

## BOARD OF ADJUSTMENT

American Fork City

March 13, 2019 • 6:30 PM

American Fork Public Works • 275 East 200 North • American Fork UT 84003

Board Members Present: Michael Privett, Scott Olson, Karen Tiberius and Ron Morrill

Absent:

City Staff Present: Dan Rojas, Chief Building Official  
 Lisa Halversen, Public Works Administrative Assistant  
 Cherylyn Egner, Legal Counsel

Others present: David and Jeanette Albers, applicants

BOARD OF ADJUSTMENT MEETING1. Call to Order

This meeting of the Board of Adjustment of American Fork City, having been properly noticed, was called to order at 6:34 p.m.

2. Approval of minutes from October 12, 2016.

**MOTION: Scott Olson moved to approve the minutes from October 12, 2016. Seconded by Ron Morrill.**

Yes - Michael Privett  
 Ron Morrill  
 Scott Olson

Abstain - Karen Tiberius

Motion passes.

## SCHEDULED ITEMS

3. #19-001 Request for a special exception to the setback requirements for an existing non-conforming building for the David and Jeanette Albers property located at 479 East 200 North**Applicant Presentation:**

The applicants David and Jeanette Albers requested a special exception to the setback ordinance 17.4.205.E.1.d. The applicants are requesting an exception in order to add on to their home at 479 East 200 North along the east side of the property. Although the property has enough depth to meet the current ordinance of the required 30 ft setback, the applicants want their home setback at 25 ft to match the existing structure. The home is currently considered an existing non-conforming building with a 25 ft rear setback. They are asking for a 4ft exception to make the existing home line up with the addition. The rear setback will be at 25.6 ft instead of 30 ft.

Mr. Olson asked Mr. Rojas if he has any issues with the setbacks on the garage side. Mr. Rojas replied that the proposal falls within the range of required side setbacks. The issue is the rear setbacks. He said the

property owners have room to make the addition within that rear range also, but they don't want to.

Mr. Olson started the discussion by saying that since it's an old home with a non-conforming setback, he doesn't see any harm in allowing the rest of the home to be at the same rear line. Ms. Egner says that from a legal standpoint, a variance has to meet definition of hardship in order to be approved.

Ms. Tiberius referred to question 3- does it meet a hardship requirement- she said her personal view doesn't necessarily override the legal restrictions. She understands why they don't want to put the addition in the front, she has many years of building experience, but she can't think of a hardship reason that is not economic, aesthetic or self-imposed.

Mr. Albers indicated that the cost of doing the addition while allowing for 30 ft setbacks would be prohibitive, it would require a new roof and many other costs. He doesn't think that 4 ft would make a difference to the city.

Mr. Olson said that he thinks it would be an unreasonable hardship to deny this application. They would merely be making the rest of the home match up to the existing non-conforming status. Mike Privett also agreed that he thinks he could find that there is an unreasonable hardship. Ms. Egner instructed commissioners to make sure the minutes and the record reflect what the hardship is. The variance may not legally be approved for economic, self-imposed, or aesthetic reasons.

Ms. Tiberius felt like this is an aesthetic situation and that words, laws and zoning code have meaning. She said that the board's instructions are that they must meet certain criteria, they can't make decisions just to make people happy. Mr. Olson repeated that the existing home is non-conforming and he feels like that is a good reason for granting a variance.

Mr. Albers asked what the purpose of setbacks are, he's building in Lehi and the older properties have a 16 ft setback requirement. Why do the American Fork setbacks need to be 30 ft? Even with the approved variance, he would have a 25 ft setback. The commissioners gave setback reasons of density, water retention, buffering, and conformance with a city's master plan.

Mr. Privett responded that he feels it is the board's duty to grant variances if they feel it's proper. Ms. Tiberius said that a variance could only be granted if the reason was found to be hardship that is not aesthetic, economic or self-imposed.

Mr. Albers stated that he doesn't want to move, they want to stay in the neighborhood. The neighbors are ok with the addition, one neighbor wants to do something similar. He doesn't feel there are any good reasons to require the 30 ft setbacks. How would those extra 4 ft benefit the city in any way?

Ms. Tiberius suggested that maybe this isn't the appropriate body, maybe the city council needs to look at reducing the setback requirements. Ms. Egner asked that a decision be made by using the criteria given. Mr. Rojas said that code requirements have changed over the years, they are not set in stone.

#### **Board Discussion:**

In order to grant a variance, the Board must find that all conditions for approval are met as stipulated by Utah State law. The board reviewed the following conditions:

1. Would granting the variance change the intended use of the property? The consensus was no

- 101 2. Are there special circumstances attached to the property that do not generally apply to other  
 102 properties in the same district? Yes, the existing non-conforming home is the special  
 103 circumstance  
 104
- 105 3. Do circumstances in condition (2) cause an unreasonable hardship on the applicant, denying use  
 106 of the property, that others in the same district enjoy or that he/she has a right to expect? This  
 107 question was the one where there were the most differences and mixed opinions. Ms. Tiberius  
 108 couldn't get to yes because of the economic, aesthetic and self-imposed rule. She asked for  
 109 objective standards, not subjective reasoning. Others felt that the hardship rule would be  
 110 justifiable because of the existing non-conforming status.  
 111
- 112 4. Is the variance essential to a substantial property right? No  
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- 114 5. Will granting the variance substantially affect the goal of the General Plan or be contrary to the  
 115 public interest? No  
 116
- 117 6. Is the 'spirit' of the zoning ordinance observed and is the Board being fair to all involved? Yes  
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119 After discussion, the board was not comfortable with approving this special exception. There was further  
 120 discussion about the legal ramifications of tabling this application. It was suggested that applicants argue  
 121 their case in front of the city council and ask for a change in setback requirements for existing non-  
 122 conforming properties.  
 123

124 **MOTION: Ms. Tiberius moved to table this request for a special exception to the setback**  
 125 **requirements for the Albers property located at 479 East 200 North. Seconded by Mr. Olson.**  
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127 Yes - Michael Privett  
 128 Ron Morrill  
 129 Scott Olson  
 130 Karen Tiberius

131 Motion passes.  
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133 Other Business  
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135 None  
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139 ADJOURNMENT  
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141 5. Adjourn.  
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143 A motion was made by Ms. Tiberius to adjourn. Mr. Olson seconded the motion. It was unanimously  
 144 approved. The meeting was adjourned at 7:35p.m.  
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 150 Lisa Halversen  
 Public Works Administrative Assistant