

MEETING RECORD

NAME OF GROUP: City Board of Zoning Appeals

DATE, TIME AND PLACE OF MEETING: Friday, October 26, 2007, 1:30 p.m., Hearing Chambers, County-City Building, 555 South 10th Street, Lincoln, Nebraska

MEMBERS AND OTHERS IN ATTENDANCE:

Members: Gene Carroll, Tim Francis, George Hancock, Gerry Krieser and Bob Kuzelka.

Others: Terry Kathe and Michele Williamson (Building & Safety); Tonya Skinner (Law Department); Brian Will and Michele Abendroth (Planning Dept.); applicants and other interested parties.

STATED PURPOSE OF THE MEETING: Regular Meeting of the City Board of Zoning Appeals

Chair Gene Carroll called the meeting to order at 1:30 p.m.

Approval of the minutes of the July 27, 2007 meeting

Hancock moved approval of the July 27, 2007 meeting minutes, seconded by Kuzelka. Motion carried 5-0. Carroll, Francis, Hancock, Krieser and Kuzelka voting 'yes'.

Appeal No. 07005 by Kim Lucero for a variance to the allowed maximum height on property generally located at 3200 NW 12th Street.

HEARING **October 26, 2007**

Will stated that the applicant has requested a one-month delay on this application until the November 30 meeting.

ACTION **October 26, 2007**

Krieser moved to delay this application until the November 30 meeting, seconded by Francis. Motion carried 5-0. Carroll, Francis, Hancock, Krieser and Kuzelka voting 'yes'.

Appeal No. 07006 by Nancy Niemeyer for a variance to the side yard setback on property generally located at 1029 S. 35th Street.

HEARING **October 26, 2007**

Niemeyer stated that she is filing an appeal on the construction of a garage. They are asking for a variance to the setback on the garage.

Kuzelka asked if she was aware of how close other garages are to the property line in the neighborhood. Niemeyer stated that she was not.

Dan Lowe, 3034 S. 41, brother of the applicant, stated that many of the garages in the neighborhood are closer to the property line than the applicant's garage.

Carroll stated that one issue is replacing the existing garage but once it was attached, it made it too close to the house and too close to the property line.

Bob Ele, 1019 S. 35, resides north of the applicant. He believes the approval of this application would not hurt his property.

Kathe stated that a detached accessory building standing on its own 6 feet away from the house can go 2 feet to the property line. The moment you attach it to the main house, the setbacks must be the same as the main house. Another issue is whether or not the garage has footings. He noted that the reason the problem was found is that they were recently cleaning up records and discovered that an inspection had never been done.

Hancock asked if a building permit was applied for on the carport. Kathe stated there was not, but there was one issued for the garage.

Carroll asked if there was further testimony in favor of or against this application. With no one appearing, Carroll closed the public hearing.

ACTION

October 26, 2007

Kuzelka asked how much leeway are they allowed under Section 27.75.040 (c1). Skinner stated that this section would not apply because she is applying for a variance. In addition, natural deterioration does not apply in that category.

Hancock stated that there is additional legal interpretation stating that we cannot grant a variance just because it is harmless. He questioned whether that is absolute. Skinner stated the Board's vote is their individual choice on how to apply the law.

Carroll stated that the concern with this application is fire and safety. One option is to require a 1 hour fire proof on the garage. This would be less costly than removing the structure. Kathe clarified that it would be rather costly to fire proof, and footings would be required.

Krieser moved to approve the variance of the side yard setback from 5 feet to 1.5 feet on the garage but the carport must be removed; it was seconded by Kuzelka.

Hancock stated that this is a tough decision. The garage was built in the wrong place and the carport was built without a building permit. On the other hand, we do not like to make anyone tear anything down. Reconciling those two issues is very tough.

A short recess of approximately 5 minutes was taken to obtain information on whether or not there are footings on the garage.

Kathe stated that the records indicate there are footings on the existing garage. The entire garage would still need to be fire rated and the carport would need to be as well.

Krieser made an amendment to approve the variance of the side yard setback from 2 feet to 1.5 feet on the garage only and remove the carport. Motion carried 5-0. Carroll, Francis, Hancock, Krieser and Kuzelka voting 'yes'.

Carroll stated that this is a terrible situation which they do not like to deal with but they have to follow the ordinance as best as they can.

The meeting was adjourned at 2:30 p.m.

***Please note that these minutes will not be formally approved until the next meeting of the Board of Zoning Appeals. ***