

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

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

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**ITEM NO. 1 COMMUNICATIONS**

Mr. Guntert presented the Board with a memo from the Historic Resources Commission and Ms. Braddock Zollner.

Carpenter abstained from Item B-08-11-09. Lane abstained from Item B-10-18-09.

**ITEM NO. 2 MINUTES**

Motioned by Bowman, seconded by Lane, to approve the October 1, 2009 Board of Zoning Appeals minutes.  
Motion carried 5-0-1 Blaufuss abstained

**ITEM NO. 3 RECONSIDERATION OF PREVIOUS BZA ACTION FOR  
1926 LEARNARD AVENUE [AMB]**

**B-08-11-09:** 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 from the provisions in Article 12, Section 20-1204(b) of the City Code as it pertains to development within the regulatory floodway. The variance request is related to the proposed development of two lots with duplex residential structures. The property is legally described as Lots 1 and 3 in the Final Plat of Elsie Hemphill Addition, an addition in the City of Lawrence, Douglas County, Kansas. The property is generally located on the southeast corner of E. 19<sup>th</sup> Street and Learnard Avenue. Submitted by Jill Gretchen Windholz, Carolyn L. Hemphill, Wendy A. Stauffer, and Jennifer D. Hemphill, the property owners of record.

The Board of Zoning Appeals is being asked to review new floodplain information and rescind the above variance, which was granted at the September 3, 2009 meeting.

Carpenter stepped down

**STAFF PRESENTATION**

Ms. Amy Brown presented the item.

John Miller said the request was unique and he could not find case law in the State of Kansas where reconsideration to rescind a Board of Zoning Appeals Variance was approved from a previous meeting. He said there may have been items where governing boards had reconsidered but he could not find such items. Mr. Miller said courts had allowed Board of Zoning Appeals to change decisions but they were rare. He said a petition had been filed in the Douglas County District Court against the City of Lawrence, based on the previous Board of Zoning Appeals decision in this matter.

Blaufuss asked what the request was for in the petition.

Mr. Miller said the petitioner was filing for money damages and such other relief that the court deemed permissible.

Blaufuss asked if the petitioner was asking the building not go forward or the variance be enjoined. She said the Board could save the City money by rescinding the previous decision.

Mr. Miller said the petition was to challenge the previous decision made by the Board of Zoning Appeals. Mr. Miller said he would advise Staff to present to the Board that the application would have never had to be made if the City had processed the proper information at that time. He said the Board should vote to give preliminary approval to rescinding the Board's previous decision pending final approval of findings of fact staff would prepare for them to act upon at the December meeting.

Bowman asked if it made sense to defer the item to next month.

Mr. Miller said he was concerned about the litigation moving forward and if the City was served with a petition they would have to prepare written findings in response to that petition.

#### **PUBLIC COMMENT**

No one from the public spoke to this item.

#### **PUBLIC HEARING CLOSED**

#### **BOARD DISCUSSION**

Lowe said it would be wise to rescind the variance granted last month, subject to Staff's further investigation and recommendation.

Blaufuss said the item should be deferred.

Mr. Miller said the Board should discuss the pros and cons tonight and make a preliminary decision and Staff would prepare findings.

Bowman asked why Staff had not prepared the findings for the current meeting.

Mr. Miller stated he did not prepare findings because he did not know what the Board of Zoning Appeals decision would be.

von Tersch said the Board did not have accurate information when the decision was made.

Blaufuss asked if the applicant's filing fee would be returned.

Lane said the decision should be rescinded.

#### **ACTION TAKEN**

Motioned by Bowman, seconded by Lane, to preliminarily rescind the variance granted for B-8-11-09 by the Board of Zoning Appeals on September 3<sup>rd</sup>, 2009, subject to final approval of the findings of fact and review on December 3<sup>rd</sup>, 2009 Board of Zoning Appeals meeting.

