

BOARD OF ZONING APPEALS

Meeting Minutes

April 6, 2006 – 6:30 p.m.

Members present: Blaufuss, Carpenter, Emerson, Hannon, Goans, Lane, von Tersch
Staff present: Patterson, M. Miller

ITEM NO. 1: COMMUNICATIONS

- Draft version of the February 2006 meeting minutes for review and comment on during the Miscellaneous section of tonight's agenda
- Letter from the property owner of 1925 Alabama providing additional information
- Email from the applicant's representative for 1136 Mississippi indicating the applicant's wish to withdraw the request
- Staff said that Item 4 would be deferred to the May 2006 agenda
- Hannon said he had discussed the project at 915 W. 4th Street with the property owner
- No abstentions were indicated

ITEM NO. 2: MINUTES

Several typographical errors were noted in the March minutes.

Motioned by Hannon, seconded by Blaufuss to approve the March 2006 meeting minutes as revised.

Motion carried unanimously, 7-0.

Swearing in of witnesses.

ITEM NO. 3: 1925 ALABAMA STREET [MKM]

B-03-07-06: 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 20-1209(b) of said City Code, which allows only one required parking space to be located on a driveway or turnaround within the required front yard. The applicant's request is to allow both required parking spaces to be located on the driveway in the front yard setback of the property. They are requesting the variance to allow the continued use of the previously converted garage as additional living space. The request applies to the following legally described property: Lot B, Replat of Lots 3, 4 & 5 of Olmstead Subdivision in the City of Lawrence, in Douglas County, Kansas. Said described property is generally known as 1925 Alabama Street. Submitted by Seth and Marilyn Bailey, property owners of record.

STAFF PRESENTATION

Ms. Miller introduced the item, a request to allow both required off-street parking spaces for the subject property to be located within the front yard setback. This would allow the continued use of the existing converted garage as living space.

One neighbor had stated opposition to the proposal because the garage conversion was constructed without proper permitting. Staff had found that the conversion was constructed by a previous property owner and the current owners said they were unaware of this violation when they bought the property.

Ms. Miller said Staff found the request met four, but not all five of the required criteria. Specifically, Staff could not find that the request met the hardship criteria, because there was room on the south side of the lot to construct a driveway that would provide parking per Code while allowing the retention of the converted living space.

Staff explained that the new development code had been adopted and was expected to be effective as of July 1, 2006. The new code would allow two parking spaces in the front yard setback as proposed by the applicant. David Corliss had stated the legal opinion that this element may be taken into consideration.

It was noted that a new driveway would require an additional curb cut and whether this would be a good idea. Staff suggested that the existing curb cut would need to be removed if the new driveway option were pursued. It was verified that a new driveway proposal would have to be reviewed by the public works department.

Inspector Tony De La Torre said the building violation was discovered following a complaint from an area resident. Investigations revealed that the garage conversion into living space occurred sometime between February 2004 and mid- early 2005. The conversion was complete before the current property owners took possession of the property in September 2005.

Now that the City was aware of the conversion, the property is subject to all applicable inspections and fees, and fees will be doubled because of the violation. The City considers the current property owner to be responsible for the fees, and suggests that pursuing recompense from the previous property is a legal issue for the applicant to address.

It was discussed that the conversion did not change the footprint of the garage, so no site plan or Planning Commission consideration would be required.

APPLICANT PRESENTATION

Seth Bailey, property owner, verified that the conversion was made before he and his wife took ownership. He said that they had settled the issue of fees and fines with the previous property owner.

Mr. Bailey explained that requiring a new driveway would be a significant financial hardship, an "expense we simply can't absorb."

It was noted that the previous property owner (the one who made the garage conversion) was Mr. Bailey's father-in-law. Mr. Bailey testified that he and his wife were naturally aware that the conversion had taken place, but that they did not know the construction took place without the proper permits. He responded to questioning that

his father-in-law had made the conversion in anticipation of selling the property, but that he (Mr. Bailey) and his wife were not the intended buyers “until the last minute.”

PUBLIC COMMENT

Betty Alderson, area resident, said she was the one who had contacted the Neighborhood Resources Department, but that her concerns had nothing to do with the variance being considered tonight. She had asked the City to look into how the garage conversion was being accomplished and whether it had the needed permits.

Ms. Alderson said she was still concerned about the adequacy and safety of the converted living space, but she had no objection to allowing two parking spaces in the front yard setback. She said she hoped the new property owners would not be penalized for the actions of the previous owner, adding that these were exactly the kind of residents the neighborhood wanted to encourage.

BOARD DISCUSSION

The Board discussed how various actions on their part would impact the applicant. If the Board denied the request, the applicant would be required to bring the property into compliance (construct a new driveway) within 120 days. If this was not done, the applicants would be subject to additional fines.

If the request were approved, the applicants would be subject only to the fines associated with the garage conversion. However, the Board was concerned about approving the proposal when it did not meet the five criteria. Specifically, the applicant's hardship claim was based solely on financial burden, which was not allowed for consideration by the Board.

