

**BOARD OF ZONING APPEALS**  
**Meeting Minutes of October 3, 2013 - 6:30 p.m.**

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Members present: Fertig, Holley, Mahoney, Perez  
Staff present: Guntert, Ewert

**ITEM NO. 1      COMMUNICATIONS**

Acknowledge communications to come before the Board:

Mr. David Guntert said a number of communications were received for agenda items 3 and 5 and all but two were included in the online packet.

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 September 5, 2013 meeting of the Board.

**ACTION TAKEN**

Motioned by Perez, seconded by Holley to approve the September 5, 2013 minutes.

Unanimously approved 4-0.

**BEGIN PUBLIC HEARING:**

**ITEM NO. 5      LOT COVERAGE, DRIVEWAY AISLE WIDTH & VARIOUS  
PERIMETER/INTERIOR LANDSCAPE VARIANCES FOR KWIK SHOP AT 1846  
MASSACHUSETTS STREET [DRG]**

**B-13-00384:** 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 the redevelopment project to have 85 percent impervious lot coverage. The second 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 variable setback along East 19<sup>th</sup> Street. The third request is a reduction of the minimum 24 feet aisle width standard found in Section 20-913(f) of the City Code, to a minimum of 22 feet along the north drive on the site layout plan. Additional variances are being requested from the perimeter parking lot landscaping/buffer yard and interior parking lot landscape requirements contained in Article 9 and Article 10 of the Development Code. These requests are submitted for a proposed redevelopment of the Kwik Shop at 1846 Massachusetts Street. Submitted by Bob Koopman, Professional Engineering Consultants, P.A., on behalf of Kwik Shop, Inc., with the permission of the Jane Crosby Cooper Trust, 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. David Guntert presented the item.

Mahoney asked if a setback variance was granted for E 19<sup>th</sup> Street originally.

Mr. Guntert said not that staff was able to find. He said the 15' greenspace requirement had not been in play for as long as the Kwik Shop had been at that location.

Perez asked if staff typically had a recommendation when landscaping was not feasible due to the condition of the property. He asked if any other screening mechanisms were advised by staff.

Mr. Guntert said there could be other options for screening such as a low wall of some sort. He said there were a number of other types of plant materials proposed that could also provide some screening.

Mahoney asked to see the property line between Cottin's and Kwik Shop.

Mr. Guntert showed the property line on the overhead. He said there was currently angled parking on the south side of Cottin's Hardware that was used by Kwik Shop.

Holley asked if there were any issues with the site plan on an administrative level for Cottin's.

Mr. Guntert said a little bit depended on what happened with Kwik Shop as well. He said they really needed to be considered together in terms of the outcome of each site plan. He said the site plan was currently being reviewed and that there had been some meetings that he was not a part of.

## **APPLICANT PRESENTATION**

Mr. Todd Mills, Kwik Shop, said one of the neighbors mentioned the site was an eyesore and he agreed that the site needed improvement. He said they were proposing a 3,250 sq. ft. store with six dispensers. He referred to a poll in which customers indicated that ease of access and number of dispensers were important to them in a convenience store. He said six dispensers would not create a hinderance but rather a convenience for the customer as a whole. He said the site would only increase the amount of traffic by 18% and more dispensers would allow traffic to move in and out quicker. He said regarding the proposed Cottin's site plan the City said they would work with Kwik Shop to make sure the minimum requirement of 24' was met for the approach. He stated he worked with City staff to get pre-approval that the City would be willing to accept the 22' clearance on the front side of the property. He said staff did not have any other concerns on the front side. He said gas deliveries would be scheduled for nighttime so trucks would not be blocking access. He said regarding the 19<sup>th</sup> Street landscape requirement the neighborhood association requested the sidewalk be moved back off the property line which caused the variance issue to come up. He said the new sidewalk improvements along Iowa Street were on the curb line itself. He said City staff was recommending approval of the variances as a whole. He said Quick Trip had eight dispensers onsite and another Kwik Shop location had six dispensers so it was not uncommon to have additional dispensers to be able navigate in and out of the site more effectively and clearly.

