

1 **Providence Board of Adjustment Meeting**

2 Providence City Office Building

3 Providence City Council Chambers

4 15 South Main, Providence, UT

5 March 23, 2006

6 Present: Clint Thompson, Chair

7 Commission: Elden Dattage, Susan Lemon, Nelson Palmer, Jane Wisner

8 City Administrator: Skarlet Bankhead

9 Secretary: Rebecca Billings

10 Excused: None

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12 Prayer by Elden Dattage

13 Pledge of Allegiance.

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15
16 ITEM 1 Larry Tanaka is appealing the decision to approve the preliminary plat for
17 the Cove Subdivision located generally at Canyon Road and Grandview
18 Drive.

- 19
20 • Clint Thompson read the following information (decided by Staff) concerning the appeal
21 from Larry Tanaka:

22
23 **Bruce Jorgensen, attorney for Providence City, has advised Staff to take the following**
24 **position concerning the appeal from Larry Tanaka:**

25
26 **Because Providence City ordinances do not specify a deadline for an appeal, the Utah State**
27 **Code applies. Larry Tanaka's appeal was not filed within 10 days of the City Council**
28 **action; therefore, the Board of Adjustment (i.e. the City's Appeal Authority) cannot act on**
29 **the appeal.**

- 30
31 • S Bankhead quoted from the book, *A Utah Citizen's Guide to Land Use Regulation: How*
32 *it works and how to work it* by Craig Call. The action to approve the Cove was taken Feb
33 14, 2006. The appeal was received by the City Office on March 6.
- 34 • Larry Tanaka said he was advised by a City Council member and a former City Council
35 member that he had 30 days to appeal a City Council decision. He said that Providence
36 City Staff said they would tell him if it was different, and he never got a phone call.
- 37 • Rand Anderson, local attorney and resident on Circle Place, told the Board of Adjustment
38 (BOA) that Mr. Jorgensen is not their attorney. He can't be the BOA's attorney because
39 he advises the City. He recommended that the BOA hire an attorney before they make a
40 ruling or decision on the appeal. He said that statutes of limitations can be waived. If
41 Staff did tell him 30 days, they could have a case to waive it. He said that the BOA
42 doesn't have to table it if they decide that the Statutes of Limitation don't overpower.
43 Unfortunately, the BOA is not represented by legal counsel.
- 44 • Clint Thompson was disturbed by the Staff's decision, but feels it would be better to wait
45 for legal counsel in case there's a different tone to it. He would like to look in to waiving
46 the Statutes of Limitations or any other avenues. He felt it was somewhat of a
47 disappointment, but it was last-minute.

- 1 • MOTION by Elden Dattage to make a stay on the action for Larry Tanaka’s appeal of
- 2 The Cove Subdivision preliminary plat approval until the Board of Adjustment can get
- 3 more counsel. SECOND by Susan Lemon. All in favor.
- 4 • S Bankhead explained that the Council acted under administrative action, not legislative,
- 5 in approving the preliminary plat. Legislative would have involved modifying an
- 6 ordinance. Administrative decisions act under the guidelines of an ordinance.
- 7 • Cheryl Eames told C Thompson that many of the audience members were there out of
- 8 love for him.

9

10 ITEM 2 Dan Rosenberg is requesting a variance to property located generally at 60

11 East 100 South to allow for an existing garage to remain in the setback.

- 12 • The BOA visited Dan Rosenberg’s property with Dan Rosenberg and Becky Billings
- 13 (secretary) and discussed the following:
- 14 • The garage has been in existence for about 40-60 years. Dan Rosenberg and his wife
- 15 moved to Providence three years ago and fixed up the lot and home. He explained that
- 16 both lots 1 and 2 were one lot, and he is just about done with the process of splitting
- 17 them. He was not able to sell his lot without splitting it.
- 18 • B Billings explained to the BOA that, after the mylar was presented to the City, Staff
- 19 noticed that the garage was too close to the adjacent property. The garage is only three
- 20 feet from the property line, and Providence City ordinance requires five feet.
- 21 • D Rosenberg presented a signed agreement from the adjacent property owner saying the
- 22 garage was fine.
- 23 • N Palmer said that the biggest problem with setback lines is water and snow issues.
- 24 • The BOA felt they could make a decision based on the information presented.
- 25 • The Board reconvened publicly in the Council chambers.
- 26 • C Thompson and the BOA scanned the staff report.
- 27 • B Billings explained that Dan Rosenberg’s surveyor told her that the garage was three +
- 28 feet from the property line.
- 29 • D Rosenberg said inches are hard to know. Even surveyors argue over inches amongst
- 30 themselves.
- 31 • C Thompson said that the Staff’s recommendation is to deny the request because there is
- 32 no way, as per ordinance, an administrative body can allow an encroachment on the
- 33 setback—that is part of the Board of Adjustment’s job. The five requirements by State
- 34 Code could be contested:
- 35 • i. If the City were to require that the building be torn down, it would be an
- 36 unreasonable hardship.
- 37 • ii. The buildings on the east property line were probably built back in the ’60s—
- 38 not good set of ordinances at that time.
- 39 • C Thompson addressed the other requirements for a variance and decided that he could
- 40 not see anything wrong with where the garage is sitting.
- 41 • Staff explained that there is another minor subdivision we are requiring tear down
- 42 structures to meet setback requirements.
- 43 • S Bankhead explained that Staff noticed that the buildings in the setback lines of the
- 44 subdivision mentioned above were shown on the plat and were noticed much earlier. Staff
- 45 recommended that those buildings be relocated or taken from the property. The developer
- 46 was aware the entire time.
- 47

