

## MEETING RECORD

**NAME OF GROUP:** CITY BOARD OF ZONING APPEALS

**DATE, TIME AND PLACE OF MEETING:** Friday, July 25, 2014, 1:30 p.m., City Council Chambers, First Floor, County-City Building, 555 S. 10<sup>th</sup> Street, Lincoln, Nebraska

**MEMBERS IN ATTENDANCE:** Annette McRoy, Scott Sandquist and Lynn Sunderman; (Andrew Budell and Tim Francis, absent). Tim Sieh of City Attorney; Terry Kathe of Building and Safety; Steve Henrichsen, Brian Will and Amy Hana Huffman of the Planning Department.

**STATED PURPOSE OF MEETING:** Regular Board of Zoning Appeals meeting

Scott Sandquist opened the meeting and acknowledged the posting of the open meetings act posted in the room. He then called for a motion approving the minutes of the regular meeting held January 31, 2014. Motion for approval made by Sandquist, seconded by Sunderman and carried 3-0: McRoy, Sandquist and Sunderman voting 'yes'; Budell, and Francis absent.

**APPEAL NO. 14002**  
**FOR A VARIANCE TO ADJUST THE SIDE YARD SETBACK FROM FIFTEEN (15) FEET TO ZERO (0) FEET ON PROPERTY GENERALLY LOCATED AT SOUTH 14<sup>TH</sup> STREET AND CENTER PARK ROAD. (1501 CENTERPARK ROAD)**  
**PUBLIC HEARING:** July 25, 2014

Members present: McRoy, Sandquist and Sunderman; Budell and Francis absent.

**Gary Butts, 2248 S. 28<sup>th</sup> Street**, appeared on behalf of appellant Dennis Flesner. He stated that the information is accurately presented. This property was subdivided years ago to create two parcels. In that zoning, a lot must have a front, side, and rear yard. Prior to that, this was one single property known as the Harvester Restaurant. The parking for this location was along the east property line. When it was sold, it created the 15 foot side yard and no one questioned it at the time. Cars continued to park in that area, and they still do, so no one was aware of that side yard. Then the property was occupied by the Moose Lodge, who downsized. When they moved out last year, the owner rented that area to the bar and grill. They wanted to expand and attempted to get a building permit to build a beer garden on the back side. When they submitted plans, Building and Safety told them it would not be allowed due to the fact that they did not have enough parking as it currently exists, let alone with the addition of a beer garden, and that the stalls along the east would need to be removed due to the setback. This was all discovered when they proposed the project and it had not been an issue during the construction done by Moose Lodge.

Possible negative effects on surrounding businesses and property have been considered and since the area has already been used as parking all this time, it seems unlikely to create much change.

Sandquist asked if there would be physical changes to the site, and if they added the required four additional stalls.

Mr. Butts replied that the two parking spots lost because of the beer garden were relocated, and others were shifted to add the four, and possibly even one additional stall to be on the safe side.

Sandquist asked if there are to be any more changes besides the addition of the beer garden.

Mr. Butts stated the business expansion is the only other change; they are planning to use the space as it is.

Sandquist asked if the real estate ownership has changed.

Butts stated that it has not. It has remained the same for approximately twenty years. The subdivided real estate is what was sold.

There was no testimony in support or opposition.

**Brian Will, Planning Department**, came forward to go over the history of the property and to clarify the facts of the case as they are understood. These were originally narrow east/west lots. Today they are more rectangular, north/south lots. On the west edge of the property is a convenience store, which according to the Assessor, was built in 1977. The middle building dates back to 1975. The buildings on the east lot, Lot 3, are shown dating back to 1990, so they were built two years after the final plat. Two of the three subdivisions were already developed. The effect of the final plat was that, in addition to creating three lots, the parking area became the side yard. When it was originally approved, it was not in violation since it was a single premises. The plat was approved, then Lot 3 was sold off, and that is when this condition was created, whether they had knowledge of it or not. It has been in continuous use since then.

Sandquist asked if these were once internal lot lines.

Will stated that as long as multiple lots are adjacent and under single ownership, the owner can ignore lot lines; the property is treated as a single premises.

Sandquist went on to ask if there is potential to create this problem anytime a lot is sold under a similar scenario.

Will replied that it is a potential, which is why caution is used in approving final plats. Should an owner choose to sell, everyone must understand the potential long term violations that could be created, just by the simple act of selling.

McRoy asked whether or not there is any way to grandfather this in since it has existed in its current state for more than thirty years without complaint.

Will replied that it does not meet any provision to grandfather it in and say that it is legal. The current plat came in 1988, and the zoning was adopted in 1979, so the provisions we are applying now were in effect at the time the plat was done.

Sunderman asked about the reconstruction that took place and why the set back was not noticed at that time.

Terry Kathe, Building and Safety, came forward to state that the construction to the Moose Lodge was an internal remodel. They may have submitted a site plan, but because they were not making exterior changes, it would have been very basic. The square footage for parking was still there, and the use did not change.

Sunderman asked what might happen if they sold the building.

Kathe replied that there would also be a building code violation. Departments are much more thorough today in order to prevent future problems similar to this one. If the building were sold, it would be required to be modified in order to be in compliance. This case does not have a clear answer, which is why we have new rules to clarify things. Now when a subdivision occurs, we ask whether or not there is any issue with putting a property line in a certain place.

Sunderman clarified that this has nothing to do with the addition of the beer garden.

Kathe confirmed that it is the modification in parking that is being examined. Another option is to try to squeeze everything in through the design in order to meet the requirements. He went on to confirm that the property has been used in this configuration for at least twenty-four years.

Tim Sieh, City Attorney's Office, came forward to state that there is generally a reluctance to grant a variance when it is to resolve a self created problem, which is what the prior owner may have done by virtue of the sale. That sale created the side yard, which was not previously required when it was a single property. In terms of doing justice to the owner and neighboring properties, this has been going on for at least twenty-four years and the way they have been operating has been okay. An option is to create conditions on the variance by saying that the property is fine as long as it remains in its current use, but as soon as it changes uses, it would be required to follow all requirements.

Sandquist clarified that as long as it is used as a restaurant or for on-site alcohol consumption it would be fine. He asked if a time limit would be placed on this use.

Mr. Sieh stated that there would not have to be a time limit. The change of use is the thing that would recreate the problem that exists today.

Sandquist stated that he wants this to be very clear that it all comes back to the premises being used for onsale alcohol or a restaurant. He stated that he is struggling with this because it seems reasonable that if this property has been used this long, in this way, the variance should be allowed. He stated that he will make a motion to approve the conditional variance due to the extended use of this establishment as a restaurant, and because losing the nineteen parking stalls in question would have a direct negative effect on the business.

Mr. Butts stated that this property has been a restaurant since the time it opened, so it could be as much as forty years under the same use.

**ACTION:**

Sandquist moved approval with conditions, seconded by McRoy.

Sunderman moved to adjourn, seconded by McRoy.

The meeting was adjourned at 2:03 p.m.