

MINUTES
OF
DOUGLAS COUNTY BOARD OF ADJUSTMENT
3015 MENKE CIRCLE
OMAHA, NEBRASKA 68134
September 19, 2007
6:00 p.m.

Chair Mayo stated:

“That the meeting is being conducted in accordance with the Open Meeting Law of the State of Nebraska and the provisions of the law are posted in the room at the back.”

The meeting was then called to order by Chair Mayo with roll call.

Members Present: Scott Bruhn, Patricia Trebbien, Colleen Mayo and Dave Rosacker.

Other County officials, staff and representatives present: Barb Frohlich and Bernie Monbouquette (Deputy County Attorney).

Motion by Ms. Trebbien, seconded by Mr. Bruhn to approve minutes of January 17, 2007 meeting.

Voting Yes: Bruhn, Mayo and Trebbien.

Voting No: None

Ms. Hayes arrived at 6:05p.m.

APPLICATION

V-1-07

REQUEST: Appeal of Building Inspector’s denial of request for refund of building permit fee in the amount of \$1,079.41 for building permit 6653.

APPLICANT: Lloyd Anthony, 21750 Quail Drive, Gretna, Nebraska 68028

Lloyd Anthony, 21750 Quail Drive, Gretna, NE 68028, applicant made the following comments:

1. Six individuals purchased lots in The Hamptons with the idea that they would all build at the same time
2. Matthew Wise and Mr. Anthony were to be the general contractors for the six homes.

3. Matthew Wiseman and Mr. Anthony were the first two owners to submit plans for permits. Mr. Anthony's permit was issued but Mr. Wiseman's permit was not because it was found that lots 90, 91, and 92 were in the floodplain and one of those lots belonged to Mr. Wiseman.
4. Boyer Young stated they would take care of the problem but that put the project on hold so the paperwork was just filed to wait for the problem to be resolved.
5. In the meantime, the City of Omaha annexed Elkhorn and those lots were then in the City of Omaha's jurisdiction.
6. The permit states that it is valid for 90 days but the permit was filed away.
7. Mr. Wiseman's permit application and fee were returned to him after the City of Omaha annexation.
8. Mr. Wiseman and I then applied to the City of Omaha for building permits.
9. Additional costs have been incurred due to the construction delays and refund if the permit fee paid to Douglas County is being requested.

Ms. Trebbien said she understood the circumstances of Mr. Anthony's request but didn't understand why the application was before the Board of Adjustment.

Mr. Monbouquette stated that the statute says that "an appeal to the Board of Adjustment may be taken by any person or persons aggrieved, or by any officer, department, board, or bureau of the county affected by any decision of an administrative officer or planning commission." If the person is aggrieved by a decision, they get to appeal that to this Board.

Chair Mayo asked if there are guidelines like for the granting of variances.

Mr. Monbouquette stated that "the board of adjustment shall fix a reasonable time for the hearing of the appeal, give public notice thereof as well as due notice to the parties in interest, and decide the same within a reasonable time. Any party may appear at the hearing in person, by agent, or by attorney."

Chair Mayo closed the public hearing. She asked if there were any questions or comments from the Board.

Ms. Hayes stated she understood the situation and was sorry about what happened with that the permit being filed away and forgotten about but the fact is that the permit clearly stated it was valid for 90 days. She also pointed out that he could have requested an extension.

Ms. Frohlich stated that had Mr. Anthony's request for refund been in a reasonable time after the permit had expired, the staff would probably have made a different decision. But the permit expired in February and the refund request was made in July so staff didn't feel that they could grant the refund request.

Mr. Anthony stated that as an alternative to receiving full refund he was willing to forfeit a portion of the permit fee.

Chair Mayo asked for a motion.

Mr. Monbouquette stated that if the hearing is closed and there are no further questions, and if you call for a motion and no one makes a motion then the matter would die for lack of positive motion.

Ms. Hayes asked Mr. Monbouquette what options Mr. Anthony has if that occurs.

Mr. Monbouquette said there should be some indication that no action was taken and that could be interpreted as a “no” vote. That would allow him, as soon as he receives notice of the decision, his opportunity for further appeal would begin at that time.

Ms. Hayes asked for clarification that no action would be interpreted as a “no” vote.

Mr. Monbouquette stated that was correct but it would be better if there was a “no” vote on the record.

Ms. Hayes asked if a motion could be made to deny.

Mr. Monbouquette said there could be a motion to deny.

Ms. Hayes made the motion to deny, seconded by Mr. Bruhn.

Voting Yes: Rosacker, Mayo, and Hayes.

Voting No: Bruhn and Trebbien.

Ms. Hayes asked Mr. Monbouquette if four votes were needed as on a variance application.

Mr. Monbouquette stated that only a majority was needed and the applicant should receive written notification of the vote and the time for filing an appeal to the District Court begins at that time.

Mr. Monbouquette said that in looking at the statute it says that four votes are required for any decision.

Conversation between Mr. Bruhn and members ensued and it was explained to Mr. Bruhn that his vote was in favor of the refund. Mr. Bruhn replied that he intended to vote to deny the refund.

Chair Mayo asked Mr. Monbouquette if the Board of Adjustment could do a revote because a member misunderstood his vote.

Mr. Monbouquette said that someone who voted in the positive can make a motion to reconsider because there seems to be some confusion.

Ms. Hayes said that confusion is shown because Mr. Bruhn seconded the motion then voted against.

Ms. Hayes made the motion to reconsider, seconded by Mr. Rosacker.

Voting Yes: Bruhn, Hayes, Rosacker, Mayo, and Trebbien.

Ms. Hayes made a motion to deny the request for refund, seconded by Bruhn.

Chair Mayo clarified that a “yes” vote means the request will be denied and a “no” vote means the refund will be given.

Voting Yes: Rosacker, Bruhn, Hayes, and Mayo.

Voting No: Trebbien.

Mr. Monbouquette told Mr. Anthony he was sorry for the confusion but it needed to be part of the record. He will receive a written notice of the decision and he can file an appeal to the vote to the District Court. The petition must be presented to the Court within 15 days after the filing of the decision in the office of the Board of Adjustment.

Ms. Frohlich stated she would let Mr. Anthony know when the notice is filed and send him a letter

Ms. Frohlich announced there would be an October meeting.

The meeting was adjourned at 6:25 p.m. Minutes approved October 17, 2007.