

MINUTES
BOARD OF ADJUSTMENT
NOVEMBER 26, 2012 - 4:30 P.M.
CITY COUNCIL CHAMBERS

PRESENT: Chairman Bang, Members Casey, Hoshor, Sawyer and Winter, Planning Director Rian Harkins, Chief Building Inspector Don Simon and Secretary Deb Pruss

ABSENT: None

Chairman Bang read a statement that this meeting was preceded by publicized notice in the Fremont Tribune and the agenda displayed in the lobby of the Municipal Building and posted online at www.fremontne.gov; and distributed to the Board of Adjustment, Mayor and City Council on November 21, 2012 and is open to the public. Chairman Bang also stated a copy of the agenda was kept continually current and available to the public at the office of the City Planner, 400 East Military. A copy of the open meeting law is posted continually for public inspection located near the entrance door by the agendas.

Roll Call showed five members present. Meeting is hereby declared to be duly convened and in open session. It was moved by Hoshor, seconded by Sawyer to dispense with the reading of the Minutes of the October 29, 2012 Regular Meeting and approve as distributed. Roll Call Vote showed all members present voting aye – 5 ayes. Motion Carried.

Chairman Bang stated the general public is invited to address the Board of Adjustment regarding any item on this agenda at this time or wait until discussion of their request is taking place. No public comments were received.

- **Consider request of Travis Bennington to erect enlarged deck with insufficient front yard setback at 1152 North “D” Street, Fremont, Dodge County, Nebraska. R2 – Moderate Density Residential District. Article 7, Section 703 (b).**

Planning Director Harkins stated this is a R2 Zoning District with a single family dwelling. It is a corner lot. The house currently has a small stoop with steps on it. The applicant is proposing to remove those and put in an actual deck that would be 16’ from the property line. It is a 9’ x 24’ deck right now. As you can see in the packet that goes with the staff report, the house itself currently sits 20’ from the property line so this would take a setback that isn’t met now and reduces it even further. However, staff is in favor of the variance because of the configuration of the house upon the lot as well as the fact that it doesn’t take away as far as being a detriment to the surrounding area or to the property. The 9’ wide really isn’t that much farther out from the house than the steps are right now. You would have maybe a step or two down from the deck to the sidewalk. Staff doesn’t see this as a huge encroachment upon the setback as is at the present time. Staff is mainly recommending approval in terms of hardship based on the fact that the house was set so far forward to the front of the lot and the fact that it is a corner lot.

Applicant Travis Bennington and his wife Stephanie were present. Applicant stated they live at 1152 North “D”, a few blocks from this office on the corner of 12th & D Street. Mr. Bennington showed a picture of the house and the existing concrete stoop that is a nonconforming use from before the statute was passed. The house is probably from the 50’s. Applicant is remodeling the house but the deck doesn’t have any grips or handrails. Applicant stated he got married earlier this year and he lived in the house before that and last winter he was coming out and it gets slippery on the steps coming down the entrance. They park on the south side of the house. In order to get to where they park you have to

come down the steps, down the sidewalk, which is slick, all the way across to get to where they park. He decided he wanted to do a new deck over the top of the existing stoop, which they said was fine so he could put handrails on because his wife is pregnant with their first child and due in April. He stated during the worst part of his wife's pregnancy she will be having to walk up and down the stoop and he will have to get her to her car without slipping and falling and hurting the baby. Applicant stated he can't build a rail that she can grab onto all the way across the concrete so he would like to build a deck that goes from the north all the way across the house to the south as lots of people in his neighborhood have decks that go all the way across so they can just walk down to their cars. That way he can have a handrail that his wife can grab onto. Mr. Bennington stated he is not wanting to build a deck that comes any further to the property line than what he currently has but just wants to build exactly the size stated across the front of the residence so his wife can handrail to the car. He stated they bought the house and are remodeling it and starting a family so they will have other winters where they will have kids and safety is his concern. Applicant stated you couldn't see from the picture he presented but it slants down a pretty good grade and it gets really slippery. He just wants to build a deck.

Chairman Bang stated the applicant's crest is 9' out. Applicant stated he didn't think it was 9' but more like 5'. He stated it may be 9' to the end of the stairs to the bottom of the steps. Mr. Bennington stated he will have the stairs come where they are. He just wants to put a wooden handrail up and get a contractor to come in and put a handrail across the front. He just wants to build the same exact thing all the way across as the landing that is there now. He will have a staircase come off the west side to meet the sidewalk but he also wants to have a staircase come off the south right to the driveway so she his wife can step down to get to her car in the winter.

