

FARMINGTON CITY
BOARD OF ADJUSTMENTS MEETING
February 9, 2017

REGULAR SESSION

***Present:** Chair DJ Williams, Board of Adjustment Members Wendy Rasmussen and Kent Hinckley, Community Development Director David Petersen, Associate City Planner Eric Anderson, and Recording Secretary Lara Johnson. Board of Adjustment Members Jason Williams and Tyler Judkins were excused.*

Item #1. Elect Chair

Motion for Chair:

Wendy Rasmussen made a motion to vote DJ Williams as Chair of Board of Adjustments. **Kent Hinckley** seconded the motion, which was unanimously approved.

Item #2. Troy Wasserman (Public Hearing) – Applicant is requesting approval for a side yard setback variance for property located at 734 North 2000 West in an AE (Agriculture Estates) zone. (BOA-1-17).

DJ Williams said variances are granted based on the following criteria, as found in Section 11-5-080:

- Literal enforcement of this title would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of this title;
- There are special circumstances attached to the property that do not generally apply to other properties in the same zone;
- Granting a variance is essential to the enjoyment of a substantial property right possessed by other property in the same zone;
- The variance will not substantially affect the general plan and will not be contrary to the public interest; and
- The spirit of this title is observed and substantial justice done.

DJ Williams said the Board of Adjustment is the appeal authority body, and the appeal is granted if all conditions are met. He said there are additional criteria that variances must also meet, which is also found in Section 11-5-080. He also reviewed that criterion.

Troy Wasserman, 734 N. 2000 W., said he is available for questions.

Wendy Rasmussen asked if there are CC&Rs for his neighborhood. **Troy Wasserman** said there is not currently an HOA, which is one of the reasons why he purchased their home. He said there was an HOA when the home was being built, but it has since gone away. **Wendy Rasmussen** asked staff if the CC&Rs are still recorded. **Eric Anderson** said CC&Rs are a private matter, so he did not know if there were active CC&Rs or not. He said if CC&Rs say something is not allowed, it does not affect the City Ordinance.

DJ Williams asked the applicant what approval process he has already gone through with the Planning Commission. **Troy Wasserman** said his plans for the detached garage were approved, but he is now in the process of getting the permit approved.

Kent Hinckley clarified that the Planning Commission approved the building, but what is being considered tonight is the 2 ½' setback variance. He said the question is if the 2 ½' setback affects the functionality of the building and causes an unreasonable hardship for the applicant. **Troy Wasserman** said he planned for a 5' setback, but that he can re-engineer his detached building further south to accommodate the setbacks to 7 ½'. **Kent Hinckley** said the standard is 10' setbacks, which is what the applicant would be required unless he obtains the variance.

Eric Anderson said the applicant initially came in proposing his detached garage 5' from the property line. The Planning Commission approved the detached garage to be in the side yard, but there is a 10' setback requirement for detached buildings in the side yard, which is why the applicant needed to come in for a variance. The applicant could receive up to a 2 ½' (or 25%) variance approval from staff, but before that happens, staff likes to obtain approval from impacted neighbors. **David Petersen** said staff has the authority to grant no more than 25% variance if the variance is uncontested. He said in order for staff to determine whether or not a variance is routine and uncontested, staff wants to see what the neighbors think about the variance. He said staff asked that the applicant obtain signatures from neighbors that directly abut his property. **David Petersen** said the applicant's neighbor directly behind his property objected to it. He said at that point, the variance is no longer routine. The applicant then has the option to go to the Board to seek the variance. **Kent Hinckley** asked if there is anything in the ordinance that states all the neighbors have to agree. He asked for clarification that obtaining neighbors' signatures is a way for staff to obtain input, and not that the applicant has to obtain a certain percentage of neighbors' approval before the variance is granted. **David Petersen** said staff uses the signatures as a test to determine if the variance is routine and uncontested. If it is not, then the applicant must seek the variance through the Board. **DJ Williams** clarified that if the variance meets the criteria, then it is ok to grant its approval. He stated that if there are any property owners that want to contest the variance, they should direct their disagreement to the elements of the variance.

DJ Williams said criteria #3 states that the variance is essential to the property right possessed by the other properties in the same zone. **Eric Anderson** said it was previously considered that the detached building might be against the CC&Rs; however, it was concluded that all detached buildings would be against CC&Rs. Detached buildings also include sheds, which most homes in the neighborhood have built. **DJ Williams** asked if it would be a substantial property right since all other homes have detached buildings. **David Petersen** said the difference between the detached buildings in the neighborhood and the applicant's detached building is the larger footprint. **Kent Hinckley** reminded the Board that CC&R requirements are between property owners.

DJ Williams said the unique character of the property might be creating the hardship for the applicant because it is difficult for the applicant to meet the setback requirements.

Wendy Rasmussen asked the applicant if he could move his detached building to a different location within the side yard. **Troy Wasserman** explained there is a gate in his fence that lines with how the detached building is currently proposed. He said have the 7 ½' setback helps substantially in pulling his motorhome straight back into the garage. **Wendy Rasmussen** asked if the applicant could shift the detached garage 2 ½' in the back. **Troy Wasserman** said there is a boulder wall he built to secure the back fence since his backyard is sloped. He built the rock wall to secure the fence and wrap the wall with landscaping rock. He said he cannot move the detached building the other direction because it then becomes too tight against the fence. **DJ Williams** said one of the criteria for the variance is

unreasonable hardship; however, it does not apply if the hardship is self-imposed. He said he is not commenting at this point if the wall or fence is self-imposed; however, it may be considered as such.

David Petersen suggested that the applicant move his rock wall. **Troy Wasserman** said the rock wall would be very difficult to move and he feels it is as close to the fence as it can be.

