

LAWRENCE BOARD OF ZONING APPEALS
Meeting Minutes of November 6th, 2014 – 6:30 p.m.

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

ITEM NO. 1 COMMUNICATIONS

Acknowledge communications to come before the Board:

Guntert said there were a number of communications in the agenda packet and two additional communications were received today- one from Kelie McIver and one from Linda Crist, both regarding Item 4. He noted that paper copies were provided.

Board member disclosure of any ex parte contacts and/or abstentions from the discussion and vote on any agenda item under consideration:

Fertig said all of the Board of Zoning Appeals (BZA) members received an email from Dan Coleman and Tom Harper regarding Item 4.

Gascon said he did not receive an email from Tom Harper.

Holley distributed copies of the communications.

Mahoney said he will recuse himself from Item 4 for personal reasons.

Holley said one of his coworkers lives in the neighborhood for Item 4 and just asked about the agenda but they did not discuss the item.

Larkin said that doesn't present a conflict.

There were no agenda items deferred.

ITEM NO. 2 MINUTES

Consider approval of the minutes from the September 4, 2014 meeting of the Board.

ACTION TAKEN

Motioned by Gascon, seconded by Holley, to approve the minutes from the September 4, 2014 meeting of the Board.

Motion carried 4-0-2.

BEGIN PUBLIC HEARING:

ITEM NO. 3 PARKING AREA SURFACE AND DESIGN VARIANCES FOR THE NEW CITY OF LAWRENCE SOLID WASTE FACILITY, 2201 KRESGE ROAD [DRG]

B-14-00443: 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 variances related to the parking and loading area design standards found in Sections 20-913(e)(1), 20-913(e)(4), and 20-913(i) of the City Code. The applicant is requesting approval to keep existing drives and parking areas with the same surface type and thickness; using gravel surfacing for the sanitation truck parking area; no concrete curbs along existing drives and some new parking areas; and, maintaining the existing driveway approach on the property. These variances are requested to facilitate the relocation of the City of Lawrence Solid Waste Facility to the property located at 2201 Kresge Road. Submitted by Darron Ammann, Bartlett & West, Inc., for the City of Lawrence, the property owner of record.

STAFF PRESENTATION

Guntert presented the item.

Mahoney said some of the existing features are not up to code, and asked if the variance is necessary or if there is a grandfather clause.

Guntert said the project is considered a major site plan and they should be brought up to current code standards.

Holley asked if the site plan must also be approved as a condition of approval for the variance.

Guntert said it would be appropriate if that was added, but one wouldn't happen without the other in this case.

No public comment

ACTION TAKEN

Motioned by Gascon, seconded by Fertig, to close the Public Hearing portion of the meeting.

Unanimously approved 6-0.

BOARD DISCUSSION

Mahoney said he sees a lot of improvements to the property and benefit to the community, and is in favor of the variance. He said he isn't sure about the site plan stipulation but it might be a good idea to add it, although he's not terribly concerned about it.

Fertig said it sounds like the site plan is contingent upon the variance, so it doesn't seem necessary.

Larkin said they could add a condition if they choose.

Wilbur asked if they anticipate a lot of visitors to the site. He mentioned it might be a minor safety risk to not have curbing in some of the areas they were requesting the variance.

Guntert said the applicant might be better able to answer that question, but he doesn't suspect it will be a high traffic type use. The household hazardous waste collection site will have visitors coming to drop off materials from time to time.

Gardner said he initially had the same concern, but it looks like all the traffic comes in from Kresge Road using the east driveway entrance.

ACTION TAKEN

Motioned by Fertig, seconded by Wilbur, to approve the variances based on the findings in the staff report.

Unanimously approved 6-0.

ITEM NO. 4 ACCESSORY DWELLING UNIT MAXIMUM SIZE VARIANCE, 907 WEST 22ND TERRACE [DRG]

B-14-00445: 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 from the maximum size standard for an accessory dwelling unit in a residential dwelling structure as defined in Section 20-534(2)(ix) of the City Code. The code standard limits the size of an accessory dwelling unit to no more that 33 percent of the living area of the primary dwelling or 960 square feet, whichever is less. The proposed size of the accessory dwelling unit is 900 square feet. The living area in the dwelling is 1,056 square feet which limits the size of the accessory dwelling unit

to 348 square feet. The property is located at 907 West 22nd Terrace. Submitted by Linda Rae Burkett Crist and James Burkett, property owner of record.

