

BOARD OF ZONING APPEALS
Meeting Minutes of September 3, 2009 –6:30 p.m.

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

ITEM NO. 1 COMMUNICATIONS

Mr. David Guntert stated all communications were within the online packet.

Lane stated he would abstain from Item 2.

Lowe stated he was contacted by the applicant Richard Stuntz regarding Item 4.

Carpenter stated he was contacted by various people regarding Item 6. He stated he lived across the street from the property and would abstain from the Item.

ITEM NO. 2 MINUTES

Motioned by Bowman, seconded by von Tersch, to approve the July 2, 2009 Board of Zoning Appeals minutes.

Motion carried unanimously, 5-0-1 Lane abstained

ITEM NO. 3 2409 BROOKSIDE DRIVE [DRG]

B-8-8-09: 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 reduce the 25 feet exterior side yard building setback to a minimum of 19 feet. The variance is needed for the applicant to be able to construct a greenhouse addition on the south side of the residence. The property is legally described as: Lot 51, Block 4, Final Plat of Four Seasons No. 5 Addition to the City of Lawrence. The subject property is addressed as 2409 Brookside Drive. Submitted by Jeremy D. and Amber D. Lehrman, the property owners of record.

STAFF PRESENTATION

Mr. Guntert presented the item.

APPLICANT PRESENTATION

Amber Lehrman stated she would like to have a green house on the south side of her house. She said the nearest neighbor's property line was thirty five feet. Only a small area of the greenhouse would encroach into the exterior side setback due to the radius of the cul-de-sac affecting a portion of their yard in the southwest area of the lot.

PUBLIC COMMENT

Trudy Walker, 2421 Brookside Court stated her home faced where the greenhouse would be placed and she had no objections to what the Lehrman's wanted to do. She recommended the Board approve their request.

PUBLIC HEARING CLOSED

BOARD DISCUSSION

Lane said the staff report outlined everything on the application and the project seemed to meet all five requirements.

ACTION TAKEN

Motioned by Lane, seconded by Carpenter, to approve the variance request for 2409 Brookside Drive, based on the findings of fact in the staff report.

Motion carried unanimously, 6-0

ITEM NO. 4 2101 GREENBRIER DRIVE [DRG]

B-8-9-09: 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 allow a second driveway access on a property having less than 200 feet of street frontage as required in Article 9, Section 20-915(f) of the City Code. The request is submitted for the property legally described as Lot 32, Golf Club Subdivision to the City of Lawrence, Douglas County, Kansas. The property address is 2101 Greenbrier Drive. Submitted by Richard A. and Kathleen L. Stuntz, the property owners of record.

STAFF PRESENTATION

Mr. David Guntert presented the item.

Lane asked Staff if the applicant had a building permit for the addition and if the second driveway was part of the approved building permit.

Mr. Guntert stated the second driveway was not on the original plans that had been approved.

Lane asked if the driveway was constructed.

Mr. Guntert said the area was all paved with the exception of the area between the sidewalk and the curb of the street. He said the plans that were submitted did not show the second access.

Bowman asked Mr. Guntert if a variance would need to be requested if this was a duplex dwelling instead of a single-dwelling residence.

Mr. Guntert said it would also require a variance if they wanted two separate driveway entrances. Duplexes currently being built have a single entry point on the street that splits into separate driveways once it is behind the front property line.

APPLICANT PRESENTATION

Brad Finkeldei, Attorney with Stevens and Brand, asked the Board to consider the applicants request and grant it. He said the original plan was to leave the driveway the way it was. Mr. Finkeldei stated the original driveway had a steep slope and required a quick right turn to get into the new garage addition. He said the issue with the City was the curb cut. The outcome of a denial of the second driveway would be to close one of the two entrance cuts by replacing the curb and gutter section.

He said originally the lots in the area were single lots and later divided into separate ownership parcels after the duplexes were built. Most of the street frontage was developed with duplexes that had their own driveway entrance from the street.

