

**BOARD OF ZONING APPEALS
MINUTES
July 7, 2005 – 6:35 P.M.**

Members present: Blaufuss, Emerson, Goans, Herndon, Santee, Hannon and Lane
Staff present: Patterson, Pool, Guntert and Saker

ITEM NO. 1: COMMUNICATIONS

Mr. Patterson outlined the following communications:

Item 8 – 1136 Mississippi Street

- Letter from Price Banks requesting an interpretation of Sections 20-607, 20-608 and 20-1212 of the Zoning Ordinance of the City of Lawrence
- Copy of the relevant Sections from Staff
- Email from Janet Gerstner stating concurrence with the Staff Report

General

- Hannon said he spoke briefly with the property owners of 2024 Learnard. Goans and Lane said they also spoke just in greeting with these property owners.
- No Board member indicated the intent to abstain from any agenda item.
- There were no deferral requests to consider.

ITEM NO. 2: MINUTES

Goans explained his concern that the Board had taken action(s) at the June meeting that went contrary to their typical decisions for Items 11 & 12, and that the minutes did not include an adequate explanation of why these actions were taken. He asked members who had voted in favor of these motions to provide additional language for inclusion in the June minutes. This was done and the Board discussed how these elements should be incorporated into the draft June minutes.

Motioned by Hannon, seconded by Herndon to defer consideration of the June 2005 minutes for one month.

Motion carried unanimously, 7-0.

Swearing in of witnesses.

ITEM NO. 3: JEHOVAH'S WITNESSES; 1802 E. 19TH STREET

B-03-08-05: 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 from the provisions of Section 20-1409 of said City Code, which requires a 50' minimum side yard building setback for a church or other place of worship in an RS-2 or PRD zoning district. The applicant is asking for a variance to allow a 17' side yard building setback from the east property line to allow for construction of two additions planned for the existing building. The second request is to vary from the provisions of Article 12, "Off-Street Loading and Parking Requirements" and Article 14A, "Outdoor Lighting Facilities and Landscape Requirements" as they pertain to the existing parking

lot design, construction and interior parking lot landscaping standards. The requests are for the following legally described property: Lots 1-6, Final Plat of Wiggins Addition No. 2 in the City of Lawrence; and, a portion of the vacated right-of-way for Powers Street lying adjacent to Lots 5 & 6 and a portion of Lot 4 described in the order of vacation dated 10/06/1998 recorded at the Register of Deeds Office in Book 624, Page 687. Said described property is known as Lawrence KS Congregation of Jehovah's Witnesses located at 1802 East 19th Street. Submitted by Alan C. Finney, member of the Building Committee for Lawrence KS Congregation of Jehovah's Witnesses, property owner of record. [Deferred by the applicant from the May 5 meeting and again by the Board at the June 2 meeting.]

STAFF PRESENTATION

Ms. Pool introduced the item, a request for variances to allow the retention of the existing church parking lot in its current design and the construction of two additions to the existing church building.

Variances included:

- Reduction of the western side yard setback from 50' to 17';
- Waiving of the concrete curb and gutter requirements around the perimeter of the parking lot; and
- Waiving of the requirement for end islands.

Ms. Pool described the surrounding area, which is zoned RS-2 in all directions except to the east, where the Lawrence Humane Society occupies land zoned PID-2. It was noted that the Humane Society abutted the property line associated with the reduced side yard setback request and had sent a letter of support for the project.

Staff recommended approval of the sideyard setback variance, but was unable to find that the remaining requests met all five criteria and therefore recommended denial of the curb & gutter and aisle & island requests.

The Board specifically noted that the church currently provided more than the minimum number of parking spaces required by Code, but this minimum did not necessarily reflect the number of spaces needed to adequately accommodate the use. It was discussed that the church had been operating with the existing parking lot for many years and providing the aisle and islands required by Code would reduce provided parking by a significant amount.

APPLICANT PRESENTATION

Leonard Blanton spoke on behalf of the applicant, stating again the church's intent to provide more worship space and parking for its growing congregation. He explained how providing the required aisles and islands would eliminate 20+ parking stalls. This was counterproductive to the church's intent to add more parking, leaving them with 2 less stalls than currently existed. He added that on-street parking was limited and said the loss of this amount of parking constituted a significant hardship.

