

BOARD OF ZONING APPEALS

Meeting Minutes of **October 2, 2008 –6:30 p.m.**

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

Members Absent: Kimball, Bowman

Staff present: Miller, Parker, Miller

ITEM NO. 1 COMMUNICATIONS

von Tersch stated she had received email communication from Paul Werner which had been sent to the members of the Oread Neighborhood Association regarding 1005 Indiana street. She said she had copies of the email that document the nature of the communication that occurred.

Blaufuss stated she had received an email regarding the lighting near Centennial/Virtual school at 2145 Louisiana street.

Lowe stated he was contacted regarding 1005 Indiana street property.

Lane stated Paul Werner contacted him regarding 1005 Indiana street and Mr. Werner had given Lane an overview of the zoning variance and his view point for 1005 Indiana street. He said Mr. Werner stated the structure had been burned by the tenants and the insurance for the property would pay for the building but not pay for parking. Lane stated Mr. Werner said there were many University parking garages and facilities within walking distance of the property.

von Tersch stated part one of the communications she had received was a draft of the letter from the neighborhood association that was part of the packet.

No agenda items deferred.

ITEM NO. 2 MINUTES

Lane suggested one change on page three of the September 4, 2008 Board of Zoning Appeals minutes.

ACTION TAKEN

Motioned by Lowe, seconded by Blaufuss to approve the September 4, 2008 Board of Zoning Appeals minutes with changes noted.

Motion carried unanimously, 3-0-2

von Tersch and Carpenter abstained from the September 4, 2008 Board of Zoning Appeals minutes.

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.

STAFF PRESENTATION

Ms. Mary Miller presented the item.

Lane asked Staff what length of time the building had been used as an eight occupant building.

Ms. Miller stated Staff was not able to determine the length of time the structure was used as an eight occupant building.

Blaufuss asked Staff to explain the uniqueness of the structure.

Ms. Miller stated the use was conforming but the lot was a non-conforming lot. She said the uniqueness was the structure had existed and then it had burned.

APPLICANT PRESENTATION

Jon Davis stated he was one of the four property owners of 1005 Indiana street. He said Crimson Properties purchased 1005 Indiana street in 2004. Mr. Davis said the previous owner had purchased the property in 1985 and it had been used for the same purpose. Mr. Davis stated the property owners did not burn the house and there was a misconception of what was going to be done with the property. He said the house was going to be rebuilt with the same type structure and with the same amount of occupants. Mr. Davis said the owners intended to use the shell of the structure and build with the same setbacks. He said Crimson Properties was not going to demolish the structure and there was a question to whether there needed to be a variance at 1005 Indiana street. Mr. Davis stated the issue was with the value of the property. He read the City Development Code Section 20-1503 and stated that sixty percent of the home was not damaged. He said Jeff Hatfield appraised the structure and the value of the property was \$594,000.00 and the insurance company would give \$320,000.00 to build the property back to its original form. Mr. Davis stated that Crimson Properties did not burn the structure down.

Lane asked Mr. Davis to clarify what the \$320,000.00 price was.

Mr. Davis stated the insurance company would give Crimson Properties \$320,000.00 to fix the property and clean the site.

von Tersch asked Mr. Davis if the property was insured for replacement cost or market value.

Mr. Davis stated if the structure was to be rebuilt the insurance company would pay full price to rebuild the home. He said if Crimson Properties did not rebuild the home they would receive after cost value which was a percentage of the insurance money and it would be significantly less.

Mr. Davis stated there were no curb cuts on the alley west of the house and it was poorly maintained. He said Mr. Rose owns the property two houses down from 1005 Indiana and he has front parking and parking space in the rear. Mr. Davis said the street was not a busy street. He said City Staff had granted a parking variance to a home on Kentucky street which is a much busier street. Mr. Davis stated Crimson Properties wanted to rebuild the home. He said if the variance was not granted the lot would probably be sold.

Rob Farhar, Crimson Properties, stated he attended the Neighborhood Association meeting and not all members were against rebuilding the home.

Lane asked Staff Attorney John Miller what it would take for the determination of the fair market value of the house and if a variance was required.

Mr. Miller said he had reviewed the Development Code and did not know if Staff had made a specific interpretation regarding a non-conforming structure that lost its non-conforming status.

von Tersch said in the memorandum from Mr. Werner to Staff he had stated there was confusion regarding the value of the structure.

Mr. Miller said he did not see anything in the report stating Staff had found the structure lost its non-conforming status.

Lane said if a variance request was not necessary it would be odd to rule on the question if the applicant needed a variance.

Ms. Miller said it had appeared in the staff report that the applicant had stated the structure would be replaced rather than repaired.

Mr. Davis stated after the staff report was written a fire restoration company and the fire marshal made the determination the structure could be saved.

