

LAWRENCE BOARD OF ZONING APPEALS

May 4, 2006 - Convening after the Sign Code Board of Appeals - 7:00 p.m.

Meeting Minutes

Board Members present: Hannon, Goans, Blaufuss, Emerson, Lane, von Tersch

Staff Present: Patterson, Pool and Miller

ITEM NO. 1: COMMUNICATIONS

- Email from Paul Werner requesting his items be deferred from this month's agenda because he had been called unexpectedly out of town.
- Item 3 was deferred prior to the meeting.
- Hannon said he had talked to the owners of 2829 Missouri Street, Item 6

ITEM NO. 2: MINUTES

The Board agreed to defer consideration of the February minutes to the Miscellaneous section of the agenda.

Several changes were requested to the April minutes

Motioned by Lane, seconded by Hannon to approve the April 6, 2006 minutes as revised.

Motion carried unanimously, 6-0.

Swearing in of witnesses

ITEM NO. 3: 1140 MISSISSIPPI STREET [PGP]

B-04-12-06: 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 amount of off-street parking spaces required for a boarding house use of an existing structure containing a total of 7 bedrooms. Sections 20-610.5 and 20-1212 of the City Code define the number of required off-street parking spaces, based upon the ratio of one and one-half parking space per two lawful occupants in the structure. Based upon this requirement, the applicant is required to provide a minimum of 6 off-street parking spaces. They are seeking a variance to provide no off-street parking spaces on the property. The request is for property at 1140 Mississippi Street. Said property is legally described as the North half of the West 100' of Lot 7, Block 9, Oread Addition in the City of Lawrence. Submitted by Paul Werner Architects for James A. Slough, the property owner of record.

This item was deferred prior to the meeting.

ITEM NO. 4: LAWRENCE MEMORIAL HOSPITAL; 325 MAINE STREET [LAP]

B-04-13-06: 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 vary from the provisions of Section 20-608 of the City Code, which requires a 25' minimum building setback from the front property line. The applicant is seeking a 15' building setback to allow for a proposed parking deck structure to be located on the east side of Arkansas Street from the centerline of 3rd Street north a distance of approximately 340'. The next variance is from the provisions of Section 20-1209(a) of the City Code, which requires a 25' parking setback along a street right-of-way for property that is residentially zoned. The applicant is seeking a variance to reduce the setback to 15' from the street right-of-way along Arkansas Street, along 4th Street, and along Maine Street from 3rd Street to 4th Street. The applicant is seeking a variance to allow an 8' parking setback along Maine Street from 3rd Street to 2nd Street. The request is for Lawrence Memorial Hospital at 330 Arkansas Street. Submitted by C. L. Maurer with Landplan Engineering for Lawrence Memorial Hospital. The City of Lawrence is the property owner of record.

STAFF PRESENTATION

Ms. Pool introduced the item, a request for five variances that would bring existing parking lot conditions into compliance and would also allow for the construction of additional parking areas, including a two-level parking deck.

Staff noted that the subject area currently encompassed multiple zoning districts, but the entire subject property would be rezoned to the new H (Hospital) zoning district when the new Code took effect.

Ms. Pool described the multiple setback variances, noting that added parking areas would not further extend any existing encroachments. She pointed out that the new parking areas would still be contained entirely on hospital property, which was well defined, and that the parking deck would be landscaped to reduce its visual impact. It was also noted that the new parking areas would provide additional on-site parking for the hospital site and clear street parking spaces for area residents.

Staff recommended approval of all requested variances, finding they met all of the five criteria.

PROPERTY OWNER PRESENTATION

C.L. Maurer, Landplan Engineering spoke on behalf of the hospital, saying he primarily wanted to provide more information about the proposed parking deck. He explained this was not a parking garage; no internal access was provided to the upper deck.

Mr. Maurer said the homes across the street would be facing the structure, but its impact would be less than that of a three-story wall. It would have landscaping and cars on either level would be only minimally visible.