Mr. Finkeldei said the unique feature of the lot was that it did not have curb cuts close together. He stated the neighbors supported his client's request for the second driveway entrance. They were asking the Board to allow his property to be consistent with the neighbor's property along the street.

Mr. Finkeldei stated the hardship was that the driveway was very steep and it was difficult to navigate in and out of the driveway. He said there was not good site vision backing out of the current driveway. A second driveway would not harm the neighbors or adjacent property owners.

Lane asked Mr. Finkeldei if the old driveway access could be closed and then only keep the new access.

Mr. Finkeldei said if the variance was denied the second driveway access would be closed off.

Blaufuss asked Mr. Finkeldei if the property owner wanted two driveways to be able to go in one and go out the other.

Mr. Finkeldei stated the property owner wanted to use the driveways to enter and exit his property.

Blaufuss asked Mr. Finkeldei why the property owner did not use the new concrete to turn around in the driveway so they would not have to back out onto the street.

Mr. Finkeldei said his clients entertained a lot and that would not always be practical. It would be more efficient to have the dual driveway entrances for traffic flow.

Carpenter asked Mr. Finkeldei if there were other circular drives in the neighborhood.

Mr. Finkeldei said there were not circular driveways on that particular street but there were circular drives on Crossgate Drive to the west.

Carpenter said when David Burress was on the Planning Commission he wanted to reduce the number of curb cuts.

Mr. Finkeldei said when the Development Code was prepared the lot frontage requirement went from 100 feet to 200 feet for consideration of a second curb cut on a lot. Also, the standards for duplex driveways changed to allow only one driveway access cut per lot.

Carpenter asked if a retaining wall could be added and the old driveway access closed off.

Mr. Finkeldei said the important thing to consider was that there was a unique feature to the property and the applicant did not cause the feature. He said it was an undo hardship; the argument was the nature of the neighborhood and the driveways were all in very close locations. In this particular neighborhood it was an undo hardship on the applicant.

Carpenter asked Mr. Finkeldei how there was a hardship other than a financial hardship.

Mr. Finkeldei said there was a hardship because of the slope of the drive and the yard.

PUBLIC COMMENT

No one from the public spoke to this item.

PUBLIC HEARING CLOSED

BOARD DISCUSSION

Bowman stated there should be a simple solution of closing the curb cut and moving the single opening. He said there was not a tremendous amount of traffic on the street.

Blaufuss said the property owner could close off the first driveway and not suffer a hardship.

ACTION TAKEN

Motioned by Blaufuss, seconded by Lane, to deny the variance request for 2101 Greenbrier Drive, based on the findings of fact in the staff report.

Motion carried unanimously, 6-0

ITEM NO. 5 1050 WELLINGTON ROAD [DRG]

B-8-10-09: 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 reduce the 30 feet rear yard building setback required in Section 20-601(a) of the City Code to a minimum of 6 feet. The variance is needed for the applicant to be able to construct a garage addition on the east side of the residence. The property is legally described as: Lot 21, Block 4, Final Plat of Holiday Hills Addition to the City of Lawrence. The subject property is addressed as 1050 Wellington Road. Submitted by Kaylyn Munro for Robert W. Augelli, the property owner of record.

STAFF PRESENTATION

Mr. David Guntert presented the item.

Lane asked if the north arrow on the site plan was correct.

Mr. Guntert stated the site plan was correct. The applicant used his neighbors' property to the east via a private drive easement to access his parking area in back of his house. The private drive also served as access for his neighbor on the north.

APPLICANT PRESENTATION

Kaylyn Munro, stated she was the project designer and the next door neighbor of the applicant. She stated she was available for comments.

Lowe asked Ms. Munro which home was hers.

Ms. Munro displayed photos of the area and the homes in the area.

PUBLIC COMMENT

No one from the public spoke to this item.

