

# MINUTES OF THE MEETING OF THE ZONING BOARD OF ADJUSTMENT

Tuesday, April 27, 2010 - 4:00 p.m.  
Council Chamber  
City Hall

Pursuant to notice, the Zoning Board of Adjustment of the City of St. Joseph met in the Council Chamber, City Hall, on Tuesday, April 27, 2010, at 4:00 p.m.

	<u>Name</u>	<u>Attendance</u> (mtgs attended-mtgs absent)	<u>Term of Office</u>
<b>MEMBERS PRESENT:</b>	Richard Meng	(1-0)	4/30/14
	Terri Lowdon	(1-0)	2/23/14
	Jim Lower, alternate	(1-0)	2/14/10
	Drew Solomon, alternate	(1-0)	2/22/09
<b>MEMBERS ABSENT:</b>	Roger Burnham, Vice Chair	(0-1)	1/30/11
	Chad Gaddie	(0-1)	3/22/14
	Brent Powers, Chairman	(0-1)	2/13/11

Quorum Present. Four members constitute a quorum (Four votes required to approve a request).

**OTHERS PRESENT:** Mike Kellam, City Planner  
Ted Elo, Assistant City Attorney  
Vicki Johnson, Assistant City Planner

Since neither the chairman nor the vice chairman were in attendance, prior to bringing the meeting to order, the attending members of the Board of Adjustment selected Terri Lowdon as acting chairman for this meeting.

Lowden: We're going to call the meeting to order (4:11 p.m.). I would like to start off with a roll call of who's present. Start with the board members. Richard, do you call the names or do you want me to?

Secretary: I usually do, but go right ahead. Terry Lowdon?

Lowdon: Here.

Secretary: Richard Meng?

Meng: Here.

Secretary: James Lower?

Lower: Here.

Secretary: Drew Solomon?

Solomon: Here.

Secretary: We have four members in attendance. That's enough for a quorum.

Lowdon: Do we have city staff that's present today?

Kellam: Yes, Mike Kellam, Ted Elo and Vicki Johnson.

Lowdon: And Mr. Elo, the staff attorney, is present today.

Kellam: Correct.

Lowdon: The following rules of conduct will apply so everyone out there can kind of listen. When you are called to the podium, you give your name and a complete address. No one can speak more than twice on the same item. No one may speak more than 10 minutes at a time without permission from the chairman and no one may speak a second time on a question until every person who wants to speak has done so. All submissions of evidence, photos, drawings, will be retained by the Board of Adjustment and will be a part of the permanent file, so don't give us something that you want to get back because you may not get it back. Ok? Certified copies of Chapters 11, 26 and 31 are available. I'll call this meeting to order.

The new business, first we have Case Number 2421. It's a request of Cody Morgan for a variance to reduce the side yard set backs from, I believe it's really supposed to be 6 feet to 5 feet and to allow construction of a new home on a lot 5,600 square feet instead of the 6,000 square feet at 806 North 5<sup>th</sup> Street in order to construct a new home. The property is located at R-4, in R-4 and the staff has recommended approval of this. Is there anyone here to speak on this matter?

Before you take, before you take the stand, everybody that is going to speak today, if you will rise so that we can swear you in, and we'll do it all en masse swearing. Raise your right hand. Do you solemnly swear to tell the truth, the whole truth, nothing but the truth?

Cody Morgan, Robert Brian, Susan Underwood Kelvin Underwood, Jesse Kincaid: I do.

Lowdon: You may approach, sir.

Morgan: I'm Cody Morgan.

Lowdon: Mr. Morgan, my understanding is that this is a lot that was laid out back before the City had the zoning ordinances in effect. Is that correct?

Morgan: Yeah, it would appear so.

Lowdon: And you're requesting the variance of one foot, is that correct?

Morgan: Correct.

Lowdon: On the set back?

Morgan: Yes.

Lowdon: Is there anything else that you would like to tell the Board at this time with regard to that set back request?

Morgan: I don't believe so. I just think it's necessary in order to get a home on there that's of decent size.

Lowdon: Can you tell the board what's on the lots on each side of the house? Or of the proposed house, I should say.

Morgan: There's a vacant lot I think to the north and then there's, I think a duplex and then basically a half an open lot on the south side.

Lowdon: So by placing the home on the lot a foot closer the set back, will you be crowding any one else's home that's already set on the line?

Morgan: No.

Lowdon: Do we have any questions from the board members?

Meng: Do you own that corner lot or is that . . .

Morgan: I do own the corner lot, yes.

Meng: The corner lot. The half lot, I meant.

Morgan: The half lot I do not.

Meng: You do not. Has there been any opposition to that at all? I mean, has there been anybody opposed?

Morgan: I haven't heard any.

Brian: My name is Bob Brian.

Lowdon: Just a minute, sir, and I'll let you come up and speak.

Kellam: We did not receive any written opposition. Also, for the record, the variance is also requesting the minimum lot area, a variance from a minimum lot area from 6,000 square feet to 5,600 square feet.

Lowdon: Is there anything else you want us to know?

Morgan: I originally purchased the corner lot and later this other lot became available and I decided to purchase it and that's where I wanted to place the house so I would have room, you know, on either side of me. If that makes sense.

Lowdon: So, you do own the adjoining lots?

Morgan: I own the one lot to the north.

Lower: That would be on the corner of Louis Street, is that right?

Morgan: Correct.

Lower: Ok.

Kellam: I think that the directions might be confused. I think he owns 802 and 806 if memory serves me correct.

Lowdon: What are you doing with 802?

Morgan: I don't have any immediate plans but I think in the future I may like to build a home there. My brother's interested, so . . .

Lowdon: Ok.

Solomon: I have a question I guess more for staff I guess right now than for yourself. In that area maybe you're a little more familiar with that specific 2-3 block area, does it appear that there are any other homes that have possibly, you know, breached at one point or another that 5 or 7 foot variance? I mean, it seems like an area that possibly could have had that, you know, due to some grandfathering.

Kellam: Absolutely. The entire area is more what we now call a traditional neighborhood development where there is lesser set back, closer to the street, older style . . .

Solomon: Ok, so this proposed home I guess it would be more or less a retrofit in that existing neighborhood so it wouldn't be really too much of an adjustment.

Kellam: Correct. It's not out of character with other homes in the neighborhood.

Lowdon: Anything further, sir?

Morgan: I, no.

Lowdon: Any further questions.

Solomon: I do have one more, actually.

Lowdon: Mr. Solomon?

Solomon: I don't know necessarily if this is a direct concern for this board at this moment, but do you have I guess a proposed plan or anything to I guess I mean if you're requesting both the setback be reduced and the minimum lot size, the variance on that be reduced as well, I guess maybe that that's somewhat of a relevant question is, you know, is that home of any architectural or, you know what I mean, like I guess would it impede on any other housing in the neighborhood by being that, you know, by reducing that lot size, or becoming close to, I take it it's a duplex that's to the immediate north?

Morgan: To the north, yes.

Solomon: To the north. Would that cause any, I mean, I guess there's been no objections been writing in to you guys so I assume there's nobody that has any objections.

Kellam: We haven't received anything in writing. We do understand that Mr. Brian has some concerns which he'll be willing to testify to.

Solomon: Ok.

Lowdon: Ok, thank you sir. Sir, state your name please.

Brian: Robert Brian.

