

BOARD OF ZONING APPEALS MEETING MINUTES
19 OCTOBER 2004
7:00 P.M.

I. CALL MEETING TO ORDER

The meeting was called to order at 7:02 p.m. by Chairman David Okum.

II. ROLL CALL

Members Present: Bob Weidlich, Jim Squires, Marjorie Pollitt
Jane Huber, Fred Borden, Bob Emerson
And Chairman Okum

Others Present: Richard G. Lohbeck, Inspection Supervisor

III. PLEDGE OF ALLEGIANCE

IV. MINUTES OF REGULAR MEETING OF 21 SEPTEMBER 2004

Mr. Squires moved to adopt and Mrs. Huber seconded the motion. By voice vote, all voted aye, and the Minutes were adopted unanimously.

V. CORRESPONDENCE

- A. Zoning Bulletin – September 10, 2004
- B. Zoning Bulletin – September 25, 2004
- C. Planning Commission Meeting Minutes – September 14, 2004

VI. REPORTS

- A. Report on Council Activities – Jim Squires

Mr. Squires reported on the October 6th meeting and passed an ordinance for \$1,600,000 in notes for bonds for street-related improvements in the Springdale Park Subdivision. We also passed a resolution opposing the ODOT proposal to construct the noise barriers along I-275. I-275 will be widened from Winton Road to Route 42 and a number of residents may be affected by the truck and traffic noise. The City felt that these walls don't work. Some of our residents did want them but we decided to notify ODOT that we did not want to participate in this project, even though the cost is fully funded by the Federal Government and maintenance funded by ODOT. Mrs. Pollitt added that three new Springdale police officers were sworn in.

Report on Planning Commission – David Okum

Mr. Okum reported on the October 12th meeting. The exterior changes for Staples, 12050 Princeton Pike. The main entrance will be reoriented to the north side of the building and after much discussion, Planning approved it. They will return next month with their landscape plan.

VII. CHAIRMAN'S STATEMENT AND SWEARING IN OF APPLICANTS

VIII. OLD BUSINESS

IX. NEW BUSINESS

- A. Catherine A. Kauffman, 11831 Ramsdale Court requests renewal of Variance 29-2001 allowing the operation of a dog grooming business in a residential district. Said variance is requested from Section 153.486(G) "home occupations shall not include..pet grooming.."

Catherine Kauffman, 11831 Ramsdale Court said it has been three years and I am here to get a renewal of this variance to allow my dog grooming business to continue in my parents' home. I have had no problems or complaints from any of the neighbors. They all called me when they got their letters and asked if they needed to attend this meeting, and I told them not unless they had a complaint.

Mr. Lohbeck reported that the applicant is requesting to continue a dog grooming business in her residence. At the time the original variance was granted, dog grooming was not specifically prohibited. At that time the Building Department felt it was similar to other prohibited uses in the code such as a barber shop, beauty salon and dog boarding. In March of 2000 the revised Zoning Code specifically prohibited pet grooming.

The applicant first received a temporary variance in 1992 to allow this use for one year. The board has subsequently granted two year temporary variances in 1993, 1995 1997 and 1999. In 2001 the board granted a three-year temporary variance.

Should the board decide to again grant a variance for the continuation of this use, the building Department encourages the continued use of the temporary variance to be able to review complaints and sanitary conditions. It also allows for expiration should the business be discontinued or should the operator move from the premise.

The Building Department has not received any complaints about the business, nor do we have current health or sanitary concerns.

Mr. Okum opened the public hearing. No one came forward and he closed the public hearing.

Mr. Squires moved to approve the renewal of the variance for a period of three years, and Mr. Borden seconded the motion.

Addressing the applicant, Mrs. Huber asked how many dogs in one day she might groom, and Ms. Kauffman answered usually about four. Mrs. Huber asked the number of days per week she operates her business, and Ms. Kauffman answered five days. Mrs. Huber asked how long it took to groom a dog and Ms. Kauffman answered about two hours.

Mrs. Pollitt commented for clarification, I would like to have the owner state that he does not have any objections to this variance. Ike Kauffman, homeowner said I have lived here 43 years. This is my daughter and when I die she and her sisters get the house. Mr. Okum asked if he had any objection to this business continuing, and Mr. Kauffman said that he did not.

IX A DOG GROOMING BUSINESS – 11831 RAMSDSALE COURT

Mr. Borden asked if the nature of her business had changed in the last three years, or increased any, and Ms. Kauffman said that it had not changed and the volume was about the same. I don't like having that many dogs in there since there is not that much space.

