

**BOARD OF ZONING APPEALS**  
**Meeting Minutes of April 1, 2010 –6:30 p.m.**

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Members present: Carpenter, Kimball, Blaufuss, Lane, Mahoney, Lowe

Members excused: von Tersch

Staff present: Guntert, Miller, Parker

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**ITEM NO. 1            COMMUNICATIONS**

The Board received communication from Schaen Cargill regarding the project at 2045 Learnard Avenue.

Kimball stated Paul Werner contacted him regarding the 1700 Tennessee Street project and clarified the variance was not needed in order to park more cars rather it was needed to help create a better parking lot.

Lowe arrived at the meeting and stated he would abstain from the minutes of March 4, 2010.

**ITEM NO. 2    MINUTES**

Motioned by Lane, seconded by Carpenter, to approve the March 4, 2010 Board of Zoning Appeals minutes.

Motion carried, 5-0-1 Lowe abstained

**ITEM NO. 3            2045 LEARNARD AVENUE [DRG]**

**B-2-3-10:** A request for variances as provided in Section 20-1309 of the Land Development Code of the City of Lawrence, Kansas, 2009 edition. The requests are for a variance to reduce the 5 feet side yard building setback required in Section 20-601(a) of the City Code to a minimum of 1' along the north and the south property lines. The variances are requested for a two-car accessory garage structure with a second level accessory dwelling unit. The proposed location for the accessory structure is approximately 235' east of Barker Avenue on a 28' wide strip of property belonging to the applicant. The subject property is addressed as 2045 Learnard Avenue. Submitted by Ryan K. Hessman and Randa L. Rogg, the property owners of record.

**STAFF PRESENTATION**

Mr. Guntert presented the item.

Lane asked Staff what the setback requirement would be if the structure was located toward the rear of the property.

Mr. Guntert stated the setback requirement was five feet from an interior property line which included the rear property line.

## **APPLICANT PRESENTATION**

Ryan Hessman stated he purchased the property five years ago and the home was one hundred and thirty years old. He said the property was heavily wooded with old growth trees. Mr. Hessman said there was no garage on the property and he did not have room to store his tools or lawn equipment. The lot was 40,000 square feet and he would like to build an accessory garage for his use on the narrow leg of the property since it was not able to be used for anything else.

While planning the garage, he and his wife thought it would be nice to add an accessory dwelling unit above, possibly for a nanny to stay in. Mr. Hessman said the project met the requirements and his property was unique because of its size. He said the project would not affect the rights of the neighbors. Mr. Hessman stated he did not want to remove the old trees on the property.

Lowe asked Mr. Hessman if the driveway would be accessed from Barker Avenue.

Mr. Hessman said the property dead ended at the tree line.

Kimball asked Mr. Hessman if the trees were the reason he did not want to build on the main lot.

Mr. Hessman stated it was. He did not want to remove the old trees on the property.

Carpenter asked Mr. Hessman how he would build and maintain the structure without needing access to the neighbors' property.

Mr. Hessman said he would not need access to the neighbors' property.

Blaufuss said the law stated the hardship could not be financial alone.

## **PUBLIC COMMENT**

Douglas Bell, 2038 Barker Avenue, stated his residential sewer line tied into a service line that ran within the narrow strip of property back to Mr. Hessman's home. When a city main was built along Learnard Avenue, the sewer service was abandoned to Mr. Hessman's home when the previous owner connected to that sewer main. The sewer service line is still in the ground and his sewer tied into it. That line ran back west under Barker Avenue, then between some houses on the west side of Barker and tied into a city main on the back side of those properties. He was very concerned that concrete trucks or construction equipment could damage the sewer line.

Mr. Bell stated the sewer line was installed in the late 30's or early 40's. He bought his home in 1984 and did not discover until later that his sewer line tied into the service line on Mr. Hessman's property.

Kimball asked Mr. Bell if his sewer line was under the proposed structure.

Mr. Bell said the sewer service line ran back to Mr. Hessman's home, but it was not used by them any longer. His sewer service line tied into that line closer to Barker Avenue than where the building was to be built.

Mark Zwahl, 2044 Barker Avenue, stated he bought his home in 1996. He said the neighborhood had massive yards and the idea of another residence on the property bothered him. Mr. Zwahl stated he did not completely trust the applicants plan. He stated he did not want anyone living in his back yard.

Schaen Cargill, 2047 Barker Avenue, stated he submitted a letter to the Board in case he was not able to attend tonight's meeting. His letter outlined a number of concerns he had with the project. He was not in favor of the variance requested by the applicant.

### **PUBLIC HEARING CLOSED**

### **ACTION TAKEN**

Motioned by Mahoney, seconded by Lane, to close the public hearing.

Motion carried unanimously, 6-0

### **BOARD DISCUSSION**

Carpenter asked Staff if the Development Code allowed accessory dwelling units in the project area.

Mr. Guntert said the zoning of this property was RS7 and the Development Code allowed accessory dwelling units in that district, subject to certain standards set forth in the code.

Lane asked if the sewer from the accessory dwelling would run to Learnard Avenue or Barker Street.

Mr. Guntert said the applicant would need a variance from the City Commission if he intended to use the private service line instead of connecting to the city's sewer main.

Lane asked if the applicant owned the entire piece of the narrow portion of property or if others may have a claim to it because of their use of the property for an extended period of time.

