

**BOARD OF ZONING APPEALS  
MINUTES  
APRIL 7, 2005 – 6:30 P.M.**

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Members present: Hannon, Herndon, Emerson, Blaufuss, Goans, Lane  
Staff present: Patterson, Pool, Guntert and Saker

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**ITEM NO. 1: COMMUNICATIONS**

- Packet of information for two requests for extensions of previously approved variances
  - Fountains Retirement Centers
  - Redevelopment of 830-832 Pennsylvania et al.
- Article the Mayor requested be distributed to all advisory boards about the Kansas Open Meetings Act
- Hannon said he spoke to the applicant about the project at 612 W. 17<sup>th</sup> Street
- Herndon said he would abstain from extension request for The Fountains and the vote regarding the March minutes
- There were no deferral requests to consider

**ITEM NO. 2: MINUTES**

Several typographical errors were noted.

Motioned by Hannon, seconded by Lane to approve the March 3, 2005 minutes as revised.

Motion carried 5-0-1, with Herndon abstaining due to his absence from the March meeting.

04/07/05

**ITEM NO. 3: 401 FRONTIER ROAD**

**B-02-05-05:** A request for a variance as provided in Section 20-1709.1 of the Zoning Ordinance of the Code of the City of Lawrence, Kansas, 2003. Said request is specifically to vary from the provisions of Section 20-608 of said City Code, which requires a 25' minimum front yard building setback. The applicant is asking for a variance to allow an approximate 14' front building setback to allow for construction of a master bedroom addition to the residence. The request is for the following legally described property: Lot 1, Westridge North Addition in the City of Lawrence. Said described property is located at 401 Frontier Road. Submitted by Henry and Betty Ann Sipple, property owners of record.

**STAFF PRESENTATION**

Mr. Patterson introduced the item, a request for a variance to allow the construction of a 24' X 24' bedroom addition to the west side of the existing residence, within the required 25' front yard setback. The requested variance was to reduce the front yard setback to approximately 14'.

Mr. Patterson noted an error in the Staff Report identifying the existing zoning for the subject property as RS-2. The current zoning is actually RS-1, but both residential zoning districts carried the same front yard setback so the variance request was unaffected.

Staff explained the subject property was addressed on Frontier Road, although it took access to Riverview Road. The subject property also had frontage on Kasold Drive, and Staff suggested the triple road frontage made this property unique.

Other elements making the property unique were mentioned, including the 14' X 14' 'cutout' for right-of-way at the corner of Kasold & Riverview Road and the 40' utility easement at the east side of the property. All of these elements combined tended to restrict the buildable area of the lot.

In Staff's opinion, the addition would not create a negative impact on the adjacent properties, since it would be 50' from the nearest adjacent property boundary and would not be readily visible from the adjoining residences to the south.

Staff recommended approval of the variance as requested, finding that it met all five criteria as described in the Staff Report.

It was clarified that the cutout area visually appeared to be part of the property. The cutout was intended to provide additional right-of-way in case it was needed for later improvements, but no such necessity was indicated for the near future.

#### **APPLICANT PRESENTATION**

Henry Sipple, applicant, said the cutout area contained an underground sprinkling system and mature trees that he intended to leave in place. He said the existing fence would also be retained in its current location.

It was discussed that the 24' X 24' dimension shown on the plan was a maximum for the increased building dimensions. A smaller addition might be built.

Mr. Sipple explained why the addition could not be built on the rear of the structure.

#### **PUBLIC COMMENT**

No member of the public spoke on this issue.

#### **BOARD DISCUSSION**

The Board agreed with Staff's determination that the situation was unique based on the information provided in the Staff Report.

It was suggested that the variance should be worded differently, reducing the front yard setback from 25' to 14'. It was discussed that the wording provided by Staff dealt with the fact that the 14' stated in the application was an approximation.

**ACTION TAKEN**

Motion by Herndon, seconded by Lane to approve a variance to allow the construction of a building addition measuring a maximum of 24' X 24' square as shown in the sketch provided by the applicant. Approval was based on a determination that the criteria for granting a variance are all met as described in the Staff Report.

Motion carried unanimously, 6-0.