Mr. Squires said for the record, you do not board these dogs overnight, do you? Ms. Kauffman answered no.

Mr. Okum asked if the operation was Monday through Friday, and Ms. Kauffman answered it is Tuesday through Saturday. Mr. Okum asked if the hours were between 8 and 5 or 6 p.m. Ms. Kauffman answered I work different hours every day, depending on the customer's needs. I work Tuesday evenings.

Mr. Okum asked the applicant if she would have a problem if the motion were conditioned so that there would be no dog boarding on the site and the operation would be during normal business hours. Ms. Kauffman indicated she would not have a problem with that. Mr. Borden said she doesn't have normal business hours. Mr. Okum asked her hours, and Ms. Kauffman said I start at noon on Tuesdays and go until 7 to 8 in the evening. It varies, but I am usually done by 8 p.m. every evening.. Mr. Okum said we'll forget normal business hours. Would there be a situation of your grooming more than six dogs in a day? Ms. Kauffman responded if they were small dogs, I probably could do eight dogs in a day. I have one customer that has four dogs.

Mrs. Pollitt said rather than trying to tie it down to the number of dogs she grooms in a day, would it be appropriate to put an end time to the business each day, say that no appointments would be scheduled after 9 p.m.? That way the comings and goings would be at a minimum and wouldn't disturb the neighbors. Would that be agreeable to you? Ms. Kauffman said yes. I don't like the idea of being limited to a certain number of dogs a day; that would limit my ability to make a living.

Mr. Okum asked if she had any employees and Ms. Kauffman said she did not. Mr. Okum commented so it would be a sole entrepreneurship operated by you, and Ms. Kauffman confirmed this. Mr. Borden asked her if she was required to be licensed and Ms. Kauffman indicated that she was not. He asked if the work was ever inspected, and Ms. Kauffman indicated that it was not.

Ms. Huber suggested adding to the motion that if Ms. Kauffman moves from the address or ceases the business, the variance would be null and void.

Mr. Okum said I think we need discuss this, package a motion and tie this into the original motion. Mrs. Huber has suggested that a three year time limit be placed on this as recommended by the Building Department. Mrs. Pollitt has indicated that there should be no appointments after 9 p.m. and there also was a reference to no dog boarding. The only other thing I would encourage the board to include in the motion is that it should be a sole entrepreneurship with no employees.

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Mr. Borden said if we say no appointments after 9 p.m., does that mean she has to close at 9, or just not accept any appointments after nine? Mrs. Pollitt said Ms. Kauffman stated that she generally is finished between 7 and 8 at night. So if we said to have the business close at 9 p.m., she could finish up her last appointments of the day and for the owners to come and collect their dogs. Ms. Kauffman said there have been times when the owners didn't come to get their dogs right away. Mr. Okum responded I don't think the time police will be at your door watching. Mr. Okum asked her if she had a problem with any of the conditions, and Ms. Kauffman indicated that she did not.

Mr. Lohbeck reported that the dog boarding is prohibited in the Zoning Code, so I don't think that should be in the motion.

Mr. Okum said so we now have three amendments, a three year time period, no appointments after 9 p.m. and sole entrepreneurship.

Mr. Squires said the three years is a part of the original motion. Mr. Okum said I understand that but I think it needs to be an amendment to the motion. Mr. Borden asked if the law director was okay with the time amendment; I know we have precedence. Mr. Okum said he is okay with this, and I think that the best way to handle precedence is to handle it with conditions.

Mr. Okum said Mrs. Huber suggested that if Ms. Kauffman ceases to operate this business, the variance shall be null and void. I think that is valid and we should consider it in the amendment to the motion..

Mrs. Pollitt moved to amend the motion to allow a temporary variance for three years for a dog grooming business that will be the sole proprietorship, with no employees. The normal business hours shall end by 9 p.m. with the condition that should Ms. Kauffman go out of business the variance will lapse.

Mr. Squires seconded the amendment.

On the amendment, all voted aye, and was approved unanimously.

On the motion as amended, all voted aye, and the variance was granted unanimously.

- B. Lucille & Ronald Bross, 11979 Marwood Lane request variances to allow the construction of a 702 s.f. garage. Said variances are requested from Section 153.105(B) "The garage shall have a minimum floor area of 400 s.f. and a maximum floor area of 600 s.f., Section 153.100(A) ".minimum front yard setback of 30 feet and Section 153.102(A) ".minimum back yard setback of 35 feet."

