



LAWRENCE BOARD OF ZONING APPEALS  
MINUTES FOR **JUNE 7, 2018**

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Members present: Clark, Gascon, Wilbur, Wisner  
Staff present: Crick, Dolar, Mortensen

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**TAKE A ROLL CALL TO DETERMINE IF THERE IS A QUORUM OF MEMBERS PRESENT**

**ITEM NO. 1      COMMUNICATIONS**

- A. All communications were included in the online packet.
- B. There were no ex-parte communications and/or abstentions for specific agenda items.
- C. Item 4 was withdrawn prior to the meeting.

**ITEM NO. 2      MINUTES**

Consider approval of the minutes from the May 3, 2018 meeting of the Board.

**ACTION TAKEN**

Motioned by Wisner, seconded by Wilbur, to approve the minutes from the May 3, 2018 meeting of the Board.

Unanimously approved 4-0.

**BEGIN PUBLIC HEARING:**

**ITEM NO. 3      EAST LAWRENCE REZONING VARIANCES**

**B-18-00157:** 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 minimum lot area, minimum lot area per dwelling unit, minimum lot width, and minimum lot frontage required by 20-601(a) of the City Code for properties zoned RM12D. The properties are located at 708 Rhode Island St, 738 Rhode Island St, 812 Rhode Island St, 711 Connecticut St, 713 Connecticut St, 721 Connecticut St, 817 Connecticut St, 821 Connecticut St, 829 Connecticut St, 832 Connecticut St, 716 New York St, 731 New York St, 740 New York St, 746 New York St, 731 New Jersey St, 800 New Jersey St, 804 New Jersey St, 810 New Jersey St, 816 New Jersey St, 823 New Jersey St, 827 New Jersey St. The second request is also for a variance from minimum lot area, minimum lot width, and minimum lot frontage required by 20-601(a) of the City Code for properties zoned RS5. The properties are located at 712 Rhode Island St, 714 Rhode Island St, 716 Rhode Island St, 820 Connecticut St, 822 Connecticut St, 837 Connecticut St, 839 Connecticut St, 727 New Jersey St. The third request is also for a variance from minimum lot area required by 20-601(a) of the City Code for properties zoned RS5. The properties are located at

746 Connecticut St, 746 1/2 Connecticut St, 745 New York St, 747 1/2 New York St, and 845 New York St. Submitted by the City of Lawrence on behalf of the subject property owners.

**STAFF PRESENTATION**

Ms. Becky Pepper presented the item.

Wilbur asked if the 3 year waiver of the unrelated occupant rule could stay with the owner of the property.

Pepper said it cannot, it only applies to the properties that are rezoned.

Gascon said he's a member of the subject neighborhood and doesn't recall being asked whether he supported the rezoning.

Pepper said the request came from members of the neighborhood.

Gascon asked how many members.

Pepper said she would have to pull the letter submitted on behalf of the East Lawrence Neighborhood Association (ELNA) to verify that number.

Gascon asked how the ELNA proves their representation of the neighborhood and for the total number of residents in the neighborhood.

Pepper said she did not immediately know.

**PUBLIC COMMENT**

Ms. Sacey Lambertson, 700 block of New York Street, said she does not support multi-family uses in the neighborhood and feels the area would develop better be far more attractive with only single family residences.

Gascon said the Board's task is to consider a variance to a zoning code. He asked why she moved to East Lawrence.

Lambertson said they lived out in the country and no longer wanted to care for a large property. She said they're delighted to be in East Lawrence.

Gascon asked Ms. Lambertson to imagine the area in 200 years and if she agreed it would be nice to share the amenities of living near Downtown with as many people as possible, or if should be reserved for the lucky few people who own single family properties.

Lambertson said the lots are quite small and not suited for multi-family development.

**ACTION TAKEN**

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

Unanimously approved 4-0.

## **BOARD DISCUSSION**

Clark asked if the initial rezoning request is available.

Pepper presented the letter on the overhead monitor.

Wilbur asked if similar requests have been received in the past.

Crick said the last request received was for the Pinckney area, but this is the first large request under the current version of the zoning code.

Wilbur asked if staff received communications or feedback from members of the neighborhood.

