

**LAWRENCE BOARD OF ZONING APPEALS
MINUTES
MARCH 3, 2005 – 7:05 P.M., CITY COMMISSION MEETING ROOM, FIRST
FLOOR OF CITY HALL AT SIXTH AND MASSACHUSETTS
STREET, LAWRENCE, KANSAS**

MEMBERS PRESENT: Goans, Hannon, Blaufuss, Emerson, Santee and Lane
STAFF PRESENT: Patterson and Saker

ITEM NO. 1: COMMUNICATIONS

- There were no additional communications for the Board.
- No ex parte communications were disclosed.
- No abstentions were indicated.
- No items were requested for deferral.

ITEM NO. 2: MINUTES

Two changes were requested to the February 2005 minutes:

- Change "9" to "5" in the applicant presentation for Item 4
- Correct typographical error at top of page 6
- Add clarifying language to Mr. Lane's comments at the top of page 7

Motioned by Mr. Hannon, seconded by Mr. Lane to approve the February 3, 2005 minutes as revised.

Motion carried unanimously, 6-0.

Swearing in of witnesses

ITEM NO. 3: 515 ROCKLEDGE ROAD

B-02-03-05: 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 20-1205(e) of said City Code, which sets a 25' minimum width for a two-way aisleway. The applicant is asking for a variance to allow an existing 15' wide driveway to remain as the aisleway for a small parking area serving a new office development. The request is made for the following legally described property: Lots 18 & 19, Country Club Terrace Addition in the City of Lawrence. Said described property is located at 515 Rockledge Road. Submitted by Paul Werner with Paul Werner Architects for Phil Rademacher, the contract purchaser from John Rueschhoff, property owner of record.

STAFF PRESENTATION

Mr. Patterson introduced the item, a request to grant a variance to bring the existing 15' wide driveway into compliance. Rezoning to residential-office was approved in 2003. The new zoning district carried a requirement for a 25' driveway.

It was clarified that the Code did not specifically state a minimum driveway width, but stated a requirement for a two-way aisleway with a minimum width of 25'. In this case, the City Engineer had made a determination that the 25' minimum width was required for the driveway. However, the Board had authority to grant a variance or make an alternate interpretation of the Code.

Staff pointed out that an additional criterion was applied to variances of this nature. The Board must justify the variance with the finding that the particular nature of the use, the exceptional shape or size of the property, or some other exceptional situation or condition is not generally applicable to other lots in the same district.

Mr. Patterson said the requested variance was intended to be temporary. The applicant anticipated expanding the business at some future point and possibly adding some residential uses. Any change to the subject property would require a new site plan and trigger another variance requirement.

Staff recommended denial of the variance, finding the request did not meet all of the required criteria.

APPLICANT PRESENTATION

Paul Werner, Paul Werner Architects, spoke on behalf of the applicant. Mr. Werner said the business was very small and did not generate a significant amount of traffic. He listed the improvements being done to the subject property in accordance with city standards for the lot's new RO zoning. These improvements included paving the driveway.

Mr. Werner said the office use was probably not the best use of the property and it was possible this would not be the final configuration of the lot. However, the 15' driveway was functional for the use and the applicant would like to retain this width until redevelopment took place.

Mr. Werner asked the Board to consider an alternative interpretation of the Code, determining that the aisleway width requirements did not apply to this case (because it was a driveway, not an aisleway).

Phil Rademacher, property owner, explained he and his wife had been renting space for their small business and decided it was time to own their own office space. He said the business had a very low traffic volume, with 1-2 appointments per day and only himself, his wife and one part-time employee. He anticipated business growth and expected to add more staff in the future. At that time he would return with a new site plan for expansion.

There was discussion about the RO zoning approved for this lot, as well as the two lots to the northeast, 501 & 505 Rockledge Road. Mr. Werner and Mr. Rademacher stated it was unlikely the three adjacent lots would be combined in the near future, since the middle lot held a residential use the owners did not intend to vacate soon. The RO zoning request had begun with Mr. Werner's property at 501 Rockledge, but had been expanded to three lots to avoid spot-zoning.

PUBLIC COMMENT

No other member of the public spoke on this item

BOARD DISCUSSION

There was additional discussion about alternatives to the City Engineer's interpretation of the Code requirements regarding aisleway width. It was verified that the Board had the authority to hear an appeal of the City Engineer's interpretation.