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 Hannon, seconded by Emerson to approve all variances for the project at 325 Maine Street in accordance with the Staff recommendation and the findings of fact presented in the body of the Staff Report.

Motion carried unanimously, 6-0.

ITEM NO. 5: **FIRST SERVE TENNIS; 5200 CLINTON PARKWAY (MKM)**

B-04-14-06: 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 from the building setback standards set forth in Section 20-608 of the City Code. The applicant proposes to build a tiered retaining wall system within the required 30' rear yard setback and a single retaining wall within a portion of the 25' front building setback (confined to the southeast corner of the property). Because the Code considers these retaining walls to be a structure by definition, they must meet the building setbacks of the zoning district. The second request is to reduce the minimum number of off-street parking spaces required by City Code for the proposed use. Section 20-1441(e) of the Code requires one parking space per 200 square feet of area devoted to the use. Based upon this ratio, the applicant is required to provide a minimum of 323 parking spaces. They are seeking a variance to provide 116 parking spaces. The request is for the property to be known as First Serve Tennis located at 5200 Clinton Parkway. Submitted by Joy D. Rhea with Landplan Engineering for J. Mike Elwell, property owner of record.

STAFF PRESENTATION

Ms. Miller introduced the item, a request for two variances to allow construction of a tiered retaining wall within the required 30' rear yard setback and a portion of the 30' front yard setback. She noted that another variance for the tennis court parking area was included in the original application, but Staff's interpretation of the Code resulted in a determination that this variance was not required.

Staff explained the property's history, saying the subject property and the adjacent property were once a single parcel, now divided in two and held under separate ownership. The subject area is surrounded by RM zoning and other recreational uses.

Ms. Miller outlined Staff's analysis, leading to a recommendation for approval since the request, in Staff's opinion, met all five criteria.

It was discussed that the current code requires an additional setback for private recreational facilities that is not addressed at all in the new code. Staff was not prepared to say if this was an intentional omission and agreed to research this question.

APPLICANT PRESENTATION

Tim Herndon, Landplan Engineering, spoke on behalf of the applicant, stating agreement with Staff's recommendation. He provided supporting documentation that the retaining wall was necessary and designed to work with excessive slopes at the rear of the property.

PUBLIC COMMENT

No member of the public spoke to this item.

BOARD DISCUSSION

The Board had no additional comments or questions.

ACTION TAKEN

Motioned by von Tersch, seconded by Emerson to approve the variances for the project at 5200 Clinton Parkway, in accordance with the Staff recommendation and based on the findings of fact presented in the body of the Staff Report.

Motion carried unanimously, 6-0.

ITEM NO. 6: 2829 MISSOURI STREET [MKM]

B-04-15-06: 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 allow the setback for an in-ground swimming pool to be reduced from a minimum 10' setback from the nearest property line as required by Section 20-1437 of the City Code, to a minimum of 7'. The request is made to allow the owner to build a swimming pool on the property located at 2829 Missouri Street. Submitted by Tim and Sherry Emerson, the property owners of record.

STAFF PRESENTATION

Ms, Miller introduced the item, a request to reduce the minimum rear yard setback to 7' allow construction of an in-ground pool. She explained that the pool could be installed with the regulation 10' setback, but it would then be located only 4' from the primary structure. This distance also met code, but the applicant would like to provide a little more space between the pool and the house.

Ms. Miller outlined Staff's analysis of the request, resulting in a recommendation because, in Staff's opinion, it met the five criteria. She noted specifically that this was a corner lot and it was discussed how this created a rear yard that faces their neighbor's front/side yard.

Staff noted that there was an existing solid fence with landscaped screening on the property that would entirely enclose the proposed pool. There had been no complaints filed with the City to-date regarding this fence.

It was verified that the variance would no longer be needed when the new code took effect on July 1st; however, the applicants hoped to have the pool in place for this summer.

APPLICANT PRESENTATION

Tim & Sherry Emerson, applicants, provided more information on the existing fence. They said the fence sat right on the property line. They did propose to replace the fence in kind and in the same location.

