

CITY OF DELTA, UTAH  
BOARD OF ADJUSTMENT MEETING  
**DECEMBER 1, 2011**

PRESENT

Gayle Bunker	Mayor / Chairman
Robert Banks	Council / Board Member
Bruce Curtis	Council / Board Member
John Niles	Council / Board Member
Tom Stephenson	Council / Board Member
Betty Jo Western	Council / Board Member

ABSENT

Gregory Jay Schafer	City Recorder
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ALSO PRESENT

Alan Riding	Public Works Director
Ken Clark	Assistant Public Works Director
Karen Johnson	Deputy City Recorder
Todd Anderson	City Attorney
Stephen Styler	Attorney
Bob & Patty Viveiros	City Residents
Tom Herbert	City Resident
Casey Anderson	City Resident
Matt Williams	City Resident
Steven Pratt	City Resident

Mayor Bunker called the Board of Adjustment to Order at 6:00 p.m. He stated that notice of the time, place and agenda for the meeting had been posted in the City Building and on the Utah Public Meeting Notice website and had been provided to the Millard County Chronicle/Progress and to each member of the Board of Adjustment at least two days prior to the meeting.

Mayor Bunker stated that the purpose of the meeting was to discuss a request for variance of the eight foot side yard setback requirement and construction on a utility easement on property located at approximately 334 Cottonwood Drive. Mayor Bunker noted that the facts, as he understood them, are that construction of a carport was begun on the property without first obtaining a building permit. The building inspector noticed the construction and knew that a permit had not been issued. The building inspector told the person doing construction that a building permit had not been issued. The building inspector then contacted Ken Clark, Assistant Public Works Director and Mr. Clark notified Mr. Viveiros that the construction was in violation and they must cease construction. Reportedly, Mr. Viveiros told Mr. Clark that he would come into the City Building to take care of the problem

but that did not happen.

Mr. Stephen Styler advised Council Members that he had been asked to help Mr. and Mrs. Viveiros on this matter. Mr. Styler noted that, at the time the Viveiroses were advised to stop construction of the carport, only the roof remained to be completed and the shingles were already on the roof. In order to prevent ruining the roof decking, the shingles were applied.

Mayor Bunker noted that the carport has been constructed without an eight foot set back from the property line and is constructed on a utility easement, which is a storm drain. Mayor Bunker indicated that Mr. and Mrs. Viveiros had been informed of the five criteria which needed to be satisfied in order to have a variance granted.

Mr. Styler stated that the lot owned by Mr. and Mrs. Viveiros is an odd shaped lot, on a cul-de-sac. No other property on the street is like this property. Mr. Styler showed a photo of the property, including the carport which has been constructed to house vehicles. Mr. Styler indicated that the property abuts two public roads; i.e., Cottonwood Drive and White Sage Avenue, and, due to the unique shape of the home and lot, the driveway is enormous in comparison with other properties in the same zone. When Viveiroses purchased the property, there was an existing awning on the property and they wanted to rebuild the structure in order to protect their vehicles and allow exiting the property onto White Sage Avenue rather than backing into Cottonwood Drive.

The Viveiroses hired a contractor to build the carport for them but the contractor did not seek a building permit, nor did he review zoning ordinances. They were of the opinion that upgrading an existing structure did not require a permit. A second contractor completed the project without seeking a permit or reviewing zoning ordinances.

Mr. Styler outlined the requirements for granting a variance and the justification for granting a variance to Mr. and Mrs. Viveiros as follows:

1. 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 ordinance:

Requiring Viveiroses to remove the carport will cause unreasonable hardship that is unnecessary to carry out the general purpose because Viveiroses cannot protect thier property and use their property in a way to prevent potentially serious injuries to children.

2. There are special circumstances attached to the property that do not generally apply to other properties in the same zone.

Due to the unique shape of their home and lot, Viveirose are required to back out of

their driveway nearly ninety feet, as opposed to neighbors who have driveways that average 24-40 feet. Children pass through the property constantly and congregate in front of the property. Children use the property as a walkway as the route connects the east and west portions of White Sage Subdivision. White Sage Subdivision covenants, conditions and restrictions prohibit work vehicles being parked on public streets and require that they be substantially concealed from neighboring lots.

3. Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zone.

Other property owners have the ability to park vehicles in garages or covered carports and enter and exit property safely. Viveiros desire the same property right to protect their property without fear of endangering local children while exiting their property.