Mr. Blanton said the design of the existing parking lot had been serving the church since

1973 with no complaints, other than there were not enough spaces. He pointed out that the idea of a berm between the parking lot and the adjacent residential property to the west had been abandoned in favor of a fence. Code allows a 5' setback between these uses with a fence and the provided setback would be 8'. The applicant agreed to Staff's suggestion that the fence be extended to the north and west to block lighting (car headlights) from encroaching into the residential areas.

Mr. Blanton said the church requested the curb and gutter variance for two reasons. First, this improvement would be a significant expense. Second, the addition of curbing would increase stormwater pooling on the property to the east and the applicant would like to avoid this negative impact as a "good neighbor" gesture.

PUBLIC COMMENT

No member of the public spoke on this item.

BOARD DISCUSSION

It was suggested that the Board could not make a determination on the curb and guttering without a stormwater study. Staff verified that the City Stormwater Engineer had reviewed this proposal and would also review the site plan for possible runoff concerns. Ms. Pool had specifically asked Mr. Voigt about impacts to the eastern property and he said such impacts were possible, but were avoidable with proper curb design.

Emerson said he found the applicant's argument about hardship persuasive, noting that some church-goers might choose not to attend if many challenges were placed before them.

Herndon said he understood and agreed with the importance of requiring compliance with current Codes, but he agreed it was a hardship to make the applicant remove 20+ parking stalls when part of the project's intent was to provide more parking. He added that the existing parking lot design had been functional for years – it was established and fit the context of the neighborhood.

Blaufuss agreed with previous comments about the aisles and islands, suggesting support for uniqueness based on the property's adjacency to the animal shelter and the nearby fairgrounds. However, she could not support the curb and gutter variance because the only remaining claim of hardship was based on cost, which was not an appropriate basis for Board consideration.

It was discussed that the application did not specifically request a variance from the 25' drive aisle. It was agreed that this element would be considered as part of the landscape island request.

ACTIONS TAKEN

Motioned by Herndon, seconded by Hannon to approve the variance to allow a reduced eastern side yard setback from 50' to 17', based on the findings of fact presented in the Staff Report;

AND

to approve the variance to remove the requirement for terminal landscaped islands as requested, based on the supportive findings in the Staff Report and the findings related to uniqueness and hardship provided in the Board Discussion.

Motion carried unanimously, 7-0.

Motioned by Herndon, seconded by Blaufuss to deny the variance to remove the concrete curb and guttering requirements.

Motion carried 5-2, Santee and Hannon opposed.

ITEM NO. 4: 1221 SUMMIT STREET

B-05-12-05: 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 specifically to vary from the provisions of Section 20-608 of said City Code, which requires a 25' minimum front yard building setback in the RS-2 (Single-Family Residence) District. The applicant is asking for a variance to reduce the setback to a minimum of 16' to accommodate the construction of a front entry addition. The request is for the following legally described property: Lots 52, 53, 54 & 55 in Fairfax Addition of the City of Lawrence. Said described property is located at 1221 Summit Street. Submitted by Delores J. Meyer, property owner of record. [Deferred by the Board at the June 2 meeting.]

STAFF PRESENTATION

Ms. Pool introduced the item, a request to allow the extension of an existing 5' front yard encroachment to create a front yard setback of 16' and allow an addition to the front of the existing home.

Following Board deferral at the June 2005 meeting, Staff looked into the possibility of applying the front yard setback averaging provision to allow this proposal without a variance. It was found that the average front yard setback on that side of the block was 19.8', so the provision was not applicable in this case. Staff stated that the request would be consistent with the surrounding area, noting that some homes had much less than 19.8' setbacks, but the Code required an average calculation.

APPLICANT PRESENTATION

Delores Meyer, property owner, explained the front yard averaging further, saying there were only four other homes on her block, three with reduced setbacks. The remaining home had a significant setback that affected the average and, she noted, also had no access to Summit Street and possibly should not even be considered as part of the block.

PUBLIC COMMENT

No member of the public spoke on this item.

BOARD DISCUSSION

It was noted that some kind of variance was needed to deal with the existing home, as it currently had a 5' encroachment into the front yard setback. It was suggested that the homes on this block were staggered and provided extensive landscaping. The area had virtually no streetscape or line-of-sight to protect, which is one important intent of the setback requirement.

