

**BRIGHAM CITY APPEAL AUTHORITY
JANUARY 14, 2009 – MEETING MINUTES**

<u>PRESENT:</u>	Fred Randall	Member
	Barbara Stokes	Member
	Holly Bell	Alternate
<u>ALSO PRESENT:</u>	Jeff Leishman	Associate Planner
<u>EXCUSED:</u>	George Berkley	Chairman
	Marilyn Peterson	Member
	Jaye Poelman	Member

AGENDA:

1. ELECTION OF CHAIR AND VICE CHAIR FOR 2009 CALENDAR YEAR
2. APPROVAL OF THE AGENDA
3. APPROVAL OF THE DECEMBER 10, 2008 MEETING MINUTES
4. APPLICATION #617 / SIDE YARD VARIANCE FOR PLACEMENT OF A CARPORT / 145 NORTH 300 WEST / RALPH E. HURST

Mr. Leishman explained that the Chairman and Vice Chairman were not present at the meeting. The intent is for the Chair or Vice Chair from the previous year to conduct the meeting and elect a new Chair and Vice Chair. In the absence of those individuals and as secretary of the Appeal Authority, Mr. Leishman called the Commission together and suggested that there be an interim Chair for the meeting. Mr. Leishman opened the meeting for election of an interim Chair.

MOTION: A motion was made by Holly Bell to nominate Barbara Stokes as the Interim Chair. The motion was seconded by Fred Randall and passed unanimously.

Barbara Stokes called the meeting to order at 5:33 p.m. Ms. Stokes welcomed those attending and asked that they introduce themselves. Visiting was a group of Scouts from troop 329 who were working on their citizenship and community merit badges. Ms. Stokes read through the agenda.

1. ELECTION OF CHAIR AND VICE CHAIR FOR 2009 CALENDAR YEAR
2. APPROVAL OF THE AGENDA:

MOTION: A motion was made by Holly Bell to approve the agenda. The motion was seconded by Fred Randall and passed unanimously.

3. APPROVAL OF THE DECEMBER 10, 2008 MEETING MINUTES:

MOTION: A motion was made by Fred Randall to approve the minutes of the December 10, 2008 meeting. The motion was seconded by Holly Bell and passed unanimously.

4. APPLICATION #617 / SIDE YARD VARIANCE FOR PLACEMENT OF A CARPORT / 145 NORTH 300 WEST / RALPH E. HURST:

Mr. Leishman explained that Mr. Hurst came before this body a month ago and as there were only three members of the Appeal Authority in attendance, Mr. Hurst chose to delay a month in hopes to have five members present. Mr. Hurst was invited to the table and asked if he wanted to proceed. Mr. Hurst said he wanted to proceed.

Ms. Stokes explained that the Appeal Authority is established by a group of up to five people appointed by the Mayor and approved by the City Council and can function with as few as three members present. Every motion must be approved by a quorum of at least three, or the motion will not carry. The Appeal Authority must apply certain preestablished criteria to any problems which may come before them and based upon those criterion the Appeal Authority is empowered to allow special variances or technical violations of the City zoning laws. The variances the Appeal Authority is empowered to grant run with the land, land conditions which are unique to the land and are not self-imposed. Regardless of any decision made by the Board, anyone can appeal that decision to the District Court within 30-days of the Appeal Authority's final decision. An appeal would typically be filed if it was felt that the Appeal Authority misrepresented the law or the facts, or used an arbitrary process in making its decision. There will be an opportunity for the applicant to be heard as well as anyone present in the audience wishing to make comment. The Appeal Authority action must be a ruling based on the facts presented in the hearing and those facts must stand-alone. The applicant bears the burden of proving that all of the conditions justifying a variance have been met and the facts must be presented at this hearing. As part of the approval process, the findings of fact must be included as part of any final motion.

Mr. Leishman reviewed the application and the standards under which it will be analyzed. He explained that Mr. Hurst resides at 145 North 300 West which is in an R-1-8 residential district. Within that residential district there are certain expectations for a minimum setback. Mr. Hurst has asked for a singlewide carport to be positioned on the north side of the home. The carport structure from the vertical supports to the north property line should be a minimum of 6-feet and Mr. Hurst has requested a variance for his proposal of a 1-foot 6-inch sideyard.

