

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 Thursday, August 18, 2022.

NAME OF GROUP: CITY BOARD OF ZONING APPEALS

DATE, TIME AND PLACE OF MEETING: Friday, August 26, 1:30 p.m., City Council Chambers, First Floor, County-City Building, 555 S. 10th Street, Lincoln, Nebraska

MEMBERS IN ATTENDANCE: Tracy Edgerton, Vickie McDonald, and Annette McRoy; David Johnson and Steve Miller absent. Tim Sieh of the Law Department; Ron Rehtus of the Building and Safety Department; Brian Will and Alexis Longstreet of the Planning Department.

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 approving the minutes of the City Board of Zoning Appeals hearing of May 27, 2022.

Motion for approval made by Edgerton, seconded by McDonald and carried 3-0: Edgerton, McDonald, and McRoy voting 'yes'; Johnson and Miller absent.

BOARD OF ZONING APPEALS 22003, A REQUEST FOR A VARIANCE TO THE SIDE YARD SETBACK FOR A GARAGE ATTACHED TO A DWELLING, ON PROPERTY LOCATED AT 620 SOUTH 55TH STREET.
PUBLIC HEARING: August 26, 2022

There were no ex parte communications disclosed.

Applicant:

Tory Baker, 620 South 55th Street, stated that this is his personal residence and gave background on the property structure. Baker stated that he recently discovered that the permit submitted by the contractor was not for an attached garage although it was supposed to be for an attached garage to the dwelling. Baker stated that his neighborhood association supports his decision.

Staff questions:

McDonald asked for clarification that if the board does not approve the variance, will he be responsible for demolition if the existing structure that was not completed by the contractor. Baker answered yes.

McRoy asked if the contractor was aware of the applicant's desires for the structure. Baker answered yes.

Opposition:

No one appeared in opposition

Neutral:

No one appeared for neutral

Support:

No one appeared in support

Applicant Rebuttal

Applicant did not appear for rebuttal.

APPEAL NO. 22003

ACTION BY THE CITY BOARD OF ZONING APPEALS:

August 26, 2022

Edgerton moved to close public hearing, seconded by McRoy.

Edgerton moved approval of variance, seconded McDonald.

Edgerton expressed her support for granting the variance. Edgerton reiterated that the neighborhood association submitted a letter stating their support for the garage being built.

Motion carried 3-0: Edgerton, McDonald, and McRoy voting 'yes'; Miller and Johnson absent.

BOARD OF ZONING APPEALS 22004, A REQUEST FOR A VARIANCE TO THE MINIMUM LOT AREA REQUIREMENT, ON PROPERTY LOCATED AT 240 NORTH 33RD STREET.

PUBLIC HEARING:

August 26, 2022

There were no ex parte communications disclosed.

Applicant:

Wayne Mortensen, NeighborWorks Lincoln, 2530 Q Street, Lincoln, NE, approached and gave history and background on the property associated with the project. Mortensen stated that the plan for the existing property is to develop a duplex and two (2) single family dwellings for

affordable housing. Mortensen stated that the two single family units fit the area and the duplexes help assist in meeting the city's goal for housing. Mortensen referenced the site plan to show that the setbacks, heights, and widths comply. Mortensen stated that they are five percent (5%) short of the lot requirement. Mortensen stated that the lots are going to be a part of the NeighborWorks Lincoln Land Trust which deems them permanently affordable. Mortensen would like to zone from R-4 to R-5. Mortensen reiterated his request and stated that if the variance is not granted, then two (2) duplexes will most likely be built.

Edgerton reiterated the plan to have the two-duplex option versus two-single family plus the duplex option and asked if there was another location in which two duplexes next to one another exist. Wayne stated that in a forty (40) mile radius, there are single family homes but there aren't any side-by-side duplexes in the vicinity.

McRoy asked if they will be marketed as townhomes or will they be rent options. Wayne answered that the duplexes would have HOA agreement and they are for sale as single family homes.

McRoy noted that in the staff report, it addresses some infrastructure issues and asked how they would be addressed. Wayne answered that they are able to accommodate the easement request along the west side of the property. Wayne stated that a rear-loaded access drive to run the utility or they will work with the city on other solutions.

Edgerton stated that she understands that there are smaller lots within the area and relatively the same size. Edgerton asked for clarification if there are larger lots in the area. Wayne answered yes and stated this site is one of larger lots.