Ms. Miller stated if the applicant intended on repairing the structure the value would need to be determined.

Lane asked if the applicant would be out of options if the Board of Zoning Appeals ruled to deny the variance.

Mr. Davis stated he did not know the whole process.

Lane asked Staff if the item should be deferred for a month for a determination if a variance was needed.

Ms. Miller stated the staff report and Staffs recommendation were based on the applicant's statement that the structure was to be replaced.

Lane asked the applicant if they wanted to defer the item.

Mr. Davis stated he would like to defer 1005 Indiana street.

ACTION TAKEN

Motioned by Lowe, seconded by Blaufuss to defer 1005 Indiana street to the November 6th 2008 Board of Zoning Appeals meeting.

Motion carried unanimously, 5-0

ITEM NO. 4 1901 LOUISIANA STREET [PGP]

B-09-14-08: 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 be allowed to exceed the 60 feet maximum permitted post height for lights at outdoor recreational uses as set forth in Section 20-1103(e) of the City Code. The applicant is asking approval to install 70 feet post heights on the football field lights and soccer field lights, and 65 feet post heights on the softball field lights. The property is legally described as Lot 1, Block 1, Lawrence High School Addition in the City of Lawrence, Douglas County, Kansas. The subject

property is located at 1901 Louisiana Street. Submitted by C.L. Maurer with Landplan Engineering for Lawrence USD 497, the property owner of record.

STAFF PRESENTATION

Ms. Mary Miller presented the item.

Blaufuss asked Staff how much time it would take to complete a text amendment.

Ms. Miller stated the Development Code was adopted in July 2006. She said text amendments could take three months to complete.

Carpenter asked Staff if the fields for 1901 Louisiana street would be new fields or replacement fields.

Ms. Miller stated new fields would be constructed.

APPLICANT PRESENTATION

Mr. C.L. Maurer said he did not know where the sixty feet number came from that is used in the code and the number may have been arbitrary. Mr. Maurer stated the International Electric Code was written in 1998 and the standard was updated in 2007. Mr. Maurer said the new pole heights were standard around the country and the way the appropriate pole height was determined would be by measuring a line at a thirty degree angle from the center of the field to the pole location. He said lights would be added to the ball fields and currently there were parking lot lights there. He said the tennis court lights would be removed when the new lights are added. Mr. Maurer stated a half foot candle would be next to the property line.

Tom Bracciano stated the new light fixtures proposed use less energy and would focus the light better. He said if the lights were placed at only sixty feet in height they would not be as safe for the participants and they would also use more energy.

Blaufuss asked the applicant for an explanation of the term 'foot candle'.

Mr. Maurer stated a 'foot candle' was equivalent to the light one foot from a candle.

Mr. Bracciano said the set up of the lights met the code and the applicant was asking for the difference in the height of the lights.

Blaufuss asked why the lower light was more dangerous.

Mr. Maurer stated if a ball went beyond the light the participants would not see the ball and when the ball came back down it was dangerous.

Blaufuss asked if there was a standard that stated the height of the poles.

Mr. Maurer stated the pole height had been a standard until the new code was developed.

Lane asked the applicant if the light would spread more with the taller poles.

Mr. Maurer stated the taller poles would keep the light from spreading.

PUBLIC COMMENT

Sven Alstrom, stated he was an adjacent property owner to 1901 Louisiana street. He said it was true the taller poles spread the light out more horizontally. He said a larger spacing of shorter poles would trespass

less into the neighborhood. He said Mike Amyx had checked the maximum building height and it was sixty feet. Mr. Alstrom stated the utility poles in the neighborhood were seventy five feet tall and fifteen feet of that was buried into the ground. He said the Centennial Neighborhood had received the short end of the stick in the meetings and he was requesting the lights stay at sixty feet. He said at the City Commission and Planning Commission meeting the item was asked to be deferred because the applicant kept changing the request. He said there would be a law suit filed against the City of Lawrence if the taller poles were approved. Mr. Alstrom stated the new Planning Director was wrong regarding the code and that the football stadiums should be classified as 'entertainment and spectator sports' not 'outdoor recreation'. He asked the variance not be permitted in regards to the football stadium. He said the parking requirements had not been met.

Lane stated the variance request was for the height of the light poles. He said this was not the venue to discuss the Special Use Permit.

Mr. Alstrom said the impact of a Special Use Permit had not been addressed. He said there would be more light with the taller light poles.

BOARD DISCUSSION

von Tersch said there was an issue that should be dealt with within the code itself with a text amendment. She said the Development Code should be in compliance with the International Electric Code.

Blaufuss asked the applicant if the project would be held up if the applicant waited for a text amendment.

