

MEETING RECORD

NAME OF GROUP: CITY BOARD OF ZONING APPEALS

DATE, TIME AND PLACE OF MEETING: Friday, January 27, 2017, 1:30 p.m., City Council Chambers, First Floor, County-City Building, 555 S. 10th Street, Lincoln, Nebraska

MEMBERS IN ATTENDANCE: Andrew Budell, Chris Hove, Annette McRoy, and Scott Sandquist; Tim Francis absent. Tim Sieh of the Law Department; Terry Kathe and Ron Rehtus of the Building and Safety Department; Steve Henrichsen, Brian Will, and Amy Huffman of the Planning Department.

STATED PURPOSE OF MEETING: Regular Board of Zoning Appeals meeting

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

Sandquist called for a nomination for Chair. McRoy nominated Sandquist. Sandquist stated he has served as Chair for a lengthy period of time and it is time for him to step down. McRoy rescinded her nomination.

Budell nominated Chris Hove, seconded by McRoy and carried 4-0: Francis absent.

Sandquist handed the meeting over Hove.

Hove called for a nomination for Vice Chair. Budell nominated McRoy, seconded by Sandquist and carried 4-0: Francis absent.

Hove called for a motion approving the minutes of the City Board of Zoning Appeals hearing of July 22, 2016. Motion for approval made by Budell, seconded by Sandquist and carried 4-0: Budell, McRoy, Sandquist, and Hove voting 'yes'; Francis absent.

APPEAL NO. 17001 - REQUESTED BY PERRY FAMILY REAL ESTATE FOR A VARIANCE TO REDUCE THE FRONTAGE REQUIREMENT FROM 175 FEET TO ZERO (0) FEET GENERALLY LOCATED AT 107TH STREET AND YANKEE HILL ROAD.

PUBLIC HEARING:

January 27, 2017

There were no ex parte communications disclosed.

Andrew R. Willis, Cline Williams, 233 S. 13th Street, came forward representing the applicant. He stated the staff report explains the details well. In 1979, when the AG Zoning district was updated to have a 20-acre minimum, these four lots were all under common ownership, giving them more than the 20 acres. The first home was built in 1967 on Lot 3, prior to the zoning change. In 1979, at least two lots were combined and Lot 2 could be built upon.

In 1994, the issue of whether or not this property was buildable came to light when the owner applied to build a home. Because of the 20-acre minimum and because these were now separate lots, it was determined they did not meet the minimum requirement to build. The City rezoned the three lots to AG-R so the lots then met the minimum. The frontage requirement was not specifically addressed.

At the time of the 1994 zoning change, it had been interpreted that the change of zone rendered these lots developable. It was also understood that the lots could be bought and sold separately, and building permits could be issued for single-family dwellings on each lot. That zoning change was done to make sure these lots were developable.

In 2015, Perry Family Real Estate purchased this lot with that understanding. They did not build and are now under contract to sell. The buyer spoke with Building and Safety and found out the lot was not buildable because there was no frontage. That was the first time the frontage issue was raised. Now, according to the current interpretation, there is no frontage road. There is an access road to service these lots, but that does not count.

This Board has the power to decide to grant a variance to the extent necessary to permit the owner a reasonable use of their land in the specific instances where there is peculiar, exceptional, and unusual circumstances that are not found elsewhere in the locality. This hardship is only affecting this property. They have a 10-acre lot that is not buildable, despite the fact that prior to recently, it was interpreted by all that it would be. This was not a condition created by the applicant. Lots 2 and 3 were already built, and Lot 1 has the frontage, so as such, it only affects this lot. It is not clear why this issue did not come up for Lots 2 and 3, but what we are asking now is to be treated the same as the other properties. Building would not negatively impact the neighbors. It is what was intended and what everyone expected to happen. A variance would help to allow what was intended by the 1994 zoning change.

Hove asked if the neighbors have been consulted. Willis said he has had conversations with a few neighbors who called simply wanting to know what action was being requested. They all said they assumed the lot was buildable. There was no opposition.

Hove asked if the intention is to use the same service road. Willis said that is correct. In a way, the frontage requirement is being met by that access road even though that is not technically the case, since it is not a public road.

Hove asked if this would be a single residence. Willis said yes, and it will comply with all other requirements of AG-R zoning. The reason this came up was because Perry Family Real Estate was selling the lot for the potential buyer to develop a home.

Sandquist asked if Lot 1 has the same owner. Willis said they have different owners.

Sandquist asked if the owner has to pay for maintenance of the access road. Willis said he would have to defer to the owner.

Alex Perry, Perry Family Real Estate, 9200 Andermatt Drive, came forward to state the road has been there as an access point for the northern two lots for a long time. As is often the case on these smaller access roads, the owners have just taken care of it. We have talked about how to set it up to make sure that each section of the road, whether along each owner's frontage or through a joint effort, will be taken care of. There may already be an arrangement in place, but he is not sure.

Sandquist said it is most likely the people who live there that do the snow removal and maintenance. Perry said that would be his guess. The area in question feels like it is outside of Lincoln, so it is a typical acreage mindset where everyone takes care of their own area.

Willis concluded by noting that without this variance, the property remains unbuildable and becomes an unuseable, 10-acre lot because there is no way to get frontage at this point.

Brian Will, Planning Department, stated he does not have much to add beyond what was stated in the staff report.

Budell asked who interpreted that the change of zone in 1994 was intended to be a solution to make the lot buildable; he wondered if it was staff. Will said yes. The minutes from the change of zone were reviewed, and though it was not absolutely definitive, there was mention of the developability of the lots and it is reasonable to assume that is the issue being referred to. In looking at the action taken at that time, it is the opinion of Planning staff that the goal was to make these lots more suitable for development.

There was no testimony from the public.

Sandquist moved to allow the variance, seconded by McRoy.

Hove stated he will support this motion. This makes sense and comes down to a timing issue in the way the lots were developed. This is the highest and best use of the property.

Tim Sieh of the Law Department noted that the motion to approve the variance must state the findings of the unique circumstances of this property and should state why a variance from the requirements is appropriate.

Sandquist stated the other lots were built upon prior to zoning changes; the subsequent zoning changes made the lot unbuildable. It is unique in the fact that it does not have the frontage, though it is similar in all other characteristics to its neighbors. Building on the property would not have an adverse affect on neighbors and is appropriate to the character of the area.

Motion for approval carried 4-0: Budell, McRoy, Sandquist, and Hove voting 'yes', Francis absent.

There being no further business, the meeting was adjourned at 1:52 p.m.

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