



# Memorandum

**Planning Division  
Community & Economic Development Department**

To: Planning Commission  
From: Casey Stewart, Senior Planner  
Date: April 17, 2014  
Re: Capitol Hills Plat B Subdivision Amendment of Lot 216 (37 East Dartmoor Way)  
Encl: Exhibit A: Minutes from past Board of Adjustment meetings

At the planning commission meeting on March 26, 2014, the commission, lacking a method to break a 3-3 tie vote, tabled the "Capitol Hills Plat B Subdivision Amendment of Lot 216". The request is to expand the side yard building area shown on the plat for a proposed addition to the residence. In order to participate in a decision for the petition, any commissioner who did not attend the first meeting must review the record (video and/or minutes) to become informed.

Video link below (start at 1:28:30 in the video timeline; approximately 36 minutes for this case)

[mms://slcstream.slcgov.com/Videos/PCM\\_2014\\_0326\\_PCM.wmv](mms://slcstream.slcgov.com/Videos/PCM_2014_0326_PCM.wmv)

A copy of the draft minutes is included for review with the general meeting materials in your "Dropbox".

At the meeting the applicant's attorney claimed that a variance had been granted for the adjoining property, which was confirmed by the owner of the adjoining property who was also in attendance. Staff had researched prior building area changes for all three Capitol Hills Subdivision plats and found none; however, staff was unaware of any prior variances.

Planning staff, after the meeting, searched through Board of Adjustment records (Exhibit A) and found history related to three setback scenarios, one for each of the three Capitol Hills Subdivisions. Staff found none after 1996. Here are the findings:

1. 1992 - At 1046 N Chartwell Court (Cap Hills Plat A), a variance for side-yard reduction was submitted in 1992 but was withdrawn because the plans were revised to comply. A variance process was necessary at that time because the base zoning district and the plat note both had front and side setback requirements of 20 feet.
2. 1995 - Board of Adjustment case for Mark Jensen at 938 N Dartmoor Way, which is adjacent to the subject lot, and the case mentioned by the applicant's attorney at the March 26<sup>th</sup> meeting. Staff's reading indicates the home was constructed in the wrong location, at which time the variance request was made. The variance was for reduced front and side yard setback. A variance process was necessary at that time because the base zoning district and the plat note both had front and side setback requirements of 20 feet; variance approval is required to change the zoning setback, and a plat amendment to change the plat note for side yards and building area.

The Board initially denied the variance request. The Jensens (owners of 938 N Dartmoor Way) went to court and were able to get a court order, based on a settlement with the City, reversing the denial based on the economic hardship of removing the building and starting over. The Board subsequently abided by the order, allowing the home to remain in the improper location.

3. 1996 - At 15 E Churchill Drive (Cap Hills Plat C), the original plat allowed an 18-foot front setback for certain lots (including 15 E Churchill). The FR-3 zone required a 20-foot front setback, and the proper process for a change in the base zone standards was/is a variance. As a technicality, given the plat's allowance of 18 feet, the Board properly approved the building location on that lot to match the plat condition.

**Staff's recommendation does not change with any of these prior cases because each one is irrelevant due to unique circumstances.**

- The Chartwell Court case was withdrawn and is therefore not relevant.
- The case on the adjacent lot (938 N Dartmoor Way) was a mistake by the builder/surveyor and is therefore not relevant. The court's reasoning for a reversal was due to the economic hardship anticipated by moving the building to comply – not because the court felt there was a hardship related to the topography of the lot, or lack of objection from neighbors. The minutes even call out the requirement to amend the plat, but the owners never followed through with it.
- The Churchill Drive case was a simple technicality and was properly reviewed by the Board of Adjustment. This case is not relevant because the original plat allowed for the 18-foot setback due to steep slopes at the back of certain lots. This case did not involve a side yard setback.

Staff again researched past subdivision plats and was not able to find any plat amendments specifically modifying building area setbacks for other lots in any of the Capitol Hills Plats.

# **EXHIBIT A**

Board of Adjustment minutes for three separate cases

## **1992 Variance Case**

March 30, 1992

~~and Community Councils support the reception center use in this structure. It was further determined that the proposed use is conducive to the preservation of the historical and/or architectural characteristics of the building and it will preserve or increase the desirability of the neighborhood as a residential area.~~

~~THEREFORE, Mr. Wagner moved to grant the applicant's request for a conditional use for a reception center in an historic building. The motion was seconded by Mr. Chambless; all voted "Aye".~~

**Case # 1667-B at 1046 North Chartwell Court by Greg and JoRita Nielsen for variances to construct a single-family dwelling without the required 20-foot side yard and to change the grade more than the permitted 2 feet; and for a special exception on height in an R-1/F-1 zone.**

Present were Greg Nielsen, petitioner; and Scott Turville, agent; Kevin L. Mortensen.

Mr. Nelson explained that he has been working very closely with the architect and the owners on this project. He said he was informed by the architect this afternoon that the applicants are withdrawing their request for a variance on the 20-foot side yard requirement. They intend to relocate the proposed structure 5 feet to the west. This will negate the need for one of the variances.

Mr. Nelson said there is still a need for the special exception on height and a variance for a grade change more than the permitted 2 feet in an R-1/F-1 overlay. By shifting the home to the west, the elevation of the structure will be increased four feet more than the original design; however, it reduces the amount of needed grade change by several feet.

