

LAWRENCE BOARD OF ZONING APPEALS
Meeting Minutes
July 6, 2006 – 6:30 P.M.

Members present: Goans, Hannon, Lane, Emerson, von Tersch and Blaufuss
Staff present: Patterson, Miller and Pool

ITEM NO. 1: COMMUNICATIONS

- There were no additional communications for the Board
- Blaufuss indicated she would abstain from the vote on the June minutes
- There were no deferral requests to consider.

ITEM NO. 2: MINUTES

Several typographical errors were noted.

Motioned by Lane, seconded by von Tersch to approve the June 1, 2006 minutes as revised.

Motion carried 5-0-1, with Blaufuss abstaining due to her absence from the June meeting.

Swearing in of witnesses

ITEM NO. 3: 537 WISCONSIN STREET [PGP]

B-06-19-06: 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 requests are from the parking setback, parking layout standards, and paving standards found in Article 12 of the City Code; and, from the parking lot landscaping standards set forth in Section 20-14A04 et seq. of the City Code. The applicant is seeking these variances so they may continue to use the property for parking and storage of trailers used for delivery and warehousing of products sold by the applicant. The parking area is currently gravel surface, which is how they want it to remain. The request is for the property located directly north of Lawrence Feed and Farm Supply, which is located at 545 Wisconsin Street. The requested property is legally described as Lots 9 & 10, Olmstead's Subdivision in the City of Lawrence. Submitted by Paul Werner Architects for Roger Tuckel, the property owner of record.

STAFF PRESENTATION

Mr. Patterson introduced the item, a request for multiple variances to allow continued use of an existing parking area that currently does not meet the Code in terms of parking setback, surfacing, peripheral curb & gutter, and interior landscaping.

Mr. Patterson explained Staff's analysis of the request according to the five criteria. In Staff's opinion, the application did not meet all of the criteria and therefore must be recommended for denial. Specifically, Staff did not find the property unique, did not feel the request met the intent of the regulations, and did not face significant hardship.

It was discussed that a house had removed from the subject property. This residence had been built before the 1966 code was adopted and would have been grandfathered in as a legal non-conforming use if left in place. However, the house was razed and additional parking lot improvements were made which were not in accordance with City standards for parking lots.

Brian Jimenez, Director of Inspections for the Neighborhood Resources Department, said the house was removed with a valid demolition permit and per all demolition regulations (capped utilities, etc.). Mr. Jimenez said his department agreed with Planning Staff that the property should now be site planned and brought up to code standards.

Tony De La Torre, Neighborhood Resources Department, said the property came to the department's attention in September 2005 following a public complaint. A citation was issued because the new parking area established was not up to code standards. The property owner was also given a copy of the appeals process at that time. Mr. De La Torre said the house had been removed following a repair-or-demolish order issued by the City Commission in 2002.

Mr. De La Torre said no additional visible improvements had been made following the September 2005 citation, bringing the situation to a legal level that may or may not be mitigated by the Board's decision tonight.

APPLICANT PRESENTATION

Paul Werner, Paul Werner Architects, spoke on behalf of the applicant. He said the applicant did not argue that the parking area was not up to current code standards. However, the applicant did not understand what, if anything, had triggered the site plan requirement (which in turn triggered the need for site improvements to code standards). Mr. Werner said this process was typically triggered by a building permit submittal, which was not done in this case.

Mr. Werner said everyone agreed the existing use was not the highest or best for the property, and that that the site was prime for commercial redevelopment. The applicant felt the improvements recommended by Staff should wait until that redevelopment occurred in what would doubtless be the near future. In the meantime, the applicant proposed measures he believed "we can all live with," primarily paving the driveway apron to reduce the amount of gravel flowing into the street.

Mr. Werner expressed the applicant's hesitation to "open this can of worms." He did not object to paving, even though it was likely this would have to be redone with redevelopment. However, he feared that this issue would spread to a requirement for site planning all of the adjacent properties under the same ownership. He hoped the Board's action would keep the situation out of court and prevent premature site planning.

Mr. Werner noted that Staff's concern seemed to be directed at the part of the lot that was graveled when the house was removed. He asked if removing the gravel from (just) that part of the lot would solve the problem.

Mr. Werner suggested their application may not have been correct, and that they should instead have asked for an interpretation of the Staff opinion that a site plan was required.

