allred noted that some of the new regulations were geared toward tree preservation. The amount of impervious area allowed on a property had been limited in an effort to preserve green space, filter water, and cool the air. He explained that there were several components to the new rules.

Mr. Allred reported that he did not provide a staff recommendation and suggested that because the matter was an appeal, the Board should make the determination.

City Planner, Alma Haskell, described how the building corridor line was computed. The distance for the front yard was taken from the front property line to the front of three homes on either side. In this case it was 48 feet. To calculate the building corridor, the distance from the front property line to the rear most portion of the existing homes on either side was averaged and 20% added. That provided a line behind which heights could be only up to 20 feet.

Mr. Allred explained that the request was to have a variance of four feet in height for a length of approximately 20 feet outside the building corridor. It was Chair Kesler's understanding that the height of a detached garage could only be 20 feet. Mr. Allred explained that if in the building corridor area a building is detached, it could be the same height as the main structure. An accessory building could be just as tall as the main house if it is in the same building corridor. If it goes outside of the corridor, it would be limited to 20 feet.

(19:31:56) Graduated height issues were discussed. Mr. Haskell explained that the code states that where there are two codes and one is more restrictive than the other, the more restrictive code must be used. Mr. Allred explained that if the building is kept as proposed with the garage

attached to the house, he did not see how graduated height would apply since it was back from the property line. He explained that graduated height tries to limit the scale of buildings close to the property line. Board Member Kesler thought that would be permitted if it were the only criteria. The issue was that the building extends past the building envelope into a rear yard or other area where a 20-foot height limitation has been established above and beyond the graduated height limit. Mr. Allred distinguished between overall height and graduated height.

Board Member Pusey asked if the roof of the garage could be graduated higher than the 20 feet within the building corridor. Mr. Haskell explained that the height of all building structures was further limited by the graduated height. As a result, the graduated height would not allow additional height beyond what the other codes allow. It would further limit buildings that come close to the property line.

Mr. Allred explained that throughout the recent code amendment process, the more they looked at the many rules and how they are developed and implemented situation; the more they found that there was always an unintended consequence. It was his opinion that there would be very little, if any, negative impact by granting the variance. Because there were trees all around, he thought there were mitigating circumstances. Setback issues were discussed.

Mr. Allred commented that staff spends a lot of time looking at variance requests and there were times when they have an odd situation. On one occasion they used setbacks from across the street since it was still in the context of what fronts the street. Staff always tried to see the side of the spirit of the law, which was flexibility and use the closest possible examples in the context of the street. To this point, that seemed to be satisfactory. The Board agreed that staff should use rational objective judgment to the extent possible. He recognized that would not be applicable in every situation.

If staff finds that in using their best judgment in applying the intent of the rule, if it can't work because of the street configuration or home placement, they find the nearest comparable and use that. Sometimes it actually works to the detriment of the application.

Chair Kesler asked the applicant to describe the unique circumstances attached to the lot and the hardship that would be imposed if the variance were not granted.

(19:42:06) Debbie Tempest stated that they were sensitive to the need of the zoning and felt that the building corridor ordinance was well intended. She highlighted, however, that the variance requested would not have a negative impact on anyone and would not block anyone's views. In this case, the intent of the ordinance did not serve its purpose and actually would destroy an existing, desirable tree and diminish the beauty of the property and the home. The City's proposed placement of the home was about 15 feet closer to the road than the home that was previously on the lot. They spoke with the neighbors on the street and all preferred the home being placed deeper on the lot. The home fit beautifully on the property and was compliant with every zoning law. The ordinance, however, would force them to place their home in a place that was inconsistent with the spirit of the zoning laws. Mrs. Tempest believed the ordinance was radical and changed quite dramatically what had been allowed in the past. The ordinance created several hardships relating to the property. She remarked that forcing them to put a home awkwardly close to the street was less attractive. They wanted to minimize the home's presence

by placing it back further from the street. They would still have approximately 140 feet from the home to the rear of the property line.

When the home was designed, the ordinances were not conceived. There was no possible way they could have predicted that in the design of the home. Prior to purchasing the lot, they went to great lengths to determine that their home was compliant with the existing laws. Mrs. Tempest stated that she met with staff to determine that the home was in compliance with the zoning requirements. Staff told her that they were only unsure about height, as they were not sure what they would be. She then attended the City Council Meetings and met with City Council Members and did not purchase the property until the height requirements were established. It wasn't until she brought the plans in that she was told about the new zoning ordinance.

Mrs. Tempest stated that great measures were taken by them and their architect to design a home that was historically and architecturally accurate. They did not have the luxury of chopping off rooflines and turning things around. She reported that it took two years to design the home and make sure that everything lined up correctly. The 24-foot garage was designed to fit discreetly behind the home and maximize the use of the lot and minimize the appearance of the width of the home.

(19:47:00) Mrs. Tempest stated that the hardship created by the ordinance was not self-imposed since they had no control over changes in zoning. She expressed appreciation to the Board and trusted that they would be reasonable and fair in making their decision.

