

**City of Lawrence
Board of Zoning Appeals
February 2, 2012**

MEMBERS PRESENT: Holley, Lowe, Edie, Christie
MEMBERS ABSENT: Perez, Mahoney
STAFF PRESENT: Guntert, Parker
PUBLIC PRESENT: Schneider, von Tersch, Brown, Francisco, Reiber

**BOARD OF ZONING APPEALS
Meeting Minutes of February 2nd, 2012 –6:30 p.m.**

Members present: Holley, Lowe, Edie, Christie
Members excused: Mahoney, Perez
Staff present: Guntert, Parker

ITEM NO. 1 COMMUNICATIONS

Mr. Guntert stated Communication regarding Item three had been added to the online packet.

No Board member disclosure of ex parte contacts or abstentions from the discussion and vote on any agenda item under consideration.

No agenda items deferred.

ITEM NO. 2 MINUTES

Motioned by Holley, seconded by Edie, to approve the January 5, 2012 Board of Zoning Appeals minutes.

Motion carried unanimously, 4-0

BEGIN PUBLIC HEARING:

ITEM NO. 3 1325 TENNESSEE STREET [DRG]

B-1-1-12: A request for a variance as provided in Section 20-1309 of the Land Development Code of the City of Lawrence, Kansas, 2011 edition. The request is from the provisions in Article 9, Section 20-902 of the City Code as it pertains to the minimum number of off-street parking spaces required for multi-dwelling residential use. The applicant’s request would reduce the number of required parking stalls provided on the property for a new 5-dwelling unit residential structure with 2-bedrooms per unit, from 10 spaces to a minimum of 5 spaces. The location of this variance request is commonly known as 1325 Tennessee Street. Submitted by Fred Schneider, architect and agent for Ashley J. Funderburk, 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.

Lowe asked Staff if parking was allowed on the street in front of the structure.

Mr. Guntert stated street parking was allowed on the west side of Tennessee Street and the spaces were on a first come first serve basis. He said the Development Code required parking be provided on the owner's property or shared parking arranged with a neighbor.

Christie asked Staff if the structure was purposely demolished would a new structure still be able to use the .5 parking space per bedroom standard or would they have to provide 1 parking space per bedroom standard.

Mr. Guntert said if the structure was demolished the new structure would have to meet the current setback and parking standard in the Development Code. If the applicant could show that the structure was less than sixty percent damaged by the fire, the Development Code would permit it to be rebuilt under the nonconforming use provisions in the Code. He said the application stated the damage was more than sixty percent of the structure's appraised value.

Holley asked Staff if the one parking space per one bedroom was also the case for three bedroom apartments.

Mr. Guntert said the number of required parking spaces was based on the total number of bedrooms for all of the dwelling units in the structure.

APPLICANT PRESENTATION

Fred Schneider, architect for the property owner, stated the fire that severely damaged the dwelling was out of the property owner's control. He said the application was submitted over five weeks prior to the Board meeting and he would like to amend the application. He said the structure would not be demolished and said the current structure would be preserved and rehabilitated and a sprinkler system would be installed.

He said the project was unique due to the fire and there were previous cases in front of the Board where a variance was granted due to fires. He said a parking variance had been approved by the Board for 1005 Indiana Street. In that case, Mr. Lowe had stated \$80,000 to construct a parking lot would be a hardship. Mr. Schneider said Board members stated the fire at 1005 Indiana Street was unique.

He said the fire was out of the property owner's control. If the number of bedrooms had to be reduced his client would lose \$2,500.00 a month in income. The loss of income would be a hardship. Mr. Schneider said there were five parking stalls on the property and there would be no adverse effect on the neighbors. Not every tenant would own a car; many students living in close proximity to the campus did not have a car.

Mr. Schneider said he would preserve the historic integrity of the structure and the taxes would also be higher due to a rehabilitation of the structure. He said the property owner should not be forced to receive less money due to an Act of God.

Lowe asked Mr. Schneider how many of the previous tenants owned vehicles prior to the fire.

Mr. Schneider stated there were previously ten tenants and three cars on the property. There had not been complaints filed with the City because of parking problems caused by this property use. He said

there were rental properties up and down the alley in this block.

Lowe stated financial hardship was not a part of the decision making by the Board. He said when the Board had ruled on 1005 Indiana Street financial hardship was not a part of the decision making process.

Mr. Schneider said the fire was a hardship to the property owner.

Lowe said the hardship factor was the hardest to define.

Holley asked Mr. Schneider if the exterior walls would remain the same.

Mr. Schneider said the structure was not a complete loss and he believed the exterior walls be able to be saved. He said the Fire Department had ordered the structure be boarded up so he had not personally been inside the structure. From what he could see from the outside and his reading of the fire report, he did not believe the structure was damaged by the fire more than sixty percent of its fair market value. They would have to hire an independent consultant to perform an inspection to determine the structural integrity of the structure.

Lowe asked Mr. Schneider if he proposed an amended application.

Mr. Schneider stated there would not be an entire new structure built. He said new windows would be installed and the interior of the structure would be reconfigured. He said the fire was out of the property owners' control.

PUBLIC COMMENT

Carol von Tersch, 706 West 12th Street, stated she had been an observer of the neighborhood, the debates and discussions for a very long time. She asked the applicant to clarify the square footage of the structure.

