

**BOARD OF ZONING APPEALS
MINUTES
JUNE 5, 2005 – 7:05 P.M.**

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

ITEM NO. 1: COMMUNICATIONS

- Memo from Staff dealing with parking requirement calculations related to Item 10
- Copy of the District Court Judge's decision regarding the Wal-Mart lawsuit
- Hannon disclosed ex parte communications related to the request at 1221 Summit Street
- Hannon indicated he would abstain from Items 11 & 12
- Herndon indicated he would abstain from Items 8 & 10
- Blaufuss indicated she would abstain from Misc. Item 1a

Mr. Guntert asked the Commission to consider deferring Items 4 & 5 for two months to allow further discussions between the applicants, Staff and the City's Legal Department. It was possible that alternate solutions could be found and that variances would not be necessary.

The Board agreed with unanimous consent to defer Items 4 & 5 to the September 2005 agenda.

ITEM NO. 2: MINUTES

Several typographical errors were noted in the May 2005 minutes.

Motioned by Lane, seconded by Herndon to approve the May 5, 2005 minutes as revised.
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.]

STAFF PRESENTATION

Ms. Pool described the subject property, noting that it matched the zoning of the surrounding area in all directions except the east, where the Lawrence Human Society existed under PID-2 zoning.

Ms. Pool explained the first variance request to reduce the eastern side yard setback from 50’ to 17’ to accommodate an encroachment by the larger of two proposed additions to the existing building. The Humane Society Director had sent a letter stating no opposition to the variance and it was noted that the Humane Society had a substantial amount of greenspace abutting the subject property.

Staff recommended approval of the side yard setback variance as requested.

The second variance was generally worded to request waiving of the sections relating to parking lot requirements and design. One of the requirements of this section was for a 10’ open space buffer between the parking lot and the residential properties to the north. This could be reduced to 5’ with a fence. The applicant proposed a 3’ (tall) berm instead of the 10’ (wide) buffer, but the plans provided did not clearly show the width of the open space.

It was noted that the applicant’s proposal provided a significant amount of parking (66 spaces) in excess of their parking requirements (38 spaces).

Staff recommended denial of the second variance based on a determination that the applicant could redesign the parking lot to meet code requirements by reducing the number of provided parking spaces.

Ms. Pool said Staff had not been contacted by any of the area residents or property owners.

APPLICANT PRESENTATION

Leonard Blanton, Building Committee Chairman, addressed Staff's recommendation for denial of the parking lot variance(s). He stated that the distance from northern property line to the nearest parking space was in excess of 20' and there was an existing cyclone fence on the adjacent property to the north. He expressed the applicant's willingness to construct a different kind of fence or provide landscape screening on their own property if required, in addition to the proposed 3' tall berm.

Mr. Blanton explained that the existing parking lot contained 64 spaces and there were occasions when this was not adequate and members of the congregation had to park in the street where parking was already challenging. He described how meeting the code requirements for landscaped parking lot islands and 25' drive aisles would eliminate 20-25 of the existing parking spaces. He showed the current parking lot configuration that had served the property with no problems for 30 years and had no islands or drive aisle on the eastern side of the lot.

Mr. Blanton said the applicant was not opposed to constructing concrete curb and guttering as required by code, but requested permission not to construct landscaped islands or a 25' wide drive aisle on the eastern side of the parking lot. He stated that requiring construction of these elements would constitute a hardship because the property would not provide adequately for the parking needs of the existing use.

It was verified that the applicant intended to retain the three existing landscaped islands on the western side of the parking lot. The proposed handicapped-accessible parking spaces could be replaced with another (western) landscaped island if required.

PUBLIC COMMENT

No member of the public spoke on this item.

BOARD DISCUSSION

The Board talked about design alternatives for the parking lot and the challenge of retrofitting long-standing, existing uses to current city codes.

The Board stated concern that the second variance was vaguely expressed. It was not clear what specific code requirements were involved. There was also concern that dimensions were not clearly stated on any of the plans or drawings provided. These dimensions were of particular importance along the northern property line and it was suggested it was worth delaying the project to have the missing information provided.