4. The variance will not substantially affect the general plan and will not be contrary to the public interest.

Granting a variance will not affect the general plan. The Viveiros property is likely the only property with such unique characteristics as to justify allowing a variance for this type of carport. The public interest is promoted by granting a variance, thus decreasing the possibility of injury

5. The spirit of the land use ordinance is observed and substantial justice is done.

The spirit of the land use ordinance is to promote the health, safety and welfare of the citizens of Delta City. Allowing a variance will reinforce these goals by allowing and promoting use of property that will prevent future accidents and will allow the Viveiros to be in compliance with White Sage Subdivision covenants, conditions and restrictions.

Mr. Styler reiterated that the request of Mr. and Mrs. Viveiros is relief from special conditions where literal enforcement is not necessary to accomplish the purposes of the zoning ordinance.

Council Member Betty Jo Western asked if everyone in White Sage Subdivision is required to back out of their driveway. Mr. Styler answered that everyone in White Sage Subdivision is required to back out of their driveway. Council Member Tom Stephenson noted that the driveway was ninety feet long before any carport was constructed. Mayor Bunker stated that Viveiros can still drive from the front of their property to the rear without having a carport on the driveway. Mayor Bunker advised Mr. Styler that a driveway is allowed over an easement but a structure is not allowed on an easement.

Mr. Viveiros admitted that he had made a mistake by presuming that his contractor had taken care

of the permitting and zoning details but noted that he felt the carport would prevent problems in backing out of their driveway.

Council Betty Jo Western asked whether, if Mr. Viveiros had found out about the set back and zoning requirements prior to constructing the car port, would we now be in this situation? In addition, Council Member Western asked if Mr. Viveiros had given any thought to finding out how and where the carport could or should be constructed and what permits were required. Mr. Viveiros admitted that he had trusted the contractor to take care of those details.

Council Member Tom Stephenson noted that this will affect the general plan because, if a variance is granted in this situation, other people will expect the same.

City Attorney Todd Anderson stated that Mr. Styler had provided interesting information but it did not change his recommendation that the variance be denied. The structure being built does not change the ninety foot length of the drive way and the covenants, conditions and restrictions in White Sage Subdivision apply to every home in the subdivision.

Council Member Betty Jo Western noted that granting this variance would create a burden on future enforcement and other residents in the same situation who want to do the same thing the Viveiroses have done.

City Attorney Todd Anderson advised Council Members that they are not required to make a decision at this time. A written decision can be issued later.

Mayor Bunker stated that the request for variance will be discussed later and the applicants will be advised of the decision.

Council Member Robert Banks MOVED to adjourn the Board of Adjustment Meeting. The motion was SECONDED by Council Member Betty Jo Western. Mayor Bunker asked if there were any comments or questions regarding the motion. There being none, he called for a vote. The motion passed with Council Members Robert Banks, Bruce Curtis, John Niles, Tom Stephenson and Betty Jo Western voting in favor.

Mayor Bunker declared the meeting adjourned at 6:43 p.m.

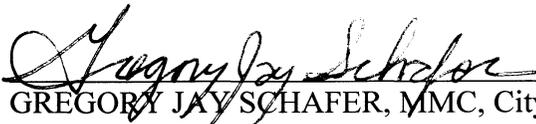
Follow completion of other meetings scheduled on December 1, 2011, the Council deliberated the Viveiroses application for a variance. Following additional discussion of the evidence presented earlier in the evening, the Board of Adjustment rendered their decision. It was determined that the applicants failed to meet the burden required for granting a variance pursuant to the provisions of §10-9a-702, Utah Code Annotated (1953), as amended.

Council Member Betty Jo Western MOVED to deny the request for variance submitted by Bob and Patty Viveiros on their property located at 334 Cottonwood Drive due to failure to show that all

conditions required for granting a variance were satisfied. The motion was SECONDED by Council Member Robert Banks. Mayor Bunker asked if there were any comments or questions regarding the motion. There being none, he called for a vote. The motion passed with Council Members Robert Banks, Bruce Curtis, John Niles, Tom Stephenson and Betty Jo Western voting in favor and no one voting against.

City Attorney Todd Anderson will draft a notice advising the applicants of the decision of the Board of Adjustment and instruct them to remove the car port by April 1, 2012.

  
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GAYLE BUNKER, Mayor

  
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GREGORY JAY SCHAFFER, MMC, City Recorder

MINUTES APPROVED: RCCM 12-15-11