

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

Wednesday, October 24, 2007

6:00 p.m.

City Council Chambers

4580 South 2300 East

ATTENDANCE

Board Members:

Barbara Dunn, Chair
Michael Blackham
Carrie Greenberg, Vice Chair
Wayne Janssen
Michael Pusey
Morissa Rich, Alternate
Dominic Welch

City Staff:

Alma Haskell, City Planner
Jon Teerlink, City Planner

REGULAR SESSION

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

Chair Barbara Dunn called the meeting to order at 6:12 p.m. and apologized for the meeting starting late. Board Member Greenberg read the Chair statement.

2. Staff Report on Variance Request – Request for approximately 20-foot variance from Section 13.14.110 and 13.14.057 regarding setbacks on corner and side yards for main and accessory buildings, of the Holladay City Code. Applicant, Todd Schmidt 2477 East Kentucky Avenue, requesting allowance to build garage at or near the property line.

(18:16:30) Chair Dunn reported that information was received by the City and a copy provided to the applicant. She asked if the applicant had had an opportunity to read the information provided. The applicant confirmed that he had. All Members of the Board had not reviewed the information so the Chair suggested the Board take five minutes to read the information. If the comments were found to apply to the property and the variance they would be taken into consideration.

The Board took a five-minute break.

City Planner, Alma Haskell, presented the staff report and stated that the applicant, Todd Schmidt, was requesting a variance at 2477 East Kentucky Avenue to Section 13.14.057, which stated that the minimum corner site setback for any main structure on a public street, private road, or private lane shall be 20 feet. In conjunction with Section 13.14.110(a) regarding accessory buildings-prohibited locations, it stated that no accessory building or structure shall be constructed in a front setback area or placed within a required side yard setback area adjacent to the street. Mr. Haskell reported that clearly there was a street on the applicant's property, which

was on the corner of Clear View and Kentucky. In the application, Mr. Schmidt requested a 20-foot setback variance and wanted the structure to go on or near the property line. Mr. Schmidt's property lines extended to the center of the street. The City required dedication of the designated right-of-way, which was 50-feet wide or 25 feet from the center of the street. Mr. Haskell identified that as one of the major issues to be considered in processing the application. After the required 25-foot right-of-way dedication, the lot would be 74.24 feet wide tapering down to 53 feet at the narrowest point. Per lot width definition the lot was 69 feet wide. The minimum required in the R-1-10 zone was 80 feet.

(18:27:18) Mr. Haskell acknowledged that the lot was a narrow or corner lot. It was not narrower than a lot in the R-1-8 zone where it could be as narrow as 65 feet. It was his opinion that for a corner lot it was fairly narrow. There was a significant drop in grade from Clear View to the property line from where the asphalt was to where the property line would be after the dedication starts. There were a few large, mature trees in the rear yard that he believed provided a major benefit. Two of the trees were cedars.

Mr. Haskell reported that currently there was no garage on the property. The Board in the past had indicated that garages were an essential amenity on properties given past decisions. Presently, there was only a small older home on the south side of the lot. The home was set back 23 feet from the new property line after dedication on Kentucky and about 12.7 feet from the new property line on Clear View after dedication. Both were considered legal non-conforming and did not meet the setback requirements that would be imposed, however, the home was already existing. The home was 8 ½ feet from the west property line. That left no room to construct a garage on any of the sides. The only direction the garage could go was to the north of the home.

The property currently had no curb and gutter or sidewalk on Kentucky or Clear View. Such improvements on the rest of the streets in the area were somewhat sporadic. The lot directly to the north of the applicant's lot did not have curb, gutter, and sidewalk while the lot beyond it did. Very few homes on Kentucky had those improvements. Mr. Haskell commented that it was not likely that the City would initiate the installation of sidewalk on either of the streets. He noted that they were not in the City's designated safe walking routes. It, however, was not out of the question for the applicant to be required to put the improvements in if a major addition or remodel were done.