Greg Nielsen, petitioner, explained that the relocation of the home on the lot will raise it out of the 100-year flood plain. He said the pitch has been changed from a 10/12 pitch to a 7/12 pitch to minimize the height.

Ms. Pleshe commended the applicant for his efforts in meeting the F-1 overlay and for working with Staff in meeting those requirements. She called for comments of neighbors or other interested parties. There were none.

Mr. Chambless moved to go into Executive Session. The motion was seconded by Mr. Hafey; all voted "Aye".

Ms. Pleshe explained that the Board shall be entitled to deny the special exception if: (a) the architectural plans submitted are designed for structures on level, or nearly level ground, and the design is transposed to hillside lots requiring support foundations such that the structure exceeds the limits of this overlay zone; (b) the additional height can be reduced by modifying either the design of the structure by stepping or terracing, or the placement of the structure on the lot; (c) the additional height will impair the views from adjacent lots and the impairment can be avoided by modification, or (d) the proposal is not in keeping with the neighborhood.

SPECIAL EXCEPTION

From the evidence and testimony presented the Board finds that the structure has been specifically designed for the topographic conditions existing on this particular lot, and the design is better suited to the site than can be achieved by strict compliance.

THEREFORE, Mr. Fenn moved to grant the special exception on the height in the R-1/F-1 overlay zone, per the plans presented. The motion was seconded by Mr. Chambless; all voted "Aye".

GRADE CHANGE

From the evidence and testimony presented the Board finds that the grade change is justified because of the steep slope of the lot. The Board also finds that the design has been modified to eliminate side yard problems. If the provisions of Section 21.80.020 of the Zoning Ordinance are literally enforced the applicant will suffer an unnecessary hardship.

THEREFORE, Mr. Fenn moved to grant the a variance to change the grade more than the permitted 2 feet. The motion was seconded by Mr. Chambless; all voted "Aye" with the exception of Mr. Hafey who voted "Nay". With a vote of 3 to 1 the motion carried.

~~Case # 1668-B at 140 North 900 West Street by Albertsons for a variance to exceed the height limit for a retail store in a C-1 zone.~~

~~Present was Kevin Mortensen, Real Estate Manager for the petitioner; and Everett Joyce of the Planning Staff.~~

~~Merrill Nelson said the applicant intends to demolish the existing Albertsons Store and construct what is referred to as a 24-hour "Super Store". He explained that the C-1 zoning limits the height to 25 feet plus a 5-foot parapet. He said the applicant is asking for a parapet facade for their international logo effect. Mr. Nelson said the store will maintain a 230 foot setback from 900 West.~~

~~Kevin Mortensen, agent, said the square footage of the existing store is just under 20,000 square feet. The proposed structure will be less than 39,000 square feet.~~

~~In response to questioning about the adjacent Payless store, Mr. Mortensen explained that it is under separate ownership. He said the owners have agreed to get an estimate of the cost to tie their store into the elevation of the new Albertson store. He said that Albertsons has a long-term ground lease on this site.~~

~~There was discussion concerning the entry off of 800 West Street. Mr. Nelson said the applicant is working with the Traffic Engineer on those issues. The applicant will be held to a 30-foot maximum curbcut.~~

~~Everett Joyce of the Planning Staff read into the record a letter from Planner Janice Jardine which outlines the findings of the Planning Division:~~

**1995 Variance Case  
(938 N Dartmoor Way; adjacent to applicant)**

Board of Adjustment

January 3, 1995

The regular meeting of the Board of Adjustment on Zoning for Salt Lake City, Utah, was held on Tuesday, January 3, 1995, at 4:00 p.m. at the City and County Building, 451 South State Street, in Room 126. Members present were Tim Chambless (Chairperson), Jerry Fenn, Michael Jones, Nancy Taufer, Shirley Watkins, and Marion Willey. I. J. Wagner was excused and Mark Hafey's appointment expired on December 31, 1994. Merrill Nelson, Administrator for the Board of Adjustment, was also present.

The meeting was called to order by Chairperson Chambless who explained that the properties have been visited by the Members of the Board. All motions of the Board are made effective immediately unless otherwise specified. Those present were advised that the testimony given during the meeting is recorded. The public is welcome to obtain a copy of the tape(s) at the expense of the individual-requesting it. Tapes are retained by the Board for a period of 90 days. Mr. Chambless further explained that all decisions of the Board of Adjustment may be appealed within 30 days to the Third Judicial District Court.

Mr. Fenn made a motion to go into executive session. Mr. Jones seconded the motion, all voted aye, the motion passed.

**Case #1999-B by the Presiding Bishop of the LDS Church at 1005 South 200 East for a variance to allow a parking lot for a church building without the required setback in an R-2 Zone. Requesting a second time extension.**

Mr. Nelson explained that the Board granted the variance on January 10, 1994. On May 21, 1994, the applicant requested an extension of time and the Zoning Administrator granted it. The Zoning Administrator is empowered to grant one time extension and it expires January 10, 1995. On December 15, 1994, the applicant requested another extension and so the case is before the Board for that request. Mr. Nelson noted that the applicant must re-apply for a variance after two extensions have been granted.

