

**City of Lawrence
Board of Zoning Appeals
May 6, 2010**

MEMBERS PRESENT: Carpenter, Lowe, Blaufuss, Lane, von Tersch, Mahoney

MEMBERS EXCUSED: Kimball

STAFF PRESENT: Guntert, Miller, Parker

PUBLIC PRESENT: Aaron Paden, Shefia Laue

BOARD OF ZONING APPEALS

Meeting Minutes of May 6, 2010 –6:30 p.m.

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

Members excused: Kimball

Staff present: Guntert, Miller, Parker

ITEM NO. 1 COMMUNICATIONS

No communications came before the Board.

No Board member disclosure of any ex parte contacts.

Carpenter joined the meeting.

ITEM NO. 2 MINUTES

Motioned by Lowe, seconded by Lane, to approve the April 1, 2010 Board of Zoning Appeals minutes.

Motion carried, 5-0-1 von Tersch abstained

BEGIN PUBLIC HEARING:

ITEM NO. 3 1700 TENNESSEE STREET [DRG]

B-3-4-10: A request for a variance to reduce the 25 feet off-street parking lot setback to a minimum of 10 feet. The subject property is addressed as 1700 Tennessee Street. Submitted by Joy Rhea with Paul Werner Architects for Carl L. and Mary A. Maurer, the property owners of record. [Continued from the April 1st meeting.]

DEFERRED

ITEM NO. 4 **1033 KENTUCKY STREET [DRG]**

B-4-5-10: 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 variance is from the provisions in Section 20-902 of the City Code, which requires a minimum of eight parking spaces for a 10-person boarding house. The applicant is asking for a reduction to five parking spaces. The property is located at 1033 Kentucky Street. Submitted by Aaron Paden on behalf of the University of Kansas Student Housing Association, contract purchaser from James C. and Nancy R. Dunn, property owners of record.

STAFF PRESENTATION

Mr. Guntert presented the item.

von Tersch asked Mr. Guntert if 1033 Kentucky Street was a boarding house or cooperative housing.

Mr. Guntert stated under the Development Code considered boarding houses and cooperative housing to be the same thing with regard to where they are allowed to exist and how much parking is required to be provided on site.

Blaufuss asked Staff if there would be a condition to the variance indicating it would stay with a cooperative housing association that was non-profit.

Mr. Guntert said staff did not recommend conditioning the variance upon ownership of the property staying with a nonprofit housing coop. He felt the variance should stand on its own merits. When the variance was first approved in 2003, the Board put a condition of approval on the variance that tied it to ownership. That was the reason they were back before the Board requesting approval of this variance. It wasn't because they proposed to increase occupancy or add on to the structure. He added that the applicant received project approval from the Historic Resources Commission and site plan approval by the City.

Carpenter asked if this variance request was new because the ownership had changed.

Mr. Guntert said it was a new request because the previous variance would lapse when the property ownership changes.

APPLICANT PRESENTATION

Aaron Paden, speaking on behalf of the University of Kansas Student Housing Association, said he intended for 1033 Kentucky Street to remain cooperative housing for a long period of time. He said the ownership would be transferred to a land holder of other student housing coops around the country. This would allow them the ability to buy bulk insurance and save students money so their housing expenses could be keep low.

Carpenter asked Mr. Paden who would have ultimate authority over selling the property in the future.

Mr. Paden stated the board of Nasco Properties Incorporated would have authority of the property. He said Nasco Properties was financially healthy and has never sold a property in the past.

Carpenter said there could be a condition that the property remained cooperative housing.

von Tersch said if there were no restrictions with the variance for the property to remain cooperative housing, the property would become more valuable as a ten bedroom rental property. She said the property was worth far more as a ten bedroom rental property than cooperative housing.

Mr. Paden stated the intent was to never sell the property and continue its use as cooperative housing for students.

PUBLIC COMMENT

Shefia Laue, 1025 Kentucky Street, said the 1000 block of Kentucky Street had a minimum of six boarding homes and all had been given a variance. She said 1033 Kentucky Street was the most community friendly home on the block. Ms. Laue said there were too many cars on the block and several homes were rented by sororities who party very loud on the weekends.

Lowe asked Ms. Laue what year she purchased her home at 1025 Kentucky Street.