Motion carried, 5-0-1 Carpenter abstained

**ITEM NO. 4 637 ILLINOIS STREET [DRG]**

**B-10-14-09:** 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 for a variance to reduce the 20 feet rear yard building setback required in Section 20-601(a) of the City Code to a minimum of 15 feet. The second request is a variance from the 5 feet interior side yard setback required in Section 20-601(a) of the City Code to a minimum of 1.25 feet along the north property line. These variances recognize existing setback conditions on the residence and are prompted by a plan to construct a screened covered front porch addition. The property is legally described as: Lot 161 on Illinois Street in the Original Townsite of the City of Lawrence, Douglas County, Kansas. The subject property is addressed as 637 Illinois Street. Submitted by Louis D. Ohle, the property owner of record.

**STAFF PRESENTATION**

Mr. Guntert presented the item.

Blaufuss asked if the first two variances were for existing conditions and the third variance was for the porch.

Mr. Guntert stated Blaufuss was correct.

**APPLICANT PRESENTATION**

Dan Hermreck, representing the property owner, stated the project had received the Historic Resources Commission approval and he was available for questions.

**PUBLIC COMMENT**

No one from the public spoke to this item.

**PUBLIC HEARING CLOSED****BOARD DISCUSSION**

There was no Board discussion regarding this item.

**ACTION TAKEN**

Motioned by Lane, seconded by Carpenter, to approve three variance requests for 637 Illinois Street, based on the findings of fact in the staff report and the following staff recommendations:

Staff recommendation is for approval of the rear yard setback variance and the interior side yard setback variance along the northern boundary of the property as they apply to the existing dwelling, and approval of a 3.7 feet interior side yard setback for the screened porch structure based upon the findings in the staff report that the request meets all 5 conditions necessary for the variances to be approved.

Motion carried unanimously, 6-0

**ITEM NO. 5 SUNFLOWER HOUSE; 1406 TENNESSEE STREET [DRG]**

**B-10-15-09:** A request for variances 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 to reduce the amount of required off-street parking needed for a 34-occupant boarding house from the required 26 parking spaces per Section 20-902 of the City Code to a minimum of 12 parking spaces. The applicant is also seeking approval of a variance to use gravel surfacing for the parking spaces along the alley rather than asphalt. The property is identified in Section 20-913(e) of the City Code as being located in Wilders Addition to Lawrence, Kansas. The property is known as Sunflower House Cooperative located at 1406 Tennessee Street. Submitted by Mike Myers with Hernly Associates, Inc., for the property owner of record, KU Housing Association, Inc.

**ITEM NO. 6 3305 RIVERVIEW ROAD [DRG]**

**B-10-16-09:** 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 for a variance to reduce the 10 foot side yard building setback required in Section 20-601(a) of the City Code to a minimum of 2 feet. The variance is needed for the applicant to be able to replace an elevated wrap around deck along the east side of the residence. The property is legally described as: Lot 25, Final Plat of Pioneer Ridge No. 6 Addition to the City of Lawrence. The subject property is addressed as 3305 Riverview Road. Submitted by Patrick T. and Kathy J. Webb, the property owners of record.

**STAFF PRESENTATION**

Mr. Guntert presented the item.

**APPLICANT PRESENTATION**

Patrick Webb stated he was available for questions.

**PUBLIC COMMENT**

No one from the public spoke to this item.

**PUBLIC HEARING CLOSED****BOARD DISCUSSION**

Blaufuss stated she had driven by the property and there seemed to be a big drop off in the deck area.

**ACTION TAKEN**

Motioned by Lowe, seconded by Bowman, to approve the variance request for 3305 Riverview Road, based on the findings of fact in the staff report and the following staff recommendations:

Staff recommendation is for approval of the side yard setback variance based upon the findings in the staff report that the request meets all 5 conditions necessary for the variance to be approved.