ACTION TAKEN

Motioned by Hannon, seconded by Emerson to approve the variance to allow a reduced front yard setback from 25' to 16', based on the findings presented in the Staff Report.

Motion carried unanimously, 7-0.

ITEM NO. 5: 1104 EAST 26TH STREET

B-06-24-05: 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 vary from the provisions of Section 20-608 of said City Code, which requires a 30' minimum rear yard setback in the RS-2 (Single-Family Residence) District. The applicant is asking for a variance to reduce the rear yard setback to a minimum of 18'-10" for a back screen porch addition. The request is for the following legally described property: Lot 6, Block 4, Prairie Winds Addition in the City of Lawrence. Said described property is located at 1104 E. 26th Street. Submitted by Brad and Debbie Brown, property owners of record.

STAFF PRESENTATION

Mr. Patterson introduced the item, a request to reduce the rear yard setback from 30' to 18'10" to enclose an existing rear patio. He noted that the same property had come forward in June with a similar request but had been revised to eliminate the front porch portion of the project.

Mr. Patterson outlined Staff's determination of the project in relation to the five criteria. In Staff's opinion, the proposal did not meet the criteria for uniqueness or unnecessary hardship, nor could it be said that the situation was not created by the applicant. For this reason, Staff recommended denial of the variance.

Mr. Patterson responded to a request to explain how setbacks are calculated for corner lots. It was noted that the adjacent home to the west was oriented so that its rear yard abutted the interior side yard of the subject property. Santee suggested this made the property unique.

It was established that Staff did not analyze the possible reduction of the rear yard requirement because Sec. 20-1504(c) carries a minimum 20' rear yard setback and this request is for an 18'10" setback.

Mr. Patterson spoke about alternative designs, including an umbrella over the porch area or a detached building away from the primary structure.

APPLICANT PRESENTATION

Brad Brown, applicant, gave the Board a written summary of his presentation, explaining how he felt this request did meet all five of the necessary criteria. He agreed with Staff's assessment of the criteria related to negative impacts (none anticipated) to adjacent properties or the public health, safety and welfare.

Mr. Brown said this property was unique and the situation was not created through his actions because he had purchased an appropriately sized lot for his intended construction and had oriented the house as it seemed best at the time of construction. He explained that Alice Street had been a stubbed street when he built the home, with no anticipated date of connection, and he had not wanted his access to meet with the guard rail.

Mr. Brown discussed modifications made to the original house design to keep the garage within the required setbacks. He also said that the porch was constructed with the intent to enclose the area when finances permitted.

Related to the issue of hardship, Mr. Brown explained his wife had recently been diagnosed with a pre-cancerous skin condition and was medically advised to stay out of direct sunlight. He said his wife was an avid gardener and that they held frequent family gatherings, and she would be restricted to the indoors if the enclosed porch area were not allowed.

Mr. Brown asked for clarification on the general intent of the setback ordinance. It was discussed that the setback regulations were intended to:

- Provide open space for the public health, safety and welfare
- Provide a buffer between residential homes
- Allow a property owner to enjoy quiet and solitude in his own yard without being unduly impacted by his neighbors.
- Promote uniform placement of buildings on lots
- Provide predictability for a person buying a home in a given zoning district

Mr. Brown commented that several homes in his neighborhood had reduced setbacks, including another corner lot with an enclosed rear porch. He pointed out that the wall of the enclosed porch would line up directly with the rear wall of the adjacent home to the west.

Debbie Brown, co-owner and applicant, said the questions on the application were not very clear and she did not always understand what was being asked for. She said she was an "outdoor person" and would like to stay that way, despite her illness.

PUBLIC COMMENT

No member of the public spoke on this item.

BOARD DISCUSSION

Emerson referenced discussion at the June meeting, when it was noted that the neighboring homes had a similar rear yard line. He suggested this made the situation unique, especially combined with the fact that the home was oriented differently because Alice Street was stubbed at the time of construction.

It was verified that a variance granted for the rear yard setback would pertain only to the porch area shown on the site plan. It would not apply to the entire width of the rear yard.