ACTION TAKEN

Motioned by Herndon, seconded by Emerson to defer this item for one month and direct the applicant to work with Staff to provide additional project details as discussed.

Motion carried unanimously, 7-0.

**ITEM NO. 4: APPEAL BY BROOK CREEK NEIGHBORHOOD ASSOCIATION
RELATED TO 1246 HASKELL AVENUE**

B-04-10-05: Consider an appeal from the Brook Creek Neighborhood Association to expand the list of items included as violations in a "Notice and Order" issued by Barry Walthall, Code Enforcement Manager of the Division of Codes Enforcement/Inspection, Neighborhood Resources Department, City of Lawrence. The "Notice and Order" citing a number of Zoning Code violations at 1246 Haskell Avenue was issued to the property owner of record, Polk & Polk L. C. on March 30, 2005 by Mr. Walthall. The appeal, submitted by Michael S. Almon, for Brook Creek Neighborhood Association, was filed in the Planning Office on April 8, 2005.

The Board agreed unanimously to defer this item to the September 2005 meeting.

ITEM NO. 5: APPEAL BY PROPERTY OWNER RELATED TO 1246 HASKELL AVENUE

B-04-11-05: Consider a request from Jane Eldridge, attorney with Barber Emerson, L.C. on behalf of her client Greg Polk, for an interpretation of each section of the Zoning Code cited in a “Notice and Order” issued by Barry Walthall, Code Enforcement Manager of the Division of Codes Enforcement/Inspection, Neighborhood Resources Department, City of Lawrence. A “Notice and Order” citing a number of Zoning Code violations at 1246 Haskell Avenue was issued to the property owner of record, Polk & Polk L. C. on March 30, 2005 by Mr. Walthall. The appeal for interpretation of these referenced code provisions was filed in the Planning Office on April 8, 2005.

The Board agreed unanimously to defer this item to the September 2005 meeting.

Emerson left at 7:30 p.m.
BZA Meeting 06/02/05

ITEM NO. 6: 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.

STAFF PRESENTATION

Ms. Pool explained the request to allow construction of a 4' addition, reducing the front yard setback to approximately 16'. It was noted that the existing structure encroached 5' into the front yard setback already.

In Staff's opinion, the proposed encroachment was not out of place in this neighborhood, since many examples of similar porch encroachments could be found in the area. Although these examples were not completely enclosed as proposed by the applicant, the presence of roofing made each of these porches technically qualify as enclosed structures.

Ms. Pool referenced the letter of support in the Board's packets that was signed by several area residents. She stated Staff's recommendation for approval of the variance as requested.

There was discussion about the Code provision that would allow the proposed porch to encroach into the front yard setback a distance equal to the average of the existing encroachments along the block face. Ms. Pool responded to questioning that Staff had not had adequate data to complete these calculations, so it was not known if this case could apply the averaging provision.

APPLICANT PRESENTATION

Mr. Patterson stated that the applicant was not able to attend but had asked Staff to communicate no opposition to the Staff recommendation.

PUBLIC COMMENT

No member of the public spoke on this item.

BOARD DISCUSSION

The Board expressed hesitancy to break with precedent and consider this item with the applicant absent, despite the communication of the applicant's support of Staff's recommendation. It was suggested that the Board would like to have the applicant present to respond to questions about the project, possibly to explain how this request was different from any other resident's wish to deviate from the regulatory front yard setbacks.

It was added that, if time were taken for further calculations, it may be found that a variance was not even needed.

ACTION TAKEN

Motioned by Herndon, seconded by Hannon to defer the item to the July 2005 agenda, directing Staff to make the averaging calculations and to request the applicant attend the July meeting.

Motion carried unanimously, 6-0.

BZA Meeting 06/02/05

ITEM NO. 7: 1104 EAST 26TH STREET

B-05-13-05: 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 requests are to vary from the provisions of Section 20-608 of said City Code, which requires a 25' minimum front yard building setback and a 30' minimum rear yard setback in the RS-2 (Single-Family Residence) District. The applicant is asking for a variance to reduce the front yard setback to a minimum of 16'-7" to accommodate the construction of a front porch addition; and, to reduce the rear yard setback to a minimum of 18'-10" for a back screen porch addition. The requests are 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 explained the request to reduce the front and rear yard setbacks to allow the enclosure of the existing rear deck and roofing over the existing front deck to create a front and rear porch. He showed dimensions of the proposed project.

