

Duncan Planning and Zoning Commission
and
Public Hearing
Minutes
January 16, 2017

The regular meeting of the Village of Duncan Planning and Zoning Commission was called to order at 7:30 PM, January 16, 2017 by Chairman Gary Schlesinger. The Chairman publicly stated to all in attendance that a current copy of the Nebraska Open Meetings Act was available for review and indicated the location of such copy in the room where the meeting was being held. Commission members present were Schlesinger, Jamie Frey, Betty Kropatsch, Travis Stempek,. Absent: Joe Runquist and Abby Wright-alternate. Also in attendance were Don Reves-Zoning Administrator and Eugene Drozd. Motion was made by Stempek and seconded by Frey to approve the agenda. Vote was as follows to approve the agenda: voting aye- Schlesinger, Kropatsch, Stempek, Frey. Voting nay-none. Absent: Runquist. The Chairman declared the motion carried. Motion to approve the meeting minutes from the October 24, 2016 meeting was made by Frey and seconded by Stempek. Vote was as follows to approve the minutes: voting aye- Frey, Kropatsch, Stempek. Absent: Runquist,. Voting nay- Schlesinger.

COMMUNICATIONS:

Zoning Administrator-none

Comments from the floor - Guests requesting to address the Planning and Zoning Commission- none

New Business:

Election of 2017 Officers (Chair, Vice-Chair and Secretary)

Motion made by Schlesinger, second-Stempek to appoint Jamie Frey as Commission Chair. Vote was as follows: voting aye Kropatsch, Stempek, Schlesinger, Frey Voting nay-none. Absent-Runquist. Motion made by Schlesinger, second-Frey to appoint Travis Stempek as Commission Vice-Chair. Vote was as follows: voting aye- Kropatsch, Stempek, Schlesinger, Frey. Voting nay-none. Absent-Runquist.

Motion made by Frey, second-Stempek to appoint Betty Kropatsch as Commission Secretary. Vote was as follows: voting aye- Kropatsch, Stempek, Schlesinger, Frey. Voting nay-none. Absent-Runquist.

PUBLIC HEARING for the purpose of hearing testimony of support, opposition, criticism, suggestions or observations for: proposed application for Conditional Use permit by UE's Storage to allow commercial storage unit in the C-2 District. Frey asked if request of permission for zoning application is complete with Reves responded to the affirmative. Frey asked if the petitioner, Gene Drozd, was present and wishing to proceed with the public hearing. Drozd responded to the affirmative. Frey called for the public hearing to be opened. Motion made by Kropatsch and seconded by Stempek. Vote was as follows: voting aye- Kropatsch, Stempek, Schlesinger, Frey. Voting nay-none. Absent-Runquist. Drozd approached the commission stating that a conditional use permit be granted/not granted for a storage unit in a Commercial C-2 District. Frey asked if there were any comments or concerns. Reves stated everything by the petitioner has been filled out and was in compliance. There were no written comments or concerns. Frey asked if any members of the commission had any questions or comments. Reves, speaking as a homeowner with adjacent property, stated there has been some discussion about a fence being placed on the property. Prior to zoning, Reves sidewalk to the east was on the Drozd property line. Reves continued that if a fence would be placed on the Drozd property it would come across Reves' property line. It is stated, with any storage unit, there is

to be a 20-foot landscape buffer between the storage unit and the residential property. Initial discussion between Drozd and Reves was that Reves would agree to a 10-foot buffer area. Reves requested that this agreement be placed on the conditional use permit with no fence and that a 10-foot buffer area be maintained between the properties. The reason for Reves' request was to maintain the value of his property. Schlesinger asked Reves before the storage unit was built, how far was the Reves property from the property line? Reves stated that his garage is built right on the property line because the concrete was already in place since 1969. Original owners had the concrete in place with a carport. Reves continued that 1969. When Reves purchased the property, they removed the carport and placed the current garage on the original concrete in 2004. Schlesinger asked if there was anything in writing as proof of the buffer agreement between Drozd and Reves. Reves noted there was nothing in writing. Reves explained when the rock was being hauled in the 20-foot rule was mentioned. The zoning administrator at that time, Mark Schacher, was aware that Drozd and Reves had come to an agreement of the 10-foot buffer instead. Schlesinger said there is nothing that can stop Drozd from putting a fence on the property line. Reves agreed. Schlesinger continued that there was nothing in writing to this agreement and nothing is written that Drozd cannot put a fence on the property line. Reves continued that is why he is asking for this to be put on the conditional use permit because at a previous meeting he was asked about what happens in the future to change anything. Reves wanted it to be fair for all parties involved. Reves complimented Drozd on the appearance of his property and he had no objection to the storage unit, but he wanted to maintain the value of his property. Kropatsch asked Drozd what kind of fence he was going to build. Drozd said he had no plans to build a fence. Reves interjected that Drozd, at one point in time, made the suggestion to do so. Reves requests, in writing, to having an agreement to a 10-foot buffer rather than a 20-foot buffer written into the conditional use permit. Schlesinger stated in the zoning regulations a fence could be within 6 inches of the property line and in his opinion, would not change the value of Reves home because he has a privacy fence. Reves explained the way the storage unit is set, and being close to the property line, the fence would be within 18 inches of Reves' garage. Schlesinger asked how that would lower the value of Reves' home? Schlesinger stated that after a number of years Reves could declare the property belongs to him because he maintained that 10-foot buffer. Reves said he has consulted an attorney about this and the attorney's response was that the cost to do so would be prohibitive. Schlesinger said this matter should be tabled to the next meeting of the commission. Kropatsch stated that it would entail another public hearing because Schlesinger is delaying the conditional use permit to move forward. Drozd interjected that his attorney told him that the sidewalk on the east side of Reves garage is actually on the Drozd property, but the Drozd attorney felt that Reves would be able to claim this sidewalk as his property. Kropatsch asked Drozd if he had a problem with the addendum. Drozd said he wasn't in favor of it, but he was not planning on building a fence. Stempek said if it is in writing everyone understands where they stand. Stempek continued to ask if an attorney needed to be involved. Kropatsch responded no, because it is just an addendum. Stempek asked if conditional use changes if Reves should sell his property. Reves responded, because of this agreement, any future buyers know, from the outset, the conditions to this agreement. Frey felt that this agreement was between Reves and Drozd. His thought was that Reves is ceding the 20-foot buffer, but Reves is asking for it to be written that a fence could not be built. Reves continued that it is in the regulation about the 20-foot buffer, but Drozd would have difficulty getting trailers in and that is why Reves agreed to the 10-foot landscape buffer. Frey asked if this set any precedence going forward. Kropatsch responded that the conditional use was only for this piece of property and no other. Schlesinger said that a privacy fence on the line, would give people space to turn around and that it was not really interfering with the Reves property because of if the privacy fence was there he couldn't back on his property. Frey felt if the conditional use permit was approved and there were new owners of either property and they decided to build a fence for whatever reason it is now in writing. Kropatsch clarified that it would be incumbent upon the new owners to come before the Planning Commission to get the conditional use amended. Frey asked Drozd if he agreed to the addendum that a fence would not be built upon that property. Drozd questioned the meaning of a buffer's landscaping. The commission members

