

**MINUTES**  
**ZONING BOARD OF ADJUSTMENT**  
**July 15, 2003**

The Zoning Board of Adjustment met on Tuesday, July 15, 2003, with the following members present: Peter Neumann, Chairman; John Herr; Jeff Stone; Vernon Osterloo; and Robb Schlimgen. Staff present: Brenda Vespested, Building Inspection; Dave Johnson, Engineering; Jeff Marino and Vicki Fisher, Planning; and Jason Green, Acting City Attorney.

Pete Neumann called the meeting to order.

**Appeal No. 5284**

Elton Bierman, 1502 E Center Street, Rapid City, SD 57701, applies for a variance on the front yard and side yard setbacks for the property located at 1502 E Centre Street, legally described as Lot B of Lot 1 in Cambell Square.

Solon was not present so there was no video presentation. Elton Bierman and his realtor, Paul Gremse, were present for the appeal. Neumann asked if the appellant had a larger plan of the property. Neumann asked Bierman and Gremse to explain to the Board why they are here today. Gremse said that the building had been there a long time. In 1986, from what Gremse understands, the City approved a lot split and established the ROW. Gremse said that the lot split created the setback violations. Herr asked who replatted the lot. Gremse said that the requestor is listed on the plat. Fisher said that it was Elmer Jenner. The building is under contract, pending that the buyer wants the violation issues resolved before the purchase. Herr asked Fisher if it was legal nonconforming. Fisher said no, that they didn't meet the setback requirements in 1986 or 1989. Herr wondered how they were able to replat then. Fisher said that there is nothing in the building permit file from when the original building was built that would show how the lot was at that time. Fisher said that the plat file they have doesn't have a structural site plan that would have been submitted as part of the review for the plat. Fisher said that even if the City approves a plat, and it's not legal, that doesn't make it legal. Green said that the only time you get to a legal non-conforming status is when the ordinance changes and the setback itself changes. The original building was built in 1957. Bierman said that he bought the property about 5 years ago. Herr asked how much ROW Creek Drive has right now. Johnson said 66 feet. Fisher said that in 1986 the applicant for the lot split submitted a plat document that showed that there was a 25-foot setback and this was accepted as verification that there were no structural encroachments within that setback. Gremse said that the expansion of two businesses hinges on the approval of this variance. Neumann read the staff comments for the record. Fire Department – ok. Planning – the property owner can use his property as the zoning ordinance intended if the site was redeveloped as shown on the approved building permit; staff finds that if the applicant were to redevelop the site in accordance with the previously approved building permit, reasonable use of the property would exist; in addition, it does not appear any physical hardship exists that result in the need to grant a variance; due to the fact that the structure appears not to have been constructed in accordance with the City of Rapid City Municipal Code, staff cannot support the variance request. Engineering – the applicant is requesting a variance from the ordinance requirements for front yard and side yard setbacks in a light industrial zoning district; the encroachments into the yards are existing conditions; the required front yard on the creek Drive frontage is 25 feet; the existing yard is 14.5 feet; this is less than the length of a typical car parking stall; given the zoning and the types of vehicles, including trucks, that use the facilities, this results in vehicles parking in or backing into the right-of-way; site observation and file photographs indicate that existing parking is in a manner that can