DJ Williams opened the public hearing at 6:25 p.m.

DJ Williams entered the emails received into the public record. **Kent Hinckley** also clarified the email received by Mr. Porter states the law prohibits the building of the detached garage; however, that is not correct. **Eric Anderson** said yes, the law does not prohibit the building of the detached garage.

Shawn Peterson asked what building materials will be used in the detached garage's construction. **DJ Williams** said that is not something the Board is considering. He said the detached building has been thoroughly vetted by the Planning Commission. **Eric Anderson** said the Planning Commission does not dictate building materials. **Shawn Peterson** said he is concerned that the owner will not consider building materials, and that the detached building will not match his house. He is concerned the applicant will build a metal shed, and that it will be an eyesore for the neighborhood. He said he feels the only reason why the applicant is seeking the variance is because he doesn't want to turn when backing his motorhome up. He said the variance is making it more convenient for him, but is inconveniencing his neighbors by not moving the detached building closer to his home.

Dane Willis, 702 N. 2000 W., asked if there is a setback on how far back the shed needs to be. **DJ Williams** said there may be; however, what is before the Board is a variance for the side setback. He said other setbacks are not before the Board to consider, and that the Planning Commission would have already considered all of those setback concerns. **Dane Willis** said he thought there were two different setbacks for a detached building in the side yard. He said he thought the distance for the side setback had to be 10'. **Eric Anderson** said that is correct, the side setback requirement is 10', which is why the applicant is seeking a variance. **Dane Willis** said he does not think the applicant has made a case for unreasonable hardship. He has the ability to fit the structure in the side yard and still meet the requirements. He said others in the neighborhood have structures, and they did not need a variance. He said he does not feel anything about the shape of the lot creates a hardship as others have successfully put their structures up. **Dane Willis** asked why the first time the application came up, it was only about the side yard. He said it seemed like the first public hearing the applicant wasn't present, like he wasn't ready to describe the structure, and then there was a separate hearing about the nature of the structure, but that wasn't made known. **Eric Anderson** said the applicant came before the Planning Commission to obtain permission to build the detached building in the side yard. The first time the proposal came before the Commission, the item was tabled because the applicant had an emergency and could not attend the meeting. When the item came before the Commission again, the Planning Commission granted the applicant permission to build the detached building in the side yard.

Shawn Brown, 725 N. 2050 W., said what the applicant is proposing is a very large building. He asked how this was approved by the Planning Commission. He said it does not fit within the neighborhood, and he is very opposed to it. He said the applicant does not have an unreasonable hardship, and he feels it will be an absolute eyesore in the neighborhood. He also said there is an HOA that prohibits certain things. **Kent Hinckley** told **Shawn Brown** that the HOA is protecting his neighborhood, and how he chooses to enforce it, is up to him. **Kent Hinckley** also said that a second structure is allowed by City Ordinance. The City Ordinance determines the size, setback, etc. He told Mr. Brown to lobby the City Council if he does not like what is approved within the City Ordinance. **DJ Williams** said he appreciates residents' comments; however, the Ordinance is what the City is required

to follow. He said the height and size of the detached building would have been discussed during the Planning Commission public hearing, and that is a different public hearing that has already taken place. It was also during that Public Commission meeting that the applicant was granted permission to build his detached garage. **DJ Williams** said he feels participation in city government is very important, and he feels if there is something residents are opposed to, they should lobby their City Council regarding it. He said what is before the Board tonight is discussing a 2 ½' setback variance. He said he understands the frustrations being brought up; however, the only thing that this meeting is addressing is the setback variance. He said there may be civil enforcement remedies that residents may wish to pursue; however, that is not an issue for the Board. **DJ Williams** said what he did hear was opposition to the variance because it does not meet the hardship criteria.

Troy Wasserman said he can make the setbacks work if necessary. He said it will not be an eyesore, and that it will match his house. He feels it will not be as bad as the neighbors think it will be. He said the roof won't be a very high pitch like a house. **DJ Williams** said the character and size are not before the Board at this time. **Kent Hinckley** also added that there are restrictions to how high a detached building can be relative to the height of the house. **Eric Anderson** said a detached building must be subordinate to the height of the single-family home in many residential zones; however, there are different height restrictions based on the zone. He reviewed a few of the different height restrictions based on the zone.

DJ Williams closed the public hearing at 6:41 p.m.

Wendy Rasmussen said she does not see a hardship for the applicant as he does have options to move the detached building to meet the setback requirements. **Kent Hinckley** said he does not see this item meeting any of the criteria for the variance. He said it may take additional expenditures of money to meet the criteria, but he does not feel the applicant meets the hardship requirement. **DJ Williams** said that he understands it's only 2 ½'; however, it is the Board's responsibility to follow the criteria to grant a variance. He said he feels the hardship the applicant is facing is self-imposed because of the location where he built his fence. He does not feel this item meets the criteria for a variance. **Kent Hinckley** said often times the enforcement of CC&Rs are not enforced, until something community members do not like comes up, which then ends up causing hard feelings. **Eric Anderson** also pointed out that not enforcing CC&Rs can weaken the original intent of the CC&Rs, which may make enforcing them arbitrary and capricious if the CC&Rs are suddenly applied to one and not another.

Motion:

Kent Hinckley made a motion that the Board of Adjustments deny because none of the 5 criterion for granting a variance has been demonstrated. **Wendy Rasmussen** seconded the motion, which was unanimously approved.

ADJOURNMENT

Motion:

At 6:46 p.m., **Wendy Rasmussen** made a motion to adjourn the meeting. **Kent Hinckley** seconded the motion, which was unanimously approved.

DJ Williams
Chair, Farmington City Board of Adjustments