Pepper said a few members of the neighborhood called for further explanation but did not provide any feedback or comments.

Gascon asked why staff would move forward with such a proposal because it is contrary to the current draft Comprehensive Plan for urban core neighborhoods.

Crick explained that this was a directive of the City Commission, and while the Comprehensive Plan is in a draft state it is not an adopted policy. The current comprehensive plan is *Horizon 2020*.

Gascon asked if the City Commission was made aware of the contents of the draft Comprehensive Plan.

Crick said the City Commission receives updates in the form of committee minutes and action items, as well as occasional updates on the draft going forward.

Gascon asked if it's reasonable to presume that the request is antithetical to the current draft plan.

Crick said in some respects, yes, and in others, no. The plan balances some of the items seen in the draft plan's growth and development chapter but it also makes reference to stabilization of neighborhoods and preservation of character in Chapter 3, so there are some competing interests and values that the community desired in the document to serve as a catch-all plan.

Wilbur asked if the hardship is the continued nonconforming status of the property.

Crick said that's correct.

Wilbur asked how many properties in Lawrence are nonconforming.

Crick said he doesn't have an exact number. In most instances, when a rezoning or subdivision occurs, the number of properties vary depending on the decisions that are made, but staff tries to identify and fix those nonconformities as they occur.

Gascon asked what number of properties were nonconforming before the rezoning.

Pepper said she did not have that number available.

Crick said a large number of properties were nonconforming.

Pepper explained that the majority of properties rezoning to RS5 were previously nonconforming.

Gascon asked if a denial for this request will limit a property owner's ability to seek a variance specifically for their property.

Crick said anyone can submit an application for a variance.

Clark asked if they could apply even if the current request is denied.

Crick said yes, but it would need to be a substantially different request.

Gascon asked for clarification.

Crick clarified that a property owner can request the same variance, provided they submit a new application and fee.

Wilbur said he sees hardship in the potential need for property owners to request the same variance individually.

Gascon said he feels this request addresses the hardship for all included properties. He asked if there has been a similar variance granted.

Crick said there were a few in the early 1980s. More recently, there was a mass driveway variance request for Langston Heights in 2013.

Wisner said he supports the recommendation for approval but would like to see the City work more with other neighborhoods with significant nonconformities to provide similar remedies.

**ACTION TAKEN**

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

Unanimously approved 4-0.

Ms. Sacey Lambertson said she suspects that a lot of multi-family properties are rented and therefore not occupied by homeowners. She felt they should encourage homeowners to occupy the modest homes included in the request.

**ACTION TAKEN**

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

Unanimously approved 4-0.

**BOARD DISCUSSION**

Gascon said he senses a level of discomfort by the Board being charged with a decision at this level. He felt it illustrates the fallibility of the zoning code and would like to see a better administrative approach to this issue going forward.

## **ACTION TAKEN**

Motioned by Wisner, seconded by Wilbur, to accept staff's recommendation and approve the variance requests based on information in the staff report.

Motion carried 3-1, Gascon dissented.

**\*\*WITHDRAWN\*\***

### **~~ITEM NO. 4      MAXIMUM DRIVEWAY WIDTH VARIANCE; Naismith Creek Subdivision~~**

~~**B-18-00212:** 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 to allow residential driveways in a new residential development area recently rezoned to RS5 (Single-Dwelling Residential) District to exceed the 12-foot maximum driveway width standard set forth in Section 20-908(b)(3) of the City Code. The request is being made for all of the RS5-zoned lots in Naismith Creek Addition, a newly approved residential subdivision. The subject properties are generally located northwest of the intersection of Louisiana Street and W. 31<sup>st</sup> Street. Submitted by Brian Sturm, Landplan Engineering, P.A., for 78, L.C. and Grand Builders, Inc., the property owners of record.~~

### **ITEM NO. 5      MINIMUM OFF-STREET PARKING VARIANCE; 1346 OHIO STREET**

**B-17-00641:** 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 120 spaces to 1 space. The property is located at 1346 Ohio Street. Submitted by Paul Warner with Paul Werner Architects, on behalf of D&D Rentals of Lawrence, L.L.C. and HDD of Lawrence, L.L.C., property owners of record.

