

**LAWRENCE BOARD OF ZONING APPEALS  
AGENDA MEETING MINUTES**

August 3, 2006 – 6:30 P.M. (Approved by BZA on September 7, 2006)

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Board members present: von Tersch, Lane, Goans, Hannon and Carpenter  
Staff present: Patterson and Pool

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**ITEM NO. 1: COMMUNICATIONS**

- Request for deferral of Item 7 from the applicant's representative. *The Board voted unanimously to honor this request.*
- Letter from property owner's representative regarding the Board's jurisdiction over the request for Item 8.
- Regarding Item 9A, a request for an extension of variances granted for 720 Grant Street.
- No abstentions were indicated.
- No ex parte discussions were disclosed.

**ITEM NO. 2: MINUTES**

Three errors were noted and revised.

Motioned by Lane seconded by Hannon to approve the minutes of the July 6, 2006 meeting as revised.

Motion carried unanimously, 4-0.

*Swearing in of witnesses*

**ITEM NO. 3: 1021 PRESCOTT DRIVE [PGP]**

**B-06-22-06:** 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 minimum rear yard setback requirement of 30 feet per Section 20-608 of the City Code, to a minimum of 26.5' feet along the western side of the property. The request will permit construction of a sunroom addition on the back side of the residence located at 1021 Prescott Drive. The property is legally described as Lot 42, Final Plat of Pinnacle West No. 3 Addition in the City of Lawrence. Submitted by Steve and Amy Rockers, the property owners of record.

**STAFF PRESENTATION**

Mr. Patterson introduced the item, a request for a reduction in the rear yard setback to allow construction of a sunroom (11' x 16') and the extension of an existing deck (11' X 12'). Staff noted the existing 6' privacy fence screening the proposed sunroom/deck area.

Staff found that the proposal met all five of the required criteria and recommended approval of the request.

**APPLICANT PRESENTATION**

Steve Rockers, applicant, said he had contacted adjacent property owners on all sides and all were supportive of the proposal.

Mr. Rockers responded to questioning that the existing stairway would be removed and rebuilt in the same general vicinity.

**PUBLIC COMMENT**

No member of the public spoke on this item.

**BOARD DISCUSSION**

Goans asked if the Board wished to discuss the 'uniqueness factor' of the proposal.

It was verified with the applicant that the changes were intended to be permanent.

**ACTION TAKEN**

Motioned by Hannon, seconded by Lane to approve the variance for Prescott Drive, based on the findings of fact presented in the body of the Staff Report.

Motion carried unanimously, 4-0.

**ITEM NO. 4:           817 ALABAMA STREET [PGP]**

**B-06-23-06:** 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 applicant is seeking a variance from Section 20-1312 of the City Code to allow an accessory building to exceed 30 percent 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 allow for construction of a 616 square feet accessory garage building. The request is for the following legally described property: Lot 5, Block 14, Lane Place Addition in the City of Lawrence. Said described property is located at 817 Alabama Street. Submitted by Angela G. Nascimento, the property owner of record.

*Item 4 was withdrawn prior to the meeting, as a variance was no longer required per the new Land Development Code.*

**ITEM NO. 5:                   FOUR SEASONS RETIREMENT COMMUNITY; SOUTH OF CLINTON  
PARKWAY & WEST OF CROSSGATE DRIVE [LAP]**

**B-07-24-06:** 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 variance is from the provisions in Section 20-608 of said City Code, which allows a 35' maximum building height for a structure in the RO-1B (Residence- Office) District. The applicant is seeking a maximum building height of 45' for the proposed residential development. The second variance is from the provisions of Sections 20-610 and 20-1212 of said City Code which define the minimum number of parking spaces that are required for an assisted living apartment complex. The request is to reduce the parking from 78 required spaces to a minimum of 46 parking spaces. The subject property is located on the south side of Clinton Parkway between Inverness Drive and Crossgate Drive. It is legally described as: Lots 2 & 3, Block 1, Inverness Park Plaza Addition No. 1 in the City of Lawrence, Douglas County, Kansas. Submitted by Tim Herndon with Landplan Engineering for Inverness Park Limited Partnership, property owner of record.

**STAFF PRESENTATION**

Ms. Pool introduced the item, a request for two variances -- one to increase the maximum allowable building height for the independent living buildings from 35 to 45 feet and one to reduce the minimum number of required parking spaces for the assisted living units from 78 to 46 spaces. She noted that, as a Use Permitted upon Review (UPR), the proposal would appear before the Planning Commission later in August 2006.

Ms. Pool spoke about the expectation for lower parking needs for this kind of multi-family use (compared to traditional apartment complexes), and the Staff opinion that the proposed building height was not out of context with existing residential structures in the area.

Staff recommended approval of both variances.

Goans asked how this proposal differed from a similar variance request for the same property heard by the Board in 2005. The applicant interjected that he could answer this question.

