

MINUTES
OF
DOUGLAS COUNTY BOARD OF ADJUSTMENT
3015 MENKE CIRCLE
OMAHA, NEBRASKA 68134

September 21, 2005

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

Members Present: Mark Roseland, Scott Bruhn, Steve Wright, Barbara Hayes, Patricia Trebbien and Colleen Mayo.

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

Election of Chair and Vice Chair

Motion by Ms. Hayes to elect Ms. Mayo as Chair and Ms. Trebbien as Vice-Chair, seconded by Mr. Roseland.

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

Voting No:

Abstain:

Motion by Mr. Wright, seconded by Ms. Trebbien to approve minutes of September 15, 2004 meeting.

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

Voting No: None.

Abstain: Roseland (not present) and Bruhn (not present) at September 15, 2004 meeting.

APPLICATION

V-1-05

REQUEST: Allow construction of detached garage in side yard

LEGAL: Lot 25 Curtis Acres

LOCATION: 1537 North 264th Street

INTENDED USE: Storage building

APPLICANT: Jesse L. Jergensen, 1537 North 264th Street, Waterloo, NE 68069

Jesse Jergensen made the following statement:

1. He is requesting a variance to construct an unattached garage in his side yard rather than the rear yard as required by the regulations.
2. His rear yard backs up to a lake which makes it unsuitable for an unattached garage.

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

Discussion, Comments, and Questions Among Board Members:

1. Mr. Wright clarified that Mr. Jergensen's house was built approximately five years ago. Mr. Jergensen stated that was correct and that six or seven of his neighbors have constructed unattached storage buildings in the side yards.
2. Mr. Wright, Ms. Mayo, and Ms. Trebbien stated they had visited the site.
3. Ms. Trebbien asked if any neighbors had expressed concern with the application and noted that a notice sign was placed in the yard.

Mr. Monbouquette commented that in this case owing to the shape of the lot and the fact that there is a lake in the rear yard, it would make it impractical to enforce the regulation.

Motion by Mr. Roseland to grant the variance based on the following findings of fact, seconded by Ms. Hayes:

1. The strict application of the zoning resolution would produce an undue hardship because the rear yard is the lake.
2. The hardship is not shared generally by other properties in the same zoning district and the same vicinity because there are already existing side yard garages.
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. It is pre-existing and the rest
4. The granting of such variance is based upon reasons of demonstrable and exceptional hardship as distinguished from variances for purposes of convenience, profit, or caprice. The exceptional hardship would be in the rear yard and the lake, it is better being on the side.
5. The intended use of the property is not of so general or recurring in nature to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the zoning regulations.

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

Voting No: None.

Abstain: None.

APPLICATION

V-2-05

REQUEST: Variance to allow construction of structure (storage rental units) at elevation of 1090.6 instead of 1091.9 as required by City of Bennington Floodplain Regulations

LEGAL: Part of lot 3 and all of lots 4 and 5

LOCATION: 15409 Warehouse Street

INTENDED USE: Storage rental units

APPLICANT: Carol Stephens, 113 S. Molley, Bennington NE 68007

Carol Stephen, 113 S. Molley, Bennington, NE made the following comments regarding the application:

1. We operate AB storage in Bennington.
2. A year ago we a variance was approved to change the setbacks on our side yards.
3. There is room on our property to construct one more storage building.
4. We are requesting a variance to construct it at the same elevation as our other buildings.
5. The City of Bennington approved the building permits for our other two buildings without any problems and now there is a problem with this building permit application.

Ms. Frohlich explained that the City of Bennington and Douglas County have an interlocal agreement for the County to issue building permits and conduct inspections for the City of Bennington. Douglas County is not the floodplain administrator for the City of Bennington. All applications for buildings permits in the City of Bennington are forwarded to the City for review, approval, and their signature. That procedure was followed for the two building permits previously issues and the City of Bennington has not approved the current building permit application.

Ms. Hayes clarified that the two buildings that have constructed are below the required elevation. Ms. Frohlich stated that was correct.

Ms. Hayes asked Mr. Monbouquette whose fault it is that these two buildings are below the required elevation. Mr. Monbouquette responded that someone issued the building permits.

Ms. Trebbien clarified that the City of Bennington approved the permits. Ms. Frohlich stated that was correct.

Mr. Wright asked what happened this time. Ms. Frohlich explained that the person in the City of Bennington responsible for approving building permits is now aware of the floodplain rules and regulations and did not approve the building permit application.

Ms. Hayes stated this is a huge problem for the Stephens and that legally all those buildings could come down.

Mrs. Stephens commented that all the buildings on the street are constructed below the required elevation, even the Fire Department.

Ms. Trebbien and Ms. Mayo agreed with her statement.

Ms. Hayes stated that just because the other buildings were constructed at the incorrect elevation, the variance should not be granted to allow continued constructed below the required elevation. She also referred to the letter written by the Papio–Missouri Natural Resources District regarding this building permit application.

Mrs. Stephens stated that they had talked to someone at the NRD and that person suggested they apply for a variance.

Ms. Hayes stated that granting this variance puts the Board of Adjustment in a very awkward position. If everyone on the whole street is below base flood elevation, they should work together to obtain a no-rise certificate. This situation is not just a hardship for you but a hardship for the whole block. She suggested they begin by talking to the NRD.

Ms. Mayo asked Mr. Monbouquette to comment on the legal responsibilities of the Board of Adjustment.

Mr. Monbouquette explained that the City of Bennington made an agreement with Douglas County to have this Board administer variances so it saves Bennington from having to put together its own Board of Adjustment. This Board uses the Bennington Ordinances and there is a procedure set forth in the floodway overlay district ordinance to hear your appeal to the denial of a building permit from the City of Bennington. There are by Nebraska law, requirements for the granting of a variance. There have to be five facts that have to be found in order to grant a variance. All the cases on variances say that they should be granted sparingly. The Bennington Zoning Ordinance also has conditions for variances. The heart of a variance is that there must be some hardship owing to the shape, soil conditions, topography of the land, not just financial in nature, but something about the land that is the reason why you can't comply with the regulation.

Mrs. Stephens explained that if the proposed building was higher than the others it would create problems with water drainage and access into the buildings.

Mr. Stephens explained that storage buildings are usually built on creeks because the land is cheap and they often get variances. He also explained that this additional building will help them get financially stable and that it is difficult for them to see their neighbors convert storage units into apartments when they are also below the required elevation.

Discussion continued about the feasibility of raising the one building higher than the others and the possibility of obtaining a no-rise certificate. Ms. Hayes explained that a no-rise certificate is certification by an engineer that putting a structure in a specific location will not cause any significant rise in the flood elevation. to have that to even be considered.

Mr. Bruhn stated he would like to see something worked out in order to help the Stephens.

Ms. Hayes stated she would like to help by talking to the NRD and Ms. Frohlich suggested laying over the application until the October 19, 2005 meeting.

Motion by Mr. Roseland to lay over the application to the October 19, 2005 meeting, seconded by Ms. Trebbien.

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

Voting No: None.

Abstain: None