

BOARD OF ZONING APPEALS
Meeting Minutes of November 6, 2008 –6:30 p.m.

Members present: Carpenter, Kimball, Blaufuss, Lowe, Bowman, Lane

Members excused: von Tersch

Staff present: Guntert, Parker, Miller

ITEM NO. 1 COMMUNICATIONS

Staff stated a letter was received from Marci Francisco regarding Item No. 3.

ITEM NO. 2 MINUTES

ACTION TAKEN

Motioned by Lane seconded by Lowe to approve the October 2, 2008 Board of Zoning Appeals minutes.

Motion carried, 4-0-2 Bowman and Kimball abstained

Mr. Guntert stated Item number four would be deferred at the request of the applicant.

ITEM NO. 3 1005 INDIANA STREET [PGP]

B-09-13-08: 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 first request is to reduce the building setbacks for a principal structure in an RM32 District as they are set forth in Section 20-601(a) of the City Code, to the existing foundation setbacks of a residential dwelling that was recently destroyed by fire. The second variance is from the provisions of Section 20-902 in the Land Development Code requiring a minimum of 6 off-street parking spaces for an 8-bedroom congregate residence. The applicant is asking for a variance to not provide any off-street parking spaces. The property is legally described as Lot 2, Block 13, Lanes Second Addition in the City of Lawrence, Douglas County, Kansas. The subject property is located at 1005 Indiana Street. Submitted by Paul Werner with Paul Werner Architects for Crimson Properties, LLC, the property owner of record. [Deferred from the October 2nd meeting.]

STAFF PRESENTATION

Mr. David Guntert presented the item.

Lane stated it had been questioned at the October Board of Zoning Appeals meeting if a variance was needed for 1005 Indiana street.

Mr. Guntert stated the applicant withdrew the set back variance application. He said parking was the issue that needed to be addressed. Mr. Guntert stated the 2004 building permit listed the structure had four bedrooms.

Blaufuss asked Staff how many parking spots would be needed if the structure had four bedrooms.

Mr. Guntert stated there would need to be three parking spaces if the structure had four bedrooms.

Lowe asked Staff if a variance was needed if the damage of the structure was less than sixty percent.

Mr. Guntert said the applicant had not provided Staff with evidence of the percentage of damage to the structure.

Blaufuss asked Staff if the request was for a parking variance.

Mr. Guntert stated the request was strictly for a parking variance.

Blaufuss asked Staff if the applicant would rebuild the current structure or build a new structure.

Mr. Guntert stated the fire had taken place in July of 2008 and there had been further damage to the structure from the elements. Mr. Guntert stated the extent of the damage had not been determined.

Blaufuss asked if the parking variance was for six parking spaces.

Mr. Guntert stated six parking spaces would be required for the number of bedrooms in the structure. Mr. Guntert presented a copy of the definition of a Boarding House to the Board of Zoning Appeals.

Lane asked Mr. Guntert if the alternative in the staff recommendation was based on a new structure being built on the property.

Mr. Guntert stated a condition of approval could be added to the variance. He said the applicant would be required to have site plan approval.

APPLICANT PRESENTATION

Mr. Robert Farha stated he was a partner of Crimson Properties.

Mr. Werner stated the structure at 1005 Indiana street could be saved and would be repaired. He said the need for the variance was not caused by an action of the property owners. Mr. Werner said the alley to the west of the house was in very bad condition and the grade was a huge issue. He said there would need to be a retaining wall and stairs and a grade change. He said the fire was an absolute hardship to the property owners and the applicant could document the house was used as an eight room congregate since 1986 and Staff could not provide documents to the contrary. He said the Polk directory indicated two people had lived in the home in 1974. Mr. Werner said for the past twenty four years there had been no history of accidents in the area and no evidence of parking problems. He said the applicants request was reasonable and they should be allowed to rebuild the structure.

Lowe asked Mr. Werner what it would cost to add a retaining wall in the back of the structure.

Mr. Werner stated the cost for dirt work and a retaining wall would be approximately \$80,000.00 and would only provide five parking spaces. He said the insurance company would not pay for the cost of new parking spaces. Mr. Werner stated the surrounding rental properties provided their own parking spaces and 1005 Indiana street had never provided its own parking spaces.

PUBLIC COMMENT

Debbie Scrivner asked the Board to think strongly against the variance. She said Mr. Werner was incorrect at stating parking was not a problem. She said there were no parking spaces available in the evening. Ms. Scrivner stated the residents would have to park and walk and it was dangerous. She said the applicant was trying to put eight bedrooms into a structure that was built for a smaller space.

Carpenter asked Ms. Scrivner what her address was.

Ms. Scrivner stated she lived at 1015 Mississippi street. She stated Mr. Werner had received a parking variance for 1001 Mississippi and had caused a hardship in the neighborhood.

Jim Rose said he owned two properties south of 1005 Indiana street and he provided adequate parking for his tenants. He said the fact that 1005 Indiana street had no parking spaces caused problems for his tenants and he opposed the variance.

Kimball asked Mr. Rose if the applicant had approached him regarding the use of his property as an access point.

Mr. Rose stated the previous tenants had approached him regarding an access point.

Carpenter asked Mr. Rose how long he had owned his rental property.

Mr. Rose stated he had owned his property for fifteen or twenty years.

Carpenter asked Mr. Rose if he knew how the 1005 Indiana street property had been used in the past.

Mr. Rose said he believed previously there were four or five apartments at 1005 Indiana street.

Carpenter asked Mr. Rose how many people lived at 1005 Indiana street when the fire had been set.

Mr. Rose said there was a third floor apartment and a basement apartment.

Blaufuss asked Mr. Rose how many parking spaces he had on his property.

Mr. Rose said he did not know how many parking spaces he had on his property.

