

Kimball asked if the Variance could be deferred until the Historic Resources Commission reviewed the project. Kimball stated the neighborhood would be more acceptable if the garage was a framed structure.

von Tersch said the idea of a two feet setback appealed to her.

ACTION TAKEN

Motioned by Kimball, seconded by Christie, to approve a two feet setback for 2025 New Hampshire street, subject to the approval of the project by the Lawrence Historic Resources Commission, based on the findings of fact in the staff report.

Motion approved unanimously, 4-0

ITEM NO. 4 DILLONS STORE; 1740 MASSACHUSETTS STREET [DRG]

B-12-13-10: A request for variances as provided in Section 20-1309 of the Land Development Code of the City of Lawrence, Kansas, 2009 edition. The first request is for a variance to reduce the 25 feet front and rear yard building setbacks on Massachusetts Street and New Hampshire Street respectively, as required in Section 20-601(b) of the City Code to a minimum of 0 feet. The second request is for a reduction in the number of off-street parking spaces for the new grocery store from the required 150 parking spaces per Section 20-902 of the City Code, to a minimum of 129 parking spaces. The final request is for a variance from the Code requirements of Sections 20-1003, 20-1004 and 20-1005 pertaining to the amount of interior parking lot landscaping and perimeter parking lot and buffer yard setbacks the applicant needs to provide in the parking area; the applicant is seeking alternative compliance for interior landscaping using the provisions in Section 20-1007 of the Code. These variances are being requested to help facilitate the redevelopment of an existing commercial center with a new urban grocery store located at 1740 Massachusetts Street. Submitted by Mike Boehm for the Dillons Companies, Inc., the property owner 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. Mr. Guntert read and email from Lisa Harris and displayed photos she had provided.

Kimball asked Mr. Guntert to explain the landscape variance.

Mr. Guntert said the variances dealt with buffer yard setbacks and interior parking lot landscape. He said the current site had less than 2,000 square feet of green space and the proposal would be less than 10,000 square feet of landscape area. He said the right of way area would also have landscape.

Kimball asked if Planning Staff would approve the final site plan.

Mr. Guntert said Planning Staff had the authority to approve the site plan. He said the City Commission would have to approve the pharmacy drive through and the outside café area.

Christie asked if there could be additional issues return to the Board of Zoning Appeals.

Mr. Guntert stated the project could potentially come back to the Board of Zoning Appeals in the future.

Carpenter said the communications Staff received dealt with the drive through pharmacy and the New Hampshire street access.

John Miller, Staff Attorney, said if a site plan was approved administratively it then could be appealed to the City Commission.

Carpenter said the Board of Zoning Appeals had very specific issues for tonight's meeting, which was the setback, parking spaces, and landscape variance.

Christie asked how many parking spaces were at the current site.

Mary Miller, City Staff, stated currently there were 178 parking spaces at Dillon's grocery store and the proposal was for 51 less spaces.

APPLICANT PRESENTATION

Brian Fulmer, Dillon's Company, stated the project at 1740 Massachusetts street was one the community could be proud of. Mr. Fulmer thanked City Staff for being professional and efficient. He stated there had been a number of Barker neighborhood meetings regarding the pedestrian sidewalk, the height of the building and the architectural effect of the structure. He said cut thru traffic from Massachusetts street to New Hampshire street would be controlled with a traffic calming speed hump. Mr. Fulmer said currently sixty five delivery trucks made deliveries on New Hampshire street per week and fifteen of those were semi style trucks. He said the new design would reduce the truck delivery to only fifteen trucks. Mr. Fulmer stated the semi truck delivery on Massachusetts street cut off would be at noon each day and the pharmacy drive thru would operate from nine to nine Monday thru Friday with an average of 320 trips to the drive thru per week. Mr. Fulmer said there would be no neon lighting or loud communication at the prescription drive thru area. He said Dillon's Company had reached out to the neighborhood to set up further meetings to address neighborhood concerns. He said Dillon's Company would like for the Board of Zoning Appeals to approve the project so the design could continue to be worked on.

PUBLIC COMMENT

Bob Gent said he was concerned with the setback and asked if the setback would have to be the same for the front and the back of the property. He said he did not want the building placed so close to Massachusetts street and would like to see an improvement with the design and the brick facing Massachusetts street. He asked the Board the review the project very carefully.

