

BOARD OF ZONING APPEALS
Meeting Minutes of May 7, 2009 –6:30 p.m.

Members present: Kimball, Bowman, Lowe, Blaufuss, Lane, Carpenter, von Tersch
Staff present: Guntert, Parker, Miller

ITEM NO. 1 **COMMUNICATIONS**

No communications to come before the Board.

von Tersch said she received telephone calls regarding Item No. 3 and also attended a neighborhood association meeting regarding Item No. 3.

Bowman and Blaufuss stated they would abstain from Item 2 since they were not at that meeting.

ITEM NO. 2 **MINUTES**

ACTION TAKEN

Motioned by Lowe, seconded by Lane, to approve the March 5, 2009 Board of Zoning Appeals minutes.

Motion carried, 5-0-2

ITEM NO. 3 **1022 ALABAMA STREET [DRG]**

B-4-3-09: A request for a variance as provided in Section 20-1309 of the Land Development Code in the Code of the City of Lawrence, Kansas, 2009 edition. The request is for a variance to exceed the maximum 12 dwelling units per acre standard as it relates to the minimum lot area standard in the RM12D District per Section 20-601(a) of the City Code. The variance is needed for the applicant to be able to construct a duplex dwelling on the lot. The property is legally described as: Lot 11, Block 26, in Sinclair's Addition to the City of Lawrence. The subject property is addressed as 1022 Alabama Street. Submitted by Paul Werner Architects for Ziegler Rentals, LLC, the property owner of record.

STAFF PRESENTATION

Mr. David Guntert presented the item.

Blaufuss asked Mr. Guntert what the change to the code would be.

Mr. Guntert stated the change would be designed to address the minimum lot area size discrepancy in the code that renders lots in the older neighborhoods with RM12D zoning unusable for that purpose without a variance due to them having smaller lot sizes than the code now requires.

Blaufuss asked Mr. Guntert if the discrepancy of the RM12D zoning was purposely put in the Development Code.

Mr. Guntert said when the Development Code was being considered for adoption it did not include a zoning district specifically for duplex density. He said there was public comment addressed to the Planning Commission that there needed to be a zoning category for duplex uses. The concern was that without such a district, areas in the city that were zoned for duplexes would convert to a district that allowed multi-dwelling residential structures. A developer could assemble several lots and build higher density multi-dwelling

structures. The Planning Commission and City Commission agreed it was important to preserve areas that were zoned for duplexes with an equivalent district in the new code.

Blaufuss asked Mr. Guntert if this project would fit under the old Zoning Ordinance without needing a variance.

Mr. Guntert said the old Zoning Ordinance contained a provision allowing a 20 percent reduction of lot size per dwelling unit that could be applied in specific zoning districts of which the duplex district was one. With that provision, the property would have enough land area to support two dwelling units and a variance would not be needed. The new Development Code does not contain that same provision.

APPLICANT PRESENTATION

Paul Werner, Paul Werner Architects, stated under the old Zoning Ordinance a variance would not have been needed for 1022 Alabama Street. He said a similar issue had been addressed with a property in the area and the Board had approved the variance. Mr. Werner stated Staff was working on a text amendment but it could take quite some time to get the issue resolved.

Carpenter asked Mr. Werner if 1022 Alabama Street was the only lot that would be affected by a text amendment.

Mr. Werner stated 1022 Alabama Street was not the only lot that would be affected by a text amendment.

Carpenter asked Mr. Werner if it would be a hardship on the property owner to wait for a text amendment.

Mr. Werner stated it was not fair to his client to have to wait for months for a text amendment to be completed. He said the property needed work and now was the right time. He said it would be reasonable for the Board to grant the variance.

Carpenter said the underlying issue was money and how much profit the property owner would make.

Mr. Werner stated the issue was not about money. He said it would be reasonable to allow his client to build the duplex.

Carpenter said the public would have a chance to comment on a proposed text amendment related to this issue if a variance was not granted by the Board of Zoning Appeals. He asked Mr. Werner if he was asking for an exception to a rule that did not exist.

Mr. Werner stated the exact same thing was addressed by the Board of Zoning Appeals three months ago and it was approved.

PUBLIC COMMENT

Ms. Candice Davis stated she was a member of the Oread Neighborhood Association and she was confused with the explanation that Mr. Werner had given regarding the property at 1022 Alabama Street. She was concerned with the size of the projects going into an RM12D neighborhood. She asked Mr. Werner how many bedrooms the structure would consist of.

Mr. Werner stated each side of the duplex would have four bedrooms.

Ms. Davis showed photos of a duplex on Illinois Street which had four bedrooms on each side. She said there were a lot of cars associated with the duplex and tandem parking was allowed. She said tandem parking was not a good situation. Ms. Davis stated the project would negatively impact the neighborhood.

Mr. Werner stated there was a zoning issue and single-family homes in the area needed a Special Use Permit. He said the Development Code would be changed in the near future.

PUBLIC HEARING CLOSED

BOARD DISCUSSION

Bowman asked Mr. Guntert if a duplex structure would be allowed under the old Zoning Ordinance on a property of this size and a text amendment in the new Development Code would allow this type of structure.

