

**City of Lawrence
Board of Zoning Appeals
December 6th, 2012**

MEMBERS PRESENT:	Perez, Kimzey, Mahoney, Lowe, Edie, Holley
MEMBERS EXCUSED:	N/A
STAFF PRESENT:	Guntert, Parker, Miller
PUBLIC PRESENT:	French, Todd, Maurer, Shutak, DeKosky, Bruner

**BOARD OF ZONING APPEALS
Meeting Minutes of December 6th, 2012 –6:30 p.m.**

Members present: Perez, Kimzey, Mahoney, Lowe, Edie, Holley
Staff present: Guntert, Parker, Miller

ITEM NO. 1 COMMUNICATIONS

No communications came before the Board.

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

No agenda items deferred.

ITEM NO. 2 MINUTES

Motioned by Mahoney, seconded by Edie, to approve the November 1, 2012 Board of Zoning Appeals minutes.

Motion carried, 5-0-1 Perez abstained

BEGIN PUBLIC HEARING:

ITEM NO. 3 RESIDENTIAL DRIVEWAY APPROACH WIDTH; 725 ELM STREET [DRG]

B-12-00243: 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 for a variance to allow the property owner to have a 32' wide residential driveway approach from the street. Section 20-908(b)(2) of the City Code indicates a residential driveway may not exceed 26' width in residential districts. The subject property is located at 725 Elm Street. Submitted by Kelly French, 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.

APPLICANT PRESENTATION

Kelly French said he was not asking for a variance to widen his driveway. He said the variance request was to pave a six feet area that was now rock. He said his neighbors had asked him to finish the area with concrete. Mr. French stated he would like to add concrete in the area around the ends of the

culvert to help prevent erosion. He said he had added a garage a year after he purchased the property and there had been drainage problems which his landscaping had taken care of.

Kimzey asked Mr. French if he had aerial photos of the property.

Mr. French displayed current aerial photos of the property. He said the driveway had been reconstructed to the east and the drainage now ran toward the landscape area he had added.

Holley asked if lawn could be added instead of gravel.

Mr. French said the culvert was 32 feet wide. He displayed photos of the current condition of the culvert. He asked for a variance to pour concrete in the six feet area.

PUBLIC COMMENT

Jack Todd, 724 Elm Street, stated the neighbors were in support of the project. He said Mr. French had beautified the neighborhood.

PUBLIC HEARING CLOSED

Motioned by Perez, seconded by Kimzey, to close the public hearing.

Motion carried unanimously, 6-0

BOARD DISCUSSION

Mahoney said he did not have a problem with allowing Mr. French to finish the area with six feet of concrete.

Perez said the situation was unique. He said the driveway had not been completed and it was not the fault of the applicant.

Edie said the property was new construction and the project would improve the neighborhood.

Holley said it appeared to him after viewing older aerials of the property that the area in question Mr. French wanted to pave was a remnant from the previous driveway that the builder had not removed.

Kimzey agreed that it appeared the previous driveway was not demolished.

Holley said the gravel did not look great and it would be better to finish it with concrete to match the rest of the driveway.

Perez said for all practical purposes the driveway was 32 feet and it was unique. He said the project would not affect adjacent property owners and the hardship was that the area the applicant wanted to pave was not aesthetically pleasing.

ACTION TAKEN

Motioned by Perez, seconded by Edie, to approve the variance request at 725 Elm Street, based on the staff report, the applicant's presentation and the testimony given by the public.

Motion carried, 4-2

ITEM NO. 4 ADVANTAGE METALS RECYCLING CENTER; 1545 N. 3rd STREET (ALSO KNOWN AS 1783 E 1450 ROAD) [AM]

B-12-00260: 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 12, Section 20-1204(e)(1)(i) of the City Code as it pertains to the placement of fill material in the Regulatory Floodplain Overlay District. The variance request is related to the creation of a landscape berm within the required setback along North 3rd Street for a new development project in North Lawrence. The subject property is located at 1545 N. 3rd Street (also known as 1783 E 1450 Road). Submitted by C. L. Maurer, RLA, ASLA with Landplan Engineering for Advantage Metals Recycling LLC, the property owner of record.