Mr. Leishman read Utah Code 10-9a-702 as follows:

(2) (a) The appeal authority may grant a variance only if:

(i) literal enforcement of the ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the land use ordinances;

(b) (i) In determining whether or not enforcement of the land use ordinance would cause unreasonable hardship under Subsection (2)(a), the appeal authority may not find an unreasonable hardship unless the alleged hardship:

(A) is located on or associated with the property for which the variance is sought; and

(B) comes from circumstances peculiar to the property, not from conditions that are general to the neighborhood.

(2) (i) In determining whether or not enforcement of the land use ordinance would cause unreasonable hardship under subsection 2a, the Appeal Authority may not find unreasonable

hardship if the hardship is self imposed or economic.

(ii) there are special circumstances attached to the property that do not generally apply to other properties in the same zone;

(c) In determining whether or not there are special circumstances attached to the property under Subsection (2)(a), the appeal authority may find that special circumstances exist only if the special circumstances:

(i) relate to the hardship complained of; and

(ii) deprive the property of privileges granted to other properties in the same zone.

(iii) granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zone;

(iv) the variance will not substantially affect the general plan and will not be contrary to the public interest; and

(v) the spirit of the land use ordinance is observed and substantial justice done.

Mr. Leishman explained Chapter 29.01.020 Purpose is the standard under which this application will be reviewed. He read, *This Title is designed and enacted for the purpose of promoting the health, safety, morals, convenience, order, prosperity and welfare of the present and future inhabitants of Brigham City, Utah, including among other things, the lessening of congestion in the streets, or roads, securing safety from fire and other dangers, providing adequate light and air, classification of land uses and distribution of land development and utilization, protection of the tax base, securing economy in governmental expenditures, fostering the agricultural and other industries, and the protection of urban development. The Land Use Ordinance is intended to carry out the goals and policies of the General Plan.* All of the above listed standards need to be satisfied to a reasonable degree.

Mr. Leishman explained that in the previous meeting Mr. Hurst gave a brief analysis and on December 22, 2008 he brought in a more detailed assessment of his position and thoughts on how the five criteria are satisfied. The expectation is the applicant shall bear the burden of proving that all of the conditions justifying the variance have been met.

Mr. Hurst stated that if they did not have the variance they would not be able to build the garage or carport and would not be able to shelter the vehicles from sun, excess heat, and cold. Mr. Hurst went through the criteria.

i. The literal enforcement of the ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purposes of the land use ordinances. Mr. Hurst explained that it does cause a hardship for them because they have a problem with the cars and as they are getting older it is difficult to not have that available. When they purchased the property, the property was terraced which has been difficult to do and they have had that for about 33 or 34 years. The residence is sitting on property where there is a 5-foot drop from the top part of the yard to the bottom. When they bought the property the terrace was already in place so it was a hardship from day one. The residential property to the rear of them is sitting on the same location as the lower part of their yard. Mr. Hurst said it would be absolutely unreasonable to build up his yard in the back and have it drop down to the neighbors yard; he would have to put up a 6 or 7-foot retaining wall to retain the 5-feet of extra soil. Construction of a garage in the back would require the removal of the existing terrace and accompanying concrete stairway, the removal of an irrigation ditch, trees would have to be felled, and an immense driveway would have to be constructed to connect the upper half with the lower half of the property. All the expense would impose a massive hardship for them and if the expense was not an issue he still would not construct a garage in the lower back portion of

the yard because of the undesirable characteristics of such construction which would not be practical and would ruin the landscape and the property.

Mr. Randall clarified that the rule is 6-feet from the edge of the property boundary to which Mr. Hurst is asking for a variance for a singlewide carport. Mr. Hurst said he saw something from the City Inspector, which said the aluminum carport would not be practical because of certain things and recommended one constructed out of wood, which he said did not present a problem for him. Ms. Stokes commented that the information supplied said the property line is required to have a rated 1-hour fire separation on the north sidewall, which would be virtually impossible to achieve with an aluminum carport. She continued to read the Inspector's report that said the aluminum carport did not meet the criteria of light frame construction and would require engineering which Ms. Stokes commented could be considerably more expensive. Mr. Hurst replied that did not bother him and he is interested in the wooden structure with the 1-hour firewall. Mr. Leishman said Mr. Hurst could have the structure attached to the home or detached. If a self-supporting wood frame construction is not attached to the home, a building permit would not be needed but it would still need to comply with the zoning. It would have more stability if it were attached to the home.

