



**BOARD OF ADJUSTMENT SPECIAL MEETING
TUESDAY, May 28, 2019
City Council Chambers, 400 East Military Avenue, Fremont NE
BOARD OF ADJUSTMENT MEETING – 5:00 P.M.
AGENDA**

1. Call to Order.
2. Roll Call, Determination as to Legality, Notice of Meeting and Agenda.
3. Public comment period. The general public is invited to address the Board regarding any item on this agenda. The overall and individual speaking time allotments may be limited by the Chair.
4. Elect new chairman per the Board of Adjustment's by-laws.
5. Elect new vice-chair per the Board of Adjustment's by-laws.
6. Elect new secretary per the Board of Adjustment's by-laws.
7. Dispense with the reading and approve the minutes of the February 4, 2019 Special Meeting for an Educational Session Meeting as prepared.
8. Dispense with the reading and approve the minutes of the August 26, 2016 Regular Meeting as prepared.
9. Consider a request for Variance made by appellant Dan Martinez on behalf of 3465 Big Island Rd, 3447 Big Island Rd, 3425 Big Island Rd, 3405 Big Island Rd, 3373 Big Island Rd, 3351 Big Island Rd, 3325 Big Island Rd, 3319 Big Island Rd, 3309 Big Island Rd, 3213 Big Island Rd and 3103 Big Island Rd, property owners with portions of parcels located outside of the regulatory floodway along Big Island Road, pertaining to the interpretation of Fremont UDC Ordinance, regarding setbacks off Big Island Road and to change square foot limitations to reduce the setbacks along Big Island

Road (front yard setback) from 50' to 10', to allow the owners to possibly build outside of the regulatory floodway on their property.

10. Adjournment.

THIS MEETING WAS PRECEDED BY PUBLICIZED NOTICE IN THE FREMONT TRIBUNE, THE AGENDA DISPLAYED IN THE LOBBY OF THE MUNICIPAL BUILDING AND POSTED ONLINE AT WWW.FREMONTNE.GOV IN ACCORDANCE WITH THE NEBRASKA OPEN MEETINGS ACT, A COPY OF WHICH IS POSTED CONTINUALLY IN THE COUNCIL CHAMBERS FOR PUBLIC INSPECTION, AND SAID MEETING IS OPEN TO THE PUBLIC. A COPY OF THE AGENDA WAS ALSO KEPT CONTINUALLY CURRENT AND AVAILABLE TO THE PUBLIC IN THE PRINCIPLE OFFICE OF THE DEPARTMENT OF PLANNING, 400 EAST MILITARY AVENUE. THE BOARD OF ADJUSTMENT RESERVES THE RIGHT TO ADJUST THE ORDER OF ITEMS ON THIS AGENDA.

BOARD OF ADJUSTMENT MINUTES

Monday, August 29, 2016

4:30 o'clock pm.

After the study session, Chairman Brad Fooker called the meeting to order. Roll call showed Chairman Brad Fooker, Board Members, Phil Bang, Gary Bolton, Scott Brown, City Attorney Paul Payne and Zoning Administrator Troy Anderson were present. Skip Sawyer has recently resigned from the Board. Four Board Members present – a quorum was established.

Chairman Fooker stated a copy of the open meeting law is posted continually for public inspection located near the entrance door by the agendas. The Chairman also stated that the Board of Adjustment is a quasi-judicial body of the City of Fremont thus, unlike the Planning Commission, its actions are not subject to review and action by the governing body, nor can its actions be overturned by the governing body. Our purpose is to adjudicate three types of issues: appeals when it is alleged that there is an error in any order, requirement or decision or determination made by an administrative official or agency based on or made in the enforcement of any zoning regulation or regulation relating to the location or soundness of structures, and you already know about maps and variances.

Chairman Fooker stated that the Applicant will have 15 minutes to present, then we will move to the public hearing. Supporters will have 3 minutes and opponents will have 3 minutes. Then the Applicant can rebut for 5 minutes. Then City Staff will give their side. Then we will close the floor to arguments and the Board Members can ask questions and ask questions of the City Attorney. Then the Board Members will deliberate the merits of the petition in terms of the facts presented at the hearing, and the criteria stated in the State Statutes and City Codes and Ordinances. A motion will then be made in the affirmative to hold or conditionally approve the request of the Applicant. Lack of a motion or lack of a second should be interpreted in favor of the decision of the administrative official. An appeal can only be approved on the affirmative vote of at least four of the five voting members. A motion not affirmative by at least four of the five members is deemed to be in favor of the administrative official.