Mr. Patterson outlined Staff's evaluation of the request in respect to the five criteria. He said Staff was unable to find that the request met all five of the required criteria and therefore recommended denial of the request.

APPLICANT PRESENTATION

Brad Brown, applicant, explained he and his wife used their existing decks regularly and would like to add a roof to the front deck and enclose the rear deck to provide insect and weather protection.

It was verified that the applicant had constructed the existing home and it was currently within code regulations in all respects.

Mr. Brown said he had invited comments from several neighbors and all had been favorable, saying the changes would increase the home's visual appeal.

Mr. Brown clarified in response to questions that the 11'2" dimension shown on the elevations included the cantilevers. The actual encroachment would be 10' as stated in the plans and the Staff Report.

PUBLIC COMMENT

Phil Rutledge, adjacent neighbor to the south, stated that the subject property was one of the structures in this neighborhood with substantial curb appeal. He said that the proposed additions to the home would make the neighborhood more attractive, adding to the building's appearance and function.

BOARD DISCUSSION

The Board discussed possible encroachments of the property to the west.

Hannon said the request appeared to be in direct conflict with the intent of the setback regulations and he could see no compelling reason to approve the variances. Santee disagreed, saying the situation was unique because of the positioning of the back yard with the property to the west. He said the front yards in this area were large, making the proposed encroachment reasonable and he had no concerns about granting both variances as requested.

Lane said he agreed with Santee about the significance of the rear yard in relation to the property to the west and he would support the rear yard variance. However, he felt the front yard encroachment would be significant and he would not be able to support the front yard variance. Blaufuss agreed, adding that the front yard, "looks full as it is".

It was discussed that the request could not meet the criteria of hardship, since the applicant constructed the home and it was possible to use the property for its intended purpose while remaining within the regulations.

Hannon said the Board was required to judge each case according to the five criteria, not based on their personal opinions of the project. He said although members may feel this would be a nice addition to the home, they could not grant a variance based on that opinion alone.

ACTION TAKEN

Motioned by Hannon, seconded by Blaufuss to deny both variances as requested, based on the findings presented in the body of the Staff Report that the request does not meet all five of the required criteria.

Motion carried 4-2, with Lane and Santee in opposition.

5-minute recess

BZA Meeting 06/02/05

ITEM NO. 8: 1818 MASSACHUSETTS STREET

B-05-14-05: 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 20-707(b) of said City Code, which requires a 25' rear yard building setback for properties that are zoned C-5 (Limited Commercial) District. The applicant is seeking approval of a 0' rear yard setback to recognize the existing building setback condition. 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 approval for a 0' greenspace setback along Massachusetts Street and along New Hampshire Street, which is the current condition on the site. These requests are for the following legally described property: Lots 11 & 12; the North 50 feet of Lot 22; and all of Lots 23 & 24, Block 16, Babcock's Enlarged Addition in the City of Lawrence. Said legally described property is known as 1818 Massachusetts Street. Submitted by Alan VanGundy with Landplan Engineering for Roger Rubright, Regional Manager for Family Video, the contract purchaser from First National Bank of Lawrence, Trustee, the property owner of record.

Herndon was recused

STAFF PRESENTATION

Ms. Pool explained the request for two variances:

1. Reduction in the rear yard setback from 25' to 0'; and
2. Reduction in the greenspace setback between the parking lot and the street right-of-way from 15' to 0' along Massachusetts and New Hampshire Streets.

Both variances reflected existing site conditions, but the applicant proposed significant changes to the site. In Staff's opinion, the required greenspace buffer could be developed as part of these site modifications to provide needed separation between the commercial use and the street. This would result in fewer parking spaces but would still allow the applicant to provide more than the required number of spaces.

APPLICANT PRESENTATION

Tim Herndon, Landplan Engineering, spoke on behalf of the applicant, introducing the project team for this proposal and describing the adjacent and area uses.