Chairperson Chambless read the letter stating the reason for the request. It is due to a change in the design to cut cost from the project budget and the design and documentation phase of the project will take longer than expected in order to meet this need.

Ms. Taufer made a motion to grant the extension. The extension shall expire July 10, 1995, and this will be the final extension. The applicant must re-apply for the variance if more time is needed. Ms. Watkins seconded the motion, all voted aye, the motion passed.

Mr. Jones made a motion to go into public session. Ms. Watkins seconded the motion, all voted aye, the motion passed.

**Case #2144-B by Anne Marie Jensen at 938 North Dartmoor Way for a variance to allow a single family dwelling without the required front yard and side yard setbacks in an R-1/F-1 Zone.**



Anne Marie and Mark Jensen (Owners), Charles Karat (Surveyor), Duane Marsala (Builder), and Ralph Petterson (Architect) were present.

Mr. Nelson explained that the subject property has buildable limits deeded on the plat as well as a zoning requirement for setbacks. A building permit was properly issued for the property to construct a single family dwelling that met all required setbacks. A Certificate of Survey is required during the footing and foundation construction stage whenever the building is maximizing the buildable limits on a lot. The survey company who originally positioned the dwelling on the lot also did the follow-up survey and certified that the dwelling was properly placed. Mr. Nelson further explained that the property is located on the northeast corner of Dartmoor Way and Dartmoor Place. Dartmoor Place ends as an oval cul-de-sac and there are two monuments in the center of this cul-de-sac. He said that most cul-de-sacs are round and have only one monument. The survey was made from the wrong monument. The error was discovered when the builder came to the City to modify the proposed exterior stairway on the east side of the dwelling. The dwelling is completely framed and the southwest corner of it projects approximately six feet into the front yard setback fronting Dartmoor Place and the east corner projects three feet into the side yard setback. Mr. Nelson explained that the subject plat must be amended in order to allow construction outside of the buildable areas if a variance is granted. He further explained that this case may set a precedent because it is initiated by an error and he asked the Board to specifically state the property-related hardship if the variance is granted.

Mr. Karat confirmed that the survey was made from the wrong monument in the cul-de-sac and the error was not discovered until late November 1994. He said that the lot, the dwelling, and the cul-de-sac are unusually shaped. The subject dwelling maintains 40 feet from the dwelling adjacent to the east which creates an ample view corridor. Mr. Karat also explained that the west setback on Dartmoor Way and the north setback are more than required. He presented pictures showing the position of the dwelling in conjunction with the surrounding homes. All property owners fronting the cul-de-sac and the owner adjacent to the north do not have a problem with the location of the dwelling on the lot and have given their approval for the variance. Mr. Karat noted that the property owner to the east did not approve of the proposed stairway projecting three feet into the east side yard so the stairway was modified and he approved the modifications. Mr. Karat said that he and his company take full responsibility for the error, but he does not feel the error is so severe that construction should have been halted. Mr. Karat believes that the unusual shape of the lot and the cul-de-sac are property-related hardships.

Mr. Karat and the Board discussed the events that took place. Mr. Karat confirmed that curb and gutter were in place when the lots in the subdivision were staked out. Mr. Karat explained that his field assistants performed the survey and he signed for their work, but did not catch the error at that time. The field assistants double checked their own work without checking from a different point.

Mr. Karat further explained that approximately 24 square feet will be eliminated in the south bedroom and 16 square feet will be eliminated in the master bedroom if the corners that encroach into the setbacks are cut back. The owners do not find this an acceptable design option.

Mrs. Jensen said that cutting back the corners is not acceptable because it would create triangular bedrooms too small for a bed. The south bedroom measures 12 feet by 12 feet and

cutting six feet into it would eliminate half the habitable space. She further believes that cutting the corners will ruin the architectural design of the exterior of the home. She noted that there are four bedrooms and the dwelling totals approximately 3,000 square feet not including space above the attached garage. Design and other options such as circular walls and moving the entire house into the buildable area were discussed. Mr. Petterson said that the Jensens and his firm have not been able to resolve the problem through re-designing.

Mr. Jensen acknowledged that a precedent will be set, but it would not be an unfavorable one. He explained that they have been working with all of the neighbors. The neighbors are aware of the error and they approve of the variance as a means of correcting it.

George Paulson, 32 East Dartmoor Place, believes a variance is the best solution under the circumstances. He also believes the exterior aesthetics of the dwelling and livable space will be ruined if the corners are cut off. He urged the Board to consider the hardship that the property owners have endured and suggested granting the variance.

Mr. Marsala added that the City was notified immediately when the error was discovered and no one tried to cover it up.

Mr. Karat concluded that they have been working with the City and the neighbors to resolve the problem. He too acknowledged that granting this variance may set a precedent, but the problem was not created by a flagrant violation. The neighbors are aware of the problem and they support resolving the problem with a variance. He said that setback lines, not property lines, have been encroached upon; other dwellings in this area encroach into required setbacks. The view corridors from above and below have been protected. He believes cutting back the corners of the dwelling eliminates precious living space and the Jensens along with the contractor and sub-contractors are suffering a hardship. His firm is also willing to follow through with the plat amendment to the City's satisfaction if the variance is granted.