Motion carried unanimously, 6-0

**ITEM NO. 7 1130 RHODE ISLAND STREET [DRG]**

**B-10-17-09:** 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 two variances involve the minimum lot area standard of 6,000 square feet and the maximum 12 dwelling units per acre standard as related to the minimum lot area standard for the RM12 District per Section 20-601(a) of the City Code. The next two variances relate to existing building setbacks that do not comply with the minimum standards for the RM12 District outlined in Section 20-601(a) of the City Code. All of the requested variances involve existing site conditions. The property is legally described as: The South ½ of Lot 132 on Rhode Island Street in the Original Townsite of the City of Lawrence, Douglas County, Kansas. The property is addressed as 1130 Rhode Island Street. Submitted by Aron Cromwell, the property owner of record.

**STAFF PRESENTATION**

Mr. Guntert presented the item.

Blaufuss asked Mr. Guntert if the Board would be seeing more of these type variance requests in the future.

Mr. Guntert stated lending practices were stricter than in the past. He said Staff believed the issue was addressed in the Development Code dealing with non-conforming lots and structures. He said this was an additional step the lender asked the applicant to go through.

Blaufuss asked if there was a fear the structure would not be able to be rebuilt.

Mr. Guntert said if something would happen to the existing structure potentially the City would not let the property owner rebuild the structure.

Lowe said the report stated the property owner would need a building permit to rebuild the structure.

Mr. Guntert stated the property owner would need a building permit. He said the property was also in the environs of Historic structures so would be subject to that review process.

**APPLICANT PRESENTATION**

The applicant was not present.

**PUBLIC COMMENT**

Nancy Cook with Fidelity Bank stated if the structure would burn down a variance would be needed to rebuild the structure as it was now. She said currently there was only a three foot setback.

Bowman said as long as the property was insured the bank would be able to recoup its money.

Ms. Cook said the bank's guidelines stated if a house burnt down it would have to be rebuilt as it was. She said to take the foundation out and rebuild smaller would cost a lot of money.

**PUBLIC HEARING CLOSED**

**BOARD DISCUSSION**

Lane asked Mr. Guntert if the structure could be rebuilt at the current size under the current Development Code or if it would have to conform to new side yard setbacks.

Mr. Guntert said it would depend on the percentage of destruction of the structure.

Ms. Cook stated she had received a letter from Ms. Sandra Day in the Planning Department indicating the structure would have to be rebuilt with five foot setbacks.

Lane said the issue should be handled by the Development Code.

Mr. Guntert said reconstruction of the dwelling in compliance with the setback requirements for the zoning district would apply if the property was damaged more than 60% according to the Development Code. If the property was zoned RS, the structure would be able to be rebuilt without having to provide the five feet setbacks.

Bowman asked if the property was unique based on zoning and the unique lot size.

Mr. Guntert said the lot size of this property was unique for the neighborhood. It was only one-half of a standard original townsite lot.

Bowman said the Board should not set a precedent by their decision.

Lowe said FHA and VA lending guidelines were more stringent than other type loans.

Carpenter said the applicant was asking for a guarantee to rebuild the structure for the purpose of gaining insurance or transferring the deed.

von Tersch said the request was more eminent than if the applicant could not get a loan.

Carpenter stated a lot of people are unable to get a loan.

Bowman said he did not see that anyone was going to gain financially. He said the situation was unique and the individual would qualify for the loan regardless of the Board's decision.

Blaufuss said it seemed like it was one buyer trying to qualify for a certain loan.

Lowe said VA and FHA loans were more stringent because of the economic crisis we are in and they have become very particular. He said he was not concerned with the financial aspect and did not believe anyone was going to gain financially.

Carpenter said the undue hardship had to be more than financially related. He said this was all about if there would be a loan by this financial institution. He said the Board would be guaranteeing a loan if it was approved.

Blaufuss said the property owner was asking for a variance so the property could be sold to a particular buyer.

Lowe said the buyer's lender needed assurance they would be able to replace the dwelling if there was damage to it.

Carpenter said there had been instances in the past where applicants asked the Board for a variance to rebuild on an existing footprint when something had happened to the dwelling. He said the Board had consistently approved those requests.

Bowman said the difference was the hardship was pushed to now.

von Tersch asked if the requirement was now standard in the banking industry.

Lowe said the requirement was becoming more standard in lending practices. He said typically they were first time home buyers.

