

**SARPY COUNTY BOARD OF ADJUSTMENT
MINUTES OF MEETING
July 14, 2014**

I. CALL MEETING TO ORDER

A meeting of the Board of Adjustment of Sarpy County, Nebraska was convened in open and public session at the call of Chairman Sharon Hansen at 7:00 P.M. at the Courthouse in Papillion, Nebraska. Chairman Hansen stated that a copy of the "Nebraska Open Meetings Act" is posted on the north wall of the Sarpy County Boardroom. Roll call attendance was taken.

Present: Doug Hill, Pat Lichter, Sharon Hansen, Doug Kellner and Del Reibold.

Notice of the public hearing was given in advance thereto by publication in the Omaha World Herald dba Bellevue Leader, Papillion Times, Gretna Breeze and Springfield Monitor. Proof of Publication is on file in the Planning Department. Notice of the meeting was simultaneously given to all members of the Board of Adjustment of Sarpy County, Nebraska. Availability of the agenda was communicated in the published notice and in the notice to members of the Board of Adjustment of this meeting.

Sarpy County Staff present: Bruce Fountain, Director of Planning & Building Department, Donna Lynam, Deputy Director of Planning & Building Department, Kelly Jeck, Planning & Zoning Assistant, and Nicole O'Keefe, Deputy County Attorney.

II. APPROVAL OF MINUTES

1. Approval of Minutes from the May 8, 2014 meeting.

MOTION: Hill moved, seconded by Reibold, to approve the Minutes of the May 8, 2014 Board of Adjustment meeting. **Ballot:** Ayes –Hill, Lichter, Hansen, Kellner and Reibold. Nays: None. Abstain: None. Absent: None. **Motion carried.**

III. REGULAR AGENDA

1. **PUBLIC HEARING AND RECOMMENDATION** – Alex Johnson has submitted an application for a variance to the Sarpy County Zoning Regulations, Section 3.3.6, at 13418 Shepard Street, legally described as Lot 6 and Parcel 6 Split of Lot 12 Block 1 Westmont as surveyed, platted and recorded in Sarpy County Nebraska.

Donna Lynam, Zoning Administrator, presented this request as outlined in the Planning Department's Staff Report. She said there is an Addendum to the Staff Report noting that the original public hearing for this request (June 3, 2014) was cancelled due to weather issues and that this public hearing was published according to Sarpy County Regulations, property owners within 300' were re-notified by mail and the property was posted.

Ms. Lynam said the applicant is requesting a variance of Section 3.3.6 of the Sarpy County Zoning Regulations to allow the construction of a 40' x 32' (1,280 sq. ft.) detached garage. Current regulations in the RS-72 Single Family Residential District allow for a maximum of two accessory structures: a) one detached garage with a maximum allowable size of 720 sq. ft., and b) one garden shed with a maximum allowable size of 144 sq. ft.

The applicant recently purchased his home at 1318 Shepard Street. He claims that he contacted the Sarpy County Planning Department prior to purchasing the property and spoke with a gentlemen who told him he could build any size detached structure so long as it met the setback requirements and was under 17 feet in height. Shortly after closing on the property, the applicant said that he contacted the Sarpy County Planning Department again to inquire on the cost of a building permit for a 32' x 40' detached garage. The applicant says it was at this time he was advised that the maximum allowable size for a detached accessory structure in the RS-72 zoning district was 720 sq. ft. The applicant desires to have all of his cars inside one location to keep them off the street and reduce traffic congestion on his neighborhood street. He also believes this will increase the value of his home and possibly other values

in the area.

Ms. Lynam noted that the proposed garage location as shown on the site plan submitted by the applicant does not meet the current setback requirements. If a variance is approved, the applicant has been advised that he would need to either relocate the proposed accessory structure on the site in order to meet the setback requirements or submit an Administrative Replat to the Sarpy County Planning Department to consolidate the two lots (Lot 6 and Parcel 6 Split of Lot 12, Block 1).

Ms. Lynam said the Planning Department believes this variance application is not in conformance with the requirements of Nebraska Revised Statute 23-168.03 and recommends denial of this request.

Alex Johnson, 13418 Shepard Street, appeared in support of his request. He reported that when he originally contacted Sarpy County he was told that his property was in unincorporated Sarpy County, and that he could construct any size structure as long as he abided by the 5 ft. side yard setback and 8 ft. rear yard setback requirements and could not be more than 17' tall. He pointed out that the site plan he submitted states that the garage location is approximate because he would like to place it as far north on the lot as possible to please the neighbors and still be able to afford the cement going from the garage all the way to the street.

Mr. Johnson said he spent a lot of time investigating the guidelines required in Douglas and Sarpy Counties in trying to find a property that would allow him to build a garage of the size he wants to store all of his cars.

Mr. Johnson reported that he tried to meet with his neighbors who live within 300 ft. of his property and obtained 18 signatures in support of his request.

Bruce Fountain, Planning Director, explained that the limitation on the size of an accessory structure in the zoning regulations was done so that accessory structures are not larger than the primary structure.

Kellner and Reibold questioned if there would be any limitation on the size of the garage if it were attached to the principle structure in the RS-72 Single Family Residential District.

Ms. Lynam said there is no limitation so long as the setback requirements are met and the garage is attached to the principle structure by a structural element (common wall).

Reibold expressed concern that the applicant called Sarpy County to ask for the rules and regulations, but was given the wrong information.

