

MEETING RECORD

NAME OF GROUP: City Board of Zoning Appeals

DATE, TIME AND PLACE OF MEETING: Friday, July 27, 2007, 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 and Bob Kuzelka. Gerry Krieser absent.

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

Chair Gene Carroll called the meeting to order at 1:30 p.m.

Approval of the minutes of the March 30, 2007 meeting

Kuzelka moved approval of the March 30, 2007 meeting minutes, seconded by Hancock. Motion carried 4-0. Carroll, Francis, Hancock and Kuzelka voting 'yes'; Krieser absent.

Appeal No. 07004 by Greg Schwinn for a variance of the side yard setback and to allow an eave to project into a required side yard on property generally located at 6250 South 82nd Street.

HEARING

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Greg Schwinn of Schwinn Homes LLC, stated that he is here to request a variance of the side yard setback and to allow an overhang into the side yard at 6250 South 82nd Street. When they created the site plan for the blueprint, the drafter in his office misread the lot dimensions and allowed an extra 5 feet for this property. The plot plan was then approved by Building and Safety. The neighbors are currently selling their house and the error was discovered at that time. The new owner is fine with leaving the plot as it is. He has spoken with several of the neighbors and the homeowners association, and they did not have any objections either. The garage encroaches on the side yard. The wall is one-hour fire rated. The distance between this house and the neighbor is 13 feet on one side and 13.5 feet on the other side.

Schwinn noted that the next door neighbor Bruce Kampsnider is here to support the variances.

Carroll asked staff about the application process. Kathe stated that there are several checks and balances in the process. The first check is that the builder would get a copy of whatever he buys. The second check is the drafter checking the plot or survey to draw the plans. Third is plan review with the fourth check being the builder surveyor marking the correct stakes in the field. Finally, the last check is the inspector verifying the setbacks from the stakes that are shown on the job site.

Carroll asked about the responsibility of the City in an error such as this. Kathe believes that there are many people responsible, although the error should have been caught. Carroll then asked if it is correct that there is no relief for a builder's error. Skinner replied that is correct. She added that it is the ultimate responsibility of the builder to ensure that the house is within the proper boundaries and meets the code. Building & Safety is a checks and balances.

Carroll verified that the gutter is over the property line. The applicant has stated that there is a one-hour fire wall on the garage, but the overhang is not fire-rated.

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

ACTION

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Carroll stated that in this case, there is a one-hour rating on the side wall so he believes that alleviates the side yard problem, but the eave is unacceptable. He believes the only relief is to reduce the eave to half the size to 18 inches to move it away from the property line.

Skinner stated that a non-variance option the applicant can consider is to work with the buyer to the north to purchase part of the property and then grant them the easement to the lot line in order to come into compliance. Schwinn stated that when the error was discovered, he offered to do this; however, the owner said they would rather seek a variance and leave the lot as it is.

Carroll stated that the roof cannot cross the property line, and he believes they are inflicting something on the other property owner. All the problems have been created by the applicant, so he believes that if there is some relief provided, it should be to the benefit of the community. The Board cannot consider financial hardship.

Hancock moved to approve the variance for the side yard setback and to allow the eave to project into the required side yard; it was seconded by Francis. Motion failed 2-2. Hancock and Kuzelka voting 'yes'; Carroll and Francis voting 'no'.

Carroll moved to approve the variance for the side yard setback with a one-hour fire-rated wall and to reduce the eave to 18" and the eave must be one-hour fire-rated; it was seconded by Kuzelka. Motion carried 3-1. Carroll, Francis and Kuzelka voting 'yes'; Hancock voting 'no'.

The meeting was adjourned at 2:09 p.m.

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