Mr. Maurer stated he would have to wait for the text amendment to be completed to begin the plans. He said depending on the time needed for the text amendment, he may be held up.

Mr. Bracciano stated the school district would like to have the lights installed in time for spring sports. He said he agreed there should be a text amendment but a variance would be better for the school districts schedule.

Mr. Maurer stated there needed to be a text amendment.

Mr. Bracciano said the City Parks and Recreation had the same issues with the lighting on their fields.

ACTION TAKEN

Motioned by Lowe seconded by Blaufuss, to approve the variance for 1901 Louisiana street based upon Staff's recommendation and based on the findings of fact presented in the body of the staff report.

Motion carried unanimously, 5-0

ITEM NO. 5 4700 OVERLAND DRIVE [PGP]

B-09-15-08: 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 be allowed to exceed the 60 feet maximum permitted post height for lights at outdoor recreational uses as set forth in Section 20-1103(e) of the City Code. The applicant is asking approval to install 70 feet post heights on the football field lights and soccer field lights at the high school. The property is legally described as Lot 1, Block 1, Free State Addition No. 2 in the City of Lawrence, Douglas County, Kansas. The subject property is located at 4700 Overland Drive. Submitted by C.L. Maurer with Landplan Engineering for Lawrence USD 497, the property owner of record.

STAFF PRESENTATION

Ms. Mary Miller presented the item.

APPLICANT PRESENTATION

The applicant made no presentation.

PUBLIC COMMENT

No one from the public spoke to this item.

BOARD DISCUSSION

No Board discussion.

ACTION TAKEN

Motioned by Blaufuss, seconded by Carpenter, to approve the variance for 4700 Overland Drive street based upon Staff's recommendation and based on the findings of fact presented in the body of the staff report.

Motion carried unanimously, 5-0

ITEM NO. 6 2145 LOUISIANA STREET [PGP]

B-09-16-08: 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 be allowed to exceed the 60 feet maximum permitted post height for lights at outdoor recreational uses as set forth in Section 20-1103(e) of the City Code. The applicant is asking approval to install two (2) 90 feet height posts and six (6) 80 feet height posts on a new baseball field to be built at the Centennial/Virtual School. The subject property is located at 2145 Louisiana Street. A legal description of the subject property is available for viewing at the Planning and Development Services Department in City Hall, 6 East 6th Street, Lawrence. Submitted by C.L. Maurer with Landplan Engineering for Lawrence USD 497, the property owner of record.

STAFF PRESENTATION

Ms. Mary Miller presented the item.

Lane asked if there was anything preventing the school district from installing cell towers on top of the new lights.

Mr. Bracciano stated there had been requests for cell towers but the requests had been denied. He said the district would rather install solar panels rather than cell towers.

Lowe asked the applicant how tall the lights were at the Free State baseball field.

Mr. Maurer stated the lights at the Free State baseball field were seventy five and eighty feet tall.

Ms. Miller read the development code regarding cell towers and stated they would not be permitted at the school sites.

APPLICANT PRESENTATION

The applicant made no presentation.

PUBLIC COMMENT

No one spoke to this item.

BOARD DISCUSSION

No Board discussion

ACTION TAKEN

Motioned by Lowe, seconded by Blaufuss, to approve the variance for 2145 Louisiana street based upon Staff's recommendation and based on the findings of fact presented in the body of the staff report.

Motion carried unanimously, 5-0

ITEM NO. 7 MISCELLANEOUS

ELECTION OF OFFICERS

Lane nominated Blaufuss as Chair of the Boarding of Zoning Appeals.

Lowe nominated Bowman as Chair of the Boarding of Zoning Appeals.

Motioned by Lowe, seconded by Lane to cease the nominations for the Chair of the Board of Zoning Appeals.

Motion carried unanimously, 5-0

The Board conducted a voice vote for Chair of the Board of Zoning Appeals.

3-1-1, Blaufuss nominated as Chair of the Board of Zoning Appeals, Carpenter abstained

Blaufuss nominated Lowe as Vice-Chair of the Boarding of Zoning Appeals.

von Tersch nominated Kimball Vice-Chair of the Boarding of Zoning Appeals.

Motioned by Lowe, seconded by Lane to cease the nominations for the Vice-Chair of the Board of Zoning Appeals.

The Board conducted a voice vote for Vice-Chair of the Board of Zoning Appeals.

3-1-1, Lowe nominated as Vice-Chair of the Board of Zoning Appeals, Carpenter abstained

Mr. Miller stated there was not a law regarding swearing in speakers. He said the Planning Commission changed their by-laws and no longer require the swearing in of speakers.

ACTION TAKEN

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

Motion carried unanimously, 5-0

ADJOURN – 8:15p.m.

Official minutes are on file in the Planning Department office.