



City of Lawrence
Douglas County
PLANNING & DEVELOPMENT SERVICES

6 East 6th St.
P.O. Box 708
Lawrence, KS 66044

<http://www.lawrenceplanning.org/pds>

Phone 785-832-3150
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September 10, 2009

Jill Gretchen Windholz
Tim Windholz
4001 W 14th Street
Lawrence, KS 66049

RE: **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 Larnard Avenue. Submitted by Jill Gretchen Windholz, Carolyn L. Hemphill, Wendy A. Stauffer, and Jennifer D. Hemphill, the property owners of record.

Dear Mr. and Mrs. Windholz:

On September 3, 2009, the Board of Zoning Appeals conducted a public hearing to consider the referenced request for variance. Upon conclusion of the public hearing, the Board voted 5-0-1 to conditionally approve the application based upon findings determined from the testimony of the applicant, the public and the staff's report that this variance met all conditions described in Section 20-1309(g)(2) of the City Code. The Board's action varied the restriction on development in the regulatory floodway under the provisions of Section 20-1204(b) in the City Code as it applies to the extension of the driveway apron in the regulatory floodway on your property.

On November, 5, 2009, the Board of Zoning Appeals conducted a public hearing to reconsider the variance that was granted at the September 3, 2009 meeting. Since the granting of this variance by the Board of Zoning Appeals information was discovered that shows that the regulatory floodplain was revised and the driveway no longer is located in the regulatory floodway. In light of new floodplain information, the Board of Zoning Appeals voted 5-0-1 to rescind the above variance, subject to adoption of written findings. At their December 3, 2009 meeting, the Board of Zoning Appeals adopted the written findings. A copy of the written findings is attached.





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Please note that the granting of this variance may have an impact on flood insurance costs for this property.

If you have questions concerning the variance, please give me a call at 832-3166.

Sincerely,

Amy M. Brown, AICP
Long Range Planner

Copy: Jonathan Douglas, Interim City Clerk
John Miller, City Staff Attorney
Barry Walthall, Codes Enforcement Manager
Adrian Jones, Senior Plan Reviewer
Lynne Braddock Zollner, Historic Resources Administrator



**Decision on
Southeast of E. 19th Street and Learnard to the Board of Zoning Appeals
B-08-11-09**

FINDINGS

Procedural Findings

1. On August 7, 2009, Jill Gretchen Windholz, on behalf of the property owners, filed an application for a variance from Flood Protection Regulations to the City of Lawrence Board of Zoning Appeals (BZA) for the following described real property:

Lots 1 and 3 in the final Plat of the Elsie Hemphill Addition,
Lawrence, Douglas County, Kansas.
2. The owners of the property are Carolyn Hemphill, Jennifer Hemphill, Wendy Stauffer and Jill Gretchen Windholz.
3. A notice of public hearing was mailed to property owners in compliance with Section 20-1301(q) of the Development Code on August 13, 2009.
4. A notice of Public Hearing was published in the Lawrence Daily Journal-World on August 13, 2009 for the September 3, 2009 meeting in compliance with Section 20-1301 of the Code of the City of Lawrence, Kansas and amendments thereto.
5. On September 3, 2009 a public hearing was held on the variance application for the Southeast of E. 19th Street and Learnard, B-08-11-09, before the BZA.
6. Board members present at the September 3, 2009 meeting were: Marjorie Blaufuss (Chair), James Lowe (Vice Chair), Stephen Lane, Michael Bowman, James Carpenter, and Carol von Tersch. Also present were staff personnel, David Guntert, Planner, John Jay Miller, Staff Attorney, and Lori Parker, Administrative Support III.
7. On September 3, 2009 after hearing all the evidence and testimony, The BZA closed the public hearing.
8. All parties who wanted to be heard were heard.
9. The BZA hearing on September 3, 2009 for B-08-11-09 was recorded on audio tape and minutes were prepared.

10. The BZA has jurisdiction to administer the detail of appeals from the provisions of the Development Code pursuant to K.S.A 12-741, K.S.A 12-759 and Section 20-1402 of the Code of the City of Lawrence, Kansas, and amendments thereto.
11. At the September 3, 2009 meeting, the BZA voted 5-0-1, with James Carpenter abstaining, approving the variance requested for 1926 Learnard Avenue, B-08-11-09, based on the findings of fact in the staff report and subject to the following conditions:
 - a. Approval of a Local Floodplain Development Permit; and
 - b. 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.
12. On October 19, 2009 a notice of public hearing was mailed to property owners in compliance with Section 20-1301 (q) of the Development Code.
13. On November 5, 2009 a public hearing was held on the Southeast of E. 19th Street and Learnard, B-08-11-09, before the BZA.
14. Board members present at the November 5, 2009 meeting were: Marjorie Blaufuss (Chair), James Lowe (Vice Chair), Stephen Lane, Michael Bowman, James Carpenter, and Carol von Tersch. Also present were staff personnel, David Guntert, Planner, Amy Brown, Planner, John Jay Miller, Staff Attorney, and Lori Parker, Administrative Support III.
15. On November 5, 2009 after hearing all the evidence and testimony, The BZA closed the public hearing.
16. All parties who wanted to be heard were heard.
17. The BZA hearing on November 5, 2009 for B-08-11-09 was recorded on audio tape and minutes were prepared.
18. The BZA has jurisdiction to administer the detail of appeals from the provisions of the Development Code pursuant to K.S.A 12-741, K.S.A 12-759 and Section 20-1402 of the Code of the City of Lawrence, Kansas, and amendments thereto.
19. At the November 5, 2009 meeting, the BZA voted 5-0-1, with James Carpenter abstaining, to recommend rescinding the variance approved on September 3, 2009 for 1926 Learnard Avenue, B-08-11-09, based on the findings of fact in the staff report and subject to adoption of written findings.