04/07/05

**ITEM NO. 4:                    612 WEST 17<sup>TH</sup> STREET**

**B-03-06-05:** A request for variances as provided in Section 20-1709.1 of the Zoning Ordinance of the Code of the City of Lawrence, Kansas, 2003. Said requests are specifically to vary from the provisions of Section 20-608 of said City Code, which requires a 30' minimum rear yard building setback and 5' minimum side yard building setback. The applicant is asking for a variance to validate the existing 3.3' side yard setback for the dwelling from the west property line; and, a variance for the existing garage setback from the rear property line that becomes noncompliant by virtue of tying the garage and dwelling together with a proposed new addition on the back side of the house. The requested rear yard setback is 16.3' from the north property line. The requests are for the following legally described property: The East 76' of Lots 4 & 5, Block 2, University Place Addition in the City of Lawrence. Said described property is located at 612 W. 17<sup>th</sup> Street. Submitted by Jack Hope, contractor for Carol Jean Brune and William C. Getz, Jr., property owners of record.

**STAFF PRESENTATION**

Ms. Pool introduced the request, a request to approve three variances. Two variances were needed to bring existing conditions into conformance and a third was requested to allow the construction of a rear addition.

Staff explained that a detached garage would not require a variance because it would conform to the standards for an accessory structure. However, a variance was required here because the garage was attached and calculated (for setbacks) as part of the primary structure, requiring a 30' rear yard setback.

In Staff's opinion, the positioning of structures on the lot made the subject property unique to its surroundings.

It was verified that the new addition would be visible to the residents to the north and west.

**APPLICANT PRESENTATION**

Jack Hope, contractor, spoke on behalf of the applicant. He said the property owners wanted to modify the house to accommodate new uses, including a larger, more usable kitchen and a 2<sup>nd</sup>-floor reading room available to the neighborhood.

Mr. Hope said area residents supported the proposal as an attractive addition to the neighborhood.

It was noted that the packet included no information about the second story. Mr. Hope responded to questioning that the second floor of the addition would be only slightly taller than the existing garage and would not extend over the breezeway portion of the project. A canopy was proposed over the breezeway.

**PUBLIC COMMENT**

No member of the public spoke on this item.

### **BOARD DISCUSSION**

Several members agreed the project appeared “reasonable”. Herndon asked how the Board would address future requests for similar rear yard setback reductions in the neighborhood, based on the precedent of this project. Several elements of this proposal were suggested as protection against claims of precedent:

1. It is significant that the structure addition is staying within the setbacks of all existing buildings on the subject lot.
2. The addition is being incorporated into the existing primary structure.

### **ACTION TAKEN**

Motioned by Hannon, seconded by Blaufuss to approve the variances as requested, based on a determination that the project meets the five criteria as described in the Staff Report.

Motion carried 5-1, with Herndon voting in opposition.

04/07/05

**ITEM NO. 5:                    HUXTABLE & ASSOCIATES, INC., 815 EAST 12<sup>TH</sup> STREET**

**B-03-07-05:** A request for variances as provided in Sections 20-1709.1 and 20-1709.2 of the Zoning Ordinance of the Code of the City of Lawrence, Kansas, 2003. The first variance request is from the provisions of Section 20-1215 of said City Code, which requires a concrete curb and gutter around the perimeter of parking areas. The applicant is seeking the variance to be able to keep all of the existing parking areas in their current condition. The second variance is from the provisions of Section 20-1216(a) of said City Code, which requires a 15' greenspace setback for parking areas from a street right-of-way. The applicant is requesting a variance to allow the existing parking area and proposed new parking area to have a 4' greenspace setback from the E. 12<sup>th</sup> Street right-of-way line. The final variance request is from the provisions of Section 20-9A04(e)(3)(ii) of the City Code. This code provision allows for a maximum of 60 percent of a lot to be covered with impervious surfaces. The applicant is seeking to vary this maximum standard to permit 68 percent impervious surface in the 100-year floodplain. The requests are for the following legally described property: All of the Northeast Quarter of Block 5 in Earl's Addition in the City of Lawrence. Said described property is known as Huxtable and Associates, 815 East 12th Street. Submitted by Darron Ammann with Bartlett & West Engineers, Inc., for Smitty G. Belcher, property owner of record.

**STAFF PRESENTATION**

Mr. Patterson introduced the item, a request to grant multiple variances to allow expansion of the existing business. The applicant proposed to remove the existing trailer and construct a 2-story addition to one building and a 1-story addition to the other building. The City Commission recently approved the vacation of a portion of Oregon Street to provide additional parking to meet the parking requirements for the building expansion.

