

LAWRENCE BOARD OF ZONING APPEALS
Meeting Minutes of April 2, 2015 – 6:30 p.m.

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

ITEM NO. 1 COMMUNICATIONS

Acknowledge communications to come before the Board.

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

Gascon said he knows Kent Fry, the applicant for Item 4, and was aware they were doing a remodel project and saw the initial floor plan for the front porch, but has not had any communications with him since he applied for the variance.

Fertig asked if he felt he could vote objectively on the item.

Gascon said he did not feel it would be an issue.

There were no agenda items deferred.

ITEM NO. 2 MINUTES

Consider approval of the minutes from the March 5, 2015 meeting of the Board.

ACTION TAKEN

Motioned by Gardner, seconded by Holley, to approve the minutes from the March 5, 2015 meeting of the Board.

Motion passed 4-0-2 with Kimzey and Gascon abstaining.

BEGIN PUBLIC HEARING:

ITEM NO. 3 REAR YARD AND SIDE YARD SETBACK VARIANCES FOR AN ACCESSORY BUILDING; 1612 LOUISIANA STREET [DRG]

B-15-00088: A request for variances as provided in Section 20-1309 of the Land Development Code of the City of Lawrence, Kansas, 2015 edition. The requests are for a variance from the minimum 25 feet rear yard and 5 feet side yard building setbacks required in Section 20-601(a) of the City Code. The variance requests seek approval for an existing accessory garage structure that has a 0 foot rear yard and 4 feet side yard building setbacks. These variance requests are submitted so the property owner can rehab the existing structure into a functional garage. The rear yard setback variance will also permit the owner to build a second accessory 2-car garage with an 8 feet setback instead of the required 25 feet. The property is located at 1612 Louisiana Street. Submitted by Dan Hermreck, architect for Gary M. Smith & Janet M. Cinelli, the property owner of record. **The legal description for each application is found in the respective project case file which is available in the Planning Office for review during regular office hours, 8-5 Monday - Friday.**

STAFF PRESENTATION

Guntert presented the item.

Mahoney asked if there was any opposition from neighbors.

Guntert said no.

Gardner asked if the road to the east is an alley.

Guntert said Court Street is classified as a street but it functions more similarly to an alley. He said it only extends the length of 3 or 4 properties off Edgehill Road/Louisiana Street/Sunnyside Avenue.

Gardner concluded that it is a dead end street.

Guntert said it's a street so the lot is classified as a double frontage lot subject to two front yard setbacks which would be 20 feet. He said if it were an alley they would actually be able to measure the building setback from the centerline of the alley.

Gardner said it's a dead end street and there is no safety issue for something that's right on the property line.

Guntert said Court Street does not have on-street parking; it has posted fire lanes and is wide enough to allow emergency vehicle access.

Holley asked, out of curiosity, if staff can explain why it's a street and not an alley. Perhaps it is for snow removal purposes?

Guntert said the plat is very old and he suspects it has to do with the topography, since that is the high point and it falls off quickly in both directions.

Gardner asked if the proposed garage will have an entrance off Court Street.

Guntert said yes.

Kimzey asked what the distance is from the centerline of the street to the property line.

Guntert said the right-of-way is 20 feet wide, so assuming it's built in the center of the right-of-way, about 10 feet.

Gascon said that rear setbacks are mentioned on page 136 of the Development Code, which says that rear setback measurements extend the full width of a lot and are measured from the rear lot line, and a rear setback abutting an alley can be measured from the centerline of the abutting alley.

Guntert said that is true, but because this is classified as a street, those guidelines do not apply.

Gascon said the way the variance recommendation was written included a different building setback for the new garage structure.

Guntert said staff worded the recommendation in a manner that would require the new garage structure to be set back from the rear property line a minimum of 8 feet. The building setback was important because the orientation of the garage doors was toward the street; they will have added maneuverability for turning into the garage.

Gardner asked if they are razing the existing building.

Guntert said no, the existing structure will be rehabilitated as a one-car garage and other recreational living space.