Levi Dinkla, Family Video, stated he had removed part of his structures store front to comply with the Development Code. He stated Dillon's grocery store was not an urban grocery store and if the project was approved tonight there would not be another public hearing and the applicant would make no changes to the project. He said Massachusetts street was a four lane street and asked if the speed limit on Massachusetts street would be changed to accommodate increased traffic and pedestrians. Mr. Dinkla stated fifty truck deliveries a week to the Dillon's grocery store would be a hardship to On the Rocks Liquor Store. He said Starbucks would be on the west side of the structure and the customers would park in On the Rocks Liquor Store parking lot. He said currently On the Rocks Liquor Store received an over flow of vehicles due to Dillon's grocery store having only 178 parking spaces. Mr. Dinkla stated 178 parking spaces was currently not enough and the project proposed to reduce the number of spaces. Mr. Dinkla said the Dillon's grocery store would block On the Rocks Liquor Store structure and the truck delivery would be a disaster. He said people driving from the south to the

north on Massachusetts street would only see the back of the structure and a loading dock. He said a zero foot setback would impede the vision of pedestrians and vehicles. Mr. Dinkla stated the store proposal was much larger than the current structure and more parking was needed. He said the proposed trees at the curb cut on the south side needed to be removed. Mr. Dinkla said the project as submitted would cause On the Rocks Liquor Store a severe hardship and his current tenant was very concerned with the safety of their customers and the parking situation and it could cause the tenant to relocate. He said if the project was approved as proposed On the Rocks Liquor Store would be stuck behind a loading dock.

Robert Farha said he agreed the area needed to have a new Dillon's grocery store but the design constraints in the proposal should be alleviated. Mr. Farha stated he had not been contacted once regarding meetings held by Dillon's Company. He said he was the owner of the six-plex adjacent to Dillon's property. Mr. Farha stated Dillon's Company had approached him previously to purchase his property for a demolition which had been approved by the Historic Resources Commission and the City Commission had previously approved zoning changes to the property. He said every major grocery store in the City faced a main arterial street. Mr. Farha stated the Dillon's grocery store should face west to Massachusetts street due to increased traffic on New Hampshire street and added noise in the area. He said if Dillon's store faced west there would be no need for a parking variance. Mr. Farha stated the proposed project would devalue properties in the area. He said his property touched two sides of the Dillon's property and Dillon's Company had not contacted him once regarding landscaping. Mr. Farha said there was nothing urban about the area and a new store was going to create a lot more traffic in the area. Mr. Farha asked the Board of Zoning Appeals to deny the project due to the hardship on surrounding property owners, the neighbors, increased traffic on New Hampshire street and the lack of parking spaces.

Jennie Storm, On the Rocks Liquor Store, stated her main concern was the setback and parking variances. She stated she had received a phone call the week her liquor store opened in 2009 and the caller asked her to remove a small banner that had been placed in the green space facing west. She said the caller indicated the banner blocked the view of customers turning in and out of Dillon's grocery store. Ms. Storm said she had a very big concern with delivery trucks idling forty to fifty feet from the entry of On the Rocks Liquor Store. Ms. Storm showed photos of vehicles parked on New Hampshire street, idling, waiting for delivery. She said there was no delivery schedule for beer or other vendors and she would like to know where the trucks would be parking. She said Dillon's Company proposal was adding a green space which would block her egress and a lot of her customers use the area. Ms. Storm stated she had worked for Dillon's Company for eight and a half years and beer vendors and beverage trucks used tractor trailers for deliveries not box trucks. She said delivery trucks would have to back in off of Massachusetts street or use On the Rocks Liquor Store parking lot to make deliveries to Dillon's grocery store. She said her employees, customers, and foot traffic would be in jeopardy and that would be a liability issue. Ms. Storm stated she was concerned with the maintenance of the building that Dillon's Company would provide. She stated bread racks, pop racks and pallets were currently dumped at the Dillon's site and they sat for weeks and weeks. Ms. Storm showed photos of trash and baking racks from the back of Dillon's grocery store. She said the photos indicate the view that people would see when driving from the south to north on Massachusetts street. Ms. Storm stated the proposed plan had the structure facing the wrong way and the store should face Massachusetts street. She said Dillon's Company had not worked with the neighborhood and she had not been notified by Dillon's Company regarding the proposed project. Ms. Storm stated the neighborhood and adjacent property owners did not want the Dillon's grocery store as proposed and she was very concerned with trash in the area from the outside eating area. Ms. Storm stated she was also concerned with snow removal in the winter months. She said the traffic was going to be increased in the area and asked the Board to deny the project as proposed.

Frederick McMillan, 1800 New Hampshire street, stated his home would face Dillon's grocery store loading dock and trash bins. He stated he was concerned with increased traffic on New Hampshire street and the street was not designed for more traffic. Mr. McMillan asked where the city owned busses would stop to pick up passengers on New Hampshire street and Massachusetts street. Mr. McMillan stated Dillon's Company had not contacted him regarding the proposed grocery store or meetings.