Mr. Herndon said this property faced problems common to older parts of town that were developed prior to the zoning code. He explained the changes the applicant was willing to finance to improve the site and make the existing building more attractive:

1. Reduce (but not eliminate) the existing rear yard encroachment by removing specified sections of the existing building.
2. Reroute the sanitary sewer line that currently runs directly underneath the existing building.
3. Negotiate cross access easements with adjacent property owners to reduce curb cuts on Massachusetts Street.
4. Provide missing street trees and landscaping to change the current "concrete slab" appearance of the lot.

It was noted that the greenspace setback was proposed for reduction, but the landscaping proposed by the applicant would provide separation and visual screening to the residential properties on New Hampshire Street, which was the intent of the greenspace buffer requirement.

Mr. Herndon addressed the parking issue, pointing out that the Code requirement for parking spaces was a minimum, and did not necessarily mean the facility would be well-served by those numbers. He said it was possible to redesign the project to provide the required greenspace setbacks, but this would reduce the amount of available parking.

Mr. Herndon explained that a section of the subject property was being designed as lease space, which could be taken by any of the allowable uses in this zoning district. However, a significant number of the uses allowed in the existing C-5 zoning district carried heavier parking requirements and would be unable to locate in this site if adequate parking could not be provided. The applicant thus interpreted the strict application of the greenspace setback requirement (and the resultant reduction in possible parking) as a hardship. This was particularly so because the applicant proposed to add a significant amount of greenery to the site.

In closing, Mr. Herndon said the applicant's proposal conformed to the established development standards of the area, noted that the adjacent Dillon's parking lot had a 0' parking lot setback along one property line and actually extended into the right-of-way along another. Staff commented that the Dillon's site was developed prior to adoption of the greenspace standards and that much of the landscaping proposed by the applicant would be located in the right-of-way.

Roger Rubright, Regional Manager for Family Video, expressed his excitement about the project and echoed Mr. Herndon's statements about the need for parking as requested. He said the applicant would not waste the Board's time if this was not an important issue.

PUBLIC COMMENT

No member of the public spoke on this item.

BOARD DISCUSSION

It was suggested that the rear yard setback was not of concern because it recognized an existing condition. Related to the greenspace variance, it was commented that the City should attempt to obtain as much parking in this part of town as possible.

The Board discussed findings in support of the greenspace setback variance:

1. The situation is unique because it involves an older building with a set of special challenges.
2. The variance will not adversely impact adjacent property owners, as determined by Staff.
3. It would constitute an unnecessary hardship to require the full greenspace setback, because this would reduce the number of available parking spaces and therefore limit the types of uses that might locate on the site.
4. The variance will not adversely impact the public health, safety or welfare, as determined by Staff.
5. The intent of the greenspace setback requirement is not violated because the applicant is increasing the amount of greenspace and landscape buffering from the site's current state.

ACTION TAKEN

Motioned by Hannon, seconded by Santee to approve variances to allow reduction of the rear yard setback from 25' to 0' based on Staff's findings and reduction in the greenspace setback from 15' to 0' along Massachusetts Street and New Hampshire Street based on the findings stated in the Board Discussion.

Motion carried 5-0-1 with Herndon recused.

