

BOARD OF ZONING APPEALS

Meeting Minutes of June 4, 2009 –6:30 p.m.

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

Staff present: Guntert, Parker, Miller

ITEM NO. 1 COMMUNICATIONS

Staff stated the Board had received all communications.

No Board member disclosed ex parte contacts or abstentions.

No agenda items deferred.

ITEM NO. 2 MINUTES

ACTION TAKEN

Motioned by Bowman, seconded by Lowe, to approve the May 7, 2009 Board of Zoning Appeals minutes.

Motion carried unanimously, 7-0

ITEM NO. 3 1023 HIGHLAND DRIVE [DRG]

B-5-5-09: 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 reduce the amount of off-street parking spaces provided for a group daycare center from a minimum of 6 parking spaces required by City standards for off-street parking set forth in Article 9, Section 20-902 of the City Code, to a minimum of 2 spaces. The property is legally described as: Beginning at the northeast corner of Lot 13, thence South 10 feet, thence Northwesterly on a straight line to a point 5 feet South of the Northwest corner of said Lot 13, thence North 5 feet, thence East 135 feet to the point of beginning; and, the South 45 feet of Lot 14; both being in Block 2 in Hillcrest Addition to the City of Lawrence. The subject property is addressed as 1023 Highland Drive. Submitted by Mary McGee, ABC Imagination Center with the permission of Randall C. Pine, POA for Richard R. Pine, the property owner of record.

STAFF PRESENTATION

Mr. David Guntert presented the item.

Blaufuss asked Mr. Guntert if Hillcrest school changed principals if it would make a difference in the fact the current principal gave approval to use the schools parking area. She asked if the school principal's approval would be necessary if the variance was granted.

Mr. Guntert stated approval from the principal at Hillcrest school would not be necessary if the variance was granted. He said parking was allowed on the street on the east side of Highland Drive throughout the day. Parking was restricted on the west side of the street from the hours of 7:00 am and 5:00 pm Monday through Friday. Depending on when the children were brought to the center or were being picked up, it might be possible to parking on the west side of the street.

Bowman asked if the use would be allowed according to the Development Code.

Mr. Guntert stated the applicant had gained approval from the Planning Commission and City Commission for a Special Use Permit. The Special Use Permit was required in this case because the residence would not be inhabited by the applicant or anyone else. Therefore it was considered in the Development Code to be a day care center rather than a day care home. During the hearing at the Planning Commission meeting the commissioners went on record in support of the applicant seeking the parking space variance citing as their reason that it would help preserve the residential character of the street. The Board of Zoning Appeals was the final step for the applicant in the approval process.

APPLICANT PRESENTATION

Mary McGee, the applicant and operator of the child care center, stated she was available for questions.

Lowe asked Ms. McGee if she had operated her daycare business from a different location.

Ms. McGee stated there was previously a daycare located at 1023 Highland Drive operated by a different owner. She stated she was a new daycare provider and did not currently have children enrolled in the daycare center. She was waiting to get all of the approvals before advertising. Ms. McGee said the drop off and pick up time would not be the same as the Hillcrest school drop off or pick up time so the two uses should not be competing for parking spaces at the same time of the day.

von Tersch stated there could be a problem if there was as many as twelve children being dropped off at the daycare center at the same time.

Ms. McGee stated she believed the children would be dropped off at different times unless there was something special scheduled at the daycare center.

Blaufuss asked the applicant if the variance would be needed if she would reside at 1023 Highland Drive.

Ms. McGee stated the variance would not be needed if she would reside in the home. The parking standards did not require as much off-street parking if operated as a day care home.

Blaufuss asked Ms. McGee if she was limited to twelve children at the day care center.

Ms. McGee stated there would be a limit of twelve children attending the daycare center.

Mr. Carpenter asked if anyone had spoken against the day care center at the Planning Commission meeting.

Ms. McGee said Virginia Anderson owned a home two doors down. She had expressed concern that the day care center would create additional traffic on the street. Ms. McGee stated the Planning Department staff did not believe traffic would be a problem.

Lane stated he lived in the neighborhood and there was plenty of parking in the area.

PUBLIC COMMENT

No one from the public spoke to this item.

PUBLIC HEARING CLOSED

BOARD DISCUSSION

No Board discussion on this item.

ACTION TAKEN

Motioned by Lowe, seconded by Kimball, to approve the variance to reduce the amount of off-street parking spaces provided for a group day care center located at 1023 Highland Drive from the required 6 spaces to a minimum of 2 parking spaces, based on the findings of fact and recommendation in the staff report.

Motion carried unanimously, 7-0

ITEM NO. 4 1022 AVALON ROAD [DRG]

B-5-6-09: 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 to remain 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 14 and the South 53 feet of Lot 15, in Hillcrest Third Addition to the City of Lawrence, Douglas County, Kansas. The property address is 1022 Avalon Road. Submitted by Michael Nuffer of Michael Nuffer Construction, Inc., for Robert Brent Morrison, the property owner of record.

STAFF PRESENTATION

Mr. David Guntert presented the item.

Carpenter asked Staff if there was one curb cut on the property.

Mr. Guntert said there were two curb cuts on the lot. The lot has a driveway in front of the residence and a curb break exists to the north end of the lot. He said the northern curb break had been blocked off with large rocks to prevent vehicles from parking in that area.

Carpenter asked Staff if the homes in the area were constructed prior to the Development Code.

Mr. Guntert said the homes were built prior to the adoption of the current regulations. The 200 feet lot frontage standard needed to be eligible for a second curb cut went into effect July 2006. Prior to that date, the lot frontage standard was 100 feet to become eligible for two driveway accesses.