Mr. Randal asked if the structure was set back further, if the 6-foot requirement would not hold. Mr. Leishman replied that was correct. If the structure is back 60-feet from the front property line it can be within 1-foot of the sideyard. Mr. Hurst said building the soil up or even digging it down would be problematic in that the level differences with the adjoining properties is such that there would need to be a retaining wall and he did not want to entertain it. Mr. Leishman commented that the intent of the ordinance for side yards is mainly aesthetic.

ii. There are special circumstances attached to the property that do not generally apply to properties in the same zone. Mr. Hurst explained the special circumstances are the terraced yard. He said he did not know of another house on that block with a terraced yard. He said there would be less than 6-feet clearance between construction and the neighboring property if the shelter is allowed to be constructed. The characteristics unique to the property create a hardship by not allowing him permission to construct a shelter for the vehicles and does not allow them to enjoy the full extent of homeownership in that area.

Mr. Leishman commented that ~~the~~ he thought Mr. Hurst was saying that the special circumstance to his property is the 5-foot terraced drop in the back, which is generally something that is not found in the R-1-8 zone.

iii. Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zone. Mr. Hurst said their situation is unique in that they do not have a carport. He said he did believe it to be essential to them as property owners to be able to have those same rights as other people do.

Mr. Leishman commented that the question would be if Mr. Hurst was being deprived of a property right, in this case is the ability to cover his vehicle, which is commonly had in the R-1-8 district.

iv. The variance will not substantially affect the General Plan and will not be contrary to public interest. Mr. Hurst said he talked to his neighbor and that neighbor is on board with the project and felt there would be no problem; he also had a consent form reflecting their position.

Ms. Bell asked if the neighbor realized there may be a problem with snow falling off the roof of

the structure on to their property and if there would be a problem with that. Mr. Hurst replied that he talked to his neighbor about that and he did not think there would be a problem. Ms. Stokes commented on the possibility of the neighboring property owner moving and the next one possibly having an issue with it. Mr. Hurst said he had thought about an aluminum roof so the snow will slide off. Mr. Leishman commented that he might want to consider having a flat roof so the snow will stay there and he would only have to deal with melting water.

v. The spirit of the land use ordinance is observed and substantial justice done. Mr. Hurst stated that he thought it was observed because it helped all of the other properties that do not have this problem and where he has the problem, which is a hardship to him, he thought the spirit of the land use ordinance was still preserved.

Mr. Hurst recapped the five criteria by saying there are special circumstances attached to the property that do not generally apply to other properties. The property that he owns has the upper and lower terraced backyard. They have a double driveway with no space between the driveways and two neighboring properties. He said he knew that other people did not have that in the neighborhood because they use his driveway as a place to come and practice turning around for the driver education. Granting the variance is essential to the enjoyment of the substantial property right possessed by other people. Other people on the block are not prohibited from having a carport if they choose. They have lived at this property for close to 35-years and have not had the convenience of having a carport. Without the variance it would be a big expense to them. It is very inconvenient to have to scrape off their vehicles, which damages the vehicles. He stated that he felt they covered the rationale.

Ms. Stokes asked Mr. Hurst if he would consider putting in the full foundation that would go down to or below the frost line depth and a 1-hour firewall. Mr. Leishman explained that the structure supports would be either on a footing foundation system or on a spot footing, which are building code issues that may or may not be relevant at this point. Mr. Hurst said he would have it engineered. Ms. Stokes wanted to make sure Mr. Hurst had as much information as possible to make an informed decision.

Mr. Randall asked for clarification on the self-imposed and economic hardship. Mr. Leishman explained that by Mr. Hurst having his car out in the weather, he has to scrape his windshield and his car will not last as long; which is an economic hardship and is irrelevant. He also explained that if Mr. Hurst had created the terraces himself, that would be self-imposed which is not the case. Mr. Leishman also explained that Mr. Hurst stated if he built the garage in the backyard it would cost him a lot of money, which would be economic and is not relevant and cannot be considered as a reason for the variance. What can be considered are the existing conditions on the property. Mr. Hurst commented that the fact his is built up and the other properties are built down; it would not be a tenable situation to have to deal with. To convolute a driveway back there would be as much a physical hardship as it would be on the side of the house.

Ms. Stokes commented by having the structure at the proposed location, they would get the protection but said it becomes a quality of life and safety issue due to the hazards of scraping snow off cars and the potential to fall. She said those things are part of what they are trying to achieve regardless of putting the structure in the back. There is another option she could see and still achieve quality of life, and address health and safety issues.

