

**City of Lawrence
Board of Zoning Appeals
August 5, 2010**

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

MEMBERS EXCUSED: Carpenter

STAFF PRESENT: Guntert, Miller, Parker

PUBLIC PRESENT: Applicants: Dwane Jimerson

**BOARD OF ZONING APPEALS
Meeting Minutes of August 5, 2010 –6:30 p.m.**

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

Members absent: Carpenter

Staff present: Guntert, Miller, Parker

ITEM NO. 1 COMMUNICATIONS

Mr. Guntert stated the Board received an email communication from Ms. Sheila Ward regarding Item No. 3 on the agenda.

No disclosure of ex parte contacts.

No agenda items deferred.

ITEM NO. 2 MINUTES

Motioned by Lane, seconded by Lowe, to approve the May 6, 2010 Board of Zoning Appeals minutes.

Motion carried unanimously, 6-0

BEGIN PUBLIC HEARING:

ITEM NO. 3 1904 E 25TH TERRACE [DRG]

B-7-9-10: 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 request is for a variance to reduce the 25 feet front yard building setback required in Section 20-601(a) of the City Code to a minimum of 13 feet. The variance is requested for an open carport structure the property owner has built onto the front of their home over a portion of the driveway. The property is addressed as 1904 East 25th Terrace. Submitted by Dwane M. and Vianna R. Jimerson, the property owners of record. **The legal description for the property in the appeal and the case file for the public hearing item are available in the Planning Office for review during regular office hours, 8-5 Monday - Friday.**

STAFF PRESENTATION

Mr. Guntert presented the item.

Mahoney asked Mr. Guntert if the plans for the carport had been submitted to the City before the owner started construction on the carport.

Mr. Guntert indicated it was his understanding that some work had started on the carport before the owner made contact with the City to find out whether he needed a building permit.

Blaufuss asked Mr. Guntert why the City building officials had not noticed that a variance would be needed when the building permit application was made.

Mr. Guntert stated the drawing that was provided in the staff report was what the applicant provided to the City with their permit application. It did not identify the distance from the front support posts to the front property line. The applicant may also have been confused about where his property line was because of his responsibility to maintain the yard area all the way to the street curb.

Lane asked Mr. Guntert if a site plan should have been submitted for the project.

Mr. Guntert said yes a better site plan (or plot plan) should have been submitted for the permit.

von Tersch asked for clarification as to how far along the construction had progressed when the application for the building permit was submitted.

Mr. Guntert stated there may have been confusion regarding which project was being constructed. He said the garage was converted to an entertainment room for the family prior to the start of the carport. No building permits were issued by the City for the garage remodel, but the owner may not have needed permits if they did not change any load bearing walls or perform any plumbing, mechanical or electrical work.

APPLICANT PRESENTATION

Dwane Jimerson stated he was a truck driver and had lived in Lawrence for ten years. He said he is normally on the road away from home five days a week and his spare time is the weekends. Mr. Jimerson said he is a licensed minister, a member of a car club, and he has two daughters who attend Kansas University and a son who works in Lawrence. The house was already built when they purchased it. The property has a large back yard and has a small front yard. The house could have been moved further back on the lot without conflict with the rear yard setback. If that had been done, the carport may have been able to stay out of the front setback.

He said the trees in the front yard along the street made the carport less visible to passing motorists and pedestrians. The sides on the carport would remain open so you will always be able to see through the structure, which also helped reduce the visual impact of the encroachment.

Mr. Jimerson stated prior to beginning his project he submitted four drawings to Development Services who had asked about the width and length of the carport. He said Development Services gave him instructions on what type of materials to use and once the materials were purchased he returned to Development Services to obtain a permit. Development Services issued the building permit on April 19th.

He said when the inspector came to inspect his project the setback issue was mentioned. That was the first time he heard any mention of a setback. He has had many neighbors complement him on the carport and how it beautified his home and was good for the neighborhood. With the application for the variance he submitted a supporting document signed by several immediate neighbors.

von Tersch asked Mr. Jimerson what date Development Services performed the inspection on the carport.

Mr. Jimerson stated the permit was issued April 19th, and the inspection took place on June 7th, 2010.

Blaufuss asked if the project was 75% complete when the permit was requested.

Mr. Jimerson said there was no construction on the carport prior to April. He also converted his garage into a living area for entertaining family and friends. That may have been why there was confusion on the carport project completion.

Mahoney asked Mr. Guntert if there was a misunderstanding regarding the location of the front property line.

Mr. Guntert believed the property owner did not understand where his front property line ended and where the public street right-of-way was in front of his home. In discussing that issue with him it seemed clear that Mr. Jimerson thought he owned all the property in front of his home to the street pavement edge.

PUBLIC COMMENT

No one from the public spoke to this item.

PUBLIC HEARING CLOSED

Motioned by Lane, seconded by Lowe, to close the public hearing.

Motion carried unanimously, 6-0

BOARD DISCUSSION

Lowe said there was nothing unique about the property. He said he had a problem with Development Services issuing the building permit without more closely checking into whether the carport would meet all setbacks.

von Tersch said she was concerned the Board would be setting a precedent if the variance was granted.

Kimball said precedence would not be established. If anyone else in the neighborhood wanted to do a similar carport project they would have to submit an application and appear before the Board of Zoning Appeals prior to receiving a building permit. Their application would have to be considered on its own merits.

Mahoney asked if it was the homeowner's responsibility to inquire about the setback requirements for the carport.

Mr. Guntert stated Development Services was responsible for checking the setbacks before proceeding with the issuance of a building permit.

Mr. Miller, City of Lawrence Staff Attorney, said the property owner was responsible for researching and asking about what the requirements were for building a carport, which included any setbacks that might apply to the structure.

Blaufuss asked if there was any responsibility on the City if an applicant was not familiar with setbacks.

Mr. Miller said staff is able to answer questions and guidance about the requirements. However, if Staff made an error it did not mean the error overturned the regulatory provisions in the Development Code.

Lowe thought the City of Lawrence placed a hardship upon the applicant by issuing them the building permit without informing him of the setback issue. He felt the City should be more thorough in making sure everything was in compliance with the Development Codes before issuing building permits. He said the applicant did everything right and relied upon the City to guide him with his project.

ACTION TAKEN

Motioned by Lowe, seconded by Kimball, to approve the variance request at 1904 East 25th Terrace, based on the uniqueness of the street view of the property, and the hardship placed upon the property owner who relied on the City of Lawrence who granted a building permit.

Mr. Lane asked if the Board should add a condition that restricted the property owner from doing any further construction on the carport that would change it to having solid walls.

Mr. Miller advised the Board if they wanted to amend the motion to add a condition it would be best for the Board to deny this motion and then make a new motion with the condition.

Motion denied unanimously, 6-0

ACTION TAKEN

Motioned by Lowe, seconded by Kimball, to approve the variance request at 1904 East 25th Terrace, based on the findings in the staff report for conditions 2, 4 and 5; and revised findings for conditions 1 and 3 that address the uniqueness of the street view of the property, and the hardship placed upon the property owner who relied on the City of Lawrence who granted a building permit as supporting reasons to grant the variance, subject to the following condition:

1. The property owner (both current and future) do no additional construction on the carport that would add solid walls to the sides of the carport.

Motion carried unanimously, 6-0

ITEM NO. 4 MISCELLANEOUS

There was no other business to come before the Board.

ACTION TAKEN

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

Motion carried unanimously, 6-0

ADJOURN – 7:20p.m.

Official minutes are on file in the Planning Department office.