Matthew Gough, Barber Emerson, L.C., stated the proposal was not the first time Dillon's grocery store had contemplated redesigning the building on Massachusetts street. He said the rezoning of Mr. Farha's six-plex was on the verge of being finalized when Dillon's Company decided not to purchase the property. He said Dillon's Company was attempting to move forward with the project by obtaining the three variances and claiming they were appropriate under the five factors written out in the staff report. Mr. Gough stated the Development Code was in existence for good reason and now was not the right time to approve the proposed project. He said the size of the property was too small for the proposed structure. Mr. Gough stated if the six-plex next to Dillon's grocery was purchased and demolished Dillon's Company would not need variances. He said the surrounding property owners were very concerned with the proposal of reduced parking spaces and a newer better store would mean more people at the site. Mr. Gough stated Dillon's Company did not meet the hardship provision and a solution would be to purchase the six-plex or build a smaller structure. He stated if the Board of Zoning Appeals denied the variance requests, Dillon's Company would find a way to make the new structure work.

Mary Wharff, Barker Neighborhood Association President, stated the opportunity for public comment regarding the proposal had been limited. She said she did not understand process and did not know why City Staff did not contact the neighborhoods regarding projects. She said the way the proposed structure was laid out was an issue and the drive through pharmacy could be moved to the Dillon's store on 23rd street. Ms. Wharff stated she was concerned with left hand turns onto Massachusetts street and preferred the structure face Massachusetts street.

Patricia Sinclair stated she was a nineteen year shopper at Dillon's grocery store and she had previously spoken against the acquisition of the six-plex by Dillon's Company. Ms. Sinclair said the Dillon's grocery store demolition would be a mess so setbacks were important. She stated she had a problem with the reduced parking spots. Ms. Sinclair stated the area of parking on the north of the structure was not zoned for parking and the Babcock residents needed to be protected. She stated she was not a fan of the landscape plan with plots of trees in the parking lot. Ms. Sinclair stated Dillon's Company had not been a good neighbor.

Craig Patterson stated Dillon's Company had not worked with the neighbors or the neighborhood. He said he was a long time customer of Dillon's grocery store and did not want his comments dismissed. Mr. Patterson stated Dillon's management and the upkeep of the property was very poor. He said the neighborhood had a very stable property ownership in the area. Mr. Patterson stated Dillon's was making a concession for the increased size of the structure and a parking reduction by over fifty spaces, by offering bike and moped parking. He said the truck traffic would use the parking of On the Rocks Liquor Store which would cause an adverse effect to On the Rocks Liquor Store business and the semi style trucks would park on New Hampshire street facing the south. Mr. Patterson asked the Board to review the proposal very carefully and take into consideration the remarks of the neighbors and the adjacent property owners. He said the cause and effect of allowing zero lot lines on Massachusetts street and New Hampshire street would cause more traffic in the neighborhood. Mr. Patterson asked the Board to defer or deny the Dillon's Company proposal to force the company to meet with neighbors and come up with an alternative landscape proposal and a site plan. He asked the Board to review the project much more carefully prior to making a decision.

Brian Fulmer stated the compactor described would be located on New Hampshire street on the east side of the building in the dock area. He stated Dillon's Company followed the notification procedure required by the City and held neighborhood meetings in November and December. He stated elevation and site plan drawings were provided for public review. Mr. Fulmer stated a year and a half ago the design faced Massachusetts street which required a basement in the structure. He said the comments showed the communities commitment to the neighborhood. Mr. Fulmer said the structure would be energy efficient and the design was pedestrian friendly.

Christie asked Mr. Fulmer how the neighbors had been notified.

Mr. Fulmer stated notification was mailed to property owners within 200 feet of the project.

Mr. McMillan stated he was not notified by Dillon's Company of meetings held.

Mr. Farha stated he was not notified by Dillon's Company of meetings held.

Kimball asked Mr. Fulmer if a smaller grocery store was considered. He said the current store was 32,000 square feet and there had been mention of a 37,000 square feet store.

Mr. Fulmer stated the proposed project was for a 44,000 square feet store and the smaller store proposed would have been facing Massachusetts street and included a basement.

Kimball asked Mr. Fulmer if there was a way to reduce the size of the store.

Mr. Fulmer stated a neighborhood group requested seven foot wide isles in the grocery store which forced the reduction of product selection.

Kimball asked Mr. Fulmer if there was a primary pedestrian entrance on the west side of the structure.

Mr. Fulmer stated there was an access point into the café.

Lynne Howitz, Dillon's Company, stated there was a café seating entrance to allow customers to exit and enter the building on the west.

Christie asked Ms. Howitz what the square footage of the current grocery store was.

Ms. Howitz stated the current grocery store was 30,000 square feet.

Christie stated the grocery store would increase by 33% and the parking lot area would be reduced by 33%.