Fertig asked if there was a particular reason why six dispensers were necessary.

Mr. Mills said it was necessary for configuration. He said based on the models that had been run internally, six dispensers would benefit Kwik Shop the most on this site and benefits the customer the most as well.

Holley said with six dispensers one of the conditions that would have to be met for any or all of the variances was criteria 3 from the staff report: *"That the strict application of the provisions of this chapter for which variance is requested will constitute unnecessary hardship upon the property owner represented in the application."* He asked Mr. Mills if he believed that to be true.

Mr. Mills said based on the initial models that were run on the site, to prove if the project was viable or not, there were hardships to be shown. He said it would be a more profitable component to be able to have six dispensers and would benefit the site and the customer more.

Holley asked if Kwik Shop would still be profitable with four pumps instead of six. He said having a hardship and maximizing profitability might be different and may impact the interpretation of criteria 3.

Mr. Mills said in the initial reports on the potential site the six dispensers is what turned the model. He said they had the ability to look at the possibility of four dispensers but the six dispenser component was what told them they had to make it a six dispenser in order for it to turn.

Holley asked if four dispensers would not be profitable.

Mr. Mills said that was correct.

Holley inquired about the traffic increase of 18% with three times as many pumps.

Mr. Mills said it was calculated through a feasibility study on the site of how many gallons of gas Kwik Shop expected to pump through the site in a given week. He said it was calculated over the years of how feasible it would be and that the number of dispensers was based on the number of gallons that were projected to be pumped at the site.

Mr. Scott Canfield, Professional Engineering Consultants, said in doing the traffic study he looked at a couple of different options. He said he looked at the number of pumps as far as the number of trips it would generate and the size of the facility. He said he looked at national studies conducted and felt the studies based on the size of the building were closer generated trip numbers and a little more consistent with what the actual existing site was seeing, as well as other site within the community and within the region. He said he focused on the study based on the size of the building and not focused on the number of pumps as far as trip traffic generated. He said once you get above six pumps the national numbers start to become very skewed so he avoided those studies and focused more on the building as the number of trips generated. He said the vast majority of studies conducted produced trips that were below average by a significant margin. He said 70% of the facilities generated below the average volume that the national study said it should which was why he focused on the size of the building for the trip generator.

Holley inquired about the scale being off the building and not the number of pumps. He said a lot of people don't go to the building anymore they just pay with a card at the pump.

Mr. Canfield said the national studies have a category of convenience stores with fueling stations. He said it was then broken down on the average number of trips generated at the locations based on the square footage of the building. He said that information was then used to calculate the number of trips he thought the site would generate. He said the number of fueling stations was a matter of convenience with site traffic. He said convenience stores were not typically a destination but rather a stop that people make on their way somewhere else so the trip generation is skewed a little by that.

Perez inquired about the increased 5% paving. He asked if studies were done regarding the impact of the extra pavement in terms of drainage.

Mr. Bob Koopman, Professional Engineering Consultants, said the City Code had a certain amount of runoff allowed based on the lot size and impervious area so those were the numbers that were used in generating the amount of underground detention that was required.