BZA Meeting 06/02/05

ITEM NO. 9: 500 LOCUST STREET

B-05-15-05: 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 minimum lot area of 20,000 s. f. for lots zoned M-3 (Intensive Industrial) District per said section of said City Code. The applicant is requesting approval of a variance to allow a minimum lot area of 2,750 s. f. in recognition of the existing platted lot size. The second variance is from said Section 20-807 of the City Code, which requires a 100' lot width for properties that are zoned M-3 District. The applicant is seeking approval of a lot width of 25' in recognition of the existing platted lot size. The third variance is also from the provisions of Section 20-807 of said City Code, which requires a 50' minimum front yard building setback. The applicant is requesting a variance to 0' for the front setback in recognition of the existing conditions. The fourth variance is also from the provisions of Section 20-807 of said City Code, which requires a 25' minimum exterior side yard building setback. The applicant is requesting a variance to 0' for this setback in recognition of the existing conditions. The fifth variance is also from the provisions of Section 20-807 of said City Code, which requires a 15' minimum interior side yard building setback when the property adjoins other industrially zoned land. The applicant is requesting a variance to 0' for this setback in recognition of the existing conditions. The sixth variance is from the provisions in Sections 20-809 and 20-1212 of said City Code, which requires a minimum of 7 parking spaces to be provided for the proposed uses. The applicant is seeking to reduce the number of parking spaces to a minimum of 3 spaces. The seventh and final 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 0' greenspace setback along the N. 5th Street property side. These requests are for the following legally described property: Lot 215 of the South Half of Block 5 of North Lawrence. Said legally described property is known as 500 Locust Street. Submitted by Lance Adams with Paul Werner Architects for Sid Ziegler, property owner of record.

STAFF PRESENTATION

Ms. Pool explained the request for seven variances to accommodate renovation of an existing non-conforming structure on the subject property that was constructed before adoption of the regulations. The five variances related to lot size, lot width, front yard setback, and exterior and interior side yard setbacks are all requested to bring existing site conditions into conformance. Two additional variances are requested to reduce the number of required parking spaces from 7 to 3 and to reduce the greenspace setback requirement from 15' to 0'.

Staff noted that the variance request was for 3 off-street parking spaces, but the plan showed 4 spaces (3 regular and 1 handicapped-accessible).

Ms. Pool described Staff's analysis of the requests and the finding that the proposal met all five criteria. Staff recommended approval of all seven variances as requested.

APPLICANT PRESENTATION

Lance Adams, Paul Werner Architects, spoke on behalf of the applicant. Mr. Adams said the property was unique because the existing structure was constructed in 1872, two years after North Lawrence joined with Lawrence. He said the building had housed many different uses, and showed a photograph of the existing building in about 1900, before the current stucco finish was applied to the outer walls.

Mr. Adams explained the parking space request, saying the applicant hoped to be able to provide 4 spaces as shown on the plan. However, depending on what kind of business took tenancy, the property owner might be required to provide an enclosed trash dumpster. This would take up one parking space, so the applicant requested the variance to allow a minimum of 3 spaces, "just in case".

Mr. Adams said the property owners had received calls from a number of interested parties, but had been unable to finalize a lease contract until the parking question was settled.

The applicant felt this project was a positive step for North Lawrence and for the property, establishing a new use for the building.

It was verified that the project would not require HRC review.

PUBLIC COMMENT

No member of the public spoke on this item.

BOARD DISCUSSION

The Board discussed the parking space issue, with the suggestion that the Board should grant the variance for 4 spaces instead of 3. It was commented that one parking space more or less would not make a significant difference in this neighborhood.

Mr. Adams was asked to state for the record that, if the trash enclosure was not required, the applicant would provide four off-street parking spaces. Mr. Adams agreed.

ACTION TAKEN

Motioned by Hannon, seconded by Lane to approve the seven requested variances as requested, based on the findings presented in the Staff Report.

Motion carried unanimously, 6-0.

**ITEM NO. 10: SOUTHERN HILLS SHOPPING CENTER; SE CORNER
OUSDAHL ROAD & W. 23RD STREET**

B-05-16-05: 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 Sections 20-709 and 20-1212 of said City Code, which requires a minimum of 298 parking spaces to be provided for the proposed uses. The applicant is seeking to reduce the number of parking spaces to 233 spaces. The second variance is from the provisions of Section 20-1205(e) of said City Code, which requires a 25' minimum width for a two-way aisleway. The applicant is seeking a variance to allow this aisleway width to be reduced to 22'. The third 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 approval for a 0' greenspace setback along the Ousdahl Road and W. 24th Street property sides. The fourth variance is from the provisions of Section 20-1216(c) of the City Code requiring a 10' greenspace buffer when parking areas adjoin a residential zoned district. The code provision permits this setback to be reduced to a 5' greenspace buffer with the installation of an opaque screening fence between a parking area and adjoining residentially zoned property. The applicant is asking approval for a 0' greenspace setback along the east property line. The final variance is from the provisions of Section 20-14A04.6 which calls for interior landscaping within the parking lot. The applicant is requesting the amount of interior parking lot landscaping be reduced from 9,744 sq. ft. to 6,899 sq. ft. These requests are for the following legally described property: Lot 3, Southridge Addition No. 5 in the City of Lawrence. Said legally described property is known as Southern Hills Shopping Center, located on the southeast corner of W. 23rd Street and Ousdahl Road. Submitted by Alan D. Mackey with Landplan Engineering for Diversified Asset Management Company, property owner of record.

