

**BOARD OF ZONING APPEALS**  
**Meeting Minutes of March 5, 2009 –6:30 p.m.**

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Members present: Lowe, Lane, von Tersch, Kimball, Carpenter

Members excused: Blaufuss, Bowman

Staff present: Guntert, Parker, Miller

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**ITEM NO. 1            COMMUNICATIONS**

No communications to come before the Board.

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

**ITEM NO. 2            MINUTES**

**ACTION TAKEN**

Motioned by Lane, seconded by von Tersch, to approve the February 5, 2009 Board of Zoning Appeals minutes.

Motion carried unanimously, 5-0

Kimball suggested the Board discuss Item 4 prior to Item 3.

Lowe stated Item 4 would be discussed prior to Item 3.

**ITEM NO. 4            749 MAPLE STREET [DRG]**

**B-2-2-09:** A request for variances as provided in Section 20-1309 of the Land Development Code of the City of Lawrence, Kansas, 2009 edition. The first request is to waive the requirement for curb and gutter to be provided around the perimeter of the parking lot in accordance with the City standards for concrete curbs as required by Section 20-913(i) of the City Code. The second variance is from the provisions in Article 9, Section 20-908(c) of the City Code as it pertains to the setback of off-street parking from a street right-of-way. The Code requires a 15 feet setback and the applicant is requesting it be reduced to 10 feet. The request is submitted to allow for the development of a contractor business on the property legally described as Lot 1, Maple Street North Subdivision in the City of Lawrence, Douglas County, Kansas. The property address is 749 Maple Street. Submitted by Albert L. Jost, the property owner of record.

**STAFF PRESENTATION**

Mr. David Guntert presented the item.

Lane asked Staff if a Site Plan had been submitted for 749 Maple Street.

Mr. Guntert stated a Site Plan was pending completion until after the Board acted on the request.

Carpenter stated 749 Maple Street had been discussed in November 2006. He asked Staff what had been determined at that time.

Mr. Guntert stated the previous request had been a set back variance request for the building to be located closer to the rear property line than allowed by code.

Lane said there had also been a discussion regarding gravel versus pavement on the property.

Carpenter stated the storm water engineer had given the same recommendation on that request as he did with the current request.

Mr. Guntert stated the previous development request was never built and the property had been sold.

#### **APPLICANT PRESENTATION**

Albert Jost stated he purchased 749 Maple Street in June of 2008. It was not disclosed by the previous owner that the property could not be developed until water and fire protection improvements were made to address severe deficiencies in the existing system. Those improvements had been completed by the City. He planned to use the property for storage.

#### **PUBLIC COMMENT**

No one from the public spoke to this item.

#### **PUBLIC HEARING CLOSED**

#### **BOARD DISCUSSION**

Carpenter said there was a previous request for the same purpose.

von Tersch stated neighbors at the previous meeting had been concerned with water run off and the gravel versus asphalt issue. She said the neighbors had been satisfied at the previous Board of Zoning Appeals meeting.

Lowe stated he had viewed the property and agreed that it made sense to waive the curb and gutter requirement.

#### **ACTION TAKEN**

Motioned by von Tersch, seconded by Carpenter, to approve the variance request and parking set back reduction request for 749 Maple Street, based on the findings of fact in the staff report, with the following condition:

1. Concrete wheel stops be provided for each parking space denoted on the site plan.

Motion carried unanimously, 5-0

**ITEM NO. 3      ZARCO 66 FUEL STATION/COFFEE SHOP; 2005 W. 9<sup>TH</sup> STREET [DRG]**

**B-12-20-08:** A request for variances as provided in Section 20-1309 of the Land Development Code in the Code of the City of Lawrence, Kansas, 2008 edition. The variances are from the following provisions in the City Code: Article 2, Sections 20-213(e)(1) and 20-213(f)(4); Article 6, Sections 20-601(b), 20-602(e)(6)(i) and 20-602(e)(7); Article 9, Sections 20-902, 20-908(c), 20-911(b)(2), 20-913(f)(1), and 20-913(k); Article 10, Sections 20-1002, 20-1003(c)(1), 20-1003(f), 20-1004(d), 20-1005(c), 20-1005(e)(3), 20-1005(g)(1), and 20-1006(b); and, Article 11, Section 20-1105(a) of the City Code. These variances pertain to certain base district standards in the CS (Commercial Strip) District; density and dimensional standards; parking, loading and access standards; landscaping and screening standards; and, general development standards of the Development Code as they relate to the redevelopment of an existing commercially developed property. The property is legally described as: Lot 4, in Block 1, in Riling Heights, an Addition to the City of Lawrence, less the following: Beginning at the Northwest corner of said Lot 4; thence South 40 feet; thence East and parallel with the North line of Lot 4, 80 feet; thence in a Southeasterly direction to a point on the East line of Lot 4 located 85 feet South of the Northeast corner thereof; thence North 85 feet to the Northeast corner of Lot 4; thence West along the North line of Lot 4 to the point of beginning; in Douglas County, Kansas. The subject property is a fuel station and drive-through coffee shop at 2005 W. 9th Street. Submitted by Tim Herndon and Brian Sturm of Landplan Engineering, P.A., for Zarco 66, Inc., the property owner of record.