It was discussed that the view from the adjacent neighbor's front yard would not change except that the new fence would be in better condition than the existing fence. That neighbor had given the applicants a letter stating he had no objection to the proposal.

PUBLIC COMMENT

No member of the public spoke on this item

BOARD DISCUSSION

Goans expressed concern about the view from the neighbor's property, and it was discussed that the adjacent property might change ownership and the new owner would not be as amenable to seeing the fence from his own front yard.

Emerson commented that there were many assumptions being made about what the new Code would contain, when none of the Board members had seen the document and Staff said they were in the process of getting familiar with the new regulations.

It was verified that the small metal shed shown in aerials had been moved.

Goans asked if the existing fence met the intent of the Code, since it disrupted the streetscape, and if it was appropriate to make this condition permanent by approving the variance. Other members said they did not share this concern.

It was established that the lot met the code definition of an RS-2 lot and was allowed to take its address (and orient its front elevation) from either street as a corner lot.

ACTION TAKEN

Motioned by Hannon, seconded by Lane to approve the variance for the project at 2829 Missouri Street, in accordance with the Staff recommendation and based on the findings of fact presented in the body of the Staff Report.

Motion carried unanimously, 6-0.

ITEM NO. 7: 235 ARKANSAS STREET [PGP]

B-04-16-06: 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 vary the 25' front yard building setback required by Section 20-608 of said City Code, to a minimum of 7.7' to allow for a recently erected carport to remain. The second variance request is from the 5' minimum side yard building setback required in Section 20-608 of the City Code. The carport is located approximately 3' from the side property line. These requests are made for the property located at 235 Arkansas Street. Said property is legally described as Lot 65, Block 9, West Lawrence Addition in the City of Lawrence. Submitted by Janet G. Foster, the property owner of record.

STAFF PRESENTATION

Mr. Patterson introduced the item, a request to reduce the front yard and side yard setback to allow retention of a recently erected carport. An additional variance was requested to allow the accessory structure to be located in front of the primary structure.

Mr. Patterson explained Staff's analysis, resulting in a determination that the request did not meet the five criteria, followed by a recommendation for denial.

It was clarified that the carport was erected in late 2005 without the necessary permits or inspections.

Brian Jimenez, Zoning Enforcement Manager, agreed with Planning Staff's assessment, noting that the carport was cited as a violation in December 2005. The applicant was given until April 10, 2006 to bring the carport into compliance or remove the structure. He described his primary concern – that the structure was designed to be temporary in nature and would become a safety hazard if it came loose in high winds.

APPLICANT PRESENTATION

Janet Foster, applicant, explained that her mother-in-law lived on the subject property and was subject to certain medical conditions that made the shelter necessary – providing rain protection when she got in and out of vehicles. She showed pictures of the carport from several angles.

Ms. Foster said she had not been aware that the carport was considered a "structure" and would require any kind of permit or approval. She said the carport did resemble a temporary tent, but she had taken extra precautions to ensure the carport was securely fastened to the ground but could still be removed.

Ms. Foster said she had purchased the house as part of a First Homes plan when she was a single mother. Her needs at that time were basic – shelter for her family – and whether the property had a garage was not of primary concern. Today, she had elderly parents and a nicer vehicle, and providing shelter over the driveway was of increasing importance.

The applicant countered comments from one of the area residents, who said the carport looked "trashy", saying it did not look any worse than a house that had been under construction for two years, or the new LMH parking deck that was just approved across the street from her house.

Regarding Staff's concerns, Ms. Foster said the carport had withstood the last severe windstorm, and she did not see how this element could reduce anyone's property value.

PUBLIC COMMENT

Doris Ottinger, the applicant's mother stated her support for the request, saying it provided her with needed shelter from the elements when she visited her daughter.

Fritz Benniman, adjacent property owner, said he "would not have said anything if it was any color but white". He said the white canopy was visually intrusive and devalued his own property.

Mr. Benniman said he thought the carport was put up without a permit and that it violated several required setbacks.

Lorreta James, the applicant's mother-in-law, provided more detail about her medical condition, which required her to stand still for a few minutes after rising from a sitting position (i.e. getting out of a car).

