

BOARD OF ZONING APPEALS MEETING
JULY 21, 2015
7:00 P.M.

I CALL MEETING TO ORDER

The meeting was called to order at 7:00 p.m.

II ROLL CALL

Members Present: Robert Weidlich, Carolyn Ghantous, Lawrence Hawkins III,
Dave Nienaber, Ed Knox, Joe Ramirez and Jane Huber

Others Present: Randy Campion, Building Inspector

III PLEDGE OF ALLEGIANCE

IV MINUTES OF THE REGULAR MEETING OF JUNE 16, 2015

Chairman Weidlich: Board Members, we have the Minutes from the regular meeting on June 16th, 2015, does anyone have any additions or corrections to those Minutes?

Mrs. Ghantous: I move to adopt.

(Mr. Nienaber seconded the motion and with a unanimous vote from the Board of Zoning Appeals Members, the June 16th, 2015 Minutes were approved.)

V CORRESPONDENCE

Chairman Weidlich: We have no correspondence this evening.

VI REPORT ON COUNCIL

(Mr. Hawkins gave a summary report of the June 17th, 2015 and the July 15th, 2015 City of Springdale Council Meetings.)

Mr. Hawkins: Also Council, Planning Commission, and Board of Zoning Appeals met on Saturday, July 18, 2015 to review the draft of the new Zoning Code and all had input.

VII REPORT ON PLANNING COMMISSION

(Mrs. Ghantous gave a summary report of the July 13th, 2015 City of Springdale Planning Commission Meeting.)

VIII CHAIRMAN'S STATEMENT AND SWEARING IN OF APPLICANTS

(Chairman Weidlich introduced Mr. Laux, sitting in for Mr. Forbes, Law Director.)

(Chairman Weidlich performed swearing in of Applicants.)

IX OLD BUSINESS

(No Old Business presented at this meeting.)

X NEW BUSINESS

- A. Chairman Weidlich: The first order of New Business tonight is, the owner of 221 Diston Lane requests the garage remain partially converted to living space; according to Section 153.105(B), a residence is required to have a two-car garage. At the time the residence was constructed, a one-car garage was required.

Mr. Brett Atkins: I am here concerning 221 Diston Lane; I represent Jane Stewart the homeowner. This May, she put her house on the market for sale. We had a buyer in early June and I believe we wrote the first contract for the sale of the house on June 11th. They had the bank inspect the home prior and they required a variance for the conversion and there obviously wasn't a record for one. It was as the house was bought over twenty two years ago when she first purchased it, so she had no idea whether a variance was recorded or even if they had told you guys. She called up here to get an exemption, thinking that there was record of it here but then she found out that there was no record of it. She got a letter showing that there is no record of it here and that we were going to have this meeting. She talked to Gregg Taylor and tried to see if there was a building permit that she needed, to maybe make it simple and get it over with but was told to be unnecessary. Now we are curious as to what happens now and whether or not what the previous owners did to the house is going to affect the sale, being the way it is. That is really it.

Chairman Weidlich: Thank you for your comments and we will move on to Staff comments.

(Mr. Campion read the Staff comments concerning this request.)

Chairman Weidlich: Does anyone in the audience want to speak on behalf of this application?

(No one from the audience came forward and the public portion of the meeting was closed.)

Mr. Knox: Mr. Atkins, as the garage is now in existence, if you were to move the boxes out of the way could you park a car in there?

Mr. Brett Atkins: No, I believe not. There is shelving on the back wall of the garage.

Mr. Knox: I saw that in the pictures and I didn't know what the depth was.

Mr. Brett Atkins: No, it would be tight if you took the shelves out. There are shelves existing on the back wall and higher up shelves on the right and the left walls, as well.

Mr. Hawkins: What are the dimensions of the square footage of the unfinished area in the garage?

Mr. Brett Atkins: I do not have that exact information on hand, sir.

Mr. Hawkins: Do you know how wide across the garage is?

Mr. Brett Atkins: How wide across? Only guesses, sir.

Mr. Hawkins: Do you think there is at least 8' between the garage door to the back wall?