From the evidence and testimony presented, some members find that the steepness of the lot and the irregularly shaped cul-de-sac with two monuments are property-related hardships. They also find that only one-third of the lot is within the buildable area. Other members find that other lots in this subdivision have approximately the same amount of buildable area within each lot and are more steep. They also find that the buildable area of the subject lot is rectangular and not irregularly shaped. The Board acknowledged the financial hardship and the emotional issues. They also acknowledged that granting a variance would be a workable solution and there are no neighbors opposing it. However, this sets an unfavorable precedent and there are design and other options available that have not been thoroughly explored.

THEREFORE, Mr. Fenn made a motion to grant the variance to allow the single family dwelling without the required front or side yard setbacks per plans presented. Ms. Taufer seconded the motion. Two members voted *aye*, two members voted *no*, and Chairperson Chambless broke the tie by voting *no*. The motion to grant the variance was defeated by a two-to-three vote, thus the variance is denied.

~~Case #2145-B by Sam and Saranya McCall at 877 West 500 North for a special exception to allow a six-foot fence in the front yard of a side street in an R-2 Zone.~~

~~Sam and Saranya McCall, Petitioners, were present.~~

further states that the Petitioners offer no reasons why the decision is not in the best interest of the City and that established procedures are available to the Petitioners if they desire to obtain a court review of the Board's decision or attempt to prevent the decision from taking effect.

The Board re-evaluated the evidence and testimony given for this case during the meeting of January 30, 1995. One option presented was allowing an enclosure for one dumpster. The Board finds that one dumpster will not adequately handle the amount of garbage produced and controlling this is a concern of the City and the neighborhood. They also made provisions that would provide a buffer and yet allow maneuverability for garbage collection trucks. The Board believes that their decision is the best workable solution and they agreed that the proper procedure is to appeal their decision to the Third Judicial District Court.

THEREFORE, Mr. Fenn made a motion to deny the request to stay the Board of Adjustment decision made on January 30, 1995, for case #2150-B at 258 South 1300 East. Ms. Watkins seconded the motion, three members voted aye, Mr. Wagner abstained from voting, the motion passed.

Mr. Fenn made a motion to go into public session. Mr. Hafey seconded the motion, all voted aye, the motion passed.

**Case #2159-B by Mark and Anne Marie Jensen at 938 North Dartmoor Way for a variance to allow a single family dwelling without the required front and side yard setbacks in an R-1/F-1 Zone.**

This case was withdrawn.

**Case #2160-B by Pierre Country Bakery at 1026 East Second Avenue for a variance to allow a parking area without the required 10-foot landscaped buffer for an existing restaurant in a B-3 Zone abutting an R-2 Historic Zone.**

Jean-Pierre Chesnel, Petitioner, was present.

Mr. Nelson explained that the subject property was previously the New Frontier Grocery Store and is now used as a bakery/deli. Section 21.78.020 of the Zoning Ordinance requires the subject commercial property to provide a 10-foot buffer between it and the abutting residential zone. Section 21.52.060 requires properties zoned B-3 to maintain a 10-foot landscaped rear yard. Mr. Nelson further explained that the building fronts Second Avenue and the parking area is located behind (south) the building abutting the residential zone. William Wright, the Planning Director, granted the business 55 seats and alternative parking provisions provided four conditions are met. One of the conditions is that the Board of Adjustment grant a reduction in the rear yard buffer to allow parking along the rear property line. Mr. Wright further recommended installing bumper curbs or wheel stops to prevent damage to a fence along the rear property line.

Mr. Chesnel explained that he went to the City before he leased the property and was informed that a bakery/deli with maximum capacity of 71 people would be allowed. A hearing was held in June 1994 because of parking concerns and the Planning Division granted 65 seats. One neighbor was still concerned about the impact of parking on the neighborhood and questioned due process of the hearing. So the case was re-heard in December 1994 and Mr. Chesnel was granted 55 seats with the condition that the Board of Adjustment grant the variance for the buffer. Mr. Chesnel has been operating under a grandfather clause that

BOARD OF ADJUSTMENT

March 13, 1995

The regular meeting of the Board of Adjustment on Zoning for Salt Lake City, Utah, was held on Monday, March 13, 1995, at 4:00 p.m. at the City and County Building, 451 South State Street, in Room 126. Members present were Tim Chambless (Chairperson), Jerry Fenn, Mark Hafey Jr., I. J. Wagner, and Marion Willey. Michael Jones, Nancy Taufer, and Shirley Watkins were excused. Merrill Nelson, Administrator for the Board of Adjustment, was also present.

The meeting was called to order by Chairperson Chambless who explained the procedures of the meeting. He informed those present that the properties have been visited by the Members of the Board and the testimony given during the meeting is recorded. Mr. Chambless further explained that three concurring votes are necessary to pass or defeat a motion. All decisions of the Board of Adjustment are made effective immediately and may be appealed within 30 days to the Third Judicial District Court.

Mr. Hafey made a motion to go into Executive Session. Mr. Willey seconded the motion, all voted aye, the motion passed.

**Case #2144-B (reopened) by Mark and Anne Marie Jensen at 938 North Dartmoor Way (aka 33 East Dartmoor Place) for a variance to allow a single family dwelling without the required front and side yard setbacks in an R-1/F-1 Zone.**

Bruce Braid (Attorney for Salt Lake City Corporation) was present to discuss the case.

