

MEETING RECORD

NAME OF GROUP: CITY BOARD OF ZONING APPEALS

DATE, TIME AND PLACE OF MEETING: Friday, March 29, 2019, 1:30 p.m., City Council Chambers, First Floor, County-City Building, 555 S. 10th Street, Lincoln, Nebraska

MEMBERS IN ATTENDANCE: Maja Harris, Vickie McDonald, Annette McRoy, Steve Miller and Scott Sandquist. Tim Sieh of the Law Department; Ron Rehtus of the Building and Safety Department; Dessie Redmond and Amy Huffman 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.

The first order of business was approval of the the minutes of the special City Board of Zoning Appeals hearing of November 2, 2018. Motion for approval made by Miller, seconded by Harris and carried, 5-0: Harris, McDonald, Miller, Sandquist and McRoy voting 'yes'.

APPEAL NO. 19001, REQUESTED BY DONALD AND PAMELA APLEY, FOR A VARIANCE TO THE REAR YARD SETBACK FROM 20 FEET TO 14 FEET, ON PROPERTY GENERALLY LOCATED AT 3861 SHERIDAN BOULEVARD.

PUBLIC HEARING:

March 29, 2018

There were no ex parte communications disclosed.

Christina Usher, Mattson Ricketts Law Firm, 134 S. 13th Street, Suite 1200, came forward representing the applicants, Don and Pam Apley. Also on hand is the owner of the Sheridan Property owner who would be directly impacted by the granting of the variance. This property has shared a side yard since at least 1999 when the Apleys purchased the property. Their goal now is simply to legally adjust the property lot lines to accurately reflect how the properties have been used for at least the past 20 years. They worked with the previous owner and also the current owner to purchase the 16-foot strip. Along that strip there is already a shed and mature landscaping. Their efforts to make the lot lines match this transaction revealed the need for a variance.

This property has unique characteristics that others in the neighborhood do not have. The Apley property is the only one squeezed in between the alleyway that runs behind Sheridan; none of the other homes do this, so this is very unique to this particular parcel. Additionally, their home is situated in the rear of the lot. While other homes front to Sheridan, their home takes access from Woodbine. Next door, also along Woodbine, is the duplex that is nestled into that small lot, bordered by the alley. The 16-foot strip of land between the two is important to the use for each of the two. It should be noted that the distance between the rear of the home and the proposed new lot line is 37 feet, so not in violation of the setback. Only the garage causes any problem, by six feet.

In addition to the unique layout of this particular lot, there is already a fence dividing the two lots as the Apleys and their neighbors have used the properties for decades. This action will shore up the technical side of things by allowing the administrative subdivision, which will also clear up title issues and property taxes. All parties involved has signed off on this arrangement, including previous owners. Money was exchanged, so the Apleys do technically own the strip of land already. With the fence and landscaping, all this will do is make the lot lines match up with how the properties are used.

If the variance is not granted, this will create a burden to all parties because of the title, taxes, and the way the land has been used for decades. This would not set any precedent in this well-established neighborhood. Again, this is the only lot in this area with the extra dwelling built between the home and the alley.

Harris asked who the applicant is, the owners of the Sheridan property or the Woodbine property. Usher said the Apleys initiated the process but the application was signed by both owners and included the owner record of the 16-foot strip in question. Harris noted that the Woodbine owners will benefit most from this. Usher said that is a safe assumption; however, the Sheridan owners are paying the tax on this strip, so there is also benefit to them.

Harris asked what the hardship would be to the Woodbine owners if this variance were not granted. Usher said they have already purchased it, so it would be a hardship to undo that. The mature landscaping, shed, and sprinkler system are all involved, so there would be several things that would need to be undone, if not granted. Harris noted that there could be hardship if another owner of the Sheridan property would not be open to this arrangement. Usher said that is mostly correct. It was worked out by a long-term owner. When they sold the property, this problem became evident.

Harris asked why the City was not contacted when the initial arrangement was made. Usher said it is her understanding that the City was contacted and the surveyor spoke with Planning. As soon as the plat was submitted, work began to clean this up.

Sandquist said that unlike most variances granted that would allow changes to a use, this would allow the owners of both homes to continue doing what they have been doing for decades.

Usher agreed this is just a technical clean up. It could have impact for ownership in the future.

Miller said that to him, it is an unusual circumstance that the other homes face Sheridan and none have this rear yard issue because there are no other parcels carved out this way. He asked if Usher is aware of any others like this in the neighborhood. Usher said they did look in the area for examples of variance from setbacks. These home were built before current zoning laws so there are a couple of houses that are placed right at the setback. Almost every lot in this area is unique so we felt more comfortable making the assertion that no precedent will be set for this neighborhood.

McRoy wondered how it worked with the title process when the 16-foot strip was purchased in December of 2019. Usher said they did not use a title company because they worked it out between parties. It is in limbo until this is resolved.

Harris noted that information was provided about the Sheridan property. She asked for more information about the Woodbine property. She wondered about the setbacks and if it is a non-conforming structure. Usher said she did not know, but she could find out and provide that information. Harris said she is trying to figure out what benefit the use of this addition 16 feet provides to the Woodbine property, and what they are prohibited from doing if it is not granted. She wondered if there were any issues related to space, access, or reasonable use of the yard. Usher said they are using it right now. Harris asked what the impact would be if they were not allowed to use the area. Usher said there is a fence in place, so the Woodbine property does not have use of the area on the other side. The back yard is not deep. It creates a burden in terms of what they are used and the investments that have been made. The fence is tied to the Sheridan property, so it would also place a burden on those owners to deal with that. The legal burden is that they now own this property and this setback is the only thing hindering making it official.