STAFF PRESENTATION

Guntert presented the item, which involved a request to allow a larger size accessory dwelling unit than permitted by City Code.

Gardner asked if three people can live upstairs in the three bedrooms, while another could live in the basement, or vice versa.

Guntert said it would be one person residing in one of the units and up to a maximum of three unrelated individuals in the other dwelling unit. How the property owner chose to do it was up to them.

Gardner asked if the property owner came back with a proposal to reduce the living space in the basement.

Guntert said there was a communication from Linda Crist, a co-owner of the property, that was submitted today asking if they could use two of the basement bedrooms for storage as a way to reduce the size of the accessory dwelling unit and if that would be approved. That was the only offer they've made for reducing the size of the accessory dwelling unit. Staff had not had time to consider that option.

Gardner asked if this could be used as an amendment to the process for an Accessory Dwelling Unit.

Guntert said he's not sure which bedrooms Ms. Crist proposed to block off so he could not determine if the reduced size of the accessory dwelling unit would become code compliant.

Gardner suggested it might have been helpful for the applicant to have been present to be able to respond to questions in order to see if there was opportunity to find a compromise solution.

Guntert said the Board has the authority to grant a variance that is a compromise between the code required standard and what the applicant has requested if the Board finds the variance request meets the five conditions for approval.

Gardner asked if there would be any need for an additional dwelling unit if they had pulled a building permit for the basement.

Guntert said the basement floor plan is identical to the main floor of the home - it has a kitchen, bathroom, 3 separate bedrooms and a separate entrance off the back of the home. He said there appears to still be an ability to access the basement and the upstairs using an interior stairway. In other words, the two floor levels and dwelling units are not separate.

Gardner commented that it appears to be one residence, not two. He wondered why there is a need for a variance if it is all one house.

Guntert said the accessory dwelling unit code standards allow someone to create an accessory dwelling unit that is ancillary to the primary dwelling in select zoning districts and in compliance with specific code standards. These code provisions went into effect in 2006 when the Development Code was adopted by the City.

Gardner said he thought an accessory dwelling unit needed to be in a separate building on the property.

Guntert said that's how many of them are set up, but that's not the way this house is currently designed and constructed.

Holley mentioned Criteria 5 in the Staff Report. He said his interpretation of the intent and spirit of the code is to allow for something such as a "grandmother's cottage" or a single family home with space above the den to rent to a single person, not to artificially add more unrelated people to a single residence.

Guntert said that has been the primary reason for applications submitted to the city.

Gascon asked if the variance was brought on a voluntarily basis or based on a complaint by others.

Guntert said it was brought to the City following the denial of the accessory dwelling unit application submitted by the property owner.

Gascon asked if that registration was brought to the city based on complaints about the number of occupants in the house.

Guntert said the Accessory Dwelling Unit Application was filed after a complaint was registered with the city about the number of unrelated people living at this address.

Gascon suggested the applicant could reconfigure the interior space so the accessory dwelling unit did not exceed the square footage allotment and they would not lose any bedrooms. They could build a wall between the three bedrooms downstairs and have a staircase connecting the upper and lower level so the primary dwelling unit would be five bedrooms (two downstairs); the accessory dwelling unit downstairs would be its own separate unit with one bedroom, bathroom and a kitchen.

Guntert said that could be allowed, but again, the code specifies a maximum occupancy limit for the number of unrelated individuals that can reside in a dwelling unit.

Gascon concluded then that the approval of the variance would allow no more than four unrelated individuals living in the structure, as opposed to three, which is currently allowed.

Guntert said that is correct.

Gascon asked how it is enforced.

Guntert said enforcement of the occupancy limit would be handled on a complaint basis. The City would investigate the complaint and issue a notice of violation directing the property owner to correct the code violation.

Gascon asked how that is accomplished.

Larkin said sometimes a criminal complaint is filed because it is a violation of the law, but people tend to move out on their own before the court proceedings. Other times staff might seek an injunction, and if they don't comply they're held in contempt of court. He said the court process often takes longer than the lease period in these cases.