Mr. Braid explained that the subject dwelling was constructed six feet into the front yard setback and three feet into the side yard setback because the surveyor made an error by using the wrong monument in a double radius cal-de-sac. The Petitioners came to the Board of Adjustment on January 3, 1995, for a variance to rectify the situation and the Board denied the request due to lack of property-related hardships.

Mr. Baird further explained that the dwelling is nearly completed and the City Administration determined that an inappropriate and unjust economic waste would occur if the Petitioners were required to tear down a dwelling appraised at \$300,000 to properly locate it on the lot. Thus, the Administration supports a court order from Judge Rigrup of the Third Judicial District Court ordering the Board to reverse their decision in the interest of justice. Mr. Baird noted that precedence has been set prior to this case and the Petitioners also agree to pay \$10,000 which will be used for construction of hillside and other improvements in the Capitol Hills Subdivision and other neighboring areas. He advised the Board to obey the court order and grant the variance pursuant to it.

THEREFORE, Mr. Wagner made a motion to grant the variance in the interest of justice pursuant to the court order. Mr. Willey seconded the motion, all voted aye, the motion passed.

~~Mr. Wagner made a motion to go into Public Session. Mr. Willey seconded the motion, all voted aye, the motion passed.~~

The Petitioner and the Board discussed the proposed plan. The wall will be two feet from the sidewalk along "E" Street. The Board questioned the location of the west property line and the setback of the garage. Ms. Crook was not certain where the property line is located, but she believes that the original fence encroached onto the City easement and the garage is setback 20 feet from the sidewalk.

Don Duff, 421 East Tenth Avenue, was present to represent the neighborhood. Mr. Duff explained that the property has been under development for two years and the property owner (Mr. Moore) has not contacted any neighbors during this time. Mr. Duff further explained that an alley abuts the north property line and the new garage is an extension of the old garage. Neighbors using the alley have experienced a line of sight problem since the garage was extended. Mr. Duff said that the original garage and the six-foot fence did not obstruct visibility and the fence still provided privacy. The neighborhood commends Mr. Moore for improving the property, but they believe that a fence or wall 9 to 10 feet high will obstruct the line of sight even more, creates a wall-in effect and adversely impacts the "E" Street streetscape. Mr. Duff submitted a letter from the neighborhood stating opposition of the proposed plan and he noted that some who signed the letter have lived in the area for 15 to 40 years. Mr. Duff has lived in the neighborhood for 4 years.

From the evidence and testimony presented, the Board finds that the plan submitted does not provide a line of sight zone and is incomplete. Specifically, the plan does not show the west property line and the garage may be improperly located on the lot.

THEREFORE, Mr. Hafey made a motion to deny the special exception per plans presented. The Petitioner may reopen the case without a fee based on a new plan that indicates correct property lines and meets Transportation Engineer requirements. Ms. Hines seconded the motion, all voted aye, the motion passed.

**Case #2312-B by Elizabeth Campbell at 15 East Churchill Drive for a special exception to allow a single family dwelling in excess of the height envelope and for variances to allow grade changes, front yard setback and the number of stories above grade in an FR-3 Zone.**

Elizabeth and William Campbell (Owners) and Magda Jakovcev (Architect) were present.

Mr. Nelson explained that the subject property is located in the new Ensign Downs subdivision, the property fronts Churchill Drive and the proposed plan is for a single family dwelling. The Petitioners are requesting a special exception and three variances in order to construct the proposed dwelling. The Zoning Ordinance requires a front yard setback of 20 feet in an FR-3 Zone, but the deed restrictions of the subject lot state that a front yard setback of 18 shall be maintained. Mr. Nelson explained that the Planning Commission determined homes in this subdivision should be closer to the street to avoid invasion into the hillside and the request for this variance is a technicality. The Zoning Ordinance does not allow dwellings to be over 28 feet in the FR-3 Zone and the proposed dwelling is 3.5 feet above the height limit. A special exception is required to allow a structure to penetrate the height envelope. The proposed design is 3 stories high and the Ordinance only allows 2 1/2 stories. Mr. Nelson explained that the Board of Adjustment has the authority to grant a special exception on height, but does not have the authority to grant additional stories and the number of stories must be addressed as a variance. The plan includes a retaining wall 9 feet high to provide a 90-degree turning radius

in order to access the attached three-car garage which fronts the east (side) property line. The retaining wall requires a grade change more than 6 feet and this also requires a variance. Mr. Nelson then reviewed standards in which the Board may grant or deny a special exception on height in the foothills. Mr. Nelson noted that design options are available and he presented letters from Doug Wheelwright (City Planner) and Cindy Cromer.

Chairperson Chambless read the letters. The letter from Mr. Wheelwright states that the Planning Staff is opposed to granting any variances because the requests made to the Board are not in keeping with the subdivision notice to purchasers deed restrictions. The deed restrictions prohibit all variances except a variance on the 18-foot front yard setback requirement. The deed restrictions also prohibit owners from filing for any building permit prior to architectural review committee approval of the plans and a statement of compliance with the restrictive covenants. The letter further states that the Planning Division believes this lot is buildable and the house design and site plan need to be revised to comply with the Zoning Ordinance.

