

LAWRENCE BOARD OF ZONING APPEALS
Meeting Minutes of April 3rd 2014 – 6:30 p.m.

Members present: Fertig, Gascon, Holley, Kimzey, Mahoney
Staff present: Cargill, Guntert, Larkin, A. Miller

ITEM NO. 1 COMMUNICATIONS

There were no communications to come before the Board.

No board members disclosed any ex parte contacts or abstentions from the discussion or any agenda item under consideration.

There were no agenda items deferred.

ITEM NO. 2 MINUTES

Consider approval of the minutes from the January 2, 2014 meeting of the Board.

ACTION TAKEN

Motioned by Fertig, seconded by Gascon, to approve the minutes from the January 2, 2014 meeting of the Board.

Unanimously approved 5-0.

BEGIN PUBLIC HEARING:

**ITEM NO. 3 OFF-STREET PARKING SPACE & FLOODPLAIN DEVELOPMENT VARIANCES
FOR 1146 HASKELL AVENUE [AAM]**

B-14-00087: A request for variances as provided in Section 20-1309 of the Land Development Code of the City of Lawrence, Kansas, 2013 edition. The first request is for a variance from the 20 required off-street parking spaces for a building contractor's office and shop as determined by Section 20-902 of the City Code to a minimum of 6 off-street parking spaces. The second variance request is from the provisions of Section 20-1204(b), "Provisions for Flood Hazard Reduction, Floodway Restrictions," and is requested to permit existing and proposed parking and driveway areas to remain in place. The subject property is located at 1146 Haskell Avenue. Submitted by Bo Killough, owner of BK Rental, LLC, the property owner of record and Eric Jay, Struct/Restruct LLC, contract purchaser of the property. **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

Miller presented the item.

Kimzey said the proposed site plan shows parking stalls on the north side of the lot and asked if those will stay.

Miller said that site plan was submitted to the Planning Office before the new floodplain data so it will need to be revised to remove those parking spaces. She indicated an area outlined in red that will need to be removed from the existing plan.

Kimzey asked if there is parking on the City lot to the north in the floodplain.

Miller said the existing Public Works storage yard is located in the floodplain, and portions of it in the floodway, that were developed as such before floodplain maps existed. She mentioned that

staff is working with Public Works to help them understand the impact of the new maps on future development of the site.

Holley asked staff to indicate the existing impervious access drive.

Miller indicated which portions are impervious and gravel on the plan.

Holley asked if a new variance would be required to make repairs to the existing impervious access drive in the future.

Miller said the floodway variance for the impervious surface will remain with the location, and there are no conditions based on owner or future repairs.

Gascon asked how many buildings are planned for demolition.

Miller pointed out two buildings on the north side. She mentioned the large building and smaller structure on the east side will remain.

APPLICANT PRESENTATION

Erik Jay, Struct/Restruct LLC, said they currently have seven employees and don't have a need for many parking spaces or the traffic to support retail sales.

NO PUBLIC COMMENT

COMMISSION DISCUSSION

Mahoney said he appreciates the time and effort staff has put into this variance request and agrees with staff's recommendation for approval as it stands to benefit everyone.

All board members agreed with Mahoney.

ACTION TAKEN

Motioned by Holley, seconded by Gascon, to approve the variances subject to conditions as recommended by staff.

Unanimously approved 5-0.

ITEM NO. 4 **BUILDING SETBACK & BUFFERYARD VARIANCES FOR 850 E. 13TH STREET [DRG]**

B-14-00079: A request for variances as provided in Section 20-1309 of the Land Development Code of the City of Lawrence, Kansas, 2013 edition. The first request is for a variance from the minimum 50 feet interior side yard building setback required by Section 20-601(b) of the City Code when adjacent to a residential district. The applicant is seeking approval for the existing 15 feet interior side building setback along the west property line. The second request is a variance from the Type 3 Bufferyard standards found in Section 20-1005(f) of the City Code when nonresidential uses are located adjacent to residential districts. The applicant is asking for this variance to waive these code standards based upon the anticipated zoning of the adjacent property at 830 E. 13th Street changing from nonresidential to residential. These requests are submitted for the existing developed industrial property at 850 E. 13th Street. Submitted by Lara Burger on behalf of 850 Investments, LLC, 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

Guntert presented the item.