McRoy addressed Wayne's comment regarding the alternative to building two sets of duplexes if the variance was not granted and asked if four single family homes could be built. Wayne answered no and stated that the lots sizes would not comply with the R-4 zoning.

Opposition:

No one appeared in opposition

Neutral:

No one appeared for neutral

Support:

No one appeared in support

Staff questions:

Edgerton asked for clarification about the zoning surrounding the parcel was R-4.

Brian Will, Planning Department, 555 South 10th Street, stated that it is all R-4 zoning. Will stated for clarification that each unit sits on individual lots which would classify the duplex as individual attached single-family dwellings.

McRoy asked if the language could be updated in the ordinance between duplex and townhomes. Will stated that townhomes are three or more attached.

Edgerton asked if Will agreed with the applicant testimony that the only issue is regarding width and square footage. Will answered yes and stated that the only issue is the lot area.

Edgerton asked about the applicants' perspective of viewing the community as a whole and placing the development there. Will stated that from a staff perspective, there aren't any issues regarding altering the neighborhoods existing structures.

McRoy asked Will to address the area item #9 in the staff report. Will stated that the zoning ordinance for R-4 has established standards and stated that the variance would allow greater density being proposed that what is allowed in R-4. Will clarified that they aren't against the development.

Edgerton expressed her confusion and stated that there is not higher density.

Will stated that there are four single family attached with three separate structures and clarified that it is higher density due to the size of the lots compared to other R-4 zoning.

Edgerton expressed her confusion that the development is addressing the City's goals in the Comprehensive Plan but density as a concern. Will stated that the applicant is not being denied use of the property due to the density in R-4.

Edgerton stated for clarification that it is difficult to balance understanding the zoning ordinance is in place to protect the neighborhood.

Will stated that it's the applicant's preference that they do not meet the requirements and want to propose an alternative. Will stated that when staff reviewed the plan, they did not have an issue with the proposed use.

Applicant Rebuttal

Wayne approached for rebuttal. He suggested that using density to refer to the property makes the understanding difficult. Wayne reiterated that the variation to the minimum lot area requirement because it's not being met by five percent (5%). Wayne explained the structure of the dwellings parking, floor plan and square footage. Wayne addressed the Comprehensive Plan

and reiterated that the four (4) units fall into the affordable housing category.

APPEAL NO. 22004

ACTION BY THE CITY BOARD OF ZONING APPEALS:

August 26, 2022

Edgerton moved to close public hearing, seconded by McRoy.

McDonald motioned approval, seconded by Edgerton.

McRoy stated that the discussion for affordable housing is viable, but the strict enforcement of the zoning ordinance is important. McRoy stated that she does not see a need for a variance. McRoy stated that they can carry out their plan just not with their preference and stated that she is not in support.

Edgerton state that she is torn and agreed with McRoy regarding the standards by which a variance is granted. Edgerton stated that the applicant can still develop in a way that is within zoning ordinance and stated that she will not be supporting.

McDonald asked if there was room for three dwellings. Edgerton answered no and stated the square footage would vary. McDonald asked what would be more desirable regarding the home type. Edgerton stated that it would be for the developer to decide.

McRoy stated for clarification that the applicant would have to apply for a different variant.

Edgerton and McRoy voting 'no', McDonald abstained; Miller and Johnson absent.

Tim Sieh, Assistant City Attorney, stated that McDonald has to vote since she made the motion.

McDonald voting 'yes'; Edgerton and McRoy voting 'no'; Miller and Johnson absent. Motion failed 1-2

Sieh stated that a vote will be done, for the members absent at the August 26th hearing, at the next Board of Zoning Appeals meeting for action only, no public hearing will be held.

BOARD OF ZONING APPEALS 22005, A REQUEST FOR AN EXCEPTION TO REDUCE THE PARKING REQUIREMENT IN THE B-3 ZONING DISTRICT, ON PROPERTY LOCATED AT 6101 PLATTE AVENUE.

PUBLIC HEARING:

August 26, 2022

There were no ex parte communications disclosed.

Applicant:

Shirley Peng, 10011 Blue Water Bay Road, stated that she is owner of the property associated with this property. Peng stated that the property was just replated to a half-acre. She stated that the business use is strictly e-commerce and storage and doesn't require parking. The zoning ordinance requires fourteen (14) stalls and stated that the request is to waive the fourteen (14) stalls to four (4).