It was suggested that the Board defer the item until the new development code took effect, making the request a moot point. Several points were established:

- Citations issued regarding the garage conversion would remain in effect when the new code took effect. Fines for this citation would be collectable regardless of the Board's action on this parking variance request.
- Deferral instead of denial would eliminate additional work for the City (the legal process of citing a situation that would no longer be non-compliant in a few months) and additional fees for the applicant.
- Withdrawal of the request would also necessitate the citation process for parking.
- The applicant was amenable to deferral of the request.

It was pointed out that it could be presumed the Board would be seeing a number of requests in the next few months that would become unnecessary when the new code took effect. It was discussed that the suggested deferral tactic should be considered for future cases 'in limbo'.

ACTION TAKEN

Motioned by Hannon to approve the variance request to allow provision of two off-street parking spaces in the front yard setback for the property at 1925 Alabama Street.

Motion died for lack of a second.

Motioned by von Tersch, seconded by Lane to defer the item to the July 2006 meeting

Motion carried unanimously, 7-0.

ITEM NO. 4: 1200 EAST 11th STREET [MKM]

B-03-08-06: 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. The request is from the paving standards set forth in Sections 20-1217 and 20-1443(b) of the City Code. The applicant proposes to use gravel within the storage area shown on the site plan rather than paving it to an acceptable paving standard as required by City Code. The request is for the property located at 1200 East 11th Street, which is legally described as Lot 4, Polk Subdivision in the City of Lawrence. Submitted by Cathy Clark with Paul Werner Architects for MG Holdings, L.C., the property owner of record.

This item was deferred prior to the meeting.

ITEM NO. 5: 915 WEST 4TH STREET [PGP]

B-03-10-06: 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. The first request is to vary the 25' front yard building setback required by Section 20-608 of said City Code, to a minimum of 24.52', which is the existing setback of the garage portion of the residential dwelling. The second variance request is from the 5' minimum side yard building setback required in Section 20-608 of the City Code. The applicant proposes to replace the existing garage with a new addition that matches the existing 1.65' side yard setback along the east side of the property. The last variance is from the provisions of Section 20-1209(b) of said City Code, which allows only one required parking space to be located on a driveway or turnaround within the required front yard. The applicant's request is to allow both required parking spaces to be located on the driveway in the front yard setback of the property. These requests are made for the property located at 915 West 4th Street. Said property is legally described as Lot 38, Block 37, West Lawrence Addition in the City of Lawrence. Submitted by Dan Riedemann for Cary and Bill Allen, the property owners of record.

STAFF PRESENTATION

Mr. Patterson introduced the item, a request for three variances that would allow replacement of the existing garage with a new addition that would match the current setbacks:

1. Reduction of the front yard setback to 24.52' to match existing conditions;
2. Reduction of the side yard setback to 1.65' to match existing conditions;
3. Provision of both required off-street parking spaces in front yard setback, in the existing driveway.

Mr. Patterson described how, in Staff's opinion, the request met all five of the required criteria and was recommended for approval. Staff's also recommended the added condition that the existing driveway be brought up to City paving standards.

Staff responded to questioning that the case for uniqueness was based on the larger-than-normal visual setback created by a significant amount of platted right-of-way in front of the property.

It was noted that the new development code, anticipated to take effect July 1, 2006, would make the parking variance moot.

APPLICANT PRESENTATION

Dan Riedemann spoke on behalf of the property owners, addressing Staff's suggestion for code-standard paving of the existing driveway. It was clarified that there was not an active variance request to retain the gravel driveway surface and Staff's discussion of paving was only a suggested condition.

Mr. Riedemann showed that the existing driveway was wide enough to accommodate two vehicles side-by-side, while retaining the existing tree adjacent to the drive. It was verified that Staff did not think it would be necessary to change the curb cut.

Mr. Riedemann asked the Board to consider a variation to the current request to further reduce the front yard setback to 22.5'. This would accommodate cosmetic changes to the proposed addition and not require it to be flush with the face of the primary structure.

Mr. Reidemann said the applicant proposed to use Hardi-Plank or modern lap siding on the addition, as the existing steel siding would be difficult to match with modern steel materials.

Mr. Reidemann stated that denial of the variances would render a significant portion of the existing property unusable, since the existing garage was not up to code standards and other expansion layouts were impractical. Approval would allow demolition of the non-compliant garage and new construction – within code – of an expansion that would extend the use of the property.

PUBLIC COMMENT

No member of the public spoke on this item.

BOARD DISCUSSION

It was established that Staff's suggestion of adding a paving condition was based on the magnitude of the proposed changes.

It was suggested that changing the front yard setback from the existing 24.52' to the newly-requested 22.5' would be appropriate, given the large visual separation created by right-of-way (existing platted 100' right-of-way where only a 60' right-of-way is normally required for a local street).

The Board agreed with Staff that the drive should be brought up to code paving standards. Mr. Riedemann asked if the gravel issue might be deferred, similar to the previous item. It was verified that the new code would not differ from the current code regarding gravel drives, and deferral would simply delay the inevitable.