(18:30:10) Mr. Haskell explained that the minimum standard for a two-car garage was about 20 to 24 feet square. The proposed garage was approximately 12 feet longer than that standard. When considering the five-part test, he asked that the Board consider whether the larger size made the situation self imposed, whether a smaller garage could fit on the lot, whether attaching the garage to the north of the home would be a possible option, whether the applicant could review some of the vegetation and locate the garage near the northwest corner, and whether a lesser variance could be pursued. Mr. Haskell remarked that staff had spent a lot of time with the applicant studying the various options. The applicant had reason to believe that what was proposed was his best option. Many of the solutions pursued would have met code and some would have been an in-line addition with the existing non-conforming setbacks that could have been done at staff level. All of the possible solutions had positive and negative aspects. Many of

the possible solutions even involved a need for a variance or in-line addition. The Board was urged to discuss with the applicant and critique some of the possible solutions.

(18:32:05) Mr. Haskell remarked that staff did not vote on such matters and acted only in an advisory position on technical aspects. In reviewing the proposal, he asked that the Board review the request in light of the five-part test dictated by State law. Questions and issues the Board should consider in light of the five-part test were reviewed.

Mr. Haskell did not give a specific recommendation for denial or approval and suggested the Board weigh the five-part test and determine which arguments applied and which did not. He thought the applicant had made some strong arguments to support the five-part test. There were, however, the following counter arguments:

1. The hardship is self-imposed because the garage could be built in another location, smaller, or a new home and garage could be built, albeit with other negative impacts.
2. Having a garage of this size or at all is not a substantial property right.
3. Granting the variance may not be in the public interest because of the impact on the streetscape.

If the variance is granted, staff asked that:

1. The garage be allowed no closer than three feet from the property line.
2. Consider limiting the depth of the garage to 28 to 30 feet to lessen the impact of the streetscape.
3. No new concrete or retaining walls allowed in the dedicated right-of-way are to be allowed.

(18:38:45) Mr. Schmidt gave his address as 2477 East Kentucky Avenue. He distributed a photograph of the property taken facing north. It was currently a large open space with level grade and no mature trees or brush. The location was initially chosen for the garage because it was in line with the existing driveway and could be positioned so as to have a minimal impact on the environment around it. He mentioned that Clear View was considerably higher in grade and there would be about a 2 ½ to 3-foot grade different between the street level and the level where the garage would be. It had the effect of tucking the garage down and reducing its visual impact from the street.

Mr. Schmidt acknowledged that there had been a lot of talk about the oversize nature of the garage. The reason for the deeper garage was due to the nature of the lot. Going deeper did not add a lot of impact and would allow him to park his 24-foot pickup truck inside it. He wanted to be able to park all of his vehicles indoors to keep them off of the street or out of the driveway for aesthetic and security reasons. The width of the garage was a standard two-car width. He noted that the square footage was less than many three-car garages being built presently.

Mr. Schmidt provided photos of the property taken from Clear View and showed the one section of sidewalk currently on the west side of the street. It showed how the sidewalk terminated at the houses directly to the north of Mr. Schmidt's property. Clear View narrowed and it seemed that a sidewalk was not feasible.

(18:44:31) Mr. Schmidt explained that when he initially began the project he was looking to build a 5,600 square foot house that would fit within the setbacks. After some soul searching he decided that because the home was built before 1926, he was making an effort to keep the house in position and restore the property around it to a more acceptable state. He was working hard to avoid removal of the existing trees on the site. Placing the garage in the location proposed was the best way to maintain the traditional nature of the property.

There had been discussion about placing the garage to the north of the house, which could be done. He could also increase the height of the garage since it would be attached to the home. In his opinion, however, it would loom over the property to the west and not be very aesthetically pleasing.

Mr. Schmidt stated that the reason he was pursuing the variance was because the property best allowed for the garage to be placed in the proposed garage because of the natural grade and the fact that the lot is so narrow. When the dedication is added it actually made the lot non-conforming based on the zoning. He recognized that there were a lot of challenges in the area because the property seemed to have been arbitrarily divided.

(18:48:35) Chair Dunn asked Mr. Schmidt to describe how he met the five criteria the Board needed to rule by. Mr. Schmidt stated that the first criteria was whether the need for the variance was self-imposed or economic. He did not believe the variance was self-imposed. He explained that if the garage were placed anywhere else on the property, the garage would have to be made shorter. Economically, he realized that money was an important factor. He had not considered economics as a driving factor; it involved more a desire to maintain the tree space and have the least impact on the property. He remarked that it would not cost him much more money to locate the garage elsewhere other than he would probably have to pay for more retaining wall.