- 1 • S Bankhead explained that Dan Rosenberg did show the building on the final plat, but it
- 2 wasn't until it came for signature that Staff caught that the garage was too close to the
- 3 property line. Rosenberg had acted in good faith; Staff is the one who failed to notice the
- 4 problem; but Staff must bring it to the attention of the BOA.
- 5 • C Thompson wondered if the developer of the other subdivision that has to tear down
- 6 structures had the opportunity to ask for a variance.
- 7 • S Bankhead explained that the person has said they will tear down the structures.
- 8 • G Stauffer said the developer would not have taken down the structures if he didn't have
- 9 to—if he was aware of the option of a variance.
- 10 • S Bankhead said that Staff has to make the comments to remove the structures and then
- 11 let the people go through the process; it is the way Providence City ordinances are written
- 12 currently.
- 13 • C Thompson felt that Staff should probably give this developer the option of going to the
- 14 BOA.
- 15 • E Dattage said that the issue has a lot to do with whether it's a new line or an existing
- 16 line.
- 17 • S Lemon wondered if the granted variance would be null and void if the lot is sold and
- 18 the new owner tears the building down and wanted to rebuild.
- 19 • C Thompson said the new owner would have to come in for a building permit and the
- 20 City would check the lot lines and make sure the new building met the required setback
- 21 [variance no longer valid].
- 22 • S Lemon wondered if the Olsens were aware that they would be held to the ten feet
- 23 between structures if they chose to build near their property line.
- 24 • D Rosenberg said that there could be future codes that are different than today. The
- 25 Olsens certainly have no plans to build tomorrow.
- 26 • S Lemon and J Wisner are in favor of leaving the structure.
- 27 • MOTION by Susan Lemon to allow the structure to stay and give Mr. Rosenberg the
- 28 opportunity to move ahead with his plans to sell the lot. SECOND by Jane Wisner. All in
- 29 favor.
- 30
- 31 • The BOA decided to schedule the next meeting for April 19. There is another appeal
- 32 waiting to be heard.
- 33 • J Wisner may not be in attendance as she will have had surgery.
- 34 • C Thompson would like to call the meeting a “workshop” so the BOA can discuss issues
- 35 with an attorney.
- 36 • S Bankhead explained that whoever the BOA hires to be their attorney will be hired by
- 37 the City.
- 38 • C Thompson said that, as a group, outside the BOA meeting, the Board could make a
- 39 recommendation as to some attorney that wouldn't have a conflict with Bruce Jorgenson. He
- 40 felt it was important to hire someone totally uninterested in what's going on. He said that he
- 41 is fine with the attorney coming to the April 19 meeting and helping him chair.
- 42 • S Lemon wondered if the developers of The Cove had the right to go ahead with their
- 43 plans.
- 44 • S Bankhead said the City has stopped the action to wait for the result of the appeal, and
- 45 there is no time limit on that.
- 46 • C Thompson said he's disappointed in Staff, the City, and Legislative body that there is
- 47 not a better set of ordinances that identify and clarify the timeframe for these applications.

1 He's sure there could be an appeal to the statutes of limitations on the 10 days for Mr.
2 Tanaka's application.

3 • S Bankhead explained that it would be helpful. It's been frustrating to meet the needs of
4 the citizenry and protect the City's position.

5 • C Thompson read a statement obtained from An Educational Handbook for Group
6 Discussion in 1997. It stated the following:

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8 The process of zoning administration requires enlightened and sound judgment because
9 of its importance to the conduct of local government. The intent of the legislative body
10 and planning commission to guarantee orderly and meaningful growth can be inhibited
11 if the authority of the board of adjustment is either misunderstood, misused or
12 underestimated. In order to preserve and enhance the proper function of local
13 government as it relates to the regulation and determination of land conversion, it is
14 necessary for each office of local government to understand its own role, as well as its
15 relationship to the other branches and agencies. When these relationships as described
16 by state statute and local ordinances are violated by the parties involved, mistrust,
17 confusion and poor government administration will result. This can only destroy the
18 intent of government to serve its people, as it may become government by whim rather
19 than government by law.
20

21 • C Thompson said the City is in that situation, and we need a set of ordinances that does
22 not allow for those whims.

23 • S Bankhead explained that the City Council would soon be reviewing an informational
24 guideline put out by the Utah League of Cities and Towns discussing Senate Bill 260. It's
25 been frustrating researching these things and trying to get consistent answers. She said she is
26 trying get something put together.

27 • C Thompson said it is a lot of work, but the most important thing to do is get a good set
28 of ordinances. Until the City does that, there will be attorneys around. He would like Staff to
29 find the Board an attorney and then there will be a work session with the attorney.

30 • Richard Eames would like the Board of Adjustment as a whole to speak with an
31 attorney—not the Staff.

32 • Marilyn Bell would like the Board of Adjustment to approve the attorney—have Staff
33 give the Board names to choose from, but the Board make the ultimate decision.

34 • C Thompson said that these appeals are serious issues and are not going to stop. He feels
35 there needs to be a hold until the Planning Commission and City Council know what's going
36 to be done. He has spoken with the mayor that it is critical the City follow the ordinances and
37 forget about the conditions.
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39 Meeting adjourned.
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