20. This written decision was approved by the BZA on December 3, 2009.

Substantive Findings

1. The BZA incorporates by reference the BZA agenda of November 3, 2009, including all documents for Agenda Item 3 attached as Exhibit A.
2. Professional Staff Recommendations: On November 3, 2009 Staff informed the BZA that the variance for the property described in the application for the variance from the regulatory floodway, B-08-11-09, was not required because the proposed driveway for the property is not located in the regulatory flood way.
3. Staff recommended that the BZA reconsider and rescind their September 3, 2009 decision granting a variance, with conditions, from the regulatory floodway restrictions in Section 20-1204(b) of the Development Code.
4. After the variance was granted in September, Staff discovered that that the regulatory floodplain was revised based on a Letter of Map Revision (LOMR) dated August 30, 2006. This LOMR (06-07-B014P) revised both the regulatory floodway and floodway fringe in an area that includes the applicant's property. Since Staff revised the floodplain maps, the applicant's proposed driveway is no longer located in the regulatory floodway. Therefore, a variance from the flood regulations of Section 20-1204(b) is not required.

Analysis of Findings:

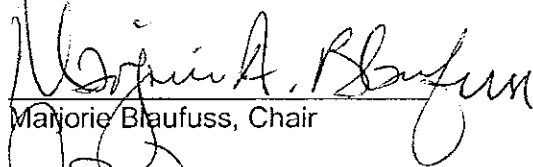
1. All procedural steps have been properly taken.
2. The BZA shall have the power and duties authorized by K.S.A. 12-741, K.S.A. 12-759 and Section 20-1402 of the Code of the City of Lawrence, Kansas, and amendments thereto.
3. As stated in Section 20-1402 (f), Powers and Duties of the Board of Zoning Appeals, the Board of Zoning Appeals shall administer the details of appeals from the provisions of this Article, or other matters referred to it regarding the application of this chapter as hereinafter provided. In exercising these powers, the Board of Zoning Appeals, in conformity with the provisions of this chapter, may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination, and to that end shall have all the powers of the officer from whom the appeal is taken,

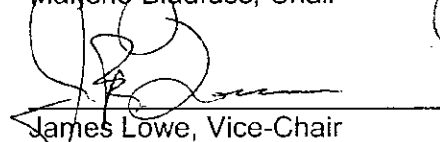
and attach appropriate conditions, and may issue or direct the issuance of a permit.

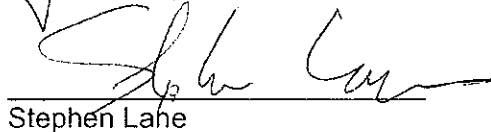
4. The applicant did not need to file an application for a variance from Flood Protection Regulations. LOMR 06-07-B014P revised both the regulatory floodway and floodway fringe in an area including the applicant's property. The revision to the map should have occurred prior to the requested application. The updated map eliminates the need for a variance from Section 20-1204 (b). Since Staff requested that the applicant submit a variance application, and Staff determined subsequent to the granting of the variance by the BZA that a variance was not required, and to prevent a variance from the floodway restrictions to exist on the property when none is needed, it is in the interest of the applicant, property owners and the City of Lawrence, Kansas for the BZA to reconsider and rescind its September 3, 2009 decision to grant the variance for B-08-11-09 at 1926 Learnard Ave.

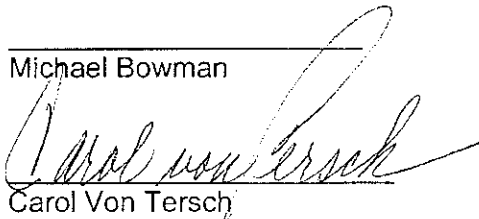
Decision

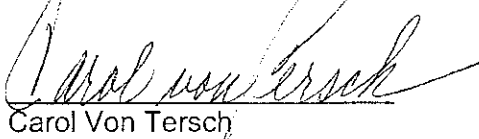
The Board of Zoning Appeals has considered the information presented by Staff regarding this application and has considered the provisions of Section 20-1402 of the Code of the City of Lawrence, Kansas, and amendments thereto, and The Board of Zoning Appeals by a vote of 5-0-1 rescinds the floodway regulation variance, B-08-09-11, granted on September 3, 2009.


Marjorie Blaufuss, Chair


James Lowe, Vice-Chair


Stephen Lahe


Michael Bowman


Carol Von Tersch