## **STAFF PRESENTATION**

Crick presented the item.

Wisner asked what allowed for the previous lack of parking.

Crick said staff could not identify anything other than the nonconforming use registration that would have granted the current parking configuration.

## **APPLICANT PRESENTATION**

Mr. Paul Werner, Paul Werner Architects, explained that the need for the variance is because the structure is failing and requires a new foundation, but the lot is too small to accommodate additional parking. He explained their proposed renovation and mixed use development, and why the variance request meets the five conditions. He noted they could be in favor of a compromise on the parking reduction but ultimately believed that parking any number of cars on the property is a safety hazard.

Gascon asked if they plan to replace the entire foundation or if they'll decide once they raise the structure.

Werner said they plan to jack it up and pour a whole new concrete foundation.

## **PUBLIC COMMENT**

Ms. Candice Davis, Oread Neighborhood resident, said she isn't aware of other homes in the area that required foundation replacement and feels that it's only done in an attempt to rent properties. She felt the request was exceedingly bold, and that Mr. Werner is aware of various other options for a mixed use property. She is completely against any concessions for parking. She said the bars generate trash, broken glass, noise, and bad behavior in the neighborhood. She felt the expansion of the bar would add to the existing safety issues in the area.

Mr. Kappelmann said he owns the three story red brick building behind the subject property. He said he appreciates the work that the applicant has completed on homes in the area. He said he's concerned about the parking situation, and explained that he must regularly tow vehicles from his own property.

Ms. Marci Francisco, 1101 Ohio Street, said parking is a frequent topic. She supports staff's recommendation for denial and felt the lot should generally be easy to develop. She acknowledged that the maintenance on the property is necessary and has done foundation work on her own properties, but has always been able to meet parking requirements.

Ms. Sacey Lambertson said it would be a mistake to take away required parking.

Mr. Kyle Thompson, 1041 Tennessee Street, mentioned a home at 14<sup>th</sup> and Kentucky Streets which had burned and received a variance to rebuild the property, but instead demolished the house and built something different. He has a similar concern about this development, due to the variance running with the property and not the project.

Ms. Janet Gestner said she lived in the Oread Neighborhood for over a decade, and during her residency the project area drew much attention. She noted how dangerous the use seemed in the neighborhood, and since then the bars have dramatically intensified, despite several traffic related deaths. She felt that the area is over saturated with bars and the geography creates a safety hazard. She thanked staff for the thorough staff report and agreed with the recommendation.

Gascon addressed Gestner's comment about the area being saturated with bars despite a previous comment about long lines to enter the subject establishment.

Gestner said her main concern is safety, and noted the intense use of a bar unusually placed in a residential neighborhood.

Gascon reiterated his comment about people standing in line to get into the establishment.

Gestner said the people standing in line aren't drinking, and those inside will be.

Gascon clarified that his interpretation of the word "saturation" would imply that there are many more bar uses in the neighborhood and that none of them are attracting business.

Gestner said she used the term to indicate there are too many bars in the area.

## **ACTION TAKEN**

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

Unanimously approved 4-0.

## **BOARD DISCUSSION**

Wilbur said he can't get past the hardship criteria.

Gascon asked if he thought the requirement to essentially build a multi-level parking garage was not a hardship.

Wilbur noted that the proposed development is the applicant's choice.

Gascon said that the parking requirement is in place regardless of how many people are in the building.

Crick clarified that the occupancy of the structure is determined by Fire Code, which takes into account several factors including circulation spaces and seating.

Wilbur said that the use of the structure isn't a factor in the occupancy.

Crick said that's correct. He explained that the Land Development Code looks at restaurants, event centers, and bar uses differently when it comes to calculating parking. Parking is calculated based on the use allowed by zoning.

Wisner felt that the required 120 spaces was unreasonable. He felt that there were valid concerns about the bar use but focusing just on parking, he would feel more comfortable granting a variance which included parking spaces for the residential portion of the development.

Gascon asked if the property is historic or within historic environs.