Chairman Hansen opened the public hearing on this request at 7:25 p.m.

Kevin Ingalls, 13512 Shepard Street spoke in opposition to this request. He believes that an accessory structures that outsize the footprint of the principle residence will take away from the family neighborhood type of atmosphere that residents enjoy in Westmont. Mr. Ingalls said he would like a larger garage too and his lot is actually larger than Mr. Johnsons. He is concerned that granting this variance will set a precedent in the neighborhood that would not benefit property values as the neighborhood would no longer look like the residential area that it should.

With no one else appearing in regard to this request, Chairman Hansen closed the public hearing at 7:26 p.m.

Chairman Hansen said there does not appear to be a unique situation or hardship in this request that would justify the variance. Mr. Johnson has the opportunity to build onto his home with a design that would actually allow him to have more than 720 sq. ft. Ms. Hansen said it is unfortunate if the applicant got wrong information or was mistaken about the information he received, however, she does not believe Sarpy County would want to open the door to other property owners in the area requesting a variance for accessory structures that are larger than the principle structure.

MOTION: Kellner moved, seconded by Lichter, to DENY the variance request by Alex Johnson as proposed and presented to the Sarpy County Board of Adjustment, based on the following findings of fact:

A. The strict application of any applicable provision of the applicable County Zoning Regulation would, in each specific variance petition, result in **at least one** of the following:

1. *Peculiar and exceptional practical difficulties to or undue hardship upon the owner of the piece of property included in the petition due to exceptional narrowness, shallowness or shape of the piece of property in question;*

Staff Analysis: This property was originally platted in 1964 and the back portion of the property was replatted in 1984. The property does not appear to have any peculiar and exceptional difficulties due to exceptional narrowness, shallowness or shape.

Resulting Hardship: Yes / **No**

2. *Peculiar and exceptional practical difficulties to or undue hardship upon the owner of the piece of property included in the petition due to exceptional topographic conditions on the piece of property in question;*

Staff Analysis: The subject property appears to slope gently to the west side of the property. The property does not appear to have any peculiar and exceptional difficulties due to topographic conditions.

Resulting Hardship: Yes / **No**

3. *Peculiar and exceptional practical difficulties to or undue hardship upon the owner of the piece of property included in the petition due to other extraordinary and exceptional situation or condition of the piece of property in question.*

Staff Analysis: This property is located in a developed residential subdivision. The subdivision has a few parcels that have detached accessory structures which appear to be in compliance with the regulations. The property does not appear to have any other extraordinary and exceptional situations or conditions.

Resulting Hardship: Yes / **No**

B. In authorizing any variance the Board shall also make findings, which shall be recorded in the minutes of the Board, that **EACH** of the following requirements for authorizing a variance can be met:

1. *Such variance may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the applicable County Zoning Regulations;*

Staff Analysis: The purpose of the size and number limitation for detached structures is to avoid the accessory structures from overshadowing the principal structure as well as obstructing views from abutting property owners. Granting of such variance could limit views from abutting property owners and would substantially impair the intent and purpose of the applicable zoning regulations.

Specific requirement: satisfied / **not satisfied**

2. *The strict application of the requirements of the applicable County Zoning Regulations would produce an undue hardship upon the owner of the property included in the petition;*

Staff Analysis: The strict application of the code would not produce an undue hardship on the owner as any property within the subdivision would be required to meet the same minimum regulations.

Specific requirement satisfied / **not satisfied**

3. *Such hardship is not shared generally by other properties in the same zoning district and the same vicinity;*

Staff Analysis: This hardship is being created by the property owner's desire to construct an accessory structure that is 560 square feet larger than what regulations allow. The size of accessory structures have been regulated by zoning codes for many years. The circumstances of this property are shared by other properties within this development.

Specific requirement: satisfied / **not satisfied**

4. *The authorization of such variance will not be of substantial detriment to adjacent property and the character of the zoning district will not be changed by the granting of the variance;*

Staff Analysis: Staff feels that the authorization of this request could be a substantial detriment to adjacent properties due to possible limiting of view and the character of the RS-72 zoning district, which allows for single-family residential structures as a primary use, would be changed due to the much larger than usual accessory structure.

Specific requirement: satisfied / **not satisfied**

5. *The granting of such variance is based upon reasons of demonstrable and exceptional hardship stemming from characteristics of the property involved in the petition and not for reasons of convenience, profit or desire of the property owner;*

Staff Analysis: The variance request would not be considered a hardship due to existing characteristics of the property involved. The hardship is created by the desire of the applicant/property owner.

Specific requirement: satisfied / **not satisfied**

6. *The condition or situation of the property included in such petition or the intended use of such property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the applicable County zoning regulations.*

Staff Analysis: This condition or situation of the property or the intended use of such property is not so general or reoccurring as to suggest an amendment of the applicable zoning regulations.

Specific requirement: satisfied / **not satisfied**

Ballot: *Ayes – Hill, Lichter, Hansen, Kellner and Reibold. Nays: None. Abstain: None. Absent: None. Motion to Deny carried.*

Nicole O'Keefe, Deputy County Attorney, noted that there is an appeal process available to the applicant and the statutory reference can be provided to the applicant upon request.

V. ADJOURNMENT

Being no further discussion, Lichter moved, seconded by Reibold, to adjourn the meeting. With the unanimous consent of the Board of Adjustment, the meeting adjourned at 7:35 p.m.

Sharon Hansen, Chairman

Kelly Jeck, Recording Secretary