STAFF PRESENTATION

Ms. Miller presented the item.

Mahoney asked Staff if the permit was required.

Ms. Miller said the State required the applicant to apply for the permit.

Lowe asked if the State's approval hinged on the Board of Zoning Appeals approval.

Ms. Miller said the State would not rely on the Board of Zoning Appeals approval.

APPLICANT PRESENTATION

C.L. Maurer, Landplan Engineering, said the property was previously the old Kaw Valley Motors junk yard. He said the property was located along the north gateway into Lawrence and the landscape would match with what exists now to the south on the former LRM Industries property along North 2nd Street.

PUBLIC COMMENT

No one from the public spoke to this item.

PUBLIC HEARING CLOSED

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

Motion carried unanimously, 6-0

BOARD DISCUSSION

Mahoney said aesthetically the project would improve the area.

Edie said the applicant was requesting the required permits from the State and the project would improve the area.

ACTION TAKEN

Motioned by Edie, seconded by Lowe, to approve the variance request at 1545 North 3rd Street, based on the recommendation and findings of fact in the staff report, with the following condition:

1. Approval of a local Floodplain Development Permit.

Motion carried unanimously, 6-0

ITEM NO. 5 **CITY WATER METERING STATION; 3/8 MILE NORTH OF N 1100 ROAD & E 1600 ROAD INTERSECTION [AM]**

B-12-00268: 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 12, Section 20-1204(e)(1)(i) of the City Code as it pertains to the placement of fill material in the Regulatory Floodplain Overlay District. The variance request is related to the development of a water metering station for the City of Baldwin City and Rural Water District No. 4 on a small tract of land located in the southwestern corner of the future City of Lawrence Wastewater Reclamation Facility property south of the Wakarusa River. The subject property is located approximately 3/8 mile north of the intersection of N 1100 Road and E 1600 Road on the east side of E 1600 Road. Submitted by John Shutak, P.E., Utilities Department Engineer for the City of Lawrence, 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

Ms. Miller presented the item.

APPLICANT PRESENTATION

Mr. Shutak said there were no adjoining property owners that would be impacted. He said a fill permit from the State was required and the intent was to minimize the area and grant an easement to the City of Baldwin City and Rural Water District 4. Mr. Shutak said the setback was encroached upon by the area to be filled.

PUBLIC COMMENT

No one from the public spoke to this item.

PUBLIC HEARING CLOSED

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

Motion carried unanimously, 6-0

BOARD DISCUSSION

There was no Board discussion.

ACTION TAKEN

Motioned by Lowe, seconded by Kimzey, to approve the variance request on the City owned property located approximately 3/8 mile north of the intersection of N 1100 Road and E 1600 Road, based on the recommendation and findings of fact in the staff report, with the following conditions:

1. Approval of a local Floodplain Development Permit, and
2. Approval of a Special Use Permit.

Motion carried unanimously, 6-0

ITEM NO. 6 1322 VALLEY LANE; APPEAL NOTICE OF OCCUPANCY VIOLATION [DRG]

B-12-00266: Consider an appeal filed by Deborah DeKosky, owner of 1322 Valley Lane. The appeal challenges a notice of occupancy violation made by the City of Lawrence Director of Planning and Development Services outlined in a letter dated October 15, 2012. The letter notified the property owner they were in violation of the number of unrelated individuals residing in the dwelling unit pursuant to Section 20-204(g) of the City Code. The reasons cited by the appellant for filing this appeal are contained in a letter from Ms. DeKosky, dated October 26, 2012. **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.

Kimzey asked if a duplex was two dwelling units on one piece of property.

Mr. Guntert stated a duplex was one structure containing two dwelling units on one lot.

Kimzey asked if congregate living was a single dwelling unit on one lot.