Chairman Fooker read the item, dispense with the reading and approve the minutes of the April 25, 2016 Board of Adjustment Regular Meeting as prepared into the record. It was moved by Member Bang and seconded by Member Bolton to approve the minutes of the April 25, 2016 Board of Adjustment Regular Meeting as prepared into the record. A roll call vote showed all Members present voting aye. Motion carried unanimously.

Chairman Fooker read the item: Hear and decide on an Administrative Appeal, made by appellant Mark Boschult, pertaining to the interpretation of Fremont Zoning Article 2 Definitions, and more specifically Subsection 212.1., the definition of Impervious Coverage. The Applicant Mark Boschult spoke, and stated that he started in 2002 and then 2012 on this site, this being the third time in front of the Board of Adjustment. Chairman Fooker

opened the public hearing. Clark Boschult spoke in favor of the item. Chairman Fooker closed the public hearing after receiving comments from the public. The Zoning Administrator presented his staff report and interpretations. The Board of Adjustment Members asked questions and had a discussion. Zoning Administrator, Troy Anderson and Applicant Mark Boschult answered questions. The Board of Adjustment Members continued discussing the interpretation of the definition of impervious coverage.

Chairman Fooker then stated that a Motion will then be made in the affirmative to wholly or conditionally approve the request of the appellant. Lack of a Motion or lack of a second will be interpreted as a decision in favor of the Administrative Official. An Appeal can only be approved on the affirmative vote of all four Members.

It was moved by Member Brown to affirm the Applicant/Appellant's request. Motion died for lack of a second.

Hearing no other business, the Meeting was adjourned at approximately 5:04 p.m.

APPROVED

Board of Adjustment, Chairman

ATTEST

Zoning Administrator

CITY COUNCIL, PLANNING COMMISSION AND BOARD OF ADJUSTMENT
MINUTES FOR SPECIAL MEETING FOR AN EDUCATIONAL SESSION

February 4, 2019
5:00 o'clock pm.

The Mayor called the Special Meeting for an Educational Session of the City Council to order.

Chairman Sookram called the Special Meeting for an Educational Session of the Planning Commission to order.

Blackburn called the Special Meeting for an Educational Session of the Board of Adjustment to order.

The City Clerk's Roll call showed Council Members McClain, Jensen and Jacobus present, Council Members Ellis, Kuhns, Bechtel, Yerger and Legband were absent. There were three Council Members present, so there was no quorum established.

The Educational Session presenter, Thomas Huston, attorney from Cline, Williams, Wright, Johnson & Oldfather, L.L.P. stated that there would be no formal action taken.

The Director of Planning's Roll call showed Board of Adjustment Members present were: Nielsen and Blackburn. Board of Adjustment Members Bowen, Carlson and Brown were absent. There were two Board of Adjustment Members present, so there was no quorum established.

The Director of Planning's Roll call showed Planning Commission Members present were: Landholm and Sookram. Planning Commission Members Nielsen, Gifford, Sawyer, Horeis, Carlson, Borisow and Bowen were absent. There were two Planning Commission Members present, so there was no quorum established.

City Council Member Yerger entered the meeting at approximately 5:03 p.m.

Planning Commission AND Board of Adjustment Member Bowen entered the meeting at approximately 5:10 p.m., establishing a quorum of the Board of Adjustment.

City Council Member Kuhns entered the meeting at approximately 5:15 p.m., establishing a quorum of the City Council.

There was a presentation given by Thomas Huston of Cline, Williams, Wright, Johnson & Oldfather, L.L.P. regarding the Board of Adjustment and Fair Hearings. He also provided handouts..

Hearing no other business, the Mayor stated he would entertain a motion to adjourn the meeting. It was moved by Council Member Jacobus and seconded by Council Member

Jensen to adjourn the meeting. There were no objections by the Planning Commission or the Board of Adjustment. Meeting was adjourned at approximately 5:50 p.m.

APPROVED

Board of Adjustment, Chairman

ATTEST

Zoning Administrator

DRAFT

Staff Report

TO: Board of Adjustment
FROM: Jennifer L. Dam, Director of Planning
DATE: May 24, 2019
SUBJECT: Appeal of front and side yard setbacks

Background:

Dan Martinez, on behalf of the property owners of Tax Lot 58; Tax Lot 13; Tax Lot 12; Tax Lot 11; and Tax Lot 10 all located in T21-S17N-R8E and Tax Lot 10, Tax Lot 112, and part of Tax Lot 78; Tax Lot 9, Part of Tax Lot 112 and Part of Tax Lot 78; Tax Lot 107, Tax Lot 108 and part of Tax Lot 72; Tax Lot 105, Tax Lot 6 and part of Tax Lot 69; Tax Lot 103, Tax Lot 104 and part of Tax Lot 66; and, Tax Lot 101 Tax Lot 102 and part of Tax Lot 63 located in S20-T17N-R8E also known as 3465, 3447, 3425, 3405, 3373, 3351, 3325, 3319, 3309, 3213, and 3103 Big Island Road, is requesting a variance of the front and side yards of the properties to reduce the setbacks to 10' and 6', respectively.