## **PUBLIC HEARING**

Ms. Lisa Harris, Barker Neighborhood Association, said the Barker neighborhood included about 700 households from 15<sup>th</sup> Street to 23<sup>rd</sup> Street and Massachusetts Street to the Burroughs Creek Trail. She stated most of the neighborhood concerns were not addressed in the revised plan, including the major concern—the scale of the project for the size of the lot in a neighborhood location. She said the site was not unique and the unnecessary hardship had not been shown for the property. She said Kwik Shop wanted to build something bigger than allowed on the property but the property was not unique. She said unnecessary hardship, by law, could not be based on financial hardship alone and that was the only reason given for this project. She said the property would still be useable if it conformed to the Code. She said the Code was designed to advance safety and public welfare and should be followed. She said six variances was significant and twice as many as requested by Dillons on Massachusetts. She stated additionally there would be waivers made to the Code for other aspects of the property. She said the proposed fueling area would have six pumps which translated to twelve fueling positions and twelve stacking positions for those pumps. She stated that would put as many as 24 vehicles in the fueling area, in addition to the vehicles parking at the store and any trucks that may be unloading or waiting to unload. She said that was out of scale with the neighborhood character of the area and school zone. She said the Historic Resources Commission agreed and requested the variances not be granted because they would like to see the maximum landscaping and neighborhood context for the property. She referenced the specific comments the neighborhood made regarding each variance that was included in the letter she sent:

***Variance 1 – Increase the impervious cover.*** *We do not support this because we have standing water at 19th and New Hampshire with every rain. This is not a location to increase impervious area, even if new storm water measures are in place. We already have too much impervious area in our neighborhood because the commercial properties were developed before standards were in place for limiting impervious cover. The comprehensive plan calls for the addition of landscaping in redeveloping commercial areas, not the increase of impervious surfaces. Approving this variance would be detrimental to public welfare and would be opposed to the general spirit and intent of the comprehensive plan.*

***Variance 2 – Reduce the parking area setback on 19th street.*** *We do not support this because the parking spaces considered in this variance are in the loading area and can't be used at all when large trucks are unloading. The store has semis making deliveries to the store, and Kwik Shop has said they can't control the timing of the deliveries of trucks other than the fuel trucks for the pumps. Approving this variance would be detrimental to public safety, welfare, and convenience, and would be opposed to the general spirit and intent of the comprehensive plan.*

***Variance 3 – Reduce the width of the Massachusetts Street access drive.*** *We do not support this because the shared access does not exist. Kwik Shop will need to provide a full width access, not reduced, on their own property. With the access relocated, we do not know if it will conform to the code in terms of required distance from the intersection of 19th and Massachusetts Street. We believe this variance cannot be considered until it is reworded to reflect a revised site plan showing no shared access, and with sufficient information needed by the BZA to make a ruling about safety of the public and conformance with the general spirit and intent of the comprehensive plan.*

***Variance 4 – Remove the requirement to plant trees on 19th Street.*** *We do not support this because it does not conform to the intent for screening in the city's development code. In addition, the comprehensive plan is clear in the intent to separate commercial activity from residential uses with transitional uses or screening. A single family home is across 19th*

*Street from the store. Trees are necessary for screening and for compatibility with the older character of the area. This was an important point for the Historic Resources Commission. Approving this variance would be detrimental to public welfare and would be opposed to the general spirit and intent of the comprehensive plan.*

*One note about the above item: The applicant cited the neighborhood's request to move the sidewalk on 19th as a factor in limiting space. The scale and density of the development is instead driving the restriction in space. The neighborhood's request for a sidewalk with some separation from the street is reasonable, especially since this is a walking route to Cordley Elementary School. The school has a crossing guard at 19th and Mass. Other sidewalks in the area have separation from the street. Our request is compatible with existing development.*

***Variance 5 – Reduce the interior parking lot landscaping.*** *We do not support this because the proposed reduction in landscaping does not fit with the character of most property re-developments in our area. Other re-developed businesses have less-than-required interior landscaping because of the lot sizes, but they have SOME. Kwik Shop is requesting they have NONE. This runs contrary to the intent of the comprehensive plan, especially given the neighborhood context of this lot. Interior landscaping adds aesthetic beauty and provides areas of pedestrian refuge from internal traffic. Approving this variance would be detrimental to public welfare and would be opposed to the general spirit and intent of the comprehensive plan.*

***Variance 6 – Reduce perimeter parking lot landscaping.*** *We do not support this because the development abuts residential zoning and the comprehensive plan calls for screening and transition between incompatible uses. Perimeter landscaping also acts as a safety buffer against adjacent street traffic. Again, perimeter landscaping is important to the Historic Resources Commission. Approving this variance would be detrimental to public welfare and would be opposed to the general spirit and intent of the comprehensive plan.*

Perez asked how many times the neighborhood met with Kwik Shop.

