

LAWRENCE BOARD OF ZONING APPEALS
Meeting Minutes of April 7, 2016 – 6:30 p.m.

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

ITEM NO. 1 COMMUNICATIONS

All communications were included in the online packet.

Wilbur abstained from Item 3.

Kimzey said he discussed Item 3 with Mr. Paul Werner.

No agenda items were deferred.

ITEM NO. 2 MINUTES

Consider approval of the minutes from the February 24, 2016 meeting of the Board, which was rescheduled from the original meeting date of February 4th.

ACTION TAKEN

Motioned by Holley, seconded by Kimzey, to approve the minutes from the February 24th, 2016 meeting of the Board.

Motion carried 3-0-3.

BEGIN PUBLIC HEARING:

**ITEM NO. 3 BUILDING OR SETBACK LINES ON MAJOR STREETS OR HIGHWAYS
VARIANCE FOR A NEW DENTAL OFFICE DEVELOPMENT; 4111 WEST
6TH STREET [DRG]**

B-16-00081: A request for a variance as provided in Sections 20-814(c) and 20-1309 of the Land Development Code of the City of Lawrence, Kansas, 2015 edition. The request is a variance from the required 50 feet building and parking setback line established along certain major streets or highways, which are found in Section 20-814(a)(2), "Building or Setback Lines on Major Streets or Highways" in the Development Code. The applicant is seeking a variance to reduce the 50 feet setback line to a minimum of 31 feet for parking only; a proposed new building structure will comply with the minimum 50 feet setback. The property is located at 4111 West 6th Street. Submitted by Joy Rhea with Paul Werner Architects, for Freestate Dental Building, LLC, the property owner of record.

STAFF PRESENTATION

Guntert presented the item.

Fertig asked if the properties not outlined in cyan pre-date the code that established the setbacks.

Guntert said yes.

Fertig asked if they are currently allowed as a non-conforming use.

Guntert said they would be in non-compliance, and some of those properties are not platted.

Fertig asked if any of the properties outlined in cyan have ever requested a variance for the 50 ft setback.

Guntert said they have never had a variance application in more than 20 years for those properties.

Kimzey asked what the setback was reduced to on Folks Road and Wakarusa Drive.

Guntert said he could pull up the development plan but he believes it's around 15 feet on the buildings currently under construction

Kimzey asked if it applies to the both sides of the road.

Guntert said it only applies to the north side- the development on the south side is in compliance.

Fertig asked for clarification on the variance request, most notably the sixth condition.

Guntert said her understanding is correct, and the sixth condition should be the primary condition for evaluation. He said staff evaluated the request to give a big picture of all the factors, but this is a variance from the subdivision regulations, so the sixth condition is most relevant.

Fertig said then that section 28-14c controls.

Guntert said he believes so.

APPLICANT PRESENTATION

Ms. Joy Rhea, Paul Werner Architects, said they made a rezoning request for the property to RMO, which was approved and allows 50% building coverage on the sites in question. They are only requesting 15% building coverage. She showed an aerial view of the area and indicated the location of the RMO zoning and compared their site to others in the area. She said the property is one of the last to develop in the area, and she explained the challenges they are facing.

Fertig asked if she could expand on the complete deprivation criteria.

Rhea said they wouldn't be able to fit their desired parking and they don't meet the green space setback. She said they're facing the elimination of the buffer yard between the property and the single family homes.

Fertig asked if the developer will scrap the project if the variance is not granted.

Rhea said she believes they would sell the property to the neighbors next door for apartment construction.

Fertig asked if that is solely due to their need to eliminate the green space buffer on the south side of the property and the burden of having to request a variance for parking and interior landscaping.

Rhea said that is correct. She continued her presentation.

Holley asked how storm water drainage is addressed in their proposed plan.

Rhea explained their plan.

Holley asked if they considered grass pavers to alleviate parking needs that also allows for fire access.

Rhea said they had not, but she's not sure if that would work.

Holley clarified his suggestion.

Rhea said they had not explored that option.

Kimzey asked the applicant to clarify their proposed options as it relates the south side.

Rhea said if the variance is granted the south buffer would most likely be a fence and maybe a few shrubs. She said buffer yards typically require many plants and are a minimum of 10 ft.

Mahoney asked why it's necessary for the office building to be the proposed size.

Rhea said they would feel penalized since neighboring properties have greater building coverage, and a smaller footprint would require them to build vertically.

Mahoney asked if the proposed footprint is necessary or if that's just a preference.

Rhea said many other dentist offices share space with other tenants for income.

PUBLIC COMMENT

Mr. Nate Clark made a comparison between parking vs a driveway in the setback. He believes parking in the setback breaks the intent of setbacks. He argued that cars may sit for hours in those parking spaces, while cars in a driveway are there for only seconds at a time.

Ms. Kim Bergman, 601 Prescott Dr, said the proposed building is way too close to the residential property line, and she feels a smaller building would alleviate parking concerns.

ACTION TAKEN

Motioned by Holley, seconded by Mahoney, to close public comment for the item.

Unanimously approved 6-0.

BOARD DISCUSSION

Mahoney said he has a hard time meeting any of the conditions for this request, and is not in favor of granting the variance.

Fertig said they are bound by the subdivision code, and she doesn't see how this is a complete deprivation of property, particularly because they have proposed several options.

Gascon asked if the deprivation of use requirement will be implemented in all other variances or if it applies to this one only due to the subdivision regulations.

Fertig said it applies only due to the subdivision regulations.

Guntert said that's correct.

Gascon clarified that the south setback is 20 ft.

Holley said he echoes some of Mahoney's concerns, and ultimately feels the request does not meet the conditions.

Kimzey said he has a hard time with the sixth condition.

ACTION TAKEN

Motioned by Fertig, seconded by Holley, to deny the variance based on the fact that it does not meet the sixth condition.

Motion carried 5-0-1.

ITEM NO. 4 MISCELLANEOUS

- a) There was no other business to come before the Board.

ADJOURN 7:23 PM