Mr. Guntert stated the narrow leg of property was part of the applicant's legal description for their parcel ownership. He was not aware of any private party easements or claims for adverse possession of the land based upon long term use of the property.

Lane asked Mr. Guntert if the applicant could build anywhere in the strip of property.

Mr. Guntert stated the applicant cannot build closer than 25 feet to the Barker Avenue property line. Then, as long as they maintained 5 feet side property line setbacks the applicant could build anywhere within the strip of land.

Lowe asked what the structure in the back of 2038 Barker Avenue was used for.

Mr. Bell said the structures behind his home were for storage.

Lane said he agreed with Staff's observation. He said it would be impossible to build and maintain the structure without going onto the neighbors' property. There was an opportunity to move the structure eighty seven feet to the east and no variance would be needed. A location like that would make the length of sewer that much shorter of a distance as well.

### **ACTION TAKEN**

Motioned by Lane, seconded by Lowe, to deny the variance request located at 2045 Learnard Avenue, based on the findings of fact in the staff report.

Motion carried unanimously, 6-0

Mr. Hessman asked the Board if there were other options for the structure.

Blaufuss said there were other options for the structure rather than building on the narrow strip of property.

Carpenter said the biggest issue to overcome was the obstacle of undue hardship. He commended the applicant for trying to save the trees on the property.

#### **ITEM NO. 4            1700 TENNESSEE STREET [DRG]**

**B-3-4-10:** A request for a variance as provided in Section 20-1309 of the Land Development Code of the City of Lawrence, Kansas, 2009 edition. The request is for a variance to reduce the 25 feet off-street parking lot setback from a street right-of-way required in Section 20-908(a)(1) of the City Code to a minimum of 10 feet. The variance is requested for redevelopment of this property which was recently damaged by fire. The subject property is addressed as 1700 Tennessee Street. Submitted by Joy Rhea with Paul Werner Architects for Carl L. and Mary A. Maurer, the property owners of record.

#### **STAFF PRESENTATION**

Mr. Guntert presented the item.

Lane asked Staff what the justification was in the Development Code requiring a twenty five feet setback for parking and only ten feet for a structure.

Mr. Guntert said the setback was ten feet in this case because it was a rear yard to rear yard orientation of the two buildings.

Lane asked Mr. Guntert if there was a reason for not establishing a similar setback for parking areas when dealing with corner lot properties.

Mr. Guntert said there may be a need to initiate a text amendment to address this code provision in the future.

Blaufuss asked if the proposed structure would have a similar setback to the house behind it.

Lane stated it appeared the proposed structure and existing house to the east would have similar setbacks from W. 17<sup>th</sup> Street.

#### **APPLICANT PRESENTATION**

Ms. Joy Rhea, Paul Werner Architects, stated the parking issue was not related to the number of parking spots. They could pave a driveway and double stack the cars without needing a variance. However, they would prefer to design the site in a functioning manner without having congestion on nearby streets.

Mr. Guntert said the Development Code stated driveway widths may not be wider than 26 feet.

Ms. Rhea said the Residential Driveway Standards found in Chapter 16 of the City Code allowed a 30 feet driveway width at the back of the street curb and the driveway could widen to 40 feet at the property line.

Mr. Guntert said the zoning regulations clearly state driveway widths cannot exceed 26 feet in residential districts.

Ms. Rhea believed the 26 feet regulation applied to the width of the curb cut.

Blaufuss asked Ms. Rhea if she proposed to move the parking closer to the structure.

Ms. Rhea stated the Development Code was written for new development. She said the lot was unique.

Carpenter stated he believed the hardship was purely financial.

Ms. Rhea stated the structure could have eight bedrooms without a variance.

Mahoney said he did not see a hardship. He said the applicant was trying to provide a convenience for the tenants.

Ms. Rhea stated the hardship was to the surrounding neighbors. She said similar variances were granted for 926 Illinois Street and 1001 Mississippi Street.

Kimball asked if the oversight in the Development Code could be considered a hardship.

Carpenter said he liked the idea of reducing the number of cars on the street.

Mr. Guntert said the Historic Resources Commission referred the project to the Architectural Review Committee for review.

Ms. Rhea said the project would be delayed until January, 2011 if the variance was not approved.

Blaufuss asked Staff to explain the sequence between Historic Resources Commission meetings and Board of Zoning Appeals.

John Miller said the Planning Director had prepared a document outlining the sequence of meetings between the Historic Resources Commission and Board of Zoning Appeals. Mr. Miller read what the City Code said about that issue in Chapter 22, Article 2 to the Board.

Lowe said he would prefer to have a more concrete plan for the project to consider before he had to decide on the merits of the request. He thought the Historic Resources Commission should make a decision prior to the Board of Zoning Appeals because their action could influence what sort of variance might be needed.

#### **ACTION TAKEN**

Motioned by Lowe, seconded by Carpenter, to continue the public comment portion of the item, and to defer the project at 1700 Tennessee Street until the May 6<sup>th</sup>, 2010 Board of Zoning Appeals meeting.

Motion carried, 5-0-1 Lane abstained

**ITEM NO. 5            MISCELLANEOUS**

Blaufuss stated the Board of Zoning Appeals would no longer affirm public speakers at the Board of Zoning Appeals meetings.

**ACTION TAKEN**

Motioned by Kimball, seconded by Mahoney to adjourn the Board of Zoning Appeals meeting.

Motion carried unanimously, 6-0

**ADJOURN – 740p.m.**

Official minutes are on file in the Planning Department office.