Miller said it is unusual that they have been treating the area as their yard, going on 50 years. Usher agreed.

Harris asked for clarification about where exactly the setback would be if the variance is granted. Usher indicated that the bold line shown on the proposed submitted plan is the fence so the problematic area is from the back of the garage to the fence. Meeting the setback from the house itself is not a problem, it is only an issue where the garage goes around a corner. Harris asked if the fence and the proposed setback are the same. Usher said yes, generally, it is the same.

McDonald noted that the house was built prior to current zoning standards. She wondered if the garage was built at the same time as the original house. Usher said she is not sure.

There was no public testimony in support or opposition.

Staff Questions:

Harris asked what the responsibility of the Board is when evaluating the criteria of an appeal from the perspective of both the applicant, and the neighboring property; in this case, it appears the adjacent property benefits more from the decision. Redmond said that the Board should let the facts guide decision making. Under consideration is whether the applicants are being denied reasonable use of their property, or what hardship they have if a variance is not granted. Harris said that is why she asked; she does not see the hardship for the applicant, and will not benefit as much from the variance as the Woodbine property. She does not have all of the information for the Woodbine property since they are not the applicant and are not part of the Staff Report. Redmond said the variance is for the shared property; the variance is really on the Sheridan property.

Sandquist commented that the Woodbine property is not the one applying so if they are suffering any hardship, it is irrelevant. Redmond said there needs to be hardship on the property obtaining the variance, so that can be taken under consideration as part of a bigger picture.

Harris asked if having to pay tax on a portion of land that you don't want to keep is an acceptable criteria through the eyes of the regulations we are governed by. Redmond said property taxes are not of consideration. Tim Sieh, City Attorney, stated that we would not consider paying taxes as a hardship for the Board of Zoning Appeals to consider.

Harris asked if aligning a plat with the long enduring and consistent use acceptable criteria. Sieh said the question is whether it is an undue hardship on the property in question, and would a variance solve that hardship. That is a finding of fact that would need to be made. It should be noted that self-created hardships are not grounds upon which a variance can be granted. There is no more a right to a variance just because bought into a property. In one case, one party submitted a building application showing a structure within the setback. The City engineer approved it and the plans showed it was there. It ultimately went to the Court of Appeals saying it would be a hardship to reverse construction. The court said, 'no', one does not get to take advantage of a mistake by saying the cost is too much to take it back.

Harris asked if Law would agree that any hardship to the Woodbine property cannot be considered even though they are certainly part of, and supportive of this application. Sieh said it was indicated that they all signed the application. There is a title issue on the north property and it remains until there is a proper subdivision. In order to that, a variance must be granted to allow the 14-foot setback. The Woodbine property meets its setbacks. The garage on the north property counts when calculating distance to setback because it is connected to the main house.

Sandquist wondered if the hardship is really on both properties in that the City is being impeded from recognizing ownership on both parcels, and that could continue if either owner

eventually sells. Sieh said that title issues amongst the owners appears to be where the hardship lies in this case.

Applicant Rebuttal:

Usher said that on the side without the 16-foot strip, the area is no longer usable sideyard. That creates hardship on that property. All parties are purposely joined to make it clear that this is something that all involved want to see happen. The applicant, in particular, would like this variance granted so they can do the subdivision as intended and clean things up; this is the best opportunity and time to do that. The Board looks at whether this creates hardship on neighbors. Not having the ownership, lot lines, taxes and titles line up is a dramatic hardship.

McRoy noted there is plenty of history provided for both of these properties. She asked for thoughts about why this process was not undertaken before today. Usher said she cannot speculate. Perhaps they were just long term owners and it was only revealed through the course of time that things needed to be fixed.

Harris agreed this would not be a detriment and that it would even be beneficial. Her issue is that she does not see a hardship significant enough to grant a variance, especially since we heard that self-created hardships are not to be considered. She sympathizes with the applicants and it makes perfect sense to want to clean this up. To her, this could set a precedent to other property owners who might want to do a similar arrangement. The general idea of the code is that we all should abide by it. She is not finding sufficient hardship to grant the variance, even though it would clearly be more beneficial to do so.

Sandquist suggested that if risking setting a precedent was reason to deny variances, this board would serve no purpose since potentially, every variance granted could somehow create that situation. He does not think that will occur here.

McRoy said that the board considers each case and scenario only in the context of their situation, and not in comparison with others.

Miller said he finds hardship in the unusual layout of the lots. These lots are configured differently from the others on Sheridan and that is what has rendered this hardship. He believes the title can be reconciled and there is no adverse effect on zoning, health, safety, or the welfare of the neighborhood. In his opinion, this variance is just.

Harris agreed that the Woodbine lot is a different story, but if she understands correctly, their hardship is not under consideration. It is very different to find fact, as it relates to the Woodbine property without the information included in the Staff Report. The finding of hardship on the Sheridan property does not rise to meet the standard.

APPEAL NO. 19001

ACTION BY THE CITY BOARD OF ZONING APPEALS:

March 29, 2019

Sandquist moved to approve the variance based on the reasons stated previously; seconded by McDonald.

Harris said she sympathizes with the applicant and understand the reasoning for requesting this variance but she believe they have been tasked with evaluating from a fairly strict perspective of being able to establish finding of fact of demonstrable hardship, and this does not meet that.

Motion carried, 4-1: McDonald, Miller, Sandquist and McRoy voting 'yes'; Harris voting 'no'.

There being no further business, the meeting was adjourned at 2:14 p.m.

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