

MINUTES BOARD OF ADJUSTMENT

MAY 29, 2012 - 4:30 P.M.
CITY COUNCIL CHAMBERS

PRESENT: Chairman Bang, Members Casey, Hoshor, Sawyer and Winter, Planning Director Rian Harkins, Chief Building Inspector Marv Hansen and Secretary Deb Pruss.

ABSENT: None

Chairman Bang read a statement that a copy of the Open Meeting Law is posted continually for public inspection near the agendas and a Public Notice of this meeting was given in advance by publicized notice in the Fremont Tribune, a copy of which is attached to these minutes and made a part thereto, and on radio KHUB; and the agenda displayed in the lobby of the Municipal Building, Police Station, and the Dodge County Courthouse on May 23, 2012 and is open to the public. Moved by Hoshor, seconded by Winter to approve the statement that this meeting is now determined to be a legal meeting. Roll Call Vote showed all members present voting aye - 5 ayes. Motion Carried.

It was moved by Hoshor, seconded by Sawyer to dispense with the reading of the Minutes of the April 23, 2012 Regular Meeting and approve as distributed. Roll Call Vote showed all members present voting aye - 5 ayes. Motion Carried.

Chairman Bang stated the general public is invited to address the Board of Adjustment regarding any item on this agenda at this time or wait until discussion of their request is taking place. No public comments were received.

- Consider variance request of Chad Stevens to construct a 30' x 45' garage at 3560 North **Ridge Road Drive that is in excess of the allowable 860 square foot accessory building size** per Article 7, Section 704. RR - Rural Residential District.

Planning Director Harkins stated the property is located on north Ridge Road, it is Rural Residential and is adjacent to some other large acreages on the northwest side of town. Each of the properties has accessory structures on them varying in size. The property for example immediately to the north has a number of accessory buildings that are quite large. The applicant had a conditional use approved by Council to do an accessory building that is non-harmonious in terms of architectural and materials with the primary residence. He is basically trying to do this in order to provide storage for extra construction material and equipment for the company he owns, which is a small amount of equipment, but is basically trying to do a larger than allowed structure in order to provide security and to protect equipment and property. He basically feels his hardship is the security and the privacy. Applicant is just barely under the five acres in size, otherwise, if he had the five acres this wouldn't be an item that would be before the Board. Chairman Bang stated this was similar to three of the other properties in the area.

Moved by Winter, seconded by Sawyer to approve the request. Roll Call Vote showed all members present voting aye - 5 ayes. Motion Carried.

- Consider the request of Matt A. Sukstorf to construct a 14' x 12' deck attached to the primary structure without the required 6' buffer for the detached garage at 1225 East 6th Street. Article 7, Section 704. R2 - Moderate Density Residential District.
Planning Director Harkins stated this item was not published with enough due notice by the legal publication of the City so staff is requesting this item be continued so it can have proper publication.

The application has been notified.

Moved by Winter, seconded by Hoshor to continue this item to the next meeting. Roll Call Vote showed all members present voting aye - 5 ayes. Motion Carried.

- **Consider request of Brian P. Doerr to construct a fence in the street side yard that is 6 feet in height, more than 50% enclosed and more than 3' from the property line to allow private usable space around an in-ground pool and a garden at 1165 North Howard Street. Article 7, Section 707. R1 - Single Family Residential District.**

Planning Director Harkins stated this applicant was before the Board last month. They have come back with a scaled down version of their proposal. They have moved some things around. Staff took another look at the property as well and on a couple of occasions walked it and actually took some measurements. Because of the scaled down version, staff is more open and actually wrote a recommendation in support of the variance request based on the privacy and security concerns. The applicant is trying to have the fence be six feet in height in order to match municipal code for the pool area. They just desire to have the fence be more than 50% enclosed, which requires the variance as well as to take that into the street side yard setback. The difference with that fence on the street side yard is this time they are actually staying three feet from the property line rather than going all the way to the property line this time so there is some green space along the area that potentially could have a sidewalk but this gives them a chance to actually use more of their back yard as well.

Applicant Brian Doerr from 1165 Howard was present. Chairman Bang stated his question again would be that you are changing the fence but what is the hardship. Applicant stated it was security, protecting their amenities, having the space for their amenities and the topography next to the house. Planning Director Harkins stated staff recommended approval mainly because of the topography. Surprisingly there is more of a slope than what you think. Harkins stated on one site visit that he took one of the individuals in the neighborhood decided to do the stop and stare except they forgot to do the stop part of the stop and stare and almost actually jumped the curb. He stated this fence provides a little extra barrier of protection to the property owner in this case.