McRoy asked for clarification what type of business Peng's husband owns. Peng stated that her husband sells cast iron products and that there would not be any public foot traffic.

McRoy asked what kind of traffic the property would expect. Peng stated that they are not anticipating any traffic from customers, mainly from delivery transportation.

Edgerton stated that one of the concerns is that the current use may change based on future owners use. Peng stated that she is a realtor and that it would be disclosed, if the parking was never put in, it would be disclosed.

McRoy stated for clarification that the information regarding parking would be disclosed but future owners wouldn't be required to have parking.

McDonald asked if it is decided that the applicant wants the fourteen (14) parking spots, could they possibly rent them to nearby entities. Peng stated the requirement is asphalt and not rocking. Peng stated that rocking would be cheaper but is not an option if they did have to develop the parking spots.

McRoy asked if the business is a part of the Havelock Business Association. Peng stated that she does not believe so. McRoy stated that the Havelock Business Association is active and one of their main concerns have been parking.

Peng stated that in the letter addressed to the board, in the last section, states that there is parking to the west and north of the property given ample parking space, if needed.

Opposition:

No one appeared in opposition

Neutral:

No one appeared for neutral

Support:

No one appeared in support

Staff questions:

Edgerton asked for clarification that parking requirements in B-3 is paving not rock. Will answered yes and due to the size of the lot, paving is a requirement. Edgerton noted that in the staff report, there have been parking requirements in previous years. Will stated that those were mentioned in fairness and stated that the scale regarding parking and the property were greatly different. Will addressed that the comments to the board from the public regarding parking as an issue.

McRoy reiterated the question regarding ownership change and asked for clarification that the city cannot force the future owner to abide by the zoning use. Will stated that at the time of a change of use, he does not see it being a requirement.

Ron Rehtus, Zoning Coordinator, 555 South 10th Street, stated that if the use was to change, e-commerce is classified as retail sales when a building permit is applied for so the occupancy would not change therefore not requiring future owners to expand parking.

McRoy stated for clarification that retail would be simply retail in B-3 zoning. Rehtus agreed. Rehtus stated the B-3 is one of zoning classifications that allow for residential as well. Rehtus stated that as long as occupancy does not change from retail, the future owners are not required to increase parking.

McDonald asked if in the future, could the parking lot be sold. Will answered no and the applicant would have to final plat the property which would not be approved.

Applicant Rebuttal

Peng stated that paving the parking stalls is the concern. Peng stated that they aren't wanting to pave the open space due to expense. She reiterated that there are other spaces for parking on the west and north.

APPEAL NO. 22005

ACTION BY THE CITY BOARD OF ZONING APPEALS:

August 26, 2022

Edgerton moved to close public hearing; Seconded by McDonald.

Edgerton moved to deny request for exception, seconded by McRoy.

Edgerton stated that the ordinance states paving.

Edgerton discussed that the request is addressing this specific business and not the possibility of future owners. Edgerton stated that the requirement of parking does not deprive the applicant of use of their property as this is the lowest parking requirement in the ordinance.

McRoy agreed and expressed her concern for changing the property's parking.

McDonald agreed with her fellow board members.

Motion carried 3-0: Edgerton, McDonald, and McRoy voting 'yes'; Miller and Johnson absent.

**BOARD OF ZONING APPEALS 22006, AN APPEAL OF AN ADMINISTRATIVE OFFICIAL'S DECISION,
ASSOCIATED WITH PROPERTY GENERALLY LOCATED AT 4575 SOUTH 1ST STREET.**

PUBLIC HEARING:

August 26, 2022

There were no ex parte communications disclosed.

Tim Sieh approached and stated that the city is requesting to defer this application until September 30, 2022.

Applicant:

Staff questions:

Opposition:

No one appeared in opposition

Neutral:

No one appeared for neutral

Support:

No one appeared in support

Applicant Rebuttal

APPEAL NO. 22006

ACTION BY THE CITY BOARD OF ZONING APPEALS:

August 26, 2022

Edgerton moved to approve deferral, seconded by McDonald.

Motion carried 3-0: Edgerton, McDonald, and McRoy voting 'yes'; Miller and Johnson absent.

There being no further business, the meeting was adjourned at 2:51 p.m.

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