

1 **Providence City**  
2 **Appeal Authority Meeting Minutes**  
3 **January 21, 2021 4:00 PM**

4 Providence City Office Building  
5 164 N. Gateway Drive, Providence UT 84332  
6 Members of the Appeal Authority may be attending this meeting electronically.  
7 This meeting was live streamed on Providence City's YouTube Channel

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9 Member Attendance: Fred Berthrong (non-voting alternate), Mary Hubbard, Randy Simmons, Ed Banda (called in  
10 around 4:38 PM)

11 Other attendance: Chad Woolley, attorney for Providence City; Craig Smith, attorney for the Appeal Authority;  
12 Deven Pettit, property owner for Item No. 1; Bryan Bostrom, contractor for Item No. 1; Tyler and Jessica Healey,  
13 property owners for Item No. 2.

14  
15 **Item No. 1:** The Providence City Appeal Authority will consider a request by Deven Pettit, who is seeking  
16 a variance to PCC 10-8-3 be granted to allow for a 3' egress window well encroachment into the side  
17 setback at the home located at 511 N. 400 E., Providence UT 84332.

- 18 • B Bostrom spoke about when the house was built. He said that they had anticipated having to deal with  
19 the window well issue, but then the neighbors to the north built their property up several feet making the  
20 issue more difficult. He spoke about the detention area on the back of the property and how it may cause  
21 flooding issues in the large area he will have to dig out in order to meet the ordinance. Ironically, in order  
22 to meet the ordinance they will have to violate the spirit of the ordinance by digging out a large pit which  
23 will create a break in the yard.
- 24 • F Berthrong asked about the connection between the size of the window wells and the ability to drain the  
25 water. B Bostrom explained that he will have to dig a large landscaped hole, one that is not considered a  
26 window well, in order to meet the code.
- 27 • R Simmons asked how deep the neighbor's footings for their retaining wall are. B Bostrom said that they  
28 are about 2 ft higher than they will be required to dig. The problem can be fixed with engineering, but the  
29 neighbors are not happy about it.
- 30 • M Hubbard asked why the basement was put below grade when the house was being built. B Bostrom  
31 said that it was all that they could do to fit the house on the lot. It was less of a problem in the beginning  
32 before the neighbors built up their property. D Pettit said that the property used to slope down into the  
33 neighbors' property before the neighbors built their property up. B Bostrom said that with the variance  
34 granted so that their window wells could extend into the setback, the side yard would be flat, better  
35 looking, and more accessible.
- 36 • B Bostrom clarified that they always knew they would have to dig down some to get the windows above  
37 grade [even before the neighbors raised their lot.] They also might have considered lowering the entire  
38 back yard if it were not for the detention area. They were not allowed to change its volume.
- 39 • C Woolley presented about variances and the conditions that need to be met. Getting a variance is a very  
40 high standard to meet, and all the conditions required in state code must be met.
- 41 • C Woolley argued that the applicants' hardship was self-imposed because they built the house right on  
42 the setback line. The circumstance is also not peculiar to the property in question. The hardship is also  
43 economic because money can fix it. The circumstance does not deprive them of privileges granted to  
44 other properties. It does not deprive the owner of a substantial property right. C Woolley argued that the  
45 variance is against the public interest because it is in the public interest for people to follow the law. He  
46 concluded that because some of the conditions of state law are not met, this is not a situation that  
47 qualifies for a variance.

- 48 • B Bostrom felt that there are many opportunities to be subjective within the rules outlined by state code.
- 49 He felt that there is a substantial property right to access the front yard from the back yard that is being
- 50 taken away. They had a right to build up to the setback line. They could not have shifted this house the
- 51 other way and still have made it fit. The fact that the neighbor built up their lot was not “self-imposed.”
- 52 He felt that the detention area is a circumstance peculiar to this property. He felt that having a basement
- 53 that floods constitutes depriving him of a privilege granted to other properties.
- 54 • C Woolley explained that his argument is that it is not a substantial property right to put a window well in
- 55 the setback beyond what is allowed.
- 56 • B Bostrom felt that this is not contrary to the public interest. The neighbors are against the digging that
- 57 would have to take place. It would also cause an exposed wall. The variance would do nothing but make it
- 58 all look better and make his neighbors happier. There would be green space between the house and the
- 59 property line instead of a pit.
- 60 • C Woolley explained that from his position, it is contrary to the public interest to allow people to do things
- 61 against the setbacks and to avoid the law. B Bostrom said that any variance is an exception to the code, so
- 62 this should not apply.
- 63 • C Woolley argued that this issue is self-imposed because the applicant could have used a different house
- 64 design, and because they knew going into this that they would have an issue with the setback. B Bostrom
- 65 argued that the neighbors building up their property was not self-imposed. They knew they would have to
- 66 deal with the issue, but it wasn't as big of a deal before the neighbors built up their property.
- 67 • M Hubbard asked why the window wells were put in if the plan was never to have window wells. B
- 68 Bostrom said that the framers did not want to work in a pit, so they put in the window wells and
- 69 backfilled them quickly. They knew it would have to come off.
- 70 • M Hubbard asked if any effort was made to talk to the city when the neighbor raised up his yard. B
- 71 Bostrom said that there was not.
- 72 • R Snow asked if there was a precedent of a previous similar case. R Simmons said that there was.
- 73 Someone wanted to encroach into the setback with their window well in order to put bedrooms in an
- 74 existing home, and the Appeal Authority denied their request.
- 75 • M Hubbard suggested that the rooms in question could be changed to something other than bedrooms. B
- 76 Bostrom said that the load-bearing walls of the basement make this difficult.
- 77 • C Woolley said that he could back off on his earlier assertion that this was self-imposed. They couldn't
- 78 foresee what the neighbor would do. However, he stands by his other assertions.