Member Sawyer asked if the fence was going to be inside the trees. Applicant stated one tree is inside the fence and the other tree is outside the fence. Applicant stated there was some concern about the amenities being on the setback and they have addressed all those issues and there won't be any amenities even anywhere close. Member Sawyer mentioned there being other solid fences and questioning what their hardship was. Harkins stated from what he could see it looks like a lot of the fences were done prior to this code. If they were done after, there doesn't seem to be any reason as far as a hardship other than I want. Chairman Bang stated in the past they have encroached on the side yard setback but we have usually allowed them to not go any further than the house. That seemed to be the most typical ones that have been approved. Bang stated if the house was within the street yard setback per the code we would allow them to put the fence even with the house. Harkins stated from last month the original proposal basically had the fence coming off the corner of the main part of the house and over to the property line and essentially down. This layout does a bit of a jog in order to go through trees and to protect trees in place but also provide a little more flexibility for the property owner. Member Sawyer stated there is quite a slope on the ground. Chairman Bang stated his concern is how the Board will handle everyone else that wants a fence in their street side yard out almost to the sidewalk. Applicant stated one of the things the Board was charged with is that they don't set precedence and this property is unique enough in that by definition it is a corner lot but the variance they are requesting is in effect another lot. There is very few of any properties like this in terms of topography and layout. Chairman Bang stated the right to put a fence out there in the street side yard is going to be a recurring issue. Applicant Doerr stated the fence would be set back further to allow green space so the proposed amenities are within the City guidelines. Member Sawyer stated the fence was set back and was that what was asked for the last meeting. Doerr stated there were two concerns with one being the amenities being on the setback. We have addressed that. The second concern was green space so we moved the fence back further to allow green space if at some point there was a sidewalk there would still be green

space on the other side of the sidewalk.

Planning Director Harkins stated one of the concerns the last time was the location of the hot tub, having it encroach and with that pushing the fence they have moved that. They have moved the fence back and also jogged it in order to get it off the property line. This doesn't take the total street side yard setback but it does leave some but also gives them the use of some. Those were some of the other issues talked about last time. The Board talked about three feet and in your discussions you also talked about five feet setting it back but there was never a general consensus about an actual distance. Applicant Doerr stated five feet was discussed last time and stated he has the tree before the setback. If he goes five feet to allow any kind of growth at all, it puts the fence right on the tree so he needs to stay away from that. Chairman Bang stated that again we have no dimensions. Bang asked if the entire fence was in the street side yard setback. Applicant Doerr stated it was not as the jog next to the house is not. Planning Director Harkins stated the part on the drawing that comes down and then jogs over to the property line is in the street side yard setback (about 10 feet). Bang asked if the piece running north/south then all the way to the west and then 10' or so on the back property line. Applicant Doerr stated that was correct. Harkins stated that basically leaves about three feet of street side yard setback past the sidewalk. As the applicant stated, that leaves green space between the edge of the sidewalk and the fence. It was asked how far from the curb to the proposed fence. Applicant stated 12'. Member Sawyer inquired about the hardship and asked if the applicant had a definition of a hardship to protect the Board from the next request down the road. Planning Director Harkins stated a lot of it is the fact that this owner is coming into a situation where there is two lots combined into one. When you look at the topography of that one large lot that actually makes it unique and is something that is unique to that property that is not found in many other locations like this. There aren't too many interior areas like this where you start to see houses of this size and lots of this size gets combined. Generally they are much smaller lots that get combined to do something. With a potential code rewrite underway in the next few months, some of that may change as well. Chairman Bang stated even if you look at the last photo and how indeed it will affect the neighbor to the west. He will have that fence blocking his view. Applicant Doerr provided another photo of the view from the neighbor's driveway to applicant's house. He stated his driveway is on the west side of his property. There is no visibility issue. Chairman Bang stated it is from his yard as applicant is blocking the neighbor's view. Planning Director Harkins stated that was another reason one of the comments made by the City Engineer was taking it to the property line obstructs that view entirely and pulling it back three feet from the property line allows the applicant to provide that view still. Member Sawyer asked the applicant if he has been in contact with the neighbors. Applicant Doerr stated he had, all of them actually. Member Sawyer asked if it mattered that we had no protests at the meeting. Planning Director Harkins stated that may or may not have any bearing on the decisions the Board makes but it doesn't necessarily have any bearing on whether or not the hardship is present. Member Winter asked Planning Director Harkins how much over the allowable the fence is. Harkins stated it was 12'. Harkins stated the request would still leave 3' of street side yard setback visible. Applicant Doerr stated with the pictures provided he tried to represent the green space, everything on the side of the house and then the flag line down the property. Applicant stated there is a lot of green there. Chairman Bang stated there is just more green required.