IX B CONSTRUCTION OF 702 S.F. GARAGE – 11979 MARWOOD LANE

Joe Zeinner, Contractor said a few weeks ago Mr. Bross said he was interested in a bid for a garage. He presented a picture of the property. He has a very well kept home and lawn, but over the last 30 years he has collected two vintage cars that are outside. He has an existing one-car garage which is packed full. He has no basement at all so everything we would put in our basement is in his garage. He still has the existing driveway which is completely cracked and deteriorated.

We talked and looked at his needs and what he needs is a two-car garage using the depth of his house, which is 27 feet. What we would like to do is keep that line coming out and get the right width to get two cars side by side. To get those cars inside, we need a little extra room.

The garage doors on the existing single car garage will come off and we will use the same brick to brick over that opening, put a new window in to match the existing living room window so it will appear as the front of the house. That old garage will be used as a storage area. The old driveway will be torn out completely and resodded and a new driveway will go into the new two-car garage.

We are asking for more space. Six hundred square feet just makes it enough room to get the cars in and to walk around it. There is still no place for him to put a work bench or storage shelves.

Mr. Lohbeck reported that the applicant is requesting a variance from Section 153.105(B) to allow the construction of a 702 s.f. attached garage. This section of the Zoning Code limits the maximum area of a garage in the RSH-H District to 600 s.f.

Drawings submitted appeared to show that the existing one-car garage will be converted to living space and a car port on the south side of the house will be removed. It appears that additional variances will be required from rear yard and front yard setbacks. These setbacks are required to be 35 feet and 30 feet respectively. The rear yard of this residence is legal non-conforming in that it was built prior to the Springdale Zoning Code. It appears that the garage addition will be 26 feet from the rear lines at its closest point. The house is skewed from the lot lines at Pilgrim and Marwood, and these lot lines are not rectangular as shown on the applicant's site plan. It appears that the proposed garage addition will be approximately 28 feet from the lot line on Marwood at the southeast corner of the garage (see the attached sheet).

The site plan submitted with the application appears to show that the existing driveway will be removed and a new driveway will be constructed further south to line up with the new garage. The Zoning Code requires that the driveway be a minimum of 18 feet wide.

The garage addition is proposed to be constructed over an abandoned sanitary trunk sewer. The owner has been made aware that the Metropolitan Sewer District must provide documents that permit construction over the old sewer and that the easement will be abandoned.

IX B CONSTRUCTION OF 702 S.F. GARAGE – 11979 MARWOOD LANE

Mr. Okum opened the public hearing.

Mr. Ron Bross, 11979 Marwood Lane said I have checked fully into the Metropolitan Sewer District and that sewer has been abandoned. I have two letters that I received from these people that I have submitted stating that the ground is fully able to be built on.

No one else came forward, and Mr. Okum closed the public hearing.

Mrs. Pollitt moved to grant the variances and Mr. Squires seconded the motion.

Mrs. Pollitt said so the front of the house will be 76 feet in length. Will it be a pitched roof? Mr. Zeinner answered the roofline will stay the same; the gutter line will stay the same. We will take the left side of the brick off the front of the house and reuse it. It will not look like an add on.

Mr. Okum asked how he planned to handle the left and rear elevations. Mr. Zeinner answered that they would be vinyl siding that matches the vinyl siding trim on the existing house, the gables and overhang on the front and back are vinyl siding.

Mr. Okum asked how the space where the old garage was would be utilized. Mr. Zeinner answered right now it is storage and it will stay storage. The difference is that the garage door will be gone. He'll have access from the original door going from the kitchen into the existing garage, and he will have another door from that storage area into the new garage.

Mr. Okum asked what would happen with the paved area where the old driveway was. Mr. Zeinner answered that would be completely torn out and hauled away. New topsoil will be brought in and the lawn will be extended over to the new driveway.

Mr. Okum asked the width of the new driveway, and Mr. Zeinner responded that it would be 18 feet. Mr. Okum said it says a minimum of 18 feet, and I was more concerned about it becoming a 26-foot wide driveway than the minimum. Mr. Zeinner reported it is drawn as 16 feet right now, and I'll have to extend it to 18 feet.

Mr. Okum asked Mr. Bross if that was the size of driveway he wanted there. Addressing Mr. Bross, Mr. Zeinner stated that under contract we are to widen the garage door which is 16 feet, and that is what I proposed to you. They want 18 feet, so we will go one foot wider on each side. Mr. Bross said that is fine.

Mr. Okum asked if the carport on the side of the house would be removed and discarded, and Mr. Bross answered yes, it is gone.