It was established that Staff had been able to find no evidence of a variance having been granted for the house to the south that obviously encroached into the required setbacks. Mr. Herndon said he opposed this project in June based on his opinion of the importance of setbacks. He said setbacks were still a significant issue, but acknowledged the difference of this proposal with the front porch/streetscape issue removed.

Several points were offered as findings in support of the variance:

- This lot provides more open space than any other lot on the street.
- It would be arbitrary and capricious and constitute an unnecessary hardship to deprive the applicant the ability to build a structure in exactly the same relation to property lines as neighboring properties. (It was pointed out that the Board had no information about other variances possibly granted to these other properties).
- The property is unique because the existing home sits at right angles to the only adjacent property, creating an unusual visual arrangement.
- It is an unnecessary hardship that the adjacent home could build further into the setback without a variance.

ACTION TAKEN

Motioned by Hannon, seconded by Herndon to approve the variance to allow a reduction in the required rear yard setback from 30' to 18'10" for enclosure of the existing rear porch as shown on the site plan, based on the supportive findings in the Staff Report and the additional findings provided in the Board Discussion.

Motion carried unanimously, 7-0.

ITEM NO. 6: 2024 LEARNARD AVENUE

B-06-20-05: 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 specifically to vary from the provisions of Section 20-608 of said City Code, which requires a 25' minimum front yard building setback in the RS-2 (Single-Family Residence) District. The applicant is asking for a variance to reduce the setback to a minimum of 10' to accommodate a new deck addition to the existing residence. The request is for the following legally described property: Lot 5, Block 1, Evergreen Addition No. 3 in the City of Lawrence. Said described property is located at 2024 Learnard Avenue. Submitted by Lanny W. and Patricia R. Maddux, property owners of record.

STAFF PRESENTATION

Ms. Pool introduced the item, a request to reduce the front yard setback from 25' to 10' to allow an addition to the existing deck. It was noted that the house sits on a flag lot, making all setback calculations awkward. Staff further noted the challenge in determining which were the rear, front and side yard setbacks, since the house technically fronted on the side yard, based on where the road frontage was located. Because of the shape and location of the lot, the porch addition would not be readily visible to the street.

Staff recommended approval of the request, finding that it met all five of the required criteria.

APPLICANT PRESENTATION

Lanny Maddux, applicant, was present to answer questions and stated agreement with the Staff Report.

PUBLIC COMMENT

No member of the public spoke on this item.

BOARD DISCUSSION

The Board had no additional questions or comments.

ACTION TAKEN

Motioned by Herndon, seconded by Lane to approve the variance to allow a reduction in the front yard setback from 25' to 10' as presented, based on the findings presented in the Staff Report.

Motion carried unanimously 7-0.

GENERAL COMMENT

Mr. Maddux said this was his first experience with this group and he was impressed with the Board's thorough consideration of the previous items on the agenda.

ITEM NO. 7: 417 MAPLE STREET

B-06-21-05: 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 20-807 of said City Code, which requires a 50' minimum rear yard building setback in the M-3 (Intensive Industrial) District when the property abuts residentially zoned property. The applicant is requesting a variance to 20' for the rear building setback. The second variance is from the provisions of Section 20-1216(a) of the City Code that requires a 15' greenspace setback to be provided between a parking area and street right-of-way. The applicant is asking for a variance to a 6½' greenspace setback along the Maple Street property frontage. These requests are for the following legally described property: Lots 161, 162, 163, & 164 in North Lawrence Addition No. 3. Said legally described property is known as 417 Maple Street. Submitted by Lance Adams with Paul Werner Architects for Jon Davis, contract purchaser from Harold C. Shephard, property owner of record.

STAFF PRESENTATION

Ms. Pool introduced the item, a request for variances to the required rear yard and greenspace setbacks to allow for construction of 2 buildings on the industrially-zoned lot. She noted that the lot was slightly larger than the minimum lot size for the existing M-3 zoning and that the new buildings were proposed to be 30' from the adjacent residential property lines.

In Staff's opinion, the public health, safety and welfare would be negatively impacted by this close positioning, and there were other lot development options (rearrange buildings or use a single larger building). Also, M-3 zoning would allow a number of heavy industrial, highly intrusive uses. For these reasons, Staff recommended denial of the variances.

Staff had received contact from only one area resident who was not an adjacent property owner but opposed the possible reduction in setbacks.

