



LAWRENCE BOARD OF ZONING APPEALS  
MINUTES FOR **AUGUST 2, 2018**

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Members present: Clark, Gardner, Shipley, Wilbur  
Staff present: Crick, Dolar, Mortensen

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**ITEM NO. 1      COMMUNICATIONS**

- A. All communications were included in the agenda packet.
- B. Gardner noted that he would be abstaining from his own request, Item 4.
- C. No items were deferred.

**ITEM NO. 2      MINUTES**

Consider approval of the minutes from the June 7, 2018 and July 5, 2018 meetings of the Board.

The minutes were deferred to the next meeting of the Board.

**BEGIN PUBLIC HEARING:**

**ITEM NO. 3      VARIANCES FROM THE REAR YARD BUILDING SETBACK FOR A RESIDENTIAL STRUCTURE; 1524 RHODE ISLAND STREET**

**B-18-00335:** A request for a variance as provided in Section 20-1309 of the Land Development Code of the City of Lawrence, Kansas, 2018 edition. The first request is for a variance from the 20 foot rear setback standard required by Section 20-601(a) of the City Code for the RS5 (Single-Dwelling Residential) District. The applicant is seeking a variance from this code standard reducing the rear setback to a minimum of 16 feet to allow for the construction of an addition to the existing residence. The second variance request is to reduce the rear setback of the existing residence to 1 foot. The property is located at 1524 Rhode Island Street. Submitted by Curtis Morton, property owner of record.

**STAFF PRESENTATION**

Mortensen presented the item.

**BOARD DISCUSSION**

Wilbur asked if the property has always been out of compliance with zoning codes.

Mortensen said it appears so.

Shipley asked if it's unusual to request a memorialization of an existing structure.

Crick said it's not unusual, and it effectively locks in the existing footprint just in case something happens to the structure.

Gardner noted that the applicant did not own the property when the structure was built.

Crick said that's correct.

**APPLICANT PRESENTATION**

Mr. Curtis Morton, property owner, explained that the house is very close to the rear property line and the intent of the variance is to ensure that he can perform any necessary repairs to the home in the future, for example if a tree falls on it or it needs a new roof.

Shipleigh asked if repairs would require a building permit.

Crick explained that a roofing permit wouldn't be an issue but a variance would allow the house to be reestablished in its current footprint in the event of a catastrophic loss.

There was no public comment.

**ACTION TAKEN**

Motioned by Gardner, seconded by Clark, to close public comment for the item.

Unanimously approved 4-0.

**BOARD DISCUSSION**

Gardner felt it was a simple request.

Clark said it is interesting that memorializing the current structure is the only way to rebuild it as is.

Shipleigh asked if the memorialization could backfire on the property owner in any way.

Crick explained that the variance would lock in the structure's current position on the lot, but if an addition is proposed that changes the footprint it would require a separate variance.

**ACTION TAKEN**

Motioned by Gardner, seconded by Clark, to approve the variances based on findings in the staff report and having met all five conditions for a variance.

Unanimously approved 4-0.

**ITEM NO. 4      VARIANCE FROM THE INTERIOR SIDE YARD BUILDING SETBACK FOR A RESIDENTIAL STRUCTURE; 2112 OHIO STREET**

**B-18-00340:** A request for a variance as provided in Section 20-1309 of the Land Development Code of the City of Lawrence, Kansas, 2018 edition. The request is for a variance from the 5 foot interior side setback standard required by Section 20-601(a) of the City Code for the RS5 (Single-Dwelling Residential) District. The applicant is seeking a variance from this code standard reducing the interior side setback to a minimum of 1 foot to allow for the construction of an attached

carport. The property is located at 2112 Ohio Street. Submitted by Gregory B. Gardner, property owner of record.

**RECUSAL**

Gardner recused himself from the item.

Crick discussed process for the item.

**STAFF PRESENTATION**

Mortensen presented the item.

Wilbur asked how unique this situation is within the City.

Crick said it's pretty unique to see a house situated perpendicular to its longest lot line.

Shipleigh said she grew up in the neighborhood and disagrees that it is unusual.

Crick said it's unusual that this property was platted sometime in the 1900's and didn't develop for 50 years.

Shipleigh said she didn't feel the mention of alleyways was relevant since one didn't exist in this area.

Crick explained that 50 foot lots typically only existed in areas with an alley, and since this was originally platted as part of the County, an alley wasn't considered.

Shipleigh said that the neighborhood is comprised of small, two bedroom homes with mostly detached garages. She said there are only four or five carports in the area.

Crick explained that the Board doesn't have the ability to review the aesthetics of the neighborhood, and noted that some structures may have variances or were built without a permit.