**APPLICANT PRESENTATION**

Tim Herndon, Landplan Engineering, spoke on behalf of the applicant. Mr. Herndon explained the proposal might be considered different from the 2005 request because of circumstances surrounding the site today.

Mr. Herndon explained revisions made between the previous and current proposal. He responded to questioning that the building height would be approximately the same as the height approved in 2005 (the previous request was for 40-foot tall independent living buildings, while this request was for 45-foot tall buildings). He also said the buildings would be of similar height to existing buildings to the south, although some vegetative screening might be necessary.

It was established that the underground parking included in the previous proposal had been eliminated; all parking would be at grade and very little excavation would be needed.

**PUBLIC COMMENT**

No member of the public spoke on this item.

**BOARD DISCUSSION**

The Board generally agreed that, with screening, the request seemed reasonable.

It was discussed that this application was being considered under the old Code. It was noted that nearly identical requests had been approved for the property under the old Code, and it would constitute a hardship to the applicant to deny this request.

**ACTION TAKEN**

Motioned by Hannon, seconded by Lane to approve the variances for Four Seasons Retirement Community, based on the findings of fact presented in the body of the Staff Report.

Motion carried unanimously, 4-0.

## **ITEM NO. 6: SPANGLES RESTAURANT; 3420 W. 6TH STREET [PGP]**

**B-07-25-06:** 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 screening requirements pertaining to rooftop mechanical equipment on the building as they relate to the provisions of Section 20-14A04.8(b & c) of the City Code. The request is for Spangles Restaurant located at 3420 W. 6th Street. The requested property is legally described as Lot 2, Final Plat of Prososki Addition in the City of Lawrence. Submitted by Craig Steven for Spangles Restaurant. JDL, LC is the property owner of record.

### **STAFF PRESENTATION**

Mr. Patterson introduced the item, a request for a variance from the screening requirement for rooftop mechanical equipment. He explained the history of the property, and it was noted that the property operated as a similar use (Runza Restaurant) previously.

Lane asked if the rooftop units were screened with the previous use. Mr. Patterson said this question might better be directed to Neighborhood Resources. He responded to further questioning that Planning Staff understood that the current owners were made aware of the screening requirement when they site planned the property.

Brian Jimenez, Neighborhood Resources, explained that he was not personally aware whether or not the previous property owners had provided the required screening. He said the City agreed to allow the current property owners to paint the rooftop equipment to determine if this would adequately address the intent of the screening requirement. It had been determined that these measures were not sufficient and Neighborhood Resources directed the applicant to screen the rooftop mechanical equipment.

### **APPLICANT PRESENTATION**

Dave Duman spoke on behalf of the property owners, saying they assumed that the property conformed to all requirements when they took possession. An inspector brought the problem to their attention two weeks before the business opened, and the applicants felt this issue should have been raised much sooner (when the revised site plan was approved and/or when the building permit was issued).

Pictures were shown of the subject property (with the painted rooftop units) and other commercial uses in the City with similar unscreened rooftop equipment.

Mr. Duman said the note on the previous (Runza) site plan was not brought to the applicant's attention and a similar note was not placed on the revised (Spangles) site plan.

### **PUBLIC COMMENT**

No member of the public spoke on this item.

### **BOARD DISCUSSION**

Mr. Patterson noted that two adjacent commercial property owners had contacted Planning Staff, stating they had no objection to leaving the units "as is."

Mr. Jimenez said it was fair to say there were other buildings in the area that did not meet the rooftop screening requirement. He said it was reasonable to think the Inspections Department would begin looking more closely at the requirement for screening of mechanical equipment when reviewing site plans.

Goans asked if the site plan approved in January 2006 had a note pertaining to rooftop screening. Mr. Patterson replied that there was no such note on the revised January site plan.

The Board generally agreed that they preferred to support Code enforcement, but they had difficulty denying this request because of the site plan approved without the relevant note. They discussed the following additional findings in support of approval:

- The case is unique because it is an existing building.
- It would constitute unnecessary hardship to deny the variance when the site plan was approved without the screening or a note requiring screening.

The Board made it clear that this case should not be misconstrued as a statement that painting the rooftop equipment was an acceptable alternative to regulation screening materials.

#### **ACTION TAKEN**

Motioned by von Tersch, seconded by Hannon to approve the variance for 3420 W. 6<sup>th</sup> Street, based on the findings of fact presented in the Staff Report and the additional findings as discussed.

Motion carried unanimously, 4-0.