Questions were raised about the placement of Maple Street adjacent to the subject property.

APPLICANT PRESENTATION

Paul Werner, Paul Werner Architects, spoke on behalf of the applicants and showed that Maple Street was off-set from the dedicated right-of-way by about 15'. Mr. Werner noted that the (incorrectly placed) street was located between the subject property and the railroad line.

Mr. Werner said discussions with the North Lawrence Improvement Association led to a redesign of the original proposal. The applicant now asked for the same variance, but proposed to place the parking area in front of the new buildings, while taking no vehicular access from the alley. Mr. Werner said this was considered to be a better design because it used the buildings as a buffer between the residential areas and the parking lot, which would be the area of most activity.

Mr. Werner said the client was not responsible for the current zoning and felt it would be more suitable to rezone the property to M-2. This would allow fewer intense uses and the proposed setbacks would meet the minimum requirements. However, this would be considered spot zoning. He added that the property was being considered as 1 lot to meet minimum lot size requirements when it was actually comprised of four lots.

Mr. Werner said he did not want to mislead the Board, and that some redesign would be required from the current site plan. However, he assured them that no vehicular access would be taken to the alley.

PUBLIC COMMENT

Cory Baker, owner of four lots on Perry Street directly behind the subject property, spoke in opposition to the reduced setback request. He expressed concern that the existing stormwater runoff conditions that now flooded his rental properties would be exacerbated by the development of the subject area as proposed.

It was verified that it will be the developer's responsibility to show during the site plan process that development will not adversely affect neighboring properties in terms of water runoff.

BOARD DISCUSSION

Mr. Werner was asked to address the water issue. He agreed that the project would be site planned and would go through the full review process including assessment by the City Stormwater Engineer. He suggested that potential water concerns were another reason in support of the newly proposed parking arrangement, because water could be directed to Maple Street more easily. He showed the property in relation to the floodplain and noted that there were no water control elements in place today. He said there were obviously some flooding problems that would not be dealt with on this site alone.

Mr. Werner responded to questioning that the alley side of the building would have no regular lighting, but would possibly include motion-detector lighting and some windows.

It was established that the M-3 zoning district allowed buildings as tall as 75', but the applicant proposed a building height of 16-18'. Mr. Werner said that anything much taller would be impractical in the building material proposed (metal).

Herndon said this appeared to be an example of a site plan that did the best it could with an infill site. He said he understood Mr. Baker's concerns, but suggested that redevelopment of the subject property would be an improvement over the existing state of the property.

It was suggested that this lot was unique because it is industrially zoned but, to maximize its transitional use, the buildings should be located at the northern side of the property instead of parking.

Staff responded to questioning that the revised parking design was allowable with required screening, but reminded the Board this was not the only design option.

It was discussed that the alley right-of-way was 20' wide, but the paved width of the alley was unknown.

Goans expressed frustration because he found it difficult to agree that the situation was unique. Infill lots with M-3 zoning next to residential areas were not uncommon and the code provided specific regulations for dealing with this circumstance. He thought the proposal made sense, but he was not sure it met all the necessary criteria and the Board was supposed look at those criteria, not the quality of the project.

Herndon countered that the project was unique because of the relationship of the M-3 area to RS-2 area and the opportunity to use the subject area for redevelopment that would make a successful transition.

It was discussed that the existing M-3 zoning would allow some highly-intrusive uses and suggested that the applicant's proposal was the most effective use of the site that could be hoped for. Emerson noted that some allowable uses would generate a significant amount of noise and he was concerned about allowing that noise to be placed closer to the residential areas (by reducing the setback).

It was generally agreed that the subject property was awkward to work with, but "awkward" could not be considered as an adequate fulfillment of the "unique" criteria.

Lane said he had no objection to the greenspace setback along Maple Street because the street was off center and this property actually provided more greenspace than was required.

Mr. Werner responded to questioning that the applicant anticipated contractor shops (plumber, electrician, etc.) in the proposed buildings. These uses generally could not afford to lease a larger building, so the two smaller buildings were proposed.

The Board summarized findings in favor of granting the variances:

- The property is unique because Maple Street is off-set from the dedicated right-of-way;
- The combination of availability of the railroad tracks and the adjacent residential development provides a unique opportunity to better develop the site; and
- Denial of the variances will constitute unnecessary hardship because it will prevent the most appropriate development of the site.