Mr. Randall commented that he may be a little biased because he looked up extending his carport to make it wider, found the 6-foot rule and decided that he could not do it; which he said

he was having a little difficulty with. Ms. Stokes reminded Mr. Randall that this is on a case-by-case basis and each resident has the same opportunity to ask for a variance. Mr. Leishman stated that the Attorney had asked him to coach the members, not lead them, in stating the motion in a way that is defensible for anyone that may question the decision.

MOTION: A motion was made by Holly Bell, Fred Randall, and Barbara Stokes to approve the request for the variance for application #617 Sideyard Variance for Placement of Carport at 145 North 300 West by Ralph E. Hurst based on or with the findings of fact:

i. (Holly Bell) The literal enforcement of this ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the land use ordinance. We feel that this is based upon the fact, because of the lay of the land, the terraced back yard, when he bought this property over 34-years ago the yard was already terraced; that the house was already set where it is and the general purpose of the land use is for the enjoyment of people in the residential area to be able to live there and enjoy the normal everyday things of life, as well as safety and use of the property. We feel that the construction of the garage/carport would allow him to overcome this hardship because the other people in the area are able to have carports or garages in their area; because of the lay of the land and where his house sits on his property he does not have that same right.

ii. (Fred Randall) There are special circumstances attached to the property that do not generally apply to the other properties in the same zone. The special circumstance is the terraced backyard, which is a finding of fact, where the backyard is approximately 5-feet lower than the front yard.

iii. (Barbara Stokes) Granting the variance is essential to the enjoyment of a substantial property right possessed by other properties in the same zone. This by finding of fact, the neighbors of the Hursts do in fact have carports and garages even just to the north so they would be able to enjoy the same privileges as his neighbors.

iv. (Holly Bell) The variance will not substantially effect the general plan and will not be contrary to the public interests. The Hursts have contacted both their north and south neighbors and there is a signed consent form reflecting their position showing that there will be no problems with this variance and the way that the attachment is on to the property. The General Plan in actuality will not be affected at all and the public interest will be met in that the Hursts will be able to enjoy their property as it has been set out. He does have agreements and understandings with the neighbors.

v. (Fred Randall) The spirit of the land use ordinance is observed and substantial justice done. With the granting of the variance justice would be done to Mr. Hurst and the spirit of the land use ordinance, Mr. Hurst said he did not know if that applied or not. Ms. Bell added that in determining that the

enforcement of the land use ordinance would have caused unreasonable hardship under the subsection 2-a and we do not find unreasonable hardship because it is located with the associated property for which this variance is sought and it comes from circumstances that are peculiar just to this property, not from the conditions that are in the general neighborhood. The motion was seconded.

Discussion: Mr. Hurst commented that he did not ask the neighbors on the south as he did not think it germane to the situation. Ms. Stokes commented that the verbage including the house on the south needed to be corrected as they had not been contacted. Mr. Leishman explained that in number iv, the variance will not substantially affect the General Plan and will not be contrary to the public interest. He said they need to be careful that this is not being made a popularity contest. They have gone to the neighbor to the north who said it was fine but the neighbors could change and it should be broader than that as the next neighbor may not like it. Public interest needs to be discussed, rather than the neighbors support to the north.

MOTION: Ms. Bell amended item number iv to add the variance will not substantially affect the General Plan, will not be contrary to the public interest in realization that no matter who lives to the north that there will not be a demeaning of their property based upon the variance and the construction that would take place because of this. The amendment was seconded and passed unanimously.

The motion to approve application #617 as corrected passed unanimously.

Ms. Bell asked Mr. Leishman if, with the motion, there needed to be anything in it that stated, because of discussion and because of the documentation presented at this meeting, it will not be an aluminum carport. Mr. Hurst stated it would not be aluminum. Mr. Leishman said it would be very difficult to build an aluminum carport. Structurally it could be a metal carport but it would need to have a 1-hour firewall. Mr. Leishman said he did not know if that was relevant if they are getting what the building code needs. Ms. Bell clarified that they were saying the variance is granted but now all the building codes need to be followed in order to follow through with this.

MOTION: A motion was made by Holly Bell to adjourn. The motion was seconded by Fred Randall and passed unanimously.

The meeting adjourned at 6:33 p.m.

This certifies that the minutes of January 14, 2009 are a true and correct copy as approved by the Appeal Authority on March 11, 2009.

Signed: _____
Jeffery R Leishman - Secretary