Ms. Harris said there were two meetings, one for the first plan and one for the second plan.

Ms. Laura Routh did not believe the applicant had adequately demonstrated a true need for the variances requested, only their desire to maximize profit. She said allowing the variances would set a dangerous precedent. She said the proposed project was out of scale for the lot size and incompatible in its proximity to and impact on nearby residential dwellings. She said the project as put forth was excessive in size and influence. She said the noise, light intrusion, parking conflict, traffic impact, and safety hazards would harm neighborhood property values and quality of life. She said it would pose a real hazard to the safety of consumers and the community as a whole. She asked the Board of Zoning Appeals to reject the variances and direct the applicant to work with the City and the neighborhood to come up with a more suitable plan.

Mr. Richard Lungstrum said legally Kwik Shop had not shown a basis to which the variances could reasonably be granted. He said he would like to see the site redeveloped and be a little bigger than what it currently was. He said the project was requesting six variances on a small lot, which were more variances than were granted for Dillons. He said Kwik Shop wants to wedge six pumping stations into a space that presently had two pumps. He stated in order to grant variances the project had to meet five conditions according to Kansas Statute. He referred to the letter he sent that was included in the packet.

Mr. Kerry Altenbernd said he had a strong desire to make sure things did not happen in the neighborhood that degraded quality of life. He said this was a pedestrian area so he was concerned about sidewalks in contact with the curbs. He said the hardship was that Kwik Shop was not going to

be profitable. He said it was not the neighborhoods responsibility to maximize Kwik Shop's profitability by increasing the neighborhood sacrifices. He did not see a reason for any of the variances. He felt Kwik Shop should have to live within the Code like most people do. He said it was a small piece of property and if Kwik Shop can't function on that property maybe they should move elsewhere.

Mr. Michael Almon, Sustainability Action Network, said Dillons and Kwik Shop were both owned by Kroger. He said Kroger placed a larger building on the Massachusetts Street Dillons site than the Lawrence site requirements allowed. He said Kroger secured a number of variances for Dillons, primarily a 0' setback from the front property line on Massachusetts Street and a parking reduction variance. He said Kroger claimed the parking reduction was warranted for Dillons because they intended the store to be a transit friendly, walkable, bicycle-able, neighborhood store. He said Kwik Shop was part of the Kroger package. He said Kwik Shop would be used as a key marketing tool and profit center. He said by definition, gasoline sales were a pull factor to attract more auto customers from a larger trade area from a farther distance, which was hardly a walkable marketing strategy as the community was lead to believe in 2011. He said the walkable business plan for Dillons and the heightened auto business plan for Kwik Shop were at odds. He said the variances requested were to shoehorn in an excessive level of auto business activity onto the site. He said there were many consequences of the requested variances, such as reduced landscaping and increased pavement. He said Kwik Shop was not requesting variances due to unnecessary hardship but rather to increase profit. He said if Kwik Shop was allowed to expand it would be a classic case of privatizing the profits and socializing the costs.

Mr. James Carpenter said the Board of Zoning Appeals role was to apply the facts in the context of the law. He stated that variances should not just be granted to anyone who wants to maximize profitability of a business. He referenced a case that Mr. Michael Almon mentioned in his letter. He said Kansas law states that a variance cannot be granted if the sole reason was financial. He said if Kwik Shop had outgrown the property they could move. He said there was a way to increase the size of the store and number of pumps and still comply with the existing Code so there was no need for variances. He said the matter would be appealable to the District Court.