ACTION TAKEN

Motioned by Hannon, seconded by Lane to approve a variance to allow a reduced rear yard setback from 50' to 20' and a reduced parking setback from 15' to 6.5' along Maple Street, based on the supportive findings in the Staff Report and the additional findings provided in the Board Discussion. Approval was subject to the following condition:

1. No vehicular access is allowed to the alley.

Motion carried unanimously, 7-0.

ITEM NO. 8: 1136 MISSISSIPPI STREET

B-06-22-05: A request for an interpretation of the off-street parking standards for a duplex use in an RD (Residence Dormitory) District as provided in Section 20-1707 of the Zoning Ordinance of the Code of the City of Lawrence, Kansas, 2003. The applicant is asking the Board to interpret which Parking Group standard governs for this use in accordance with the provisions of Section 20-1212 in said City Code, which delegates this responsibility to the Board. 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 Paul Werner of Paul Werner Architects for James A. Slough, the property owner of record.

As a request for interpretation of the Ordinance, the applicant is asked to present first. However, for clarity the multiple attempts (made throughout all phases of the Board's consideration) at summarizing the situation are condensed as follows:

The applicant presented a section of the Code stating that duplexes could be considered as Use Group 3A (residential-duplex), which carried a requirement for Parking Group 1 (2 spaces per dwelling unit = 4 parking spaces in this case). This was compared to the Code section used by Staff, which considered the same project under Use Group 4 (multi-family residential), carrying a requirement for Parking Group 2 (1 space per bedroom = 8 parking spaces in this case).

APPLICANT PRESENTATION

Paul Werner, Paul Werner Architects, spoke on behalf of the applicant, apologizing for coming forward for the third time with a request regarding the same property.

Mr. Werner described the site modifications developed in response to the Board's previous direction – following a second denial for a parking space reduction – to find a way to develop the site that did not require a variance. He explained that the newest design had gone before the Historic Resources Commission (HRC) for environs review, and had been approved with one exception – the property was not allowed to take any access on Mississippi Street. This decision could be appealed to the City Commission, but the applicant wanted to pursue the option on tonight's agenda before trying that challenging path.

In looking at other design options, Mr. Werner had come across the section of the Code presented by the applicant. He said this was probably "unpopular", but he did not see how the Board could agree with Staff that Use Group 4 was the only Use Group applicable to this situation. He felt the code was clear in stating that Use Group 3A was possible for this use. He added that the proposed duplexes were not an apartment complex and should not be required to provide parking as if they were.

Mr. Werner responded to questioning that the applicant was proposing (due to HRC conditions) to take access from Indiana Street and provide 5 parking spaces in the rear of the lot, leaving out the originally proposed garages. He questioned the City's ability to restrict access to Mississippi Street, since it was the lot's only right-of-way, but said the applicant felt the design with Indiana Street access was better in any case.

STAFF PRESENTATION

Mr. Patterson explained that Staff has historically applied (Use Group 4 instead of Use Group 3A) in RD zoning districts because these zoning districts are intended for high-density development. This is not an arbitrary decision, since it is reasonable to consider that development proposed in a high-density area will be designed in a high-density manner. In Staff's opinion, that is the case here since 8 bedrooms are proposed.

In further support of Staff's position, Mr. Patterson noted that the applicant's prior development proposals:

- B-11-28-04: 6 apartments, 1- and 2-bedroom, with 11 required parking spaces
- B-01-01-05: 3 apartments, all 3-bedroom, with 9 required parking spaces

The applicant now proposes 8 bedrooms in a different configuration, and Staff cannot find that this should be considered a residential-duplex use instead of multi-family.

In Staff's opinion, Use Group 3A would be more appropriately applied to duplex developments placed in lower-density zoning districts and in accordance with lower-density design standards (larger lots, fewer bedrooms, etc.).

Mr. Patterson cited proximity to the University, a high concentration of residents and the high parking demand of the area as additional reasons why the property should be held to the more intense Use Group, reflecting a multi-family use in a high-density area.

