

ON JANUARY 7, 2022 AT 10:30A.M., THE HURRICANE CITY APPEAL BOARD MET IN THE CITY COUNCIL CHAMBERS LOCATED AT 147 N 870 WEST HURRICANE, UT.

Members Present: Beth Lock, Bob Peterson, and Rick Wixom

Staff Present: Planning Director Stephen Nelson, Assistant Planner Fred Resch, and Planning Technician Brienna Spencer

Consideration and possible approval of a variance request to reduce the front setback for property H-SEEV-1A, address 916 W 325 S.

Harmony Vanderhorst shared that they are looking for a variance for their garage to be 5 feet into the 25-foot required set back due to the flood plain in the rear so they can build. They have been working with FEMA, their engineer, and the city to make these lots buildable. They feel like asking for this little variance is still complies with the spirit of the regulations but would allow them to build their home. This will be their forever home. They asked for a variance for the lot across the street and they were granted it due to the shape of the lot and it kept the integrity of the neighborhood. Stephen Nelson stated that he reviewed the site plan with our floodplain admin to make sure he didn't have any concerns about the location of the house and he doesn't have any issues based off this site plan. Bob Peterson asked if they were planning to build two houses. Tyler Vanderhorst shared that it will be an attached garage with a basketball court on the back and casita on top. Beth Lock went over the unreasonable hardship section of state code and asked the applicants if they had read through it. Mrs. Vanderhorst shared that she feels like the hardship comes from the floodplain line. When the city approved this lot, they approved it with normal setbacks but then FEMA came in and said if certain insurance rates want to be granted, they have to abide by their regulations. This building restriction isn't the only restriction, they have a lot of others as well. She feels like abiding by FEMA's rules is a hardship that others don't have to go through. Ms. Lock asked if they owned the lots in before FEMA came in. Mr. Vanderhorst stated that they purchased 7 lots after FEMA came in and added the floodplain but how the lot was originally designed is not how FEMA is trying to design it and that is what they are saying the hardship is. They are trying to use the lot as it was originally intended to be used, as a 125-acre lot. Rick Wixom shared that when the state code talks about granting a variance it asks what the substantial property right is that they are not getting that other properties have in the area. Meaning, what property right are they losing out on if this variance isn't granted? Mr. Vanderhorst stated that they can't build as deep of a house because they are being restricted. The lot is half it's normal size from what it was designed to do. In this this neighborhood, that same hardship variance has been granted. Mr. Wixom stated that the state code says, "conditions peculiar to that property not the conditions that are general to the neighborhood." Mrs. Vanderhorst stated that the floodplain line is not for the entire neighborhood, it only affects a few lots. She asked Mr. Nelson if the lot was smaller, would the front setbacks be less than 25 feet? Mr. Nelson shared that every zone, aside from a planned development overlay, has a minimum of 25 feet. The minimum set back in the PDO zone is 20 feet which is approved through a zoning ordinance. Mr. Wixom asked what the lot size is from the floodplain line to the front property line and what the minimum size for the current zone. Mr. Nelson calculated approx. 33,272 square feet is buildable which is twice the minimum lot size for the zone. Mr. Wixom went over the five criteria the board has to look