Mr. Brett Atkins: Yes, more than 8'

Mr. Hawkins: More than 8' so 8' would be a conservative estimate?

Mr. Brett Atkins: I would guess 10ø to 12ø

Mr. Hawkins: Do you think there is at least 10ø?

Mr. Brett Atkins: 10ø would be minimum and 12ø would be a pretty close maximum.

Mr. Hawkins: Do you have a conservative guess for the width of that?

Mr. Brett Atkins: The width of the garage is the original width of a garage, other than shelving which is mounted shelves. Yes, the walls on the sides is the original width of the garage.

Mr. Hawkins: Do you think it is at least 8ø?

Mr. Brett Atkins: Yes, absolutely.

Mr. Hawkins: If the Board were to grant this, do you have a problem maintaining an operable overhead garage door that is similar in appearance?

Mr. Brett Atkins: We actually just replaced the old one with a brand new one.

Mr. Hawkins: And to be clear, you stated this but I want it to be clear in the record, the applicant has had the property for at least twenty two years?

Mr. Brett Atkins: Yes, it was purchased in 1993; that is pretty accurate.

Mr. Hawkins: And the conversion took place prior to the home being purchased?

Mr. Brett Atkins: Yes, definitely. I grew up in that house, if that helps.

Mr. Hawkins: And at the time of the purchase, twenty two something years ago there was no knowledge that there was no legal conversion of the garage; correct?

Mr. Brett Atkins: No, we just assumed that it was done properly, obviously for the sale of the house.

Mr. Hawkins: Thank you.

Mr. Brett Atkins: You are very welcome.

Mr. Ramirez: As I see it, the only conversion made is on the back wall, looking straight into the garage; correct?

Mr. Brett Atkins: Yes.

Mr. Ramirez: The sides are still in tack and is still the original width?

Mr. Brett Atkins: Yes. I believe it is insulated and everything but that is the only conversion.

Mr. Ramirez: What is behind that wall, living space?

Mr. Brett Atkins: It is open space. It is unclosed and has an open wall entry on the interior from the dining area into that space.

Mr. Ramirez: Thank you, that's all I have.

Chairman Weidlich: I have one question; is the sale still pending on the house?

Mr. Brett Atkins: Yes.

Chairman Weidlich: So you haven't lost it because of the variance request?

Mr. Brett Atkins: The last contract that we were in currently is for the 31st of July, so we are getting pretty close.

Chairman Weidlich: Crunch time.

Mr. Brett Atkins: They had some issues of their own getting cleared to purchase the home, anyway. This is the last tackle.

Chairman Weidlich: Thank you. If there is no further deliberation or discussion based on the evidence presented to the Board Members, could we have a motion please?

Mrs. Huber: I move to grant a variance to Section 153.105(B) for the property located at 221 Diston Lane so as to allow the partial conversion of existing one-car garage with the existing garage door to remain operable. The Code Section states, "A single two-car garage with related parking is required" (Mr. Knox seconded the motion.)

Chairman Weidlich: Do we have any further deliberation, Board Members?

Mr. Hawkins: I move to amend the motion, to add that the applicant is to maintain at least an 8' x 10' unfinished area directly inside of the garage door; and also amend the motion to require the applicant to maintain not just an operable garage door but an operable overhead garage door that remains in same or similar appearance to the one that is there now.

Mrs. Huber: What is the size of the storage area?

Mr. Hawkins: 8' x 10'

Chairman Weidlich: Does anyone else have any deliberation on the motions?

Mr. Hawkins: Mr. Chairman, as a point of order I think with regard to the amendment, we need to see if there is a second and if there is then we need to vote on the amendment prior to addressing so that it becomes part of the motion.

Chairman Weidlich: I was heading there.

Mr. Nienaber: I second the amendment.

Chairman Weidlich: Mr. Nienaber seconded the amendment to the motion. Does anyone else have anything?

(No deliberation or discussion brought forward at this time.)

Chairman Weidlich: We will move to vote on the amendment.

Mr. Ramirez: Could you read the amendment, as written?