Staff also referenced tables for residential zoning district requirements for lot size, explaining how this related to Parking Groups for uses that are allowed in more than one zoning district (i.e. duplexes in single-family, residential-duplex and multi-family zoning). He pointed out that the minimum lot size for low-density uses was 7000 square feet, and the subject property is only 6250 square feet. Mr. Werner responded that the lot was established in 1968 and was therefore allowed a 20% reduction in lot size.

Hannon pointed out that the Board had approved parking variances for other proposals, similar to this one in lot size and bedrooms, with the difference that they were for existing houses, while this was new construction. Staff replied that this was a significant difference, and it was reasonable to expect new construction to meet current code requirements. Additionally, existing uses in this area requesting variances of this nature were typically bringing the property closer into Code conformance – moving from a more intense use to a less intense one.

It was noted that the Board had addressed the issue of a variance in this case, denying the request twice. They were not considering a variance in this case, but were asked to determine which code section should be applied to the proposal.

It was asked whether Staff would apply Use Group 3A if the same project were proposed in a different zoning district. Mr. Patterson said it was unlikely that anyone would attempt to develop 8 duplex bedrooms in a duplex-residential zoning district.

Mr. Patterson responded to questioning that the Ordinance provided by Staff was a relevant response to the suggestions from Price Banks.

Several Board members referenced the table that showed residential-duplex uses (carrying Use Group 3A) were allowed in this zoning district and asked repeatedly why Staff felt it was not applicable in this case. Staff reiterated that, according to precedent, Use Group 3A was used for lower-density developments where less parking was needed. In this case, the proposal was for high-density development in a high-density zoning district and Use Group 3A was not appropriate.

It was discussed that a text amendment may be needed to either eliminate the allowance of duplexes in one of the categories, or to clarify when Use Group 3A and Use Group 4 are to be applied.

It was established that there is no difference in the definition of “family” between RD and RM-D zoning.

Goans said he understood the applicant was in a difficult position, but directing Staff to change a precedented interpretation would have far-reaching consequences. Herndon disagreed, saying code interpretations were becoming increasingly literal and recently there had been numerous instances where the historic pattern was called into question.

Herndon said his apprehension about this matter did not stem from this case, but from a concern that future applicant’s would take “extreme advantage” of this interpretation. He commented on the need for multiple approvals (BZA, HRC, etc.) making development of the subject site more challenging.

Mr. Werner said the same interpretation called into question tonight should have applied to other duplex projects on the same street and had obviously not been strictly applied. He suggested that the provided ordinance did not appear to have anything to do with this project. The applicant added that this was not really a request for interpretation but simply recognition that duplexes were an allowed use in the RD zoning district.

One Board member said that there was no argument that both Use Groups applied, but that Staff had chosen which to apply in this case based on historic precedent of high-density duplex uses in high-density zoning districts. Mr. Werner countered that, if this were the case, then many neighborhoods could argue that RM-D was not medium-density.

Mr. Patterson responded to questioning that Staff had not analyzed this matter according to the new Zoning Ordinance, which had not yet been adopted.

Lane said, in his opinion, both Use Groups were applicable, subject to meeting the special conditions (approval of a site plan) set forth in the current Zoning Ordinance.

Herndon said Staff’s interpretation was not unreasonable or unfair, but a literal interpretation supported the applicant’s argument and either would be an allowable choice. However, he felt there was not sufficient case law provided to support the claim of historic precedent, making the strict application of Staff’s opinion arbitrary.

Goans noted that the applicant had been before the Board twice before with proposals based on Use Group 4 (a 6-plex and a triplex). Mr. Werner said the applicant would have been amenable to Use Group 4 if approval was given by the HRC. It was only after studying the issue again after the HRC's decision that the applicability of Use Group 3A was discovered.

Santee said this was an opportunity to bring attention to an existing problem in the code and correct it.

Goans said the Board needed to be clear on the difference between duplex uses in Use Group 4 (residential multi-family) & Use Group 3A (residential-duplex). Staff said the primary difference was intensity and Goans noted that the original site plans were for a multi-family development (6-plex).

It was questioned whether this interpretation would apply only to this property or to all duplex proposals. It was also asked if the Board's decision, if in favor of the applicant, would require the use of Use Group 3A or leave the applicant open to use either Use Group.

Goans said there appeared to be a conflict in the code and asked if the Board was contemplating amending the code to removing the ability to apply one of the Use Groups under discussion. If this was the case, which Use Group would be "corrected"? Additionally, was the Board inclined to let the applicant use the existing code language to his advantage?

