

**LAWRENCE BOARD OF ZONING APPEALS
MINUTES
AUGUST 7, 2003 – 6:30 P.M., CITY COMMISSION MEETING ROOM, FIRST
FLOOR OF CITY HALL AT SIXTH AND MASSACHUSETTS
STREET, LAWRENCE, KANSAS**

MEMBERS PRESENT: Mr. Goans, Chairman Herndon, Mr. Hannon, Mr. Fizell, Mr. Hicks, Mr. Henderson and Mr. Santee

STAFF PRESENT: Mr. Patterson, Mr. Guntert and Ms. Saker

ITEM NO. 1: MINUTES

Motioned by Chairman Herndon, seconded by Mr. Hannon to approve the minutes of the July 3, 2003 meeting as presented.

Motion carried 6-0-1, with Mr. Henderson abstaining due to his absence from the July meeting.

One typographical error was noted on page 2 of the June minutes.

Motioned by Mr. Hannon, seconded by Mr. Hicks to approve the minutes of the June 5, 2003 meeting as revised.

Motion carried unanimously, 7-0.

ITEM NO. 2: COMMUNICATIONS

The following communications were received in addition to those included in the packet:

- Letter requesting an extension to the variance granted to the Church of God in North Lawrence.
- Information regarding the letter forwarded to Legal Services regarding the length of variances and extensions.

It was agreed that both of these topics could be dealt with in the Miscellaneous section of the agenda.

DISCLOSURE OF EX PARTE COMMUNICATIONS/DECLARATION OF ABSTENSIONS

- Chairman Herndon said he had spoken with the applicants or their representatives in Items 3 & 4.
- Most of the Board agreed they had been contacted by the applicant's representative about Item 4.

Swearing in of witnesses.

ITEM NO. 3: RIVER'S EDGE; 311-317 N. 2ND STREET

B-07-17-03: A request for variances as provided in Section 20-1709.1 of the Zoning Ordinance of the Code of the City of Lawrence, Kansas, 2001. Said requests are specifically to vary from the provisions of Section 20-1216(a) of said City Code, which establishes a 15' setback for parking aisles and parking spaces from a street right-of-way to a minimum of 0'; from Section 20-1212, which requires a minimum of 20 parking spaces to a minimum of 9; from Section 20-1215, which requires perimeter concrete curb and gutter; from Section 20-707(b), which requires a front yard setback of 25' to a minimum of 0'; from Section 20-1217, which requires surfacing to City standard; and from Section 20-14A04.6, which requires 15% interior parking lot landscaping and requires that each row of parking terminate with a landscaped island. The request is for the following legally described property: The north 13 feet of Lot 41 and all of Lots 43, 45, 47, and 49, North Lawrence, in the City of Lawrence. Said described property is developed with three commercial buildings at 311-317 N. 2nd Street. Submitted by the property owners of record, Corvas Brinkerhoff & Robert Sturgeon.

STAFF PRESENTATION

Mr. Patterson introduced the Item, explaining the applicant's intent to modify an existing structure to open a coffee/wine bar. The property had recently been purchased and the owner(s) were trying to bring the structure closer to Code compliance and also provide handicapped accessible amenities.

Six variances were requested, with 4 receiving Staff's recommendation for approval:

1. Request to reduce the required minimum 15' setback for parking aisles and parking spaces from a street right-of-way to 0';
2. Request to reduce the required minimum of 20 parking spaces to 9;
3. Request to reduce the required minimum front yard setback of 25' to 0'; and
4. Request to eliminate the requirement for 15% interior parking lot landscaping and landscaped islands at the end of each row of parking.

Staff recommended denial of the 2 remaining requested variances:

5. Request to eliminate requirement that parking lot surfacing and driveway approaches (aprons) be upgraded to City standard; and
6. Request to eliminate requirement for concrete curbs around the perimeter of the parking lot.

APPLICANT PRESENTATION

Cory Brinkerhoff, co-owner of the property, explained he had discovered after purchasing the subject property that the area was difficult to work with. The original structure was built for a specific use (gas station and service garage) and many of its features were unsuitable for today's standards. One example was the very small restroom facility that was barely adequate for regular service, much less for handicapped accessibility.