Herndon was recused.

STAFF PRESENTATION

Mr. Patterson distributed information about the calculation of required and provided parking spaces for the subject property. He explained the property had met site plan requirements when it was originally developed, but that these requirements had changed and the lot did not meet the revised standards.

Staff outlined the variances requested:

1. Reduced off-street parking requirement from 298 spaces to 233. Based on the information provided by the applicant, this variance may not be necessary.
2. Reduced parking lot aisle width from 25' to 22'. This is an existing site condition.
3. Reduction of the greenspace setback between the parking area and the street right-of-way from 15' to 0' along Ousdahl Road and W. 24th Street. This is an existing site condition.
4. Reduction of the greenspace buffer setback between the parking area and the residential properties to the east from 10' (5' with an opaque fence) to 0'.
5. Reduce the interior parking lot landscaping requirement from 9,744 to 6,899 square feet. This reflects the addition of 3,000+ square feet of landscaping to the existing site condition, but is not adequate to meet the landscaping requirements.

Mr. Patterson said the project would bring the existing site closer to conformance with today's regulations. He said the existing building was developed in the 1970's with an approved site plan in configurations that might not be approved today. However, the site was functioning adequately in terms of parking lot safety and circulation according to the 23rd Street Corridor Study.

It was noted that the plans did not identify specific cross access easements for the subject property and there appeared to be some shared parking between the businesses in the area.

Mr. Patterson described Staff's review of the project and their finding that the request did meet all five of the required criteria. Staff recommended approval of all variances as requested, noting that variance 1 (reduced parking requirements) might not be needed.

APPLICANT PRESENTATION

Tim Herndon, Landplan Engineering, presented on behalf of the applicant, saying the existing structure would not be changed at all with this project. The building permit and subsequent variance approval requirements were triggered by the change in use, moving from multiple various uses to a single larger user.

Mr. Herndon referenced the two different parking space requirement calculations, noting that the site would just barely meet the minimum requirement of 233 spaces as calculated by the applicant. He asked that, for clarity, the Board grant this variance.

Alan Mackey, Landplan Engineering, also spoke on behalf of the applicant to address the remaining variances. He pointed out which were for existing conditions and which reflected the significant site improvements proposed by the applicant (providing missing street trees and nearly doubling existing parking lot landscaping) that still fell short of the code requirements. Mr. Mackey showed how providing these upgrades limited the amount of parking that could be provided.

PUBLIC COMMENT

No member of the public spoke on this item.

BOARD DISCUSSION

The Board had no additional comments or questions.

ACTION TAKEN

Motioned by Santee, seconded by Lane to approve the five variances as requested, based on the findings presented in the Staff Report.

Motion carried 5-0-1 with Herndon recused.

ITEM NO. 11: 1136 WAVERLY DRIVE

B-05-17-05: 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 30' minimum rear 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 17.5' to accommodate the construction of a deck addition on the back of the house. The request is made for the following legally described property: Lot 5, Block 4, Fox Chase South Addition in the City of Lawrence. Said described property is located at 1136 Waverly Drive. Submitted by Janet Smalter with Smalter & Associates, Architects for Paul and Mary Pendry, property owner of record.

ITEM NO. 12: 1132 WAVERLY DRIVE

B-05-18-05: 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 30' minimum rear 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 21.5' to accommodate the construction of a deck addition on the back of the house. The request is made for the following legally described property: Lot 6, Block 4, Fox Chase South Addition in the City of Lawrence. Said described property is located at 1132 Waverly Drive. Submitted by Janet Smalter with Smalter & Associates, Architects for Jeff Hoffman with Hoffman Builders, property owner of record.