Secretary: You need to come up to the mic.

Lowdon: Would you please state your name and your address for the record, and then . . .

Brian: My name is Robert Brian. I own the residence at 724 North 5<sup>th</sup> which is actually directly across the street from 806, rather 802. My concern is that the, the zoning was there for a reason and it's, Mr. Cody Morgan obtained a variance for lot 802, or the lot at 802 North 5<sup>th</sup> about six months ago and he subsequently put up a post as if he was going to start building, which is certainly fair. And at that time, he received a variance of the setback from 7 feet to 5 feet on the north and south sides. So, he's, my feeling is, he's building a postage lot stamp thing in this area. He's really diminishing the value of what I think that area could be.

Lowdon: I'm sorry, sir, he's building a what?

Brian: Well, he hasn't started building. He is, he had, he placed, he has the stalk where you put your temporary power, so I presume he's going to start building fairly soon. It may be because he has a mobile home on the lot now; I don't know, but the fact is that he obtained a variance to decrease the lot size and to decrease the setback from, I believe it was from 7 to 5 and now he's taken the adjacent lot which was zoned, which would disallow him to build on it, and he wishes to decrease the size of the variance on that also from, well in the letter it says 7 to 5 but as I understand it, it is now 5, or rather 7, or 6 to 5, is that correct?

Lowdon: That's correct.

Brian: Ok. There are some issues. Some of them are fire suppression. There was a reason that the setbacks are 7 feet. I don't know if anyone here is a fireman, but if firemen and health and safety people that have to go in ... personnel etc. are impeded by these narrow houses. That is one of the reasons that the setback is 7 feet and so he's diminished one set back from 7 feet to 5 feet and then on the next lot that he has adjacent to it, he wants to diminish that from, what is it, I guess 6 feet to 5 feet so he's shrunk the area between that houses that he anticipates building. I, my understanding was that if he put them two, both of them together, he would have no problems building the house that he wants to build. I don't have a problem with him building a house there. I was late when he went through the process to, for the variance for his prior lot, the lot 802 and as I came in, everyone was leaving and it was too late, so I couldn't come in and I was told that I could not appeal it which I subsequently was advised by counsel that I could. I'm not going to appeal it because I think that it's important if the gentleman wants to build a house that he be able to build a house, but I do object to the fact that he's shrinking the size house he wants to put on this lot. I do not think that it's going to be in keeping with the houses in the area. If you drive by the area, the first house you come to going down 5<sup>th</sup> prior to reaching the intersection, is my house which is a fairly substantial house. It is actually the closest residence to the residence that he wishes to build. Now, I don't know if his intent is to make the residence at 802 his primary residence or the residence at 806 his primary residence. Sounds like he's trying to make a subdivision – I don't know! But once again, I can appreciate the fact if a man wants to build a house for his family, but if he is trying to circumvent the zoning code to allow him to build several houses, well in this case, it's two, in an area where if he did not obtain a variance he could only build one house, you know, push the two lots together, I think that's wrong. And I hate to see St. Joe be placed back into a era where these house, have all these houses very close together and incredibly small. Now he anticipates I understand, building houses that are consistent with houses in the area. And I don't know how many square feet that is. On his application, he indicates that it's going to be, the footprint will be approximately 30 by 54. Maybe 14, 1400 square feet at the most. Now, I'm sure that the Planning Commission could illuminate on this a little bit more, but I think that's about right. And I don't want to see St. Joe, and I've seen this around this fine town, where there have been new construction but the construction has been very, well, I was told that it was plastic. I don't think it's plastic, but I think it's within code, but it's barely within code. And I don't want to see that. I think that perhaps the, you folks may wish to set this aside and wait and see what he builds on this lot – the first lot before you commit to saying, yeah, go ahead and build whatever you want.

Lowdon: Well, you understand that we're not saying he can build whatever he wants. If there are codes that he would have to abide by. . .

Brian: Yes, ma'am. I understand that.

Lowdon: Ok, it's just a matter of how much space between . . . Report from the city.

Kellam: Just a clarification. There are two existing lots there, if he wanted to build two homes, he legally has lots that are currently platted to the dimensions that they are. If he can meet

the current setbacks, then he could build a house there. It would simply be two feet lesser in width. That's just a response to Mr. Brian's concerns about building houses within those lot perimeters. He is asking for the setback basically to allow for a little bit larger design which is consistent with the majority of homes. Mr. Brian's home is a larger home on a larger lot than the rest of them, but his is more of an exception to the neighborhood than it is a matter of rule.

Lowdon: Can the city address his concern about the firemen's accessibility between the houses?

Kellam: Well, there's a building code that actually addresses that. I'm not a building code expert but I do know that they have, 5 feet is the minimum for where a higher rated firewall is required and that is, the intent behind that is to better protect from fire protection between structures. That's 5 feet from the property line. If Mr. Morgan were to build both homes and Mr. Morgan did request a variance for 802, I don't know when the date was, but if he were to build both of those homes with the 5 foot setback on both sides, it would essentially be 10 feet between the homes and they would ultimately have to do that extra fire protection. That would be something that would be addressed during the building permit application and the plan review. It would be allowed, there would just be some additional fire protection required. An extra layer of sheetrock, more or less. The fire department has reviewed a copy of this application and we got no comment from them on that as well. I'd be happy to answer any questions from the board.

Lowdon: Board members have any questions? Mr. Solomon.

Solomon: Yeah, I actually have a quick question for the gentleman here. With the City process that's in place, obviously with the city doing the hard work and things like that, why do you, that prior lot when you had missed that, why didn't you submit a written . . .

Brian: I did, sir.

Solomon: You did submit a written . . .

Brian: Yes, sir.

Solomon: Ok, so you did submit a written . . .

Brian: Yes. I have the minutes from that particular meeting with me but I didn't think it was necessary or germane to this particular activity.

Solomon: Ok, I was just curious about that because I didn't know, I wasn't aware when we spoke about this, I thought that Mr. Kellam said that there . . .

Lowdon: I think he is saying that he submitted a written objection to the prior setback but not this one.

Solomon: Why not on this one, I guess?

Brian: Because on the first one, it was as if my objections fell on deaf ears so I came in to present to you my case as opposed to writing it.

Solomon: Ok. Yeah, obviously there's a process in place for that. I guess my other question would be, Mr. Kellam also stated that the current owner could have the ability within city protection and regulation to go ahead and build two homes on the lots that are already surveyed and designated, they would just have to be 28 feet in width. Is that what I understood?

Kellam: Approximately, without seeing a plan, but yes, that's what I understand.

Solomon: Ok, and I guess naturally I think probably that the reason for that would be probably that the home owner obviously would like a little bit larger home, maybe a little bit more aesthetically pleasing to the neighborhood.

Kellam: Correct.

Solomon: Ok. Perfect.

Lowdon: Any other questions from board members?

Meng: I don't have any.

Lowdon: Any further discussion from the city?

Kellam: No.

Lowdon: Sir, did you have anything else.

Brian: Well, I was unaware there was 28 feet. I was told that that lot was not buildable by several individuals including the building people when I first purchased the property where I purchased and, but I was unaware totally that 28 feet was the minimum that was buildable.

Lowdon: Is anyone else here to speak on this matter? Mr. Morgan you have the chance to reply if you wish to say anything. Thank you, sir.