Crick said the property is within the Oread Neighborhood Design Overlay District so the structure would be reviewed by the Historic Resources Commission (HRC) for aesthetics. He noted that the project would also need to be heard by the Planning Commission and City Commission for expansion and modification of the existing Special Use Permit as well as other possible agreements.

Gascon noted that the HRC could prevent modification of the property to provide parking but that wouldn't be known before the Board takes action.

Crick said that's correct. He explained that the parking calculation is initiated in commercial parking lot standards with multi-dwelling residential projects.

Gascon asked what science determines parking requirements.

Crick said typically those calculations are determined with the help of a third party consultant and City engineering staff using AASHTO, Institute of Transportation Engineers, and is also tailored to meet the needs of the community.

Gascon asked if parking is calculated the same for identical uses but in different neighborhoods.

Crick said yes. He noted that the Mixed Use zoning allows for deviations as does the Special Use Permit.

Gascon asked if the parking required for a spa would be based on the spa use.

Crick said it is based on the use and the amount of space being used for that use.

Gascon asked if the parking for the same use of the same size in this location versus 6<sup>th</sup> Street & Wakarusa Drive would be calculated identically

Crick said yes.

Gascon said the science does not take into consideration the location, pedestrians, or bicyclists, or Uber users.

Crick said that's correct, otherwise it would be considered spot zoning, which is illegal.

Gascon asked if staff could elaborate.

Crick explained that spot zoning was banned by Supreme Court decision because you can't change the zoning of a property to be inconsistent with the surrounding area.

Gascon felt that the science behind parking requirements is flawed, and that providing parking only induces driving and is not in the best interest of the public. He argued that foundation repair is necessary and is a tremendous cost, and restricting uses only limits property owners' ability to pay for such repairs. He addressed Ms. Candice Davis in the audience making a motion and noted that the Board voted in her favor at a previous meeting and that she made a comment he felt was insulting.

Davis said Gascon insulted her [at the previous meeting].

Gascon told Davis he may have to ask her to leave the meeting.

Davis exited the room.

Gascon encouraged members of the public to read specific literature that addresses the parking issue on a larger scale.

Clark asked if they could discuss Criteria #4.

Wilbur felt that the intent of the project was to increase attendance which will likely bring more cars to the area and be a burden on the neighborhood.

Clark noted the number of public members in attendance who are against the project, which signifies the project does adversely affect the morale of the impacted public.

Gascon said that as a member of the neighborhood six blocks away the project as proposed does not concern him. He felt that the requirement for parking was creating the issue to public safety, not the request for a reduction.

Clark talked about the threat of drunk drivers versus drunk walkers. He asked what the property was zoned before the MU (Mixed Use) designation.

Crick said it was zoned RM32.

Gascon noted that the previous zoning from a residential standpoint was a much higher intensity.



Clark said the previous zoning could accommodate an apartment building. He pointed out a paragraph in the staff report that references an expectation that the MU district provide a coordinated expansion and a balanced parking approach. He asked how that expectation is captured or communicated.

Crick said it is usually conveyed with the MU designation, and some portions of the adopted neighborhood plan give guidance in that direction, but neither give a specific parking expectation.

**ACTION TAKEN**

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

Unanimously approved 4-0.

**PUBLIC COMMENT**

Mr. Paul Werner, Paul Werner Architects, said the property owner initiated the rezoning and there were no conditions of the zoning when it was approved. He added that typically expectations are communicated with conditions but that was not done.

**ACTION TAKEN**

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

Unanimously approved 4-0.

**BOARD DISCUSSION**

Gascon felt the first paragraph in the Staff Report after the applicant's response on Criteria #5 is contradictory to the staff recommendation.

Wilbur asked if Gascon's issue is with parking regulations in general or with the requirements specific to the case.

Gascon said he's made his feelings about parking requirements pretty clear. He also noted his conflict with language in the draft comprehensive plan that is contrary to the staff recommendation for the project.

Clark asked if the variance stays with the parcel.

Crick said that's correct.

Clark asked if they could place stipulations on change of use or building permit.

Crick said they can approve with conditions which vary from case to case, such as a condition that a project receive all other approvals.

Clark posed the hypothetical scenario of a restaurant taking over the property in 10 years and only having one parking space.