Mrs. Huber: "To require an 8' x 10' storage area to remain and the overhead garage door to be operable."

(With seven "aye" votes from the Board of Zoning Appeals Members, the amendment to the motion was accepted.)

Chairman Weidlich: Now we will vote on the motion; if you will call the roll.

(Mrs. Huber polled the Board and with seven "aye" votes from the Board of Zoning Appeals Members, the variance was granted.)

Chairman Weidlich: Sir, you have your variance to move ahead there.

Mr. Brett Atkins: Thank you, everybody. We appreciate your time.

- B. Chairman Weidlich: The next owner of New Business is the owner of 246 Balsam Court is appealing the decision of the Building Official issued on June 3, 2015, to cease any further construction; stating the construction is not consistent with the conditions of the variance granted on October 20, 2014. The variance allowed a garage conversion to remain. Said variance is from Section 153.105(B) – a single two-car garage and related parking area is required.

Mr. William Hafer: I am William Hafer, 246 Balsam Court.

Chairman Weidlich: Do you want to state the reason for your appeal?

Mr. William Hafer: I think it is very obvious why I am here; I mean I keep coming back to all of these meetings. I got a letter from Mr. Taylor that said he didn't agree with the last meeting that I came up to, which was not an official meeting. So, I get this afterwards; I talked to Mr. Taylor and apparently he had talked to somebody on Zoning and had the Attorney draw up the letter and so, here I am.

(At this time, Mr. Campion read the Staff comments concerning this request.)

Chairman Weidlich: Is there anyone in the audience that would like to speak on behalf of this application?

Mr. Lavawan Riley: This is my wife Sheila. We are the neighbors on the right side of Butch and Sue; we have been their neighbors since 1990, except for the three years that they moved to Florida. Let me first state that, it is an honor to have people like the Assistant Chief of Police and someone of this stature, as your neighbor. Butch and Sue, through the years, have done everything they could to improve our street. They probably have the best looking home on our street. Everything they do is for the improvement of property, for the efficiency of the area that they have. I like what they are doing. I watched them, through the years, move junk, or he may call it something else but I call it junk, out of a garage area. Many of us in Springdale do not use our garages. I do not use my garage. I am 15' from his garage; mine is the same size as his except I don't have the backroom. I don't use my garage. Butch parks his Cadillac and his other vehicle in his driveway. Our driveways are within 18' of each other and never through twenty two years has he ever parked on the grass, he has never parked in my driveway; I have never hit his vehicle, he has never hit mine. There has never been a problem of parking the vehicles outside of the garage area. The fact that he doesn't use the garage is not an abnormal thing. These homes were built back, and Sheila may testify in a minute, she moved there in 1959 and saw the homes built, families did not have the numbers of cars that we do today. I have read your Minutes from the last meeting and many things I have problems with but my wife tells me to "keep my cool" today. I just want to say that I was standing this morning and looking at the room that they built, it looks sharp, it looks nice and it makes my property more valuable. When Butch came back from Florida, we had a tree from his yard hanging over my garage, probably most of the tree was in my yard and he paid to have it taken down and he never asked for any funds from me or my wife; he did it. They are very generous people. They have landscaped their property and have put up a privacy fence that I have the benefit of. He has never asked for anything. I read the report where Butch said he never parks his vehicle over the sidewalk; I want to tell you something, he was a Springdale Cop for many, many years and I respect him for that. At night, when I was asleep, I would see him going and coming. I think these people should be listened to a little bit more, a little bit higher up and what they are doing, I look at people and I read in your report how some of you are concerned about something being attacked for some future buyer out there; some hypothetical