Herndon said it was his inclination to remove applicability of Use Group 3A because Use Group 4 was more suitable for good land use planning. He clarified that this did not impact his decision regarding the current case, because both Use Groups were clearly allowed by today's code.

Goans suggested that allowing the application of Use Group 3A, followed by the initiation of a Text Amendment to remove this possibility, was counteractive. Others disagreed, saying that allowing the applicant to apply the code as written today was not tied to potential code modifications.

It was asked if the issue of density was being disregarded.

It was suggested that the case be deferred and Staff directed to provide examples of precedent to support their interpretation.

Blaufuss asked if it was known when and why the dual applicability had been written into the existing code. If this was not known, she suggested that background of claimed precedent was needed. The Staff Report noted that the ordinance regarding RM-D zoning was inserted into the code after adoption, presumably to address issues of density and intensity of proposed duplex uses.

Herndon proposed language for a motion overturning Staff's interpretation. He clarified

that this decision was intended to apply only to this request and that the applicant would be able to apply either Use Group 4 or 3A. He added that tracing the validity of an interpretation was a good idea, but that information was not available at this time. He said Staff's interpretation was better for land use planning, but there was no sufficient ground for saying the applicant's interpretation was not equally valid.

Emerson stated his hope that the Board would pursue clarification on this issue.

ACTION TAKEN

Motioned by Herndon, seconded by Hannon to overturn Staff's interpretation as applied to this application, based on a determination that this interpretation is inconsistent with the literal meaning of Sec 20-610.4 which clearly allows Use Group 3A, duplex use and Parking Group 1 in RD zoning district.

Motion carried 5-2, with Blaufuss and Goans voting in opposition.

ITEM NO. 9: 830 NEW YORK STREET

B-06-23-05: 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 variance request is from the provisions of Section 20-1312 of said City Code, which defines the maximum size for accessory buildings not to exceed 30 percent of the required rear yard. The proposal provides a 528 square feet accessory structure, while the code allows only 300 square feet based upon the current zoning of the property being RM-2 (Multiple-Family Residence) District. The application is for the following legally described property: Lot 60 on New York Street in the Original Townsite of the City of Lawrence. Said described property is known as 830 New York Street. Submitted by Cris M. Combs, property owner of record.

STAFF PRESENTATION

Mr. Patterson introduced the item, a request to allow an accessory structure to exceed the maximum allowed rear yard coverage. The new building will not encroach into the required setbacks. The new garage is proposed to be 528 square feet, a measurement commonly approved by the Board in the past for smaller lots in the older sections of town like this one.

Staff recommended approval of the request, finding that it meets all five of the required criteria.

Mr. Patterson noted that the property had appeared before the Historic Resources Commission (HRC) and been approved for an addition to the existing primary structure. It was verified that the applicant was aware that he would have to appear again before the HRC for the garage application. Staff was not aware if the garage would be 1- or 2-story, or where that garage doors would open.

Ms. Combs said it was not his intent to have the garage doors open into the alley, which would affect the setback measurement.

Mr. Patterson noted that the existing residence encroached into the northern property lines setback but was not included as part of this request. Staff was asked to determine whether the Board could address a variance that had not been legally noticed.

APPLICANT PRESENTATION

Cris Combs, applicant, responded to questions, saying he had applied for a building permit for the garage the day before and no issue had been raised regarding the existing encroachment. He explained how the new construction would cover the same footprint as the existing building. Staff determined that if this was so, the building permit may have been issued without a variance as a continuation of a non-conforming element per Article 13.

PUBLIC COMMENT

No member of the public spoke on this item.

ACTION TAKEN

Motioned by Lane, seconded by Emerson to approve the variance to allow an accessory building measuring 528 square feet (22' X 24') to cover more than 30% of the rear yard, based on the findings presented in the Staff Report.

Motion carried unanimously, 7-0.

ITEM NO. 10:

MISCELLANEOUS

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

The Board directed Staff to bring forward in August proposed language for a text amendment that could be initiated to clarify the intent of the regulations regarding duplex parking requirements in RD and RM-D zoning districts as discussed in Item 8.

ADJOURN – 10:20 p.m.

Official minutes are on file in the Planning Department office.