Hannon was recused. Items 11 & 12 were discussed simultaneously.

STAFF PRESENTATION

Mr. Patterson explained the request to reduce the 30' rear yard setback to accommodate an elevated rear yard porch on two newly-constructed homes that were nearing completion. These 2-story decks both backed onto a ravine/drainage area referred to generally as the Ring Park.

The subject properties sit on lots with significant grade, but Staff found that the properties are not unique except that they back onto a heavily wooded ravine that effectively blocks visual connection to the residential areas across the ravine.

Although Staff did not believe the projects would adversely impact adjacent properties or the public health safety and welfare, Mr. Patterson said the proposals did not stand up to all five criteria. Since these were new homes, it could not be said that the need for the variance did not arise through the action of the applicants. Nor could Staff find that the request met the definition of hardship, since the homes could be constructed with rear decks up to 30" above grade. Finally, in Staff's opinion the requests were opposed to the intent of the regulations. With these findings, Staff was required to recommend denial of both requests.

APPLICANT PRESENTATION

Janet Smalter, Smalter & Associates, spoke on behalf of the applicant, responded to questioning that the plans provided to the Board were identical to the ones submitted to Neighborhood Resources for building permits. She said she misinterpreted the Code and submitted plans showing decks on both houses clearly encroaching into the rear yard setbacks, but both of these plans were approved for building permits as submitted.

Ms. Smalter explained that the applicants, when told of the error, worked with her to create the revised plans also presented to the Board. These revisions significantly reduced the amount of rear yard encroachment for both homes to approximately 9'.

Ms. Smalter said these properties were unique to the area because of the adjacent Ring Park to the rear and the fact that these lots were not as deep as others in the near vicinity.

The applicant referenced letters stating no opposition from adjacent neighbors. Ms. Smalter also addressed a letter from one property owner that stated several concerns about the Ring Park in general and the potential of a walking path into the ravine.

Ms. Smalter showed multiple photographs showing it was virtually impossible to see other residential properties across the ravine. She then presented several pictures of similar situations (elevated decks encroaching into the rear yard setback) existing in this neighborhood.

Ms. Smalter said she admitted she made an error but that no one had intentionally violated the code and she hoped her clients would not be penalized. She noted again that the elevated decks had been part of the designs since the beginning and stated her opinion that the requests did meet all five criteria and should be approved as presented.

PUBLIC COMMENT

No member of the public spoke on this item.

BOARD DISCUSSION

Mr. Patterson responded to questioning that the writer of the letter regarding use of the Ring Park had contacted Staff by phone but was not able to attend tonight's meeting. It was discussed that the primary point relevant to these cases was the concern that the writer's rear yard would be visible from the elevated deck.

Mr. Guntert said one other call from the public had been received related to these requests, from another builder in this area who was concerned that his project would face similar issues. It was determined that this would not be the case.

It was noted that, because of the slope of these lots, any projection into the rear yard would quickly reach the 30" maximum height.

It was discussed that Neighborhood Resources shared responsibility with Ms. Smalter for the errors leading to these requests because they should have been aware of the non-conformity of the plans submitted.

Herndon suggested it would be a hardship to prevent the applicants from using the "incredible view opportunities" provided by the location of the subject lots. Blaufuss said this was not a suitable claim for hardship, since the structures could still be used for their intended purpose. It was noted as a possible claim of hardship that both homes had a door leading from the main floor to nowhere if the deck were not constructed to meet the exit point.

It was established that the provision for a reduced rear yard based on exposed yard space was not applicable to these situations. It was noted, however, that the 9' encroachment posed by the revised deck plans was close to meeting this provision.

The Board discussed design alternatives and whether or not these cases met the criteria of uniqueness.

It was commented that the Board frequently had a negative view of "after-the-fact" requests, but that this developer's mistake was harmless to the neighborhood. It was added that evidence had been provided showing that this particular infraction had been allowed in this area several times before.