The Board talked about the difference between aisleways, driveways and parking lot entrances. It was again clarified that the Code does not specifically address minimum driveway width. Nor does the Code provide a clear definition of 'driveway' compared to 'aisleway'.

The Board spoke about the additional criteria and noted that it was not applicable if the Board chose to interpret that a variance was not needed.

It was suggested that a caveat could be added to the variance stating that any building expansion would require a new variance. It was understood that this was the case regardless, but there was concern about precedent.

Mr. Emerson asked how much of an addition would make the Board look at the variance request differently. It was suggested by the applicant that this was a small business and a 25' driveway was not needed. Would the addition of a single small room make a difference?

Chairman Goans summarized the situation before the Board. The City Engineer had made a determination that 2-way traffic must be accommodated for this use in RO zoning, and the 15' existing driveway was not adequate for 2-way traffic. The Board must decide if they agreed with the Engineer's determination. If they did agree, they must consider a variance in light of the five criteria and the additional criteria outlined by Staff.

Chairman Goans said he did not believe the case met the criteria of uniqueness. He was also concerned about a 25' wide paved surface "going up the hill", but that alone did not affect the validity of Staff's interpretation.

There was additional discussion about the difference between a driveway and an aisleway and the fact that the City Engineer's interpretation is based on code text specifically addressing aisleways. There was general agreement that this was a driveway and the code language was therefore not applicable.

Staff proposed language for a motion supporting a different interpretation from the City Engineer.

Board finds that the **ACTION TAKEN**

Motioned by Mr. Lane, seconded by Mr. Emerson to support an interpretation that Sec. 20-1205(e) does not apply to the property at 505 Rockledge, based on a determination that the 25' requirement applies specifically to aisleways, not driveways.

Motion carried unanimously, 6-0.

DISCUSSION ON THE ACTION

It was verified that the Board's action allowed a 15' driveway leading to the parking area, all improved to city paving standards and the access & driveway improvements reflected in the application.

ITEM NO. 4: 1022 NEW YORK STREET

B-02-04-05: 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 450 square feet based upon the current zoning of the property being RS-2 District. The application is for the following legally described property: Lot 104 on New York Street in the Original Townsite of the City of Lawrence. Said described property is known as 1022 New York Street. Submitted by Cathy Clark with Paul Werner Architects, for Hugh Hines, property owner of record.

STAFF PRESENTATION

Mr. Patterson introduced the item, a request to allow an accessory building (detached one-story garage) in excess of the maximum rear yard coverage permitted by Code. The applicant proposed a garage measuring 528 square feet in area (22' X 24'), matching the precedent set by the Board in similar cases.

Staff recommended approval of the variance, with the condition that the existing shed be removed upon completion of the new accessory building.

It was noted that the new Development Code eliminated the need for a variance in cases like this, but new code had been delayed for at least 6 months.

APPLICANT PRESENTATION

Paul Werner, Paul Werner Architects, stated the applicant's support of Staff's recommendation. He responded to questioning that the applicant intended to supply electric service to the new garage, but not plumbing.

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 Mr. Hannon, seconded by Mr. Lane to grant a variance for 1022 New York Street to allow construction of an accessory building measuring 528 square feet (22' X 24'), based on the findings stated in the Staff Report and subject to the following condition:

1. The existing 80 square foot accessory building on the property (small shed located in the rear yard) shall be removed upon completion of the construction of the detached garage.

Motion carried unanimously, 6-0.

ITEM NO. 5: MISCELLANEOUS

- a) Consider a request from Rich Minder, Treasurer for Delaware Street Commons, a new residential co-housing development in the 1200 block of Delaware Street, for a 90-day extension of a variance [B-01-01-04, et al] previously approved by the Board.

It was established that this was the fifth extension of the variances approved for the property. The new Code would limit the number of extensions that could be granted for a project, but the original approval and each extension would be for a longer period of time.

Ms. Blaufuss and Mr. Emerson said they would abstain from the vote because they were not present during the original consideration of the variances. If the project had to request another extension in the future, the Board asked Staff to provide all background information on the project.

ACTION TAKEN

Motioned by Mr. Hannon, seconded by Mr. Goans to grant a 90-day extension to the variances granted for Delaware Street Commons.

Motion carried 4-0-2, with Ms. Blaufuss and Mr. Emerson abstaining.

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

There was no additional business to come before the Board.

ADJOURN – 8:00 p.m.

Official minutes are on file the in the Planning Department office.