

2144606

BOOK 2434 PAGE 570

BEFORE THE BOARD OF ADJUSTMENT, SALT LAKE CITY, UTAH

FINDINGS AND ORDER, CASE NO. 5221

Recorded MAR 1 1966 at 2:46 p.m.  
Request of S.L. CITY CORP  
Fee Paid HAZEL TAGGART CHASE  
Recorder, Salt Lake County, Utah  
**NO FEE** By Sydney Jones Deputy  
Ref. \_\_\_\_\_

REPORT OF THE COMMISSION:

This is an appeal by Clea N. Sumner for a variance to legalize an eleven-unit apartment building at 673 Sixth Avenue without the required offstreet parking and without the required side yards in a Residential "R-5" District. This property is more particularly described as follows:

Commencing at the Southwest Corner of Lot 1, Block 88, Plat "D", Salt Lake City Survey, and running thence East 4 Rods; thence North 10 Rods; thence West 4 Rods; thence South 10 Rods to point of beginning. Subject to a right of way over North 12 ft thereof-- and together with a right of way over the following- Commencing at the Northeast corner of Lot 1, Block 88, Plat "D", Salt Lake City Survey; thence South 12 ft; thence West 6 Rods; thence North 12 ft; thence East 6 Rods to point of beginning.

On January 24, 1966 Mrs. Sumner was present. Also present was Grant W. Stott of 946 South 5th East. Present in protest were Milton K. Gehrke of 711 Seventh Avenue, Mrs. Glen J. Boyce of 681 Sixth Avenue, Myrtle B. Ray of 325 "K" Street. Mrs. Ray also represented the LeFevres of 317 "K" Street. She submitted a letter of authorization from the LeFevres. The builder, Franz Stangl of Quality Construction, was not present. Mrs. Sumner stated she sold the apartment to Mr. Stott on contract. Mr. Jorgensen reported the apartment in question is built; it has eleven units and is short on parking. The original plot plan on which a permit was taken out was submitted and it was noted there was no problem with the plan except that is not the way the building was constructed. One parking stall (at least 9'x18') is required for each unit. The plan which was approved shows eleven 9' stalls coming in off a right-of-way out to "K" Street but there are not eleven stalls, which is the problem. It has been discovered that the building has 10' less rear yard than is required. The plan shows a rear yard of 61' but it is actually 51'. Mr. Jorgensen read from the application which indicated that the error in the parking was merely an oversight and should have been caught by several different people and that the building was actually mislocated on the property. It was noted, however, that this is not the case since the building is back not over 1' more than the average alignment along the street. This is a matter of not having the ground which is shown on the plot plan. The parking stalls which have been put in are 8' wide and one comes out partly into the right-of-way and even by having the substandard size stalls and having one project into the right-of-way there are still only ten stalls. The request for variance is to reduce the required number of parking stalls by one and allowing them ten stalls to be used as at present, or to reduce the parking by two stalls the required size.

Mr. Gehrke stated he has a right-of-way over this property to his property to the west but the applicant reported according to the people from whom she bought the property the right-of-way had been fenced for eight years, or about ten years now. The plan on which a permit was taken out showed this entire property was owned, not a right-of-way. Complaints were filed in November of 1964 and this matter has been in court. The court hearing on January 14th was held over because of this appeal to the Board. If the Board approves this request, then the court would dismiss the case. If the Board does not grant a variance, the matter would go back to the court and the court would order the situation corrected. As far as the right-of-way is concerned, regardless of the Board's decision if there is a question of right-of-way it would be a matter for the court to decide between the par-