at with state code when granting a variance. Ms. Lock doesn't see where the hardship is being proven in this case. Mr. Wixom stated that there is an overly large lot in a zone that is a 15,000 square foot minimum lot size. There is still twice the minimum lot size between the floodplain line and front property line. This is a new home being designed to fit the property. He's having a real trouble with the self-imposed part of the code that says if you're designing something for the property. Mrs. Vanderhorst stated that this is the type of home to be built there. If the floodplain wasn't there, they wouldn't need to ask for the variance. Nobody who is going to build a 2000 square foot home is going to build in this neighborhood. Mr. Vanderhorst stated that the lot was designed for one thing and now it's being hindered by a flood line. Mr. Wixom stated that it's a new home and knowing that the flood line is there, they are designing a home that doesn't fit. They could design and modify the home to make it fit. Mrs. Vanderhorst stated that if this line wasn't there, they would have no problem scooting the house back. Nobody would know that this variance was granted just by looking at it. The request is very minute. She would rather scoot it back. It is costing them a ton more money to have to do it this way versus if there was no line there, they could save a ton of money. Ms. Lock sympathizes with them but that's not what state code says. It says the hardship can't be self-imposed or economic. Mr. Vanderhorst stated that they aren't imposing this hardship, FEMA is. They cannot move the house back because of federal regulations. Mrs. Vanderhorst said that the city doesn't have to follow the FEMA line if they don't want to because city laws and ordinances overstep federal but because the city has chosen to be in compliance with this federal law because it effects the insurance rating they get, they choose to follow this ordinance. Not only is it a hardship caused from the city and what they are trying to do, it is now imposing a hardship on them. The city could technically give them a variance as well but they aren't going to which is why they are here. Mr. Wixom stated that they are designing a home to fit a circumstance knowing that flood line is in place and that hardship could be fixed if they designed their house. Mr. Vanderhorst stated that if it more of a hardship to not grant a 5-foot variance than it is for them to completely redesign a house, which they are already trying to do because of the flood line, then that's one argument. He doesn't see that as an argument. At the end of the day, the hardship is being imposed by a line that was not supposed to be there. It was imposed after the subdivision approval. Did they purchase the property after the fact? Absolutely, but it was originally designed for the entire lot to be used. At the end of the day, they are asking for a variance for what isn't normal because the line is not normal. They aren't asking for the moon or something that hasn't been granted in the past, they are asking what is typical for this neighborhood. Mrs. Vanderhorst stated that she understands where they are coming from but she does feel like they can put the emphasis on the hardship either way. It's really kind of a person opinion. Ms. Lock stated she doesn't think it's an opinion. She thinks it's following what is written out for them as an appeals board. They have a guideline and this is the guideline. Mr. Vanderhorst shared that when they went through this before, the opinion of the board was that they were facing a hardship so they approved it. To say there isn't an opinion involved, an opinion was involved in the exact same scenario when they went through this in the exact same neighborhood with exact same restriction. At that time, they thought it was a silly hardship and didn't think they should have to alter their entire plans so it was determined to be a hardship. It is an opinion. Just because they don't think in this case it may or may not be hardship doesn't mean someone else doesn't think that it is a hardship. Mrs. Vanderhorst referenced criteria 5 and shared that she thinks it leaves it open for individual cases and opinions and the whole circumstance to be looked at and not be nit picked apart.

They don't feel like in the spirit of the zoning ordinance that it is putting a burden on the city or this ordinance, or on the variance process to allow for the 5 feet to be granted. Mr. Peterson shared that being the third wheel, he agrees with the applicants. He thinks the variance should be granted based on the criteria they are going by. Ms. Lock asked where the garage attaches to the house. It was shown on the site plan displayed where the structures will be attached. The Vanderhorsts shared that the city said it would be easier for them to have the structures attached. Ms. Lock asked the applicants how big the basketball court was. Mr. Vanderhorst stated that it is smaller than a typical basketball court, probably slightly bigger than half a court. Ms. Lock asked if they could just remove 5 feet of the basketball court and Mr. Vanderhorst replied stating that if they did, they wouldn't have a three-point line. This is the smallest they can go to even have half a court.

Bob Peterson motioned to approve the variance contingent on the conjoining of the lots. Motion failed.

Ms. Lock can't find the hardship. Mr. Peterson stated the floodplain. They have the federal government telling them "Hey, you have a nice lot but we're going to tell you that you can't use it", that is the hardship in his opinion. Mr. Wixom agrees that the floodplain is a hardship but he can't get past the idea that this is a new house being designed to fit a space that is twice the size of the minimum lot size in the zone. He can't see that it's not self-imposed. A new house being designed to fit a space, that's saying they are choosing to do something that's making it so they can't meet the setback. He can't get past it. Ms. Lock agrees.

Rick Wixom motioned to deny the variance finding that this hardship is self-imposed based on state code 10-9A-702-2-B-2 that the hardship is self-imposed and that the appeal authority may not find that it does not meet state code. Beth Lock seconded the motion. Rick Wixom and Beth Lock – aye, Bob Peterson – nay. Motion passes.

Harmony Vanderhorst asked Stephen Nelson what their options are moving forward. Mr. Nelson shared they can accept it, appeal it to district court within 30 days, or petition the council to change the code. Mrs. Vanderhorst stated they won't accept it and will appeal it in court. She asked Mr. Nelson what that entails and he advised her to speak with her attorney. Mrs. Vanderhorst continued to plead a case to the board before leaving the meeting.