Mr. Sturgeon was the first party to indicate interest in the property for six months, and he was willing to cover the extensive remodeling costs to bring the restrooms up to ADA standards. This modification alone would take up the majority of the northern end of the structure, and approval had been obtained from the HRC to construct an additional 40' on this end of the property.

Mr. Brinkerhoff said any use of the property would require completion of many years' deferred maintenance, and the use would have to be profitable enough to recoup these improvement costs. Commercial use was the only type that would provide these kinds of profits, and commercial zoning had been obtained.

Site planning was the final step in the process and during this stage it was established that it would be impossible for the property to meet the parking requirement of any commercial use. A maximum of nine spaces was attainable, even with a 0' setback.

Mr. Brinkerhoff said that, without the requested variances, the property basically could not be used.

The applicant suggested the city-owned parking lot across 6th Street to the south could be used to supplement the less-than-adequate on-site parking. It was hoped that this would reduce the amount of overflow parking in the Johnny's Tavern lot to the east. It was established that the northern lot was actually closer than Johnny's lot and the cross walk between the southern lot and the subject property was protected with a push-button stoplight.

Staff was asked to elaborate on their recommendation for denial of the 5th & 6th variance requests. Mr. Patterson said that, in Staff's opinion, there was nothing preventing the per-Code improvements except financial considerations.

Mr. Brinkerhoff presented several photographs of the existing site, pointing out the poor condition of Locust Street, and said there was "no point" making the required improvements to the parking lot on a substandard street. This was particularly so when the lot was not intended to be the primary parking area.

Mr. Brinkerhoff suggested the existing stone wall on the western property line was preferable to typical curbing and showed that there was no connecting point for the curb ends to attach to.

It was established that a site plan had been submitted and would go to the City Commission in the near future. The Board discussed the possibility of a benefit district for Locust Street improvements and Mr. Brinkerhoff said he expected a condition would be applied to the site plan requiring the property owner to sign an agreement not to protest the formation of such a benefit district.

It was suggested that the surfacing and curbing variances could be granted with the condition that the variance would expire when Locust Street was improved. Mr. Brinkerhoff pointed out that being responsible for both of these costs at the same time might be financially overwhelming.

Chairman Herndon reminded the applicant that signing an agreement not to protest did not prevent the property owner from negotiating the amount of his participation in the benefit district. Also, benefit district costs were amortized and financed, making the total amount paid less imposing than one might think.

It was also noted that the applicant had the ability to make the parking lot improvements at any time prior to the street improvements, so the costs would not be applied simultaneously. Mr. Brinkerhoff said the extensive structural improvements needed would be of primary concern, leaving the parking lot improvements for a later date if the variances were granted.

Mr. Brinkerhoff indicated that he expected to be required to sign an agreement not to protest and had no objections to doing so.

PUBLIC HEARING

Jeff Fortier, co-owner, said it had been interesting to go through a lengthy development process for what he considered to be a small project.

Mr. Fortier said he had made a mistake in not meeting with the adjacent property owner – Rick Renfro, Johnny's tavern – sooner. It was not the applicant's intent to have a negative impact on Mr. Renfro's business, and Mr. Fortier understood there was an existing parking problem and he would like to find a solution that would meet the needs of all.

Mr. Fortier said he would like to have signage in his own lot, pointing customers to the city-owned lot on the other side of 6th Street.

Rick Renfro, owner of Johnny's Tavern, said he had mixed feelings about the project. He would like to see the subject property put to good use, but he was concerned with the potential impact on the existing parking problem. He said it was unlikely customers would utilize the north lot.

Mr. Renfro's second concern was that he had been denied a variance for parking lot improvements similar to the ones being considered today. He had been required to make costly improvements to bring his site up to City Code and felt it was fair that the adjacent property be required to do the same.

BOARD DISCUSSION

It was discussed that the rest of the area had not been brought up to City standards in the past because this requirement was typically applied to site plans.

Mr. Hannon explained why he would like to have the variance – if approved – tied to the structure, not the property as is usual. He was concerned that the property would be cleared at some future date and be allowed to rebuild with the reduced setbacks and other variances being considered.

Mr. Goans said it appeared that granting those variances recommended for approval by Staff would be the only way the property could ever be utilized

Chairman Herndon said he understood Mr. Renfro's frustration, but he (Chairman Herndon) was in favor of tying the parking lot improvements to the Locust Street improvements or to redevelopment. He also would like to condition signage that would direct customers to the parking lot across the street.