Mr. Schmidt believed that a garage was a fairly essential building. Because he owned a lot of expensive equipment, putting it under a carport would invite criminal elements to take advantage of the situation. He stressed the importance of keeping expensive items secured and viewed a garage as an essential right of a property owner.

With regard to whether the situation affected the property differently than others in the area, Mr. Schmidt commented that he had spent a lot of time driving around his neighborhood. The only reason his home was not “pushed to the edges” like many zero lot line situations, was because he lived on a corner. If he had two houses on either side, it would not be an issue. He did not believe that affected other properties differently in other areas because many have garages located right to the edge of the property.

(18:52:44) Mr. Schmidt referred to the special circumstances attached to the property and explained that the special circumstances were due to the fact that the new dedication requested would put the lot into an illegal zoning situation. When he initially approached the City, they began planning out where the garage could be located working from a 25-foot setback from the center of the street, not realizing that they had not dedicated the property. A lot of the hard work they had put into the project was wasted because they were working from incorrect information. When he discovered that they were asking for a 50-foot setback and measured the lot, it became

apparent that it would be a situation that would be difficult to work around. He viewed his major circumstance as the narrow width of the lot and the additional zoning.

With regard to whether granting the variance was essential to the enjoyment of a substantial property right possessed by other properties in the same zone, he remarked that a majority of the homes in the neighborhood have garages. He thought he had shown a lot of restraint by not wanting to build a 6,000 square foot home on the lot. If that were the case, the garage would not be out of proportion.

(18:54:56) Mr. Schmidt explained that the variance would not substantially affect the general plan or be contrary to the public interest. He did not believe it was realistic for a sidewalk to be put into the location at any point in the future based on the location of the homes. He did not think what was proposed would hold back any pending curb, gutter, and sidewalk development. It also sat far enough back from the corner that it would not impinge on any visibility issues.

Mr. Schmidt believed that the spirit of the zoning ordinance was observed and substantial justice was done. He understood that he must live by the rules and that zoning and ordinances were in place for good reason. He also believed that in this instance the setback was imposing the problem within an area that does not allow for such a narrow lot. He believed he was complying with the spirit of the zoning ordinance but the zoning ordinance was being violated by the required setback.

Mr. Schmidt had read through the comments received from the neighbors and was surprised by them. He had not spoken to all of his neighbors but the ones he had spoken to approached him and were friendly. Everyone he had spoken to was supportive of his proposal. The people he had not spoken to were not as supportive. As stated in a few of the letters, he did not feel that he had misrepresented his intentions in developing the property. Initially, he wanted to build a larger home on the property but that plan was shelved. Mr. Schmidt wanted to act in the best interest of the City and be a good citizen. He had worked a great deal with the City to come up with solutions that would not have forced him to request a variance.

(19:00:36) The applicant was asked about the second preferred site. Mr. Schmidt explained that it would involve locating the garage on the north side of the home. In order to do that he would have to tear the back of his house off to attach it. Part of the problem was that the house would have to be rebuilt. The home was oriented east and west, which was the way the garage would be if he built it in the alternate location. If the garage were not built into the house he would have a drainage problem with the snow and runoff going between the house and the garage structures. Also, the ground dropped off considerably going west on the lot. It would necessitate him having the garage floor start at about an eight-foot level to the property to the west. It would also require that he tear out two fir trees on the site, which included the largest on the lot. For that reason, he sought other solutions.

Mr. Haskell explained that height was not a consideration of the variance. As far as staff was concerned, height would be limited to 20 feet and was not before the Board for consideration tonight.

Mr. Schmidt was asked about the height of the drop off from Clear View down to his lot. Mr. Schmidt responded that it tapered slightly from south to north with the most extreme drop off being approximately 3 ½ feet. A retaining wall was currently in place where the driveway was located. From there it went down about three feet.

Mr. Haskell stated that the applicant proposed a second option that would require a variance as well.

Chair Dunn asked if the proposed garage were rotated or placed to the rear of the house whether it would fit at any point on the lot without asking for a variance. Mr. Haskell responded that it would if it were moved far enough to the west. Chair Dunn asked if the reason for not moving it was primarily due to the trees. Mr. Schmidt responded that it was mostly due to the trees, grading issues, and runoff mitigation because of the slope of the property. He indicated on the site map where the property drops off. He explained that the reasoning behind the proposed location was that it would require minimal grading and impact to the property. Going further to the west would require removal of trees but also substantial stabilization. He remarked that retaining wall issues would also come into play.

