

BOARD OF ZONING APPEALS
Meeting Minutes of July 2, 2009 –6:30 p.m.

Members present: Carpenter, Bowman, Lowe, Blaufuss, Kimball, von Tersch

Members excused: Lane

Staff present: Guntert, Parker, Miller

ITEM NO. 1 COMMUNICATIONS

No communications came before the Board.

No Board member disclosed ex parte contact or abstention from the discussion or vote.

von Tersch said she attended a neighborhood association meeting where Item 3 had been discussed.

No agenda items deferred.

ITEM NO. 2 MINUTES

Motioned by Lowe, seconded by Bowman, to approve the June 4, 2009 Board of Zoning Appeals minutes.

Motion carried unanimously, 6-0

ITEM NO. 3 1004 ALABAMA STREET [DRG]

B-6-7-09: A request for a variance as provided in Section 20-1309 of the Land Development Code in the Code of the City of Lawrence, Kansas, 2009 edition. The request is for a variance to exceed the maximum 12 dwelling units per acre standard as it relates to the minimum lot area standard in the RM12D District per Section 20-601(a) of the City Code. The variance is needed for the applicant to be able to construct a duplex dwelling on the lot. The property is legally described as: Lot 15, Block 26, in Sinclair's Addition to the City of Lawrence. The subject property is addressed as 1004 Alabama Street. Submitted by Eric Oligschlaeger for Odyssey Rentals, LLC, the property owner of record.

STAFF PRESENTATION

Mr. David Guntert presented the item.

Carpenter asked Staff to explain why the situation of the property was unique.

Mr. Guntert stated it was a situation that was not created by the property owner. The lot was platted over 100 years ago into the 50' x 117' size. The property owner did not create the lot size nor did they have any part in the creation of the regulations that resulted in the need for the variance. The property had previously been developed with a four unit dwelling. The applicant was reducing the number of dwelling units on the property.

Carpenter said the parcel was not unique and the same situation had come before the Board previously. He stated most zoning issues were not created by applicants.

Blaufuss asked Staff if the hardship was a monetary loss. She stated there were other duplexes in the area that would indicate denying the variance would be arbitrary.

Mr. Guntert stated there were properties in the immediate area that were developed as duplexes. He said under the old code the duplex would have been allowed based on the lot size. When the development code was nearing the final stages of being approved by the City, a neighborhood group pointed out a concern that the code did not have a zoning district that only allowed duplex density. The development code would have converted the existing RMD zoned areas to RM12 which would have allowed potentially larger apartment buildings to be built on property that would before only have allowed duplex density. In response to that concern, staff suggested adding a new district, RM12D, which would only allow duplex structures or single-family dwellings with approval of a special use permit. It was not discovered until later on that the density standard for RM12D did not work for areas in the original townsite that were platted with smaller lot sizes.

Blaufuss asked Staff if applicants received approval for their plans not realizing the code did not allow it.

Mr. Guntert was not aware of other duplexes that had been built during the past three years in the original townsite areas of the city that also have RM12D zoning. He said in the newer platted areas the lot sizes were being platted so that they would be large enough to handle the density required to support a duplex structure.

Bowman asked how the project got so far along without this issue coming to light.

Mr. Guntert stated Staff was not aware of the project until April or May when the application was filed for 1022 Alabama Street. He said Staff sent the property owner a letter informing him of the code violation and of the fact the building permit was issued in error.

Kimball asked Staff if the previous structure, a four-plex residential building, had been destroyed by a fire or tornado, would it have been allowed to be replaced as a four-plex.

Mr. Guntert stated the structure would have been able to be rebuilt as a non-conforming use.

von Tersch asked Staff why a four-plex was allowed to be built on the property.

Mr. Guntert stated in the past the area was zoned multi-family and then more recently down zoned to the RMD duplex district. He said with the new Development Code the RMD zone converted to RM12D.

Carpenter asked Staff if the structure had been damaged 100% would the applicant be able to rebuild what was there in the past.

Mr. Guntert stated a non conforming residential use could be rebuilt on the property but they would have to comply with the district setback and parking standards.

von Tersch asked Staff if the previous structure had been destroyed by fire.

Mr. Guntert stated the previous structure had not been destroyed by fire.

APPLICANT PRESENTATION

Dan Hermreck stated the applicant assumed the property was zoned to allow a duplex when he purchased it. Mr. Hermreck stated the building setbacks, structure size and parking were followed according to the requirements outlined in the Development Code. Nothing was mentioned by the City staff when they submitted the building plans for permits about the lot not having enough area to meet the density standard for the duplex and eventually the building permit was issued.

von Tersch asked Mr. Oligschlaeger if he had demolished the previous four-plex structure.

Mr. Oligschlaeger stated he had demolished the structure due to its poor condition. He said sand had been used under the foundation rather than gravel which caused large cracks to appear. Mr. Oligschlaeger also said the roof was bad and it had poor siding.

Blaufuss asked the applicant what time frame he had begun construction on the structure.

Mr. Oligschlaeger said he received the demolition permit last fall and began construction at that time.

PUBLIC COMMENT

Marci Francisco said she wanted to relay concerns the neighborhood had about the request. She said there was a new Oread Neighborhood Plan in the works. There were single family homes north of the stadium and in 1979 it had been proposed to make the area lower density. Ms. Francisco said it had been considered a change for the area to become duplex zoned but there was not agreement on behalf of the neighborhood that all the properties should become duplex zoned. She said it made sense for the area to be zoned single family and the situation was not unique.