**ITEM NO. 7: 1140 MISSISSIPPI STREET [PGP]**

B-04-12-06: 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 reduce the minimum lot area required for RD zoned property from 6,000 square feet per Section 20-608 of the City Code, to a minimum of 5,000 square feet. The second request is to reduce the minimum side yard setback and rear yard setback from 5 feet and 20 feet, respectively, per Section 20-608 of the City Code, to 3.7 feet and 12.3 feet. The final request is to reduce the amount of off-street parking spaces required for a boarding house residential use of an existing structure containing a total of 7 bedrooms. Sections 20-610.5 and 20-1212 of the City Code define the number of required off-street parking spaces, based upon the ratio of one and one-half parking spaces per two lawful occupants in the structure. Based upon this requirement, the applicant is required to provide a minimum of 6 off-street parking spaces. They are seeking a variance to provide no off-street parking spaces on the property. The request is for property at 1140 Mississippi Street. Said property is legally described as the North half of the West 100' of Lot 7, Block 9, Oread Addition in the City of Lawrence. Submitted by Paul Werner Architects for James A. Slough, the property owner of record. [Deferred from the May 4th meeting at the request of the applicant and by the BZA at the June 1st meeting.]

*Item 7 was deferred to the September 2006 meeting per the applicant's request.*

*Carpenter arrived at this point.*

**ITEM NO. 8: SALVATION ARMY COMMUNITY COMPLEX; SOUTHWEST CORNER OF HASKELL AVENUE & LYNN STREET [PGP]**

**B-07-26-06:** Consider a request from Michael S. Almon on behalf of the Brook Creek Neighborhood Association, for an interpretation of various sections of the old Zoning Ordinance and the new Land Development Code for the City of Lawrence as enumerated in a letter from Mr. Almon dated July 3, 2006. Said request for interpretation of these code provisions relates specifically to the proposed Salvation Army Community Complex being considered by the City for the property bounded by Haskell Avenue, Bullene Avenue, Lynn Street and Homewood Street.

**BOARD DISCUSSION**

Before beginning the hearing for Item 8, Goans reminded the Board that their responsibility was three-fold:

1. To determine if the Board had jurisdiction to make a determination in the circumstances.
2. To determine if the request had been appropriately filed.
3. (If the Board's answers to 1 & 2 were "yes") If the Board wished to support or overturn the interpretation of Staff.

He suggested beginning with a discussion of the Board's jurisdictional authority over this matter. He asked Staff to provide background on the issue.

**STAFF PRESENTATION**

Mr. Patterson provided a brief history and current hearing schedule for the project:

- Site plan deferred by the City Commission on July 11, 2006 for additional discussion.
- Rezoning deferred by the Planning Commission on July 26, 2006.
- Revised rezoning request scheduled for public hearing with the Planning Commission at their August 2006 meeting.
- Combined hearing for the site plan and rezoning at the City Commission sometime in September, 2006.

Toni Wheeler, City Legal Services, was present to give a legal opinion regarding the Board's jurisdiction in this matter. Ms. Wheeler said the Legal Department's opinion was that the decision over jurisdiction was the Board's responsibility, not City Staff's. However, she said, the Legal Department had made similar interpretations in the past, determining that the Board of Zoning Appeals did not have jurisdiction over a Staff interpretation that is then reviewed by another body (Example: In this case, the site plan would be going to the City Commission).

Ms. Wheeler said the current applicant was not without legal recourse. He would be able to appeal the City Commission's action to the District Court if he was not satisfied with the governing body's decision on the site plan in September.

Ms. Wheeler asked that the Board consider the implications of accepting the responsibility of jurisdiction tonight. She explained that Planning Staff made interpretations with every application. It may be unwise to set a precedent of appealing these interpretations before the item even came before the reviewing body (Planning Commission, City Commission, etc.).

Ms. Wheeler reminded everyone that Staff's interpretation was not final in this case. The City Commission had the "final say." She noted that this was not always the case, and the Board clearly had jurisdiction to consider an appeal in administrative reviews (where the Staff interpretation was "final").

#### **BOARD DISCUSSION**

Goans said this was not the first time this type of request had come before the Board, and they had been consistent in their determination that the Board did not have jurisdiction in these kinds of requests. The rest of the Board stated agreement with the Legal Department's opinion that they did not have jurisdiction in this case.

It was stated that it would be inappropriate to take action tonight on this item when the Planning Commission and City Commission hearings were yet to come.

#### **ACTION TAKEN**

Motioned by Hannon, seconded by Lane to support a decision that the Board did not have jurisdiction to consider Staff's Code interpretation in this matter.

Motion carried unanimously, 5-0.

**ITEM NO. 9: MISCELLANEOUS**

a) Consider a request for an additional 90-day extension of variances for the North Lawrence Pump Station No. 3 located at 720 Grant Street. The BZA granted the variances during the January 5, 2006 meeting and approved a 90-day extension of the variances at the May 4th meeting. [B-12-42-05]

**ACTION TAKEN**

Motioned by Hannon, seconded by Lane to approve a 90-day extension to the variances granted for 720 Grant Street.

Motion carried unanimously, 5-0.

a) Consider any other business to come before the Board.

There was no other business to come before the Board.

**ADJOURN – 7:30 p.m.**

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