**APPLICANT PRESENTATION**

Mr. Greg Gardner, property owner, said the property has been a money pit. He said the detached garage is on the verge of collapse and is close to the property line. He explained that he'd like to tear down the garage and replace it with a carport, as well as replace the driveway with a shorter drive thereby reducing the impermeable surface on the property. In addition he said he'd like to construct a covered porch connecting the house to the carport and eventually enclose it.

Clark asked if the proposed carport will have the same southern setback as the existing detached garage.

Gardner clarified that it will. He added that the neighbor to the south, who is most impacted by the proposed, supports his request.

**ACTION TAKEN**

Motioned by Clark, seconded by Wilbur, to close public comment for the item.

Unanimously approved 3-0.

## **BOARD DISCUSSION**

Clark asked about memorializing the existing detached garage, which has always been out of compliance.

Crick said the 1949 code didn't require detached structures to obey the setbacks so it was likely in compliance at that time.

Shipleigh felt the point of a new code was to bring things into compliance with it. She noted that the existing structure can't be grandfathered because the applicant is proposing a different footprint.

Crick explained grandfathering only exists for uses, such as a restaurant. In this instance, the variance request must prove to be unique to the lot or circumstances of the lot, or a product of zoning that makes the lot uneven with rights of nearby properties. He discussed the Board's task in balancing strict adherence to the code and whether doing so posing an undue burden on the property owner.

Clark said the structure was in compliance when it was built. He said the property is unique because it was platted long before anything was built, and was likely a burden at the time of construction.

Shipleigh disagreed that it's unique because other properties in the neighborhood are similar. She suggested that the rest of the neighbors could apply for similar variances.

Crick explained that anyone can apply for a variance, but typically when several properties in one area require a variance, a text amendment is initiated that recognizes that deficiency in the code.

Wilbur asked if uniqueness can apply to an entire neighborhood.

Crick said it's not unheard of- the Board has considered an entire neighborhood in the past.

They discussed the criteria for approval of a variance, specifically the hardship criteria.

Wilbur said the staff report refers to "previous findings of the Board". He asked staff to address that comment.

Mortensen explained that the structure to the north was granted a variance in the 1980's for the carport.

Clark and Shipleigh discussed alternative solutions for the construction of a new parking structure.

Wilbur felt that there is some hardship when options are limited.

Clark said there isn't anything preventing the property owner from constructing a detached garage, but wondered if cost- which he acknowledged they cannot consider- is a factor due to the extra stretch of driveway to keep the structure in the rear.

Wilbur said the lack of application of the code is why the Board is reviewing the request.

They continued to discuss whether the property is unique.

Crick explained the lack of subdivision regulations when the property was platted, as well as the absence of zoning, which are elements that work together in the current code.

Shipley did not feel those factors made the property unique.

Wilbur said the gap in time between platting and construction makes it unique.

Crick said the time between platting and construction is typically months, not decades. He added that some neighborhoods were even built before they were platted.

Shipley said the Barker neighborhood is an example.

Crick said that's correct.

Clark said he's hung up on the fact that there are other options.

Wilbur asked if a key factor for staff was the structure's proximity to the right-of-way.

Crick said a key factor for staff was ensuring the structure doesn't break the front setback plane, noting more leniency with side setbacks.

Wilbur asked whether staff considered the option to build the structure in the rear.

Crick said that is an option, and added that staff usually advises applicants to avoid the front setback and suggests the side as an alternative.

### **MOTION**

Motioned by Clark, seconded by Shipley, to deny the variance request because it does not meet the five conditions, specifically the hardship criteria.

### **ACTION TAKEN**

Motioned by Wilbur, seconded by Shipley, to open public comment for the item.

Unanimously approved 3-0.

### **PUBLIC COMMENT**

Gardner explained that building the garage in the rear would increase the impermeable surface by extending the driveway. He said lots that were 132 feet long and 50 feet wide in 1909 didn't connect with the way houses were built years later, and that alone created an unnecessary hardship. He said his lack of ability to build an attached garage or carport is also a hardship.

### **ACTION TAKEN**

Motioned by Clark, seconded by Wilbur, to close public comment for the item.

Unanimously approved 3-0.

### **ACTION TAKEN**

Motioned by Clark, seconded by Shipley, to deny the variance request because it does not meet the five conditions, specifically the hardship criteria.

Motion carried 2-1, Wilbur dissented.

**ITEM NO. 5 MISCELLANEOUS**

- A. Consider any other business to come before the Board.

Mortensen mentioned that there will be at least one item on the September agenda.

Crick noted that Mahoney's term expires at the end of the September and the City Commission may appoint a new member at their next meeting.

Clark asked if there are any updates regarding pending legal action.

Crick said no.

**ACTION TAKEN**

Motioned by Clark, seconded by Shipley, to adjourn the meeting.

**ADJOURN 7:26 PM**