Mr. Okum said you have a letter from the MSD that vacates the sewer easement that you can provide. The city has not been told by Metropolitan Sewer District that it has been vacated.

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Mr. Lohbeck stated we need that in writing. Mr. Bross said the contractor has it

Mr. Okum said I have a letter dated January 3, 2002 to Mr. Ronald Bross, 11979 Marwood Lane.

“RE: Abandonment of Existing 30” 30 Sanitary Sewer Upon
11979 Marwood Lane

Dear Mr. Bross:

The Metropolitan Sewer District is in the final stages of construction on the Springdale Sharonville sewer replacement. The portion of the new 36 inch sanitary sewer which runs approximately 150 feet south and parallel to your southern property line is now in service rendering old existing 30 inch sanitary sewer upon your property abandoned. MSD has no further need for the old existing sewer and will not object to any building proposal which would encroach upon its easement. If you have any additional concerns or if I can be of additional assistance please contact me at 244-1360.

Sincerely,

Timothy G. Howard
Right of Way Manager
Waste Water Engineering Division”

Mr. Okum reported we also have similar comments from the Waste Water Engineering Department.

Mr. Weidlich said as I understand it, the new garage would be storage for two other cars. Mr. Zinnear reported he intends to get these two vintage cars in the back, and the vehicles that he and his wife drive will go in the front. That is why we are asking for the width. Mr. Weidlich commented I was going to suggest that maybe you consider stepping it back from the house three feet or so not only to come closer to code but also for architectural appearance of the home. I would guess that the existing garage is just the brick area and doesn't include the sunroom at the back of the house. Mr. Zinnear said the sun room is not included in this.

Mrs. Pollitt said my only concern about this request is the length of the house. I understand Mr. Weidlich's suggestion to knock it back a bit and create some architectural interest, but I understand that would be difficult to do with the roof line. I think the fact that they are going to move the driveway and brick in the existing garage door and add windows to break up that expanse is very beneficial. So, I would not have a problem supporting this.

Mr. Borden said staff comments talks about a minimum 18-foot wide driveway. Do we need to include that in the motion? Mr. Okum said no. Mr. Borden asked if these are two lots, and Mr. Okum said no; it is a corner lot, and I believe it is an extra large and deep parcel. The longest point is 185 feet wide by 84 feet.

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Mr. Borden commented that he was looking at the line going through the lot. Mr. Okum said that is a sewer easement. Mr. Lohbeck reported that it was a 20-foot wide sewer easement.

Mr. Okum added this is an oversize lot so density wise this addition would not impact significantly. I believe that due to the limitation of space and the intent of the applicant to create a two-car garage versus a single car garage which the property currently has is an asset to the home and to the value of the property. I am pleased that the applicant has indicated by his request that he will be taking the brick from the south side for infill on the front. That certainly should be part of the motion. I think limiting the width of the driveway at 18 feet on the front of the house versus more drive is necessary, and the motion should also include that the old driveway shall be removed and infilled and seeded just as the applicant has said.

Mr. Lohbeck said I would also like to point out that there are two storage sheds on the property and one is closer to the property line than five feet.

Mr. Okum asked Mr. Bross to approach the board to discuss the two sheds. You have indicated that your old garage space will be utilized as storage.

Mr. Bross said it would be storage of household items and my wife shops for the grandchild; those kinds of things. It will not be storage of lawn equipment or those types of things. In the barn on the far side I keep lawn equipment.

The building next to my house was there when we bought the place. I had nothing to do with it. Mr. Okum said it is on your property, and you are utilizing it. One of your sheds, I believe the detached shed further away, is not legal where it is.

Mr. Bross responded I wasn't aware of that. I had a permit when it was built. At the time they came out and checked it and I never had any problems. No one ever said anything.

Mr. Okum said if the board was to grant you this variance for this additional space, which is 102 s.f. over what is allowed, would it be possible for us to deal with the shed issue. You are only allowed to have one shed, limited to 120 s.f. Mr. Bross said what are you saying I must do? Mr. Okum responded we are hoping that you will give us a solution so we don't have to tell you what you need to do, but right now you are in violation of the Zoning Code. Mr. Bross said are you saying I must move the shed?

Mr. Okum responded the Building Department has indicated that you would need to come back here for a variance on one of those sheds. In my opinion, if we are giving you 102 s.f. more in garage space, in addition to your storage space that you are retaining, you certainly should be able to do without one of those sheds. The problem is that the better of the two sheds is the one that needs a variance for a five-foot setback.