The demarcation between the floodway and the flood plain crosses these properties as shown on the attached FIRM map from FEMA. The map was effective January 2, 2008.

Residential construction is not permitted in the floodway.

Pre-existing houses that sustained substantial damage from the recent flood (more than 50% of the market value of the structure) and are in the floodway cannot be rebuilt in the floodway. Houses that sustained less than 50% of the market value in damage that are in the floodway may be repaired.

Non-residential structures located in the floodway that sustained more than 50% market value in damage from the recent flood must demonstrate that reconstruction will not raise the flood level and must meet the floodplain regulations for construction and flood proofing.

Residential and non-residential structures may be constructed in the flood plain provided that the lowest floor is 1 foot above the base flood elevation.

Pre-existing structures located in the flood plain that sustained flood damage of less than 50% of the market value may be repaired. Those that sustained more than 50% in damage and all new construction must meet all flood plain requirements for construction.

These properties are located in the R, Rural zoning district. The front yard in the R, Rural zoning district is 50'. The side yard is 15'.

Any new residential construction on these lots must be outside of the floodway. It would be difficult or impossible to construct a structure and meet the front yard requirement of the district and be outside of the floodway.

These properties are adjacent to the Platte River and are not a part of a homeowner's association. Properties across the street on a lake are part of a homeowner's association.

"Lake" properties have no setbacks but those established by a condominium or homeowners association. (Table 11-602.02.01 footnote 2)

The properties were zoned RL, River & Lake under the previous zoning code. Under that code "Note 8: Residential uses in the Lake and River Residential District that abut permanent open water (river, lake, or pond, etc.) shall consider the water frontage as the Front Lot Line." Thus, the front setback was not measured from the street.

Findings:

- The demarcation between the floodway and flood plain on these 11 properties creates a hardship in that residential structures could not be constructed on the property and meet the setbacks. The properties would be limited to use as a park, agriculture or outdoor recreation.
- This condition applies to these 11 lots. Other lots along the river are either wholly within the floodway or have sufficient buildable area outside of the floodway.
- A variance will not change the character of the surrounding area. The treatment will be more consistent with the lots along the abutting lake.
- The granting of a variance will not be a detriment to the public good.
- Prior to any construction or issuance of permits, a survey with the specific flood plain elevation and location of the floodway line is required. All construction must comply with flood plain regulations.



National Flood Hazard Layer FIRMette



Legend

SEE FIS REPORT FOR DETAILED LEGEND AND INDEX MAP FOR FIRM PANEL LAYOUT

- | | | |
|-----------------------------|--|---|
| SPECIAL FLOOD HAZARD AREAS | | Without Base Flood Elevation (BFE)
Zone A, V, A99 |
| | | With BFE or Depth Zone AE, AO, AH, VE, AR |
| | | Regulatory Floodway |
| OTHER AREAS OF FLOOD HAZARD | | 0.2% Annual Chance Flood Hazard, Areas of 1% annual chance flood with average depth less than one foot or with drainage areas of less than one square mile Zone X |
| | | Future Conditions 1% Annual Chance Flood Hazard Zone X |
| | | Area with Reduced Flood Risk due to Levee. See Notes. Zone X |
| | | Area with Flood Risk due to Levee Zone D |
| OTHER AREAS | | NO SCREEN Area of Minimal Flood Hazard Zone X |
| | | Effective LOMRs |
| GENERAL STRUCTURES | | Area of Undetermined Flood Hazard Zone D |
| | | Channel, Culvert, or Storm Sewer |
| OTHER FEATURES | | Levee, Dike, or Floodwall |
| | | 20.2 Cross Sections with 1% Annual Chance Water Surface Elevation |
| OTHER FEATURES | | 17.5 Coastal Transect |
| | | Base Flood Elevation Line (BFE) |
| OTHER FEATURES | | Limit of Study |
| | | Jurisdiction Boundary |
| OTHER FEATURES | | Coastal Transect Baseline |
| | | Profile Baseline |
| MAP PANELS | | Digital Data Available |
| | | No Digital Data Available |
| | | Unmapped |

