MEETING RECORD

NAME OF GROUP:	City Board of Zoning Appeals	
DATE, TIME AND PLACE OF MEETING:	Friday, April 24, 2009, 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, Bob Kuzelka and Gerry Krieser.
	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	

The meeting was called to order at 1:58 p.m. The Nebraska Open Meetings Act was acknowledged.

Carroll noted that the delay of the meeting was due to staff discussion regarding a discrepancy between the legal description published in the hearing notice and the survey done by a legal surveyor. The description in the newspaper is broader than the surveyor's description. He asked if there was anyone who was opposed to proceeding with the hearing. Seeing no one, he proceeded with the agenda.

Approval of the February 27, 2009 minutes
Krieser moved approval of the February 27, 2009 minutes, seconded by Francis. Motion carried 4-0. Carroll, Francis, Hancock and Krieser voting 'yes'; Kuzelka abstaining.

Appeal No. 09004 by Ray Lineweber claiming an error by the City and for a variance to the side yard setback and the projection of eaves into the side yard on property generally located at 2942 Stratford Avenue.

HEARING **April 24, 2009**

Ray Lineweber, 2942 Stratford Avenue, stated that he and his family have lived at this address since 1975. A footing permit for an addition to the home was issued in July of 2003. A partial permit was issued in September of 2003 as the roof overhang was too far into the east side yard. Mr. Lineweber stated that the contractor never showed him the paperwork on this issue. He thought the issue was resolved until April of 2005 when he became aware of the formal City denial. He cut back the overhang at that time and again he thought that everything was fine with his neighbor, Ms. Meints.

Mr. Lineweber stated that he again cut back the eave a couple weeks ago. He retained an architect, Michael Bott, to prepare the design work and Mr. Bott verified that it is to code.

Mr. Lineweber is concerned that there is an irregularity with the survey marker on the southeast corner of the property, as about 6 inches is over the property line. He believes there is a question about the survey line.

Mr. Lineweber noted that the garage is completed and has fire-proof sheet rock. He thanked the Board and appreciates the opportunity to present his case.

Terry Kathe clarified that the garage wall is fire-rated but he does not believe the eaves are.

Carroll asked if there was any testimony in favor of against this application.

Michael Bott, an architect, appeared on behalf of Ray Lineweber. He was asked by Mr. Lineweber to look at the roof which at that time was overhanging the lot line about 2 inches. If it was cut back 2 inches, then they could ask for a variance. He believes it will not do any good to chop off part of that roof as it will reduce the attractiveness of the house.

Michael Rierdon, appearing on behalf of Edith Meints, stated that Ms. Meints' property is east of Mr. Lineweber's property and is located at 3000 Stratford Avenue. He believes the applicant is missing the point. The issues of the variance are properly in front of the Board. The issue involving Ms. Meints is the overhang on the property. He heard nothing in the testimony about unusual or peculiar circumstances of the property. It is his belief that there has been no showing of these circumstances. He began work on this case in 2006, and they have made many attempts to work this out, but that never came to fruition. They object to the request for the variances, and he urged the Board to vote down this request based on the fact that they have shown no peculiar or unusual circumstances.

Carroll asked what type of notification is given when a building inspection fails. Kathe stated that the contractor on site is contacted.

Carroll then asked about the fire-rating on the garage. Kathe stated that the garage wall must be one-hour fire-rated and anything less than 3 feet to the property line must be fire-rated as well.

Carroll asked about the setback requirement. Will stated that in this zoning district, the setback is 5 feet. An eave can project into that required setback 24 inches.

Lineweber stated that when the situation became apparent that there was a problem with Ms. Meints, he contacted her. He offered to pay for her legal fees, which he has done. He also retained a commercial appraisal which he has paid for as well. The response from her counsel was that they wanted $5000 for the corner. At that time, he felt he should check the property line. He believes the lot is peculiar in that it sits at an angle and is an odd-sized lot.

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

ACTION **April 24, 2009**

Kuzelka noted for the record that he has a conflict of interest with this application, and he will excuse himself from the vote.

Hancock stated that there are a lot of interesting aspects, most of which they cannot do anything about. Most of it boils down to whether or not there are peculiar circumstances. If there is a peculiar circumstance, it is the shape of the lot, and he is unsure if that qualifies.

Carroll noted that the Board has seen a case like this before a little over a year ago. He would like to do the same thing as they did then.

Hancock moved denial of the variance on the side yard setback, seconded by Krieser. Motion for denial failed 4-0. Carroll, Francis, Hancock and Krieser voting 'no'; Kuzelka abstaining.

Carroll stated that on the previous similar case, they reduced the side yard about a foot on the structure itself. There was also misinterpretation of the property line of both public and private officials in that case.

Francis moved approval of the variance for the side yard setback, seconded by Carroll. Carroll believes there is an irregularity of the property line. He believes that only 1 foot 4 inches does not create a hardship for the neighbor. Motion for approval carried 4-0. Carroll, Francis, Hancock and Krieser voting 'yes'; Kuzelka abstaining.

Carroll asked for clarification on the eave projection. Kathe stated that an eave may project 24 inches or 2/5 of the required side yard, whichever is greater.

Hancock moved denial of the eave variance, seconded by Krieser. Hancock stated that there is an issue of fire safety. Motion for denial failed 3-0. Carroll, Francis and Krieser voting 'no'; Hancock voting 'yes'; Kuzelka abstaining.

Francis moved approval of the variance on the eave projection, seconded by Carroll. Carroll amended the motion to reduce the eave to 24 inches from the side yard and anything along the eave must be fire-rated at 1 hour. This protects the neighbor from fire, and he believes this is a good compromise. Francis accepted the amendment. Motion for approval as amended carried 4-0. Carroll, Francis, Hancock and Krieser voting 'yes'; Kuzelka abstaining.

The meeting was adjourned at 2:31 p.m.

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

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