Chair Kesler's understanding was that part of the reason for putting the house where it was in relation to the front yard setback was the sycamore tree. Mrs. Tempest explained that the sycamore tree was located on the lot where it was quite far forward. By moving the home back they would be able to save the tree. She explained that the home fit on the lot in the building envelope and they had a building permit. If built in that location, however, the home would be 20 feet ahead of the two homes on either side.

Chair Kesler asked Mrs. Tempest to explain why the garage needed to be 24 feet high. Mrs. Tempest explained that they had a bonus room above the garage. It would take a considerable amount of architectural change to the home to bring it into compliance. She explained that it took quite a bit of effort to turn the corner and keep the rooflines at the correct pitch with the home.

Chair Kesler asked for a description of the special circumstance required to grant the variance. Mrs. Tempest responded that the special circumstance was the tree and the fact that they would be 15 feet ahead of the home that was previously on the lot.

Michael Tempest commented that the tree was estimated to be 60 to 70 feet tall and they did not want to lose it. They also wanted the home to be compatible with the rest of the neighborhood. He did not want the two houses on either side to be located 20 feet behind the proposed home.

The estimated size of the home was 6,600 square feet, including the garage. The square footage calculation would not include the unfinished basement, which was estimated to be 2,600 square

feet. One Board Member asked what the definition was for monster home. Mr. Allred responded that monster home was not defined in the zoning ordinance. Staff had studied it, however, and had prepared a report on monster homes. Mr. Tempest stated that the property was over one acre in size and was suitable to the size of the home.

Chair Kesler opened for public comment.

Laura Pinnock gave her address as 4919 S Marilyn Dr. She had looked at the proposed plans and stated that the proposed home was considerably smaller than a number of the new homes built in the neighborhood over the last few months. It was almost half the size of a home completed just one year earlier. She was thrilled that the home was of a more manageable size. As required by the zoning ordinance, the home would be unusually close to the front of the road, which she believed would detract from the beauty of the neighborhood. She thought a more reasonable setback would be appropriate. She expressed support for the variance.

(19:58:25) Sam Frampton gave his address as 4966 Marilyn Dr. He remarked that the home would fit in the building envelope if it were moved forward. His preference was to have it moved back to the same location as the previous home. Because the lot was long and wide, there was plenty of room to have it moved back and the garage placed in the backyard without being obtrusive. He thought the garage would be far more intrusive if it were detached and moved to the property line. He expressed support for the variance.

Allison Pinnock gave her address as 4949 Marilyn Dr. One of the reasons she moved to the street was because of the beautiful trees. She thought the home proposed would be better closer to the back of the lot. The home would not be as noticeable because of the trees. She liked the idea of hiding the garage.

(20:01:45) Barry Miller gave his address as 4884 Viewmont St. One of the benefits they had was that their backyard looked onto the undeveloped backyards of everyone along the street. They liked looking at pasture areas and trees and were grateful that the City rezoned the area to one acre zoning. When Holladay became a City he wanted a limitation on building envelopes to make sure the whole lot is not filled up with houses. He thought it was better to allow spaces for big trees to grow rather than have only small decorative trees. Because of that, he doubted the monster home problem would continue. In context with the CC&Rs, what was proposed was consistent. With regard to height, he thought the extra five feet of height in the rear of the home was worth giving up to in order to be able to have the home further back from the street.

There were no further comments.

Chair Kesler restated the request. He clarified that in order to grant a variance, all five statutory requirements must be met. It was reported that a letter was received from Shane Topham who was not in favor of granting the variance. The letter was provided to all Board Members. Mr. Topham did not have a particular objection but wanted the Board to simply adhere to the existing ordinance. In the letter, Mr. Topham reminded the Board of the statutory requirements necessary to grant any variance.

(20:10:17) Chair Kesler remarked that the Board should be aware that a new ordinance was

passed after much diligence, thought, and discussion. It was not the Board’s role to decide the correctness of the ordinance. Their role was to determine whether the variance request meets the five statutory criteria required.

Chair Kesler asked that the Board discuss the special circumstances attached to the property that do not generally apply to other properties in the same zone. He stated that similar sycamore trees were located on other properties in the same zone. He did not view the location of the sycamore tree as a special circumstance.

Board Member Greenberg was concerned with conditions that are general to the neighborhood since they were comparing a house that is two houses away. She wondered why they did not use the house across the street. It seemed that the feeling of the neighborhood would be lost the further the house is moved back from the street. She questioned where the measurement requiring less than 50 feet came from. Chair Kesler remarked that the setback question was statutorily addressed in Section B. He also noted that the City requirements could be more or less strict than the CC&Rs in the subdivision. He stated that they were two separate issues.