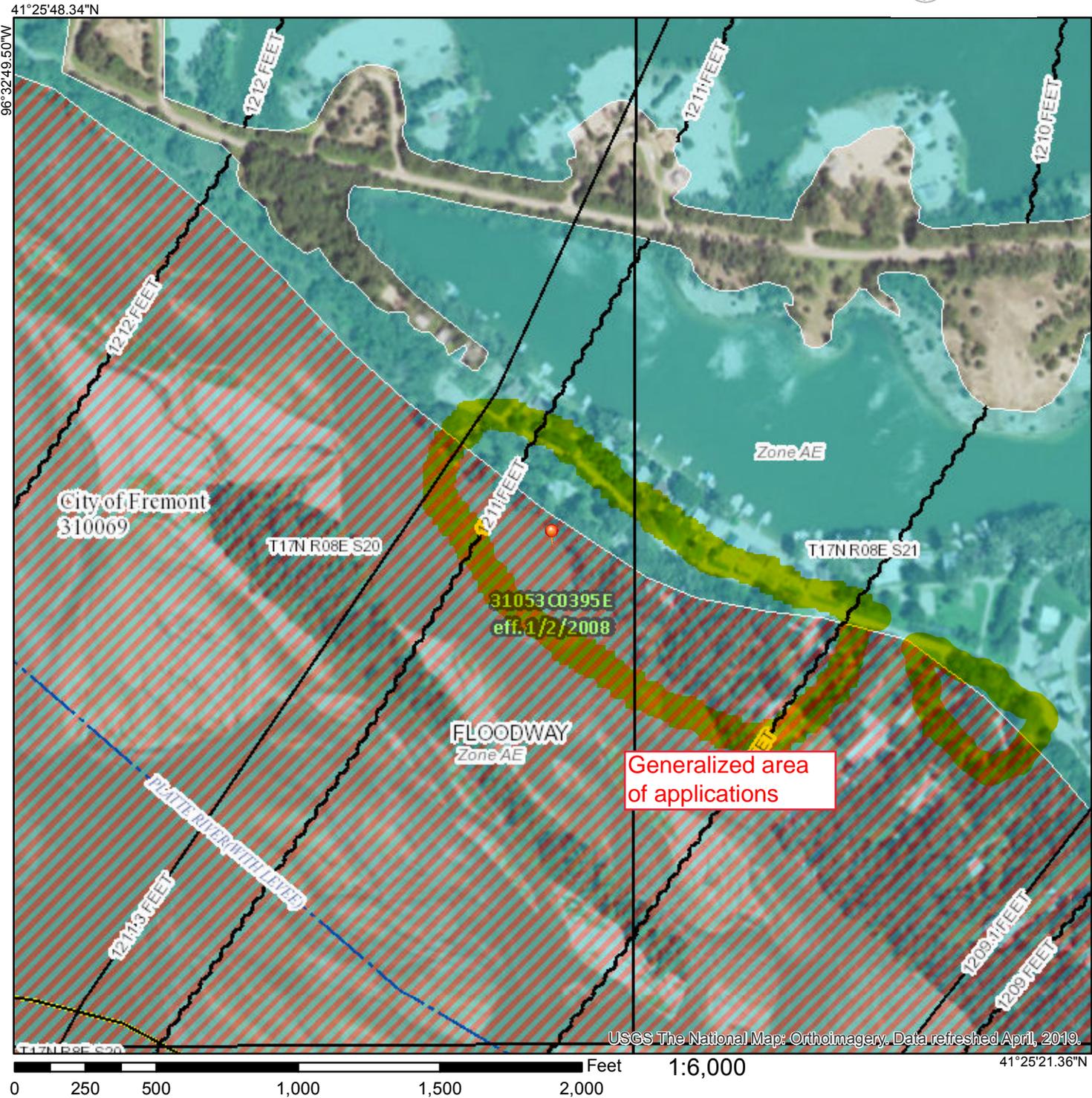


The pin displayed on the map is an approximate point selected by the user and does not represent an authoritative property location.

This map complies with FEMA's standards for the use of digital flood maps if it is not void as described below. The basemap shown complies with FEMA's basemap accuracy standards

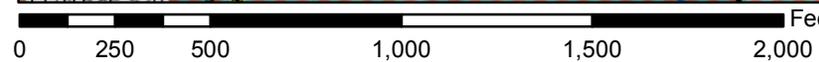
The flood hazard information is derived directly from the authoritative NFHL web services provided by FEMA. This map was exported on 5/24/2019 at 12:08:04 PM and does not reflect changes or amendments subsequent to this date and time. The NFHL and effective information may change or become superseded by new data over time.

This map image is void if the one or more of the following map elements do not appear: basemap imagery, flood zone labels, legend, scale bar, map creation date, community identifiers, FIRM panel number, and FIRM effective date. Map images for unmapped and unmodernized areas cannot be used for regulatory purposes.



41°25'48.34"N

96°32'49.50"W



1:6,000

41°25'21.36"N

96°32'12.04"W

USGS The National Map: Orthoimagery. Data refreshed April, 2019.