PUBLIC HEARING CLOSED

BOARD DISCUSSION

The Board noted the unique topographic challenges on this property and how they played into the variance. Also, they noted the support of the immediate neighbors for what the applicant proposed to build.

ACTION TAKEN

Motioned by Lowe, seconded by von Tersch, to approve the variance request for 1050 Wellington Road, based on the findings of fact in the staff report.

Motion carried unanimously, 6-0

ITEM NO. 6 SOUTHEAST OF E. 19TH STREET AND 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. 19th Street and Learnard Avenue. Submitted by Jill Gretchen Windholz, Carolyn L. Hemphill, Wendy A. Stauffer, and Jennifer D. Hemphill, the property owners of record.

BOARD DISCUSSION OF WHETHER TO PROCEED WITH HEARING THE ITEM

Carpenter asked if the Historic Resources Commission had requested the item be deferred until after their September 17th, 2009 meeting.

Mr. Guntert stated the Historic Resources Commission submitted a letter requesting the Board of Zoning Appeals defer the item until after they had a chance to consider it at their meeting later in the month.

Blaufuss asked the Board if there should be a discussion on deferring the item.

Lane said the response from the Planning Staff was that it did not seem prudent to defer the item.

Carpenter stated the Historic Resources Commission could determine the area was not a place to have a driveway. He said the Board of Zoning Appeals could be back in a month to discuss a different variance.

Blaufuss said it was the applicants risk if their project would have to come back to the Board of Zoning Appeals.

von Tersch stated the applicant may use the Board of Zoning Appeals decision to strengthen their case with the Historic Resources Commission.

Carpenter stated he would move the item be deferred one month.

Blaufuss asked if there would be an extra cost to the applicant if the Board of Zoning Appeals reviewed the project prior to the Historic Resources Commission and then found they needed to come back with another variance request.

Mr. Guntert said staff did not believe the variance had anything to do with what the Historic Resources Commission would be looking at later in the month. He said this was the only location that worked for access to the property because of the floodplain issue. Staff recommended access be from Learnard Avenue rather than 19th Street.

Carpenter stated he did not feel comfortable participating in the discussion since he lived just north of the property.

Mr. Miller said the Board of Zoning Appeals could approve the project subject to conditions of the Historic Resources Commission.

von Tersch stated it seemed it was procedure for the Historic Resources Commission to review projects prior to the Board of Zoning Appeals.

Mr. Miller stated the previous projects could have been circumstances and not code required.

Bowman asked if the Historic Resources Commission would have to approve the project prior to it going forward.

Mr. Guntert stated the Historic Resources Commission would be involved in the review of the development.

Mr. Miller stated if the Historic Resources Commission denied the project the applicant would have the choice to appeal the decision.

Low stated the variance could be approved subject to Historic Resources Commission approval.

Mr. Miller said the Board of Zoning Appeals could approve the variance, approve the variance with conditions, or deny the variance.

Blaufuss asked the applicant if he wanted the variance to be heard by the Board of Zoning Appeals prior to the Historic Resources Commission.

Mr. Windholz stated Planning Staff had alerted him that procedurally the variance was being heard backwards. He said the hardship would be that his project would be pushed back another thirty days. Mr. Windholz stated he was on the September Agenda for the Historic Resources Commission.

von Tersch stated an additional two week delay following the HRC hearing would not affect concrete pouring.

Low stated the item should be heard by the Board of Zoning Appeals rather than postponed until the October meeting.

Lane thought the item should be heard. He said the variance was simply whether or not the driveway could cross the floodway.

Carpenter stated he would step down from the dais and not be a part of the decision.

Mr. Miller stated Carpenter should exit the room.

Carpenter stated he was a neighbor and he did not get notice of the hearing.

Mr. Windholz stated Mr. Carpenter may not have received notice due to the project being on the 1926 Learnard side and not the 436 19th Street side.