couple may need that garage. You know what, I would love to move into his house, I could use that room. I wouldn't need a garage, I wouldn't need a garage door. Many people would not need that. I just don't understand some of your reasoning; however, I know you have laws against these things. But I think that the using of that area, which was a storage area, I saw when they got back from Florida and they moved several large storage houses in the back to accommodate that; so, this area was just empty space, what do you do with it. If you are retired, you are looking to the end of your life, you are not looking as a young couple into the future as a young couple with several cars; we have many people on Balsam with many cars. For instance, we have some people, and I won't mention the name, they moved into a home that had a garage converted into a room. The lady who was a good neighbor, passed away and so did her husband. A couple bought the home and they had to convert the room back into a garage. I am looking at the people from different viewpoints. I knew the people who lived there at the end of their life and I went into the home and they needed that room, that space was practical for them at that age. It was no problem for new buyers coming in there to convert that back to a garage. I want to mention this; you say, "Well, if they have a garage they won't use it", these people have two vehicles and they park one in the garage and the driveway is empty and they park the other one on the road. My neighbors on the other side of us, to the right of us have two vehicles and they also do not use the garage, they put one vehicle in the driveway or two sometimes and one on the street. You mention parking there, we have street area on Balsam Court to park, not in some areas which are enforced fire areas but we have more parking areas than just our driveways and I would say that these homes were built in the early 60's and people had more vehicles and bigger vehicles in 1960's. Butch has a nice Cadillac and it looks really nice sitting beside my house, it makes me look like I am a wealthier person because I've got better off neighbors. They are very clean people, they are very decent people and I would listen to him any day. Anybody can come by; it looks pretty sharp. I would love to have that room myself for my house and I am looking at it logically. It would be better for him to move his storage into storage units, which he is doing; that is an intelligent move, and move his items that he had there for years and years that he moved in and out and you've got empty space there, you are in your retiring years of life. You have a creative wife, Sue is very creative, and it is an intelligent thing to convert this area into something to live in because you are the one who bought the home. Some of you are too concerned about some couple out there and what may happen to them if they were trying to buy the house. They have an option, they can buy "as is", and they can convert. I had my garage door changed a number of years ago. I had the old door taken out and I stood Sheila out there and you know, when my door was out, I have an 8' x 8' enclosure; Butch has the same thing. All of the homes, with a one-car and I say one-car because you can only get one car in those what I call single garage, it took just a few hours for a man to put a garage door in the house; I don't see taking walls down and putting garages; I mean some of you act like you are taking out a 5' concrete wall. I don't know why we have to make people have operable garage doors in tack; that doesn't make sense to me. Maybe you have reason behind it. Sheila said, "Don't bring that up, they will kick you out, but that is the way I feel". To me it is illogical. Because I am not a construction worker but I watched the construction workers that Butch had, he had very reputable people, very friendly people, very knowledgeable people work on his home and they knew what they were doing. I want to tell you something, they did a first-class job of what they were doing; they have a nice room there and I think that you should whatever, the variance or whatever went on; I don't know. But, from what I am seeing, it looks good. They are still working on the property, the landscaping, it looks good. I have no objection and you know what, I see that room, other than Butch and Sue more than anybody else; I go to my garage every day and I see his room, it is as close as from me to you, Mr. Hawkins. It is nice looking and it makes my property more valuable and it makes our neighborhood look better and it upgrades the area so I don't really know what the issue is. Sheila, do you want to say anything? She will say what I was supposed to say.

Chairman Weidlich: Thank you for your comments, sir.

Mrs. Sheila Riley: I do live next door. I moved there when I was eleven. I watched that house being built.

Chairman Weidlich: Could you give us your address please?

Mrs. Sheila Riley: 236 Balsam Court. I live right next door; I watched the houses being built. I have known Butch and Sue since they moved in. My mom and dad lived there for many years; when my mother passed away in that home then my dad had to go to a nursing home; when he did, we moved into the home and then a few years later we bought the home because dad needed money for the retirement home that he was in. I don't know how many of you have actually seen a garage in that home; I don't know how many have seen one of those garages. I babysat as a teenager and I had been in that home many times babysitting many times before they moved in. If you have to keep an operating garage door; that is flat out ugly. How would you like to have a room with all of these things above you? It would be very, very ugly and I don't understand it, they do have a door there that opens that anybody that moved into that house could easily change it back to a garage door and I think it is more important for the people that have lived in this community for years and paid taxes for years, I believe it is more important for their wishes to be granted than for maybe perhaps, perhaps somebody moving in that house and wanting a garage that they could easily convert. That is all I would like to say. Thank you.