Gascon asked if a warrant is required to verify the number of occupants.

Larkin said there must be probable cause before a warrant can be issued, and sometimes that is difficult to prove.

Gascon concluded that there is nothing really stopping six people from living in the house if the variance is approved, given the explanation of the complaint and citation processes.

Gardner said without the variance, the mother, son and one other individual can live there; with the variance, the mother, son and two other unrelated people can live there.

Gascon thought the mother is out of the picture as far as her ever moving into the house. He said just the son and two roommates are currently living there and they'd like a fourth roommate for the accessory dwelling unit.

Guntert said there's been an indication in correspondence that the mother hopes to move into the accessory dwelling unit.

Wilbur clarified that three unrelated occupants is compliant with city code, four would be in compliance with a variance, but five would not be compliant at all.

Guntert said with the City's approval of an accessory dwelling unit, it was possible to have four unrelated occupants. The variance was only related to the maximum size of the accessory dwelling unit and had nothing to do with an increase of occupancy.

Fertig suggested they ask public members to focus comments on the variance request and not the occupancy limits, and to limit the length of time for comments.

Holley said that was a good suggestion, particularly because they cannot verify the occupancy of the property, and brief comments- around three minutes- would be ideal.

PUBLIC HEARING

Mr. Craig Jacob, 843 W 22nd St, said he moved into the neighborhood in 1980 and worked very hard with the neighborhood association to make it a good place to live. One thing they worked through is the occupancy guidelines. He said one of the reasons ordinances exist is to control how a neighborhood and the City grows and maintains its healthy existence. He added that variances are granted when a situation doesn't quite meet the intent- or in this case the space requirements- of an ordinance. If the Board grants this variance, it would be very hard not to grant the same thing for the next request. He said right now there is a house for sale in the neighborhood that lists five bedrooms and two kitchens. He added that within the last two or three months, there are four houses within eyesight of his property that are now or will become rentals, and three of those have basements. He said his house has a basement with a bedroom and bath, and could easily have a kitchen and two other bedrooms. He said the house they own next door could be converted into two units and has enough off-street parking for five or six vehicles. His point is that once you let one house vary from the ordinance, it's hard to disallow others to do the same. He said rules without consequences are merely suggestions - this ordinance is not a suggestion – it is a rule that would keep Centennial Neighborhood a single family neighborhood. He asked the Board to deny the variance.

Mr. Frank Brown, 908 W 22nd Terrace, said he has lived across the street from the subject property for a year. He said he discovered the new owners were planning to move six or eight college kids into the house when they went over to introduce themselves as they were in the process of moving into the house. The new owners were totally unaware of the city code restrictions that limit the number of unrelated people who can live in a dwelling unit. He said the application for variance was requested for the sole purpose of increasing occupancy, and it was made clear that the applicant will do what is necessary to have six occupants.

He and his wife and several other neighbors would like to request the variance be denied. He feels it's a slippery slope and goes against the intent of an accessory dwelling unit.

Mr. Gordon Brown, 19th & Ohio St, said he echoes the neighbors' sentiments and said he agrees with staff's recommendation for denial of the variance. He thought the owner was abusing the essence of the ordinance.

ACTION TAKEN

Motioned by Fertig seconded by Gardner, to close the public hearing portion of the meeting.

Motion carried 5-0-1.

BOARD DISCUSSION

Fertig said they've received 11 items of written correspondence from neighbors who are opposed so it seems the neighborhood is strongly against the variance.

Holley said he agreed. In order to approve the variance the Board has to find that it meets the five conditions. He read the first condition.

Fertig said it does not meet that condition since the request arises from the owner's desire to add more occupants than what is currently allowed. She felt this is not like other cases they've seen, like an applicant constructing a roof on a pre-existing deck, that based on zoning changes over the years now encroaches on a property line. She said this is completely different.

Holley said he agreed. He said they frequently deal with triangular sites that are not very well described, but this is a regular house that doesn't seem to have anything unique to the site or the house itself.

Gascon said he disagreed. He felt it is important to recognize that the variance is for an increase of square footage to 1000 feet for the accessory dwelling unit, which is limited by the existing footprint of the house. It could be argued that a hardship arises from creating dead space in an otherwise useful finished basement.

