

**BOARD OF ZONING APPEALS**

September 7, 2006 - 6:30 p.m.

Meeting Minutes – (approved by BZA on 11/02/06)

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Board members present: von Tersch, Emerson, Goans, Hannon, Carpenter, Blaufuss and Lane

Staff present: Patterson

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*Swearing in of witnesses.*

**ITEM NO. 1: COMMUNICATIONS**

There were no additional communications for the Board.

There were no ex parte communications disclosed.

There were no deferral requests to consider.

Blaufuss and Emerson indicated they would abstain from voting on the August minutes.

**ITEM NO. 2: MINUTES**

Motioned by Hannon, seconded by Lane to approve the August 3, 2006 meeting minutes as presented.

Motion carried 5-0-2, with Blaufuss and Emerson abstaining due to their absence from the August meeting.

*BZA Meeting 9/7/06*

**ITEM NO. 3: 702 MAINE STREET [PGP]**

**B-07-27-06:** A request for a variance as provided in Section 20-1309 of the Land Development Code of the City of Lawrence, Kansas, July 1, 2006. The request is to reduce the minimum rear yard setback requirement of 20 feet per Section 20-601 of the City Code, to a distance of 11.5' (1.5' closer than the existing deck from the eastern side of the property). The request will permit construction of a porch addition with a 2<sup>nd</sup> story bathroom on the back side of the residence located at 702 Maine Street. A variance is also requested for a front and exterior side yard setback for the existing structure. The property is legally described as Lot 1, Final Plat of Community Mercantile Inc. a replat of Lot 24, Block 11, Lane Place Addition in the City of Lawrence. Submitted by Paula O'Connor, property owner of record.

**STAFF PRESENTATION**

Mr. Patterson introduced the item, a request for three variances:

1. Reduce the rear yard setback from 20' to 11.5 feet to allow construction of two-story rear porch addition. The existing rear yard setback is 13'.
2. Reduce the front yard setback from 20' to 0' to recognize existing conditions.
3. Reduce the exterior side yard setback from 20' to 12.75', also to recognize existing conditions.

Staff presented photographs of the property and surrounding area.

Mr. Patterson gave an overview of Staff's analysis of the request, pointing out several pre-existing conditions that had been in place for several years. Staff found that all three requests met the five criteria and therefore recommended approval of all three variances as presented.

It was noted that the front of the house appeared to line up with most others on the block. It was verified that the 0' setback was created by the porch steps, which went to the west property line.

**APPLICANT PRESENTATION**

Paula O'Connor, applicant, said the intent of the proposal was to provide an additional bathroom. She expressed no objection to the Staff Recommendation.

**PUBLIC COMMENT**

No member of the public spoke on this item.

**BOARD DISCUSSION**

The Board had additional questions and comments, clarifying the item at hand.

**ACTION TAKEN**

Motioned by Hannon, seconded by von Tersch to approve all three variances for the project at 702 Maine as presented, based on the findings of fact presented in the body of the Staff Report.

Motion carried unanimously, 7-0.

*BZA meeting 9/7/06*

**ITEM NO. 4: 1140 MISSISSIPPI STREET [PGP]**

**B-04-12-06:** A request for variances as provided in Section 20-1709.1 of the Zoning Ordinance of the Code of the City of Lawrence, Kansas, 2003. The request is to reduce the minimum side yard setback and rear yard setback from 5 feet and 20 feet, respectively, per Section 20-608 of the City Code, to 3.7 feet and 12.3 feet. The final request is to reduce the amount of off-street parking spaces required for a boarding house residential use of an existing structure containing a total of 7 bedrooms. Sections 20-610.5 and 20-1212 of the City Code define the number of required off-street parking spaces, based upon the ratio of one and one-half parking spaces per two lawful occupants in the structure. Based upon this requirement, the applicant is required to provide a minimum of 6 off-street parking spaces. They are seeking a variance to provide no off-street parking spaces on the property. The request is for property at 1140 Mississippi Street. Said property is legally described as the North half of the West 100' of Lot 7, Block 9, Oread Addition in the City of Lawrence. Submitted by Paul Werner Architects for James A. Slough, the property owner of record. [Deferred from the May 4<sup>th</sup> meeting at the request of the applicant, by the BZA at the June 1<sup>st</sup> meeting to August and deferred from the August meeting at the request of the applicant.]

