

MINUTES
OF
DOUGLAS COUNTY BOARD OF ADJUSTMENT
3015 MENKE CIRCLE
OMAHA, NEBRASKA 68134
July 19, 2006
6:00 p.m.

Chair Mayo stated that effective July 14, 2006 LB838, states:

“Before calling a meeting to order the Chair is to announce that this meeting is conducted in accordance with the Open Meeting law of the State of Nebraska and the provisions of the law are posted in the room.”

The meeting was then called to order by Chair Mayo with roll call.

Members Present: Scott Bruhn, Barbara Hayes, Colleen Mayo, and Patricia Trebbien.

Other County officials, staff, and representatives present: Barb Frohlich (Environmental Services) and Bernie Monbouquette (Deputy County Attorney).

Motion by Ms. Hayes, seconded by Ms. Trebbien to approve minutes of April 19th, 2006.

Voting Yes: Bruhn, Hayes, Mayo and Trebbien.

Voting No: None.

Abstain: None.

APPLICATION

V-6-06

REQUEST:

Allow construction of cabin, 45 x 30, in floodway to replace removed cabin.

LEGAL:

Lake Platteview, Lot 107C, less than ½ acre in size.

LOCATION:

North of Highway 92 on Campanile Road, Section 25, Township 15 N, Range 9 E of the 6th P.M.

INTENDED USE:

Seasonal Cabin

APPLICANT:

Richard Baker, 3714 North 77th Street, Omaha, NE 68134

Richard Baker, 3714 N. 77th Street, presented the application with the following comments:

1. The cabin was purchased three years ago and planned to redo the cabin. However, the existing cabin had to be tore down because it was uninhabitable.

2. We are asking for this variance because we want to build a new cabin. It would be in the floodway but we are not concerned if it floods, we are prepared for that.
3. We did build a shed and were given a permit for that.

Mr. Hayes and Chair Mayo asked when the permit for the shed was issued.

Ms. Frohlich replied that the permit was issued erroneously and she did not recall the date.

Mr. Monbouquette replied that he had reviewed case law and if the permit was improperly issued then it was improperly issued and that doesn't give anyone protection.

Chair Mayo asked if that sets a precedent for additional permits. Mr. Monbouquette stated that it did not set a precedent.

Ms. Hays asked the size of the proposed new cabin in relation to the cabin that was torn down. Mr. Baker stated it would be about 200 sq. ft larger than what was there.

Chair Mayo stated that on the petition for the variance, it says "enclosed cabin area would be 26x30 to replace the removed cabin that was 26x24 and then it states the size will be 45x30. Mr. Baker replied that the additional 16' would be a carport roof that covers his 5th wheel trailer from bad weather. It will not have a foundation and the roof will be on 6x6 posts. He is willing to remove the roof if the Board desires that.

Ms. Hayes asked when the other cabin was torn down. Mr. Baker replied in April of this year.

Chair Mayo asked where the cabin would be built in relation to where the shed is now and if the elm trees are his property line. Mr. Baker replied that the cabin will be next to the shed and that the three elm trees are his property line.

Ms. Hayes asked Ms. Frohlich if she sent the Papio-Missouri Natural Resources District notices of variances. Ms. Frohlich replied that she did not send this application to the NRD.

Ms. Hayes asked if the permit was denied because it is in the floodway and if there are other houses close by in the floodway. Mr. Baker replied there was an existing cabin.

Chair Mayo asked if the property is less than ½ acre. Mr. Baker replied yes.

Ms. Frohlich stated that the property has been zoned multifamily for years.

Ms. Hayes stated she has concerns regarding floodway issues and that in the past the Board has taken a stance where if something is torn down, the new structure goes up on the footprint of the old one but typically if the old one isn't completely down, the foundation is left.

Ms. Hayes asked Ms. Frohlich if in the past the Board had considered a similar request for a variance when the building was already taken down and not approved a variance for new construction. Ms. Frohlich replied that she couldn't think of a request like that.