Goans asked if the applicant questioned the fact that the parking lot was not up to code standards. Mr. Werner gave examples of other gravel parking areas, saying the parking lot was not up to current code, but the applicant questioned whether he was required to meet those standards at this time.

PUBLIC COMMENT

No member of the public spoke on this item.

BOARD DISCUSSION

It was discussed that the area had been used for parking for a long time and it was unclear at what point the expansion of the parking use became “significant”. It was also questioned whether the Board was considering these to be permanent improvements, or was it assumed that these were temporary and they would be redone with redevelopment of the property.

The Board noted that the lot was obviously used by other area businesses and asked if that should be taken into consideration. It was also suggested the area should have been site planned when it began being used for parking instead of just an unloading area.

Staff responded to questioning that the site plan requirement was triggered by “significant improvements” made to the site. Specifically, the size of the parking area was expanded and improved and also included an area vacated by the removed house. Mr. Werner said the improvements (the expansion) were not large enough to meet this description. The Board pointed out that they could not consider making an interpretation of the City’s ability to require a site plan, because that was not the item submitted before them and published as part of the agenda.

ACTION TAKEN

Motioned by Emerson, seconded by Harris to support the Staff recommendation to deny all variances, based on the findings of fact presented in the body of the Staff Report.

Motion carried unanimously, 6-0.

BOARD DISCUSSION

Mr. Werner returned during the General Public Comment to request clarification on the Board’s decision.

Mr. Werner asked for more direction from the board. Specifically on whether they would suggest he return with a new application requesting an interpretation on the site plan requirement for this property.

It was suggested that it was important to recognize the parking area was now being used more intensely by several properties, possibly bringing the proposal forward as a whole. This brought up the question of whether the lot improvements were of permanent or temporary nature and which property or combination of properties should bear the cost of the improvements.

ITEM NO. 4: 3838 W 6th STREET [LAP]

B-06-21-06: 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 exterior side yard setback requirement of 25 feet per Section 20-707 of the City Code, to a minimum of 10 feet along the western side of the property. The request will permit a variable height retaining wall to be built within the exterior side yard setback of the property located at 3838 W. 6th Street. The property is legally described as Lots 1 & 2, Brackett School Addition in the City of Lawrence. Submitted by Joy D. Rhea, Project Manager with Landplan Engineering for Lawrence Multiple Listing Service, Inc., the property owner of record.

STAFF PRESENTATION

Ms. Pool introduced the item, request for a variance to allow a retaining wall to be constructed within the west side yard setback. She referenced the small lot size and the number of parking spaces being provided, saying this limited placement of the detention pond and therefore the retaining wall.

It was established that the new code did not specifically allow or disallow retaining walls within side yard setbacks.

Ms. Pool verified that the existing retaining wall was immediately adjacent to the sidewalk, in the public right-of-way. When the site plan went forward, they would need to recognize this and move the new retaining wall farther to the east, creating a 10' side yard setback.

Staff recommended approval of the request with conditions listed in the Staff Report, based on a finding that the application met all five of the required criteria.

APPLICANT PRESENTATION

Tim Herndon, Landplan Engineering, spoke on behalf of the applicant. He gave a history of the building, explaining the needed expansion to make the structure viable for modern business use.

Mr. Herndon explained that parking for the existing business often spilled over into the Applebee's parking lot. This was an undesirable situation that would be addressed by this proposal. The variance was needed in order to meet other code requirements (minimum aisle width, interior landscaping, etc.).

It was discussed that the existing retention wall was built in the public right-of-way with City funding as a CIP. The new retaining wall would correct this situation and allow the detention pond to function per City ordinance. Mr. Herndon added that denial of the variance would constitute a hardship because the applicant would not be able to provide adequate, legal parking for the existing business.

It was established that the high point of the retaining wall would be only minimally visible from the street.

PUBLIC COMMENT

No member of the public spoke on this item.

ACTION TAKEN

Motioned by Hannon, seconded by Emerson to approve a variance for 3838 W. 6th Street to reduce the minimum west side yard setback from 25' to 10', based on the findings of fact presented in the body of the Staff Report.

Motion carried unanimously, 6-0.