Mr. Fulmer stated the current parking configuration was inefficient.

Mr. Dinkla stated the setback would be a hardship to On the Rocks Liquor Store.

PUBLIC HEARING CLOSED

Motioned by Kimball, seconded by von Tersch, to close the public hearing.

Motion carried unanimously, 4-0

BOARD DISCUSSION

Kimball said he did not want to see the grocery store built smaller than what was needed. He said a twenty five feet setback on the rear was already established and would not affect the neighbors. Kimball said the side yard setback was zero lot line by code and was not a variance that was required. He said there was an issue with trucks delivering from Massachusetts street but that was not an issue for the Board of Zoning Appeals. He asked Staff to review the truck issue. Kimball stated he wanted to see more of a pedestrian access and the parking reduction was warranted due to the number of pedestrians. He said if the size of the grocery store was reduced to meet the parking requirement the traffic would not be reduced.

von Tersch said the new and improved store would increase the volume of customers. She said she had a concern with the parking reduction.

Kimball said the guidelines for parking regulations have shifted to reduce the number of parking spots for projects like this one.

von Tersch stated a bigger store would increase the volume of customers and vehicles.

Carpenter said the guidelines for parking spots had not changed at the current time. He stated it would be helpful to know the situation with the two other Dillon's stores in the City.

von Tersch stated the additional setback would affect the site line of neighboring businesses.

Carpenter stated the change in the Development Code had taken this project away from the Planning Commission and had allowed decisions to be made by Staff. He said only neighborhood associations and property owners within 200 feet were required to be notified.

Kimball asked Staff if the adjoining property had requested a variance in 2005.

Mr. Guntert said the adjoining property owner had requested a landscape variance and a setback for parking on the public right away and a rear yard building setback.

Christie asked Staff how the three variances would impact the loading dock between Dillon's grocery store and On the Rocks Liquor Store.

Mr. Guntert stated if Dillon's grocery store met a twenty five feet setback it would push the loading dock further east.

Christie stated the variance was more of a site design decision rather than the need of a variance.

Carpenter said a zero feet setback on Massachusetts street with a loading dock would impact the site lines of the semi trucks. He stated there would be increased traffic on New Hampshire street.

Christie asked if the proposed project would require a new street installed on New Hampshire street.

Kimball said a traffic study should be provided by the applicant.

Christie said simple decisions now could cause problems in the future.

Carpenter said he would like to see more information regarding the parking guidelines.

Kimball asked the applicant if a traffic study had been completed.

Mr. Fulmer stated a traffic study had been completed.

Ms. Martin stated a seven step traffic study had been completed.

Motioned by Kimball to approve the variance request to reduce the 25 feet front and rear yard building setbacks on Massachusetts Street and New Hampshire Street.

Carpenter stated there was no action to Kimball's motion.

ACTION TAKEN

Motioned by Kimball, seconded by Christie, to approve the variance for the amount of interior parking lot landscaping and perimeter parking lot and buffer yard setbacks.

Motion carried unanimously, 4-0

ACTION TAKEN

Motioned by von Tersch, seconded by Carpenter, to defer the following variances to the February 3rd, 2011 Board of Zoning Appeals meeting, the reduction of the 25 feet front and rear yard building setbacks on Massachusetts Street and New Hampshire Street, and for a reduction in the number of off-street parking spaces from the required 150 parking spaces to 129 parking spaces, until alternative parking guidelines and parking comparisons of Dillon's two other grocery stores is received, and a safety traffic assessment is complete.

Motion carried unanimously, 4-0

ITEM NO. 5 MISCELLANEOUS

- a) No other business before the Board.

ACTION TAKEN

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

Motion carried unanimously, 4-0

ADJOURN – 9:30p.m.

Official minutes are on file in the Planning Department office.

BOARD OF ZONING APPEALS
Meeting Minutes of February 3, 2011 –6:30 p.m.

Members present: Kimball, Carpenter, Mahoney, Lowe, Christie, von Tersch
Staff present: Guntert, McCullough, Parker

ITEM NO. 1 COMMUNICATIONS

von Tersch stated she had received a phone call regarding 1740 Massachusetts street.

There were no agenda items deferred.

ITEM NO. 2 MINUTES

Motioned by Christie, seconded by Kimball, to approve the January 6, 2011 Board of Zoning Appeals minutes.

Motion carried, 4-0-2 Lowe and Mahoney abstained

BEGIN PUBLIC HEARING:

ITEM NO. 3 DILLONS STORE; 1740 MASSACHUSETTS STREET [DRG]

The Board of Zoning Appeals deferred the two variances described below at the conclusion of the public hearing during their January 6, 2011 meeting.