Ms. Linda Cottin, Cottin's Hardware and Rental, said Kwik Shop had operated using the Cottin property for their business purposes. She said Cottin's had to take drastic measures to secure the safety of their customers and the safety of Kwik Shop customers. She said Cottin's was going to go back to the original site plan from when the building was built in the 1970's which included a fence down the property line to secure the safety of Cottin's and Kwik Shop customers. She felt the current plan for Kwik Shop was not the right one for the property. She said if Kwik Shop limited the pumps to four and doubled their size they would acquire enough maneuverability to accommodate customers, traffic needs, and delivery needs. She didn't think the site was unique. She felt Kwik Shop needed to work with the City and develop a plan that was right for the area and not oversized for the lot.

Mahoney asked Ms. Cottin if she was against the variances being granted.

Ms. Cottin said yes, she was opposed to the variances.

Perez said the letter received from Planning staff member, Ms. Lynne Braddock Zollner, was vague regarding what the Historic Resources Commission discussed.

Ms. Cottin said the Historic Resources Commission meeting was strange and felt like there was a disconnect since they weren't aware of what variances were being requested.

## **APPLICANT CLOSING COMMENT**

Fertig asked Mr. Mills to respond to the comments about the site not meeting the conditions for variances, uniqueness, and unnecessary hardship.

Mr. Mills said the surrounding commercial areas were only there due to variances being approved. He said the City provided several examples, such as Dillons and On The Rocks. He said regarding the hardship Kwik Shop would be willing to look at four dispensers instead of six but that would not solve the variances. He said there would still be a setback issue off of 19<sup>th</sup> Street. He stated the variance along Massachusetts would improve with a 24' driveway. He said Kwik Shop was willing to entertain the idea of having four dispensers if the Board of Zoning Appeals moved to make that decision.

Holley asked if Kwik Shop explored a way in which a variance would not have to be requested, for example, removing the waiting spots on one row to shrink the total size down.

Mr. Koopman said the stacking requirement was required by the City and not a choice.

### **BOARD DISCUSSION**

Mahoney said he lived in the Barker neighborhood and this was his Kwik Shop. He said he heard repeatedly tonight that this was out of scale based on the neighborhood. He said he understood the concerns from the public and understood any situation would require at least setback variances. He said he was not sure if under the current Code Cottin's would be within Code regarding the setback.

Mr. Guntert said parking wise, no. He said the building setbacks were also not under the current Code.

Mahoney said some of the conditions were clearly met but a few of them may need discussion.

Fertig said she had not heard to her satisfaction that this was going to create an unnecessary hardship. She did not feel increased profitability was an unnecessary hardship. She said she was not satisfied about hearing the criteria of unnecessary hardship.

Mahoney said when it came to the setbacks of all the businesses in the area he did not feel that four or six pumps was going to make a difference with the setbacks at all so that's where he saw the unnecessary hardship. He said no matter what the site plan was there would be a need for variances because of the setbacks. He felt asking the applicant to move the plan 25' would create an unnecessary hardship.

Fertig asked if Mahoney felt that way about each of the variances or just that the setback.

Mahoney said he did not feel like the landscaping was an issue as long as there was landscaping. He thought that it would be better long term for the sightline on that corner. He said he also did not have any problem with granting the variance regarding the addition of 5% impervious surface.

Perez felt it was premature to make a decision when everyone in the neighborhood was upset about the scale of the project. He said Kwik Shop disclosed tonight they would consider four pumps versus six pumps. He suggested the item be tabled until the applicant could draft a plan with four pumps.

Mahoney said the only possible reduction of variances with the pumps reduced to four would maybe be west of Massachusetts Street.

Perez said they were not engineers and there could be ways to configure it. He said he would rather see an engineer study it.

Mahoney said a lot of the opposition had to do with how the project looked. He felt they had to take all of that out and just look at the five conditions. He said a lot of things discussed this evening were beyond what the Board of Zoning Appeals was tasked with.

Perez said the property owner across the street that would be impacted by the increased traffic, lights, and noise.