ITEM NO. 5: 445 LYON STREET [PGP]

B-06-20-06: 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 a church or other place of worship in an RS-2 District from one acre (43,560 square feet) per Section 20-1409 of the City Code, to a minimum of .708 acre (30,884 square feet). The second request is to reduce the minimum side yard setbacks established in Section 20-1409 of the City Code, to a minimum of 5' along the north property line for the parking area; 11' along the north property line for the proposed building addition; and, 23.5' along the south property line for the parking area and existing building. The third request is from the parking lot paving standards found in Section 20-1217 of the City Code. The applicant is asking to be able to use a 4" compacted gravel surface instead of paving it to City standards. The final request is to not install curb and gutter along the west side of the parking area. Section 20-1215 of the City Code requires the perimeter of parking areas to be curbed in accordance with city standards. These variances are requested for the Korean Presbyterian Church located at 445 Lyon Street. The property is legally described as Lot 31, North Lawrence Addition No. 4 in the City of Lawrence. Submitted by Paul Werner Architects for Korean Presbyterian Church, the property owner of record.

STAFF REPORT

Mr. Patterson introduced the item, a request for multiple variances to allow the continued use of a lot with non-complying area and setbacks for an existing church use. Other variances were required to allow the expansion of the current parking area with graveled surface material and no curb & guttering.

Mr. Patterson said the lot was platted as part of the North Lawrence Addition, explaining that this part of Lawrence was once a separate county that allowed smaller lot sizes. The property was developed in 1950 with access to Lyon Street and grandfathered in when the current Zoning Ordinance was adopted in 1966.

Staff described the applicant's intent to construct an accessory structure, smaller than the primary building, to accommodate classrooms and church offices.

Mr. Patterson said Staff was not able to find that the request met all five criteria and therefore had to recommend denial of all requested variances.

It was suggested that the Board may find adequate support to split the request and approve part of the application.

It was noted that the proposed site plan application differs from the BZA application, and the discussion on the variances would encompass the submitted site plan.

It was verified that, if the lot were developed residentially, a house could have minimum interior side yard setback of 5', provided other conditions were in place.

APPLICANT PRESENTATION

Paul Werner, Paul Werner Architects, spoke on behalf of the applicants, expressing surprise at Staff's recommendation for denial. He said that, without at least the lot size and setbacks variances, the applicants were not able to obtain a building permit to work on the existing building that had been in place for 55 years. He hoped the fact that the building predated the zoning code and all of the surrounding residential development would pave the way for some level of compromise.

Mr. Werner said the proposed new accessory building was intended to provide better classroom space (classes were currently held in the church basement) and to provide adequate parking for the existing congregation. The applicant did not see this as an intensification of the current use.

Mr. Werner showed several lot configurations that were considered and rejected. He explained the proposed layout was chosen because it provided for the church's needs while putting the parking area farther from adjacent residential development and the building farther from the street. Mr. Werner said other configurations would need lesser setback variances, but a variance would still be needed and would make the lot improvements more intrusive to the neighbors.

Aerials were viewed, showing an existing parking area that provided 15 spaces. This met the code requirement for parking based on sanctuary occupancy. There was discussion about the property's location adjacency to the floodplain.

It was commented that, without curb and guttering, the parking area could more easily be expanded to the west in the future and use the existing secondary access on Lyon Street.

Goans noted that the accessory building was proposed to encroach farther into the front setback than the existing building and asked if it would be possible to line those buildings to maintain the same existing encroachment. Mr. Werner said this was possible, but it would counter the intent of minimizing impact on the neighbors by allowing additional space within which child would likely play and make noise in.

PUBLIC COMMENT

Harring Cha, teacher at the church, said the church provided Christian education in Korean for children ranging in age from 2-13, and the current basement classrooms were not suitable and were inadequate for their needs. The new building would provide a safer environment and allow for separate, age-targeted education.

David Almoood, church member, said the proposed lot configuration would minimize impact on the neighbors by putting building access and play areas farther from adjacent houses. He said the area residents had not complained in the many years they had been next to the church, and the church wanted to maintain being a good neighbor.

Mr. Almoood responded to questioning that the play area would be moved to the front yard greenspace, and that the existing fence did not extent farther than the current parking lot.

BOARD DISCUSSION

Goans said he would be supportive of approving the preexisting conditions (the undersized lot and existing setback encroachments), but allowing an increased encroachment with the new building was, in his opinion, against the intent of the regulations. Emerson understood this concern but noted that allowing this design provided better circulation and larger greenspace.

Blaufuss said it appeared that the church setback regulations were somewhat generic, and she felt some leniency would be appropriate since this lot was so small.

It was established that the "extra" encroachment would be about 4.5 feet from the north.

It was verified that no building access was proposed for the north side of the new accessory building.