APPLICANT PRESENTATION

Mr. Dan Hermreck, applicant, said the underlying reason for the variance request is because Louisiana Street is hard to park on when school is in session. He said the existing garage is historic and it would have been difficult to demolish, so it will be rehabilitated. He said they tried to pull the new garage structure back into the lot so it was away from Court Street as far as possible without getting it too close to the existing house.

Gardner asked if this has a breezeway.

Fertig said no, there is a breezeway on the next proposed item.

Kimzey asked if it's possible to move the garage an additional 10 feet to the west.

Hermreck said doing so might create a Historic Resources Commission (HRC) issue because it would be too close to the existing house. He said he played with many placement options but this seems to satisfy all potential issues.

Holley asked if the 8-foot space on the east of the structure is just a concrete apron.

Hermreck said yes.

Holley asked if they considered moving it all the way east and requesting a zero-foot setback.

Hermreck said if the garage doors were on the alley it would not be functional.

Gascon asked if the ideal depth is eight feet.

Hermreck said yes, it will probably serve as guest parking if needed.

Gascon asked if the eight foot setback was deep enough to use as a parallel parking place.

Hermreck said yes.

NO PUBLIC COMMENT

ACTION TAKEN

Motioned by Gascon, seconded by Kimzey, to close the public comment portion of the item.

Unanimously approved 6-0.

BOARD DISCUSSION

Mahoney said he's familiar with the area and is all too aware of the parking issues on that street. He said he supports anyone who wants to provide off-street parking and feels they have addressed all issues and details appropriately.

Gascon thought it was a great solution.

ACTION TAKEN

Motioned by Mahoney, seconded by Holley, to approve the variances with conditions as recommended in the staff report.

Unanimously approved 6-0.

**ITEM NO. 4 REAR YARD SETBACK VARIANCE FOR A COVERED BREEZEWAY
CONNECTING A DWELLING AND ACCESSORY GARAGE; 1016 NEW YORK
STREET [JSC]**

B-15-00092: A request for a variance as provided in Section 20-1309 of the Land Development Code of the City of Lawrence, Kansas, 2015 edition. The request is for a variance from the minimum 20 feet rear yard building setback required in Section 20-601(a) of the City Code. The variance request seeks approval for a 13 feet rear yard setback which is created by the construction of a covered breezeway connecting a detached garage with the residential dwelling. The property is located at 1016 New York Street. Submitted by Kent E. and Diane L. Fry, the property owners of record. **The legal description for each application is found in the respective project case file which is available in the Planning Office for review during regular office hours, 8-5 Monday - Friday.**

STAFF PRESENTATION

Crick presented the item.

Holley referenced the HRC minutes and their discussion regarding materials, and said it's unclear what the materials might be for the proposed breezeway.

Crick said he'd like to defer that question to the applicant because some details might have changed since the HRC hearing.

Gascon asked if staff could define "attached".

Crick said the Planning Director defines "attached" as the physical connection of a structure to another item, and in this case the physical attachment of the breezeway from the principal building to the accessory structure. He added that a sidewalk or patio would not constitute an attached structure in this instance.

Gascon suggested then under that example, a one-inch gap between the breezeway and the principal structure would be considered detached.

Crick said under the current rule, yes.

Gascon added that there would then be no need for this hearing.

Crick said that was correct if that was how the applicant wanted to proceed.

Fertig asked if staff could summarize the reasons why the proposed request did not meet the five conditions for variance approval.

Crick said staff's finding is based on Criteria 1 and 3. He said there is a difference in the setbacks for an accessory structure and what is usually seen with a principal building, and that differentiation between the setbacks is a known commodity. He explained that the connection of the buildings at the point of completion automatically transitions it out. The hardship is not derived from anything such as an oddly configured parcel line or a change in zoning, it's done by the attachment of the two structures through construction of the breezeway.

Holley asked if there are any issues with the total building area in the proposed plan.

Gascon said he thinks the total coverage includes both the accessory and principal structure.