Chairman Weidlich: Thank you for your comments. Is there anyone else in the audience that would like to speak on behalf of this application?

(No one from the audience came forward to speak and at this time the public portion of the hearing was closed.)

Chairman Weidlich: Board Members, does anyone have questions for the applicant?

Mrs. Huber: I don't think this is a question for Mr. Hafer. When talking about parking and garages, particularly in Springdale Terrace, I wish that every one of you, from about from 6:00 a.m. until way into the night on Van Cleve Avenue, it is bumper to bumper to bumper to bumper of cars and the garage and driveways are vacant. Everybody is on the street so that they can make a quick getaway. It is true. What he has done; I better not say that and I probably should excuse myself because I worked with Butch for a long time but what he has done is lovely. He does have a garage door, it will open and shut and as his neighbor said if other people buy it they can easily convert back. I think, any more we dare not be different. I think that we better start thinking about the residents that are paying the taxes. I know that there are some zone issues that are necessary but then when the subdivision was built the lots were not very big and the driveways were not very big. If you have a big car, I don't think you can get in some of those garages. That is all I have to say, I just think we are very restrictive on a job that has been very well done.

Mr. Hawkins: I don't have a question at this time for Mr. Hafer. I did want to respond to Mr. and Mrs. Riley to make sure they understood what we have going on today. Some of the comments that were made sounded in favor of a variance; a variance has already been granted to Mr. Hafer. The question that we are here for today is regarding whether or not the actions that he has taken are in accord with the variance that was granted; that is what we are here for. So, the City administration had said that the actions were not. He has appealed it to the Board of Zoning Appeals and that is what we are talking about today. In terms of some of the comments that you made with regard to garage conversions, there have been a number of them in the City over the last umpteen years. The thing, in terms of you saying you are not sure why the Board is concerned about what may happen down the road; the thing that you have to understand when it comes to variances, we have to be concerned about the future because the variance runs with the land forever.

Mr. Hawkins (continued): So, it is beyond just what Mr. and Mrs. Hafer do or what I may do with a property, it goes forever. One hundred years, when all of us are gone, that variance will run with the land. So, the thing about it is you have to understand that a variance is a very big deal because it something that is going to attach to that land. The concern and why we have the things in the Code that we do, with regard to maintaining a garage, is there is concern about stressing non-street parking and there is concern about the impact on first-responders, law enforcement, fire, e.m.s. or what have you; if they are congested roads and particularly when we are talking about the Terrace and some parts of Heritage Hill, where some of the roads are tighter and it is a higher density of homes. Those are some of the reasons why the Code indicates that you have to maintain a garage. To be clear, also we are going through right now, Board of Zoning Appeals, Planning Commission and City Council, revising the Code. So, in a few months the Code will be revised and we will be dealing with maintaining a new Zoning Code. And so the input and the issues that Board of Zoning Appeals and Planning Commission and City Council have watched and seen over the years, whether it is a garage conversion or signage for some business, all of those things have been talked about. We spent approximately five hours or so this past Saturday going over all of these things; so, none of this is taken lightly by anybody who is involved in that process. But, I want to make sure that you guys understand that for one, he has already gotten a variance; and two, it is a very big deal when we are talking about granting a variance because it goes on well beyond all of us so we have to make decisions that are not just about us here right now, it is about the City, in forward thinking long after all of us are gone. He has a variance, the issue is whether or not the actions with the door are in accordance with what the variance said. That is why we are here.

Mr. Knox: Captain Hafer, would you be kind enough to read that portion of the variance that relates to the door? Do you have the variance with you?

Mr. William Hafer: To be honest with you, I have a stack of papers from you all. So, I grabbed a few. O.K. This is to certify that William and Susan Hafer, 246 Balsam Court, Springdale, Ohio 45246, has been granted a variance by the Springdale Board of Zoning Appeals from the strict application and provisions of the Zoning Ordinance of said City for the property located at 246 Balsam Court, to allow the owner of 246 Balsam Court to convert the garage into living space with the condition of maintaining an operable garage door. Variance is from Section 153.105(B) "A single two-car garage which I don't understand - and related parking area is required". Said variance is granted by the Springdale Board of Zoning Appeals at its meeting of October 21st, 2015.