Mr. Schmidt was asked about the proposed portable office. He explained that he planned to purchase an Air Stream and put it in the backyard. His understanding was that it would need to be out of view behind the home. He planned to use it as extra studio space. Mr. Haskell explained that the portable office issue would have to be enforced by the City's Code Enforcement Officer and was not up for consideration tonight.

(19:13:08) Board Member Pusey was bothered by the roof pitch and realized it was not part of the application. He asked where the garage would be located relative to Clear View. Mr. Schmidt commented that it was a straight in. He described the slope of the property and explained that he planned to locate the garage on the flat section of the property to the west of the drop off. He clarified that the existing retaining wall would remain in place.

It was noted that because of the right-of-way, the driveway would be limited to 12'7" as it goes by the house. It could then widen as it goes past the house. Mr. Haskell did not think the second option was viable. Something similar to the second option might be possible within code either in line at 12.7 feet or further back. That way the applicant might have enough room to turn in off of Kentucky.

Chair Dunn acknowledged that drainage was an issue but stated that it could be mitigated. Mr. Haskell remarked that drainage from Clear View along the driveway down to the garage could be mitigated, however, drainage on the other side for the other lot would be difficult. There had been times when drainage had been mitigated in such a narrow area. He did not doubt that the slab of the garage would have to be raised in order to get it even with the driveway or lowered with a reasonable grade on the driveway. He expected that the garage would be elevated somewhat and look a bit taller from the west.

(19:21:14) Board Member Pusey's understanding was that staff suggested amending the variance request to 17 feet. Mr. Haskell added that he recommended it be with the orientation coming in straight from Clear View.

Board Member Pusey asked about the extension on the garage. Mr. Schmidt explained that it was meant to provide a place for him to park his motorcycles at the end and leave room for other equipment. The garage layout proposed made the garage as narrow as possible while providing the squarest footage. He wanted to avoid making the garage look so imposing that it dominates the house. He wanted to narrow the front area and make it as interesting as possible from a visual standpoint and still get as much square footage as desirable.

It was suggested that perhaps moving the extended portion to the west side would help with the variance. Mr. Schmidt explained that the extended portion was within 24 feet. He added that if the garage was moved over, the grade dropped off. The proposed position would preserve the natural grade of the property. If it were moved any further to the west, it would require a lot more tree removal, grading, and runoff mitigation.

Chair Dunn opened the meeting to public comment.

She noted that comments were received from Mark Huber Construction on behalf of Mr. Schmidt.

(19:28:46) Mauve Walker reported that her property adjoined Mr. Schmidt's to the north. Mr. Schmidt claimed to have consulted with all of the surrounding property owners during the planning process and got their support. Ms. Walker commented that he never contacted her. The neighbors that he did contact were given the impression that the garage would be of normal size. The neighbors were not opposed to a normal sized garage but none were in favor of the oversized garage. She had lived in Holladay for over 45 years and knew the original builder and owner of the house. Contrary to what was stated earlier by Mr. Schmidt, it was never an apple orchard and was once beautifully landscaped.

Lenny Walker identified himself as a Clear View resident to the north of Mr. Schmidt. He reminded Mr. Schmidt that as the owner of fruit trees he had a responsibility to pick up the fruit, which had not been done. Mr. Walker had been doing it since Mr. Schmidt moved in and was tired of it. Chair Dunn appreciated Mr. Walker's comments but stated that the Board did not rule on such matters.

There were no further public comments.

(19:32:45) Board Member Pusey asked Mr. Haskell if the project were approved, whether there was some way to mandate that there be maintained landscaping or trees to mitigate the imposing nature of the garage. Mr. Haskell stated that if it pertained to general maintenance of the lot, it involved a separate issue for code enforcement. With regard to fencing on larger public rights-of-way like Holladay Boulevard, there was language in the ordinance mandating that. On this street, however, there was no such mandate other than the fact that street trees need to be preserved and cannot be removed unless the City is aware of them and they are replaced. He thought the ordinance should control separately and was unsure it would be wise to tie the maintenance of trees to a variance application. He suggested the Board instead consider the application separately and see if it meets the five-part test. He explained that it was not like a conditional use where conditions can be added to mitigate the impact of what was being done.