Ms. Trebbien asked Mr. Baker if the new cabin couldn't be built in the same footprint as the old cabin. Mr. Baker stated he has no problem with that.

Ms. Frohlich stated that this application falls under the provision in the flood regulation that states if property is under an 1/2 acre and there are other structures below base flood level, a variance can be issued for new construction..

Mr. Monbouquette stated that is a consideration and that to be a finding of fact n that and that the county floodway regulations requires findings E-F which states the following:

There can be no increase in flood level during a base flood discharge, and this is the minimum necessary to afford relief. And the granting will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud nor victimization of the public, or conflict with existing local laws or ordinances. So these are all there so there has to be a finding for this to be granted or defensible.

Mr. Monbouquette commented that if it had the same type of foundation it wouldn't cause an increase in the flood level. Mr. Baker stated the previous cabin was built on pallets but he planned to elevate it off the ground two feet with 6 x 6 posts.

Chair Mayo opened the public hearing. No one from the public spoke for or against the application. The public hearing was closed.

Questions, Comments, and Discussion among Board members:

1. Ms. Hayes asked Mr. Baker if there is an existing septic system. Mr. Baker stated there was an existing septic system and well when they bought the existing cabin. Ms. Frohlich stated the Health Department could be asked to determine if the septic system and well were usable.
2. Chair Mayo read the following from the variance requirements: "There shall be given written notice over the signature of the community official that the issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25.00 for \$100 of insurance coverage and such construction below the base flood level increases risks to life and property. Such notification shall be maintained with the record of all variance actions as required by this resolution."

Motion by Ms. Trebbien to grant the variance based on the following findings of fact:

1. The variance wouldn't cause any increase in flood levels as Mr. Baker is going to elevate the cabin up on 6x6 posts that should allow proper water movement and the footprint will be the same as the previous cabin.
2. The variance is the minimum necessary to afford relief.
3. He removed the previous cabin in good faith because it was not livable and not replacing the structure would be an exceptional hardship.
4. The applicant has been made aware that there is a potential for an increase in rates for flood insurance and he has noted he would not apply for flood insurance.

Further findings by Ms. Trebbien:

1. Not granting this variance would produce a hardship as previously mentioned because of the investment in that inhabitable structure.
2. Such hardship is not shared generally by other properties in the same zoning district because the structures are livable.
3. The authorization of such variance will not be of substantial detriment to adjacent property. This obviously would be an improvement to surrounding properties.
4. That granting of this variance is based on a demonstrable hardship in that for a safety issue if that cabin were to be inhabited and such no longer exists and that this is not of some general nature that it would occur because of the situation that the existing condition of the previous cabin that was removed.

Ms. Hayes stated the record should reflect that it cannot be said that construction of the cabin will not cause an increase in flood levels. Only a no-rise certificate prepared by an engineer can make that statement.

Ms. Hayes asked that the motion reflect that he plans to build a cabin on the same footprint as the previous one. Ms. Trebbien added that to the motion.

Motion seconded by Mr. Bruhn.

Voting Yes: Trebbien, Mayo, Hayes, and Bruhn.

Voting No: None

Abstain: None

APPLICATION

V-7-06

REQUEST:

Allow construction of accessory building in side yard.

LEGAL:

Lot 78, The Hamptons

LOCATION:

23502 "N" Street

INTENDED USE:

Accessory building

APPLICANT:

Dave Vencil, 611 South 262, Waterloo, NE 68069

Dave Vencil, 611 S. 262nd Street, presented the application requesting a variance to build an accessory building, 28 x 60, in the side yard rather than the rear yard as required by zoning regulations because of the steep slope of the lot.

Ms. Hayes asked the members if they had seen the letter from Mark Boyer that was attached to the back of the Petition for Variance.

Chair Mayo read from the letter from Boyer-Young Development, developer of the property: "The Hamptons Development LLC is requesting approval of a setback waiver for Vencil Construction to construct a detached garage at the same setback as the dwelling. We have reviewed and approved the building plans for conformance with our architectural requirements and topography of the lot. /S/ Mark Boyer."