Ms. Francisco stated the issue should be addressed by the Planning Commission. She stated duplex development had been different in areas adjacent to the University due to them having four bedrooms. Duplexes also allow for tandem parking and that caused conflict. There was a concern with the density standard and with how the duplexes near the university were designed but it was not appropriate to say there was a mistake on the part of the Planning Commission. She stated duplexes should be built on larger lot sizes and mixed use should be maintained in the neighborhood.

Ellie LeCompte said she owned property at 1023, 1019 and 1017 Kentucky street. She had never heard of a duplex having four bedrooms on each side. The applicant continued with construction on the property after the letter written by the City had been received. Ms. LeCompte said there was not a lot of space between neighboring homes and the four-plex structure. There was a big three car metal garage on the property that extended five to seven feet from the alley.

Ms. LeCompte said the structure was enormous and a duplex dwelling structure required another 1,400 sq feet of lot size. She said the structure was not in keeping with the size of other structures in the neighborhood. Most of the homes in the area were occupied by families who were renting or who own their home. She said the applicant demolished a four-plex and was now putting in a boarding house and not a duplex. The applicant used the code to build something that was inappropriate for the neighborhood.

von Tersch asked Ms. LeCompte if she had sought relief from the Planning Commission.

Ms. LeCompte said the Planning Commission was surprised these kinds of structures were being built in the Oread Neighborhood. She said owner occupied homes should be protected. An updated Oread Neighborhood Plan was being drafted and there should be a lot of down zoning.

Candice Davis stated she lived in the Oread Neighborhood and was a member of the Board of the Oread Neighborhood Association. She said this was an example of planning gone berserk. She said the property owner was looking for financial gain. Ms. Davis said she had lived in the neighborhood for ten years and her interests were just as important as someone who was buying up property for profit. She was disappointed with the Planning Department. The applicant was getting around the code by naming the structure a duplex.

She stated boarding houses had to provide adequate parking. Ms. Davis stated all the tenants would have a vehicle and tandem parking created higher density. She said the Planning Department had been aware of the concern for several years and it had been brought to their attention to no avail. Ms. Davis stated it should not be up to the neighbors to lobby for good planning.

Rod Laing stated he was a home builder in Lawrence and his first home was at 940 Alabama Street. He said he had demolished the home and built a duplex. Mr. Laing said the neighbors were upset until the structure had been built.

Mr. Laing stated this structure was unique because the building inspectors issued the permit to the applicant. The area was zoned to allow duplexes and the zoning should be honored for its use. Mr. Laing stated the neighbors would not agree on everything which was why they needed to adjust. Mr. Laing stated people buy ground and make investments for the long term and when rules change it is out of the property owner's control. He said there had to be adjustments made. The property was zoned for a duplex, the applicant received a permit and he should be allowed to finish his project.

He asked the applicant where the eight parking spaces were located. The structure was a block north of the stadium which was high density; there were a lot of homes in the area that were rented to students. Mr. Laing said the property could be turned into a single family home and it could be a real mess.

PUBLIC HEARING CLOSED

BOARD DISCUSSION

Blaufuss asked if there was a definition of duplex in the Code and if the structure the applicant was building was allowed by the Code. She asked if there was a limitation on the number of bedrooms.

Dan Hermreck stated the limitation on bedrooms was based on parking spots.

Blaufuss said the definition of duplex did not have a limitation on bedrooms.

Carpenter said the Zoning Code had been in place for three years. He said the League of Women Voters and the Lawrence Association of Neighborhoods was involved and there was no mystery what was happening with duplexes. He said there was a proposed text amendment to deal with the issue. He said the City did issue the building permit but that did not nullify the Zoning Code. Carpenter said the City was taking steps to address the issue with a text amendment.

Kimball said the area was duplex zoning and the fact a duplex could not be built in duplex zoning was a clash. He said there was an oversight and that was unique to the neighborhood. He said if there was duplex zoning and a person could not build a duplex then reducing a four-plex to a duplex was better. He said it was a step in the right direction.

Blaufuss said if a duplex was built straight up with sixteen bedrooms it would not necessarily be better. She stated there was no definition for a duplex in the Code.

von Tersch stated she would vote against the variance because she did not know if the Planning Commission would come through with the text amendment. She said the Board should not keep on working around the issue and they should send a message that it was not appropriate.

Bowman said the area had been down zoned and the neighborhood had evolved. He said the structure was in line with the rest of the neighborhood. Bowman said there was not a definition of a duplex in the code. He said he had lived in Lawrence a long time and he chose to move from a neighborhood because it was moving towards more rentals. The property was zoned duplex and the property owner should be able to build a duplex.

Lowe said he was disappointed with the City for granting the building permit then four months later saying they missed something in the Zoning Code. He said the Code was changing so much it was hard to keep up with it. Lowe said he viewed the property and regardless if he agreed with the number of bedrooms the structure was fairly attractive looking. He said the structure was different than others in the neighborhood but that was diversity.

ACTION TAKEN

Motioned by Kimball, seconded by Bowman, to approve the variance request for 1004 Alabama Street, based on the findings in the staff report.

Motion carried, 4-2

ITEM NO. 4

MISCELLANEOUS

- a) No other business came before the Board.

ACTION TAKEN

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

Motion carried unanimously, 6-0

ADJOURN – 7:25p.m.

Official minutes are on file in the Planning Department office.