Mr. Guntert stated a duplex structure would have been allowed under the old regulations without a variance. It was staff's intention to draft a text amendment that would fix the Development Code so duplexes could be built on smaller size lots that are found in the older neighborhoods. It was evident there was a problem and a text amendment needed to be developed.

Blaufuss asked Mr. Guntert if a text amendment would be influenced by the approval of variances.

Mr. Guntert stated the Planning Commission and City Commission would be made aware of the applications for variance as evidence that the text amendment needed to be developed.

von Tersch stated she attended the prior Board of Zoning Appeals meeting and she had voted to approve that variance. She said if the issue was revisited she may not vote to approve the variance. Ms. von Tersch stated she did not think the application met the hardship test.

Carpenter said it was acknowledged that this was not a unique situation and was purely an economic factor.

Lane asked Mr. Guntert if a variance would be needed if the previous provisions in the old Zoning Ordinance had been translated into the new Development Code.

Mr. Guntert stated a variance would not be needed if the "existing lot of record" provisions from the old Zoning Ordinance had been included in the new Development Code.

Blaufuss asked Mr. Guntert when the new text amendment would be completed.

Mr. Guntert stated the earliest possible Planning Commission hearing date might be in June, but more realistically it would be July or August. He said the process would be for the Planning Commission to have a public hearing and then it would be considered by the City Commission. An ordinance would then need two readings by the City Commission and publication in the newspaper before the amendment became law.

Kimball stated the timing was a hardship. He said the intent of the zoning district was to actually allow duplexes in the area.

Blaufuss read the definition for a hardship from the Development Code. She said duplexes were allowed in the past and the Development Code would be fixed.

Carpenter said when the state legislature changed laws and made errors, it was still a law until it was changed back.

Blaufuss stated there was no system to go before the state legislature and ask for an exception as there was for the Board of Zoning Appeals.

ACTION TAKEN

Motioned by Lane, seconded by Bowman, to approve the variance request for 1022 Alabama Street based on the findings of fact in the staff report, subject to the condition that all other zoning standards be complied with.

Motion carried, 5-2 Carpenter and von Tersch voted against the motion

ITEM NO. 4 WAKARUSA MARKETPLACE; 1520-40 WAKARUSA DRIVE [DRG]

B-4-4-09: A request for a variance as provided in Section 20-1309 of the Land Development Code of the City of Lawrence, Kansas, 2009 edition. The request is to reduce the amount of off-street parking spaces provided for an existing commercially developed property from 340 parking spaces to a minimum of 247 spaces. The calculation for the required amount of parking spaces is based upon the existing and proposed tenant mix in the development applied to the City standards for off-street parking set forth in Article 9, Section 20-902 of the City Code. The request is submitted for the property legally described as Lot 3A in a Lot Split of Lots 1 and 3, Alvamar Northwest No. 3, an addition in the City of Lawrence, Douglas County, Kansas. The property address is 1520-1540 Wakarusa Drive. Submitted by Kim Bartalos with Block & Company, Inc., realtors for Wakarusa 15 Associates, LLC, the property owner of record.

STAFF PRESENTATION

Mr. David Guntert presented the item.

Kimball asked Mr. Guntert if 333 parking spaces included the shared parking access for the adjacent property.

Mr. Guntert stated 333 parking spaces were based upon the tenant mix and the commercial space in the strip center.

Kimball asked if there would be an additional eleven parking spaces that had shared access.

Mr. Guntert stated there would be an additional eleven parking spaces that would have shared access. He said there was an issue of the actual spaces on site. He said the last approved site plan on file identified 259 spaces to be provided. Mr. Guntert stated there could be an argument that the required number of parking spaces should be 259, but the actual count made by the applicant is 247 parking spaces on the property.

APPLICANT PRESENTATION

Kim Bartalos, Block & Company, Inc., stated there was a problem at Wakarusa Marketplace they were trying to solve. She said the way the code stood today she could not rent the three vacancies in the center because they did not have parking for those spaces based upon what the code said they need. She said the property was purchased in 2006 and they did not know there was a parking issue. When they purchased the center it was fully occupied and there wasn't any problem with parking.

Based on the code, the current tenant mix in the center requires them to provide 317 parking spaces which they do not presently have available. Ms. Bartalos said the new tenant was a coffee shop and would serve breakfast and lunch. They want a drive-through window to make it more convenient for the customer to get a quick breakfast or coffee on their way to work.

She said filling the empty vacancies would benefit the community. Ms. Bartalos stated the parking lot was never full based on the mix of tenants at the center not all having the same hours of operation. They were looking into providing 40 diagonal parking spaces behind the building but there is a large overhead electrical transmission easement they would need to work with Westar and the City to gain site plan approval before it could be built. Ms. Bartalos stated if the Development Code was followed it would be a hardship on the property owner and leases would have to be terminated.

Kimball asked if a drive-through would reduce the required parking spaces.

Ms. Bartalos said it would take out 11 parking spaces next to the building where the drive-through was proposed that would be removed. The intent was to replace those spaces with the 40 diagonal spaces behind

the building. She said vehicles would not stop and park to get their coffee so a drive-through window was necessary.

