

BOARD OF ZONING APPEALS
Meeting Minutes of December 5, 2013 – 6:30 p.m.

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

ITEM NO. 1 COMMUNICATIONS

Mr. Guntert stated that he received and posted one email in support of Item 4 from Cottin's Hardware.

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

No agenda items were deferred.

ITEM NO. 2 MINUTES

Consider approval of the minutes from the October 3, 2013 meeting of the Board.

ACTION TAKEN

Motioned by Holley, seconded by Fertig, to approve the October 3, 2013 Board of Zoning Appeals meeting minutes.

Motion carried 3-0-2.

BEGIN PUBLIC HEARING:

ITEM NO. 3 FENCE SETBACK ON A CORNER LOT AT 2827 TOMAHAWK DRIVE [DRG]

B-13-00458: A request for a variance as provided in Section 20-1309 of the Land Development Code of the City of Lawrence, Kansas, 2013 edition. The request is for a variance to allow a wood screen fence to be constructed in a code restricted area on a corner lot having its rear yard abutting the side yard of the adjoining property. Section 20-602(e)(6)(ix)(b) in the Development Code is the governing provision in this case. It prohibits a fence, wall or hedge to be placed within the exterior side yard area of the property a distance equal to ½ the front setback for the adjoining property within a measured distance of 25 feet from the common property line shared with the abutting property. The subject property is located at 2827 Tomahawk Drive. Submitted by Jared Gab and Joanna Prince, 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.**

Kimzey asked what the purpose is of this section of the code.

Guntert said it was created to prevent sight visibility issues for neighbors.

Kimzey asked if it was staff's opinion that the proposed project makes the sight issue worse than it already is.

Guntert said only a solid fence that would remain year round could worsen the visibility issue. He said the landscaping already planted there loses its leaves and provides some visibility. He added that staff has discussed with the applicant their recommendation that the project be approved using the gapped fence style they're proposing but on other areas of the yard, and believes they were agreeable to that proposal.

APPLICANT PRESENTATION

Mahoney asked the applicant (Jared Gab) if he plans on using a type of construction that would be see-through as discussed with staff.

Mr. Gab said yes, he is open to that. He explained that, due to the curve in the street, even with spaced fence posts you wouldn't be able to see through it; however, the steep grade alleviates visibility concerns for neighbors to the east.

Kimzey asked if neighbors had been contacted.

Mr. Gab said yes, the neighbor was contacted but she did not sign because her home is for sale.

Holley asked if he had considered building the fences back on both sides to the required setbacks.

Mr. Gab said he has but it makes for odd dimensions on the west side.

Holley asked if he has considered pulling the whole thing back.

Mr. Gab said yes but there is a retaining wall and tree that would make that difficult.

No public comment

COMMISSION DISCUSSION

Mahoney said he is always concerned about maintaining lines of sight; however, he sees no opposition from the public and considering the grade that would enhance the line of sight he doesn't believe it would be a visibility issue.

Kimzey agreed.

Holley said due to the unique wedge, if it weren't a rotated property line, the project would be naturally accommodated by the curve.

Mahoney said it looks a lot better in person than in the aerial photos.

ACTION TAKEN

Motioned by Kimzey, seconded by Fertig, to approve the variance based on staff report, findings of fact, and staff recommendation.

Unanimously approved 5-0.

ITEM NO. 4 **LOT COVERAGE, BUILDING SETBACKS, PARKING SPACE VARIANCES FOR 1900 MASSACHUSETTS STREET [DRG]**

B-13-00457: 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 80 percent maximum impervious lot coverage standard applied to property in the CS (Commercial Strip) District

per the provisions in Section 20-601(b) of the City Code to allow this redevelopment project to have 85.4 percent impervious lot coverage. The second request is a reduction of the minimum 25 feet front building setback and minimum 15 feet exterior side yard setback required by Section 20-601(b) of the City Code. The applicant is seeking approval for the existing 8 feet front building setback from the west property line along Massachusetts Street, and the existing 5 feet exterior side building setback from the north property line along 19th Street. The third request seeks a reduction of the 15 feet parking area setback from a public street right-of-way required by Section 20-908(c) in the City Code, to a 5 feet setback along East 19th Street. Also requested is a variance from the minimum number of off-street parking spaces for the proposed commercial use. Per the requirements found in Article 9 of the Development Code, the proposed use requires 13 off-street parking spaces; the site plan provides 5 parking spaces. These requests are submitted for the proposed redevelopment of a commercial property at 1900 Massachusetts Street. Submitted by Mike Myers, Hernly Associates, Inc., on behalf of Sabrina Prewett, 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.**

Holley asked for clarification as to whether there is a request for a 5th variance regarding the use of gravel in the parking area.

Guntert said there are some options for paving that could potentially reduce the impervious lot coverage. He mentioned grass pavers would allow for some water percolation and provide a more permanent option.