Moved by Hoshor, seconded by Sawyer to recommend approval of the request. Roll Call Vote showed 2 ayes - 3 nays (Winter, Bang and Casey). Motion Failed. Request Denied.

- **Consider request of Steve and Lori Rohrig to construct addition to residence with insufficient side yard setback at Woodcliff Lakes, 980 County Road W, Lot S-1080, Saunders County, Nebraska. Article 4, Section 405, Table 4-3. RL - Lake and River Residential District.**

Planning Director Harkins stated this is a variance to erect an addition to a house in the Woodcliff area. As you can see in the information packet, there is a detached garage. The addition basically connects the house to the garage. The applicant has a number of family that is there at various times and this provides some additional space for them. The garage already sits within the side yard setback. In order to do a full room space for that addition, it would go to .4 feet into the side yard setback so definitely less than the garage which sets at a 10' side yard setback. The garage sits in quite a few feet. This would

generally be behind that so it wouldn't be visible from the street. Chairman Bang asked if the garage was attached. Harkins stated it was not.

Applicant Lori Rohrig from 980 County Road W, Lot 1080, was present. She stated they would like to add onto the existing property. They brought the property along with her parents, Dennis Bender, was present, and it was intended to be a family event so that they could all spend some quality time together. As time has gone on, they wanted to add on additional room as their family grew and also they wanted to make sure that they had room for the parents to be able to spend some time there. In recent months, her mother has gone through knee surgery and had a full knee replacement and one of the things with the addition to stay within the setbacks allowing enough room in a bedroom to get any sort of walker or device around the bed staying within the setbacks was going to be really difficult. The other rooms within the house are rather small as well so basically they could walk in and have to back out which would be very difficult to do that too. They are looking for just a couple more feet to allow for easy movement around a bed and give a little more room.

Planning Director Harkins stated it would be difficult to add onto the back as it slopes down to the lake quite rapidly. It is similar to many of the structures in Woodcliff. The applicant can't do a second story. This is about the only option for this application. Applicant stated they looked at all different sides to figure it out. If they would go out the back of the house not only would it slope down but it would obstruct the neighbor's views up and down because they are all pretty even across the back. Chairman Bang asked if they would have to bring the garage into code with a firewall. Chief Building Inspector Hansen stated they would have to put in a firewall. Bang stated it looked like barely a 10' addition. Applicant stated by the time you get a bed in that room and are able to walk around, it is pretty tight. Mrs. Rohrig stated if you look up and down the street most folks have property close to the street and some so close that you can't even put a car in front of it.

Moved by Sawyer, seconded by Casey to recommend approval of the request. Roll Call Vote showed all members present voting aye - 5 ayes. Motion Carried.

- **Continued consideration of adoption of Board of Adjustment By-laws.**

Planning Director Harkins stated a couple of changes as far as the Board make-up just to reflect Municipal Code and otherwise staff didn't really make any changes over the last month. Chairman Bang stated he saw there was some debate with the Planning Commission By-laws concerning the term limits and motions by the Chair. Bang asked if they adopted them as well. Planning Director Harkins stated they did and also decided as they adopted it to essentially have the term limits begin on January 1, 2013. Bang asked if they agreed with the Chair having two consecutive terms. Harkins stated he thought they changed theirs to three with a term being one year. Planning Director Harkins stated he felt term limits are a good idea as in some cases what you have are communities that will have a person get elected Chairman and then everyone defers judgment to them. This allows others to have a chance and also being Chairman can be a taxing task over time. It allows other members of the Board to have a unique perspective. Harkins stated it helps keep things fresh and keeps the ability to having a new perspective in place. Planning Commission changed it to three years so that their thinking was by the time you get a Chairman used to it the first year that gives them two years to really be effective and working with the other members of the Commission, which made sense from their perspective. Term limits can also be helpful in the fact that you don't have just one person sitting as the Chairman or Vice-Chairman for the Board for too long. It also makes others have to step up and it gives that person a break. Member Sawyer asked if that was the only thing there was term limits on. Harkins replied that was correct.