Morgan: I can certainly answer any questions this board has, I mean concerns.

Solomon: Sir, I do have one. Is the 30 by 54 plot, I take it it's a single story, almost like a shotgun ranch type house. Is there any specific reason for construction maybe by possibly like construction type that you've elected for this floor plan at 30 feet and maybe not, maybe not doing like a, I see, what is it, 48 by 30, is there a reason maybe you'd like to do like a 52 by 28? That way you would maybe bypass all of the variances and things like that.

Morgan: One concern is the lot has some slope to it . . .

Solomon: Ok.

Morgan: . . . so the longer you get, the further it gets up in the air.

Solomon: Ok. Is this home going to have a basement, I take it, with the slant, so, hopefully, like a walk-out basement maybe to the back or something?

Morgan: Correct.

Solomon: Ok.

Morgan: I guess the other concern is, I mean, if you go narrow and long it almost starts to look more like a mobile home or a double wide or something.

Solomon: Ok, so have you, I guess, have you consulted with a contractor, somebody who you maybe or yourself even, who is planning on constructing this home?

Morgan: Right. I mean, I have some construction experience and most of it, I would be the general contractor, I guess . . .

Solomon: Ok.

Morgan: . . . in that respect.

Solomon: Ok, well no, that's definitely good; that's one of the things I was curious about.

Morgan: And, as far as the setbacks go on the sides, if you drive down 5<sup>th</sup> Street, you'll see that most of the homes on that street are probably, I'm going to say 5, 6, 7 feet between them. If in fact I were to build two homes, which I don't, I have plans to build one home, but there would be 10 feet between the two homes so I think it's . . .

Solomon: So, your idea with the two lots and having this variance and building the one home is obviously kind of almost a protection of your investment somewhat, making sure that at least the other lot is buildable at some point.

Morgan: Correct.

Solomon: Ok. I can understand that.

Lowdon: Thank you. Any other questions? Thank you, Mr. Morgan.

Kellam: Staff has one more comment. I know it's not within the purview of the application today, but there's been a lot of discussion regarding 802 North 5<sup>th</sup> and just for this board and also the applicant's education, if the variance, if the application for permit for that house on 802 North 5<sup>th</sup> does not commence within one year of the approval of that variance, then he will have to reapply for that.

Lowdon: Ok.

Kellam: Just a point of . . .

Lowdon: Did you understand that, Mr. Morgan? Ok.

Kellam: The same would go for today's application, too.

Solomon: Now, I guess my last question, for staff I guess, you had stated that the gentleman's home here was more of the exception in that neighborhood as opposed to the rule, so would you say that, obviously you guys probably haven't reviewed or seen any preliminary plans or anything about what this would be. Would you say that what he's looking at building is really consistent size wise with what's there?

Kellam: I don't know what the square footage of the homes are, but as far as setbacks, yes I would say that they are in character with it.

Solomon: Ok, and you guys have recommended approval on this?

Kellam: That's correct.

Solomon: Ok.

Lowdon: No further discussion? Yes, sir? I'm going to ask you to state your name again so we can keep it straight on the record.

Brian: Robert Brian, the, obviously the 1,400 square foot home is not nearly as large as the homes built on that lot, or on that block, that are currently there. There are 200 homes. They are two-stories. If the gentleman would build a two-story home, certainly it would be consistent with what is there, but it is not consistent if he were to build a 1,400 square foot home there. Now, some of those other places are duplexes on very small lots but nonetheless, the structures are probably closer to 24-2500 square feet. My concern was really that, that, I think we want to improve St. Joe and not diminish it by building houses that are substandard and below minimum . . .

Lowdon: Sir, and you understand that today the only issue that we're addressing here today is whether or not he would be allowed the setback, allowed to change the setbacks.

Brian: Yes, yes I do, ma'am.

Lowdon: So that wouldn't necessarily . . .

Brian: Right,

[both talking at the same time]

Brian: . . . true issue was that, that we have zoning and we have various regulations and we need to adhere to those and it does not appear to me that, that we're adhering to them.

Lowdon: Thank you for your opinion.

Solomon: I guess one quick comment. This property is currently zoned R-4 which is garden-multi plex.

Kellam: Multi-family apartment.

Solomon: Up to 4 units, is that correct?

Kellam: Four or more.

Solomon: Four or more? Ok. So, essentially this would be reducing I guess in my mind I guess the total head count in the neighborhood in a lot of ways potentially because I guess it's well within the gentleman's rights and means to possibly build a multi-family structure on that lot as well.

Kellam: That correct. The zoning would allow for that.

Solomon: Ok.

Kellam: The other comment I'd like to make is that the zoning code does not address minimum square footage of a home.

Lowdon: I think we're ready for a vote unless there's any further discussion. Call for roll call vote.

Secretary: Do you want me to do just one or do you want one for each of the findings?

Lowdon: Let's do one for each of the findings.

Secretary: Ok. The first finding is that the particular physical surroundings, shape or topographical condition of the specific property involved would result in an unnecessary hardship upon the owner as distinguished from a mere inconvenience if the strict letter of the regulations were carried out. Richard Meng:

Meng: Approve.

Secretary: James Lower?

Lower: Approve.

Secretary: Drew Solomon?

Solomon: Approve.

Secretary: Terri Lowdon?

Lowdon: Approve.

Secretary: The second fact is, the conditions upon which the petition for a variance is based would not be applicable, generally, to the other property within the same zoning classification. James Lower?

Lower: Approve.

Secretary: Drew Solomon?

Solomon: Approve.

Secretary: Terri Lowdon?

Lowdon: Approve.

Secretary: Richard Meng?

Meng: Approve.

Secretary: The third fact, the alleged hardship has not been created by any person presently having an interest in the property. Drew Solomon?

Solomon: Approve.

Secretary: Terri Lowdon?

Lowdon: Approve.

Secretary: Richard Meng?

Meng: Approve.

Secretary: James Lower?

Lower: Approve.

Secretary: The fourth finding: the granting of the variance will not be detrimental to the public safety or welfare, or the other property improvements or the character in the neighborhood which the property is located. Richard Meng?

Meng: Approve.

Secretary: James Lower?

Lower: Approve.

Secretary: Drew Solomon?

Solomon: Approve.

Secretary: Terri Lowdon?

Lowdon: Approve.

Secretary: And the fifth finding: The granting of the variance is in keeping with the purpose of the zoning district for which the property is located and in keeping with the City's comprehensive plan. James Lower?

Lower: Approve.

Secretary: Drew Solomon?

Solomon: Approve.

Secretary: Terri Lowdon?

Lowdon: Approve.

Secretary: Richard Meng?

Meng: Approve.

Secretary: The vote is four yeases. The variance is approved.

Lowdon: The next order of business is Case Number 2422, it's a request of Kevin Underwood for the variance to increase the allowable size of a detached garage from 1050 square feet to 1,427 square feet at 2236 North 22<sup>nd</sup> Street in order to allow a detached garage that is nearly complete in its construction to remain. Property is located in an R-1A Single Family Residential District. The staff report on this first, if you would please.