Mr. Guntert said it was not possible for the property to have two different uses. It was either a duplex or congregate living use. The appellant could possibly site plan a congregate living use if the ownership of the other side of the duplex was agreeable, but the structure could only have one kitchen for the congregate living use.

Mahoney asked if the property had been site planned for approval of the use.

Mr. Guntert stated the property had not been site planned.

APPLICANT PRESENTATION

Aaron DeKosky, said the property was purchased in 2004 and was within walking distance to the University. He said in 2004 the deed stated there were five bedrooms. He said the pipes on the 2nd floor had burst and carpet, drywall and wood molding had to be replaced. Mr. DeKosky said a bathroom was added in the basement of the property. Mr. DeKosky stated the 1986 building permit stated the property was multi-use in a RM12 district. He said he was never notified that the property was out of compliance and under the Zoning Code in effect at that time the use of occupancy was permitted. Mr. DeKosky stated in 2006 the district had changed to RM12 and boarding house use was permitted. He said in 2011 the City Commission had added a section to the Development Code that created new standards for boarding houses and Site Plan approval. Mr. DeKosky said historically the structure had been used as a boarding house under nonconforming use and there was nothing that prohibited the structure from having more than one kitchen. Mr. DeKosky stated the inner-connected fire alarm system was suggested by the City Inspector.

Mahoney asked if there were more than five people living in the structure in 2012. He asked the applicant if he had documentation that stated the use of the property was a boarding house.

Mr. DeKosky stated there had been five or more people living in the structure since 2004. He said there had only been one complaint since he purchased the property and that complaint was in 2004 for a weeds violation.

Kimzey asked if there were rental records indicating five or more people resided at the property.

Mr. DeKosky stated there was no documentation stating the property was a boarding house.

PUBLIC COMMENT

Kathy Bruner, 1321 Raintree Place, stated she had a wonderful relationship with the kids. She said the street was U-Shaped and the neighborhood topped out from 1987-1996. She said her concern was vehicles in the area and it was difficult to keep property values up in the area. She said in the winter time snow plows could not get up the street because of the parking situation.

PUBLIC HEARING CLOSED

Motioned by Perez, seconded by Kimzey, to close the public hearing.

Motion carried unanimously, 6-0

BOARD DISCUSSION

Perez asked Staff if a duplex was defined as two primary dwelling units in one structure and congregate living was defined as a dwelling unit that has five or more unrelated people.

Mr. Guntert agreed.

Kimzey asked if a dwelling unit could be on each side of the duplex without having a shared kitchen and be considered a congregate living use.

Mr. Guntert said there can only be one principal use on a lot. He said the principal use of 1322 Valley Lane was a duplex.

Perez asked if a duplex could be a dormitory.

Mr. Guntert stated a duplex could not be considered a dormitory.

Kimzey asked Staff what year the Development Code changed.

Mr. Guntert stated the Development Code was adopted in July 2006. The definition for congregate living was amended into the Development Code late last year.

Mr. DeKosky stated until the 2011 amendment, there was nothing in the Development Code that required a boarding house or congregate living use to Site Plan. He said he purchased the property in 2004 and the code had changed twice. Mr. DeKosky stated the only technical issue was the Site Plan issue.

Kimzey believed the property was originally permitted for development by the City as a duplex and it had never changed to a boarding house.

ACTION TAKEN

Motioned by Kimzey, seconded by Edie, finding there was not an error in the Notice of Violation dated October 15, 2012 issued to Deborah DeKosky.

Motion carried unanimously, 6-0

ITEM NO. 7 MISCELLANEOUS

a) Consider approval of the 2013 meetings schedule for the next calendar year.

ACTION TAKEN

Motioned by Lowe, seconded by Holley, to approve the 2013 Board of Zoning Appeals calendar.

Motion carried unanimously, 6-0

b) No other business came before the Board.

ACTION TAKEN

Motioned by Edie, seconded by Kimzey, to adjourn the Board of Zoning Appeals meeting.

Motion carried unanimously, 6-0

ADJOURN- 8:28 p.m.

Official minutes are on file in the Planning Department office.