

BOARD OF ZONING APPEALS
Meeting Minutes of January 7, 2010 –6:30 p.m.

Members present: Kimball, Blaufuss, Lane, Carpenter
Members excused: von Tersch, Lowe, Bowman
Staff present: Guntert, Miller, Parker

ITEM NO. 1 COMMUNICATIONS

Mr. Guntert said Board of Zoning Appeals member Mike Bowman indicated in an email that he resigned his position due to accepting a new job that required him to immediately relocate to the Chicago area.

Mr. Guntert stated Item No. 3 on the agenda would be deferred.

ITEM NO. 2 MINUTES

Motioned by Kimball, seconded by Lane, to approve the December 3, 2009 Board of Zoning Appeals minutes.

Motion carried 3-0-1 Carpenter abstained

ITEM NO. 3 NW CORNER OF E. 13TH STREET & NEW JERSEY STREET [DRG]

B-12-20-09: A request for variances as provided in Section 20-1309 of the Land Development Code of the City of Lawrence, Kansas, 2009 edition. The first request is for a variance to reduce the 10 feet front yard building setback required in Section 20-1504(c)(2)(i) of the City Code to a minimum of 5 feet. The second request is a variance from the 20'-3" exterior finish wall height required in Section 20-1504(c)(2)(iii) of the City Code to a minimum of 10 feet. The variance provisions apply to an existing nonconforming residential dwelling. The property is located on the North Half of Lot 143 on New Jersey Street in the Original Townsite of the City of Lawrence, Douglas County, Kansas. The subject property is addressed as 1245 New Jersey Street, which is on the northwest corner of E. 13th Street and New Jersey Street. Submitted by Michael Morley, SIPSmart Building Systems, Inc. for Scott Rustenhoven, the property owner of record.

Deferred

ITEM NO. 4 3518 W. 9TH COURT [DRG]

B-12-21-09: 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 30 feet rear yard building setback required in Section 20-601(a) of the City Code to a minimum of 17 feet. The variance is needed for a new sunroom addition which is replacing a deck that had deteriorated. The property is legally described as: Lot 5, Final Plat of Holiday Hills No. 5 in the City of Lawrence, Douglas County, Kansas. The subject property is addressed as 3518 W. 9th Court. Submitted by Dale L. and Jeannie M. Alley, the property owners of record.

STAFF PRESENTATION

Mr. Guntert presented the item.

Lane asked Staff if there were other homes in the area that had less than thirty foot rear yard setbacks.

Mr. Guntert said the applicant made reference to other homes in the area in his response. He said the Board was provided a planimetric map detailing the location of residential structures on properties relative to property lines. He said the measurements seemed to indicate there were other structures on nearby properties that may encroach into the rear setback, but the information was not survey accurate.

Blaufuss asked Mr. Guntert if the properties were on Randall Road.

Mr. Guntert said the properties were on West 10th Street and West 9th Court.

Kimball asked Mr. Guntert what the margin of error was on the planimetric.

Mr. Guntert said the margin of error was probably plus or minus five feet.

Blaufuss asked Mr. Guntert if 3511 West 9th Court had a variance.

Mr. Guntert said he was not aware of a variance for 3511 West 9th Court.

Kimball asked Mr. Guntert if the setbacks were shown on the planimetric.

Mr. Guntert said the setbacks were not shown on the planimetric. He said the dashed line on the planimetric was a fence line.

Blaufuss asked Mr. Guntert if a variance would be needed if the issue was with a gazebo.

Mr. Guntert said a gazebo would be an accessory structure and a variance would not be necessary. He said the connection of the porch to the house was what made the variance necessary.

Kimball asked if the structure would be a screened porch.

Mr. Guntert said the structure evolved from a deck to a covered deck to a sunroom.

APPLICANT PRESENTATION

Dale Alley said the project began as a deck replacement and escalated from there to an enclosed porch. He said the roof was added and the project went on from there. He said the property was an odd shape and there was only room for the house. Mr. Alley said it would be a financial hardship to remove the roof, the footings, the floor and replace the siding. He said there were many other properties in the area that encroached in the rear setback area.

Carpenter asked if there was no other hardship than financial.

Mr. Alley said if the roof and the floor of the structure were removed the structure could potentially get wet and mold.

Kimball asked the applicant if the intent was for a sunroom or an addition to the house. He asked if the room would be air conditioned.

Mr. Alley said the room would be a sunroom and it would not be air conditioned.

Lane asked if the applicant would need a building permit. He said a variance was denied for a carport in the area.

Mr. Alley said a carport was different because it was in the front of the house. He said they have now applied for a building permit but did not have it yet pending the decision of the Board.

Lane said there has to be rational justification on how the structure conformed to the criteria.

Blaufuss said the zoning code was to keep things in conformance.

Mr. Alley said he did not see a difference in his request and previous variance requests that had been approved.

PUBLIC COMMENT

No one from the public spoke to this item.

PUBLIC HEARING CLOSED

BOARD DISCUSSION

Carpenter said the Code did not seem to adequately address cul-de-sac lots because they seemed to be frequently on their agendas for setback relief. He said the lot was an odd shape; if the structure was separate from the house then a variance would not be needed.

Kimball asked if the addition was the same size as the deck.

Mr. Alley said the addition was nearly the same foot print as the deck but it was slightly longer. It did not extend out from the house any further than the deck.

Lane said the original construction met the setback requirements. He said there was sufficient open space on the lot.

John Miller, Staff Attorney, read the definition for unnecessary hardship in the Development Code.

ACTION TAKEN

Motioned by Kimball, seconded by Lane, to approve the variance request for 3518 West 9th Court, with the following conditions:

1. The addition remains a sunroom and not be finished as conditioned living space for the house; and,
2. The owners obtain building permits from the City for the addition.

The Board cited the facts presented in the staff report, the applicant's presentation, the Board's discussion, and the following alternate findings for the numbered requisite conditions as reasons for their action to approve the variance:

1. The uniqueness is the footprint of the sunroom addition is basically the same as the deck that had been on the back of the house. The sunroom addition does not project further into the rear yard but is slightly longer than the deck had been. The need for a variance to build the sunroom addition is driven by the connection it has to the residence via the roof cover and vertical walls. A free standing accessory structure can be built in the rear yard setback without being bound to the same 30' setback requirement.
3. Strict application of the setback provisions has not been uniformly enforced in the neighborhood as evidenced in the aerial photo and planimetric map evidence presented by staff and testified to by the applicant. The hardship placed on the applicant versus the neighboring property owners by strict application of the setback would be unfair and arbitrary.
4. The distance to the property line in the remaining area of the lot does not adversely affect the neighboring properties. The applicant will have to obtain a building permit from the City which will ensure the addition is built to meet codes designed to protect the general welfare and create a safe, sound and secure place to live.

Motion carried unanimously, 4-0

ITEM NO. 5 MISCELLANEOUS

- a) No other business came before the Board.

ACTION TAKEN

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

Motion carried unanimously, 4-0

ADJOURN –7:15p.m.