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easily obstruct traffic or safe distances; it is also noted that Creek Drive has been classified by the City Council as a minor arterial street and that it is near SD Highway 44, a major arterial road; city street design standards call for a 100 ft. right-of-way for arterial streets such as Creek Drive; at this time there is a 66 ft. right-of-way width; we believe there is a reasonable likelihood that additional right-of-way will have to be obtained in the future when improvement of Creek Drive or the intersection at Highway 44 is improved; there is also an existing encroachment into the rear yard (on the north side of the building); a public sewer main is located along the north lot line of this property; the sewer main serves several properties to the north and west of the subject parcel; the area of the sewer needs to be protected from further encroachment to assure that ability to operate and maintain the sewer line; the applicant has not presented any plans showing the location of the buildings from the sewer line (as shown by the manhole locations); it is noted that a site plan was submitted with the platting action in 1986 that indicated that the existing buildings met the yard requirements of the ordinance; expansion or further development of use that encroach into the yards should be discouraged; if the Board finds that the conditions for approval of a variance have been met, we recommend that the minimum adjustment necessary include the following provisions: 1) the applicant shall provide a site plan showing the location of required parking outside of the street right-of-way, and in compliance with the ordinance provisions for required parking; it is recommended that the applicant be required to install any necessary improvements to provide parking in compliance with the ordinance provisions at this time, as a condition of any approval, to reduce existing safety hazards. 2) that the variance only applies to the existing structure(s), and that if the buildings are reconstructed, or there is an initiation of expansion of use per ordinance section 17.50.270.B, the buildings shall be brought into compliance or a new variance shall be obtained for the new use. Herr asked who was buying the building. Gremse said the vet clinic was purchasing this property, which is directly across the street from the existing vet clinic. Herr inquired about the parking requirements for a vet clinic. Fisher did not know if they had the required parking because no plans have been submitted. Fisher said that the parking was not relevant to this variance because the new owner will have to bring in plans for the change in use. Osterloo said that to make this property comply, they would have to vacate some of the Creek Drive ROW. Fisher agrees from looking at the aerial, that it might be hard to make parking regulations comply. Gremse said that there is existing parking, which Fisher replied that a change in use may require more parking and may require additional paving on west side of the building. Osterloo suggested that they take care of the setback problem and let the new owner comply with the parking regulations. Stone asked what is to the north of Bierman's property. Bierman said that it was a used car lot. Johnson said that there is a sewer main that goes along the property line between lot A & lot B. Neumann said that Bierman bought a piece of property that he was not aware that he had a problem. Gremse still doesn't understand why these issues are coming up now when the replat was approved in 1986. Fisher said that she believes that the issues are coming up because the owners at the time of platting demonstrated that they were in compliance with the setbacks and that was not a true statement at the time. Green said that this is occurring because a previous owner split a lot, so if there is a hardship based on narrowness or siting, that hardship is self-imposed. Self-imposed hardships are not a basis to grant a variance. Herr said that if the center of the road changed, then the hardship is not self-imposed, the City imposed it. Fisher said that the east lot line was established prior to the lot split; when the building permit for that structure came forward, they identified that they would be 25 feet from that east lot line, they just built the structure within the setback. Bierman said that if you look down Creek Drive, they took extra ROW from just Lot A & Lot B. Gremse said that he disagrees that this hardship is self-imposed because when Bierman bought the property, it was already replatted, he did not do the replatting; he bought it with the approval by the City. Fisher said that the original owner created

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the hardship, not the applicant before us today. Green said that in the 1986 plat the dedicated ROW of 33 feet is shown, so the ROW dedication occurred at that time or prior to that. Green said that this isn't a case where the City has come in and taken some land and reduced the setback. Herr asked about the existing vet clinic building across the street because it looked to him that this building is even closer to Creek Drive than Bierman's building. Fisher said that it was built in the County. Herr wanted to know if the vet clinic got a variance to build the addition. Fisher said that we don't have those files here at this time; it will have to be researched. Herr said that somebody was wrong in the replat. Green said that the error is on the applicant of the surveyor. Herr said that it was an approved plat. Green said that the plat was based on the application that was submitted. Herr said that there are still existing structures. Green said but if the structures are represented to be within the setback and not encroaching into the setback, then that error lies with the surveyor or the applicant. Gremse said that it should be on the City to make sure that what is brought before them is correct. Fisher said that today's standards require a structural survey, and that surveyor is going to stand by that yes this is where it is located; and if it were wrong, then your remedy would be to go back to the surveyor and say they were wrong. Stone doesn't have a problem with the setback on the north, but the east side is where we are getting into the encroachment of the ROW, Neumann agreed. Herr still wanted to know if the vet clinic received a variance for their addition. Fisher said that they could continue this appeal and let staff do the research on that if they want. Stone wanted to know the plan for Creek Drive in the future. Fisher said that it is identified as a minor arterial requiring 100 feet of ROW at some point. Johnson and Fisher said that the City would have to buy ROW if they needed it in the future. Osterloo wanted to know what they were going to prove to themselves by knowing what the vet clinic has done across the street. The major street plan was discussed. Schlimgen was concerned about the comment that it changes the long-term impact of the property to the ROW; the 100 feet of ROW isn't there and it may be needed someday. There was more discussion about the ROW and buying properties in the future. Osterloo wanted to know the next step for the property owner if the variance was denied. Fisher said that they could do a planned development. Gremse asked Green if it was precedence or statute saying that the current owner is bound by the statements or representations of the previous owner. Green said that it is fundamental property law or common law. Osterloo moved to deny the variance based on the applicant has not given sufficient information to convince the Board that all criteria of the variance has been met, especially that the variance is not in conflict with the comprehensive plan; with a second by Schlimgen. Appeal No. 5284 was denied with a vote of 5-0.

Stone moved to approve the minutes of July 1, 2003, second by Osterloo. Motion carried 5-0.

There being no further business to come before the board at this time, the meeting adjourned at 8:00 a.m.