Mr. Knox: Thank you. It says, "operable door".

Mr. William Hafer: Yes, sir.

Mr. Knox: I happened to whip out my Funk and Wagnall's dictionary at home, and it says door: a moveable barrier of wood or other material commonly turning on hinges or sliding in a groove for closing or opening a passage or opening into a building, room, etc. I still maintain that you have a door.

Mr. William Hafer: Yes, sir. I explained this the last time that I was here at the unofficial hearing, that I did everything possible to try to get an overhead garage door or any other garage door that would fit what I wanted to do and none of them would work. When I had a contractor out there and we stood there he goes, "Well, a garage door; if this door opens on hinges and it has a handle and you can open it and you can drive whatever in there or whatever you wanted to do, then close the door and latch it, is that a garage door?" I looked and said, "It is a garage door". So, we went ahead and put that in. I realize that there are laws for certain things. We have got this down to a technicality and I think the legal people here, sometimes a technicality doesn't work and sometimes it does work. If I can open a door and it is on four or five hinges, I can't remember, to open that door up then it

is a door. I called and had a gentleman come down from the Building Department when we hung it because I still had my garage door laying in my front door, racks and all before I got rid of it, and said "Is this a garage door", and what I was told was that I had to go back and talk to Mr. McErlane. I got a call later and the answer was, "If it is on hinges and it opens and closes, then it is a garage door". The junk man came and got my garage door. Like I told you before, I wasn't trying to hoodwink anybody, I wasn't trying to go behind anybody's back. The overhead garage door, now that has become the issue; overhead garage door. This is not an overhead garage door. It could have been, I could have put the hinges on the top and lifted it up, I mean I am just trying to say this is what my interpretation was and my contractor's interpretation was and that is what it says in the variance.

Mr. Knox: If there is no other discussion by the Members of the Board, how do we proceed from this point because this family has a variance?

Chairman Weidlich: Right now we do have some more from the Board Members.

Mr. Hawkins: Thank you. To be clear, I think my understanding, and correct me if I am wrong, I think we have to take a vote at some point whether or not to grant the appeal of Mr. Hafer to indicate that he can maintain the door as it is, or to deny that; indicating that is not an application that was approved. I think that is the action that has to be taken, one way or the other tonight for the appeal. Mr. Hafer, as you've said, as I've said before, words and the way they are interpreted are critical in terms of the way things are looked at. And I think the reality is the actions of the door that is up there are not in line with the spirit of what I think the Board had in mind but I think it falls within the letter of the law, in terms of the variance that you were given. I am not happy about it. To be clear it is not so much about a door that swings or a door that is overhead, the concern and part of what goes into the Zoning Code, I think as I look at it, is also about trying to maintain a certain appearance and part of that is just like we have a Route 4 Corridor PUD, trying to maintain some uniformity. It doesn't say anything about the job that you did on it; I have seen it and I have told you before that I am sure whatever you are going to do is going to be meticulous and it is.

Mr. William Hafer: It is not finished yet; I had to stop.

Mr. Hawkins: In terms of maintaining uniformity with the appearance that there is a garage there is the issue. It is part of the Code, part of the zoning to maintain some uniformity with regard to want the houses to appear that there is a garage there. What you do inside there, you have a lot of discretion with regard to that. That is the issue for me, in terms of the type of door that is there. It says nothing about the craftsmanship or nothing like that but it is about the uniformity issue, for me. It is not what I want to do but I am going to, when it comes time for a vote, despite my wishes, I have to by the law, I think, indicate that you should be granted your appeal with regard to the situation because it is a door on a garage that is operable. I probably wouldn't personally call it a "garage door" but it is a door on a garage that is operable and I have reviewed this with the City's Legal Counsel and I don't want to end up in Hamilton County doing stuff just for the sake of doing it and costing the City money. This is not what my intention was on the onset. I think you are probably in the clear, based on the words that are in the variance and what has transpired.