B-12-13-10: A request for variances as provided in Section 20-1309 of the Land Development Code of the City of Lawrence, Kansas, 2009 edition. The first request is for a variance to reduce the 25 feet front and rear yard building setbacks on Massachusetts Street and New Hampshire Street respectively, as required in Section 20-601(b) of the City Code to a minimum of 0 feet. The second request is for a reduction in the number of off-street parking spaces for the new grocery store from the required 150 parking spaces per Section 20-920 of the City Code, to a minimum of 129 parking spaces. These variances are being requested to help facilitate the redevelopment of an existing commercial center with a new urban grocery store located at 1740 Massachusetts Street. Submitted by Mike Boehm for the Dillons Companies, Inc., the property owner 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. He said a stake holder meeting was held January 28th and changes to the plan included a shift of the structure five feet to the north. He said the applicant reduced the building footprint and added speed humps at the store entry. Mr. Guntert stated the pharmacy drive thru would have a single access from New Hampshire street and removable bollards would be added to the access point near New Hampshire street. Mr. Guntert stated the applicant provided more detailed parking generation data which indicated the need for 118 parking spaces.

Lowe asked Staff to explain the removable bollards.

Mr. Guntert stated the bollards would be made of iron posts sunk into a pit in the pavement.

Lowé stated with the bollards in place the entrance would be a one-way entry.

APPLICANT PRESENTATION

Brian Fulmer, Dillon's Company, thanked the Board, City Staff, and neighborhood groups. He said the latest site plan shifted the structure five feet to the north and the crosswalk would be twenty feet wide and would be raised. Mr. Fulmer stated the drive through exit would lead into the parking lot rather than New Hampshire street. He said Kroger Company was committed to helping not hindering the traffic in the neighborhood and Kroger Company agreed to make a donation to traffic calming devices on New Hampshire street. He said delivery trucks would complete deliveries by noon each day.

Ms. Martin displayed photos of the project. She stated On the Rocks Liquor Store sign would be seen sooner than previously proposed.

Christie asked Ms. Martin to explain the distance of the building from the sidewalk.

Ms. Martin stated the width of the sidewalk was twenty four feet from the base of the curb.

Mr. Fulmer stated the existing parking count was 149 spaces. He said the proposal was to reduce the parking spaces to 129.

Christie asked if a parking study had been conducted. He stated he recently drove to Dillon's grocery twice at 5:15pm and there was not one empty parking space. He said it would be very easy for Dillon's customers to spill over into On the Rocks Liquor Store parking lot. Christie asked what recourse the liquor store would have if the spillover occurred.

Mr. Fulmer said On the Rocks Liquor Store could install signs in their parking lot designating the lot as customers only. He stated the current parking lot was inefficient.

Christie asked Mr. Fulmer how the structure would be moved five feet north without impacting the number of parking spaces.

Ms. Martin stated a few parking spots were made smaller for compact cars and the landscape would be smaller.

Christie asked if the plans included landscape on the east side of the structure.

Ms. Martin stated landscape was part of the site plan review.

PUBLIC COMMENT

Tom Kern stated Dillon's Company was a member of the Chamber of Commerce and they employ over four hundred people. Mr. Kern stated the store at 1740 Massachusetts street currently had twenty seven full time and fifty part time employees. He stated the new store would generate an additional forty to fifty new jobs. Mr. Kern stated the project would generate higher property taxes paid by Dillon's Company and would create construction jobs.

Bob Gent stated he was part of the neighborhood team that worked with Dillon's Company and he was not certain the concerns of the citizens had been well addressed. He stated the request for a variance was dependent on how the new store would affect the neighbors.

Mahoney asked Mr. Gent what neighborhood concerns remained.

Mr. Gent stated the neighbors were concerned with truck traffic and if the bigger trucks would adversely affect the neighbors. He stated the trucks had driven in the lawn across the street on New Hampshire street and broken down the curbs in the area.

Christie asked Mr. Gent if it had been brought to the attention of Dillon's Company regarding the trucks driving on neighbors lawns.

Mr. Gent stated Dillon's Company had been contacted regarding the damaged easement and after some time it had been repaired.

Jason Yuhasz stated he was an owner of On the Rocks Liquor Store building. He said the new Dillon's grocery store would create more business yet Dillon's wanted to reduce the amount of parking spaces. He said Dillon's customers would use On the Rocks Liquor Store parking lot and walk the entire frontage of the building to get to the entrance of the grocery store. Mr. Yuhasz stated customers would not walk to and from the grocery store and the forty to fifty new employees would also need parking spots. He stated Dillon's delivery trucks would use On the Rocks Liquor Store parking lot and tear up the turnabout.