Mahoney asked if the Board of Zoning Appeals has dealt with anything recently on impervious development.

Guntert mentioned the Kwik Shop application in October.

Mahoney thanked him for the reminder.

Fertig asked if they intended to pave over the existing gravel parking area.

Guntert said he was not sure about the gravel behind the building.

APPLICANT PRESENTATION

Mike Myers for Hernly Architects, on behalf of Sabrina Prewett, presented the item. He said they have received no negative feedback on the project from the public, and that people seem excited about the site use. He pointed out that the site has gone underutilized for a long period of time and that the property owners are making a significant investment. He indicated it would be ideal to pave the parking area as it helps define parking spaces, but alternatively gravel would be preferred if the impervious coverage is an issue.

Kimzey asked what the setbacks are and if there have been any previous variances.

Mr. Myers said he was not aware of any variances and that the lot hasn't been site planned in quite some time. He said the setbacks are five feet from the east property line and eight feet from the west property line.

Mahoney asked if it was constructed pre-code.

Mr. Myers replied yes, he thought it was constructed in the 1930s or 1940s.

Gascon asked if they are planning on changing the curb cut at all.

Mr. Myers said they will change the curb cut for the parking area in order to define the parking stalls, and there will be a landscaped strip to define where cars park and some screening with shrubs.

Gascon asked if customers would be pulling in and backing out toward the south on the last parking space with the dumpster.

Mr. Myers said it's fairly typically to have about five feet of backing space to then pull forward. He said they don't anticipate customers backing into the street.

Mahoney thanked the applicant.

No public comment

COMMISSION DISCUSSION

Mahoney said he is very much in favor of utilizing vacant buildings and encourages people to seek variances. He said he is a fan of impervious substance because parking stalls are easier to define, whereas gravel parking areas tend to be less orderly. He indicated he is in favor of the requested variances.

Gascon said he agrees but is concerned for the business owner from an access standpoint.

Mahoney noted that the property has been empty for some time and there's not much you can do about the access issue, particularly due to the existing awning. He asked if anyone had any thoughts regarding parking in the back.

Kimzey agreed that impervious parking is the best option for this project due to the location and lot configuration. He said he felt there were no solid options for pervious parking solutions.

Fertig agreed that it is difficult to stick to the maximum number of parking spaces when parking is not well defined, an issue that could also raise concerns for neighboring businesses.

Mahoney mentioned reading somewhere in a staff report that the Historic Resources Commission was contacted and there was no opposition from them.

Holley said he agreed on all counts, but doesn't think gravel is appropriate unless parking places could be clearly marked.

Mahoney said he was unsure if paver grids were a good solution as they might pose a challenge when clearing snow in the winter.

Holley said he is in favor of all variances if spaces can be clearly marked using gravel, but thought that the size of the project warranted a paved lot.

ACTION TAKEN

Motioned by Holley, seconded by Fertig, to approve all variances based on staff report, staff recommendation, and findings of fact, subject to City site plan approval and issuance of building permit(s) for approved construction.

Unanimously approved 5-0.

ITEM NO. 5 MISCELLANEOUS

- a) Authorize the Chair to execute a Notice and Waiver of Conflict of Interest, permitting the City Attorney's Office to represent jointly the City and the Board of Zoning Appeals in Tom and Linda Cottin, d/b/a Cottin's Hardware & Rental, Inc., Matthew Johnson, Mallory Johnson, Rod C. Smith, Todd A. Schwartz, Roberta F. Schwartz, Michael Amick, Ricky L. Atwell, d/b/a Mass Street Automotive, Jared M. Scholz, Amanda D. Scholz, James Sowers, and Tracee Sowers v. City of Lawrence, Kansas, and its Board of Zoning Appeals, Case No. 2013CV519, which challenges the decision to approve variances requested by Kwik Shop at 1846 Massachusetts Street.

ACTION TAKEN

Motioned by Fertig, seconded by Holley, to authorize the Chair to execute a Notice and Waiver of Conflict of Interest.

Motion carried 4-0-1.

- b) Adopt the 2014 Board of Zoning Appeals meeting calendar.

Guntert asked the board if the July 3rd, 2014 meeting would pose a scheduling conflict and if they should consider an alternate date.

Mahoney said he would prefer an alternate date

They discussed possible meeting dates.

ACTION TAKEN

Motioned by Kimzey, seconded by Fertig, to adopt the 2014 Board of Zoning Appeals meeting calendar with the meeting date in July changed to July 10th.

Unanimously approved 5-0.

- c) Consider any other business to come before the Board.

Guntert stated there have been no official submittals yet but there have been some discussions that may go to the January 2014 meeting.

ACTION TAKEN

Motioned by Holley, seconded by Kimzey, to adjourn the Board of Zoning Appeals Meeting.

Unanimously approved 5-0.

ADJOURN 7:09 PM