There was discussion about the use of the second Lyon Street access for overflow parking on the grassy area. Mr. Werner responded to questioning that there were certainly days when the church needed more than the required 15 parking spaces, and allowing them to leave off the curb & guttering on the west side of the parking lot would allow them to provide that on the church property. It was clarified that, regardless of actual need, this church was only required to provide 15 parking spaces.

The Board discussed the appropriateness of gravel surface material for a property so close to the flood plain. It was noted that the new Code permitted other permeable surface materials but these were much more expensive than concrete. It was discussed that curbing was designed to direct water flow, but leaving off curbing would allow water to flow easily into the grass.

Concerns were expressed about setting inappropriate precedent and the need to clearly define the uniqueness of this situation. Goans said the Board must be careful to uphold the same level of conformance in all parts of the City.

Mr. Werner responded to questioning that it might be preferable to pave the parking area designated for handicapped accessibility in order to meet ADA requirements.

The issue of hardship was discussed, noting the detriment to the environment of paving that did not allow free water flow to the grassy areas. It was noted that the five criteria specifically referenced hardship to the applicant, not the environment.

Mr. Patterson referenced a section of the new code that stated gravel surfacing of the kind requested was permissible "in floodplain areas" The close proximity of the FEMA designated floodplain should be considered.

ACTION TAKEN

Motioned by Lane, seconded by Emerson to approve the variance for substandard lot size and reduced setbacks as requested, based on the findings of fact presented in the body of the Staff Report and the additional findings:

- The property is unique because:
 - The lot was developed prior to the adoption of the Zoning Ordinance and grandfathered in with substandard lot size and reduced setbacks.
- The proposed configuration mitigated negative impacts on neighboring properties by:
 - moving building access away from residential areas;
 - providing better circulation; and
 - creating larger greenspace.
- Strict application of the regulations would constitute a hardship because:
 - The setback regulations for churches are generic and are not adequate to deal with a lot of this small size.
 - Denial of the variances would preclude the continuation of the existing use and/or the provision of needed services for the existing use.

Motion carried unanimously, 6-0.

Motioned by Hannon, seconded by Lane to approve a variance to allow 4" compacted gravel for the parking areas, as allowed per Code for floodplain areas, and to remove the requirement for concrete

curb and guttering along the west parking boundary, based on the findings of fact presented in the body of the Staff Report and the additional findings:

The property is unique because:

- It is closely adjacent to the floodplain and may be defined as a "floodplain area".
- The new Code will allow 4" compacted gravel in this area as an acceptable surface alternative.
- Peak use of the parking areas is regular but infrequent, occurring only 1-2 times per week.

The proposal will be beneficial to the public health, safety and welfare because:

- Elimination of curbing on the west parking lot boundary will facilitate stormwater dispersal into the greenspace.

Strict application of the regulations would constitute an undue hardship because:

- Curbing will preclude the continued use of the grassy area to provide needed overflow parking.

Motion carried unanimously, 6-0.

ITEM NO. 6: 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. [Deferred by the Board during the April 6th meeting.]

STAFF PRESENTATION

Ms. Miller introduced the item, a request to allow two off-street parking spaces to be located in the front yard setback. She explained the item had been deferred from the April meeting in anticipation of the new code, which would allow the parking arrangement as proposed in this zoning district as long as the vehicles were not in the public right-of-way.

The variance was needed originally because the attached garage had been converted to living quarters. The conversion had been done by a previous owner without proper building permits, and the City was waiting to pursue that matter until the variance issue was settled.

It was clarified that the new code would allow the parking arrangement, but a variance was still required to clear the cited violation. It was not necessary to analyze this case against the five criteria, but simply state that the arrangement was now legally conforming.

APPLICANT PRESENTATION

The applicant had no additional comments.

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 Blaufuss, seconded by Emerson to approve the variance for 1925 Alabama as presented to allow the provision of two off-street parking spaces in the front yard setback.

Motion carried unanimously, 6-0.

ITEM NO. 7: MISCELLANEOUS

- A. Paul Werner asked for clarification on the Board's decision for Item 3 [B-06-19-06]. *That discussion is included with the minutes for that item for clarity.*

- B. The Board was invited to attend a City Commission meeting on the budget process the following week. The City Commission is seeking additional public input and asked the advisory boards to participate as an additional method of bringing forward concerns of the public.

Adjourn – 9:35 p.m.

Official minutes are on file in the planning department office.