Jennie Storm, On the Rocks Liquor Store, stated she wanted the Dillon's Company to build a new store. She asked who would be in charge of the bollards. She stated there would be full tractor trailers using On the Rocks Liquor Store parking lot and she asked what recourse she would have if Dillon's trucks used her parking lot. She said the trucks would not turn left onto Massachusetts street and they would use On the Rocks Liquor Store parking to drive to New Hampshire street. Ms. Storm said the medians and the lights would be torn up by Dillon's Company delivery trucks and there would be a lot of trash around the store. She said Dillon's Company was not concerned with her business' hardship. She stated the new grocery store would affect her business in many ways.

Mahoney asked Ms. Storm to give examples how the new store would affect her business.

Ms. Storm said Dillon's Company had stated there was an eighteen foot line of site to her business. She said the line of site was the very south west corner. She said Dillon's grocery was trying to bring the down town look and feel to the area but at her expense. Ms. Storm stated the trash from Dillon's grocery would end up in her parking area. Ms. Storm stated the Dillon's grocery would block her building and customers would not stop at her business.

Christie asked Ms. Storm if she knew an average number of return customers to On the Rocks Liquor Store.

Ms. Storm stated she had numerous return customers and also new customers.

von Tersch asked Ms. Storm what compromises On the Rocks Liquor Store offered to Dillon's Company.

Ms. Storm stated Family Video had asked Dillon's Company to move the structure back 15 feet rather than 25 feet, and had asked for windows on the back of the building.

Jack Martin stated he lived on Barker street and he supported the project. He stated he would like to see a Dillon's store like the Dillon's store at 6th and Wakarusa.

Austin Turney stated a larger store at 1740 Massachusetts street was necessary. He said he was in favor of the zero setback and the residents on New Hampshire street had moved to the area after the

store was built. Mr. Turney stated some of the traffic concerns in the area had been overblown. He applauded the improvements of the main entrance to the store but stated he was concerned with the north entrance. Mr. Turney stated management would need to keep the entrance free of snow and water build up. He stated he was concerned with the limited parking spaces and straight parking would be more dangerous than angled parking. Mr. Turney stated On the Rocks Liquor Store was a first class store.

Robert Farha stated he was part owner of 1745 New Hampshire street, the six-plex that touched two sides of Dillon's Company property. He said there had been plans to face the structure towards Massachusetts street and he displayed a drawing of a 43,000 square foot building with the structure facing Massachusetts street and said the structure would look better facing Massachusetts street. Mr. Farha said his property was changed to commercial zoning and asked the Board to put a condition on approval for his property to have two cross access points. He asked the Board to take into consideration the cart corrals and how much space they would require.

Gail Sigurdson stated she represented the 120 tenants of Babcock Place. She stated most of the tenants were customers of Dillon's grocery store and the pharmacy. Ms. Sigurdson stated the tenants would like to keep the pharmacy and were excited for the outdoor café and the wider aisles within the store. Ms. Sigurdson stated the Babcock tenants would like to see a green demolition of the current Dillon's grocery store.

Matt Gough, Barber Emerson Law Firm, represented the owners of 1745 New Hampshire street. He stated the Development Code was identical to the State statute that governed variances. He said Dillon's Company had made revisions and new proposals to the plans and those actions were not enough to address the concerns of the neighbors. Mr. Gough stated Dillon's Company had not met the legal requirements for a Variance. He said the proposal had nothing to do with uniqueness or hardship and had everything to do with Dillon's Company own choice. He said in 2009 there was a contract for Dillon's Company to purchase 1745 New Hampshire street and with that purchase Dillon's would not need a Variance. Mr. Gough stated Dillon's Company had the burden to prove that the property was unique and that the Variance would not affect the neighbors. He stated Dillon's would have to show that the application of the code would constitute an unnecessary hardship on Dillon's Company. Mr. Gough stated the application exhibited the contrary and the only reason Dillon's Company needed a variance was due to the fact they were trying to build a store too large for the property and there was not enough parking spaces. He stated the Kansas Supreme Court defined an unnecessary hardship as the use restriction must be so unreasonable as to constitute an arbitrary and capricious interference with the basic right of private property, or there must be convincing proof that it was impossible to use the property for a conforming use, or there must be sufficient factors to constitute a hardship that would in fact deprive the owner of his property without compensation. Mr. Gough stated the staff report stated the applicant needed the variance to make the property practical. He stated to make the property practical was not an unnecessary hardship. He said Dillon's Company was operating a conforming store today and the company was trying to save money by testing the limits of the City's Development Code. Mr. Gough stated Dillon's company made a choice and only wanted a larger structure at the detriment of the neighbors. He stated Dillon's Company had the financial means to comply with the Development Code but they did not want to. Mr. Gough said if the Board of Zoning Appeals approved the variance, the owners of 1745 New Hampshire street would request a condition be added for cross access in the event the lot was ever rezoned for commercial purposes.