STAFF PRESENTATION

Mr. David Guntert presented the item. He stated the request was for a variance from the floodplain development regulations of the City. He said it related to a portion of the driveway that would be located in the 100-year floodway of Burroughs Creek. The area in question was an 18 square foot area of the proposed driveway that crossed the floodway.

Lane asked Mr. Guntert to explain the existing apron of the property and asked if there was a FEMA type designation. He asked if the area was actually below the flood level.

Mr. Guntert stated a portion of the property was within the floodway and that was what the driveway had to cross. The existing driveway apron was built at the same time the box culvert drainage improvements were done by the City.

Lane said the FEMA map could be wrong. He asked Staff if the floodway actually passed beneath the street.

Mr. Guntert said the FEMA maps were adopted in 2001 and there had been storm water improvements completed to the north of the property since that time. The City had supplied FEMA with engineering documents indicating the extent of improvements and changes made in the drainage channel. He also said that FEMA was in the process of preparing new mapping for the city and county.

APPLICANT PRESENTATION

Mr. Windholz said the new flood level in this area was 851 feet. He said Learnard Avenue was above the regulatory floodplain level. This was essentially the only location to use to access the two lots he wants to develop with duplex units. The driveway pavement was at grade and only a very small area of the driveway clipped the floodway. Because this was a privately owned driveway instead of a public improvement in the floodway the Development Code did not permit it by right, which is why he was seeking this variance. He did not believe the driveway would have any adverse affect upon his neighbors or the environs of any historic property.

PUBLIC COMMENT

James Grauerholz stated he lived in the William S. Burroughs house across the street. He stated the number of people driving by the home had doubled in the last year or two and what ever decision is made by the Board of Zoning Appeals, it would be seen by thousands of people.

Mr. Grauerholz said three years ago Richard Hemphill requested the platting of the property in question. He said the applicants already had access that was approved by the City Commission. More recently the property was rezoned from single family to duplex and he had wondered what regulation would apply to the property. He stated Lawrence's first storm water engineer turned the land into a detention pond. He said the bridge railing moved further south and it got very tight.

Mr. Grauerholz said the applicant wanted parking for nine cars and all of them would have to squeeze through a small opening. He thought the owners were taking the project a step too far and he would like to see the variance denied. Mr. Grauerholz stated the applicant could take access from 19th Street because one of the lots did have frontage on 19th Street. He did not object to the duplex but he was concerned with the site lighting and the number of potential vehicles using the single access entry.

PUBLIC HEARING CLOSED

BOARD DISCUSSION

Lane asked Mr. Guntert if Staff met with the property owners and discussed having the access off of 19th Street instead of Learnard Avenue.

Mr. Guntert said the City Engineer recommended access not be from 19th Street and Staff supported that recommendation.

Lane asked the applicant if the City had recommended one access point over the other.

Mr. Windholz stated the City recommended the Learnard Avenue access due to the traffic in the area on 19th Street.

Lane said the Board of Zoning Appeals was considering approving the variance to the floodplain regulations not the Historic value or Planning value of the proposed duplex development.

ACTION TAKEN

Motioned by Blaufuss, seconded by Lowe, to approve the variance request for 1926 Learnard Avenue, based on the findings of fact in the staff report and subject to the following conditions:

- 1) Approval of a local Floodplain Development permit; and,
- 2) Subject to the Historic Resources Commission approval, with the understanding that the floodplain variance approval is not an endorsement from the Board of Zoning Appeals for the rest of the proposed development.

Motion carried unanimously, 5-0-1 Carpenter abstained

ITEM NO. 7 MISCELLANEOUS

- a) Mr. Guntert said he anticipated items coming in for next month's regular meeting and next month the Board would need to hold election of officers for the next year.

ACTION TAKEN

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

Motion carried unanimously, 6-0

ADJOURN – 8:00p.m.

Official minutes are on file in the Planning Department office.