Chairman Bang asked if there was an issue with the street side yard or would we? Planning Director Harkins stated there would not be an issue here because you would be keeping it flush with the house so in his mind the street side is 15', the porch isn't wrapping around to the north. Bang stated he knew it wasn't wrapping around to the north but he was just wondering if the north side of the house is non-conforming the way it is sitting down and, therefore, the deck would become nonconforming. Member Sawyer stated if you looked at neighboring houses, such as 1122, it is closer to the property line and the houses across the street are closer. Planning Director Harkins stated if you look at the aerials that are included as part of the packet, you can see where the house sits a bit clearer but right now the north side would be the street side yard and that is 16'. Chairman Bang stated he didn't see a dimension on there. Harkins stated it was 16' from the property line so the house sits within current setback requirements but a hair. Bang stated he was just trying to clarify if we have a street side yard setback issue as well. Harkins stated there was no issue there. Harkins stated we are o.k. in that regard. Applicant is using the existing primary door to the west off those steps for that reason so as to avoid any additional setback issues. Applicant stated he didn't want to go any further to the north. He just wants to build over the top of the stoop with nice wood and go south to the edge of the house so he can get down to where they park. Bang stated his concern was if you tear off the steps and the porch that is there and adds out to the edge of the house technically we would be adding and the north edge of the porch would be nonconforming as well to the street side yard. Bang stated if the applicant stays a foot in we are o.k. Bang stated it is drawn flush with the house on the plan but is stated it will actually be a little in.

Moved by Hoshor, seconded by Sawyer to approve the request. Roll Call Vote showed all members present voting aye – 5 ayes. Motion Carried.

- **Consider request of AMPC, Inc. (dba APC, Inc.) to allow lot split with insufficient rear yard setback at 900 Factory Street, Fremont, Dodge County, Nebraska. GI – General Industrial District. Article 4, Table 4-3.**

Planning Director Harkins stated last month we had the lot split with the church that had their variance issue and this is the same process. Currently there is one lot that is grandfathered. They are looking to split one into two parcels that kicks in the current setback requirements which they can't meet entirely. The Planning Commission approved the lot split subject to the Board of Adjustment granting a variance

for the proposed lots. The only adjustment the Planning Commission made from last week until now is there is one area on the west side between the factory and the shop with a distance of 7.4 feet that the Planning Commission adjusted up to 10 feet. It might be hard to see on the plat in front of you as part of the packet. It is the east central part of the lot. Chairman Bang stated the other side then ends up being closer to 9 feet. Harkins stated the south side of the building of the factory, the southeast corner. Harkins stated right now it was proposed at 7.4 feet and the Planning Commission changed it to 10 feet. Bang stated if you make that 10 feet then you obviously have to take 3 feet off the other side. Harkins stated that is correct.

Dan Martinez from APEX Land Surveying was present. He stated it ends up being 14'3". Mr. Martinez stated this is the old Campbell Soup property. The owners of the property, AMPC and APC, Inc. represent a couple other companies all together and currently there is a group Functional Proteins that is working out of the factory. They are going to stay there. The warehouse and shop buildings which are to the south piece showed very little activity there. What these group of companies are doing is just splitting up this asset they purchased together a few years back. Functional Proteins and the old factory are staying, which is Parcel 2 on the map. There is only one real drive access and that is the area where this constriction is taking place on the north side of the shop building. There is a manhole that is raised and then to the south of the manhole before the shop area would be the 14'3" of 17' 3". Mr. Martinez stated the Building Inspector pointed out that for firewall issues if this were a new building going up if it were within 10' feet of the property line or less than 10 feet it would have to be fire rated. He asked that it at least be 10' so that is why the change from 7' to 10' and then the 17'3" to 14'3". Mr. Martinez stated once you get west from those buildings and you turn to the southwest then you take the new line that you are creating and get it 25' away from the Factory Building. Because this line represents the rear yard for the Factory Building on Parcel 2, that is where they are not able to meet the required setback for rear yard. While on the shop building and warehouse as you come off Platte Avenue, it is a side yard and in this zoning district it could be 0' but they need that lane or they would like to have that lane attached to the warehouse lot as their access off of Platte Avenue. Martinez stated the rest of the property line conforms with setback requirements and the buildings do on the north side along Factory Street there are some encroachments that have been there for a long time.

Chairman Bang stated for the Board he believes the way they handled this a month ago was to grant the variance only for the existing buildings. Any future building would have to come back in front of the Board of Adjustment for new variances

Moved by Bang, seconded by Casey to approve the request. Roll Call Vote showed all members present voting aye – 5 ayes. Motion Carried.

Meeting adjourned at 4:52 p.m.