Mr. Patterson described the surrounding zonings and land uses, including multi-family development and public service uses.

Staff explained the three variances requested:

1. Remove the requirement for concrete curbing & gutters for the existing parking area. It was noted that parking lot curbs for industrial uses were often destroyed by large trucks maneuvering in the lot.
2. Reduce the 15' parking lot setback for the north property line to 4', subject to appropriate landscape screening, to bring the existing lot into conformance and allow construction of the new lot to match.
3. Increase the amount of allowable impervious surface within this section of the 100-year floodplain from 60% to 68%.

Staff explained the third variance was a technical point, because the City stormwater project adjacent to the subject property had already modified this section of the floodplain. The City would be filing an application for a revision to the federal floodplain maps, resulting in a calculation of only 52% impervious surface for the subject area.

This would make a variance unnecessary in the future, but Staff suggested considering the variance at this time to allow the proposed expansion to move ahead.

It was discussed waiting until the floodplain map revisions were processed could delay the business expansion up to a full year and may cause the business to choose another of their locations (Olathe or Topeka) for the expansion and associated job market increases.

Mr. Patterson suggested the situation was unique because of previously approved site plans, the recently vacated right-of-way in Oregon Street and the changing floodplain designation.

Staff recommended approval of all three variances, finding that the proposal met all five criteria.

Mr. Patterson responded to questioning that, in Staff's opinion, the adjacent properties would face no negative impacts. He said Staff had received one call from an adjacent property owner, expressing concern about how the vacation of Oregon Street right-of-way would impact his property. It was verified that this was not part of the Board's consideration and the vacation question was dealt with already by the City Commission.

It was clarified that the eastern parking lot would have the required concrete curb and guttering. The curbing variance was intended to apply only to the internal sections of the existing parking lot, adjacent to the building.

### **APPLICANT PRESENTATION**

Dan Myers, Bartlett & West, was present to answer questions on behalf of the applicant. He had no additional information and expressed no objection to the conditions proposed by Staff.

### **PUBLIC COMMENT**

No member of the public spoke on this item.

### **BOARD DISCUSSION**

It was suggested that the City Commission's vacation of a portion of the Oregon Street right-of-way, making this land private property, "gave permission" for the existing parking lot as shown. Mr. Patterson said the City would retain 50' of the total 60' of right-of-way as a public access and utility easement.

It was noted that the eastern parking lot would be available for public use during non-business hours.

The Board discussed the appropriateness of including the economic impact of the project (increased tax base and employment opportunities) in the findings of fact. Typically, economic issues were not part of the Board's consideration. It was suggested that, in this case, these issues were relevant because they supported a claim that the project would enhance the public health, safety and welfare (related to the five criteria).

**ACTION TAKEN**

Motioned by Herndon, seconded by Lane to approve the three variances for the project as requested, based on a determination that the proposal met the five criteria as described in the Staff Report, with the removal of the Staff finding regarding economic impacts.

Motion carried unanimously, 6-0

**ITEM NO. 6: MISCELLANEOUS**

- a. Consider a request from Stan Hernly, architect with Hernly Associates, Inc., for a 90-day extension of variances approved by the Board for the redevelopment project at 830-832 Pennsylvania Street, 846 Pennsylvania Street and 716 E. 9<sup>th</sup> Street (B-08-21-04).

**ACTION TAKEN**

Motioned by Hannon, seconded by Lane to approve a 90-day extension for the variances granted for 830-832 Pennsylvania, 846 Pennsylvania and 716 E. 9<sup>th</sup> Street as requested.

Motion carried 5-0-1, with Ms. Blaufuss abstaining because she had not taken part in the original variance consideration.

- b. Consider request for a 90-day extension of variances approved for Fountains Retirement Center [B-09-25-04].

It was verified that extension requests carried no publication requirement, so this request could be considered although it had not appeared on the published agenda.

**ACTION TAKEN**

Motioned by Lane, seconded by Hannon to approve a 90-day extension for the variances granted to The Fountains Retirement Center as requested.

Motion carried 5-0-1, with Herndon abstaining.

- c. Other business

There was no other business to come before the Board.

**ADJOURN – 7:15 p.m.**

*Official minutes are on file in the Planning Department office.*