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Mr. Okum asked the size of the shed, and Mr. Bross answered that it is 10' x 12'. Mr. Lohbeck reported that it is over the property line and in the city park.

Mr. Okum said it is out of compliance to have two sheds. One would need to be moved and the other would need to be removed, or you can come back for another variance. Mr. Zeinner commented you are not going to give a variance for something on somebody else's property. Mr. Bross asked which shed was on someone else's property, and Mr. Lohbeck reported that the one by the park is over the property line and in the park.

Mr. Bross commented when I built that shed I went through the Building Department and obtained a permit. They measured it and told me where I could build it, and that is where I built it. Now I find out it is on somebody else's property.

Mr. Okum said it is your responsibility. Even though they approved your building permit, they may have told you where your property line was but there was not a survey done. The most current survey on that site probably would have been when they did the sewer. Did they put new property markers, new pins or stakes along your property line? Mr. Bross indicated that he had not seen any.

Mr. Okum said no matter what two sheds are in violation. One is not on your property, so that needs to be dealt with. It is going to need to be moved anyway because it is partially on somebody else's property and your property. You also have two sheds when you are only allowed to have one. That has been a part of the code for a long time.

Speaking to Mr. Bross, Mr. Zeinner said they are giving you a variance for the garage, but they want you to be in compliance with the other two sheds. It is a very simple request. The building inspectors are not surveyors. As a builder, I have to be responsible for everything that I build. They would give you a variance for the garage and to be in compliance you have to move one of the sheds.

Mr. Bross said both those sheds have concrete floors. It's not like they are set on the ground. Mr. Okum commented I don't think that the City would demand that the concrete be removed. Mr. Zeinner said I am the contractor and I will tear it out while I am tearing the driveway out and make it look nice.

Mr. Okum said we have to deal with it either now or at another hearing, and these members are the same that you would have to come before for two variances. One is your shed that currently is across your property line, and is required to be five feet from the property line. So once you get it to your property line, you would need to move it another five feet. I am very sorry that this has occurred, but it is a fact. The other shed is a second shed on your property. The second shed, which appears to be five feet off your property line, probably could remain, but it probably is not the nicer of the two sheds.

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Mr. Bross said it is not. That shed has been there for almost as long as we have owned the property. Mr. Okum responded we have to live by the rules that are set. The City could issue orders for you to remove the shed, because it is on their property. I think we are trying to work through that, and I don't think that is the intent.

Mr. Bross commented I can also say that I have maintained the property behind my bushes almost since I have lived there.

Mr. Okum asked if the barn could be pulled closer onto his property. Mr. Bross commented it would involve destroying the barn. It is a wood structure with a lot in it. Mr. Zeinner added it can be moved; it's a matter of just doing it.

Mr. Okum said we are trying to get from Point A to Point B. Mr. Bross said you are saying that I have to move the barn that is against the park. What gets me is I went through the whole process. I distinctly remember that I went through the Building Department, and the inspector came out and inspected it. I'll have to do it I guess to conform, but I don't understand why 30 years went by and I am requesting to have a garage addition and you are trying to penalize me for a barn being a little close on the property line. I was completely unaware of it. Yes I would like to have my garage addition and I'll probably go ahead and do that, but it seems like there should be a better solution than making me tear down a fully built barn with siding and everything else on it.

Mr. Okum said I am in the construction field and I understand what you are saying, but I also know that in construction where there is a will there is a way. You can adapt and make things work if you lay out a plan to do it. That area of the ground is fairly flat, and you could make adaptation. It would take some work, but you will have some pretty heavy equipment on your property that could assist you.

As far as the barn being on city property, whether it is on the city property or somebody else's property it is an accident that occurred.

Mr. Bross added what really gets me is I went through the process and nobody informed me or said anything at all. I would have been more than happy not to build it encroaching on the city property or anything like that. I wasn't aware of the situation until tonight.

Mr. Okum said that is one of the reasons that his board is here to deal with appeals if there is a topography issue that is unique to your property. In this case, we have to look at what you are adding to your property and we have to consider if you are adding storage and accommodating space within your property, we have to look at what else is on your property. We also have to look at the number of sheds, because it is very clear that your property is only entitled to one garage and one storage shed. We didn't write the Code; it was adopted a long time ago.

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Mr. Bross responded at the time I built that barn, I had an existing shed in the back of my house. It was clearly noted and signed, and I requested to build the barn on my property. I went through everything I am going through aright now, and it was granted. What happens if I build a garage and down the road I want to put a sidewalk in and I find out that my garage is in violation and I have to tear it down.