**STAFF PRESENTATION**

Mr. David Guntert presented the item.

Lane asked if there was a need to recite the variance requests.

John Miller, Staff Attorney, stated the staff report could be considered for all nineteen variance requests.

von Tersch asked if action could be taken on the variances Staff recommended be approved, and the remaining variances be heard separately.

Miller stated he would recommend taking action on the remaining variances separately.

**APPLICANT PRESENTATION**

Tim Herndon, Landplan Engineering presented photos of 2005 West 9<sup>th</sup> Street. He introduced Brian Sturm, Project Manager, and the owner of the property Scott Zaremba. Mr. Herndon stated Staff had worked with him on all nineteen variances. Mr. Herndon presented items regarding the variance requests for 2005 West 9<sup>th</sup> Street.

Scott Zaremba stated he had met with Public Works staff prior to purchasing the property at 2005 West 9<sup>th</sup> Street, and there had been a lot of improvements over the past fifteen years. He said there was a two to four year time frame to improve the intersection of 9<sup>th</sup> and Iowa Street. Mr. Zaremba stated the ninth street spur had utilities running through it but traffic needed to keep flowing through the intersection.

Mr. Herndon stated the right of way that existed to install sidewalks along W. 9<sup>th</sup> Street consisted of eighty six feet. He said the code required a minimum of one hundred fifty feet. He said sidewalks and cross walks could not be built on the property to meet City standards. Mr. Herndon asked the Board of Zoning Appeals to grant variance request numbers ten and nineteen.

Kimball asked Mr. Herndon if the coffee shop on site had been built on a temporary permit.

Mr. Herndon stated the coffee shop had been built on a temporary permit with the understanding the owner would site plan the property. He said the wind turbine installation was a separate building permit.

von Tersch asked if the wind turbine was included in the variance request.

Mr. Herndon stated the variance was not for the wind turbine. He said the variance request consisted of the screening around the wind turbine.

Mr. Zaremba stated the current wind turbine produced an average of 1675 kilowatt hours per year.

von Tersch asked if the wind turbine produced noise.

Mr. Zaremba stated the wind turbine did not generate much noise.

von Tersch asked the applicant if the wind turbine approval would set a precedent.

Mr. Herndon stated the action of the Board of Zoning Appeals would not set precedence.

von Tersch said she did not know if the community desired wind turbines all over the City.

Mr. Herndon stated the wind turbine did not produce noise and the applicant was trying to take steps for the City to become a green community.

von Tersch said she was interested in the green movement but the project seemed like a lot of change.

Lowé thought screening would defeat the purpose of the wind turbine.

von Tersch stated she was not comfortable with wind turbines. She asked if net metering was in place.

Mr. Zaremba said it was not something that could be done at this time, but perhaps so in the future. He said he had financially supported the site with no government help. Currently the site consisted of one transportation fuel and he was moving forward to create a second transportation fuel.

von Tersch asked the applicant what the 1675 kilowatt hours were used for.

Mr. Zaremba said the utilities had been reduced because of the installation of the wind turbine but it was not large enough to make the site self sufficient.

Carpenter asked the applicant if there were figures for traffic accidents in the area.

Mr. Herndon stated there was no feedback from Public Works stating havoc would be created in the area.

Mr. Zaremba stated accidents had not been an issue at the intersection. They were planning to close the access driveway on Iowa Street, which was dangerous.

#### **PUBLIC COMMENT**

No one from the public spoke to this item.

#### **PUBLIC HEARING CLOSED**

## **BOARD DISCUSSION**

Carpenter asked Mr. Miller to explain the Federal Regulations regarding Americans with Disabilities Act and the space on site.

John Miller said he would research the Americans with Disabilities Act.

