

A-24-788, David W. French (Appellant) and Brian Nolan v. City of Omaha Zoning Board of Appeals (Appellee)

Douglas County District Court, Judge Russell Bowie

Attorney for Appellant: N/A (Self-Represented Litigant)

Attorney for Appellee: Tyler E. Hiipakka

Civil: Zoning Laws; Competent Evidence; Gross Negligence

Facts: McNeil Co. owns two adjacent parcels of land in Omaha near 168th and Shirley Streets. In 2022 McNeil Co. was successful in having the property rezoned so they could build an apartment complex on the property. At the rezoning hearing, McNeil Co. told the zoning board they would not be requesting any setback variances if the property was rezoned. Then in 2023, McNeil Co. applied with the zoning board for three variances for zoning setbacks due to one of the parcels being odd shaped and having a waterway and sewer easement running through the property. Essentially, McNeil Co. was requesting to reduce the front yard setback from 35 to 15 feet, reduce the rear yard setback from 25 to 10 feet, and reduce the buffer between properties from 30 to 10 feet to allow them to build an apartment complex with pool and clubhouse as far as possible away from neighboring residential homes.

The City of Omaha Planning Department authored a responsive report recommending that the zoning board deny the requested variances. The planning department opined that McNeil Co.'s request was a design preference, not a necessity. Further, the planning department asserted that the hardship was either intentionally or inadvertently created by McNeil Co.

Appellant French owns one of those neighboring homes and objected to the requested variances, arguing that McNeil was going back on their word from the rezoning hearing not to request variances. French and several residential property owners appeared in person or via written testimony at the hearing and argued that building the apartment complex would negatively impact the look and appeal of the neighborhood as well as increase traffic in and around the area. French also argued that any hardship was McNeil Co.'s own creation, so they should not be rewarded for their behavior.

After a public hearing, complete with public deliberation, the Omaha Zoning Board of Appeals granted a front yard variance of 25 feet (down from 35), a buffer variance of 25 feet (down from 30), and a rear yard variance as requested (10 feet down from 25). The zoning board opined that while there was a hazard or difficulty that justified the request, less variance than what was sought could accomplish the desired outcome.

French appealed the decision granting the variances to the Douglas County District Court.

Action Taken by Trial Court: The district court entered an order finding sufficient evidence in the record from the zoning board to support the board's decision thereby affirming the zoning board's decision.

Assignments of Error on Appeal: On appeal, French argues that the district court was wrong (abused its discretion) in affirming the zoning board because there was not enough evidence to support the request for the variances. French also argues that any hardship or difficulty was caused by McNeil Co. so their request should not have been granted. Finally, French asserts that the zoning board acted with bad faith or gross negligence because they testified for McNeil Co. at the zoning board hearing.