

## **BOARD OF ZONING APPEALS**

Meeting Minutes

January 4, 2007 – 6:30 p.m.

(Minutes approved March 1, 2007)

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Members present: Blaufuss, Carpenter, Emerson, Bowman, Goans, Lane, von Tersch

Staff present: Patterson, J. Miller, Brown

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### **ITEM NO. 1:            COMMUNICATIONS**

- Draft version of the December 7, 2006 meeting minutes for review and comment on during the Miscellaneous section of tonight's agenda
- No ex parte or abstentions were indicated

### **ITEM NO. 2:            MINUTES**

Three minor changes were noted in the December minutes by Goans and Lane. Goans also requested page numbers be added to the minutes.

Motioned by Lane, seconded by Goans, to approve the December 7, 2006 meeting minutes as revised.

Motion carried unanimously, 7-0.

*Swearing in of witnesses.*

### **ITEM NO. 3:            5005 INGE COURT [PGP]**

**B-12-33-06:** A request for a variance as provided in Section 20-1309 of the Land Development Code, effective July 1, 2006, which is a part of the Code of the City of Lawrence, Kansas, 2006 edition. The request is to reduce the minimum rear yard setback requirement of 30 feet per Section 20-601 of the City Code, to a distance of 18' along the south side of the property. The request is for the construction of a covered porch addition to the existing residence on the property legally described as Lot 20, Block 2, Westwood Hills Addition in the City of Lawrence, Douglas County, Kansas. The property address is 5005 Inge Court. Submitted by David Clemente, owner of David Clemente Construction Inc., the property owner of record.

### **STAFF PRESENTATION**

Mr. Paul Patterson introduced the item, a request for a variance for a rear yard setback to be allowed to construct a covered patio over the location of an existing concrete patio located at 5505 Inge Court.

Mr. Patterson said that staff report had RS7 as the current zoning when it should have been RS10, but that it would not change the public notice since the 30-foot rear yard setback would be the same.

Based upon the findings as presented in the staff report, staff was not able to make positive findings for each of the five required conditions per Section 20-1309(g)(1) and is therefore required to recommend denial of the requested variance.

However, Planning Staff is of the opinion that the required 30' rear-yard setback should be measured from the centerline of the pedestrian alleyway/common green space (maximum width of pedestrian alleyway is considered to be 20' per Section 20-1701 General Terms - Alley). This would effectively reduce the rear yard setback by 10' for this property (from the required 30' to be a minimum of 20' from the rear property line). Therefore a building permit would need to be obtained for a covered patio that is set back a minimum of 20' from the rear property line.

Lane asked when considering a 30 foot setback, as staff had suggested, a reduction of 10 feet from the rear property line would be allowed, due to the recorded pedestrian easement/alleyway and not require a variance?

Mr. Patterson said that was correct.

Goans asked again for clarification if a variance was not required for this project as proposed.

Lane stated that if they were to build with at least a 20 foot setback from the rear property line then it would not require a variance.

Bowman said the applicant would get an extra 10 feet, but because a portion of the proposed covered patio extends across 20 feet from the rear property line, then they still need to obtain a variance for this portion of the proposed covered patio.

#### **APPLICANT PRESENTATION**

Mr. David Clemente, owner of David Clemente Construction Inc., stated that he built the homes on each side of 5505 Inge Court and the last thing he would do is put something on the house that would make the neighbors mad. He said he had a hard time interpreting the new codes and was frustrated he was put in the situation just for 5 square feet. He does not feel that the neighbors would be upset by the sun porch being in the greenspace.

Goans was concerned about setting precedence.

Mr. Clemente said that if he really thought this would hurt anyone in the area he would not have applied for the variance and that there is quite a bit of greenspace behind the house.

Goans inquired about how large the porch would be.

Mr. Clemente stated that it would be 14 feet by 20 feet.

Lane said that it would be nice if Mr. Clemente had a good explanation for hardship that is not financial.

Mr. Clemente said that when he filled out the application he struggled with that question. He stated that he is not trying to cram something right up against the neighbors and that there is plenty of greenspace in the rear area. He said he was aware it does not meet the codes but any activity on the enclosed porch would be the same if it were not enclosed.

Mr. Patterson stated that if the patio deck was less than 30 inches in height and not covered then it is not considered to be a structure requiring a building permit and could then be located within the setback.

Blaufuss said she noticed there was an exception for a patio that was covered and less than 6 feet in height it would be allowed. She thought it was strange that a patio would be less than 6 feet in height.

Mr. Patterson said that it would be an accessory structure like a gazebo or shed that could not be located in close proximity to the house.

Blaufuss asked if a covered porch would be away from the house?

Mr. Patterson said that it would then not be a porch, it would be an accessory structure.

Blaufuss said she could find uniqueness in the project but not hardship.

#### **PUBLIC COMMENT**

No public comment.

#### **BOARD DISCUSSION**

Lane stated that he would like for someone to come up with a reason for hardship.

Bowman said that the 5 feet might set a precedent and he felt like staff went out of their way to help the applicant. The Board is not telling the applicant that he cannot build the structure, just that it needs to be smaller. He did not feel it was a hardship, nor did it meet all the variance requirements.

Lane stated he did not see a hardship either.

Bowman said that the applicant could still build the porch and it would still be a good size, just not as large as requested.

#### **ACTION TAKEN**

Motioned by Goans, seconded by Bowman, to deny the variance request for 5505 Inge Court as presented, based on the findings of fact presented in the body of the Staff Report.

Motion carried unanimously, 7-0.

#### **ITEM NO. 4: MISCELLANEOUS**

A. Discussion of location of February BZA meeting.

Mr. Patterson advised that the February 1, 2007 BZA meeting will need to be moved to a different location due to the Commission Room already being schedule for use by the PlaceMaker charrette. He suggested the February BZA meeting be held at the new Fire Station #5, located at 19<sup>th</sup> & Iowa.

**ACTION TAKEN**

Motioned by von Tersch, seconded by Blaufuss, to change the location of the February 1, 2007 BZA meeting to Fire Station #5, located at 19<sup>th</sup> & Iowa.

Motion carried unanimously, 7-0.

B. Mr. Patterson encouraged the Board to attend an open house at the Lawrence Arts Center on Monday, January 22<sup>nd</sup> from 5pm-7pm, in appreciation of those serving on the City and County Advisory Boards and Commissions.

**ADJOURN – 7:05 p.m.**

**RECONVENE – 7:10 p.m.**

Lane wanted to discuss a possible change in location for the February BZA meeting. Several members of the Board wanted the opportunity to attend the charrette meeting on February 1, 2007 so they would like for the February 1, 2007 BZA meeting to be held in another room in City Hall.

**ACTION TAKEN**

Motioned by Goans, seconded by Bowman, to request that staff find another location in City Hall for the February BZA meeting.

Motion carried unanimously, 7-0.

**READJORN – 7:12 p.m.**

Official minutes are on file in the Planning Department office.