Crick said yes, he believes the proposed coverage is ok but the impervious might need to be checked based on the placement of the final design.

Mahoney asked if it's safe to say the new addition in front of the house is the deal breaker for staff, and if there was only an addition in the rear it might be approved.

Crick asked if he's referring to its relation to the breezeway or the principal building.

Mahoney said in relation to the principal building.

Crick said the addition to the principal building doesn't have any weight or effect on the variance- the only item of concern is the breezeway connection.

Gascon referred to his earlier comment regarding a one-inch gap in the structures, adding that even if a slip of paper could go between those structures, it would be allowed.

Crick said that would be correct because technically it would not be physically connected, although that might require some review to make sure.

Gascon said he hopes the Board entertains his desire to point out the absurdity in the code. He asked if the property's listing on the Local Register prior to the applicant's ownership could be considered a hardship. He pointed out that the applicant would have preferred an attached garage but was asked by the HRC not to do so.

Crick said that is correct, if the property was not in the environs of a locally listed property it would not have been in the purview of the HRC and the garage placement would have been more lax.

Gascon said the client is trying to meet the wishes of the HRC, and in doing so, has pushed the garage back and outside the requirement for the setback.

Crick said that is correct.

APPLICANT PRESENTATION

Mr. Kent Fry, property owner, said they didn't own the property during the HRC process because they wanted a clear understanding of any requirements before they closed on the property. He said during the HRC process, they had a plan to attach the garage to the house, but the HRC recommendation was to move it back toward the alley. He agrees it looks better there. The breezeway is just to accommodate getting from the garage to the house under cover from the weather. He said they can move the garage a couple feet in without a significant impact.

Gascon asked how many garages in his current neighborhood are attached to the principal structure.

Fry said all of them.

Gascon said they are moving to a neighborhood where they are not attached.

Fry said right. He mentioned that they plan to use trusses on the breezeway, which helps with the connection, and there was never a plan to add screens.

Gascon said so it's four columns and open in between.

Fry said yes.

Gascon asked what the HRC's comments were regarding the breezeway.

Fry said they didn't find the breezeway to be an issue.

Holley mentioned that HRC Commissioner Hernly said he liked that the breezeway was connecting the garage to the addition and not to the historic stone portion of the structure.

NO PUBLIC COMMENT

ACTION TAKEN

Motioned by Gascon, seconded by Holley, to close the public comment portion of the item.

Unanimously approved 6-0.

BOARD DISCUSSION

Mahoney asked if staff heard from any neighbors regarding the variance.

Guntert said no.

Gardner commended the property owner for compromising with multiple advisory boards on a workable solution.

Gascon asked if they approved a variance recently involving an existing accessory structure that was connected to the principal structure.

Guntert said yes, possibly 2045 Vermont Street.

Gascon said it seems there's been a precedent set for this type of variance.

Guntert asked if he's referring to a precedent involving the attachment of an accessory structure to a principal structure.

Gascon said yes, and in the previous case the existing structure was the garage.

Guntert said the two have similarities but the big difference in this case is they were talking about new construction of an accessory garage and breezeway that ties the garage to the residential dwelling structure. In the case of the Vermont Street variance, the accessory garage and dwelling were both existing structures that were being tied together with the new residential addition.

Gardner asked if the HRC was involved in the previous variance.

Guntert said they were not.

Gascon asked if there is any evidence of a historic garage on the subject property.

Fry said yes, there was a garage but not in recent years.

Kimzey said there's a comment by the HRC that the breezeway shall not be attached to both structures.

Fertig asked what page the comment is on.

Kimzey said page 70.

Holley said that was staff's recommendation to the HRC.

Gascon said the fact that the code outlines different setbacks for a principal structure and accessory structure from an alley is silly. He explained that if someone builds a house with an attached garage on a vacant lot, there would be a 20 foot setback, but if someone built a house with a detached garage it could have a five or zero foot setback. He said an attached garage then must waste space in the yard to accommodate the setback, so the code seems only applicable to a typical suburban lot and not those with alleys.