Mr. Hafer: I understand your explanation. I think you have made it clear and the gentleman that came before; overhead garage door and space. It won't happen again; but I thank you.

Mr. Ramirez: Just for the record, as I see it, I believe that we need to allow the door to stay as is because as we wrote the variance we were not specific enough. Although we discussed overhead garage door in the variance itself, we don't have that listed, we have an operable garage door listed. So, for that reason I don't believe that we should enforce the violation.

Chairman Weidlich: Does anyone else have any comments? I am going to throw my two-cents worth out, too, sir. I go along with Mr. Hawkins and Mr. Ramirez, that wasn't my intention when I voted for the variance but like they say, you met the words of the variance, you have a door that opens. So, for that reason I will be voting for your appeal, as well.

Mr. William Hafer: Thank you.

Mr. Nienaber: I don't think we are voting again for the variance that was granted previously?

Mr. William Hafer: I think the way that this is, I'm appealing Mr. Taylor's decision and either you affirm his decision or you don't.

Mr. Nienaber: That is what I am confirming.

Mr. Hafer: I am not telling him how to do this, but this is the way that I understood it and either you affirm his decision or you don't.

Mr. Laux: Thank you, Mr. Chairman. I think that is right; I believe that we are going to need to have a reversal of the Building Official's decision, if that is the direction that the Board of Zoning Appeals would like to go. We are not voting on a variance here tonight, the variance has already been granted. So, the Building Official has made a determination that Mr. Hafer's progress on the door, I'd just call it at this point, is not consistent with the variance. If the Board of Zoning Appeals wants to reverse that then they are going to have to take a vote on that. Just a couple of notes; in the Zoning Code there is a definition of garage, it says it is a building used primarily for the parking, storage or repair of vehicles. It doesn't say that this space has to be used exclusively for that but the primary purpose for a garage, at least according to the definition listed for garage in the Zoning Code is that it is a building used for parking, storage or repair of vehicles. The terms of the variance do not say, "an operable overhead garage door", that is a fact. The spirit of the Zoning Code seems to suggest that the purpose of a garage, at least according to the definition and the rest of the Zoning Code as I read it, is to store vehicles and not for the conversion of garage space into living space. If that were the case then the exception would swallow the rule and everybody's garage in Springdale would be extra living space. I would caution the Board of Zoning Appeals to be careful in that regard. Secondly, I would note in the Property Maintenance Code under Section 155.059, there is a Section on accessory buildings that refers to garages and it does say that garages need to be properly maintained in good repair and free from health, accident and fire hazards; and there is a specific definition for that under Subsection "C" of that Section. It says, "Properly maintained and good repair and free from health, accident and fire hazards mean having passed an inspection, which includes but is not limited to the structural supports, exterior painting, exterior trim, the doors, the windows, the siding, the plates and the chimneys and the sheathing". It goes on to say, "Where the doors are side hinged, they shall not be repaired by the application of any plywood, pressboard and or similar materials. The only acceptable repair shall be the replacement with like or similar parts". If the Building Official's determination is reversed, I would remind the Board of Zoning Appeals that we are going to have to stay on this as far as if any changes are made to this door, to make sure that it is in compliance with the Property Maintenance Code. That is all that I have.

Mr. William Hafer: I was already issued the variance, so that is no longer a garage. So, you are referring back to a garage and how a garage shall be maintained. I was given a variance for the conversion of the garage to a living space. So, it therefore loses its garage.

Mr. Laux: Yet it still stays with the condition of maintaining an operable garage door. It doesn't say "an operable door", it says "an operable garage door".

Mr. William Hafer: For a garage.

Mr. Laux: No. It says for maintaining an operable garage door, period. Then it goes on to say, "Variance is from Section 153.105(B); which says, and I quote directly from that, "a single two-car garage and related parking area, as required."

Mr. William Hafer: And I still don't understand that two-car garage thing.