Mr. Okum responded I don't think that will happen sir, but I understand what you are saying. My comment as a proponent to your request is that your lot is an oversized one which can accommodate the garage very nicely. I believe you have a quality contractor who is interested in doing it right for you. On the other hand, we have to live with what the Building Department has brought to our attention. It is their responsibility to bring that to our attention so we can deal with it and dispose of it.

Addressing Mr. Bross, Mrs. Pollitt said you stated that you had an existing shed. Mr. Bross reported I moved there in 1975 or 1976 and in the first couple of years I lived there, the barn was there. The previous owners had a covered carport on the property and a closed porch and that shed closest to my house. It is probably 8' x 6' approximately. Mrs. Pollitt asked if he had to come before the Board of zoning Appeals or just to the Building Department. Mr. Bross answered I went to the Building Department, and he said he would come out and inspect the setback from my property line, and from the street in. Once I started building it, some people from the Building Department came out, checked it and okayed it. Now, I am in violation.

Mrs. Pollitt said from looking at those pictures, do we know that the shed is setting over the property line? Mr. Okum responded based on the markers that are on the site now, our Building Department has interpreted that the shed is across the current property line of the site.

Mr. Okum said Chamberlain Park was built and the creek got rechanneled in the 1970's. Could the property lines have been changed at that time? I'm not sure. I can clearly see on this CAGIS information that it looks like the creek went right through your yard.

Mr. Bross said at the time the people came out, he said that he had to make sure that I had the proper setback from the street and the proper setback from the edge of your property line. Once I started building the shed, they came out and rechecked it and said everything was okay, so I proceeded to build it.

Mrs. Huber asked the applicant if he remembered when Chamberlain Park became Chamberlain Park. Mr. Okum added she is asking when the roadway was constructed next to your property. Mr. Bross answered that it was there ever since we have been there.

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Mr. Lohbeck reported that the driveway that comes off Marwood goes up behind Hunter's Glen. It is not really the park; the park is down further. There is a parking lot behind Hunter's Glen, and they have a bridge that goes over to the park itself. Mr. Okum added the park is also on top of the hill and the City put those landscape timbers in on the Hunter's Glen side and redid that whole area.

Clearly the CAGIS we have here shows that the creek got relocated; when it got relocated we don't know. Those lines continue all the way across there, and if you look at the channel of the creek and the rechannelization that had to occur when the subdivision was built. I do know that a lot of the residents have absorbed the space between the creek line and the rear of their lots, even though it is not theirs. They have encroached up to the creek line, assuming it was their property line.

Mrs. Pollitt asked Mr. Lohbeck about the permit taken out for the shed. Mr. Lohbeck reported that in May of 1981 we issued a permit to place a 10' x 12' frame utility building in the rear yard not closer than 5 feet to a property line and at least 35 feet from the right of way line.

Mrs. Pollitt asked if it was signed off on by the Building Department as inspected, and Mr. Lohbeck reported that it was, adding that it doesn't necessarily mean that we can check property lines. We can't.

Mrs. Pollitt said I am having a real issue with this. Mr. Okum said the difficulty is that either you demand from your property owners that they give a registered survey on every application for a variance, which we don't do or I don't think we should do since it puts a burden on the resident. The other option is to rely upon the resident's interpretation or fence lines that are observed to be the true property line.

Addressing the applicant, Mr. Okum said the problem is that this land all the way to the creek is the city's land. Mr. Bross responded I'm trying to be reasonable about this, but you understand too that this makes a great deal of extra expense and work for me. Can't this be adjusted or something done to help me a little bit?

Mr. Okum said the simplest way to deal with it is for you to eliminate the shed directly behind your house first. Then we only have to deal with the issue of the shed that is placed incorrectly separately.

Mr. Bross said you told me that I had to remove with both sheds, right? Mr. Okum responded no. My recommendation is to eliminate the small shed behind your house and then deal with the other shed issue that is on your property line with a survey. You are not sure if the shed is over your property line. Mr. Lohbeck believes that it is based on a field observation and the CAGIS map. We need to resolve that, but I don't think we will tonight unless you engage a surveyor to know exactly where the property line is located.

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Mr. Okum added if you agree to move that shed, great. If you don't agree to move it, the City will have to deal with it because it is not currently in conformance with the Zoning Code. I think it would be prudent for the board not to force it to be moved without knowing how far it needs to be moved. However, I think it would be appropriate for the board to act on two sheds versus one, and eliminate one.