Kellam: Yes, thank you, Ms. Chairman. As you stated, the applicant is looking for a variance from the 30% rear yard requirement within the zoning code. This particular case is unique in that there was some errors made at the time of the permitting of the garage itself by city staff. We were in error in allowing the original proposal, which was 1,328 square feet. There was not a proper calculation for the detached garage, thereby identifying the 1,050 square foot limitation. It was permitted for that 1,328 in error. Later, during the performance of on site inspections, it was determined that there was a discretion, well, there was a change basically made, what we thought was a change, that increased the footprint of the building. What we basically found out after talking to the owners and the contractors was that what we have approved was the interior dimensions and adding the width of the foundation and the walls, it basically enlarged the square footage of the footprint an additional amount of square feet up to a total of 1,427 square feet. Once that was determined, that's when we determined our error in the

initial permitting process, which we did identify as our error. However, it doesn't make it legal per se. We've worked with the owners to try to basically come up with the best solution. The owners obviously would like to maintain the garage the size that they have constructed at this point in time, given that it's almost complete. However, staff's bound by code to enforce the letter of the code which is no more than 30% of the rear yard area, so that puts us in the situation that we're in right now. Again, we are working with them to correct the issue and a lot of it's determined on what happens today, whether the variance is granted to allow the building as is or if it's denied based on what the code calls for.

Lowdon: What percentage, how far from the 30% are we?

Kellam: There's approximately 278 square feet, what's actually there now is 1,427 and the allowable square footage is 1,050 per the code, so that doesn't come out right in math. Let me figure that up. 377, yeah.

Lowdon: So, 377 square feet? 200?

Johnson: [can't hear]

Solomon: So it's another 100 . . .

Kellam: No, it's another 377 square feet total. Sorry.

Meng: But that's not the amount that was approved to begin with.

Kellam: Correct. The amount approved was 1,328.

Meng: So we're talking about 100 square feet difference.

Kellam: No, the 1,328 square feet was approved in error, a staff error. However, we cannot allow it to be that size because the code only allows for 30%.

Meng: 30%.

Kellam: And we do acknowledge that as staff's error. We did not catch that up front.

Meng: What percentage would it be now? Do you know, can you give me a . . .

Kellam: I don't know what percentage it would be at this point in time.

Solomon: But needless to say, it's at least 100 square feet larger than what staff approved in its current standing?

Kellam: Correct and that was due to the misunderstanding as to interior dimensions versus exterior dimensions.

Solomon: Which is more or less a ??? I guess. Ok.

Kellam: Yes, so bottom line is the allowable is 1,050 square feet per code and the current building which they're asking for a variance, for an exception to allow it to remain, is 1,427 square feet. So, 377 square feet difference. Based on what code calls for and the findings of fact that we review the applications based on, staff recommends denial of the application as it does not meet the 30% rear yard requirement and, that the particularly because of the finding that the alleged hardship has been created by the person presently having interest in the property, and that being the contractor as he's working on it, but ultimately the property owner.

Lowdon: Ok, so was the hardship caused by the property owner or by the city making an error?

Kellam: Well, the hardship, well, there was originally the city error, but there was also the error on the fact that the contractor gave us the interior dimensions which we didn't, was not labeled. Even from what we approved, there was still an enlargement so that additional square footage was a hardship created by them. Staff is willing to accept the fact that we approved it in error, but that doesn't necessarily make it legal.

Lowdon: Well, how, so how soon after they gave you the interior dimensions did you figure out that even the interior dimensions were larger than what you had approved and when did you notify them of that?

Kellam: The building inspector that was on site, there was another issue that came up that where he started to measure the dimensions. I don't want to speak on his behalf because I don't know the details of his inspection, but at that time it was determined at its current state, and a stop work order was put on the building. Basically all that came about because of a complaint about the structure from an outside party.

Lowdon: So, when the owners determined that there was an error, theirs or the city's or the combination of the two, the structure was in . . .

Kellam: It was under construction.

Lowdon: It was like it is today?

Kellam: Yes.

Lowdon: Almost complete, just needs some doors I think.

Kellam: Yeah, it's about 80% complete.

Lowdon: It looked pretty complete from the street.

Kellam: That was the other error on city staff, was that at the time, we didn't, they didn't check the dimensions on their initial footing and foundation inspection and that's something else that we've identified and are working to safe guard in the future.

Lowdon: Ok. Questions?

Meng: Do we have any opposition by people that are adjacent to that property? I looked and I didn't see anything that was up real close, about 3 or 4 doors up on 22<sup>nd</sup> Street, but other than that . . .

Kellam: We had one opposition filed and one, and looks like, well we, I have one in my packet, so two for and one against. That's what we have in written opposition. We do have, we do have a letter from the adjacent neighbors, 2238 North 22<sup>nd</sup> Street, has written basically stating that they accept where the property line is and are not in opposition to that and also, I thought there was another one. I know we've got signed statements from both adjoining property owners that they agree with where the property line is and are not concerned about any set back issues. Although it's not written in favor, it's another form of support.

Lowdon: Ok.

Meng: Do we have somebody who wants to speak on these, or . . .

Lowdon: Anyone here to speak on behalf of the setbacks.

Secretary: I did a quick calculation. It's a little over 40%.

Lowdon: 40%? Thank you. We're calculating it at a little over 40% instead of 30%.

Meng: Ok.

Lowdon: So, it's a 10% . . .

Solomon: 41%?

Lowdon: Yeah. Ma'am, if you would please state your name and address.

Underwood, S: Hi, my name is Susan Underwood. I live at 2236 North 22<sup>nd</sup> Street and I'm sorry I'm not a good speaker, but if I get to rambling, just stop me because, ahm, obviously, I'm for the garage. And I, I just wanted to clear up a few things before somebody else gets to talk about the actual garage. First of all, we applied for a permit and got that, so we started building our garage and we had to stop working on it because of the weather and then I think it was February they put a stop work order on our garage and when it got nice enough for us to get working again, I think the contractor called first and he was told that it was much larger than it should have been, or whatever. So, Roger Mapel hand delivered us a letter, I'm sure you probably all have it in your. . . it was dated March the 25<sup>th</sup> and I just wanted to clear up a few things that I don't think that are correct. In the very first paragraph, it says the permit was issued

based on the enclosed site plan, which that's correct. However, the garage was built significantly larger than permitted, which I don't think that's correct because you're talking 18 inches. You're not talking, I mean, when you sit and you hear them say you, they act like we're asking for a garage that's, well, it is big, but, something more than we were permitted for. We were permitted for a garage at 1,328 square feet and that's what we proceeded at. We did not know that that was out of compliance or whatever the rules are, so, and that first letter, I mean you're talking 18 inches and they talked about that's from inside and outside dimensions and then further on in the letter, it gave you options. I think Roger Mapel gave his comments and it was, you had to firewall the walls and one side we're in compliance and the other side we know we have to firewall. And he also told us we had to get something from our neighbors saying they were in agreement and we went to our neighbors and we got that and then he told us we needed to get something *notarized* from our neighbors agreeing with all this, so we went back to our neighbors again and got that again and then when Roger brought me this letter where I work, he asked us about the wall which he told us there wasn't a permit on that, which that was the first time we found out that there wasn't a permit to build the wall in the beginning, so the first letter, those are the three things that I think are wrong with that. Then . . .

Lowdon: Excuse me, ma'am. Can I ask you a question?

Underwood, S.: Sure.

Lowdon: Is there a wall that has been fireproofed?

Underwood, S.: No, not yet. This was the cement wall. The wall that's on the garage now to the south, they say it's too close to the property line and that's something they're saying needs to be fire walled in, that's ok.