Carpenter asked Mr. Gough to give an example of an adverse affect on the rights of the adjacent property owners with the proposed plan.

Mr. Gough stated the evidence was in the record by On the Rocks Liquor Store owner and neighbors. He stated the over flow and damage to On the Rocks Liquor Store parking lot, the trash produced by the grocery store, delivery trucks driving on and damaging lawns. Mr. Gough stated the larger structure would limit the availability of future development for 1745 New Hampshire Street.

Carpenter asked Mr. Gough if Dillon's Company had an obligation to protect the future value of 1745 New Hampshire street.

Mr. Gough clarified that if Dillon's Company wanted a variance they had to show that they would not adversely affect the neighbors and Dillon's had not done so.

Carpenter said on one hand Mr. Gough argued Dillon's did not meet the criteria of a hardship and the proposal was purely financial. He said on the other hand Mr. Gough argued the proposal would put a hardship on the property owner of 1745 New Hampshire street due to unknown future development. Carpenter asked Mr. Gough to choose between the two arguments.

Mr. Gough said the issues were separate. He said the first issue dealt with entirely the definition of what Dillon's Company hardship was and the fact that it would be less profitable to the company to build the store differently was not a hardship under the Kansas Supreme Courts definition. He stated the adverse effect on the neighbors was a different issue.

Carpenter stated Mr. Gough gave an example of the wear and tear of On the Rocks Liquor Store parking lot. He said there was a contractual relationship with On the Rocks Liquor Store and Dillon's Company for cross traffic.

Mr. Gough stated he was not present to create a factual record. He said he was present to illustrate the legal arguments of the proposal.

Carpenter said Mr. Gough created a factual record. He asked Mr. Gough if he had found a definition or guidance from the court for an adverse effect on the rights of adjacent property owners and neighbor's.

Mr. Gough stated he found a case where a property was a triangular tract and due to the shape and a change of the zoning code, rendered the property undevelopable. He stated because of the change in the code the property owner suddenly had no development right and a variance was requested based on the change in the Development Code. He said at the present time Dillon's Company was operating a conforming use and could continue doing so. Mr. Gough stated by granting a variance Dillon's Company would lose nothing that they had at the present time.

Austin Turney II, stated there would be no adverse effect to On the Rocks Liquor Store. He stated neighbors who bought property next to a commercial property, in a sense would adversely affect the neighbors if the business was more successful. He said a business could not be expected to try and be less successful to create less traffic and hopefully the interest of the fifty people within a one block radius of Dillon's grocery store would not be weighed more greatly than the five to ten thousand east Lawrence residents who lived in the greater east Lawrence area. Mr. Turney said it was hard to see how the size of the new Dillon's Grocery would work without the variance and Dillon's could close the store and abandon the site and the neighbors would be upset.

Mary Wharff, Barker Neighborhood Association stated it was frustrating when people that do not live next door to a business, try and tell people that do how they should feel about it. She said traffic was often a surprise and the attitude of working with Dillon's Company managers had been an unhappy

surprise for the residents. She said she lived a few blocks away and always drove to the store as would other customers. Ms. Wharff stated Jennie Storm had asked Brian Fulmer if Dillon's Company would put a loading dock within forty feet of a Dillon's front door and Mr. Fulmer stated no. She said Ms. Storm should not have to spend her time contacting Dillon's Company to clean up the trash in the area. Ms. Wharff stated because the neighbors were bringing up the issues did not mean they did not want a new store. She said there was no use for a new store if the problems would be worse. Ms. Wharff stated fear of what might be should not dictate wisdom. Ms. Wharff displayed photos of neighbors' lawns on New Hampshire street that appeared to have ruts created by Dillon's Company delivery trucks.

Mahoney asked Ms. Wharff how she knew the ruts were caused by Dillon's Grocery delivery trucks.

Ms. Wharff stated the ruts were tractor truck tire tracks and it was highly likely the ruts were caused by Dillon's delivery trucks. Ms. Wharff presented photos of Dillon's docking area, delivery trucks and trash in the area. She said the zero set back on Massachusetts street was taking a risk with the parking. She said most commercial property faced the parking spaces and there needed to be a condition for a way for the neighbors to ask for help with the parking conditions in the future. She stated she would hate to see On the Rocks Liquor Store move and leave an empty space.

Allan Zimmerman stated he lived within one block of Dillon's Grocery and he was in favor of the new store. He said his primary concern was the amount of parking available. He said he had never seen the lot full but Dillon's was adding more employees which would cause a problem. He said the only effect on the property at 1745 New Hampshire street would be the ability to sell the complex. Mr. Zimmerman said Dillon's Company could have been a better neighbor and On the Rocks Liquor Store had a valid concern.