Mr. Okum said if you are on the City's property, this board has no power whatsoever to deal with that issue. A setback of five feet from the property line is germane to this board. Right now we have two issues. We can deal with the two sheds reducing it down to one shed, most of which we believe is on your property and some of which is on the City's property.

Mr. Bross said if I remove the shed behind my house, tear it down and tear the other shed down and build a new shed farther up, would that satisfy Springdale?

Mr. Okum said that would eliminate the whole problem, but I am not saying you that you have to do that. Mr. Bross responded basically you are pressing me up against a rock. You are saying one thing and I am saying another thing. I did it within the conformity of the law. One shed I never even put up. No one told me any of this until now, when I decided to have a garage built on the house. I need the space and these houses in Springdale are not all that large. They don't have the storage that is up to current standards. Unless you can tell me something, what else am I going to do?

Mr. Okum responded I have given you the board's position which is we can act on your requested variance with conditions. The prudent thing for this board to do is act upon the requested variance with at least several conditions, the brick and the elevations, etc. Additionally, one of the two sheds should be removed. The problem with the other shed, which is placed on City property (based on observation, not a survey) needs to be resolved. If the shed is totally on your property, you would have the opportunity to request a variance. I cannot tell you that this board would grant that variance. But, removing the one shed would eliminate the one variance issue. Then you would have only one shed that you would have to resolve where it is placed.

Mr. Bross asked what the problem was with the shed next to his house, and Mr. Okum answered that it is a question of two sheds when you are only allowed one shed on your property. This is not inconsistent with this board's action on any property that has more than one shed.

Mr. Squires said it is not a question of where the sheds are; it is a question of how many sheds. Mr. Bross responded it seems to be two questions. I have two sheds and there is a question of where the one shed is. The one shed is possibly on city property.

IX B CONSTRUCTION OF 702 S.F. GARAGE – 11979 MARWOOD LANE

Mr. Squires said that is according to the chairman and I agree that it is a separate issue between you and the City. That is going to have to be resolved outside this board. We think it may be on City property, but I don't have any guarantee that it is; it may not be.

Mr. Borden asked if the board could separate the issue, between the garage and the shed. We could deal with the garage tonight. We can't resolve the shed.

Mr. Okum said I think we can resolve the problem of the two sheds on the site. Mr. Borden commented that the worst case scenario would be that the applicant would end up removing both sheds. If he is required to remove the shed at the rear of his house, and later determines that the other shed is on City property, perhaps that shed would have to be removed. So two sheds would be down

Mr. Okum said the fact is that there is a possibility that either or both could be moved. If we would eliminate one shed, the only issue Mr. Bross would need to deal with is the larger shed. We are giving him latitude to resolve the issue with the City. Mr. Borden commented he could abandon that shed. Mr. Okum responded it is not totally on City property.

Mrs. Pollitt said the one shed was in existence when he bought the house in 1975 or 1976. He came into the Building Department in 1981 and got a permit to build a second shed. The Building Department came out to his property. Wasn't this a rule that he couldn't have two sheds then or has this rule been added

Mr. Lohbeck reported the one shed behind the house wouldn't necessarily have been seen by the inspector because he is concerned about the 10' x 12' on the side yard. As far as the inspection is concerned, if we can pick points of reference for property lines, we can get a halfway good idea of where the property lines are. However, when we issue the permit to the property owner, it is his responsibility to make sure that it is five feet from the lot lines. We can't survey property and say the shed is five feet.

Mrs. Pollitt asked if the one shed per property rule has always been in effect, and Mr. Lohbeck answered that in 1981 you could only have one shed.

Mr. Zeinner said it is obvious that the inspector did not see the shed behind Mr. Bross' house. I didn't know that it was there. It is well hidden. It is not a great shed; it is rusty. He proposes to tear that shed down because it is the smaller one.

I build in every county around, and the Building Department personnel are not surveyors. They look at the buildings, so it is obvious that Mr. Bross make a mistake. We will move that shed over to be within code and we would like to put our request for the garage variance back on the table.

Mr. Okum asked Mr. Bross is that okay with him. Mr. Bross said I guess it is okay.

IX B CONSTRUCTION OF 702 S.F. GARAGE – 11979 MARWOOD LANE

Mr. Borden said are you willing to deal with the shed tonight; is that what you are saying? Mr. Zinnear said yes.

Mr. Okum said the applicant has indicated that they are willing to work, remove the older metal shed behind the house and next to the sunroom.