Ms. Laue said she purchased her home in 1996. She said she was happy when old homes were renovated and preserved.

PUBLIC HEARING CLOSED

ACTION TAKEN

Motioned by Lane, seconded by Mahoney, to close the public comment portion of the Board of Zoning Appeals meeting.

Motion carried unanimously, 6-0

BOARD DISCUSSION

von Tersch said when the applicant initially applied for the variance in 2003 it was granted due to the property being cooperative housing. She thought the variance should continue to be tied to cooperative housing.

Mahoney asked Staff if the variance could be tied to cooperative housing.

John Miller, Staff Attorney, said the variance should be tied to the land not the applicant or the use. He discouraged the Board from tying the variance to the applicant and cooperative housing.

von Tersch said the property would automatically stay a ten bedroom boarding house. She asked Staff what would happen if a text amendment changing the off-street parking requirements for boarding houses and congregate living quarters was passed by the City within the next few months.

Mr. Miller said a text amendment would not change anything unless there was a time frame assigned to the variance.

Lowe asked Mr. Miller if other conditions could be assigned to the variance.

Mr. Miller said there was nothing in the Development Code that defined cooperative housing.

Blaufuss thought the parking space reduction was granted the first time because it was assumed since the cooperative housing was a non-profit housing that most of the tenants would not own a vehicle and the maximum parking spaces would not be needed.

von Tersch asked if the applicant could contract with the church for additional parking.

Mr. Paden said the church did not have a problem with the cooperative housing using their parking spaces when they had no events planned at the church.

von Tersch asked the applicant if the cooperative housing had ten bedrooms, ten cars, and only five parking spaces.

Mr. Paden said there were six parking spaces on the property.

Mahoney asked Mr. Paden what the cost would be to add additional parking spaces.

Mr. Paden said there was not enough space on the lot to add parking spaces. He said the cooperative housing was non-profit so they really didn't have extra money to use to purchase more land for parking.

von Tersch asked Staff why the variance could not be tied to the applicant.

Mr. Miller said the variance should be tied to the land and not the land owner. Otherwise, it would lapse with a transfer of ownership. He did not recommend tying the variance to the land owner.

Mr. Paden stated cooperative housing did not fit the definition of a normal type boarding house. He said cooperative housing should be defined as a non-profit organization that was geared towards affordable housing.

von Tersch thought the variance should have a time frame and a Text Amendment should be initiated to define cooperative housing in the Development Code.

Mahoney asked if a new property owner could request the variance continue if the property was sold for a different use in the future.

von Tersch said the 2003 variance was granted based on the fact cooperative housing was non-profit and at the time there was no problem with boarding houses. She said a variance should be conditioned upon the use remaining non-profit cooperative housing. That would allow them to continue and buy time for text amendments addressing parking standards for boarding houses and congregate living to be fully investigated before a blanket variance was granted for the property.

Mahoney thought the parking issue for this property had been determined when the BZA granted the 2003 variance.

Blaufuss said the applicant was asking for a variance with a condition upon a non-profit cooperative housing.

von Tersch said a text amendment should be drafted.

Mr. Paden said he was trying to begin the renovation of the structure. If the variance was not granted with the capability of being transferred to a new owner the bank would not lend money on the property.

Blaufuss said cooperative housing should also obey the Development Code. She said the previous variance was granted due to the history of the particular structure and the property.

Mahoney thought all five conditions had been met.

ACTION TAKEN

Motioned by Mahoney, seconded by Lane, to approve the variance request for 1033 Kentucky Street, based on the findings of fact in the staff report.

Motion failed on a 3-3 vote, with von Tersch, Carpenter, Blaufuss opposed

ACTION TAKEN

Motioned by von Tersch, seconded by Blaufuss, to grant the variance request for 1033 Kentucky Street, with the following conditions:

1. Nasco Properties Incorporated owns the property at 1033 Kentucky Street
2. The use remains as cooperative housing containing ten or fewer bedrooms
3. The variance would expire if the property ownership changes

Motion carried, 5-1 Mahoney opposed

ITEM NO. 5 MISCELLANEOUS

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

ACTION TAKEN

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

Motion carried unanimously, 6-0

ADJOURN –7:25p.m.

Official minutes are on file in the Planning Department office.