Mahoney asked for clarification of the requested variances.

Guntert confirmed that variance requests are in anticipation of a change in zoning at 830 E 13th St.

Mahoney asked if there have been similar variances in the past.

Guntert said not that he could recall.

Mahoney felt that they would be approving the variance based on a technicality, since 830 E 13th St is being rezoned RS5 which then will make 850 E 13th St noncompliant with regard to the development code standards. Right now 850 E 13th St is in compliance with code standards.

Gascon asked if there are numerous sites in the City that are out of compliance because the zoning has changed.

Guntert said he couldn't answer definitively but said it is possible.

Gascon asked if the Board would be setting a precedent to require a variance for properties adjacent to those with zoning changes, or if there is a grandfather clause in the existing code to prevent the need for this type of variance.

Guntert said the non-compliance is not typically an issue for property owners until they are ready to sell the property and it reveals those non-conformities, which can be a problem for the lender or the buyer. He said these situations typically don't surface until after the land transaction is complete.

Holley asked why the property owner of 830 E 13th St is rezoning to RS5.

Guntert said the rezoning will allow them to reconstruct if something catastrophic happens to the property.

Miller explained that there are different types of nonconformities. The house at 830 E 13th St is currently a nonconforming use which comes with different standards and restrictions in order to sell or rebuild. When the 830 E 13th St property is in compliance, it makes 850 E 13th St a nonconforming structure, which involves setbacks. She said it is staff's opinion that it would be beneficial to the property owner to remove a nonconforming structure as opposed to keeping the non-conforming use.

Mahoney thanked staff.

APPLICANT PRESENTATION

Mr. Chris Burger, property owner at 850 E 13th St, said the industrial building houses several small businesses and was purchased because it's an ideal piece of true urban planning. 830 E 13th St was part of the industrial zoning but included a residence, whose owner was granted the residential zoning designation contingent upon the variances for setbacks and bufferyard at 850 E 13th St. He emphasized that without the variance, and in the event the property is damaged, they would be losing a substantial amount of space to rebuild the structure. He said they have no plans to tear it down and like the utility it provides. He added the lender is aware of its status.

Fertig asked when the zoning request was presented to the Planning Commission.

Burger said last month.

Gascon asked if there is any planned use for the flag of land to the north of 830 E 13th St.

Burger said there are currently no plans for the property, but there has been discussion to allow people who use it to store their vehicles.

Kimzey asked if, in the event the building is damaged, a building of equal size could be built in its place with a 50 ft setback.

Burger said that would not be possible since 50 feet is more than double the current setbacks.

Mahoney thanked the applicant.

COMMISSION DISCUSSION

Mahoney said his questions were answered by staff's presentation, and it seems they've reached a compromise that everyone can live with and agrees with staff's recommendation.

Kimzey agreed.

Mahoney said it's almost a technicality and appreciates the applicant's compromise to bring this action.

Fertig said she feels the requests are to protect the interests of the property owners.

Mahoney agreed. He said this is the best compromise.

ACTION TAKEN

Motioned by Fertig, seconded by Gascon, to approve the variances based on the staff report.

Unanimously approved 5-0.

ITEM NO. 5 MISCELLANEOUS

a) Consider any other business to come before the Board.

Guntert said there was a lawsuit filed in November 2013 by Cottin's Hardware against the Board of Zoning Appeals on their decision regarding the Kwik Shop at 19th & Massachusetts St. There has since been a dismissal.

Larkin said staff filed a Motion to Dismiss for Lack of Subject Matter in December 2013 and there was no response; however, the plaintiff has since filed a voluntary Motion to Dismiss without Prejudice and the order is pending court signature.

Mahoney asked what effect those proceedings have on the decision of the Board.

Larkin said their decision was not effected as the Kwik Shop has withdrawn their request.

Mahoney asked if they came up with a new site plan.

Guntert said they did submit a site plan to relocate their entry point on Massachusetts St to the south to remove it from Cottin's property.

Larkin said they were going to do some work on the façade and some interior redesign but no other exterior work.

Holley asked, as a frequent user of that business, how far south they moved the entry.

Mahoney said about 4 feet and it is not noticeable.

Guntert mentioned he had received an item for the May meeting.

ADJOURN 7:10 PM