Mahoney asked for Gascon's feelings on this variance in particular. He said he likes the design and likes that it goes to the rear of the property and does not see any negatives with the proposed plan. He agrees there is some absurdity in the language of the code.

Gascon said the hardship in this case was self-imposed because the applicant went to the HRC and is trying to move forward with a design they have approved. He said if they don't get approval today, they could still build the garage with a small space between the principal structure and would have gone through this process for nothing. He said this Board could at least recognize the hardship and grant them the opportunity to construct their project how they might anyway.

Mahoney agreed. He feels the fact that it's historic poses a hardship.

Holley agreed. He feels this is a nice solution. He said he doesn't see a hardship in complying with the Development Code and just building the garage 20 feet from the principal structure.

Mahoney said he feels part of the Board's responsibility is to consider each project on a case by case basis, and feels the hardship comes with ownership of a historic property.

Fertig asked if Mahoney compares this to the hardship of an oddly-shaped lot.

Mahoney said yes, that is his opinion.

Fertig said she understands that because it's something that won't change with time.

Mahoney said that is his opinion.

Gascon said it's interesting to see the similarities and differences between this case and variances past and based on whether they are located off an alley or street.

Fertig said she likes that the HRC is ok with this proposal; they think it's a clever solution.

Holley mentioned that KT Walsh, East Lawrence Neighborhood Association, also supports the project which indicated there is little neighborhood controversy over this project.

Fertig agreed.

Crick suggested the Board make a condition that the breezeway shall never be enclosed if they choose to approve the project.

Mahoney said he likes and appreciates that recommendation.

Holley said that condition would address a lot of his concerns as well.

Mahoney agreed.

Kimzey asked if attached a breezeway then makes the accessory a primary structure built within the rear yard setback.

Crick said yes.

Gardner said the variance would have to be for zero feet.

Crick said right, the variance would be for a principal structure and would not involve code requirements that pertain to accessory structures.

Gascon said that would be a seven foot variance.

Crick said an accessory structure can have a zero or five foot setback, depending on door placement, but under code intended for principal structure the setback is 20 feet.

Gardner pointed to the overhead map and asked if a street was an alley.

Crick said the gray line running east of the parcel is an alley.

Gardner asked for the width of the alley.

Guntert said 16 feet.

Gardner asked what the setback requirement is for a primary structure from an alley.

Guntert said 20 feet from the centerline.

Gardner said they need a 12-foot variance for the primary structure.

Guntert said they're going from 20 feet to 13 feet so it's a seven foot reduction.

Gascon asked how far the garage is from the property line.

Mahoney said five feet as proposed.

Guntert said five plus eight is 13 feet, and the required rear yard setback is 20 feet, so that is a 7-foot reduction in variance from the code standard, measured from the centerline of the alley.

Gardner asked if the motion should approve the breezeway and a seven foot variance since that makes it one whole structure.

Gascon asked if there is a way to approve only attaching an accessory structure to the primary structure.

Mahoney thought that, if attached, the structures become one.

Crick said correct. He explained that if there was no proposed breezeway there would be no need for a variance because the accessory structure satisfies setbacks for an accessory structure.

Kimzey asked what the code difference is between the definitions of a principal and accessory structure.

Crick recited the code definitions for each.

Gardner asked if they could approve the breezeway connected to the accessory building with a seven foot variance based on the historic elements of the property.

Guntert said the accessory structure is a new structure on the property and the house is the historic structure. He explained that the variance would allow the reduction of the rear yard setback from the required 20 feet to 13 feet, measured from the centerline of the alley, based upon the applicant's plan to connect the accessory building to the principal building via breezeway.

Mahoney asked if they are technically going from 20 feet to five feet from the alley.

Guntert said they would be seven feet shy of the required 20 feet setback.

Mahoney concluded that it would be five feet from the property line.

Guntert said correct.

Kimzey asked what the possibilities are for living space on the second floor for a primary structure versus an accessory structure.