Ms. Frohlich stated that the reason for the letter is the closing is not complete on this lot and building permits are not issued until Boyer Young has reviewed the plans and approved them.

Mr. Monbouquette asked if notice of this application was given to the people who owns lots adjacent to this one?

Ms. Frohlich stated that the Hamptons LLC is the owner of the adjacent property and they received the notice.

Chair Mayo stated she had visited the property and the sign was down but the lot next to it was for sale.

Mr. Monbouquette pointed out that since Boyer Young is the owner then they can request approval of the variance but if someone else was the owner then the developer could not make that decision. Mr. Monbouquette further asked that the findings state that the variance is for Mr. Vencil's personal residence.

Ms. Frohlich stated that a copy of the purchase agreement is in the file for verification purposes.

Mr. Monbouquette stated that in order to meet part of the exceptional hardship requirements, one of the factors has to be the shape, soil conditions or topography of the lot.

Ms. Hayes stated that some of the lots are irregularly shaped and have severe drop offs.

Chair Mayo opened the public hearing. No one from the public spoke for or against the application. The public hearing was closed by Chair Mayo.

Discussion, Comments or Comments:

Ms. Trebbien stated that since the developer does not have a problem with this application and they own the adjoining lot and the topography dictates a variance, she was in favor of granting the variance.

Chair Mayo asked if the proposed regulations will also accommodate an application of this type. Ms. Frohlich stated it would only affect lakeside lots. She also stated that Mr. Monbouquette has a question about the use of the property and that when a building permit is issued it is written on the permit "not for commercial use" and that's a standard procedure on all accessory building permits.

Ms. Hayes stated that the covenants at the Hamptons would not allow commercial use.

Mr. Monbouquette asked what purpose the accessory building of this size will be used for. Mr. Vencil replied that it would store a boat and his wife's "junk."

Ms. Hayes stated that it isn't any business of the Board what someone uses their accessory building for since it is not for commercial use. Mr. Monbouquette stated the use is important to determine if the size of the proposed building is appropriate.

Ms. Hayes stated that storing campers/boats/etc has to be enclosed per the covenants at the Hamptons. The biggest obstacle here is the topography of the land.

Motion by Mr. Bruhn to grant the variance based on the following findings of fact:

1. The strict application of the zoning resolution would produce undue hardship. The hardship in this case is the topography of the property.
2. Such hardship is not shared generally by other properties in the same zoning district and the same vicinity.
3. The authorization of such variance will not be of substantial detriment to adjacent property and the character of the district will not be changed by the granting of the variance.
4. The granting of such variance is based upon reasons of demonstrable and exceptional hardship as distinguished from variations for purposes of convenience, profit or caprice.
5. The Board finds that the condition or situation of the property concerned or the intended use of the property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the zoning regulations.

Motion seconded by Ms. Trebbien.

Voting Yes: Bruhn, Hayes, Mayo, and Trebbien.

Voting No: None

Abstain: None.

APPLICATION

V-8-06

REQUEST: Allow construction of accessory building in side yard.

LEGAL: Lot 27, Curtis Acres

LOCATION: 1315 North 264th Street.

INTENDED USE: Accessory Building

APPLICANT: Mike and Sue McDermott, 1315 North 264th Street,
Waterloo, NE 68069

Joe Kreski, with Kramer-Kreski Designs, 9300 Underwood Avenue, made the following comments as the representative for Mike and Sue McDermott.

1. He was asked by the McDermotts to design an accessory building for their lakefront home and a variance is required because the building is proposed to be located in the side yard rather than the rear yard as required by the zoning regulations.
2. Mr. McDermott has presented the request to the homeowners association and has been given approval to construct the proposed building.
3. The McDermotts are trying to be sensitive to the view of the lake by their neighbors and are trying to push the accessory building back towards the street side as much as possible.
4. He also stated that he understood the zoning regulations were being rewritten to address lakefront properties in the future.