Board Member Rich asked if any of the objections pertained to the positioning of the garage. Board Member Greenberg stated that there were alternative suggestions mentioned in a couple of the letters submitted.

Board Member Blackham liked where Board Member Pusey's questioning was going because he thought part of the Board's consideration was the streetscape and how the garage will appear after it is built. In looking at the photo, if the trees, shrubs, and bushes continued along Clear View, the garage would almost not be visible from the street. He thought that was part of the objection and why streetscape was an issue. Mr. Haskell thought mitigation measures would be more appropriate on a conditional use permit application. He was not sure it would be appropriate for the Board to attach conditions to a variance. Having served on the Board for eight years, Chair Dunn recalled only one occasion where conditions were attached to a variance and it involved a very special circumstance. She was unsure a condition like the one discussed could be proposed unless it is imposed on others in the neighborhood.

(19:38:45) Chair Dunn asked what would happen if Clear View were expanded. Mr. Haskell responded that in other areas where they have put sidewalks on rights-of-way that were originally narrower and widened, they typically take the trees into account and try to work the sidewalk around as many of them as possible. If Clear View were expanded, it was possible that travel lanes could be expanded and curb, gutter, and sidewalk put in. They could also require retaining walls be built to bring them up to level or graded to bring the sidewalk down. He thought it would be dependent on individual situations and designs. He remarked that the City ordinance only has control over trees when they are in the public right-of-way. For that reason he thought trees in the public right-of-way were safer than trees that are not. If it is necessary to remove trees in the public right-of-way, they are replaced with two two-inch caliper trees for every significant tree that is removed per ordinance.

It was clarified that in the applicant's preferred plan, the applicant was to enter the garage off of Kentucky level with the existing driveway. Chair Dunn thought the drawing was unclear and that it was very difficult to visualize how Mr. Schmidt would access the garage with 12.7 feet. Mr. Haskell reviewed the drawing and what was proposed. Mr. Schmidt showed the proposed drawings on his laptop with the entry shown off of Kentucky.

Board Member Pusey stated that the nature of the property seemed to meet the conditions for a variance except for the fact that it was not essential to have such a large garage. He suggested the Board consider staff's suggestion that it be cut back to at least 28 or 30 feet.

Chair Dunn remarked that the Board was encouraged to consider the variance requested and not offer alternatives. She knew that planning staff had requested the Board consider alternatives in this case. Mr. Haskell responded that he had, particularly on the three feet where it would cause conflicts with building codes and right-of-way maintenance should the City ever decide to install a sidewalk there. For those reason, he suggested the proposed alteration.

Board Member Pusey pointed out that the Board was not asked to consider the length of the garage and were only asked to consider the variance of 20 feet, which he suggested be amended to 17 feet. Mr. Haskell agreed and asked that the length be limited. They did not want to see a

home built the full length of the front and rear setbacks and three feet from the property line. What was before the Board was a request for a 20-foot variance, which was what they had to work with tonight. Chair Dunn suggested the Board either approve or deny the 20 feet. It was her opinion that in order to make the changes that were suggested, they could shorten it but could not consider the depth since it was not included in the original variance. She believed if the variance were denied it would have to come back to the Board of Adjustment. In order to accommodate the three feet or limit the depth, it would have to be renoticed and come back to the Board exactly as it was suggested to the applicant.

(19:53:55) Mr. Haskell’s understanding was that the intent was to renote both the setback from the property line and include in the request the length requested along the variance. Chair Dunn explained that for the Board to consider depth they would need the request to consider depth. Mr. Haskell suggested the hearing be continued to prevent the applicant from having to pay an additional \$500 fee.

Chair Dunn thought the Board could limit the request to 17 feet recognizing it would not address the issue of the depth, which seemed to be an issue. Mr. Haskell stated that by virtue of the maps that accompanied the application, the applicant was asking for a 20-foot waiver for a distance of 36.5 feet.