Guntert said that would not be allowed in the current zoning district, RS-5.

Mahoney asked if it would be allowed as a primary structure.

Crick said it would depend on the design, but usually you can have an accessory dwelling unit in a principal structure depending on building code.

Guntert said that's also only allowed in certain zoning districts, and the RS-5 District doesn't allow an accessory dwelling unit.

Mahoney asked if the garage would remain an accessory structure if it was built and the applicant came in later for the breezeway.

Guntert said no it becomes part of the principal structure.

Gascon said the variance is ultimately not for a setback, it's to allow a connection between the accessory and principal structures without deeming the accessory a principal structure.

They discussed the best ways to form their motion.

Mahoney reiterated that he believes the project is an improvement on the property but he wants to base approval on something that will protect the intent of the variance in the future.

Gardner said the owner is simply trying to protect the historic elements of the property and feels they should approve the breezeway and a setback.

Holley asked staff if there have ever been discussions of proposals such as this, either with walls or without.

Mahoney said without walls the breezeway doesn't seem to be a structure.

Guntert reminded the Board of a request last year on Bauer Farm Drive to build an accessory structure (greenhouse & garage) past the front building line. He said staff required a connection between the structures to allow them to obtain a building permit while the variance was being processed. He said that once the variance was approved, they didn't build the connecting link, and mentioned that the house was several hundred feet from the road and was not encroaching on the front yard setback.

Holley said he appreciates staff's explanation. He said there's a difference between a fully enclosed building and a trellis, and this project seems reasonable.

Mahoney said he doesn't think anyone wants to break the code but their job is to consider variances after interpreting the code. He mentioned the importance of considering each project individually.

Kimzey said his biggest concern is the changes that arise from identifying the garage as a principal structure instead of an accessory structure.

Mahoney asked staff if they are legally setting a precedent when the variance is tied only to this property.

Guntert said this would only apply the setback reduction to this property, and anyone else would need to make an application for a variance to reduce the setback of their own property.

Holley asked if the accessory structure could still be interpreted as such if the variance is approved and it becomes a de facto principal structure.

Guntert said that's why staff advised the applicant to seek a variance, since it would all be considered principal structure if connected.

Mahoney said even if this was a variance to reduce the setback, and it included habitable living quarters, he would still be in favor of approving the variance request.

ACTION TAKEN

Motioned by Mahoney, seconded by Fertig, to approve the variance with the condition that the breezeway remains open based on findings of fact, the five conditions for a variance, and the undue hardship presented by the historic structure.

Motion carried 4-2.

ITEM NO. 5 MISCELLANEOUS

- a) Consider a request for a 12-month extension of variances approved by the Board of Zoning Appeals [case number B-13-00033] on March 7, 2013 involving perimeter parking lot setbacks and interior parking lot landscaping for Phi Delta Theta Fraternity at 1621 Edgehill Road.

Guntert said the fraternity put the project on hold and site plan and building permit applications have now been submitted for upgrades to the structure. He said the variance needs to be extended another month to allow approval of the building permit and site plan.

Fertig mentioned that the application states a request for a 12 month extension of time.

Guntert said he suggested they ask for 12 months in case there were any unforeseen delays.

Fertig said she's never seen these requests before.

Guntert said they used to be fairly common because the old code only made variance approval valid for a period of 120 days following the approval of a variance, during that time a building permit needed to be issued by the City for the project. He said the new code allows a 24-month approval time so these variance extension requests are less common.

Gardner suggested that if the variance was approved today it would already be covered for 24 months.

Guntert said yes.

Mahoney asked if the applicant would have to request a new variance if the extension is not granted.

Guntert said yes they would have to start over.

The Board agreed that would be unnecessary.

ACTION TAKEN

Motioned by Gardner, seconded by Kimzey, to approve the extension of the variance for 12-months per the applicant's request.

Unanimously approved 6-0

There was no other business to come before the Board.

ADJOURN 7:44 PM