Case No. 5221

Page 2--

ties involved. When a person comes in for a permit, it is not up to the staff to question whether or not they own the property; but if they do not, they get into trouble. According to an ownership plat there is a 12' right-of-way from "K" Street to the applicant's west property line and also an arrow from the property to the west into it, which indicates the property to the west has a right over the right-of-way. Mr. Gehrke indicated he would like to keep the right-of-way to his property to the west. If the right-of-way cannot be considered, then the applicant is short three cars. The applicant noted the former owner was waiting until he had had the right-of-way fenced the required number of years and she was under the impression she had it in writing that there would be no trouble on ground. It cost her about \$5,000 to clear the right-of-way; the bank would not clear the loan until it was cleared. Again it was noted that the 10' in question just does not exist. The whole problem is that the building extends back 10' farther than it should have, so there is actually 10' less property than indicated on the original plan. The problem came from the builder. Mr. Hurley then reviewed the history of this property dating back to November 1964 when the complaints were filed, noting the builder appeared in court the first of this month only after a bench warrant had been issued. The case has now been continued until February 9th to be heard.

Mrs. Boyce, neighbor to the east, wondered if this error were accidental or intentional. She felt it was ridiculous to have an eleven-unit apartment house without the required parking; most of the cars park on the street while the parking lot is half full; she has trouble getting her car out to take her children to church. Mrs. Ray also complained about the cars parking on the street in front of her property since her guests have to park in the next block. Mr. Gehrke noted maybe three single fellows are living in one unit which would mean three cars for one unit. The Chairman explained under the law only one parking space per unit is required; while that may not be sufficient, it is legal. It was also explained in order for the Board to act there must be some unusual condition attached to a property. The question before the Board is whether or not there should be less parking, whether the applicant should provide the required parking or whether she should meet the ordinance and take out two of the units. With respect to no other land being available for parking as indicated in the application, Mr. Gehrke noted he has property and no one has even approached him. He would not, however, consider selling just the back portion of his property. The applicant stated she had investigated acquiring other property but the bank informed her she was in too deep to buy other property. She then went on to explain that she had used every bit of her reserve and also her borrowing power and then when the taxes increased last year she decided to sell. She did not believe that Quality Construction made the error deliberately; she did not think she would get any place suing them since they are going broke; she felt this matter has hurt everyone in one way and in another way it has not hurt anyone. When the matter of a survey was questioned, the applicant noted she had paid over \$400 for one. Mr. Stott informed the Board his real estate man assured him everything was in order before he bought. He has put into this venture all his money and also that of his wife. Mrs. Boyce could not see why all the neighbors should suffer for the errors which had been made; the apartment exists only because the neighbors thought offstreet parking would be provided. When it was noted that Mrs. Boyce and some of the other neighbors also park on the street, it was explained their homes were built before

Case No. 5221

Page 3--

offstreet parking was required. Mrs. Ray was asked if her property were for sale and she stated it was only if a buyer would give her her price. She asked if she had to take the cars parking in front of her property and she was informed that the street is a public street and anyone has the right to park there; however, about ten years ago an ordinance was passed which required all new construction to provide off-street parking, at least one stall for each unit (except for some areas which require  $1\frac{1}{2}$ ), although many apartments need two or three stalls per unit. Further discussion brought out that Mrs. Sumner had the apartment house built, she worked through Mt. Olympus Realtors. The Board noted they would be interested in seeing the survey, which according to the applicant is held by the bank, Western Savings & Loan (Bob Thompson). Mr. Gehrke stated the neighbors feel if better parking were available it would ease the problem especially on Sixth Avenue, which is a busy street. Mrs. Ray stated the apartment house is beautiful and it has been an asset to the neighborhood and an old building was removed; on the other hand, if there were proper space to park the cars no one would complain. The Chairman ordered the matter taken under advisement. In the executive session the various aspects of the case were reviewed. It was noted that the complaints on this property have existed for over a year and any real estate company could have found it out by calling; also Mrs. Sumner knew there was a problem before she sold. A need to have the builder, Franz Stangl, appear before the Board was noted. There followed considerable discussion. At the conclusion of the executive session a motion was passed that the matter be held over, that the builder be requested (subpoenaed if necessary) to appear at the next meeting, and that Mr. Thompson of Western Savings and Loan be requested to bring in his files on this property at the end of the Board's next meeting. The staff was requested to make a plan of the property and check the average alignment.

