

MEETING RECORD

Advanced public notice of the City Board of Zoning Appeals meeting was posted on the County-City bulletin board and the Planning Department's website. In addition, a public notice was emailed to the Lincoln Journal Star for publication on Friday, August 11, 2023.

NAME OF GROUP:

CITY BOARD OF ZONING APPEALS

**DATE, TIME AND
PLACE OF MEETING:**

Friday, August 25, 1:30 p.m., City Council Chambers,
First Floor, County-City Building, 555 S. 10th Street, Lincoln,
Nebraska

**MEMBERS IN
ATTENDANCE:**

Annette McRoy, Tracy Edgerton, Steve Miller, and Vickie McDonald; David Johnson absent. Tim Sieh of the Law Department; Ron Rehtus of the Building and Safety Department; Steve Henrichsen, Brian Will and Clara McCully of the Planning Department; and other interested parties.

**STATED PURPOSE
OF MEETING:**

Regular City Board of Zoning Appeals meeting.

Chair McRoy called the meeting to order and acknowledged the Open Meetings Act posted at the back of the room.

McRoy called for a motion to nominate a Chair.

Edgerton moved to nominate Miller as chair, seconded by McDonald and carried 4-0; McRoy, Edgerton, Miller and McDonald voting yes; Johnson absent.

Chair Miller called for a motion to nominate a Vice Chair.

McDonald moved to nominate Edgerton as Vice Chair, seconded by McRoy and carried 4-0; McRoy, Edgerton, Miller and McDonald voting yes; Johnson absent.

Miller called for a motion approving the minutes of the City Board of Zoning Appeals hearing of July 25, 2023.

Motion for approval made by Edgerton, seconded by McRoy and carried 4-0: McRoy, Edgerton, Miller and McDonald voting yes; Johnson absent.

BOARD OF ZONING APPEALS 23006, BY MIKE EASTMAN FOR A VARIANCE TO THE REQUIRED SIDE YARD SETBACK, ON PROPERTY GENERALLY LOCATED AT 329 NORTH 36TH STREET.

PUBLIC HEARING:

August 25, 2023

There were no ex parte communications disclosed.

Applicant:

Mike Eastman, applicant, 5331 Rockford Drive, Omaha, NE, 68521: The entries to the house are on the south and north. The house runs east and west. There's a double driveway with two single garages and the unit is set up where the main entrance is to the south and the back entrance is to the north. He was told at one point five feet of property was sold on the north side. At one point, they had seven feet of setback and now they have two feet of setback. On the south side, he can make the entrance narrower, and it will get the five feet of clearance needed on the side yard on the south side of the property. He is asking for a setback variance on the north side. The entrance is currently 36 inches, and he can't get it much narrower, otherwise, people won't be able to get in and out once he gets the railing on it.

Edgerton asked if they are reconstructing the entrance and egress.

Eastman stated that is correct. There are existing decks and entrances there now. He did not construct them. The homeowners hired him to get them up to code.

Edgerton asked if the ingress and egress that are there currently are already in the setback.

Eastman confirmed on both sides, they are currently in the setback. The deck on the south side is currently 6.5 feet wide. If we move it to 4.5 feet wide, that will give them room to get furniture in and out and still get up and down the stairs. The north side is tight. It's close to the property line.

Edgerton asked if the primary entrance is in the south, and the secondary one is in the north.

Eastman confirmed.

Miller asked how long the existing steps have been there.

Eastman stated the current steps have been there for 25 to 30 years based on the wood condition.

Miller asked if there was any other way to access the north side or to find any other egress.

Eastman said there is no good way other than how it is now. It wasn't an issue before the 5 feet were sold off.