It was noted that the applicant could not lease parking space in the south lot from the City, as the lot was constructed through Federal funding.

Mr. Brinkerhoff asked if there could be a length of time given between the street improvements and completion of the parking lot improvements, so the financial burden of both constructions would not come due at the same time.

Staff pointed out that Public Works, when reviewing the site plan, had asked for a signed agreement not to protest a benefit district for improvements to the area's sidewalks.

Even if all variances were granted, the applicant would have to provide on-site ADA parking and a hard surface path for handicapped accessibility to the front entrance of the structure. This was also a site plan issue.

ACTION TAKEN

Motioned by Chairman Herndon, seconded by Mr. Fizell to approve all 6 variances as requested by the applicant, subject to the following conditions:

1. Variances for parking lot surface and concrete curb and guttering are valid until such time that Locust Street is improved. Upon completion of Locust Street improvements, the applicant shall have a period of two (2) years to bring the on-site parking area into compliance with City standards; and/or
2. All variances shall expire at such time that the existing structure is demolished and the property is redeveloped.

Motion carried unanimously, 7-0.

ITEM NO. 4: **3517 TAM O'SHANTER DRIVE**

B-07-18-03: A request for variances as provided in Section 20-1709.1 of the Zoning Ordinance of the Code of the City of Lawrence, Kansas, 2001. The variance is from the provisions in Section 20-608 of said City Code, which requires a 30' rear yard setback in the RS-2 District. The applicant is asking to allow a minimum rear yard of 15.8'. The request will allow for an enclosure on the existing deck at 3517 Tam O' Shanter Drive. The request is for the following legally described property: Lot 18, Alvamar Estates in the City of Lawrence. Submitted by Allen Belot with Belot/Hartronft Associates, for Terry Sutcliffe, property owner of record.

STAFF PRESENTATION

Mr. Patterson introduced the Item, stating the requested variance was to allow for a reduced rear yard setback from 30' to 15.8' to accommodate a solarium in place of the existing back porch. A section of the existing porch was covered but not enclosed.

The original owner built the primary structure, including the original porch, in violation of the required setbacks. Another previous owner had enlarged the original porch, increasing the amount of encroachment.

Staff did not believe this corner lot could be considered unique and recommended denial of the variance because the project, in Staff's view, did not meet the Five Criteria.

Mr. Patterson explained that Staff would like the Board to grant a variance to bring the existing conditions into compliance.

APPLICANT PRESENTATION

Allen Belot spoke on behalf of the applicant, explaining the original owner was a builder who sited, designed and constructed the home himself, resulting setback encroachments that were not the fault of the current owner. This encroachment had not been noticed and had received no objection from the owners or any of the neighbors until a recent survey was done in anticipation of the proposed porch remodel.

Mr. Belot explained that the propose project would not encroach any further into the setback than the existing structure. He pointed out that the new solarium would be smaller than the existing porch, so the square footage of the encroachment would be reduced.

Mr. Belot said the intent of rear yard setbacks, as stated in the Code, was to protect the enjoyment of this space by the property owner without infringing upon this same right for the adjacent properties. He distributed a plan showing how the proposed project would allow adequate space for the owners of both the subject and the adjacent properties.

The applicant had contacted all of his neighbors and had received a majority of support for his proposal. Letters from each of these neighbors were presented to the Board. Mr. Belot indicated how the neighbors with the most direct sight lines on to the subject area were not opposed to the project.

Mr. Belot said a claim of hardship could be based on the inability of the applicant to enjoy his own property to the same extent as his neighbors.

Mr. Goans pointed out that the primary structure was noticeably larger than any other home in the area, "overfilling " it's own lot in comparison.

Mr. Belot stated that the proposed use as a solarium, while more intensive than the existing porch, would be indoors.

The dimensions of the proposed solarium were discussed, and Mr. Belot said the final structure would be about as large as the amount of existing covered porch.

It was pointed out that the dollar amount placed on the proposal suggested a construction of some magnitude. Mr. Belot explained he had intentionally set the estimate somewhat high amount so the actual cost would come in below the estimate. It was clarified that the \$75,000 estimate also included the landscaping and the interior kitchen remodel.