Kellam: It's within 5 feet of the property line; therefore, it requires extra fire protection. The wall that was unpermitted is a retaining wall that's being doubled as a foundation wall. That's what she was referring to.

Underwood, S.: That doesn't count on my ten minutes, does it?

Lowdon: No.

Underwood, S.: And then, where we work, every Monday we have a safety meeting and on the 5<sup>th</sup> of April we had a safety meeting and a district manager where we work stopped Kelvin and was asking him about the garage and I thought that somebody there at work had put him up to it. I thought that it was a joke, but actually he got on the mayor/city council website and he was reading, because that's what he's involved in, and in that it states our Case Number, which I understand you have to have a case number, but it says Kelvin R. Underwood requests a variance to increase the allowable size from 1,050 to 1,427 and that's not true. What we're asking the variance for is from 1,328 to 1,427, 18 inches from the inside and outside dimensions. *That's* what we're asking for the variance for. Whether we're in or outside of code, that was something that happened beyond our cause. We did not make that happen. We just said we want a garage, this is what we want, and they said ok and we went with it. Now, we're, we're in the

neighborhood, people, I mean, people are getting letters saying that we're asking for 1,400 square feet instead of 1,050 and that's not true. Am I rambling?

Solomon: No, you're doing wonderfully.

Underwood, S.: Ok, all right. So not only are our neighbors thinking this about it, it's our co-workers and everybody that gets on this website and reads it, they're thinking we're just out there wanting a great big garage that we just started building and we didn't have a permit for it, but in honesty, we did have a permit for that. April 7<sup>th</sup> we get a letter in the mail that we're requesting a variance that goes to 27 of our neighbors which half the people that got this letter probably didn't even know we were building a garage. We had, they told us our choice was you either fill out the variance or take out a \$38.00 demolition permit. So, obviously we're going to fill out the variance, come down here and pay our money, and, because it wasn't our mistake. We have too much money in this garage to just tear it down.

Lowdon: Ma'am, you, I'm going to interrupt you just a moment. You realize that they have to send out letters . . .

Underwood, S.: Yeah, I understand. But the way that it reads that we're asking for a 1,427 square foot garage from 1,050 and that, that's not correct. Do you see what I'm saying? All these people in my neighborhood are thinking that . . .

Lowdon: I understand but in order to bring it within code, you need a variance for all of it . .

Underwood, S.: I understand that, but they're not here.

Lowdon: I understand, but, so you are seeking that variance, correct? So that you can be within code. That would include the city's mistake and your mistake. You're seeking the entire amount. That's the only way you get within code.

Underwood, S.: Right, I understand that.

Lowdon: So you are seeking that variance.

Underwood, S.: Right, but I'm not seeking, ok, whatever you want to call it.

Lowdon: I just want to make sure you are seeking the variance that we have in front of us.

Underwood, S.: I'm seeking the variance for 18 inches from what I was permitted is what I'm seeking the variance for. I understand what you're saying but I'm trying to, I'm trying to get you to see what my co-workers and my neighbors see.

Lowdon: We understand. I just want to make sure on the record that you want to seek the full variance because if we only grant an 18 inch variance, that will not help you.

Underwood, S.: Oh, yeah, I do.

Kellam: Right, correct, and that's why we had the notice the way it was noted.

Lowdon: So, I want to make it clear on the record that you are not just seeking an 18 inch variance.

Underwood, S.: Right. You're right. I want the garage to be completed as is.

Lowdon: Ok.

Meng: I have one question. That south wall that you're talking about fire walled, is there, I thought, I was by there the other day and it didn't seem like there was any structure on the south side.

Underwood, S.: There's not, there's not.

Meng: It's just vacant.

Underwood, S.: It's just vacant, right.

Meng: So the firewall would be just in case something else was put there later on.

Underwood, S.: Right. And that neighbor is getting ready to build a garage, but it's on the other end of his property.

Meng: Ok.

Lowdon: Yes, Mr. Solomon.

Solomon: Thank you. A few quick questions I guess to kind of wrap my mind around this a little bit more. I've been out of town until just a few days ago. I've had a chance to review and read all of this but I haven't actually been by the property in person. I take it this is a pretty typical post and beam constructed garage. When you guys poured the, I guess, in my mind, or, is the contractor present on this? Well, we'll get to that I guess in a minute. I guess the thing that I'm looking at is, the city's, despite the city's mistake essentially, and that's I guess what we're all calling that quite honestly, the code as written to the letter of the law calls for 1,050. You guys are applying for a variance for the full 1,427 which is actually not what's on paper and on file with the city for plans, it's actually 1,328. My next question – who submitted the plans on your guyses behalf for this garage? Was this a . . . you did that? Ok, and then for you guys, I guess it's a 1,427 square foot garage and in the xxx kind of picture, you talked a lot about your neighbors and things like that, what are in the back yards of anything on South 22<sup>nd</sup>? I see you've got photos. That's going to be very . . .

Meng: You'll lose them, though.

Underwood, S.: I don't care. [Photographs dated 04/05/10 are Exhibit A]

Solomon: Does anybody else have any kind of a structure similar in any way, shape or form to what you've put . . .

Underwood, S.: Any shape or form?

Solomon: Yeah, is there a detached, is there a detached garage in any . . .

Underwood, S.: There are detached garages all, and I do have a copy of that aerial on that, too. [Aerial photograph dated 04/27/10 is Exhibit B]

Solomon: My question, is there anything that big in the neighborhood?

Underwood, S.: No, actually, the reason we started out getting off 22<sup>nd</sup> Street because we've had several vehicles hit and in the meantime, we had gotten a travel trailer and Plan A was to have something that it could be stored in because we're paying to store that now and that's why we started with Plan A and they accepted Plan A and so we moved on.

Solomon: Ok, so you, but you are aware, obviously, that despite the city's error, that ultimately no matter what, the structure still exceeds even what was approved in error so in some ways, I guess in some ways, there's somewhat of a negligent situation on both sides and I guess maybe what we're here today more so than anything is to try to find more or less an amicable resolve for that situation, like, I think that's one thing I guess is really, and maybe for everybody else to really wrap their mind around is, is there's in some ways fault on both parties.

Underwood, S.: You mean the contractor and the city?

Solomon: Correct.

Underwood, S.: From inside and outside dimensions, is that what you're saying?

Solomon: Correct. That's something that, I mean, quite honestly, any, well I won't say any, but for the most part, I would think most people would understand how to, that were in building, would understand how to properly measure a structure, especially taking into consideration, you know, interior square footage and total square footage of the, of a building. So I am by no means you know saying that I'm for or against this at this point . . .

Underwood, S.: Right, I understand that.

Solomon: . . . that's something that I just want to make sure everybody understands, that while there maybe was a little bit of a breach in the city's code, there obviously, in some other areas, there were obviously some mistakes that were made as well, which maybe brings this situation a little more to light than maybe it possibly would have been.

Underwood, S.: Well, I guess my point is, too, you, you sit, you talk about what it should have been and what it is and there's a big difference on cutting off 18 inches and 11.6 feet you know of a structure that's almost complete.

Solomon: Correct, and no doubt that that's a hardship that I can completely understand.