Blaufuss asked Staff if parking was allowed on the west side of Avalon Road.

Mr. Guntert stated he had reviewed the area and there was rarely vehicles parked on either side of the street.

Kimball asked if the property consisted of two lots that had been combined.

Mr. Guntert stated the property consisted of approximately one lot and a half.

Lane asked if the garage would be built within the utility easement.

Mr. Guntert stated the drawing the applicant provided with the variance application did not show the location of the proposed garage to scale. The garage would not encroach into the utility easement.

APPLICANT PRESENTATION

Robert Morrison, the property owner, stated he bought the property at 1022 Avalon Road in 2000. He said the City replaced all the curbs in 2005 and changed the parking on the street. He received a permit from the City to build a second driveway with the anticipation of building a garage. Mr. Morrison stated the City approved the second driveway access prior to the new Development Code being adopted. The driveway permit was issued in 2005.

Mr. Morrison said he had no parking space for entertaining and the street usually lacked parking spots. The driveway leading to his garage and residence was very shallow and only provided room for two vehicles.

He presented photos of parking in the area. When classes were in session at KU, the street was used by students for parking. It also provided overflow parking for the sororities in the neighborhood.

Kimball asked the applicant if the garage would have an accessory residence in it.

Mr. Morrison said the garage would not have a residence. He said there would be additional storage space within the garage and he was still considering whether to finish some of the building for an office/hobby room.

Lowe asked Mr. Morrison if he had a picture of the front of his house.

Mr. Morrison stated he did not bring a picture of the front of his house.

PUBLIC COMMENT

No one from the public spoke to this item.

PUBLIC HEARING CLOSED

BOARD DISCUSSION

Lowe was disappointed there were no pictures available of the property to help him visualize the layout and relationship to other adjacent properties.

John Miller recommended the Board members take a moment to view the Google street view pictures of the property that Board member Carpenter had accessed on his computer.

Lowe asked the applicant if there were large rocks sitting near the driveway.

Mr. Morrison stated the rocks were placed in the area to block the extra driveway. He said the City had notified him that it could not be used for parking because it was unimproved and parking had to be on a paved surface.

Blaufuss asked the applicant to provide the Board with the letter he had received from the City of Lawrence concerning the approval of a second driveway.

Carpenter said he used to live in this area and was aware that the driveway had been used as parking spots from August 1992 to the spring of 1994.

Blaufuss stated the letter from the City said the garage had to be completed within a year.

Carpenter asked the applicant if there was a way to design the second driveway using the existing driveway access.

Mr. Morrison stated there was not enough room within the existing driveway for it to be able to serve as the access to a detached garage. His existing driveway was very short and the turning movements would be challenging at best.

Kimball stated the letter Mr. Morrison provided to the Board indicated there was not an approved building permit for a garage.

Mr. Guntert stated under the old zoning regulations and City Codes, the applicant had enough lot frontage on the property to support the development of a second driveway access. The new Development Code changed the minimum lot frontage requirement to support a second driveway access. The applicant's property no longer met the standard.

Lane asked Mr. Guntert if Staff's denial recommendation was based on a technical nature or if there was a life safety issue with them having a second driveway access.

Mr. Guntert stated if two access points were allowed there is potential for additional traffic conflict on the street. Anytime there are access driveways added along a street it creates opportunity for conflicting vehicle turning movements that may pose safety problems for neighbors and motorists using the street.

Mr. Morrison asked Mr. Guntert if the City was going to add sidewalks to both sides of the street.

Mr. Guntert stated a local residential street would typically have a sidewalk on one side of the street. He did not know of any plans the City had for building a sidewalk on this street.

ACTION TAKEN

Motioned by Blaufuss, seconded by von Tersch, to deny a second driveway access for 1022 Avalon Road based upon the findings and recommendation in the staff report.

Motion failed, 2-5

Lowe stated the applicant had a unique situation because parking was only allowed on one side of the street. He felt the on-street parking limitations caused a hardship to the applicant.

Carpenter stated by eliminating the parking to one side of the street it made the area safer. The area was very hilly. He said it would be beneficial to the area to have additional off street parking.

Lane said there was already a second curb cut on the property that the City had approved in the past.

von Tersch stated the property consisted of two lots.

John Miller, Staff Attorney stated the Board could look at the factors submitted by the applicant and look at the reasoning behind them for meeting the five criteria. He said the decision making process should go along with all five criteria.

ACTION TAKEN

Motioned by Lowe, seconded by Bowman, to approve the second driveway access variance for 1022 Avalon Road based on the following:

1. The property is unique in that the lot frontage standards for having a second driveway access have changed since the applicant purchased the property. The City previously approved a second driveway access on the property before the regulations changed.
2. Granting the variance would not adversely affect the rights of the adjacent property owners, but may in fact benefit them by allowing more parking spaces on the property.
3. Strict application of the provisions of this chapter would put unnecessary hardship on the applicant, due to inadequate parking for the applicant's residence.
4. Granting the variance would not adversely affect public health, safety, morals, order, convenience, prosperity or general welfare. Granting the variance would improve the area by moving the parking off the street.
5. Granting the variance would not be opposed to the general spirit and intent of this chapter.

Motion carried, 5-2

ITEM NO. 5 MISCELLANEOUS

- a) No other business to come before the Board.

ACTION TAKEN

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

Motion carried unanimously, 7-0

ADJOURN – 7:35p.m.

Official minutes are on file in the Planning Department office.