Ms. Cromer's letter states that when the Planning Commission approved the Ensign Downs plat, the developer and the Planning Staff assured the Planning Commission that each lot had sufficient buildable area to be developed within the Ordinance. The lots along this segment of Churchill Drive received more attention than others and the subject house will be highly visible from many parts of the City. Ms. Cromer urged the Board to deny the requests with the exception of the reduced front yard setback.

Mr. Campbell explained that Glen Lloyd, member of the Ensign Downs Architectural Review Committee, reviewed and approved the plans. Neither Mr. Lloyd or the Architect realized any variances were required until the building permit review process. Mr. Campbell further explained that the lot has significant slope problems and the subject lot slopes more than any other lot in the subdivision. Only the east portion of the dwelling encroaches into the height envelope where the lot slopes the steepest and the north (rear) elevation of the dwelling appears as two stories. Mr. Campbell noted that the retaining wall requires a grade change of 7.5 feet which is 1.5 feet more than what the Zoning Ordinance allows.

Loren Weiss, 19 East Churchill Drive, supports the proposed plan. Mr. Weiss said that the additional height of the retaining wall is to lower the driveway and he believes that this is a good idea because he has experienced safety problems with his driveway having too much slope. Mr. Weiss also believes that 3.5 feet above the height limit is not a significant visual impact. He explained that there will be no homes behind the subject dwelling and it will not protrude above any ridge lines, in fact, there will be 40 feet of land above the dwelling. Mr. Weiss also explained that the subject dwelling and the existing ones will visually disappear when the lots to the west are developed.

Glen Lloyd, 70 East Dorchester Drive, said that there is a conflict in language between the developer's interpretation of requirements and what the City actually requires. He explained that the Architectural Review Committee did not perceive the proposed dwelling as three stories high because of the grade of the lot and the front (south) elevation has only two elements. Mr. Lloyd also explained that the land behind the subject property is owned by the City, it will never be developed and the standard regarding blocking views is not applicable in this case. Mr. Lloyd believes that the proposed dwelling is compatible to the lot and it is in keeping with the neighborhood.

Chairperson Chambless read a letter from Patricia Gunther at 16 East Churchill Drive. The letter states that Ms. Gunther and her husband are opposed to the proposed plan because it will result in a house that is out of character with the neighborhood, it will overshadow their dwelling and obstruct their view of Ensign Peak.

Mr. Chambless read the Transportation Engineer report which states the driveway needs to meet City standards for grade changes.

The Petitioners and the Board discussed the proposed plan and options. The proposed dwelling is not stepped, but the Petitioners said that the dwelling is designed for the lot. They prefer not stepping the dwelling because this reduces square footage. Ms. Jakovcev explained that the majority of the dwellings in this subdivision are larger and she believes that surrounding dwellings have more of a visual impact than the proposed dwelling. Ms. Jakovcev also explained that the basement is not considered a story because it is not more than 50 percent of the footprint and accessing the garage from the side does not detract from the Churchill streetscape. Ms. Campbell noted that development around their property has caused their views to be obstructed.

From the evidence and testimony presented, the Board finds that the Petitioners have not submitted sufficient data indicating the visual impact of the proposed dwelling on surrounding properties. The Board further questioned whether or not the language in the Zoning Ordinance allows the Board to consider a variance regarding the number of stories. The Board asked Mr. Nelson to seek a legal opinion on Section 21.A.24.010(O)(2) of the Zoning Ordinance which states "the Board of Adjustment may approve a permit to exceed the maximum building height but shall not have the authority to grant additional stories."

THEREFORE, Mr. Hafey made a motion to hold the case until the meeting scheduled for October 28, 1996. The architect must provide cross-sections including the north and south sides of Churchill Drive to determine the visual impact the proposed dwelling may have on surrounding properties, specifically the property to the south. Mr. Jones seconded the motion, all voted aye, the motion passed.

~~Case #2313-B by Alan Parsons at 879 West Duluth Avenue for a variance to allow a pole barn without the required front, sides and rear yard setbacks in an M-2 Zone.~~

~~Alan Parsons was present.~~

~~Mr. Nelson explained that the subject property is located in the least restrictive zone which allows harsh elements. The Zoning Ordinance mitigates the harsh elements by imposing larger setbacks. The M-2 Zone requires 35 feet for front yard setbacks, 35 feet for rear yard setbacks and 20 feet for side yard setbacks. Mr. Nelson further explained that the subject lot was subdivided before the area was zoned M-2 and it is only 47 feet wide and 125 feet deep. The Petitioner is proposing construction of a pole barn that will create a rear yard setback of 1 foot, a front yard setback of 33 feet and side yard setbacks of 6.5 feet on the east and 3.5 feet on the west. Mr. Nelson noted that the property is presently used for storage.~~

~~Mr. Parsons explained that he has owned the subject property for four years. He also owns property in the Central City area where his office and workshop are located. This area was down zoned and the storage was moved to the subject property. The storage is outside and~~

## **1996 Variance Case**



BOARD OF ADJUSTMENT

October 28, 1996

The regular meeting of the Board of Adjustment on Zoning for Salt Lake City, Utah, was held on Monday, October 28, 1996, at 4:00 p.m. at the City and County Building, 451 South State Street, in Room 126. Members present were Tim Chambless (Chairperson), Jerry Fenn, Sydney Fennesbeck, Mark Hafey Jr., Barbara Davis Hines, Michael Jones, Nancy Taufer and Marion Willey. Merrill Nelson, Administrator for the Board of Adjustment, was also present.