Underwood, S.: And that's why I wanted to bring up the, what you guys thought, the report to you guys because there are several things in it that I don't feel like without bringing that to your attention, that you only read what was in front of you. And one of the things in that and they brought up that they found this during an inspection. Well, the only reason why the inspection was, was because someone anonymously complained about the garage, whether it was, what it was built out of, whether it was too big or what -- that's the only reason they were out there to inspect this. From what I understand, at the points we were at, it was, call us when you're done and they'll do the final inspection but in this report to the committee, they say, you know, this garage is partially what was determined in an inspection and, yeah, he was there inspecting but he wasn't there in a routine inspection, it was because of this complaint.

Solomon: Ok.

Underwood, S.: So that, to me that makes a big difference on, oh I was just out there on a routine inspection and I seen, oh it's too big and I did my measuring. And on page 2 of the, in here, it also says that we continually kept building this, and we did not. We built it until we had the stop work order. We did not continually keep building this garage. We stopped when we were told.

Solomon: So when stop work orders were received, you guys promptly stopped constructing  
...

Underwood, S.: We weren't even constructing at the time because of the weather. That was in February they put a stop work order on it and we hadn't even worked on it for a while.

Solomon: Ok. And that was in February?

Underwood, S.: That was in February.

Solomon: Ok.

Underwood, S.: So anyway, the only other thing I have is my aerial picture of some of the other yards and I know that you're going to say that they're grandfathered or whatever but if you look at that aerial, our yard, which is not under roof as they tell us, is just about as big as some of the other in that neighborhood. Yes, our garage may be bigger but our yardage is, I mean you can look at the, I'm sure you guys all have this and I highlighted mine . . . any of that. So anyway, sorry that's just all I have.

Lowdon: Ok, thank you very much. Is there anyone else who wants to speak?

Lower: We need a brief recess.

Lowdon: Ok, we'll be in recess for 5 minutes. (5:00 p.m.)

(5:06 meeting reconvenes)

Lowdon: Do we have any more persons to speak on behalf? I'm going to ask you to state your name and your address and remember that you've already been sworn to an oath.

Underwood, K.: My name is Kelvin Underwood. I live at 2236 North 22<sup>nd</sup> Street and I'd like to clarify some things and present some evidence. I have a packet if you would like to pass it amongst the members [Packet is Exhibit D]. In this packet is, the big reason why the garage is the size it is, the travel trailer and I have a picture that is date-stamped on various stages of the garage that correspond and it shows the dates not ??? on the inspection reports so it basically clarifies some of the confusion that's in the report to the Board of Adjustment. [Photographs dated 07/19/08 through 12/06/09 are Exhibit C] There are a few items in that report that's correct. My name is Kelvin Underwood. I do live at 2236 North 22<sup>nd</sup> and we are building a garage. However, what I believe we should have been at is a meeting for amended plans as opposed to the ultimatum of get a demolition permit or file a variance because there was confusion in the beginning between the developer and the city on internal/external dimensions but it was never presented and we never got the opportunity and as soon as it came back that you're over 30% and the city was in error, now it became a matter of we've got to fix it. So that's why we're here asking for a variance to remain, to let it remain as is. We do have a plan for Plan B had the city originally said no to that size of a garage so we could park our camper in but since the city did say ok to the plan we submitted, at this point and in your packet is a break down on cost. With the cost that we've paid to this point, our loss a square footage cost, the 387 square feet that was reported in theirs based on the dollars per square foot that we've paid to this point. The cost would be \$8,924 that I would be out of pocket that I would need to be reimbursed had the, if the garage is getting, is made smaller, and that doesn't include the cost of the actual reduction of the garage. The city has gave us a plan of lopping off 11.62 feet off one end which is not acceptable. You do have a copy of what Plan B would have been [Exhibit E]. It would have been the same length but only 24.5 feet in depth and only 9 feet tall and not 14 feet tall to accommodate the camper, so the, the reasons that we have for the granting the variance of one is saving the city and the taxpayers the loss of square footage in addition to the 76% cost is what the city's committed to if it is modified and I have that report in your packet, too, I believe. We had a meeting with Sam Barber, Mike Kellam and Roger Mapel and they committed to a percentage to get the garage brought down to size and they committed to 76% based on their error and just a rough estimate from the contractor on this is anywhere from \$24,000 to \$30,000 to fix the thing so that's a huge cost to the city. The, I mean, we don't have the objection from the neighbors. We have signed and you have in your evidence signed papers from both sides of us, everybody along the back side of us across the alley. Nobody's in objection to this. To me, it's a cost that shouldn't be borne by the city and the hardship it would create on the contractor because he's the one that they've put this on. If it's not allowed, also, it will require us to make, to continue to have our travel trailer in storage which is an issue. This has been for three months, the stop order was issued February the 3<sup>rd</sup> and this is almost May 3<sup>rd</sup> so it's nearly three months that this thing has been stopped in limbo so, and it was stopped due to the miscalculation and the false, or the error permitting by the city. One of the things this garage has done for the whole block, and they may not be aware of it, is I obviously work for KP&L and this whole alley, because of this garage project has been rebuilt. There's new lines up and down the alley, there's new poles, there's new transformers, because when they went to look at the garage, there was things seen that needed to

be fixed and this was a motivator for them to, to go ahead and so the garage has made improvements there. It's also the garage, before we had a, and your pictures may show this, we had a single structure, or single car garage that was there before and then on the south side of that garage was where they do the three tiered retaining wall, the timbers and it was, I can't remember how far back, but it went quite a ways back up in the yard and the only thing it did was trapped leaves and weeds so with the garage there, that cleaned up a lot of that mess and really improved the situation as far as the mosquitoes and the, and the weeds. I believe the issue of the inspections and being reported that we were being, we had been told the size difference, I think that has been discussed. At this time, I believe I have brought everything to light that I can bring to light.

Lowdon: I have a question for you, Mr. Underwood. When we're talking about the area that you're using for the garage, you were talking about, and I heard this about this retaining wall, how much grass area are you taking out with this larger garage than what you had before? Are you just taking out an area that was brush and retaining wall mostly or was it actual green grass yard?

Underwood, K.: No, ma'am, it was retaining wall and weeds.

Lowdon: So we're not talking about a level, nice green yard and now it's all cement and a building.

Underwood, K.: No, ma'am.

Kellam: Mr. Underwood, was there, the historical nature of the property was, as it is now?

Underwood, K.: I don't understand your question.

Kellam: Before you put the concrete pad and the retaining wall in, that's what was there before?

Underwood, K.: Before, there was a single car garage and there was the old timber three-tiered . . . there was like three tiers.

Kellam: Was that grass in between?

Underwood, K.: Well, it was weeds.

Kellam: Ok, just trying to clarify.

Solomon: Yes, you had a stair step retaining wall in the back and it probably went about, for what, 30 to 40 feet I would say?

Underwood, K.: About 25, 25 feet.

Solomon: And you removed that, points the retaining wall at the back end of where that would be and then built a garage to the south from that.

Underwood, K.: Correct.

Solomon: Ok. So the back side of the garage, just so we're clear where, there's only about, actually, I would say, about 4 to 6 feet of framed wall on the back side of the fascia back towards, there's probably 8 to 10 feet of retaining wall on that back, that back wall?

Underwood, K.: Well, from the inside of the garage floor there's nine foot of concrete and then there's about 5 feet I believe of wall.