Holley said he also agreed and hoped that he was not misunderstood. He said purely based on square footage, whether you count one floor or two because it's a connected house, the applicant was asking for a variance that is much more than the code allowed 33%. There are ways to carve out the space to meet the requirements, but they're not asking or proposing to do that.

Gascon feels the hardship would be the requirement to build a wall.

Holley said they are still addressing the first condition.

Wilbur said he agreed with Holley and Fertig regarding Condition 1.

Holley asked for feedback regarding Condition 2.

Gascon said he doesn't see how the square footage materially impacts the residents because they cannot control occupancy.

Holley said he agreed that it does satisfy Condition 2. He moved on to Condition 3, which speaks to the hardship.

Gascon said the hardship would be the requirement to re-construct a unit that could be occupied as is.

Gardner asked if the variance would be necessary if all of the occupants were children in one family.

Gascon and Holley said no.

Holley said without the applicant present it's hard to assess the severity of the hardship, and he's not convinced - based on the application submitted - that it would be a significant hardship.

Gascon said he has a hard time believing that it's not a hardship considering the cost of an accessory dwelling unit is \$0.

Fertig said she agreed. She said the latest communication suggested using two of the downstairs bedrooms as storage, so at least now they're thinking about shrinking it down. She doesn't feel the applicant has met the burden of proof that this would be an unnecessary hardship, and in her opinion they don't meet Condition 3.

Holley read the 4th condition, adding that the applicant feels the variance would have a positive effect and can see no issues that would adversely affect the aforementioned areas.

Fertig said it would be a stretch to suggest that granting the variance would affect the public morals, but she could see the addition of occupants having an adverse effect on order and convenience in the neighborhood, in terms of street parking and possible noise.

Gascon said she's implying that there is added occupancy beyond one.

Fertig said not necessarily.

Fertig and Gascon discussed the possibilities for different scenarios.

Fertig said there is some evidence that there would be an adverse effect, based on comments from the neighbors, and the only counter to their concerns is the statement in the application that it would have a positive effect.

Gascon said he doesn't see the difference between an accessory dwelling unit that is 300 square feet versus one that is 900 square feet.

Holley said he feels there's not enough information to determine how this contributes to the neighborhood.

Holley recited Criteria 5. He said if they increased the size of the main building it would be within the spirit of the code to ask for an accessory dwelling unit of this size.

Gascon said if they added two stories above they could actually do this.

Holley suggested the 33% is in place with good intentions, and for the spirit of having a primary and secondary unit, he feels the request is against the intention based on the percentage, not the prospect of additional occupants. He said he lives in a very small house behind a larger main house, and if they were the same size that might be weird, but he's open to discussion on that opinion. He felt the Board has not reached a consensus that the applicant meets all of the criteria for variance approval.

Gascon said that's fair to say, but it's important to recognize the real purpose of an accessory dwelling unit in an urban environment. He mentioned that the Horizon 2020 Steering Committee is struggling with the idea of increased population growth while maintaining agricultural land by not expanding outward, the solution to which, he feels, is increased density within the existing urban area. He feels the true spirit of an accessory dwelling unit is to add density and vibrancy to neighborhoods.

Fertig said she doesn't disagree but can't get past the 33% maximum size standard. She said it seems the whole point of having a 33% cap is to prevent de facto duplexes, and based on that she feels the variance doesn't meet the intent of the Development Code.

Wilbur said he agreed.

Gascon said after looking at some studies, he feels the 33% is a bit tight for making an accessory dwelling unit work in the City.

Gardner said it's because the house isn't that big to begin with.

Fertig suggested members should state their position on this condition.

Holley said the code isn't perfect and hopes the City increases density in the future, but he does not find the request meets the spirit of Criteria 5.

Fertig, Gardner, and Wilbur agreed.

ACTION TAKEN

Motioned by Fertig, seconded by Gascon, to deny the variance for failure to meet all required criteria as outlined in the Staff Report.

Motion carried 5-0-1.

ITEM NO. 5 MISCELLANEOUS

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

Guntert asked if it would be appropriate to revise the 2015 meeting schedule from July 2nd to July 9th. They agreed on July 9th.

ADJOURN 7:46 PM