On February 14, 1966 Mrs. Sumner was present. Also present were the following:

Myrtle B. Ray	325 "K" Street
Milton Gehrke	667 Sixth Avenue
Mrs. Glen J. Boyce	681 Sixth Avenue
Franz C. Stangl II	275 Cottonwood Mall
Edward E. Stuart	289 "K" Street
G. R. Miller, attorney for Western Savings & Loan	
H. Robert Thompson, Assistant Vice-President of Western Savings & Loan	

The Chairman read a letter of protest signed by fifteen or more people who opposed legalization of the parking under the present conditions. The letter was ordered filed with the case. Mr. Jorgensen explained this matter was considered at the last meeting but the Board felt that the contractor, Franz Stangl, should be requested to explain how this came into being because his statements on the application were not correct. There was no error in placement of the building on the lot, it is just a place where the building is too big to fit the lot. The building could be 1' closer to the street but not 10'. A discrepancy in side yards has been discovered since the last meeting. The plot plan on which a permit was taken out shows 7' and 10' side yards as required but the side yards are actually 6.9' and 8'. A survey of the property shows these reduced side yards, a 51' rear yard and also shows a 12' right-of-way as part of the 51' rear yard. A drawing made by the staff shows there

Case No. 5221

Page 4--

is room for only eight parking stalls so the building is shy three parking stalls and shy 2' on the side yards. When the Board asked how this condition came about Mr. Stangl stated the Board's guess is as good as his. When he was asked if he had not seen the foundation survey, he stated it was sent directly to the bank. It was noted that the dimensions of the building are other than shown on the plan; the plot plan meets the ordinance but the building was not constructed in accordance with the plan which was approved. When the Board asked why a variance should be granted, the contractor asked if the building inspector does not check the building in the field. He was informed the responsibility is that of the owner and the contractor and the building inspectors are to enforce the ordinance and when a plan is approved, it is up to the contractor to build in accordance with it. Considerable discussion followed in which Mr. Stangl noted he knew nothing about the error until the staff brought it to his attention. With regard to the right-of-way he knew there was a right-of-way to get to the property but not through the property. It was brought out that the point is not to fix the blame but what reason there is for granting a variance. When it was asked if there is any possibility of acquiring more land, Mrs. Sumner stated as far as she is concerned it is absolutely impossible but perhaps Mr. Stott could; if a variance were granted, Mr. Stott has money where she has not. Any property they tried to acquire at this time would probably be at an inflated price. Mrs. Sumner felt the parking is adequate, it is only occasionally that the parking lot is filled. At this point it was brought out that the Board cannot grant a variance just because the building is built; they can require it to be removed, which they have done in some cases. The only redeeming factor in granting a variance on side yards is the semi-court at the east center of the building. Mrs. Ray again objected to the cars parking on the streets. Mrs. Boyce noted there was no parking problem before this apartment house was built. It was explained that the only way the Board can reduce the parking is if it is shown there is no need for parking. Mr. Gehrke objected to the wall which blocks the right-of-way to his property to the west. Various complaints from the neighbors were registered. Mr. Jorgensen quoted the ordinance which states the contractor is liable as an agent of the individual, to which Mr. Stangl reported Quality Construction has no assets and is no longer functioning, so there is not someone to pick up the bill in this case. He stated he was present today as a courtesy rather than an officer of the company. A question was asked as to whether a completion bond were required, and the answer was that there was not. Mr. Gehrke noted after the last meeting Mr. Stott inquired about the availability of some of his property but no offer was made. The Board noted the parking is a serious matter, there is a very definite need for the parking and one of the most serious matters in cases of this kind is that a structure is built and then an appeal is made to the Board to have it legalized. When Mr. Miller and Mr. Thompson of Western Savings & Loan came into the meeting, Mr. Jorgensen explained what had transpired, pointing out the violations, the alternatives if the variance were denied, the fact that the Board has to find some unusual condition attached to a property or find that parking is not needed to grant a variance. Mr. Miller reported their note is up to date so they would not be affected until such a time as it is in default but they are interested in what the Board would decide. The representatives of the lending institution were asked if, before lending money, they require something to show there are no violations (the survey shows just the opposite). It was noted the plans were approved by the City. During the ensuing discussion it was brought out that if a foundation survey were required to be presented to the