The following elements were suggested as findings related to the criteria of hardship and uniqueness in support of both requests:

- Uniqueness applies, because the subject rear yards are virtually invisible to the public and nearby properties, heavily screened and buffered by the City-owned "ring park" that the subject properties back up to.
- Uniqueness applies, because severe slopes fall immediately away from the rear of the subject properties, exaggerating the height from decking to the ground level below.
- Uniqueness applies, because of extraordinary vista views toward the "ring park" from the rear of the subject properties, particularly warranting decks.
- Hardship applies, because the building permits were issued by the City, based on site plans submitted by the Applicant that clearly showed the proposed decks. In this case, the Applicant should not be penalized for this mutual oversight.
- Hardship applies, because several interior doorways would lead "nowhere" in the absence of decking.
- Hardship applies, because denial of the variance would require significant demolition and reconstruction of two brand new homes, to truly rectify the situation.

ACTION TAKEN

Item 11

Motioned by Herndon, seconded by Lane to approve the variance to allow a reduced rear yard setback from 30' to 17.5' for the property at 1136 Waverly Drive, based on a determination that all five criteria have been met, particularly those of uniqueness and hardship as outlined in the Board Discussion, and subject to the following condition:

1. Deck construction must match the design shown in the site plan dated 11/09/04, revised 05/03/05.

Motion carried 3-2-1, with Blaufuss and Goans in opposition and Hannon recused.

Item 12

Motioned by Herndon, seconded by Lane to approve the variance to allow a reduced rear yard setback from 30' to 21.5' for the property at 1132 Waverly Drive, based on a determination that all five criteria are met, particularly those of uniqueness and hardship as outlined in the Board Discussion, and subject to the following condition:

1. Deck construction must match the design shown in the site plan dated 12/04/04, revised 05/04/05.

Motion carried 3-2-1, with Blaufuss and Goans in opposition and Hannon recused.

ITEM NO. 13: 2529 BONANZA STREET

B-05-19-05: 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. 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 existing garage to be converted into living space for the family and to correct a drainage problem that exists. The request applies to the following legally described property: Lot 32, Replat of Cimarron Hills Block 5 in the City of Lawrence, Douglas County, Kansas. Said described property is generally known as 2529 Bonanza Street. Submitted by Jeff and Debi Farmer, property owners of record.

STAFF PRESENTATION

Ms. Pool explained the request to allow the two off-street parking spaces to be located within front yard (driveway), to allow construction of a stem wall to redirect stormwater flow that currently pooled in the garage and flooded the primary structure.

Staff recommended approval of the variance, subject to the condition that the project was approved by the City's Stormwater Engineer to ensure that drainage issues were dealt with properly and would not adversely impact other properties.

APPLICANT PRESENTATION

Brian Blevins, Central Plain Inspection, spoke on behalf of the applicant, saying the frequent flooding of the property had created other problems, such as a cracked and shifting foundation. He explained how the stem wall and other construction elements would divert water to a more suitable flow location that would not negatively impact other properties.

Mr. Blevins said the situation was obviously unique and hardship was clearly established, adding that he would be happy to provide the Public Works Department with whatever drawings were necessary.

PUBLIC COMMENT

No member of the public spoke on this item.

BOARD DISCUSSION

The Board had no additional questions or concerns.

ACTION TAKEN

Motioned by Lane, seconded by Herndon to approve the variance to allow two off-street parking spaces to be located in the front yard at 2529 Bonanza, based on the findings presented in the Staff Report and subject to the following condition:

1. Stormwater drainage will not be diverted into the neighboring property in such a way as to create a flooding or health issue for them.

Motion carried unanimously, 6-0.

ITEM NO. 14: MISCELLANEOUS

- a. Consider a request from Rich Minder, Treasurer for Delaware Street Commons, for an additional 90-day extension of variances previously granted and extended by the Board.

Motioned by Hannon, seconded by Lane to approve the 90-day extension of the variances granted for Delaware Street Commons.

Motion carried 5-0-1, with Blaufuss abstaining due to her absence from the original consideration of this item.

- b. Consider any other business to come before the Board.

There was no additional business to come before the Board.

ADJOURN – 10:10 p.m.

Official minutes are on file in the Planning Department office.