Mr. Okum said we have a motion to grant three variances to allow the construction of a 702 s.f. garage. Are there any amendments to or discussion of the motion? We have discussed bricks that match, overhead door opening to be enclosed and replaced with a window, the old driveway to be removed and seeded, removal of the 6' x 8' old metal building behind the house next to the sunroom, a new 18 foot wide driveway and the existing shed that appears to be across the property line to be relocated within the five-foot setback as required by code.

Mrs. Pollitt moved to amend the motion to grant the variance to include removing the existing concrete driveway, infill and seed and install a new 18-foot driveway, remove the existing garage door and use bricks from the side of the house to redbrick the front, including a window. The left and rear shall be vinyl sided. The 6' x 8' shed located directly behind the house shall be removed. The shed located on the property line shall be relocated so as to be five feet from the property line as required by Code.

Mr. Borden seconded the motion.

Mr. Okum said for clarity, the only thing I would encourage us to do is say approximately 6' x 8' metal shed. Mr. Borden suggested the motion say 18-foot wide driveway. Mrs. Pollitt so amended her motion and Mr. Borden seconded the amended motion.

On the amendments, all voted aye and they were adopted with seven affirmative votes.

Mr. Okum said I'll repeat that I think these are valid requests of the applicant. The applicant has indicated in the discussion that he has agreed to remove the smaller shed and relocate the larger shed within Code requirements. They are utilizing the bricks from the left side of the building to be blended in and mixed on the front and will remove the overhead door so it will all conform. I believe that the density of the lot allows for this type of an expansion. In my opinion, it is an enhancement and improvement to the property and in the better interests of the City of Springdale, so I will be voting in favor of the motion.

On the motion as amended, all voted aye, and the variances were granted with seven affirmative votes.

- C. Showcase Cinemas requests variance to allow the extension of the "Coming Soon IMAX Theatre" banner until November 10, 2004. Said variance is requested from Section 153.533(D) "shall, in no event exceed 2 consecutive weeks in duration".

C. SHOWCASE CINEMAS COMING SOON IMAX THEATRE BANNERS

Robert Cummings of Showcase Cinemas reported that they are in the process of building the IMAX Theatre. We estimate opening date will be November 10th. There are two 5' x 17' banners located on the west side of the building facing Route 4, and we would like to extend them until the opening date.

Mr. Lohbeck reported that the applicant is requesting a variance from Section 153.533(D) to allow two 5' x 17' temporary signs to remain on the building until November 10, 2004.

The Zoning Code permits special event signs to be placed for a maximum of two consecutive weeks per occurrence with a period of one month required between the end of one occurrence and the beginning of the next.

A permit has been issued for the temporary signs for the period of 10/11/04 through 10/24/04. The applicant is asking for a variance for a period of 31 days.

The applicant did not provide much information on the description of request and reasons for variance. The applicant should indicate their reasons why the two-week period provided for in the Zoning Code is insufficient.

Mr. Cummings reported we are building an IMAX Theatre and investing over a million dollars in the theatre itself. The Chatters Restaurant will be opening this weekend, investing over \$2 million in Showcase Springdale. We want the public to know that the IMAX Theatre is coming. It is an additional way of letting the public know. My apologies if the application wasn't sufficient; I had never filled out anything like that before.

Mr. Okum opened the public hearing. No one came forward, he closed the public hearing.

Mr. Squires moved to grant the variance and Mr. Weidlich seconded the motion.

Mr. Okum commented I think the banners need to be a little bit higher and stretched out a little better. Mr. Cummings said we'll adjust them tomorrow. We've mounted them above the light fixtures on the Route 4 side of the road so they are more visible from Route 4. When they were mounted below, it was tough to see them.

Mrs. Huber said I think allowing this is very good because it is a real coup for Springdale to get the IMAX.

Mrs. Pollitt thanked Showcase for being such a fantastic corporate citizen. I was in the theatre a few weeks ago and the carpet has been redone and it looks very nice. I am totally in support of anything we can do to help you be more successful.

Mr. Squires added I can't say enough about what you are doing. I hope your market research indicates that you will have tremendous success.

C. SHOWCASE CINEMAS COMING SOON IMAX THEATRE BANNERS

On the motion to grant the variance, all voted aye, and the variance was granted with seven affirmative votes.

.X DISCUSSION

XI ADJOURNMENT

Mr. Squires moved to adjourn and the Board of Zoning Appeals adjourned at 9:00 a.m.

Respectfully submitted,

_____, 2004 _____
David Okum, Chairman

_____, 2004 _____
Jane Huber, Secretary