Chairman Weidlich: Is that all, Mr. Laux?

Mr. Laux: That is all I had. Thank you.

Mr. Ramirez: Just one more note; although I am in favor of your appeal, going forward it won't be the standard that that type of garage should be approved, going forward. The only reason it is staying this time is because of the wording of your variance.

Mr. Hafer: Understood. I get that from the language that was used earlier, especially the gentleman from Diston; everything now is overhead garage and I am sure that will be written into your new Zoning Code.

Mr. Ramirez: That's all I have.

Mr. Hawkins: Mr. Hafer, in terms of that two-car garage, that is just from when the Zoning Code was changed last and that was put in there. So, obviously everybody that has a one-car garage has been grand-fathered in. If for some reason, someone's house was demolished or something like that and they started over, they would have to have a two-car garage at that point because there are bunch of houses that are legally non-conforming in the Terrace but at the point that that house ceased to exist for some reason, the next time they rebuilt it, it would have to have a two-car garage unless they got a variance. Now, the Code is getting ready to change again and so some of those wouldn't have to go through that once it changes. Just so you understand. Mr. Laux, is there wording that will be most accurate for the Board to use with regard to whoever makes this motion? Should it just be a motion to grant the appeal, reversing the decision of the Building Official? Is that sufficient?

Mr. Laux: I believe that would be sufficient, Mr. Hawkins.

Chairman Weidlich: Does anyone else have any other deliberation or discussion on the evidence presented? (No further deliberation presented, at this time.) Can we have a motion please?

Mr. Knox: I move that this Board grant the appeal of the Building Official's finding, in favor of Captain Hafer. (Mrs. Huber seconded the motion.)

Chairman Weidlich: Any other deliberation or amendments to this motion?

Mr. Hawkins: Thank you, Mr. Chairman, I was just going to suggest adding his address of 246 Balsam Court.

Mr. Ramirez: I had the same question.

Mr. Laux: I think the wording of the motion needs to be the motion to reverse Building Official's determination, not in favor of the property owner. The official wording needs to say, "Motion to reverse the Building Official's determination that the property owner's use of the property is not in conformity with the existing variance."

Mr. Knox: At 246 Balsam Court.

Chairman Weidlich: Do you want to read what you have there as far as the motion goes?

Mr. Laux: "To reverse the decision of the Building Official's determination that the property owner's use of the property is inconsistent with the existing variance."

(At this time Mrs. Huber polled the Board of Zoning Appeals Members and with seven "aye" votes the appeal was granted to the owner of 246 Balsam Court.)

Chairman Weidlich: Your door can stay.

XI DISCUSSION

Chairman Weidlich: Thank you. It is quite obvious that the new Zoning Code that we are working on may benefit from additional wording in there, as to what is a garage door so that this doesn't occur in the future. I personally will bring this up since I am a Member of the Committee, as is Mr. Nienaber, Mrs. Ghantous and Mr. Hawkins, to come up with wording that is suitable that when we talk about garage conversions that it will be an overhead garage door. Thank you.

Mr. Hawkins: And also, along those lines with the new Code; when that takes effect, the Code is going to be a little more flexible with giving instead of mandating two-car garages, it is going to have one-car garages for higher density areas. So, I think it gives this Board the opportunity to sort of start fresh and if the Board is not inclined to grant a variance because there is a means in which an applicant could go and an addition on the back of their house or what have you, I think the Board will then be in a position to turn down these variances. It sounds like, from Legal Counsel that we would stand on firmer ground than we do right now based on the precedence that has been set. Once we set this new Zoning into effect, I think we are sort of starting over and starting fresh and should look at these with a little more critical eye than what we have.

Chairman Weidlich: Does anyone else have anything for discussion this evening?
(No further discussion presented.)

XII ADJOURNMENT

Mr. Hawkins moved to adjourn, Mr. Ramirez seconded the motion and the Board of Zoning Appeals meeting adjourned at 8:02 p.m.

Respectfully submitted,

_____, 2015 _____
Chairman Robert Weidlich

_____, 2015 _____
Secretary Jane Huber