**STAFF PRESENTATION**

Mr. Patterson introduced the item, noting variances that have already been approved for the property for the existing lot area and setbacks. He explained that the request to allow the property to provide no off-street parking spaces had been deferred three times previously.

Mr. Patterson said the property was platted in 1863, developed in 1912, and used since then for residential uses, most recently a multiple-family residence with 8 units. This proposal was for a boarding house with 7 bedrooms/7 occupants, bringing the property closer into Code conformance.

John Miller, Legal Staff, was asked to further explain information provided in a memo from Staff Attorney Toni Wheeler. It was established that Planning Staff and Legal Staff agreed that the Board could consider the adjacent properties, whether or not the applicant owned these lots. The Board clarified that their specific question was about the legal ramifications of considering other properties.

Mr. Patterson commented that the prior site plan regulations did not require the combined site planning of adjacent properties owned by the same applicant unless the adjacent properties shared some common elements such as a parking area or laundry room.

There was discussion about Ms. Wheeler's statement that, if the parking variance was denied, the property would have to be used in a manner that met the code requirements. It was established that the property owner could continue to operate the existing multi-family use with 8 bedrooms/occupants if the variance was denied, on the condition that he provide adequate evidence that this had been a legal non-conforming use. If such evidence were not available, the property would have to be used in a manner that met the Code requirements - Lane asked what use this would be, since the property could provide no parking at all – or it would revert to its original single-family use.

Mr. Patterson responded to questions, saying the Code does differentiate between a boarding house (proposed) and a multi-family use (existing).

There was discussion about how long the property had been vacant between its multi-family use and the issuance of the boarding house building permit. It was questioned whether this time period was long enough to support a reversion to single-family usage.

von Tersch said she did not want to perpetuate a system that encouraged property owners to create plans that would require variances instead of trying first to work within the Code requirements. She felt that created situations like this, where the Board had no real alternatives.

### **APPLICANT PRESENTATION**

Paul Werner, Paul Werner Architects, said there was a “huge difference” between a non-conforming use and this case, which was a non-conforming property. He said the non-conforming status of the site plan was easier to grandfather in because the use was not in question; a boarding house was an allowable use in this zoning district.

Mr. Werner spoke about number of similar uses in the area that were not up to code. He said the applicant should get some credit for trying to improve the property and do what he could to improve the existing situation.

Mr. Werner said the Board approached a slippery slope in discussing adjacent properties. He suggested this would lead people to think differently about combining properties and common ownership. He said 1136 Mississippi was a “done deal”, developed and in use with all approvals and permits in place. The fact remained that it was physically impossible to provide any on-site parking for the existing structure on the subject property.

It was suggested that the problem was inherent with this zoning district, and that it was reasonable to ask a property owner to consider alternate ways of providing needed parking before he began development. Mr. Werner said down-zoning had been discussed for years. He admitted it was a tough problem and he did not have the ultimate answer.

### **PUBLIC COMMENT**

Candice Davis spoke on behalf of the Oread Neighborhood Association, clarifying that the Association was not interested in down-zoning. The neighborhood wanted to create and protect a mix of uses that would include enough year-round residents in each block to stabilize the area.

Ms. Davis said boarding houses had once made sense in this area because students did not drive and needed an affordable, walkable location. This was not the case anymore, but the boarding house use was still pursued by developers because it was lucrative, allowing as many as 24 occupants in some houses.

Ms. Davis said she owned rental property on Louisiana Street, had three occupants and made a “nice profit”. She saw no reason why other property owners needed such high occupancies.

The Oread Neighborhood Association asked the Board and the City to “stand behind their zoning.” The only way to control what happened in the neighborhood was to use parking regulations to control size, number of bedrooms and number of occupants. They were concerned that “easy variances” led developers to think they could build whatever they wanted, then claim hardship.

