



LAWRENCE BOARD OF ZONING APPEALS  
MINUTES FOR **JULY 5, 2018**

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Members present: Gardner, Gascon, Mahoney, Shipley, Wilbur, Wisner  
Staff present: Crick, Dolar, Mortensen

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**ITEM NO. 1            COMMUNICATIONS**

- A. Crick mentioned there were two communications received after the deadline and paper copies were provided to the Board.
- B. There were no ex-parte communications and/or abstentions for specific agenda items.
- C. There were no agenda items deferred.

**ITEM NO. 2            MINUTES**

Consider approval of the minutes from the June 7, 2018 meeting of the Board.

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

**BEGIN PUBLIC HEARING:**

**ITEM NO. 3            VARIANCE FROM THE EXTERIOR SIDE YARD BUILDING SETBACK FOR A RESIDENTIAL STRUCTURE; 1625 HASKELL AVENUE**

**B-18-00272:** 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 25 foot exterior side setback standard required by Section 20-601(a) of the City Code for the RM12 (Multi-Dwelling Residential) District. The applicant is seeking a variance from this code standard reducing the exterior side setback to a minimum of 15 feet to allow for the construction of a detached dwelling. The property is located at 1625 Haskell Avenue. Submitted by Wagner Contracting, LLC, on behalf of the Estate of Virginia R. Copp, property owner of record.

**STAFF PRESENTATION**

Mortensen presented the item.

**APPLICANT PRESENTATION**

Erik Wagner, applicant, said he didn't have anything to add but had renderings of the house. He presented the plans on the overhead and explained the design.

**No public comment.**

## **BOARD DISCUSSION**

Gardner said he supports the request.

Mahoney said he felt the variance would be nothing but positive and would improve the community.

Shipleigh asked if there wasn't more that could be done to minimize the building footprint.

Gascon explained that when the lot was designed the applicable zoning code lacked the 25 foot side yard setback, but now when all setbacks are applied there is less than 60% of the lot to build on.

Gardner added that there have been multiple changes in zoning.

Wisner said he had no issues with the request, and that it will improve the community to build a house on a vacant lot.

Mahoney said that an alternative footprint without a variance would be very small, and while possible, probably run into height restrictions.

Shipleigh mentioned the possibility of two dwellings on the parcel in the future.

Gascon said the current code wouldn't allow this lot to be divided, and due to the uniqueness of the lot they are struggling to fit one dwelling unit.

## **ACTION TAKEN**

Motioned by Gardner, seconded by Wilbur, to approve the variance based on findings in the staff report.

Unanimously approved 6-0.

## **ITEM NO. 4      MINIMUM OFF-STREET PARKING VARIANCE; 444/446 LOCUST STREET**

**B-18-00278:** 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 Article 9, "Parking, Loading and Access," requiring a minimum number of off-street parking spaces to be provided from a required 64 spaces to 8 spaces. The property is located at 444/446 Locust Street. Submitted by Paul Warner with Paul Werner Architects, on behalf of Tiburcio J Reyes Sr, property owner of record.

## **STAFF PRESENTATION**

Crick presented the item.

Gardner said the center section is a bar, so there's not a change in use because the bar size is only expanding.

Crick said they are allowed to have an accessory bar but the majority of receipts must be derived from food sales, so there must be separation between the restaurant use and proposed bar use.

Wilbur asked if that rule is enforced by Alcoholic Beverage Control.

Crick said yes, as well as approval by the City Clerk for the liquor license.

Gascon asked for the number of required parking spaces to maintain the quality restaurant use.

Crick said 16 parking spaces are required for the quality restaurant use as-is.

Gascon said they are proposing eight.

Crick said that's correct, the eight that currently exist.

Gascon asked if staff knows what the required parking was when the restaurant originally opened.

Crick said no.

Gascon asked how the parking calculation for quality restaurant use was derived.