PUBLIC HEARING

Jan Erland, 2002 Quail Creek, said she and her husband owned the adjacent property and had submitted a letter of opposition to Staff in which she outlined how the project did not meet the Five Criteria. She asked that a correction be noted to this letter, clarifying that only Mr. Sutcliffe was addressed. The letter was not intended to address Mr. Sutcliff's fiancé.

Mrs. Erland said she had always gotten along well with the applicant, but this project concerned her for two reasons:

1. The amount of enclosed area would be an increase over the amount of existing covered porch area.
2. The reduction in privacy on her property and the subsequent negative impact on her property value.
3. The fact that the proposed glass solarium would be a year-round use instead of a summers-only porch.

Mrs. Erland said it would be difficult to increase privacy, because the applicant was already a very unobtrusive and quiet neighbor. The project posed an invasion of her property's privacy and granting the variance would allow for enlargement of what was already a double encroachment.

Mrs. Erland said she had no problem with allowing the existing structure to remain, but did not think the additional encroachment should be allowed just because there had been no complaints in the past.

Mrs. Erland said it was unprofessional of the applicant to "try to influence" the area residents by inviting the entire neighborhood to his home for ice cream. She questioned the appropriateness of the petition that was circulated.

Mrs. Erland asked where the applicant would place/use his barbeque grill, since he was an avid griller and often entertained in the area that was currently a patio. She said discussions with Code enforcement officers left her with the impression that the applicant could pour a concrete slab right up to the property line if he chose.

Jim Erland, 2002 Quail Creek, echoed the concerns expressed by his wife, saying a 15' extension on the existing porch would bring the structure within 15' of his own property line. Mr. Erland was also worried about the height of the proposed solarium.

It was clarified that the Erland's were concerned with the view of the solarium, when they were in their own back yard, rather than the sight line from inside their house.

It was established that the Erland's had not been aware of the landscaping buffer proposed for the project, but Mr. Erland commented that landscaping would "ruin the whole purpose" of a solarium.

Mrs. Erland spoke again about sight lines. When asked what she saw if looking out her bedroom windows, Mrs. Erland said she could "see what kind of tanning lotion they are using". She said she was not sure she would "last another 10 years" for the landscaping to mature and block the view.

Mr. Belot indicated he would like to respond to the Erland's concerns. Chairman Herndon asked Mr. Belot to please wait to do so.

BOARD DISCUSSION

It was established that the proposed solarium would be constructed 30" above grade at its highest point. It was discussed that the existing porch was not considered a code violation because it was not more than 36" above grade. At 30", the deck did not require a building permit but did have to conform to setbacks. A concrete slab would not be subject to setback requirements.

Mr. Goans explained that, if the existing deck were non-conforming, then granting the variance would be trading one non-conformity for another. If the deck was not in violation, then granting the variance would be allowing an entirely new situation to occur.

Mr. Santee said it was possible he could support the project if height concerns were addressed and landscaping details were provided.

Mr. Henderson believed the situation was unique because the current owners had inherited problems without their knowledge. Since no one had a problem with the existing porch, he did not understand why there would be opposition to a smaller structure that – in his opinion – was an improvement.

Mr. Hannon had no objection to "grandfather in" the existing situation, but was not comfortable with compounding the violation, especially if this would bring the structure within 15' of the property line.

Chairman Herndon was sympathetic to the Erland's encroachment concerns believed there was a way to design the project to minimize imposition on the adjacent properties.

Mr. Belot was permitted to respond to public comment at this time. He said it appeared the applicant had mis-communicated his intent to the Erlands. The new project would not be an addition onto the existing porch. The solarium would take

the place of only a portion of the existing porch, thus creating less of an encroachment than currently existed without opposition.

The roofline of the project would closely resemble that of the primary structure and would certainly not reach higher than the house itself.

The Board discussed the possibility of limiting the location of a concrete patio, with some members feeling this was not appropriate beyond requiring that the concrete would not extend any further into the setback than the existing porch.

Design elements were discussed at length, including roofline and landscaping. It was ultimately determined that the roof would match the primary structure in height and design. Landscaping elements were left to the developer, with the understanding that the intent of the landscaping would be to provide a buffer between the solarium and the adjacent property.

Ms. Erland said the area designated for landscaping had severe water runoff issues and any vegetation would likely be washed with any heavy rain.