Mr. Guntert stated the number of required parking spaces was based on the occupancy within establishments when figuring parking for eating establishments.

Lane asked the applicant if the empty retail spaces could be leased under the way the current Development Code read.

Ms. Bartalos stated the empty retail spaces could not be leased. She said she had photos that indicated there were empty parking spaces all day long.

Blaufuss asked if the parking requirements changed when the tenants changed.

Mr. Guntert stated the parking requirements change as tenants change in the center unless the new tenant is a similar use as the previous tenant.

Bowman asked if the original assumption of required parking spaces was based on a certain mix of tenants.

Mr. Guntert stated the original assumption of required parking spaces for the center was based on a certain mix of tenants. The original site plan did not indicate there would be any eating establishments in this center. The first site plan revision proposed an eating establishment at the south end of the center. Other eating establishments have been established in the building which takes away parking spaces from other leaseable spaces because eating establishments are typically a higher traffic generator than other commercial or service oriented businesses.

PUBLIC COMMENT

Brad Johnson stated he owned the building directly north of Wakarusa Marketplace. He said he had no problem with a restaurant filling the empty tenant space. He was concerned with the space next to Wakarusa Marketplace. Mr. Johnson stated he wanted to be assured that the variance did not take away from his tenant parking spaces. They have a cross parking agreement between the two properties that indicates his property can use 11 parking spaces on the Wakarusa Marketplace property.

Carpenter told Mr. Johnson that no matter what happens with Wakarusa Marketplace the number of parking spaces he has the right to use on the Wakarusa Marketplace property would not change based upon the recorded parking easement document between the two properties.

Kimball asked Mr. Johnson if there had been issues with the current parking spaces in the area.

Mr. Johnson stated he had never seen parking issues in the area.

PUBLIC HEARING CLOSED

BOARD DISCUSSION

Lowe stated he was familiar with the property. He said Zig and Macs catered to the lunch and dinner crowd. He said the new tenant would cater to a morning and lunch crowd.

Kimball asked if there was parking in the back of the property.

Mr. Guntert stated there was not designated parking in the back of the property. However, people were using the east side of the service drive for parallel parking.

Blaufuss asked if there would be a need for a variance if there had not been a revised site plan.

Mr. Guntert said there would be a shortage of parking spaces without a variance.

Blaufuss asked if the tenant parking space was based on all tenants and if the required parking spaces changed when tenants changed.

Mr. Guntert stated it was not always known when a lease changed.

Blaufuss asked Mr. Guntert to explain the basis of staff's recommendation. She said she was concerned that the property owner had empty tenant space.

Mr. Guntert stated the parking requirement would not be met with the tenants that were currently there.

Lane asked if the tenants would have to be evicted to meet the parking requirement.

Ms. Bartalos stated the parking requirement might be met if she would remove some of the restaurant tenants.

Mr. Guntert stated the original site plan did not anticipate eateries.

Carpenter asked Staff what the response was by the City when a sign request was submitted and there were not enough parking spaces.

Carpenter asked if a variance would be requested every time there was a new tenant.

Lane said unless there was a change of use there would be no issue with parking.

Blaufuss asked if the Subway restaurant required the same amount of parking spaces as any other restaurant.

John Miller stated the tenant occupancy may be reduced which would reduce the parking requirements.

Lane asked if a Site Plan would be completed if the variance was approved.

Mr. Guntert stated the next step would be a site plan.

Carpenter asked if the property would then come back to the Board of Zoning Appeals for additional variances.

Mr. Guntert said he believed there would not be additional variances needed.

Lane asked if there was an intention to make a deal with Brandon Woods for additional parking spaces.

Mr. Guntert stated staff was unaware of any discussions the applicant might have had with Brandon Woods.

Lane asked if the parking requirement changed with the new Development Code.

Mr. Guntert stated the parking requirements for eating establishments did not change with the adoption of the Development Code.

Lane suggested there could be a condition that a variance was dependent on Site Plan.

ACTION TAKEN

Motioned by Blaufuss, seconded by Kimball, to approve the variance for 1520-40 Wakarusa Drive, subject to the applicant receiving Site Plan approval for the proposed parking spaces along the east side of the service drive behind the building, as well as the restaurant and drive-up window site modifications being proposed, and for the following reasons:

1. The unique mix of tenants on the property who do not have a conflict in the parking lot.
2. The lack of parking spaces was not created by the action of the property owner.
3. The variance would not affect the rights of adjacent property owners or residences. Leasing the property would be an advantage to the adjacent property owners.
4. It would not adversely affect public health safety and morals, and that the variance was not opposed to the general spirit and intent of the chapter because the mix of uses did not share the same hours of operation.
5. Conditioned upon the recommendation in the Staff note.

Motion carried unanimously, 7-0

ITEM NO. 5 MISCELLANEOUS

- a) No other business before the Board.

ACTION TAKEN

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

Motion carried unanimously, 7-0

ADJOURN – 7:47p.m.

Official minutes are on file in the Planning Department office