Staff questions:

Brian Will, Planning Department, 555 South 10th Street, stated there is a point of clarification. The lot lost ten feet, not five feet. If this lot is lined up with the lot to the west, it has a ten-foot jog. All of the lots throughout the block are uniform— 50' by 142'. The property to the north, a duplex, was built in 1910. Sometime between when the subdivision was platted and prior to building the duplex, the ten feet were sold off. Also, on the street side, there are two garages on the ground level facing the street with a significant slope coming up, moving to the west. The primary entrance and exit is on the south side. He doesn't know how else to create a way to get in and out of this building other than with the stairs and decks that were constructed, which would date back to the original dwelling itself.

Miller asked if the structure has been over 40 years.

Will confirmed. He believes these facilities were built with the original dwelling and they are not shown on the building permit, but he assumes there was an inspection, and the building permit was approved. This has been the primary entrance from the very beginning.

Miller asked if the Planning Department had received any comments or complaints from surrounding property owners.

Will stated they have all been notified but he didn't receive any calls.

Edgerton asked if the building code requires an ingress and egress.

Will stated yes, there must be more than one way in and out of the building.

McRoy asked if the final inspection was in 1979 and it didn't mention any stairs or landing at that time so was it added after 1979.

Will stated he thinks they were part of the original building. They're just not shown on the plans on the building permit, but without them, there's no way to get into the building. He believes it was an error of omission on the building permit and site inspection.

Applicant Rebuttal:

None

APPEAL NO. 23006

ACTION BY THE CITY BOARD OF ZONING APPEALS:

August 25, 2023

Edgerton moved to approve a variance to the required side yard setback, seconded by McRoy and carried 4-0: McRoy, Edgerton, Miller and McDonald voting yes; Johnson absent.

BOARD OF ZONING APPEALS 23007, BY DAN HEMINGER, FOR A VARIANCE TO THE REQUIRED REAR YARD SETBACK, ON PROPERTY GENERALLY LOCATED AT 5036 BUNKER HILL ROAD.

PUBLIC HEARING:

August 25, 2023

There were no ex parte communications disclosed.

Applicant:

Dan Heminger, 8032 Maple Street, Omaha, NE 68134, stated he is here on behalf of Poloceks and ABC Seamless. The sunroom on the back of the property is eight feet, four inches in the setback. The building was erected without a permit. They did not have a preexisting sunroom, just a concrete patio.

McDonald asked if the room was already built.

Heminger confirmed the room is already built. There is no issue with the neighbors. It's next to two corner lots. Those lots are closer together than this room is to the property line. It's 11 feet, 8.25 inches off the property line.

Miller asked when the sunroom was built.

Heminger stated it was built in 2022.

Miller asked if the applicant had been talking to staff.

Heminger stated he has been talking to staff. The only thing that doesn't pass the code is the setback and the neighbors have no issues.

McRoy asked if staff had pulled the proper building permit, would the room have been permitted to be built.

Heminger stated the building permit would be denied due to the setback.

McRoy asked if they had changed their process because of this oversight.

Heminger stated there is no change just process, a step in the current process had been skipped. They would order the product after they get the permits.

Edgerton asked if the building permit was denied at the time, did he have another product that would have fit within the setback.

Heminger stated he would have given them other options, such as a patio cover.

Staff questions:

Miller asked how this code violation was discovered.

Brian Will, Planning Department, 555 South 10th Street, stated he received a call from Building and Safety. Once they were referred to Planning, he started talking to Mr. Hemminger about the process.

Miller asked if the Planning Department received any complaints.

Will stated the Planning Department notified surrounding property owners within 200 feet. He received calls from two neighbors requesting information, but not in opposition.

Miller asked if there are any public safety concerns such as in the case of fire or other emergency services.

Will stated he hasn't heard of other issues. The structure encroaches into the rear yard setback. There are 37 other interior lots on the block and all appear to meet zoning setbacks. There are accessory buildings in rear yards that are allowed. He doesn't see any other additions in the block that protrude into the rear yard.

McRoy asked if there is a way that they can get past inspection though it's encroaching if the Board grants a variance.