ACTION TAKEN

Motioned by Mr. Hannon, seconded by Mr. Goans to deny the variances requested to allow for the new structure, but approve the existing conditions as recommended by Staff.

Motion was denied, 2-5, with Mr. Henderson, Mr. Herndon, Mr. Santee, Mr. Fizell and Mr. Hicks voting in opposition.

Motioned by Chairman Herndon, seconded by Mr. Hicks to approve the variance as requested, subject to the following conditions:

1. The new structure shall encompass no more than 225 square feet and shall not encroach any further into the required setback than the existing structure.
2. Concrete slab patio areas may not encroach any further into the required setback than the existing structure.
3. The roof and cornice of the new structure must generally match the roofline of the primary structure.

Motion carried 5-1, with Mr. Hannon voting in opposition.

5-minute recess, reconvene at 9:23 pm

ITEM NO. 5: **1930 COUNTRYSIDE LANE**

B-07-19-03: A request for variances as provided in Section 20-1709.1 of the Zoning Ordinance of the Code of the City of Lawrence, Kansas, 2001. The variance is from the provisions in Section 20-608 of said City Code, which requires a 30' rear yard setback in the RS-1 District. The applicant is asking to allow a minimum rear yard of 10'. The request will allow for the addition of an enclosed deck at 1930 Countryside Drive. The request is for the following legally described property: Lot 29, Countryside Subdivision of portion of Block 29, West Lawrence in the City of Lawrence. Submitted by Bayliss Harsh & Doug Dubois, property owners of record.

STAFF PRESENTATION

Mr. Patterson introduced the Item, explaining the request was to allow for a reduction in the rear yard setback from 30' to 10' to accommodate an enclosed deck structure.

It was noted that the area was platted at a time when a structure could extend as close as 7' from the property line.

A correction was made to the Staff Report to indicate that the required side yard setback was 10', not 5'.

The subject property was described as extremely steep and oddly shaped.

Staff recommended approval of the variance based on the fact that the property did meet Code requirements at the time it was originally platted and that construction would not impose on adjacent properties due to the extreme topography of the area.

Only one call had been received regarding this project, and that neighbor had indicated no opposition once the details of the project were explained. One letter in support of the project had been submitted by another area resident.

APPLICANT PRESENTATION

Doug DuBois, property owner, said the requested variance was to allow for the addition of an enclosed workshop area.

Mr. DuBois showed how the northern property line was designated as the rear yard based on the orientation of the house on the rear adjacent property. This same line was more appropriately stated as the side yard in relation to the subject property, which was oddly situated within its own lot.

It was established that, with the northern line designated as the rear yard, a strict application of the required setbacks would cut through the center of the existing primary structure.

The proposed addition would not increase the extent of the existing encroachment.

PUBLIC HEARING

No member of the public was present to speak on this Item.

ACTION TAKEN

Motioned by Mr. Hannon, seconded by Mr. Goans to approve the variance as requested.

Motion carried unanimously, 7-0.

Motioned by Mr. Herndon, seconded by Mr. Hicks to approve the footprint of the existing structure, including the proposed addition, for the lifetime of the primary structure. This would eliminate future confusion if the property owner sought to obtain financing.

Motion carried unanimously 7-0.

ITEM NO. 6: MISCELLANEOUS

- a) Request to grant an extension to the variance granted for the Church of God in North Lawrence.

Motioned by Mr. Hicks, seconded by Mr. Fizell to grant a 90-day extension as requested.

Motion carried unanimously, 7-0.

- b) Mr. Herndon said there had been no response from the City's Legal Department to the letter the Board forwarded in July regarding lengthening the time period of variances and extensions.

It was established that the new Code under consideration included longer time periods than discussed by the Board (12 months for the initial variance with 6-month extension) but only one extension was permitted.

The Board agreed to let the situation rest for the time being.

Mr. Fizell noted his continuing concern that the new Code should not be used for existing cases until it was formally adopted.

- c) Mr. Henderson reminded the Board that they would likely be hearing an appeal regarding the 6th & Wak project. He said it would be important for all members to keep personal discussion regarding the project to a minimum.

It was clarified that the issue, if an appeal were filed, would not be on the BZA agenda until at least October.

- d) Five Board members requested copies of the draft Code.

ADJOURN – 9:45 p.m.

Official minutes are on file in the Planning Department Office.