agreed there is a vagueness in the description of landscape material. Frey explained the reason behind a buffer is to have the property look well kept and to not devalue, or potentially devalue, other properties. Schlesinger asked how a fence would devalue the property? Frey replied that it was not necessarily a fence, but what the commission is defining as landscape. Schlesinger said a fence would conceal what is on the property and a buffer doesn't conceal anything. Frey asked Drozd if he wanted the fence issue to be an addendum not to have a fence, because in the future Drozd may decide to build a fence. Drozd restated that he was not planning to build a fence. Frey then stated Drozd does not have restrictions in building a fence and has the option to do so. Frey concluded that he does not see why there could not be an agreement between the interested parties. Stempek asked Drozd if he wanted a fence and Drozd: *not at this time*. Stempek continued Reves and Drozd need to agree the maintenance between the two properties. Kropatsch commented a need for this to be in writing in the conditional use permit. Drozd continued, in turn, he wanted to protect his property from a future owner's lack of keeping up their property, Drozd would want at that time be able to build a fence. Frey: *What is being voted on in this conditional use permit and what needs to be in the permit that the commission is going to adjust it to a 10-foot buffer zone, and what the 2 property owners on either side of that buffer zone agree to was between them. We should be voting on allowing the 10-foot buffer.* Schlesinger along with Frey had some concerns about the addendums. Reves explained that the conditional use had to have application before the addendums can be established. Frey stated that we are going against code with the 20-foot buffer and that must be in the conditional use permit. Frey noted that it was Drozd's concern with the fence was the 10-foot buffer because it was too close. Stempek said we are abiding by the regulations, but Reves and Drozd are agreeing and that is why he questioned its legality. Reves stated what a conditional use is for is to add other conditions to be presented to the Board and everything is clearly outlined. Kropatsch quoted the conditional use that was publicized and if there are any addendums, now is the time to do so because application has been made. Kropatsch reiterated that the buffer concern be added to the conditional use permit. Frey thoughts were that the conditional use would be granted as written, adding the 10-foot buffer and the two owners need to come to agreement on what happens between them. Kropatsch asked if that is what Frey wants in the conditional use--that they have to agree? Frey responded that this would protect both parties. Frey felt that we are granting the conditional use on what Reves requests, but concerning defining of landscape, which Drozd broached could be addressed at another time. Frey continued that as far as the fence he wasn't sure, but Kropatsch stated that in the agreement between the two parties that is where, and if the two parties could not come to an agreement, they would need to come before the commission again. Frey asked Reves if a new property owner disagreed with the permit what would happen. Reves said it doesn't matter because it was when the initial zoning permit was issued that the property owners must abide by. Every concerned party of that application has copies of such application. Stempek said that moving forward with the permit, but now these issues arose between Reves and Drozd it be added to the conditional permit and if either property sells an amendment needs be drawn up and go forward from that point on. Frey said it protected everyone. Reves added that the conditional use is only good for 12 months, but he would like it to state that it is transferable upon review and renewable. Motion was made Stempek and seconded by Kropatsch for the proposed application for Conditional Use permit by UE's Storage to allow commercial storage unit in the C-2 District with the addition of adding an adjacent 10-foot buffer from a 20-foot buffer with the agreement of both property owners. Vote was as follows: voting aye- Kropatsch, Stempek, Frey. Absent: Runquist. Voting nay- Schlesinger.

Motion was made to close the Public Hearing by Frey and seconded by Stempek.
Voting aye- Schlesinger, Kropatsch, Stempek, Frey. Voting nay-none. Absent: Runquist.

In closing, Frey assured Drozd that the definition of landscaping will be visited at a later time.

OLD BUSINESS: None

REPORTS/COMMENTS: None

SCHEDULING NEXT MEETING: March 20, 2017 at 7:30 p.m.

ADJOURNMENT:

Motion to adjourn made by Frey and seconded by Stempek: voting aye- Schlesinger, Kropatsch, Stempek, Frey. Voting nay-none. Absent: Runquist.

Minutes recorded and submitted by:

Betty Kropatsch, Commission Secretary

All meetings are open to the public and a current agenda for said meetings will be posted and available for public inspection at the office of the Village Clerk 10 days following the Commission meeting