The meeting was called to order by Chairperson Chambless who explained the procedures of the meeting. He informed those present that the properties have been visited by the Members of the Board and the testimony given during the meeting is recorded. Mr. Chambless further explained that three concurring votes are necessary to pass or defeat a motion. All decisions of the Board of Adjustment are made effective immediately and may be appealed within 30 days to the Third District Judicial Court.

EXECUTIVE SESSION

**Case #2243-B by Albert and Arla Funk at 20 North "O" Street for a variance to allow an existing lot of 5,744 square feet to be reduced to a substandard lot of 3,403 square feet for a single family dwelling in an SR-1 Historic Zone.**

This case was withdrawn at the Petitioner's request.

The Board noted that during the field trip on January 2, 1996, a fence dissected the rear (east) yard and the portion of yard on the east side of the fence was being used as a parking area for the apartment located at 1007 East South Temple also owned by the Funks. The Board determined that the fence functionally and illegally subdivides the lot which is contrary to the Zoning Ordinance.

THEREFORE, Ms. Fennesbeck made a motion to remand the fence issue to enforcement. Ms. Hines seconded the motion, all voted aye, the motion passed.

**Approval of the minutes for the meeting held October 7, 1996.**

Mr. Hafey made a motion to approve the minutes as written. Ms. Taufer seconded the motion, all voted aye, the motion passed.

PUBLIC SESSION

**Case #2312-B (readvertised) by Elizabeth Campbell at 15 East Churchill Drive for a special exception to allow a single family dwelling in excess of the height envelope and for variances to allow grade changes, front yard setback and the number of stories above grade in an FR-3 Zone.**

Elizabeth and William Campbell (Owners) and Magda Jakovcev (Architect) were present.

Mr. Nelson explained that this case was before the Board of Adjustment on October 7, 1996, and the Board held the case. The Board requested that cross-sections be provided to determine the visual impact on surrounding properties specifically the property to the south - 16 East Churchill Drive. The Board also questioned whether or not they had the authority to grant additional stories and asked Mr. Nelson to seek a legal opinion. Mr. Nelson further explained that the Petitioners are proposing construction of a single family dwelling. The proposed dwelling will exceed the height limit 3.5 feet on the southeast corner, is three stories high on the east elevation and will have a front yard setback of 18 feet. The Zoning Ordinance requires 20 feet for front yard setbacks in an FR-3 Zone. However, the Planning Commission has determined in approving the subdivision that an 18-foot setback from the front property line would better solve some of the topographical problems with lots on this side north side of Churchill Drive. Thus the deed restrictions of the lot state that a front yard setback of 18 feet shall be maintained. The proposed plan also includes a grade change of 7.5 feet and the Zoning Ordinance allows 6 feet. The proposed grade change is necessary to provide a 90-degree turning radius to access the attached garage facing the east (side) property line. Mr. Nelson noted that Staff recommends approval for the front yard setback and the grade change. He also noted that Section 21.A.24.010(O)(2) of the Zoning Ordinance states that the Board of Adjustment may approve a permit to exceed the maximum building height if the Board finds that standards for a height exception have been met, but the Board shall not have the authority to grant additional stories. Mr. Nelson presented the Board with a memorandum from Assistant City Attorney Lynn Pace stating that the Ordinance explicitly prohibits the Board from authorizing additional stories. Mr. Nelson noted that the proposed dwelling would not be considered three stories if one of the stories was horizontally stepped 12 feet.

Mr. Campbell acknowledged that the issue regarding the number of stories may be addressed by design modifications or to the City Council recommending a change to the text of the Zoning Ordinance.

Mr. Campbell presented pictures and sight diagrams prepared by Ms. Jakovcev showing sight lines from surrounding lots to Ensign Peak. Ms. Jakovcev stated that the proposed dwelling in no way obstructs the view of Ensign Peak from the dwelling located at 16 East Churchill Drive.

Mr. Campbell added that the dwelling at 16 East Churchill Drive is below street level and Ensign Peak is above and five feet to the west of the dwelling abutting to the east of the subject property. He further reviewed the pictures and diagrams with the Board showing visibility of Ensign Peak from different areas and windows of the dwelling at 16 East Churchill Drive. Mr. Campbell explained that the subject lot slopes in two directions, the east portion slopes more than what the developer anticipated and the proposed dwelling would still penetrate the height envelope if the upper level was set back.

The Petitioners and the Board discussed the proposed plan and options. The proposed dwelling consumes all of the buildable area of the lot. The main and upper levels total 3200 square feet and the garage (lower) level is 1000 square feet with a utility room and storage. The proposed dwelling has less square footage than average dwellings in the neighborhood and constructing a dwelling even smaller will decrease property values. Setting back the upper level eliminates a bedroom and may effect the two-story atrium.

Gina Dalton-Weiss and Loren Weiss, 19 East Churchill Drive, support the proposed plan and encourage development on surrounding vacant lots. Mr. Weiss expressed his concerns about the hazards of steeply sloping driveways. Allowing the proposed grade change allows a less

sloping driveway. Mrs. Weiss expressed her concerns about decreasing property values in the neighborhood if smaller homes are constructed. Mr. and Mrs. Weiss have lived in their home for 2 1/2 years.