Mahoney said property owners who live across the street from a gas station probably expect lights and traffic.

Perez said he would not want an 18% increase in traffic flow.

Mahoney said the view could not be controlled.

Perez said the view could be controlled with screening but Kwik Shop was requesting a variance from that. He also said the applicant said the only reason they are doing the project was to make the project financially feasible and maximize profit which was not an unnecessary hardship.

Mahoney said he heard a lot of the same types of concerns with the Dillons variances and he thought it would be interesting to see what some of the people who were opposed to it thought now. He felt that a newer better store would produce more traffic. He felt any additional gas pumps would be welcomed since there was not currently a place for cars to wait.

Fertig asked if they should consider each variance one by one.

Mahoney said he would prefer to look at it as package and provide exceptions in the motion.

Perez said it could be premature to make a determination if Kwik Shop was willing to reduce to four pumps.

Mahoney said four pumps would still need a setback variance.

Perez felt there could be a configuration that could work.

Holley asked if Mr. Koopman did any exercises where parking was essentially rotated and the setback along 19<sup>th</sup> Street could be eliminated.

Mr. Koopman said early on there were a number of variations looked at. He said one version had the building turned toward 19<sup>th</sup> Street with some of the parking that direction. He said it was requested, either by City staff or the neighborhood, that the building be turned in an opposite direction so Kwik Shop changed the orientation of the building to what was currently proposed. He said if the building was facing in its current configuration the pumps would be to the west. He said any pumps above three would still require a variance on 19<sup>th</sup> Street.

Mr. Mills said the neighborhood preferred the orientation of the building to be facing Massachusetts Street. He said if the dispensers were rotated it could create a safety hazard with the traffic flow. He said there was a restriction from the back end of the parking stall to the front of canopy to allow customers to safely navigate out of the dispenser area and safely back out of a parking stall.

Mahoney asked Ms. Cottin if there was something additional she wanted to say.

Ms. Cottin said her architect took the plan and reduced the pumps to four and rotated them 90 degrees which did not require any variances.

Mahoney said he did not personally have a problem with not having interior landscaping.

Fertig said based on what she had heard it sounded like no matter what was done to renovate the property, because it was constructed when a different Code was in place, it was likely some parking setbacks would be required. She agreed with the 80 to 85% impervious lot cover issue and felt it was not a huge issue. She said she was not concerned about the interior lot landscaping. She said it was the remaining variances that she was not sure based on the unnecessary hardship criteria.

Holley wanted this to move forward but they didn't have anything in front of them regarding them four pump configuration.

Mahoney said they could make a motion to pass with a condition of four pumps and add site plan approval from the City.

Perez said they could be granting variances that may not be applicable with four pumps.

Mahoney felt like they could do better than deferring and put conditions with their concerns.

#### **ACTION TAKEN**

Motioned by Perez, seconded by Fertig, to deny all six variance requests.

Fertig said she seconded so they could discuss the motion.

Motion failed 1-3, with Perez voting in favor of the motion. Fertig, Holley, and Mahoney voted in opposition of the motion.

Mahoney asked Perez what his main concerns were.

Perez felt it was a difficult situation because it involved a business that wanted to expand and a neighborhood that wanted to protect its interests. He felt there could have been room for a compromise. He did not feel maximizing profit was an unnecessary hardship.

Fertig said generally she would agree with that but felt some of the variances requested were due to the Code changing over the years. Some of them could be seen as a hardship because they could be an issue regardless of the configuration.

Mahoney agreed with Fertig and said he would have liked to have seen Ms. Cottin's site plan.

Motioned by Holley, seconded by Fertig, to approve all six variances, given the reasons discussed and given the existing site conditions, with conformance of a condition that only four pumping stations be used and a 90 degree rotation of pumping be attempted to be implemented in the plan. Including the following condition:

1. Approval of the site plan by the City and issuance of a building permit for the approved construction

Motion carried 3-1, with Perez voting in opposition. Fertig, Holley, and Mahoney voted in favor of the motion.