Lowe stated the lot size was 5850 square feet.

Mr. Guntert stated the structure size was 4213 square feet according to the County Appraiser Office.

Ms. von Tersch asked when the structure was converted from a single family home to a multi family dwelling.

Mr. Schneider stated the structure was converted sometime in the 1970's.

Ms. von Tersch said Staff had indicated when the structure was converted from a single family home to a multi-family dwelling that the property was compliant with local Zoning Codes. She said the statement was incorrect due to the property conversion happened after the previous Zoning Code was adopted and there were parking restrictions.

Mr. Guntert said there were different parking regulations in effect when the structure was converted from a single family home to multi-family use than there are today in the Development Code.

Ms. von Tersch stated the structure may never have been compliant with local codes. She said the owner of the property had already been made whole by the insurance company after the fire.

Ms. von Tersch stated 1005 Indiana Street was a boarding house rather than apartments and the fire

damage to the structure was under sixty percent of its fair market value. She said the code regarding parking spaces had not been resolved.

Mr. Schneider stated the property owner had not received a payment from the Insurance Company.

Ms. von Tersch said almost every structure on the block was a rental property and there were sixteen structures on each block with only twenty three parking spaces on the street. She encouraged the Board to consider the neighbors who have had to deal with various issues caused by over occupancy and over density in the neighborhood for many years.

Dennis Brown, Lawrence Preservation Alliance President, said his main concern was that if at all possible the structure should not be demolished. If the variance was allowed there should be a condition that the property be rehabilitated. He said the footnote that had been part of the congregate living text amendment was meant for conversion and renovation of multi-dwelling or congregate structures.

Mr. Brown stated the staff report should be reconciled. The fire was not created by the owner, but every lot in the immediate area was faced with the same conditions. He thought the structure was not damaged enough to justify a demolition permit and that a structural engineer should provide a report. He said the applicant should attempt to prove the structure was not damaged over sixty percent of the fair market value. If that can be shown then a variance would not be needed.

Marci Francisco, 1101 Ohio Street, stated she was pleased the applicant did not request a demolition permit. She thought they could qualify to use the .5 parking spaces per bedroom standard in the Code. She questioned whether the applicant even needed to seek the variance.

Beth Reiber, 1235 Kentucky Street, stated when the single family home had become apartments the parking conditions were different. She questioned the applicant's statement that only three of the tenants had cars. Ms. Reiber stated there was a huge apartment complex down the street that received visitors and a fire hydrant that blocked parking spaces. She asked the applicant if the cause of the fire was known.

Mr. Schneider stated the Fire Marshal had indicated the cause of the fire could have been arson.

Ms. Reiber said there were a lot of fires in the area and if the structure was renovated the apartments would be larger and nicer and the owner could receive more rent.

Mr. Schneider said he appreciated the public's comments. He said the structure would be a much safer place for people to live after the renovation was complete.

PUBLIC HEARING CLOSED

Motioned by Holley, seconded by Edie, to close the public hearing.

Motion carried unanimously, 4-0

BOARD DISCUSSION

Lowe asked Staff if a Variance was needed by the applicant.

Mr. Guntert stated Staff had not been provided with information to determine whether the structure was damaged over sixty percent of the fair market value. The County appraised valuation for this

property was approximately half the amount of what the owner's insurance company estimated the repair/replacement costs to be. He said the applicant's concept of what they wanted to do with the property have changed since the application was filed.

Holley thought the structure was burnt over sixty percent of the fair market value.

Lowé said if the applicant could prove that the structure was not damaged by the fire more than sixty percent of its fair market value, a variance would not be needed.

Mr. Guntert said the application was reviewed using the information given to them by the applicant.

Christie asked if there were more examples besides the 1005 Indiana Street request where the applicant used the damage sustained from a fire as reason for seeking a variance.

Mr. Guntert said this was the first instance he could recall where the applicant used fire damage as the reason why a variance was needed.

Lowé said using the fire did not satisfy the hardship condition.

Holley said the fire was an unfortunate accident, but he was not convinced it was a hardship.

Edie said the Board did not have sufficient information to determine whether the applicant really needed a variance. He felt the applicant needed to better demonstrate the extent of the damage to the structure compared to the fair market value before the Board should consider the merits of a parking variance. It may be that the owner did not need a variance.

Christie said he wanted clarification on the meaning of uniqueness and hardship.

Lowé said the hardship and uniqueness factors were the most difficult to determine. He agreed the Board did not have enough information from the applicant to make a decision on whether or not a variance was needed.

ACTION TAKEN

Motioned by Edie, seconded by Holley, to deny the variance request at 1325 Tennessee Street, based on the recommendation and findings of fact in the staff report, and the absence of information to support the unnecessary hardship criteria was met.

Motion carried unanimously, 4-0

ITEM NO. 4 MISCELLANEOUS

- a) Mr. Guntert stated an appeal had been filed in the Planning Office concerning an administrative determination regarding the 12th and Haskell Recycling Center at 1146 Haskell Avenue. It was tentatively scheduled for the April 5th, 2012 Board of Zoning Appeals meeting.

No items had been submitted for the March 1st meeting, but the application deadline wasn't until February 3rd.

ACTION TAKEN

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

Motion carried unanimously, 4-0

ADJOURN- 7:40 p.m.

Official minutes are on file in the Planning Department office.