Ms. Hayes responded that the county is in the process of rewriting the regulations. The draft should be ready in September and this issue is addressed because lakefront houses are basically turned around and face the back of the property.

Ms. Hayes asked Mr. Monbouquette how to define this hardship. Mr. Monbouquette replied that this would be finding #5 and that the motion could include the following:

This is a condition that affects all houses in this area and there is a proposal to change the regulations but since the new regulations are not approved, a variance can be granted and is not unique.

Chair Mayo opened the public hearing. No one from the public spoke for or against the application. Chair Mayo closed the public hearing.

Discussion, Questions or Comments:

1. Mr. Bruhn clarified that the homeowners association has approved the proposed accessory building. Mr. Kreski stated that was correct.

2. Chair Mayo asked if a letter from the homeowners association should be filed with the application.
3. Mr. Monbouquette stated that wasn't necessary since Mr. Kreski stated on the record that approval was granted..

Motion by Ms. Trebbien to grant the variance with the following findings:

1. The strict application of the zoning resolution would produce undue hardship not only to the owner of the property but also to existing neighbors because the required rear yard location would obstruct the view of the lake.
2. Such hardship is probably shared with other properties in that district and the zoning regulations are being rewritten such that a variance will not be needed in the future for accessory buildings to be located in the side yard for lakefront property.
3. The authorization of such variance will not be of substantial detriment to adjacent property because it will protect the view of the lake.
4. The granting of such variance is based upon reasons of demonstrable and exceptional hardship, the view and this is lakefront property.
5. Changes are being made to the zoning regulations such that within the next three to six months a variance would not be needed.

Motion seconded by Mr. Bruhn.

Voting Yes: Mayo, Hayes, Bruhn, and Trebbien.

Voting No: None

Abstain: None

APPLICATION	V-9-06
REQUEST:	Allow construction of accessory building in side yard.
LEGAL:	10.39 acres located in Section 30, Township 16 N, Range 11 E of the 6 th P.M.
LOCATION:	19885 State Street
INTENDED USE:	Accessory Building
APPLICANT:	Mike Patak, 19885 State Street, Bennington, NE 68007

Mike Patak presented the application requesting a variance to build a new pole barn on the property and place it near the front of the property instead of the rear.

Ms. Hayes asked why he wanted to place it in the front instead of the rear. Mr. Patak replied that the rear of the property drops off and the sewer laterals and main sewer drain are located in the back where the building would be located. A substantial amount of dirt work would also be required.

Chair Mayo asked if the stakes placed between the house and property line indicated the proposed location. Mr. Patak stated that is the proposed location of the building.

Chair Mayo opened the public hearing. No one from the public spoke for or against the application. The public hearing was closed.

Discussion, Questions or comments:

Ms. Trebbien and Mr. Bruhn clarified that the the topography of the land would be the hardship. Mr. Patak replied the rear of the property drops off and also the sewer system and laterals are located in the back of the property.

Mr. Monbouquette asked how many acres there were. Mr. Patak replied 10.3 acres.

Motion by Ms. Trebbien to grant the variance based on the following findings of fact:

1. The strict application of this particular zoning resolution would produce undue hardship because the rear yard location is not feasible because of the location of the septic system laterals and septic tank; and the topography of the land.
2. Such hardship is not shared generally by other properties in that particular area.
3. This variance will not be of substantial detriment to adjacent properties because no one is here from the public opposing the application and the public was given notice.
4. The granting of the variance is based on demonstrable hardship, the topography of the land and location of the septic system laterals and septic tank.
5. The variance is not so general in nature that it would require a change in the zoning regulations.

Motion seconded by Mr. Bruhn.

Voting Yes: Hayes, Bruhn, Mayo, and Trebbien.

Voting No: None.

Abstain: None

Announcements:

1. A meeting is scheduled for August 16, 2006.
2. Chair Mayo stated she would not be available to attend the August meeting.

Meeting adjourned: 7:00 p.m.

Minutes approved August 16, 2006.