Crick said the parking tables were approved by City Commission, which were likely created by a consultant with the code in 2005.

Mahoney clarified that there are two separate businesses with two separate addresses. He asked if the variance would be necessary if both uses were addressed as one property.

Crick said the restaurant would only be allowed an accessory bar which must derive 55% of sales from food.

Mahoney asked if the proposed bar use plans to generate more of its sales from alcohol.

Crick said that's correct.

### **APPLICANT PRESENTATION**

Mr. Paul Werner, Paul Werner Architects, explained the existing space and the proposed project, noting that they only intend to change the operator of the existing bar/lounge space and are not changing the occupancy. He explained how they arrived at required parking calculations. He mentioned a parking variance granted to Frank's North Star Tavern down the street that reduced their parking from 90 to 16 spaces.

Wilbur asked if the bar/lounge is currently being used by the restaurant.

Werner said yes, it's event-driven.

Mahoney asked how many total spaces the applicant plans to provide.

Werner said eight.

Mahoney mentioned he was on the Board for Frank's variance request.

Wisner said it looks like there is empty space between the south end of the building and the beginning of the propose parking area.

Werner explained that there are trees but it's possible they could add one more space.

Gascon said the required parking spaces would require a three story parking garage that would encompass the entire lot. He asked the applicant if they are prepared to build such a structure.

Werner said they are not.

### **PUBLIC COMMENT**

Ms. Jennifer Myers, Kaw Valley Group, explained their idea to expand the space, their history with the property and the neighborhood, and addressed some concerns mentioned in an email received by staff. She said they've received nothing but positive feedback from the neighborhood about their proposed project.

Wilbur asked how often they hold events and how many people are typically in attendance.

A gentleman present with the applicant said they hold events two or three times a month with around 30-40 people at a time. He said parking is hassle but there are never complaints about it.

Myers added that the space is used weekly for lunch overflow or large groups.

Gardner asked if there were any public members present that were not connected to the family or the restaurant willing to answer some questions. He asked Mr. Ted Boyle if there's ever been an issue

Mr. Ted Boyle, North Lawrence Improvement Association (NLIA) said he's lived in the neighborhood 74 years. He said there has never been a complaint on El Matador. The only complaints from the neighborhood were due to Club 508 which is now Frank's North Star. He highlighted the walkability of the neighborhood.

Gardner asked if there has ever been a problem when the event space is full.

Boyle said no, the patrons of Club 508 generated the only complaints in the area historically. He said there has been no congestion even with the band playing next door and no police calls. He noted that area residents are in favor of the project.

Myers described the family friendly theme of the business.

### **ACTION TAKEN**

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

Unanimously approved 6-0.

### **BOARD DISCUSSION**

Shiplee asked Ms. Myers if both spaces could be rented simultaneously.

Myers explained that it's possible but certain areas would be prohibited due to liquor laws.

Shiplee asked if they would rent the two spaces together.

Myers said she didn't think that would be possible.

Crick clarified that alcohol must be sold and served within each respective space.

Mahoney said he's a huge proponent of utilizing existing structures for new or changing businesses. He said he's in favor of the project but has a hard time meeting all conditions.

Gascon asked if a building permit had been pulled for the project.

Crick said not at this time but a site plan would be required.

Gascon noted that there is no construction proposed.

Crick said that's correct.

Gascon felt there was hardship due to the needed space to accommodate the required parking and because there is no construction proposed.

Mahoney felt the issues were the unique conditions and the voluntary change in use. He couldn't identify a use that would be compatible with the existing parking, and noted that they still need to apply for the necessary liquor licenses.

They talked about the impact of the change in use.

Crick said the Board is not empowered to determine the use of the property.

Wisner said he doesn't feel the proposed will increase the intensity of the property felt there is ample parking in the area, noting the gravel lot across the street.

Crick mentioned that the gravel area is railroad right-of-way.

Shipleigh noted that NLIA supports the request.