## **APPLICANT COMMENT**

Jim Slough, property owner, pointed out that the variances he requested were for conditions that existed when he bought the property. He said he could understand the neighborhood's opposition if he were increasing the density, but that was not the case.

Mr. Sough said if he were only interested in increasing his profits, he would have left the property in its previous condition and continued to operate it as it had for years, in poor condition and with a higher occupancy than he now proposed.

Mr. Slough said this part of the neighborhood was more isolated and did not function as a through street, so it did not have the severe parking problems seen on Louisiana or Indiana Streets.

## **BOARD DISCUSSION**

The Board discussed with Mr. Walthall of Neighborhood Resources the fact that the applicant had filled out all permit applications indicating the property would be a single-family use. It was verified that the particular form used by the applicant did not have a "boarding house" option. Mr. Walthall explained that there were different permit applications for different kinds of uses, and there is a process in place to help an applicant determine which form to use if they are unsure.

It was discussed that the plan review for a single-family use is quite different from other kinds of uses, with more emphasis on zoning issues (setbacks, easements, etc.) and fewer submittal requirements. Mr. Walthall responded to questioning that the consequences for providing false application information varied, depending on whether it was determined that the error was intentional. The City had litigation pending in one such case. However, most often the City required the applicant to stop work on the project and begin the application/development process from the beginning. Mr. Walthall said the City had not made a investigation into the legitimacy of the error in this case.

It was clarified that it should make no difference in the board's consideration that the site plan requirement was identified after the building permit was issued. Goans suggested it would have been different if the applicant had correctly identified the project as a boarding house instead of a single-family use because the planning department would have reviewed the site plan at the same time as the adjacent properties.

It was noted that this project was being considered under the old Code, which would allow the previous use to continue as-is if the property owner made a defined minimum of improvements. He would not, in that case, have to go through the site planning or variance process. Staff verified that this provision has been removed from the new Code, and that a change in use was now enough to trigger the site plan process. Mr. Werner pointed out that this was only in cases where the change in use increased the parking requirement.

It was discussed that State statute and Legal Staff interpretation supported the Board's ability to consider the proposal's impact on the entire zoning district, including but not limited to the adjacent properties, regardless of ownership.

Hannon said the issue came down to whether or not the Board was going to allow the continued use of the existing structure. If they denied the variance, the applicant would have to "tear down and start again." If they approved the variance, the proposed use would not be any worse and slightly better than the previous one. He said he saw no option but to grant the variance, accepting that there was simply no parking available here.

von Tersch said the Code required a property to look for ways to provide parking and asked about the option of renting parking spaces from nearby developments.

Blaufuss noted that a claim of hardship should not be considered if it is solely financial. She referenced a previous case where a denial resulted in an applicant buying additional land from the City to bring the property into compliance. It was pointed out that this arrangement was made after the Board's action and their denial was not based on the idea that this was a possibility. If the land purchase had not been an option, the property owner would have had to remove the corner of the house.

Hannon said that case was different because it involved new construction on vacant land and the builder and applicant admitted the encroachment was created through "sheer carelessness." This case was unique because it involved a long-standing existing structure with a virtually continuous use and there was no practical way to provide any parking.

Lane said hardship in this case was not solely financial, since denial would effectively deny the applicant any use of his property.

It was noted that the new code permitted the provision of off-site parking on property that could be under a different ownership than the subject property.

Blaufuss said she was strongly opposed to the interpretation the Board made regarding 1136 Mississippi, but she could support this request.

**ACTION TAKEN**

Motioned by Hannon, seconded by Lane to approve the variances for 1140 Mississippi Street as presented, based on the findings of fact presented in the Staff Report.

Motion carried unanimously, 7-0.

**ITEM NO. 5: MISCELLANEOUS**

The Board noted that this was the end of Hannon's final term and thanked him for his six years of service. Hannon commented that his discussions had been controversial now and again, and that he greatly enjoyed his time serving on the Board of Zoning Appeals and the discussions they had.

**Adjourned – 7:50 p.m.**

*Official minutes are on file in the Planning Department office.*