One Board Member understood that the Board had the authority to rule for or against the 17 or 20-foot variance but questioned whether they could determine the length or depth of the variance. Mr. Haskell explained that the staff report asked that the Board set the limit at whatever length they feel is appropriate. He suggested the Board be very specific about the distance they would allow the variance to extend. His impression in speaking with Community Development Director, Paul Allred, was that that was appropriate.

Chair Dunn stated that the 17 or 20-foot variance applied only to the garage structure on the property. It was thought that the variance applied only to the garage portion rather than the entire property. Commissioner Greenberg did not see the hardship in what was proposed. Chair Dunn clarified that approval dealt not only with the size and depth of the garage, but meeting each of the five criteria.

(20:06:10) Board Member Greenberg moved to deny the variance based on the five-part test. The request did not meet the hardship requirements and without the variance there were ways for the applicant to enjoy a property right posed by others. Of the five criteria, the request did not meet items one or three. Chair Dunn seconded the motion. Vote on motion: Michael Blackham-Nay, Wayne Janssen-Nay, Dominic Welch-Aye, Carrie Greenberg-Aye, Barbara Dunn-Aye. The motion passed 3-to-2. Alternate Board Members Pusey and Rich did not participate in the vote.

Chair Dunn informed Mr. Schmidt that he would be provided with notice from the City within five to 10 days.

3. Review and Approval of Minutes – September 11, 2007.

(20:10:24) Board Member Pusey questioned use of the term “abstained” in the minutes. His understanding was that as an alternate he was a non-voter and did not abstain.

Chair Dunn referred to page 8, line 9, and asked that the minutes reflect that she asked for a motion from a Member of the Board but no motion was made. As a result, she made the motion.

(20:13:27) *Board Member Greenberg moved to approve the minutes as amended. Board Member Janssen seconded the motion. Vote on motion: Michael Blackham-Aye, Wayne Janssen-Aye, Dominic Welch-Aye, Carrie Greenberg-Aye, Barbara Dunn-Aye. The motion passed unanimously. Alternate Board Members Pusey and Rich did not participate in the vote.*

With regard to Board Member Pusey’s previous question, Mr. Haskell stated that alternate appropriate language would be inserted. He agreed to consult with Mr. Allred and legal counsel.

(20:16:33) *Board Member Greenberg moved to approve the minutes with the changes pertaining to the alternates not abstaining from the vote and clarify that they did not vote. Approval was also subject to the additional comments made by the Chair with regard to her motion. Board Member Janssen seconded the motion. Vote on motion: Michael Blackham-Aye, Wayne Janssen-Aye, Dominic Welch-Aye, Carrie Greenberg-Aye, Barbara Dunn-Aye. The motion passed unanimously. Alternate Board Members Pusey and Rich did not participate in the vote.*

4. Other Board Business.

(20:17:23) A question was raised about taking group tours. Chair Dunn recommended group tours be held prior to meetings. Mr. Haskell was not sure if seeing the property a few days before would give the Board more time to reflect on what was proposed. Typically the Planning Commission, for example makes a field trip the meeting before an item is considered. That was something the Board could also consider. Board Member Greenberg pointed out that the day before a meeting typically falls on a Monday. She thought doing it the same day as a meeting was the most reasonable. Chair Dunn agreed to discuss scheduling options with Mr. Allred. She thought it might be possible to do field trips in two groups.

Chair Dunn asked for comments on the training that was held previously. The Board found it to be helpful. Board Member Pusey recommended training sessions be held at least bi-annually whether there is an appeal or not.

5. Adjourn.

(19:45:11) *Board Member Janssen moved to adjourn. Board Member Welch seconded the motion. Vote on motion: Michael Blackham-Aye, Wayne Janssen-Aye, Dominic Welch-Aye, Carrie Greenberg-Aye, Barbara Dunn-Aye. The motion passed unanimously. Alternate Board Members Pusey and Rich did not participate in the vote.*

The Board of Adjustment Meeting adjourned at 8:23 p.m.

I hereby certify that the foregoing represents a true, accurate, and complete record of the Holladay City Board of Adjustment Meeting held Wednesday, October 24, 2007.

A handwritten signature in black ink that reads "Teri Forbes". The signature is written in a cursive style and is positioned above a horizontal line.

Teri Forbes
T Forbes Group, Inc.
Minutes Secretary

Minutes approved: 12-11-07