Ms. James agreed with her daughter-in-law that the approved parking deck across the street would be much more of an eyesore than their carport, commenting on the fact that City was the applicant in that application. She expressed her hope that this request would be given the same consideration.

BOARD DISCUSSION

The applicant pointed out that she would be willing to change the color of the carport.

Concern was expressed that, once approved, the carport would be in place "forever." Mr. Patterson responded to questioning that Staff knew of no way to provide a temporary permit to allow the carport to stay in place for a defined time period.

A comparison was drawn to a similar situation at 9th Street Ct. & Kasold Street, noting that the structure in that case was more substantial and there was no issue of special needs.

Hannon said it was a difficult situation, but he could understand the neighbor's concerns and he could not support the request.

ACTION TAKEN

Motioned by Hannon, seconded by Emerson to deny the variance request for 235 Arkansas Street, in accordance with the Staff recommendation and based on the findings of fact presented in the Staff Report.

Motion carried 5-1, with Lane voting against the motion to deny.

ITEM NO. 8: NEW YORK ELEMENTARY SCHOOL; 936 NEW YORK STREET [MKM]

B-04-17-06: 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 vary the 25' front yard building setback required by Section 20-608 of said City Code, to a minimum of zero (0) feet to allow for the construction of retaining walls and access ramps to the front of New York Elementary School. These requests are made for the property located at 936 New York Street. Said property is legally described as New Jersey Street, Odd Numbered Lots 49 thru 71; New York Street, Even Numbered Lots 72 thru 92; and all of vacated alley accruing thereto vacated by Ordinance No. 1878; all property lying within the Original Townsite of the City of Lawrence. Submitted by BG Consultants for USD 497, the property owner of record.

STAFF PRESENTATION

Ms. Miller introduced the item, a request for a variance to allow a 0' front yard setback to accommodate a handicapped-accessible ramp to the school's main entrance. She noted that the building pre-dated the Zoning Code and the structure was already within the setback required by the current code. It was verified that the applicant requested the variance only for the ramp, not for the entire building.

It was noted that the school had an accessible ramp at the side entrance, but the applicant would like to bring that element to the front of the building.

Staff recommended approval of the request, finding it met all of the five criteria. It was pointed out that the school was subject to review by the Historic Resources Commission and if that body recommended changes to the proposal it would return to the BZA for additional review.

APPLICANT PRESENTATION

Jay Zimmerscheid, BG Consultants, said the School Board approached his company in January 2006 with this request, making several stipulations:

- The new ramp must be constructed at the main entrance, replacing a "temporary deck" currently serving for ADA access at the south entrance;
- Safety for the children was of paramount importance; and
- The design must blend with the architecture of the main school building and the historic character of the area.

Mr. Zimmerschied said the site was challenging because of its slope, and the proposed design was the best alternative to providing a ramp that met ADA slope requirements without "snaking" around the property. He pointed out that the ramp design increased depth so children were not pushed closer to the street at this bus pick-up location.

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 Blaufuss, seconded by von Tersch, to approve the variance for the project at 936 New York Street, in accordance with the Staff recommendation and based on the findings of fact presented in the body of the Staff Report. Approval was subject to the following condition:

1. The variance must pass Historical Resources Review in addition to approval by the Board of Zoning Appeals. If the HRC requires changes to the variance, it will be returned to the BZA.

Motion carried unanimously, 6-0.

ITEM NO. 9: MISCELLANEOUS

- a) Consider a request for a 90-day extension of variances granted by the Board during the January 5, 2006 meeting for the North Lawrence Pump Station No. 3 located at 720 Grant Street.
[B-12-42-05]

The Board agreed unanimously, 6-0, to approve a 90-day extension as requested.

- b) February 2006 minutes

The Board directed Staff to make a number of revisions to the February 2, 2006 minutes, then agreed unanimously, 6-0, to approve those minutes as revised.

ADJOURN – 8:45 p.m.

Official minutes are on file in the Planning Department Office.