Blaufuss said there was a buyer who had wanted a screened porch and the variance was not granted. She said in this case the seller was the applicant and not the buyer.

Bowman asked Mr. Miller what his opinion was on the statute.

Mr. Miller said the Board of Zoning Appeals could look at the facts in the Staff Report and make a finding that there was hardship or not a hardship. Mr. Miller said there may be facts to support either position.

Carpenter asked if there was a potential legislative remedy for modifying the Development Code to address this concern.

Lane asked how long it would take to modify the Development Code.

Mr. Miller asked if the Board of Zoning Appeals was asking for a text amendment to the Development Code.

Carpenter asked Staff if a text amendment had been discussed.

Mr. Guntert said it would not be a high priority in the list of text amendments.

Bowman said most generally a variance would be granted anyway.

Lowe said it was a pre-grant prior to an event.

Blaufuss said she could see the difference if the variance would be granted anyway. She said the Board did not have a history of granting variances as in this case.

**ACTION TAKEN**

Motioned by Blaufuss, seconded by von Tersch, to deny the variance request for 1130 Rhode Island Street, due to the applicant failing to satisfy the unnecessary hardship condition, which is one of the 5 conditions that must exist for variance approval.

Motion carried, 4-2

**ITEM NO. 8 2032 HOGAN COURT**

**B-10-18-09:** 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 to allow an accessory dwelling unit to exceed the 960 square feet maximum size allowed in Section 20-534 of the City Code. The applicant is seeking variance approval for an 1150 square feet living space within a new accessory building planned for the property. The property is legally described as Lot 19, A Final Plat of The Masters at Alvamar, an Addition in the City of Lawrence, Douglas County, Kansas. The subject property is located at 2032 Hogan Court. Submitted by Jack Hope with Jack Hope Design for the property owners of record, Mike Y. and Dana S. Zheng.

*Lane abstained and left the room*

**STAFF PRESENTATION**

Mr. Guntert presented the item.

Blaufuss asked Mr. Guntert if the size of the accessory building was acceptable. She asked if the issue was only about how much of the inside area could be finished as living space and why there was a limitation on living space.

Mr. Guntert said accessory building size was not the issue. It complied with the standards in the Development Code. The variance centered on how much area inside the building could be finished for the accessory dwelling unit. These were new provisions in the Development Code.

Blaufuss asked why there was a size limit.

Mr. Guntert said the Code tied back to the maximum number of people that could reside on a property, based on the definition of family in the Development Code. He said if there was only one person living in a dwelling of 960 feet it might be a sufficient size. The intent was to make sure the accessory dwelling unit was a subordinate size to the primary dwelling unit.

Staff had not been able to find any discussion in the record about the accessory dwelling unit size provisions to understand how the limitation of 960 square feet was determined. A brief review of how other communities have approached this issue indicates the size limitation the City established is not inconsistent with many other communities. Staff did find one example that established a minimum dwelling unit size but then established the maximum size based upon 30 percent of the primary dwelling unit.

Bowman said the City does not want people to buy land, build a garage and live in the garage until they can afford to build a house.

**APPLICANT PRESENTATION**

Jack Hope said the finished area in the structure would be a recreation area for the applicant's children. He said the owners' are from China and their parents live in China and they do not speak English. The owners' children do not speak Chinese. Mr. Hope said the intention was to allow the grandparents to reside in the accessory dwelling unit when they came to visit their children. In the past, the applicant had to lease an apartment or house for a few months somewhere else in town for them to stay in. That presented logistical problems with transportation as well as issues if someone came knocking on the door since the grandparents did not speak any English. The accessory dwelling would resolve those issues and yet give the grandparents their own space when they wanted it.

He said the recreation area would be on the first floor with a bedroom on the second floor. The structure would not be a rental. The size of the accessory building would not change regardless of the amount of

space inside the building that could be used as the accessory dwelling unit. Mr. Hope said when the original prints were given to him he had not gotten into the proportions of the structure. It exceeded the building setbacks required by City Code. It was when he applied for a building permit that he learned about the maximum accessory dwelling unit size. They agreed to remove the kitchen, leaving the cabinets in place, and also to remove the shower so it would not be considered an accessory dwelling unit. That way, they were able to obtain the building permit to start construction while the variance request was being processed.