Wisner said he does not feel parking is an issue but is hung up on the hardship criteria.

Wilbur said the parking requirement generated by an administrative change is the hardship.

Gardner asked about actual number of required parking spaces.

Gascon said there is a discrepancy between the applicant's understanding of code required parking and the calculation in the staff report.

Crick the staff report indicates a requirement of 64 spaces and a requested reduction to eight.

Wisner said the applicant makes a logical argument for 42 required spaces instead of 64 required spaces.

Gascon talked about the shortfall of parking requirements in general and concluded that the parking requirement is an unnecessary burden on the applicant.

Mahoney said he has no problem with the uniqueness of the property and is only hung up on the unnecessary hardship because the slight business change is a choice.

Gascon said the applicant is a long standing family owned business that is trying to be compliant with State law, and the parking requirement is punishing them for doing the right thing.

Mahoney said the number of parking spaces isn't a factor for him, and he'd like to find a way to support their investment in the neighborhood.

Wisner said he felt the liquor laws are the hardship because the applicant must structure their business in a way that complies with those laws.

Shipleigh said any business would have to comply with those rules. She asked where other Board members stand on the issues.

Gascon felt the need for a site plan that results in 64 required parking spaces is a hardship.

Shipleigh questioned whether the rules set forth by the City are a hardship in every scenario.

Gascon said there is no construction taking place.

Shipleigh noted that they're making a change.

Wilbur said they're making a very subtle change and are planning to use the property in a similar way.

Gardner asked if they serve liquor in the event space.

Gascon said yes, adding that it was an important distinction to note they're not converting from a residential use.

Crick clarified that an event space is not required to have a liquor license, sales can be accommodated through off-premise license extensions provided by the caterer.

Gascon reiterated that liquor is already being served, and added that just coming into compliance with existing use would result in the same parking hardship.

Crick said the restaurant use is grandfathered in. He explained two parts of the code, one that details applicability of the code to all new structures and changes in use, and the other part of the code that deals with the intensification of a use.

Gardner said the event space has been used to its full potential without impact on the neighborhood.

Crick said it hasn't been approved as an event space, it was a carryover of the restaurant use. The proposed change would create two distinct spaces with two distinct users, which is an intensification of the code.

Gascon discussed practical application versus code required application of a change in use. He reiterated that any change to the property would trigger an impossible parking requirement, which is a hardship.

**ACTION TAKEN**

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

Unanimously approved 6-0.

**PUBLIC COMMENT**

Mr. Ted Boyle, NLIA, mentioned that the City library train use to park in the gravel lot across the street, and the City has been maintaining that property between 4<sup>th</sup> & 5<sup>th</sup> Streets. He said it's used extensively by surrounding businesses and parade-goers.

**ACTION TAKEN**

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

Unanimously approved 6-0.

**BOARD DISCUSSION**

Crick reiterated that the gravel lot mentioned is not City property.

Gascon asked if the variance process will repeat even if the proposed variance is granted and a structure is later added or the use changes.

Crick clarified that a structure addition would trigger an increase in required parking, which would require a variance, but a change in use alone would not because the proposed variance would run with the land.

Gascon noted that conditions cannot be tied to a property owner or specific use.

Crick said that's correct; however, conditions could be placed on corresponding site plans or licenses.

Wisner asked what, other than a bar or lounge, would increase the number of required parking spaces.

Crick said a bar or lounge is one of the uses that requires the most parking, only a conference or event center would require more.

Wisner said he's comfortable approving without conditions.

**ACTION TAKEN**

Motioned by Wilbur, seconded by Shipley, to approve the variance as submitted by the applicant based on findings of the Board.

Unanimously approved 6-0.

**ITEM NO. 5 MISCELLANEOUS**

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

Crick said there were will be a meeting in August.

**ACTION TAKEN**

Motioned by Gardner, seconded by Wisner, to adjourn the meeting.

**ADJOURNED 8:00 PM**