Ms. Storm stated the cross entrance agreement was from entrance to entrance. She displayed photos of four delivery trucks, trash and bread racks at the current Dillon's Grocery store. She stated she had a huge safety concern for the Babcock residents.

Andy Bloomer stated he had counted the number of current parking spaces and there were 179. He displayed a photo of the current parking lot and counted the spots for the Board.

PUBLIC HEARING CLOSED

Motioned by Mahoney, seconded by von Tersch, to close the public hearing.

Motion carried unanimously, 6-0

BOARD DISCUSSION

Mahoney asked Mr. Guntert if the public parking area on the east side of New Hampshire street would be removed.

Mr. Guntert stated the parking area on New Hampshire street would not be removed.

Carpenter asked Staff what the justification was to substitute the ITE parking requirement for the Development code.

Mr. Guntert said the code had not been substituted. He stated the ITE parking requirement was only submitted as additional information and as a resource as another way to look at parking.

Kimball asked Mr. Guntert when the 25 foot setback on New Hampshire street was imposed. He asked

if the zoning had changed at some point.

Mr. Guntert stated the area had been commercially zoned for many years. He said the property to the south of On the Rocks Liquor Store had asked for a setback variance to conform to the current Development Code.

Christie asked Mr. Fulmer where the tractor trailer delivery trucks would park while waiting to make a delivery to Dillon's Grocery store.

Mr. Fulmer said there were approximately 65 trucks that would deliver to the store. He said most of the trucks were smaller trucks and the delivery would be cut off at noon each day.

Christie asked Mr. Fulmer if trucks would use On the Rocks Liquor Store parking area to get to New Hampshire street.

Mr. Fulmer stated he was not sure why the trucks would drive to New Hampshire street. He said there was no need for trucks to use On the Rocks Liquor Store parking area. He said Massachusetts street would be the easiest access point for the delivery trucks.

Christie asked Mr. Fulmer if there was a future problem with the delivery trucks how the community would solve the problem and work with Dillon's Company.

Mr. Fulmer stated Dillon's Company had been responsive to the neighbors in the area. He said problems with the new store would be directed to a store manager and then a district manager.

Christie asked Mr. Fulmer if he had an estimate of what the increased business would be with a larger store in the area.

Mr. Fulmer stated Dillon's Company did not share information.

Christie stated a larger grocery store in the area could potentially provide more customers to On the Rocks Liquor Store. He asked Mr. Fulmer if the current Dillon's Store hours would change.

Mr. Fulmer stated the grocery store would be open twenty four hours a day.

Christie asked Mr. Fulmer if false windows could be installed at the back of the grocery store.

Mr. Fulmer stated more architectural elements had been added to the proposal.

Ms. Howitz stated windows would not be added to the south side of the structure. She said Dillon's Company was working with the Architectural Review Committee for additional ideas for the south side of the structure.

Carpenter stated he had seen trucks at the current loading dock drive on neighbors' lawns on New Hampshire street. He asked if the new design would help the ability of trucks to keep off neighbors lawns.

Mr. Fulmer stated the existing radius would be widened and the larger trucks would be able to make turns in the area.

Carpenter asked Mr. Kaup if the Board of Zoning Appeals denied the variance if it would cause Dillon's

Company and undue hardship.

Jim Kaup, Dillon's Attorney, stated the rights of the neighbors would not be affected with the Board of Zoning Appeals approval of the variance. He said Staff had made a recommendation to the Board of Zoning Appeals to approve the variance.

Mahoney stated he heard no data or saw no evidence that the rights of the adjacent property owners would be affected by the new Dillon's Grocery store.

von Tersch stated the new proposal of moving the store five feet would not make a difference with the line of site of On the Rocks Liquor Store. She said it would be a hardship on the community if the project did not go forward.

Carpenter stated he was persuaded by the argument that things had really changed in 36 years in planning and how communities should develop. He stated the property was an old suburban drive in strip mall of the 60's and there were constraints with the property and that was an undue hardship. He said right now a definition needed to be applied for undue hardship. Carpenter stated the ITE parking criteria had been offered as a suggestion and there could be a rare occasion the parking lot would be full and customers would park at On the Rocks Liquor Store. He stated On the Rocks Liquor Store would have means of recourse and no parking signs could be posted. He said he would like to tie the variances as a condition to the approval of the site plan for a reconfigured grocery store at the location.

ACTION TAKEN

Motioned by Carpenter, seconded by von Tersch, to approve the variance requests at 1740 Massachusetts street, based on the findings of fact in the staff report, with the condition the variance be tied to the current site planning process and the property's usage remains a grocery store.

Motion approved unanimously, 6-0