

MEETING RECORD

NAME OF GROUP: COUNTY BOARD OF ZONING APPEALS

DATE, TIME AND PLACE OF MEETING: Friday, June 23, 2017, 2:30 p.m., City Council Chambers, First Floor, County-City Building, 555 S. 10th Street, Lincoln, Nebraska

MEMBERS IN ATTENDANCE: Jeff Frack, Jennifer Hiatt, Herschel Staats, and Ed Woeppel; Matthew Warner absent. Ron Rehtus of Building and Safety; Douglas Cyr of County Attorney's Office; Steve Henrichsen, Tom Cajka, and Amy Huffman of the Planning Department.

STATED PURPOSE OF MEETING: Regular County Board of Zoning Appeals Meeting

Chair Woeppel opened the meeting and acknowledged the posting of the Open Meetings Act in the room.

Woeppel called for a motion approving the minutes of the regular meeting held April 14, 2017. Motion for approval made by Hiatt, seconded by Staats and carried, 4-0: Frack, Hiatt, Staats, and Woeppel voting 'yes'; Warner absent.

COUNTY BOARD OF ZONING APPEALS NO. 17005
REQUESTED BY ROBERT AND KATHY FINDLEY, FOR A VARIANCE TO THE AG
(AGRICULTURAL DISTRICT) REQUIREMENT FOR 550 FEET OF MINIMUM FRONTAGE ON
PROPERTY GENERALLY LOCATED AT 16600 S. 82ND STREET.

PUBLIC HEARING:

June 23, 2017

Members present: Frack, Hiatt, Staats, Woeppel; Warner absent.

There were no ex parte communications disclosed.

Robert Findley, 16600 S. 82nd Street, came forward to state that he purchased the property in 2000 and began designing and building his home. He has had many ties to the Planning Department over the years. At the time they were building the house, he visited with Mike DeKalb, formerly of the Planning Department, about the property and his long-term plans. They now have 14 grand kids and his youngest child is looking for a spot on the property to build a house. DeKalb had said that there would be a clear path to being able to build another house on the parcel as long as there were 20 acres. At that time, he had inquired about whether it would be best to do the subdivision and was advised that it could wait until we were ready. They trusted that answer. Since that time, an addition was added to the main house in the appropriate position. There is also a 3-stall out building and another legal lagoon. All of these preparations were made with the intention of building a second house someday.

Findley went on to say he has been working with County Planner, Tom Cajka. Up until recently when meeting with Mr. Cajka, he had no knowledge of the 550 foot requirement for a second house. He believes Mr. DeKalb would have mentioned that in the past, since he was well aware of the dimensions of the site and the lot. There is plenty of land, and taking the 20 feet off of the

requirement still leaves 530 feet. He was made aware that the County Attorney at the time was not enforcing the distance requirement even though it had been in the ordinance since 1979. The only legal option available would be to purchase 20 feet from neighbors. The distance of 20 feet is negligible and not recognizable to the average eye. Both neighbors refused a sale, saying they did not trust the County and that they did not want to have the same problem in the future. So that option could not work.

Findley is now met with the frustration of being caught in the middle. Many people were trapped in lots with a similar type of problem so the law was changed so that some did not have to have the frontage because they were not platted that way. It is understandable to want to be rid of the confusion and to have the same rules apply for everyone. It is his belief that his family was just caught in the middle of changes that were occurring and no one let them know. If anyone had told them to subdivide earlier, they certainly would have followed the new rules.

Photos have been provided to show view of the property from up and down 82nd Street. The houses are far from the road, in the middle of the property, so it is unlikely that a passerby would even perceive there is a house there. The location proposed for the new house allows for use of the existing garage and lagoon. Electric and phone have already been run up to the property. Water needs to be run. The question of allowing the 20 foot variance seems acceptable given the amount of confusion that has gone on.

Hiatt asked how many houses are on the parcel. Findley said one house now, and this would be the 2nd.

Cajka said that Findley had come in asking to do a farmstead split. The existing home is considered the primary residence and can be on its own lot as long as 20 acres remain. The second house is required to have the 550, so Mr. Findley was told that staff would be required to deny a final plat that did not show this. The change to the zoning text was to allow lots that already existed to have the requirement waived so they could get building permits. In this situation, there is not an existing lot for the second home. The area makes up roughly 34 acres, so there is well over the required 21 needed. This is simply a frontage issue.

Frack asked for more information about the lots. Cajka said Lot 28 is 13.78 acres and is land locked. If it were 20 acres, with the new text, they could have built today. He does know that staff has been enforcing the frontage issue for at least the last six years.

Cyr came forward to comment on the statement made about the former County Attorney not enforcing code. Enforcement is not the role of the attorney; it is a policy decision. The current County Attorney does not have a different position from the former Attorney and the position of the office has not changed. County Attorney interprets the law but does not determine it.

Findley stated the Assessor taxes the full 34 acres as one piece. In terms of the County Attorney, he was repeating what he was told.

Staats asked if this would still be an issue if there were 20 acres at the back part because they could change the size of the lots. Cajka said the frontage issue would still exist unless the lot existed prior to January 1, 2017 and there were more than 20 acres. Making it 20 acres now would not help.

Kathy Findley stated that if they would have known about the regulation change, they would not need to request a waiver because they would have taken care of creating the lots right away.

ACTION:

June 23, 2017

Frack moved approval of the variance, seconded by Staats.

Frack stated that in light of the history and the verbal commitments made in the past, he is willing to grant the variance to subtract the 20 feet from the requirement.

Woeppel agreed that the family was acting in good faith and made plans for a significant amount of time, during which, it is understandable that things changed. It is not a situation where someone is trying to “get away with” something that would otherwise not be allowed. If the Findleys had known earlier and split the lot, they would not even be here today.

Motion carried, 4-0: Frack, Hiatt, Staats and Woeppel voting ‘yes’; Warner absent.

There being no further business, the meeting was adjourned at 3:00 p.m.