79 **Item No. 2:** The Providence City Appeal Authority will consider a request by Tyler Healey, who is seeking  
 80 a variance to PCC 10-8-1 be granted to allow a 5' setback from the property line to the rear of the home  
 81 located at 710 S. 150 E., Providence UT 84332.

- 82 • Tyler Healy explained the background of the request. When they purchased the lot, they thought that the
- 83 area in the rear of their house would be considered a rear yard. However, because part of it is against the
- 84 street side, April Fredrickson from the city told them it would be consider a side yard – street. They feel
- 85 that the unusual curvature of the cul-de-sac that cuts into their lot is a special circumstance.
- 86 • Addressing whether the hardship is self-imposed, T Healy said that they read through the city code in
- 87 advance and thought that because it was their rear yard, they would be in the clear. Then later on they
- 88 were told that this would be considered a side yard street.
- 89 • M Hubbard asked why the shed cannot go in the south part of the side yard. T Healy explained that he
- 90 and the neighbors had agreed to leave that corner open for the kids to play.
- 91 • R Simmons asked how far to the west they would have to move the shed to meet the requirements. T
- 92 Healey explained that to the west they have poured a concrete pad for a sports court and extra parking.

- 93 • C Woolley presented the city’s position. He felt that the argument that the applicant thought this area  
94 would be their back yard is a possible argument. Therefore, this may not be self-imposed. He also felt that  
95 the property is peculiar enough that they might even be able to meet the criteria of having circumstances  
96 peculiar to the property. C Woolley felt that it may be an economic issue, but overall, he might be able to  
97 say that it is an unreasonable hardship. C Woolley felt that they do not meet the criteria that says that  
98 they must be denied a privilege that is granted to other properties. They can still have a shed, but they  
99 may not be able to put it where they want to put it. C Woolley felt that the ability to put a shed where one  
100 wants is not a substantial property right. C Woolley argued that this is contrary to the public interest  
101 because it is violating a setback.
- 102 • T Healy argued that the shape of the property in the back yard creates unique difficulties.
- 103 • R Simmons asked about the zoning rules. April Fredrickson, city staff, said that if it were considered a rear  
104 yard, this could work, but it does not work because it is considered a side yard [street].
- 105 • M Hubbard asked how a back yard is defined.
- 106 • Skarlet Bankhead, city staff, said that setbacks are measured from the property lines: side property line,  
107 front property line, and rear property line.
- 108 • R Simmons asked for more clarification on how the side and rear are defined.
- 109 • S Bankhead explained that the code that requires a 20 ft setback references whichever side of the house  
110 is against a street, whether that be the front, rear or side of the house. C Woolley agreed.
- 111 • T Healy said that they would meet the setback if the street were a standard street, but instead it  
112 becomes a bowl-shape that cuts into the lot.
- 113 • R Snow explained that one of the reasons that we have a larger setback on the street side is for traffic  
114 safety. We don’t want to have things that obscure the view. T Healy said that in their case, they are not  
115 obstructing any traffic view.
- 116 • T Healy asked about the difference in the code for sheds under 200 square feet or sheds that are on a  
117 moveable foundation. S Bankhead said that even for Detached Accessory Building Small, the code  
118 requires a 20 ft setback on the street side.
- 119 • B Bostrom asked that the committee view his video that he made so that they can see the issue while  
120 they are in deliberations.

121 **Motion to enter closed deliberations: — M Hubbard, second — E Banda**

122 **Vote:**

123 **Yea: E Banda, M Hubbard, R Simmons**

124 **Nay:**

125 **Abstained:**

126 **Excused:**

127 Closed session entered at approximately 5:15 PM

128

129 **Motion to close deliberations: — M Hubbard, second — F Berthrong**

130 **Vote:**

131 **Yea: E Banda, M Hubbard, R Simmons**

132 **Nay:**

133 **Abstained:**

134 **Excused:**

135 Deliberations closed at approximately 5:55 PM

136

137 **Motion to close the meeting: — F Berthrong, second — M Hubbard**

138 **Vote:**

139 **Yea:** *E Banda, M Hubbard, R Simmons*  
140 **Nay:**  
141 **Abstained:**  
142 **Excused:**  
143 Meeting closed at approximately 5:55 PM  
144 Minutes prepared by Jesse Bardsley  
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146  
147  
148 \_\_\_\_\_  
149 Randy Simmons, Chair

DRAFT