To Chair Kesler the Tempest’s lot appeared to be very similar to the lots on either side of it in terms of size, shape, and vegetation. He stressed that the Board needed to determine the special circumstance specific to this property. Board Member Greenberg thought the front setback created a hardship since it was not consistent with the general neighborhood. She viewed the tree as the special circumstance. Chair Kesler did not particularly like the tree and thought it looked “straggly”. Board Member Welch thought the placement of the tree was the special circumstance. Board Member Janssen thought the location of the tree made it impossible to do what the zone calls for. He thought the property owners should be able to keep the tree.

(20:21:40) Board Member Dunn thought there were special circumstances with the lot itself in that it is wide and long. She believed that to move a 24-foot garage to the rear of a yard was not putting a monster home on a property, which she believed the zoning was created for. She thought a special circumstance was created for the property because the neighborhood was established and the homes were set back from the street. Chair Kesler remarked that all of those things apply to other properties in the same zone. Board Member Dunn thought the special circumstance was preserving the quality of the neighborhood.

(20:26:04) Chair Kesler asked if literal enforcement of the zoning ordinance would cause an unreasonable hardship not necessary to carry out the general purpose of the ordinance. Board Member Welch thought tree preservation was important. Board Member Janssen thought removing the tree and moving the house forward would create an unreasonable hardship. One Board Member thought moving the house forward seemed to be more of a detriment than removing the tree. Board Member Dunn thought the placement of the house was more important than the tree. She believed granting the variance would be in keeping with the intended character of the Holladay ordinances and the General Plan.

Board Member Pusey stated that his interpretation of “unreasonable” included the tree. He had two sycamores in his yard that had been there for the past 15 years. They were not nearly as big as the one in question. He knew how long it took to grow a sycamore and was in favor of saving it. He appreciated the intent of the ordinance, but in looking at the neighborhood, the only view

that would be blocked would be to the pasture areas. He did not think a four-foot variance was unreasonable with regard to height.

Chair Kesler did not think it was unreasonable to require the applicants reduce the height of the garage by four feet, build a garage that meets the 20-foot height requirement, and save the sycamore tree. He believed the requested variance was really for a four-foot variance in the rear yard area. Board Member Welch stated that any obstruction could be corrected with money or changing the plans. In this case, it seemed that the change of plans would make the situation worse.

(20:39:50) Mr. Allred recognized that the irony of the ordinance in some ways was that someone the applicants could be unable to build something that had far greater impact on the area by building to the maximum of what is allowed in the ordinance that what they are actually proposing with the current plan before the Board tonight is far less impactful. An unintended consequence of the ordinance was that it didn't provide for a transition between the maximum height and 20 feet.

Chair Kesler pointed out that as a Board they were statutorily required to determine the special circumstances attached to the property. The five criteria were reviewed.

Mr. Tempest stated that they had been issued two permits on the property. They were asking for an additional 20 feet to situate the garage in a place where a tree can be saved, would not be cumbersome for other property owners in the area, and would be in line with the building corridor down the street.

Chair Kesler was empathetic that the applicants were trying to comply with the spirit of the code. Board Member Greenberg thought the ordinance itself was creating the hardship. She thought on this particular lot it did not serve its purpose. Chair Kesler responded that the way to address that was through the City Council by having the ordinance changed. He explained that the purpose of the Board was to determine whether an application for a variance statutorily meets the five statutory criteria. Common sense and public clamor had nothing to do with the Board's decision.

(20:51:30) Board Member Janssen moved to grant an exception allowing a six-foot maximum height variance for 20 feet of the home outside the building corridor. The request was determined to meet the statutory test required by the Board to grant the exception in all five of the following instances:

- 1. It would be a hardship to try to change the design and architectural look of the property if the applicants were required to cut out six feet off of one particular portion of the home.***
- 2. Where the tree is located and what they need to build the home would be a circumstance that would be addressed in this particular allowance.***
- 3. The applicants have the right to build a home within the scope of the height, shape, and length of the property that fits the lot. It was determined to be consistent with the plan in that it doesn't interfere with any view or problem with the neighbors.***
- 4. It was noted that all of the neighbors were in favor of the proposed plan.***

5. *The request was believed to observe the spirit of the zoning ordinance, as it would not infringe upon any one else's rights.*

Chair Kesler seconded the motion.

Mr. Haskell recalculated the figures and stated that taking into account the natural grades, the height differential could be as high as 7 feet but no more than that above the 20 feet allowed.

Board Member Janssen moved to amend the motion to include an additional 7 feet of roof height for no more than 20 feet outside of the building corridor. Chair Kesler 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.

3. **Other Business.**

(20:59:30) Mr. Allred reported that staff was working with candidates to replace Chair Kesler. His term has expired but because the Council had not appointed anyone in his place, he would continue to serve. A new member would be added within the next 30 to 45 days and a new Chair would then need to be elected.

The minutes from the last meeting were not available for review.

Board Member Dunn thought it would be appropriate for the City to reappoint Henry Kesler. Mr. Allred agreed to pass their recommendation to the Council. On behalf of staff, he thanked Chair Kesler for his years of dedicated service to the community.

4. **Adjourn.**

Chair Kesler moved to adjourn. Board Member Dunn 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 9:12 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