Shelly Sky stated she had lived near 1005 Indiana street twenty five years ago and she had a problem with Mr. Werner's comment that parking was an easy thing.

Mr. Fahra stated when Crimson Properties purchased the house in 2003 it was rented by the room and there was only one kitchen.

Kimball asked Mr. Fahra if there had been a variance when the building permit was pulled.

Mr. Fahra stated the structure was for congregate living.

Mr. Werner stated the contractor that pulled the previous building permit was now out of the country. He said the property would be site planned. Mr. Werner stated the variance that was approved for 1001 Mississippi street was for a parking set back and was not for a parking variance.

Lane asked Mr. Werner if the structure would have more than eight bedrooms.

Mr. Werner stated the structure would not have more than eight bedrooms.

Bowman asked Mr. Werner if a parking agreement could be made with the property owner to the south of the property.

Mr. Werner stated there was a worry that the property owner to the south would have to site plan his property.

Carpenter asked Mr. Werner why the previous building permit had listed the structure having four bedrooms.

Mr. Werner stated he was not involved with the previous building permit.

BOARD DISCUSSION

Lowe stated it would be a hardship to the property owner to construct an \$80,000.00 parking area.

Mr. Guntert stated Staff had not found it would be a hardship to the property owner to construct a parking area. He said obviously the applicant did not have enough room on the property to add six parking spaces. He said there were other options available to the applicant.

Lowe stated \$80,000.00 to construct a parking lot would be a hardship. He said most cases before the Board of Zoning Appeals had involved money.

Kimball asked if the fire could be considered a hardship.

Blaufuss stated the fire was the uniqueness factor of the project.

Carpenter asked staff how many on site parking spaces would fit on the property.

Mr. Guntert said typically a fifty foot wide lot could handle five parking spaces.

Lowe stated one of the properties near the structure had v-shaped parking in the back.

Kimball asked Staff if a curb cut from Indiana street could be installed and if there was room for a driveway from Indiana street to park in the back of the structure.

Mr. Werner said the structure was dead center on the fifty foot lot. He said the Historic Resources Commission would not allow curb cuts on Indiana street.

Lane said he had been to the property and had walked around. He said there would be major earth work to prepare the property for parking.

Carpenter stated he had driven the alley behind the property. He said the building permit stated the property had four bedrooms and now the variance asked for eight bedrooms. He said it could have been more expedient to state the property only had four bedrooms at the time the permit was requested.

Lane asked if the conditions of the regulations interfere with the basic rights of the property owner. He said the applicant was rebuilding the structure and it did not appear that it would impose on the neighbors. Lane said section 2017-01 of the code stated the condition of the regulations could be that if it was so unreasonable to become arbitrary and capricious and interfere with the basic rights of the property owner. He said it was virtually impossible to provide parking on the lot.

Carpenter asked Lane what the reason was it would be impossible to provide parking on the lot.

Lane stated the grade was very steep in the front and the back of the structure and it was unlikely the Historic Resources Commission would allow a curb cut. He said the property had been zoned RM-32 for quite some time.

ACTION TAKEN

Motioned by Lowe seconded by Bowman, to approve the variance request for 1005 Indiana street based on the findings of fact in the staff report, with the stipulation the structure be rebuilt to its previous condition and occupancy level.

Motion carried, 4-2

ITEM NO. 4 903 & 903 ½ ALABAMA STREET [DRG]

B-10-17-08: 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 first request is for a variance to exceed the maximum 12 dwelling units per acre standard in the RM12D District per Section 20-601(a) of the City Code. The second request is to reduce the 5 foot minimum setback back requirement for residential structures set forth in Section 20-601(a) of the City Code to 2 feet. The applicant plans to move the existing residential structure so it is located on the second lot. This action will then free up the second lot (Lot 2) for development of a new duplex. The new duplex will be located on the south wall of the existing house extends 3 feet away from the main wall of the existing house. The property is legally described

Deferred

as Lots 1 & 2, Block 23, Sinclair's Addition in the City of Lawrence, Douglas County, Kansas. The subject property is located at 903 & 903 1/2 Alabama Street. Submitted by Dan Hermreck for James A. Slough, the property owner of record.

ITEM NO. 5 4505 OLD OAK COURT [DRG]

B-10-18-08: 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, 2008 edition. The request is to allow construction of a second driveway access on a lot having 242.2 lineal feet of frontage along Old Oak Court. Section 20-915(f) of the City Code stipulates the number of driveway access points, unless otherwise restricted, to be based upon one driveway opening per 200 lineal feet of street frontage. The property is legally described as Lot 1, Block 1, Oakley Addition No. 3 in the City of Lawrence, Douglas County, Kansas. The subject property is located at 4505 Old Oak Court. Submitted by Lorie Doolittle-Bowman with Bowman Bowman Novick, Inc. for Landmark National Bank, the property owner of record.

STAFF PRESENTATION

Mr. David Guntert presented the item.

Carpenter asked what had happened with the property to the south of 4505 Old Oak Court.

Mr. Guntert stated the property south of 4505 Old Oak Court had already been developed.

APPLICANT PRESENTATION

Lorie Doolittle-Bowman stated she was representing Landmark National Bank.

PUBLIC COMMENT

No one from the public spoke to this item.

BOARD DISCUSSION

Lane stated the variance for 4505 Old Oak Court was reasonable.

ACTION TAKEN

Motioned by Lane, seconded by Carpenter, to approve the variance request for 4505 Old Oak Court based on the findings of fact in the staff report.

Motion carried unanimously, 6-0

ITEM NO. 6 MISCELLANEOUS

a) No other business came before the Board.

ACTION TAKEN

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

Motion carried unanimously, 6-0

ADJOURN – 7:55p.m.

Official minutes are on file in the Planning Department office.