ACTION TAKEN

Motioned by Hannon, seconded by Lane to approve the following variances for the property at 915 W. 4th Street, based on findings as presented in the body of the Staff Report:

1. Reduction of the front yard setback from 25' to 22.5';
2. Reduction of the side yard setback from 5' to 1.65' on the east side and 4.4' on the west side.
3. Provision of two off-street parking spaces on the driveway within the front yard setback.

Approval was subject to the following condition:

1. The existing gravel driveway must be paved to meet City paving standards.

Motion carried unanimously, 7-0.

ITEM NO. 6: 1637 ILLINOIS STREET [PGP]

B-03-11-06: 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. The applicant is seeking a variance from Section 20-1312 of the City Code to allow an accessory building to exceed the 30 percent maximum coverage of the area of the required rear yard. Based upon this code provision, the maximum size for an accessory building on this property is 450 square feet. The applicant is asking for a variance to ratify the size of an existing 576 square feet accessory building. The applicant has also requested a rear yard building setback variance from 30 feet required by Section 20-608 of said City Code to a minimum of 18'-6". The requests are for the following legally described property: Lot C, Block 4, University Place Addition in the City of Lawrence. Said described property is located at 1637 Illinois Street. Submitted by Carolyn Swift, Administrator for the Estate of Constance Scheerer, property owner of record.

STAFF PRESENTATION

Mr. Patterson introduced the item, a request to allow retention of the existing accessory structure, which is in excess of the maximum allowable square foot coverage for an accessory structure.

A second variance for a reduced rear yard setback is outlined in the original application. Staff had determined that this variance was not needed because the property carried no rear yard setback requirement for this accessory structure as the property backed up to an alley.

Mr. Patterson noted the existence of a second accessory structure, a small metal shed, also present in the rear yard. Staff recommended approval of the variances that would allow retention of the larger accessory building, conditioned upon removal of the smaller secondary building which is located over the property line and would also be in excess of the total allowable maximum square feet for accessory structures on this property. Staff also recommended applying a condition that the applicant sign an affidavit stating that the accessory structure would not be used for a residential use (rented, leased or sold). It was established that the affidavit should be worded such that it retain the rights of similar property, per the new code provisions. The new code would, in specific circumstances, allow some kinds of residential uses to occur in accessory structures such as this.

It was verified that all proper permits were obtained for the larger accessory structure, an A-frame accessory building measuring 576 square feet in area when it was constructed in 1981. No complaints had been received from area residents and the property owners testified that the accessory building had not been used for residential purposes in the recent past.

APPLICANT PRESENTATION

Matthew Hoy, Stephens & Brand, spoke on behalf of the applicant. Mr. Hoy said the existing A-frame accessory building had stood on the property in its current location without complaint for 25 years. The applicant was requesting variances at this time as a

“City seal” on existing conditions and uses for insurance and title purposes arising from administration of the estate.

PUBLIC COMMENT

No member of the public spoke on this item.

BOARD DISCUSSION

Goans registered his concern about allowing residential uses, even those sometimes referred to as “granny flats” in accessory structures. He suggested this issue would need to be discussed further as the new code’s effective date approached.

ACTION TAKEN

Motioned by Hannon, seconded by Lane to approve the variances for 1637 Illinois Street as presented, based on the findings of fact presented in the body of the Staff Report and subject to the following conditions:

1. The property owners execute an affidavit and record the same with the Register of Deeds stating that the A-frame structure on the property be solely limited to incidental and accessory use to the main structure, and not as a separate dwelling unit; and
2. The existing 90 square foot accessory building on the property (small shed located over the rear yard property line) shall be removed.

Motion carried unanimously, 7-0.

ITEM NO. 7: 1136 MISSISSIPPI STREET [PGP]

B-03-09-06: 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. The request is to reduce the amount of off-street parking spaces required for a duplex structure containing a total of 6 bedrooms. The applicant is asking for a variance to provide no off-street parking spaces on the property. The request is for property at 1136 Mississippi Street. Said property is legally described as the North half of Lot 8, Block 9, Oread Addition in the City of Lawrence. Submitted by Cathy Clark with Paul Werner Architects for James A. Slough, the property owner of record.

This item was withdrawn by the applicant prior to the meeting.

ITEM NO. 8: MISCELLANEOUS

A. Draft February meeting minutes

It was agreed that the draft meetings minutes were quite rough and would need additional work. Specific corrections were requested:

- The Staff Presentation outlined for Item 4, 1106 Ohio, was from another meeting, possibly from the January agenda.
- The draft had the wrong date in the header.

Staff was asked to email the revised draft to the Board before the next meeting for additional review time.

B. Public Comments

Goans said he had been contacted by a previous applicant, Brett Slough. Although Mr. Slough's request was denied, he was very complimentary about the Board's conduct and attention to due process throughout the entire meeting. He had also asked Goans to pass on additional compliments to Staff, who had been thorough and helpful throughout the process.

ADJOURN – 8:00 p.m.

Official minutes are on file in the Planning Department office.