Solomon: Ok. Completely understand that. I have a real, then you guys might think I'm crazy, but I have a real blatantly obvious question with this. I've been down those alleys before in that area quite a bit and actually when I was an undergrad here, I lived in that area a little bit. Is the turning radius of the trailer with the length of the trailer and then obviously the width of the alley, is it even, has anybody done any calculation to see if it's even really feasibly possible that you truly can park this thing in there coming from either direction?

Underwood, K.: It is. One of the things that I've done is put a 16 foot wide door in and it's 12 foot tall and the whole inside is open. The post style was done in order to give me trusses so I could have it all open on the inside. Once I get it turned, I'm going to get a power caster so once it's turned and half-way started, I'll unhook and hook up a power caster, that's basically an electric motor on wheels, to the vehicle . . .

Solomon: Ok, so you guys have done the calculation and you've looked at that. What was you say in your estimation, and anybody can answer this one, what would you say the width of that alley is? Is it 12 feet?

Kellam: 20. 20 feet of platted right-of-way. Whether the pavement is that wide, I don't know.

Solomon: Whether the pavement's that wide or not, that too. And, you've done the calculations and you're for sure that that thing can get in there.

Underwood, K.: Well, I've had it in the, when it was just open, when we had the retaining wall and gravel, it used to be a gravel pad, this has been about a three-year project. . .

Solomon: Oh, ok.

Underwood, K.: . . . and I've had, we had the wall in and a gravel parking area before the garage actually got started and I had the camper in there, so I know I can get it there.

Solomon: You know you can get it in there.

Underwood, K.: I know I can do that. It would be a lot easier when I put a power caster on the end of it besides the 18 foot expedition.

Solomon: I understand that completely. I just wanted to make sure that there wasn't any self-induced hardships here maybe that we weren't considering before we even, we even really got into the meat and potatoes of the structure, I mean, obviously if you can't fit what you primarily built the structure there for, . . .

Underwood, K.: Right.

Solomon: Ok, and I noticed in the evidence that you submitted in that there was a, or a contractor's invoice. You said that it says another total cost of the structure originally intended as it is right now was \$30,000, is that correct?

Underwood, K.: Correct.

Solomon: Ok. And you're saying it would cost more or less \$8500 to amend the current situation and make that amicable to what the city had approved.

Underwood, K.: Well I'm saying my cost, because I've already paid for, between the contractor's cost, the insulation, and now the variance fee, I've paid, I've paid that piece of it, so if you take how much I've paid now based on what this, the square footage of what the contract is for, I've figured out a dollar per square foot and when the city says you have to lop off 387 square feet, I put a dollar amount to that which is \$8,924. That doesn't include the cost of the contractor to even touch the structure yet.

Solomon: You're talking about just straight removal is \$8,000. . .

Underwood, K.: Straight removal on my reimbursement for loss of square footage after they permitted it is about \$9,000.

Solomon: How many people did you have look at that, how many, I guess more or less, how many contractors have you had look at that?

Underwood, K.: To do the retrofit?

Solomon: To do the retrofit.

Underwood, K.: I just, just the one, just my contractor.

Kellam: I'd like to add that the city hasn't been able to review any of those numbers and we don't know what the final estimate would be, but we do agree to paying for a significant portion of the alterations to get it down to the size, if need be, so, Mr. Underwood's numbers may or may not be correct. I cannot say at this time.

Solomon: That's based on, you know, obviously, there'll be a procurement process by the city probably.

Kellam: Well, we don't know that for sure.

Solomon: Ok.

Underwood, K.: If I could speak again, my point is that I don't have any objections around me. Obviously I want the garage the size it is so I can get my travel trailer in there and protect my investments but to have the city have that outcome, I just can't see how that's any . . .

Solomon: What you're saying I guess just to put it plainly, you don't want to see the city suffer any, you know, financial hardship you know from having to pay to more or less like you said, lop this off. You would rather just go ahead and finish the project as is it and it would be more or less a variance and almost in saying no harm, no foul situation. Now, do you understand I guess by asking for that, that in some ways potentially there's a little bit of a dangerous precedent being set for not only inspections but contractors and even home owners to go ahead and maybe do things at some points that maybe supersede what they submitted for plans and things like . . . you understand that that's kind of a dangerous precedent there?

Underwood, K.: But my point is, we've not done anything. There was confusion. The only thing that we've done at this point was there was confusion in the internal and exterior wall issue.

Solomon: Uh-huh. I completely understand that.

Underwood, K.: I mean, that's the only thing that we've done, so we're not really trying to change precedents. If anything, maybe the other side, maybe that process would get the city review, the plans, who seen what.

Solomon: Well, I definitely do think, yeah I agree with that. I think that the days of hand drawn home grown blue prints are, you know, probably should be looked at because that's definitely, you know a pretty gross error. I guess, though, I mean I guess I'm still in some ways struggling. Regardless of the city's error and all the things, and obviously they've already stated that they're willing to, I guess in some ways, cover some expenses, to what extent, you know, that's for you guys to decide. Regardless of that, still there was a situation where you exceeded even what was approved in error and I guess maybe in my mind what I'm looking, what I'm looking at there is, you know, just plain and simple, while there is an error maybe on the part of the city, there's also an error and I'm obviously, I'm not in a position to cast blame or anything like that but there obviously was an error somewhere on that side of the, be it your contractor, the plan, however that error came about and as the results of that maybe in some ways this is a bigger issue now than what it maybe would have been because I think if the city maybe was already in agreeance more or less to pay a proportionate part of the removal to basically keep things within code and obviously, you know, keep precedent so to speak, that that I guess in some ways muddies the water, I mean, because there's obviously an error on the contractor's or the, you know, even possibly the design of the structure itself. I mean that's really where I guess the gray area comes in, so if it would be okay, I guess maybe I'd like to hear from the contractor a little bit on that.

Lowdon: I think he's here but we'll call him next. Do you have anything further, sir?

Underwood, K.: Along your lines, yes, I believe where we should have been right now, where this should have went was a amended plans where we went to the city and had amended plans once the error was discovered and that would have been a quick and easy, we'd have paid whatever the difference in square footage was for the permit. I mean and I've got that in some of the letters I've replied back to, so I don't have a problem with that, to make things right but that was not my direction or my information from the city it was you're over 30% and it should never have been issued so tear it down or bring it into code or get a variance.

Solomon: Ok, I completely understand.

Lowdon: Thank you.

Kellam: For clarification, it was never to tear the entire structure down but basically to pull a demo permit to alter it to the 30% size. That's what we were getting at – it wasn't to tear the entire structure down. We never intended for that to happen.

Solomon: Of course.

Kellam: Just for clarification. It's been mentioned several times, just wanted to clarify it.

Underwood, K.: W-e-l-l, that's not completely true because when I went down for my letter, Ms. Johnson said you had your choice of getting a demolition permit or filing a variance.

Kellam: The demo permit was basically to show action, corrective action on the property because we . . .

Lowdon: Not to demolish the entire structure.

Kellam: Right because we needed to know what the plan of action was to appease the complaint and also to enforce the code as it's written. It was not to destroy the entire, the whole garage.

Lowdon: Ok.

Kellam: I apologize if there was any miscommunication on Mr. Underwood's behalf but that was not the intent.

Lowdon: Ok, anyone else here that wishes to speak? Yes, sir. Your name, please, and address when you get to the microphone.