Case No. 5221

Page 5--

building inspector in all cases, such problems could be eliminated. Mr. Miller noted they would not have entered into this agreement or made the loan if they had known the actual facts as they exist; they made a loan of \$97,000 and did not know there was any difficulty until they received Mr. Jorgensen's call. In answer to the Board's question, the lending institution required no completion bond. The lending institution relies on the borrower that he will comply with all the laws and regulations. The Board felt if they legalize an illegal act in a case like this, they would be creating a precedent which would apply to any other case to be fair and they did not see how that could properly be done by the Board. If a variance is not granted on the parking, to legalize the structure there will either have to be more parking provided or three apartment units would have to be eliminated. There would still be, however, the problem of the illegal side yards. Mr. Stott would be the one who suffers because the whole loan was based on the eleven units, and the payments could probably not be made if there were only eight units. Mr. Miller explained his company has no standing in this case as long as the payments come in but if the loan were in a state of default and they had to take it over, they might very well have the ability and the means to secure additional land, in which case they would like additional time to solve that problem, but at this time that is not their problem. All those present were notified that the case in court on this matter was continued until March 2nd at 1:30 in Room 101 of the City & County Building. The Chairman then ordered the matter taken under advisement. In the executive session the various aspects of the case were reviewed. It was again pointed out that the one factor in favor of a variance on side yards is the open court area to the east of the building.

From the evidence before it, the Board is of the opinion that the petitioner would suffer an unnecessary hardship from a denial of the variance on side yards; that the spirit and intent of the Zoning Ordinance will be upheld and substantial justice done in the granting of the variance; however, the Board is of the opinion that the granting of the requested variance on the parking would be inimical to the best interest of the district and contrary to the spirit and intent of the Zoning Ordinance.

**IT IS THEREFORE ORDERED** that a variance be granted to legalize the structure with 6.9' and 8' side yards provided the building is made to conform to the ordinance within sixty days by providing one offstreet parking stall for each unit (either providing eleven legal stalls or reducing the number of apartments to eight), these restrictions to be recorded in the office of the County Recorder to become a part of the abstract of the property; provided the construction plans show conformity to the requirements of the Uniform Building Code and all other City ordinances applicable thereto; and provided such reduction or addition does not conflict with any private covenants or easements which may be attached to or apply to the property.

**THE FAILURE OF THE APPLICANT TO ABIDE BY THE CONDITIONS OF THIS VARIANCE SHALL CAUSE IT TO BECOME NULL AND VOID, WHICH IN EFFECT IS THE SAME AS THE VARIANCE HAVING BEEN DENIED.**

Action taken by the Board of Adjustment at its meeting held Monday, February 14, 1966.

BOOK 2434 PAGE 575

Case No. 5221

Page 6--

Dated at Salt Lake City, Utah, this 28th day of February, 1966.

*Edwin Whitney*  
Chairman

*Mildred G. Snider*  
Secretary

I, Mildred G. Snider, being first duly sworn, depose and say that these are the Findings and Order in Case No. 5221 before the Board of Adjustment on February 14, 1966.

*Mildred G. Snider*

Subscribed and sworn to before me this 28th day of February, 1966.

*Vernon F. Johnson*  
Notary Public  
Residing at Salt Lake City, Utah

My commission expires *Oct 16, 1965*.