Member Sawyer inquired about #9, people not talking to them prior to the meeting. Harkins stated what typically happens is that will happen no matter what, even when it is written like this. The general practice is members of the body if they have had that type of communication would just recognize that at the start of the meeting. Harkins stated it is more or less a formality of informing the Chairman for the record that you have had or received communication or contact about this agenda item. It essentially goes back to the transparency issue of making sure as a member of the Board of Adjustment can

entertain agenda items in an unbiased way.

Member Winter asked inquired about anything being mentioned regarding his position since he comes off the Planning Commission. Harkins stated Article 1, Item 7 - The Board shall be composed of six members, one of whom shall be a member of the Planning Commission and one of whom shall serve as an alternate member appointed by the Mayor per Chapter 2.203 of the Fremont Municipal Code. Chairman Bang asked if the reason for that is that they were also dealing with the same items and it was a way of communicating from the Planning Commission to us. Harkins stated in general yes but in general practice because the Board of Adjustment is the only group authorized to deal with variances where interpretations or appeals of Zoning Administrator decisions, when it comes to the issues of variances you have a member of the Planning Commission sit on the Board of Adjustment so that if they see a pattern where you are getting the same variance request for the same issue like a fence in the street side yard setback then it is a matter of this isn't an issue that should be a variance it should be an issue of we need to look at amending the Zoning Ordinance to deal with that. Essentially that person is a conduit for information.

Member Sawyer inquired about Article 3, No. 5 that states specific variance requests shall be considered twice during the tenure of each property owner. Planning Director Harkins stated that means somebody could bring a variance request to the Board of Adjustment twice. Member Sawyer stated in another place it says the maximum is three times. Harkins stated each specific variance request yes. He stated that was one of the conflicts that was actually brought to our attention about an hour ago that we had just missed. Harkins stated variances won't go to the Planning Commission anymore they will just remain with the Board of Adjustment. Member Sawyer stated he always relied on that as a recommendation, especially if they said no he looked at the item closer. He stated that was the applicant's second chance rather than the Board of Adjustment being the one shot and that's it. Sawyer stated he always felt that two chances were better for the City. Planning Director Harkins stated he can understand that reasoning but if you look at State Statutes as well as the Zoning Ordinance itself, there is nothing in there that authorizes the Planning Commission to look at variances. It is just the Board of Adjustment as a body. Staff is looking at it as that was a nice advisory to the Board of Adjustment but that's all it could be so if we would get taken into Court over it and push came to shove, those could be overthrown or overturned in court.

Several members voiced their approval of Article II, No. 6 stating if a member is deemed to have a conflict of interest on a matter before the Board, that member shall leave the room during all matters pertaining to that agenda item.

Member Harkins told the Board if they wanted to take another month and look through it they could. He knows Planning Commission talked at length and then decided to approve it. If there are changes that need to be made, that is fine too but it more of a desire by himself to get something in place for the Board. Chairman Bang stated that there were only two areas of concern, the number of terms and Item 4 of the first page, the right to make motion or second motions, which are big changes. Planning Director Harkins stated that was talked about the idea of the Chair making motions with the Planning Commission as well. He stated this item was inserted in case there was ever a stalemate as it gives the Chairman the option to try and move things along at least and break the stalemate and get the other members to move the meeting along. Bang stated the item still has to be seconded and it has to be voted on so he could see the point. Harkins stated in reality it may not be used that often but it is a tool that is there if needed.

Moved by Winter to approve the Board of Adjustment By-laws and rules of procedure. Chairman Bang asked if these could always be changed by the group. Harkins stated yes. Bang asked if the Board on its own vote and make a change of a decision a year from now or does it have to go back if we want to modify some of these. Harkins stated the issues could be brought up at any time. Member Sawyer asked if the Board had the final say or does it go to someone else. Harkins stated the Board has the final say of the Board of Adjustment By-laws. Member Sawyer seconded. Secretary Pruss asked if they would start the term limit as of January, 2013 as well like Planning Commission. Planning Director Harkins stated it would probably be the most consistent that way. Roll Call Vote showed all members

present voting aye - 5 ayes. Motion Carried.

Meeting adjourned at 5:10 p.m.