Hazel Horsfield, 958 North Dartmoor Way, believes that surrounding dwellings are taller than the proposed dwelling and it will not block the view of Ensign Peak. Ms. Horsfield explained that diverse designs of dwellings make up the character of the neighborhood and the proposed dwelling fits the character of the neighborhood. Ms. Horsfield is concerned about safety issues and she too encourages development on vacant lots. She has lived in the area for three years.

Clayton R. Hurst, 57 East Churchill Drive, also supports the proposed plan.

Pat Gunther, 16 East Churchill Drive, did not have the opportunity to reviewed the sight line plans submitted by the Petitioners and she voiced her concerns about the proposed dwelling obstructing the view of Ensign Peak from her study. Ms. Gunther reviewed the sight line maps with Ms. Jakobcev and her concerns subsided.

Brandon Ritcher, 16 East Churchill Drive, asked Chairperson Chambless to read the letters from Doug Wheelwright (City Planner) and Cindy Cromer. Mr. Chambless read the letters:

Mr. Wheelwright's letter states that the Planning Staff is opposed to granting any variances because the requests made to the Board are not in keeping with the subdivision notice to purchasers deed restrictions. The deed restrictions prohibit all variances except a variance on the 18-foot front yard setback requirement. The deed restrictions also prohibit owners from filing for any building permit prior to architectural review committee approval of the plans and a statement of compliance with the restrictive covenants. The letter further states that the Planning Commission believes this lot is buildable and the house design and site plan need to be revised to comply with the Zoning Ordinance.

Ms. Cromer's letter states that when the Planning Commission approved the Ensign Downs plat, the developer and the Planning Staff assured the Planning Commission that each lot had sufficient buildable area to be developed within the Ordinance. The lots along this segment of Churchill Drive received more attention than others and the subject house will be highly visible from many parts of the City. Ms. Cromer urges the Board to deny the requests except for the front yard setback and states that she suspects the hardship is too much money (i.e.; too much house) and/or too little architectural expertise. The letter further states that the developers did an excellent job of engineering Churchill Drive and most of the houses constructed and the proposed house are not of the caliber of the engineering and planning that preceded them.

Mr. Chambless read the Transportation Engineer report which states the driveway needs to meet City driveway standards.

From the evidence and testimony presented, the Board finds that the topography of the lot presents a property-related hardship and the proposed plan meets the standards of Section 21.A.24.010(O)(2) of the Zoning Ordinance.

THEREFORE, Ms. Fannesbeck made a motion to grant the special exception to exceed the height limit 3.5 feet. Mr. Fenn seconded the motion, all voted aye, the motion passed.

AND, Mr. Hafey made a motion to grant the variances to allow a front yard setback of 18 feet and the grade change of 7.5 feet. Ms. Fannesbeck seconded the motion, all voted aye, the motion passed.

AND, Ms. Fannesbeck made a motion for the Board of Adjustment not to consider the variance on number of stories because this issue is not within the purview of the Board. Mr. Hafey seconded the motion, all voted aye, the motion passed.

**Case #2316-B by Douglas Knight Construction, Inc. at 601 North "D" Street (aka 593 North "D" Street approx.) for a special exception to allow a single family dwelling in excess of the height limit in an FR-3 Zone.**

Katherine Kennedy and John Yoon (Owners) and Lance Duffield (Designer) were present.

Mr. Nelson explained that the subject lot is located in a new subdivision called Capitol Park and abuts the north portion of "D" Street where "D" Street and Twelfth Avenue conjoin. The Petitioners are proposing a new single family dwelling that is two stories high with a pitched roof. Mr. Nelson further explained that the Zoning Ordinance allows a height limit of 28 feet in the FR-3 Zone and the proposed dwelling exceeds this height limit. Mr. Nelson noted that the topography of the subject lot is level.

Mr. Duffield explained that the dwelling was designed for the lot and the encroachment is necessary to accommodate the design and mitigate drainage problems. Mr. Duffield further explained that deed restrictions do not allow garages facing the street and the access to a garage is limited because of the location of the lot in conjunction with "D" Street. He also explained that the subject lot slopes less than four feet and is surrounded by lots with far greater slopes; this causes concern for drainage. Mr. Duffield said that he has been working with the planning staff and believes that the height of the proposed dwelling has been reduced as much as possible without ruining the design and creating a drainage problem. The dwelling has been raised and the pitch of the roof has been lowered.

Ms. Kennedy and Mr. Yoon added that they have considered several roof designs and changed the roof style as proposed. They are concerned about their neighbors' views, but believe that the proposed height will not obstruct views any more than the three pine trees along the east property line. The subdivision covenants prohibits these trees from being removed. The Petitioners find the need for the special exception to solve drainage problems and address concerns for an indoor swimming pool located in the basement. The Petitioners noted that they have met with the Greater Avenues Community Council.

The Petitioners and the Board discussed the proposed plan and design options. Mr. Fenn suggested an alternative roof design that would meet the height requirement. Mr. Duffield said it would not be an acceptable design solution and is concerned about meeting design specifications described in the deed restrictions. The Petitioners explained that several options have been considered and determined that these options resulted in drainage problems, a negative slope on the driveway and problems meeting the subdivision covenants.