Kincaid: I'm Jesse Kincaid, Kincaid Installation at 3524 Pickett Road, St. Joseph, but I brought the plans down to Roger that I received from the customer which is Kelvin and I believe it was, the garage was supposed to be 41 feet 6 inches wide on the inside and I explained that to Roger as I was at his desk and everything seemed to be fine. He would tell me come back in you know, two or three days and you know, bring your plans back and basically I just gave him the plans and ??? it and told him this is what I had, you know, and let him know that them wall were

going to be 8 inches on either side, that that's going to be the outside measurement and the inside measurement. I don't know, you know, and then I guess the neighbor called in and said that the garage was too big or they were mad because it was metal or something like that and that's when the stop work order got on it so and that Steve, I'm trying to think of his last name, the inspector that came out and inspected the work, the holes that the posts were put in, he came out and told me the holes were fine, told me to do some things to the posts and at the bottom of the posts so that the concrete would adhere better to the posts and not shift and all that, which we did, and told me on the framing to put some clips from the walls to the trusses and he, everything was fine and not to call him until I was completely done with the concrete and everything and that it was fine but other than that, you know, I never heard, I wasn't just trying to build something that the city didn't give me a permit for, you know, I just didn't go in there and say well . . .

Solomon: How many, how many times did you meet with Mr. Mapel?

Kincaid: Several.

Solomon: Several.

Kincaid: Several times.

Solomon: Ok.

Kincaid: It was a chore, I mean, it was, it was a job trying to get the permit in the first place. I'd been down here two or three times, which I, is understandable, they want to see what's going on, look over all the plans and stuff and that's what I did. He'd tell me, well you need this, Jesse, and I would do this and I'd come back down and show it to him and I came back down I think the third time later or something and the lady at the front desk said, asked if it was, asked Roger if it was fine to build it and he said yes and she gave me a permit and we started building. And like I said, we got the garage I'd say 80 to 85% complete and we stopped because of the weather.

Solomon: Prior, you got 80 to 85% of the garage complete prior to the stop work order?

Kincaid: Right.

Solomon: So this garage has been setting, I think the roof is finished.

Kincaid: The roof is on. Everything is there.

Solomon: Ok, so it's been sitting at about 80% finished for almost three months.

Kincaid: Definitely 80%. All it needs is two garage doors, one entry door and a floor.

Solomon: And it needs a, okay, so the floor's not in yet.

Kincaid: The floor's not in yet.

Solomon: Ok.

Kincaid: Yeah, it's gravel right now but like I said, I just didn't, in one of the letters that I got from the city or somebody had gotten I'd seen, that they said that I just built whatever I wanted to build back there basically and that wasn't the case. I showed Roger what it was and after Ms. Johnson found out that we were building a garage that big, you know, obviously she said well, it can't be that big, he failed to take it from her is what I assumed, from the get go so I don't know why we would have to take even the 18 inches, or actually I think it's 16 inches to be honest with you. Eight inches off of either side, but your six inch post we've got in the ground and then the metal and insulation on it adds another two inches or something like that.

Solomon: When you purchased the materials for the structure, was this a kit of some kind?

Kincaid: No.

Solomon: For the building, this was just more or less a custom design that you guys had created, there was no quote unquote kit.

Kincaid: The only problem Mr. Mapel said that he thought he had with it was the east wall which is the wall you were talking about earlier that is 9 foot tall and we put 5 feet on top of it was the wind, windage or something north and south so the garage wouldn't go like this, so he wanted us to put some X bracing in there which we were going to do, haven't did yet. And let's see, and the south wall maybe, maybe the south wall should be fire walled which we knew, you know, either or. If he would have said you're going to have to fire wall it, we would have fire walled it but he never did say that, you know, for sure yet so, and like I said the inspectors had come and gone and telling us we're fine, everything's fine and that's what we assumed. Then somebody called in and said they didn't like the garage being metal back there, and, or it was too big or something or the other so then they came back over, after the inspection was fine, you know everything was fine, they came back over and put the stop work order because somebody called.

Lowdon: Ok. Anymore questions of this gentleman? I have a question of the city, I think. Regardless of the 18 inches, the inside versus outside measurement, whether that's 16 or 18 inches I don't really care, but regardless of that, they would have still needed a variance because of the city's error, correct?

Kellam: That's correct, to leave it as is.

Lowdon: So, we would be here regardless of their error. If we want to say that that's totally their error, the inside/outside, we say that's totally on them, it wouldn't make any difference, because we'd still be here because of the city's error, correct?

Kellam: Once identified, if it was over the 30%, we would still have required it to be within code.

Lowdon: That's important to me in to my finding of whether it was something brought on by themselves and, you know, seems to me like we're talking about a few inches, it wouldn't have mattered. We'd be here anyway and that wasn't brought on by them.

Solomon: We'd be here for a variance regardless.

Meng: Because it's over 30%.

Solomon: Because it's over 30%.

Lowdon: Is there anybody here to speak in, I'm sorry, are you . . .

Kincaid: No, I was just wondering, is that it?

Lowdon: That's it. Anybody else present who wishes to speak on this matter? I see no responses. At this time, I'm going to call for, yes, ma'am.

Underwood, S.: I'll just take a second. I have a hand-out that you didn't see. I'm Susan Underwood again. I'm wondering if the stop work order wasn't put on, though, and we would have got to complete it, maybe the neighbor wouldn't have complained. I'm just saying . .

Lowdon: I don't know. Ma'am, you know, that's speculation and has nothing really to do with what we're here for today. I mean, while they complained . . .

Underwood, S.: Well, it does make a difference when you have a garage sitting there for that long, you know, without being finished.

Lowdon: I understand. At this time, I'm going to ask that we vote on the record and I'm going to ask for a finding, and remind everyone that you have to make the five findings to determine whether you approve or disapprove. Instead of going through each finding if that's acceptable to everyone. I'll call for a roll call vote to approve or disapprove.

Secretary: James Lower?

Lower: Denial.

Secretary: Drew Solomon?

Solomon: Denial.

Secretary: Terri Lowdon?

Lowdon: Approve.

Secretary: Richard Meng?

Meng: Approve.

Secretary: The vote's two approval and two denial, so the variance has been denied.

Lowdon: We still have, that's the last of our new business. We will go to the regular business which would be the approval of the meetings [minutes] of the last, which was be October, is that correct? October 27? Do I have a motion?

Lower: So moved.

Lowdon: A second on that?

Meng: Second.

Lowdon: And everybody in favor say "aye".

All: Aye.

Lowdon: So passed. Is there anything else I need to do? Oh, yes, we need to make the findings of fact of the last meeting. With regards to the findings of fact on the denial, where we named each person, we had Robert Langston at 1606 on Harmon Street and that was an approval by four votes of Chad Gaddie, Terri Lowdon, Richard Meng and Brent Powers and the other one was the Joe Stagg variance which was approved, Chad Gaddie, Terri Lowdon, Richard Meng and Brent Powers, and at this time, then, having reviewed those and saying that in fact that was the finding. Is that what we're doing? Ok. Any objections. So done. Do I need to sign this now? I guess I didn't realize they were around since November. Is there any further business for the board at this time? Seeing none I call this meeting adjourned. Thank you.

Meeting adjourned at 5:35 p.m.

The next regular meeting of the Zoning Board of Adjustment will be May 25, 2010 at 4:00 p.m.

Transcript submitted by Debbie Cline.