Gascon said that's a valid point. He argued that the number of parking spaces may be invalid, and that the real questions should be whether parking in general should be required at all.

Clark asked how many living units are proposed.

Crick said four beds.

Clark said they could provide 5 parking spaces. He noted the aerial view shows seven cars parked at the current living units.

Gascon said that's an interesting hardship because the City doesn't recognize that property having seven spaces. He asked if the rule prohibiting stacked parking under the Oread Design Guidelines applies for this property.

Crick said that those particular guidelines are not applicable for this property so it would go to the Land Development Code for commercial property standards.

Gascon asked if stacked parking would be allowable on this property.

Crick said no. He pointed out a discrepancy in the staff report that refers to the property as congregate living while it is actually an apartment use.

Clark asked if the math is the same.

Crick said yes, the bedrooms and parking count are correct.

Clark said he loves the walkability/bikeability of the area and the support of those components not included in the current code. He also felt it was fair to require parking for the residential portion of the project, particularly given the mixed use of the property.

Crick noted that the bicycle parking portion is currently adopted in *Horizon 2020*. He reminded the Board that it is their role to adjudicate the current code.

### **ACTION TAKEN**

Motioned by Clark, seconded by Gascon, to open public comment for the item.

Unanimously approved 4-0.

### **PUBLIC COMMENT**

Mr. Paul Werner, Paul Werner Architects, said they are willing to explore options for meeting the parking requirement for the residential portion of the project.

Ms. Marci Francisco said she agrees there are options but the Board's decision should be based on the information already presented.

Mr. Kappelmann asked if other bars will be granted a variance if this one is passed.

Wisner said no, the variance is specific to the property.

Crick explained that a variance for multiple other properties would require a text amendment which would require final approval by the City Commission.

Ms. Janet Gerstner said granting the variance will set a precedent.

Gascon said he appreciated her opinion but that it does not set a precedent.

**ACTION TAKEN**

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

Unanimously approved 4-0.

**BOARD DISCUSSION**

Crick noted that each case must be weighed independently.

Gascon said the property is unique because the current use would require 600 parking spaces. In regards to whether the project would affect the rights of adjacent property owners, he noted that the parking situation won't really be changing.

Clark said it certainly won't affect their rights.

Gascon said the hardship criteria is always the hardest, and noted that any change to the property would require parking that is not possible to provide without demolition of the existing structure, which would likely not be allowed by the HRC.

Wilbur asked if a different business use for the property could provide the required parking.

Crick said it would depend on the size and type of use.

Gascon asked if staff could provide an example of a use that would require less parking.

Crick said a restaurant use would require less parking.

Clark asked if the bridge between the two buildings is the issue, and noted that the Special Use Permit is for 1340 Ohio Street.

Crick said that even without the bridge it would still be considered a bar use.

Clark asked if the parking is only being calculated on the southern building.

Crick clarified that the variance is induced by the expansion of the use and does not correct any existing shortage of parking- without an expansion, the variance is not needed.

Clark asked if the 120 required parking spaces is only for the additional space.

Crick said yes, for the expansion of the bar use and the residential component.

Gascon reiterated that the parking technically required for the entire property would exceed the size of the entire property.

Clark asked for the square footage of the expansion.

Crick said about 4000 square feet.

They discussed whether there is hardship.

Gascon said that any change to the property would require parking that isn't possible. He wondered whether the parking requirement alleviated or added to public safety concerns. He felt the intent of the mixed use is to reduce reliance on cars, but he can see arguments both ways.

Wilbur said it isn't clear how many people are parking in the neighborhood to go to the Hawk.

Gascon said it's difficult to tell.

**ACTION TAKEN**

Motioned by Wisner, seconded by Clark, to deny the variance based on findings in the staff report and because the request does not meet the five conditions required for a variance.

Motion carried 3-1, Gascon dissented.

**ITEM NO. 6 MISCELLANEOUS**

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

Crick mentioned there will be both Sign Code Board of Appeals and Board of Zoning Appeals next month.

Wilbur asked if staff has identified a replacement for Josh Mahoney.

Crick said the Mayor is aware that his term is about to expire.

**ADJOURNED 8:29 PM**