

**BOARD OF ADJUSTMENT  
LEXINGTON, NEBRASKA  
July 9, 2024**

A Meeting of the Board of Adjustment of the City of Lexington was held Tuesday, July 9, 2024, at 8:00 a.m. in the Council Chambers at City Hall, 406 East 7th Street, Lexington, Nebraska. Board of Adjustment members present were Michael Maguire, Ron Balthazor, Cameron Smith, Deb Stuchlik and John Knapple. Alternate Bo Berry was absent. City Officials present were Development Services Director Bill Brecks, Chief Building Inspector Jason Harris, City Attorney Brian Copley, and Secretary Pamela Baruth. Applicant Eulen C. Whitten, Bryce Sealock, counsel, and Doris Burby, court reporter, were also in attendance. The press was represented by The Clipper-Herald

**CALL TO ORDER:** The meeting was called to order by Chairman Maguire at 8:00 a.m. Maguire informed the public that the Open Meetings Act is posted in the Meeting Room at City Hall, located at 406 East 7th Street, Lexington, NE.

**MINUTES 2-14-2023:** Minutes from the Regular Meeting held Tuesday, February 14, 2023, were presented for the Board's consideration. Moved by Smith, seconded by Knapple, to approve the minutes as presented. Roll call. Voting "aye" were Balthazor, Stuchlik, Knapple, Smith, Maguire. Motion carried.

**APPOINTMENT:** Chairman Maguire requested nominations for Chairman of the Board of Adjustment for 2024. Moved by Knapple, seconded by Balthazor, to retain Mike Maguire as the chairman for 2024. Roll call. Voting "aye" were Stuchlik, Smith, Balthazor, Knapple, Maguire. Motion carried.

**APPLICATION OF APPEAL:** Eulen C. Whitten, applicant, appeared before the Board of Adjustments to request an appeal of a demolition order issued on May 13, 2024, for a structure located at 104 West 7<sup>th</sup> Street. Brecks reviewed condemnation letter dated 2/14/2024 and demolition letter dated 5/13/2024, and gave a brief history regarding city contact regarding the property. The Application for Appeal and accompanying documents including prior letters regarding the property were presented as part of the official record. The most recent contact was a report of a homeless person living in the building despite the condemnation order forbidding such. Photographs taken by building inspection personnel from the public right-of-way through windows and from neighboring buildings were presented as part of the official record. Brecks noted that city officials have not been granted permission by the owner to do a complete inspection of the property. He stated the property has deteriorated since 2013 with no utilities to the property since then so it is the opinion of the Building Inspector that the building should be demolished. Copley reviewed pictures of the damaged roof and ceiling, exposed electrical wires, and interior water damage. Copley asked Brecks about any discussions over the years with owner regarding the state of the property. Brecks stated they have had no contact with the owner over the years except following the condemnation order dated February 14, 2024. At such time, Brecks requested a complete inspection of the property to outline needed repairs. The applicant declined to move forward with the

condemnation appeal in February 2024 and no inspection was scheduled. Bryce Sealock, counsel for applicant, asked Brecks a series of questions related to education and certification of city building inspection staff, completed inspections with needed repairs listed, number of complaints regarding this property, and opinion of staff of the cost of repairs. Brecks noted that no complete inspection with needed repairs listed have ever been conducted because the owner has not given permission for staff to enter the property. He reiterated that any photographs on file have been obtained from the public right-of-way and neighboring buildings. He said that he has not counted the number of complaints but many are received on an annual basis.

Sealock then asked Dr Whitten a series of questions related to the history of his chiropractic office, reason for moving from this building, letters received from city staff, contact with city staff, completed repairs and estimates received. Dr. Whitten stated that he has been a community member for many years and would like to be able to complete repairs with the intention of leasing office space upon completion. He stated that he left the location due to parking issues from the neighboring apartment building, loitering issues, drug deals being conducted in the area, and COVID19. Referencing the demolition order letter dated May 13, 2024, Whitten stated that he started to get estimates for demolition, estimates for repairs and asbestos inspection, and to search for a structural engineer to confirm the structural integrity of the building. He said he has not been able to obtain estimates for the engineering or any asbestos abatement.

Board members also asked Dr. Whitten what repairs have been done since letters received in 2016 and 2018, answering none. He was also asked when the last time he visited the property, which he replied probably 2018 but could not recall the exact time as he no longer possesses a key to the building. Stucklik inquired why there is an urgency to repair the structure now when nothing has been done in the last 11 years. He stated he has been busy with life, that he does not get to this part of town often, and he has finally gotten funding lined up for the repairs.

Additional questions from Sealock to Whitten referred to actions regarding any roof repairs. Whitten stated he had made contacts for estimates for roof repair and noted that some work has been done on the back addition at some point. Noting that it appears that only one side of the addition was repaired, he stated he never checked to see if repairs had been completed. Whitten stated that he has currently received quotes that the building can be repaired and plans to fix the roof by Oct 2024. He is also looking for a structural engineer to verify the condition of the block walls. He plans to lease the building as office space if he is allowed to continue with the repairs.

Copley questioned Whitten about what has been done between February and May letters. Whitten submitted three quotes for the record, Neiman & Sons \$66,800 for roof repair, temporary roof repair for \$800, and roof coating for \$18,000. Copley and Sealock then discussed condemnation versus demolition and right to cure.

Sealock had final comments regarding the demolition notification process. 1. In violation of maintenance codes process as no specific issues are listed in the order. 2. No specific

issues outlined with a reasonable time given to make corrections. 3. Eminent domain proceedings are not clear as to whether the property would be put to public use. 4. Repairs could be done by Fall 2024 but they are searching for structural engineer to render opinion if structurally sound.

Copley reiterated that Whitten has been aware of the needed repairs before demolition order, and that sufficient time had been given to work with city staff to devise a plan for the property

There being no more comments, the public hearing was closed. Maguire asked for any discussion from the board members. Knapple noted that removal of the building would leave a hole in the downtown area and hates to see any building demolished without future plans for the property. Following discussion, moved by Smith, seconded by Stuchlik, based on the testimony and reports presented, to affirm the demolition order as presented. Roll call. Voting “aye” were Stuchlik, Balthazor Smith, Maguire. Voting “no” was Knapple. Motion carries.

**ADJOURNMENT:** There being no further business to come before the Lexington Board of Adjustment, Chairman Maguire declared the meeting adjourned.

Pamela Baruth  
Secretary