**ITEM NO. 3 FRONT AND REAR YARD SETBACK VARIANCES; 1707 UNIVERSITY DRIVE [DRG]**

**B-13-00371:** A request for variances as provided in Section 20-1309 of the Land Development Code of the City of Lawrence, Kansas, 2013 edition. The requests are for a variance to reduce the front yard building setback of 25 feet and the rear yard building setback of 30' required by Section 20-601(a) of the City Code to a minimum of 13 feet and 25½ feet, respectively. The requests are made to allow the applicant the ability to replace an existing carport and solarium addition with a new carport and solarium addition of similar size. The subject property is located at 1707 University Drive. Submitted by Daniel B. and Miwha L. Stevenson, 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.**

**STAFF PRESENTATION**

Mr. David Guntert presented the item.

**APPLICANT PRESENTATION**

Mr. Dan Stevenson was present for questioning. He said neighbors support the improvements and that the new design would complement the house while preserving the property.

**PUBLIC HEARING**

Mr. Earl Iversen spoke in favor of the variance.

**BOARD DISCUSSION**

Mahoney said he liked the improvements and felt like all the conditions were met.

Holley and Fertig agreed.

**ACTION TAKEN**

Motioned by Fertig, seconded by Holley, to approve the front yard building setback variance to a minimum of 13 feet from the north property line for the carport structure; and, approval of the rear yard building setback variance to allow a minimum setback of 25 feet from the south property line for a solarium addition, as shown on the "proposed site plan" drawing submitted with the variance application. Both recommendations are based upon the findings in the staff report that conclude the requests meet the 5 conditions outlined in Section 20-1309(g)(1) necessary for variance approval.

Unanimously approved 4-0.

**ITEM NO. 4 LOT SIZE, FRONT AND SIDE YARD SETBACK VARIANCES; 1206 & 1208 PENNSYLVANIA STREET [DRG]**

**B-13-00383:** A request for variances as provided in Section 20-1309 of the Land Development Code of the City of Lawrence, Kansas, 2013 edition. The requests involve variances from the minimum lot frontage, lot area, front yard and side yard building setbacks as they apply to a parcel of land currently zoned RS5 (Single-Dwelling Residential) District. The lot dimensional and setback standards for this district are found in Section 20-601(a) of the City Code. The applicant wants to create two separate lots so the two existing dwelling units on the property have the potential to be sold to separate owners. One of the new lots will not conform to the RS5 District standards with regard to lot width and lot area.

Both structures will not conform to the interior side yard setback from the newly created lot line; and, the north structure does not conform to the required minimum front yard setback. The subject property is located at 1206 and 1208 Pennsylvania Street. Submitted by Brad Eldridge, Manager/Registered Agent for Nacho House 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**

Mr. David Guntert presented the item.

#### **APPLICANT PRESENTATION**

Mr. Brad Eldridge, Nacho House, said he was trying to make the property legally conforming.

#### **PUBLIC HEARING**

No public comment.

#### **ACTION TAKEN**

Motioned by Perez, seconded by Holley, to approve the lot area and front yard setback variances for "proposed Lot 1" and side yard setback variances for "proposed Lots 1 and 2" as illustrated on "Exhibit E" included in the variance application based upon findings in the staff report that conclude the requests meet the 5 conditions outlined in Section 20-1309(g)(1) necessary for variance approval. Staff's recommendation includes the following condition:

1. The applicant submits a Minor Subdivision plat consistent with the lot layout shown in "Exhibit E" for the City's approval, and following the approval of said minor subdivision plat it is recorded at the Douglas County Register of Deeds Office.

Motion carried 4-0.

#### **ITEM NO. 6 MISCELLANEOUS**

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

Mahoney asked to revisit the motion for item 5 to be sure it was reflected correctly in the minutes. He stated the motion was based on findings of fact.

**ADJOURN 8:41pm**