Mr. Hope stated the foundation was poured and they had started framing the building. He said if the variance was not granted, the grandparents would have to go outside to the main house to have their meals or to shower. It seemed odd that the building was allowed but not the living space. The applicant had not indicated someone would be living in the structure full time.

Blaufuss asked if there was a design remedy to take out the extra square feet in the accessory dwelling unit to bring it into compliance with the Code.

Mr. Hope said he has tried to find a way to take out 200 square feet of the finished floor area in the dwelling but it seriously affected the functional use of the space. They would prefer not to have to do that.

### **PUBLIC COMMENT**

Thomas Ruddy said he owned the undeveloped lot next to 2032 Hogan Court. He stated he agreed with Staff that there was nothing unique about the property and there was no cause for unnecessary hardship. He said he intended to build a home on his lot and it would feel like there was another house being built between his home and the neighbors' home. Mr. Ruddy stated he paid a premium price for his lot and he had hoped his rights as a neighbor would be protected. Mr. Ruddy stated the homeowner spoke perfectly good English and he hoped that the Board would deny the variance.

Robert Harrington, 2023 Hogan Drive, had several concerns with this request. The staff report stated a building permit was issued and the plans did not show a restroom or a kitchen. He said the homeowner had stated he wants a kitchen and a restroom. Mr. Harrington stated Mr. Zheng was a business man who ran Microtech Computers. He did not want to see this building become an annex for the business with trucks kept on site or storage of computer parts. He also did not want his neighbors' property to become a rental property. Mr. Harrington said he had also seen plumbers at the site and wondered why if the building was not supposed to have a kitchen or restroom. The structure was two stories high and Mr. Ruddy would have an obstructive view to the golf course if it is allowed.

Brian Hedges said there were private declarations and restrictions in effect for this subdivision. He was a member of the Architectural Control Committee and said Mr. Zheng had not made an application to the Architectural Control Committee prior to starting the project to seek approval of the project. He said legal action would be taken to ask Mr. Zheng to stop construction if he did not get with them to discuss the project and gain approval to proceed.

Mr. Hope said the Planning and Development Services Department approved the size of the structure and framing was about to begin. He said he was unaware the plans needed to go through any other Board than the City. Mr. Hope said Mr. Hedges had requested the plans from him and he complied with his request. He said the structure was not going to be rental space. He said it could be filed in the deed that the structure would never be rental space.

Mr. Harrington stated there was more of an issue than the stucco, stone frontage, and the lighting. He asked if a plumbing permit had been applied for and if the area was going to be living space.

Mr. Guntert said the building permit that was issued had notes that stated there would be no kitchen facilities and no shower or bath. He said there could be a toilet and sink but no shower.

Bowman said it was irrelevant what the structure was being finished as.

Mr. Guntert said the variance before the Board was the square footage of finished space.

**PUBLIC HEARING CLOSED**

**BOARD DISCUSSION**

Bowman said it was clear the 960 square feet was in violation.

**ACTION TAKEN**

Motioned by von Tersch, seconded by Bowman, to deny the variance request for 2032 Hogan Court, due to the applicant failing to satisfy the unnecessary hardship, and based on the following staff recommendations:

Staff recommendation is for denial of the accessory dwelling unit size variance based upon the findings contained in the staff report that this request does not meet all 5 conditions necessary for the requested variance to be approved.

Motion carried, 5-0-1 Lane abstained

**ITEM NO. 9 MISCELLANEOUS**

- a) Mr. Guntert stated there would be at least one item on the December 3<sup>rd</sup>, 2009 Board of Zoning Appeals Agenda.

**ACTION TAKEN**

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

Motion carried unanimously, 6-0

**ADJOURN – 8:05p.m.**

Official minutes are on file in the Planning Department office.