Carpenter said the issue of stacking spaces for the drive-up window blocking the accessible parking space could subject the City to potential lawsuit.

von Tersch stated it would be safer for pedestrians if the street access was narrowed.

Lane asked if there was a sidewalk on the property.

Mr. Herndon said there was a sidewalk on the south side of Ninth Street Terrace.

Lane said there was a crosswalk across Iowa Street from the east to the west.

Mr. Herndon said there was a conglomeration of electrical poles at the intersection that made it impractical to build a sidewalk in that location.

Kimball asked if there was a walk up window at the coffee shop.

Mr. Zaremba said there was a walk up window for customers to retrieve change after fueling their vehicle.

Kimball stated it was ironic the variances were to remove landscaping. He said pedestrian traffic was the greenest traffic.

von Tersch asked if people in the neighborhood walk to The Merc.

Lane said there was no practical way to handle pedestrian traffic in the area of 2005 West 9<sup>th</sup> Street.

Mr. Zaremba stated the intent was to improve the area for the community.

Lowe said he was concerned with variances number one and eight. He said the stacking of automobiles was a big concern. Mr. Lowe said if the access was narrowed and moved thirty feet east of Iowa Street there would be a problem for people entering Ninth Street off of Iowa Street. He thought people were more cautious traveling through that location because of the wide open access.

Lane said it made more sense to leave the existing north entrance than to close it.

Lowe said the property was unique.

Carpenter stated the current situation appeared to work.

Lowe said he had only seen one accident at the corner during peak times of travel.

## **ACTION TAKEN**

Motioned by Carpenter, seconded by Lane, to approve variance requests two through seven, nine, and twelve through eighteen, for 2005 West 9<sup>th</sup> Street, based on staffs recommendation, and the findings of fact in the staff report.

Motion carried unanimously, 5-0

**ACTION TAKEN**

Motioned by Kimball, seconded by Lowe, to approve variance request number one, based on the findings presented by the applicant in their presentation.

Motion carried, 4-1

**ACTION TAKEN**

Motioned by Carpenter, seconded by Lane, to approve variance request number eight, for 2005 West 9<sup>th</sup> Street, with the modification that the number of stacking spaces be modified from four to two, based on the presentation of the applicant and discussion by the Board.

Motion carried unanimously, 5-0

Mr. Herndon stated the stacking spaces were striped. He asked if the applicant would be required to remove two cars length of striping or change the site plan.

Carpenter asked if there was a difference in dotted or solid lines.

Lane stated there were four spaces for parking identification.

Lowe stated the lines did not have to be removed.

Lane stated the requirement for four stacking spaces would be reduced to two stacking spaces.

**ACTION TAKEN**

Motioned by Carpenter, seconded by von Tersch, to approve variance request numbers ten and nineteen, for 2005 West 9<sup>th</sup> Street, based on the presentation of the applicant and discussion by the Board.

Motion carried, 4-1

Carpenter asked Staff if a land owner could withdraw an agreement not to protest.

Mr. Miller said a land owner could not withdraw an agreement not to protest.

**ACTION TAKEN**

Motioned by Carpenter, seconded by von Tersch, to approve variance request number eleven, for 2005 West 9<sup>th</sup> Street, based on the presentation of the applicant and discussion by the Board.

Motion carried, 4-1

Lane asked Staff if the representation of the location of street trees on the Site Plan shown by the applicant reflected what City Staff recommended for the location of the additional street trees.

Mr. Guntert stated the Site Plan generally reflected what was Staff's recommendation.

Lowe asked Staff if the two small trees were on the property line.

Mr. Zaremba stated the two small trees were within the public right-of-way.

Lowe asked the applicant what prevented the trees from being planted east of the coffee shop.

Mr. Zaremba stated overhead power lines prevented trees from being planted east of the coffee shop.

Mr. Herndon said trees planted east of the coffee shop would not satisfy City street tree requirements.

Lowe said Westar Electric would not approve trees planted under power lines.

**ACTION TAKEN**

Motioned by Kimball, seconded by Lane, to modify approval of variance request number eleven, for 2005 West 9<sup>th</sup> Street, to reduce the number of street trees from fourteen to one, based on the applicants presentation.

Motion carried unanimously, 5-0

**ITEM NO. 5 MISCELLANEOUS**

- a) No other business to come before the Board.

**ACTION TAKEN**

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

Motion carried unanimously, 5-0

**ADJOURN – 9:00p.m.**

Official minutes are on file in the Planning Department office.