Will stated the building permit was denied because of the setback. It meets all other requirements for the building permit. If the setback is approved, they may otherwise meet all requirements for a building permit.

McRoy asked if this request for variance meets the stated provisions for this board. It's not unusual, one of a kind, or hardship.

Will stated the opinion from staff is there is no unique circumstance. This lot is like most of the other lots on the block and the others appear to meet setback requirements. There is no denial of reasonable use for the property because even without the sunroom, there's still a single-family dwelling in a single-family residential zoning district. There is reasonable use and benefit of the property by virtue of the fact the owner has a house there. There's nothing peculiar about this property, unique or exceptional in any other regard. An addition was constructed without a building permit. This happens every year. In similar situations, he tells the applicant this is a self-imposed hardship caused by the applicant's action contrary to the ordinance and it doesn't meet the test for the Board of Zoning Appeals. They will make the structure come into compliance. Without the variance, the sunroom must go.

Applicant Rebuttal:

Heminger stated there are a lot of people who don't pull building permits and he wants to do what takes to make this right. A competitor may have called Building and Safety. He doesn't think it was a neighbor who called it in. This is not in the middle of the block. The only reason for this code is so neighbors don't live on top of each other. The neighbors haven't complained. This is an oddity. The corner lots on the block are closer together than this sunroom is to the property line. The difference is that this property is right next to the corner lot. This doesn't affect anyone but the decision here today.

Darryl Polocek, property owner, 5036 Bunker Hill Road, stated he was the one who requested the permit when ABC presented them with the bill. He asked for a copy of the permit for his own files, which is how it was discovered a permit wasn't pulled. He came into the City offices and talked to several people. He is trying to get this settled. He and his wife requested that an appeal be made to the Board.

McDonald asked when the sunroom was finished.

Polocek stated the sunroom was finished April 2022 and construction started around December 2021 or January 2022.

Miller stated this is not a special circumstance. He can see from street view, it is visible in the side yard. He struggled with a way to make this work, but it sets a bad precedent for other cases.

Edgerton stated it's an honest mistake by a reputable builder and homeowners who are trying to do right. The standards for this board in granting a variance if the application and enforcement results in impracticality, difficult or extreme hardship, extraordinary or unusual circumstances of permitting reasonable use of the land. She doesn't see that in this case. She is worried about how to make the call if it's right next to the corner lot if two lots in or if 20 lots into the block is ok. The rules are there to encourage there to be a black-and-white case of what's allowed and what isn't. Granting this variance would be allowing a message that folks don't need to come in and get a building permit before they do projects. This is certainly something that, as a community, we have decided to put importance on which is why she is voting against it.

McDonald stated she is voting to grant the variance, as it is a hardship for the homeowner to tear the structure down. Every situation that comes to the zoning board meets its own standard. The Board has to look at each property in and of itself.

Edgerton stated this case is distinguishable from the case heard earlier today, BZA23006, in terms of ingress and egress being the issues and accessing the property. The length of time that had been in place and they were trying to rebuild it to make it safe. That made it distinguishable for her why she is voting differently in the current case.

McRoy stated she commends homeowners for wanting the building permit, and realizing it didn't exist, to go through the process to make things right. She does not see the corner lots or locations within the subdivision having much to do with the decision, it is irrelevant. If the Board does deny this remedy, there are other options. They may build a covered patio, which is not as nice as an all-weather sunroom, but they can improve it from the original concrete slab.

APPEAL NO. 23007

ACTION BY THE CITY BOARD OF ZONING APPEALS:

August 25, 2023

Edgerton moved to deny a variance to the required rear yard setback, seconded by McRoy and carried 3-1: McRoy, Edgerton and Miller voting yes voting 'yes'; McDonald voting "no"; Jonhson absent.

There being no further business, the meeting was adjourned at 2:13 p.m.

Note: These minutes will not be formally approved by the City Board of Zoning Appeals until their next regular meeting.