



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

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

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 agenda packet.
- B. There were no ex parte communications or abstentions.
- C. No agenda items were deferred.

ITEM NO. 2 MINUTES

Consider approval of the minutes from the February 1, 2018 meeting of the Board.

Gascon requested an edit to his comment on Page 4, Paragraph 3 of the minutes, to remove the word 'bordering' and rephrase that 'he felt it was insulting'.

ACTION TAKEN

Motioned by Gardner, seconded by Wilbur, to approve the minutes from the February 1, 2018 meeting of the Board as amended.

Unanimously approved 6-0.

BEGIN PUBLIC HEARING:

ITEM NO. 3 VARIANCE FROM THE PARKING AND DRIVEWAY STANDARDS FOR A RESIDENTIAL DWELLING; 868 ELM STREET

B-18-00098: 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 surfacing requirements for parking and driveway standards required by 20-913(e)(1) of the City Code for a detached dwelling. The applicant is seeking a variance from this code standard to allow for the construction of a gravel driveway. The property is located at 868 Elm Street. Submitted by Tiffany Asher, property owner of record.

STAFF PRESENTATION

Mortensen presented the item.

Mahoney asked if a solid surface border would be acceptable.

Mortensen said yes, concrete edging is acceptable, as well as a concrete pad near the accessory structure and driveway apron as required by Public Works.

Mahoney asked if the purpose of edging is to contain the permeable material.

Mortensen said that is correct. He noted that the driveway apron and parking pad are required regardless of driveway material.

Gardner asked if the applicant is exempt from building an apron for the current driveway.

Mortensen said that is correct.

Wilbur asked what percentage of properties in North Lawrence have gravel driveways.

Mortensen said he doesn't have any solid numbers but acknowledged that there is a wide variety of driveway types in North Lawrence and specifically in Zone X. He mentioned that there were some numbers provided in a communication submitted by a member of the public.

Crick explained that the requirement for driveway material is dependent on when the driveway was constructed and the code standards for that time period.

Gardner asked if the property is within the 500 year floodplain.

Mortensen explained that the property is located within Zone X, an area protected by the levee with a .2% chance of flood every 100 years.

Crick added that this area was historically referred to as the 500 year floodplain.

Gascon asked for staff's response to the communication submitted by the North Lawrence Improvement Association, which does not support the use of concrete or asphalt driveways in North Lawrence.

Crick said the Land Development Code prescribes certain paving materials that are permissible and gravel is not one of them.

Gascon asked why gravel is not permissible.

Crick said he could not definitively answer that question based on when the code was written. He explained that solid surface paving probably occurred citywide because gravel damages asphalt and is a potential liability. He said the idea of amending the code to allow gravel in some areas has been voiced in the past but has not yet been considered by the City Commission.

Gascon asked if there are codes or ordinances preventing property owners from parking anywhere on their property.

Crick said that's correct, vehicles must be parked on improved parking surfaces.

Shipley asked if the purpose of a driveway apron is to prevent the gravel from escaping.

Mortensen said that's correct.

Gascon said property owners are not allowed to use gravel but the City has gravel roads.

Crick said he's aware of at least one gravel access alley that was inherited from the County that will be constructed to standard.

APPLICANT PRESENTATION

Ms. Tiffany Asher, property owner, explained the reason for her request for gravel, noting that she is willing to install concrete edging and the apron.

Gardner said he supports the property owner's plan, and asked if the accessory building has an existing apron.

Asher said it does not.

Gardner said it appears the proposed driveway will be smaller than the existing.

Asher said it will be narrower.

Gardner pointed out that less driveway means more permeable surface, which is good.

Shipley asked about the location of the proposed fence.

Asher indicated on a map the proposed location of the fence, noting that relocation of the driveway will make fencing more functional.

Gascon asked if the purpose of the gravel will be to reduce driveway construction costs and to reduce flooding on the property.

Asher said yes, flooding is an issue.

Gardner asked if she was willing to install concrete borders.

Asher said yes, they look nice and are functional.

Wilbur asked if the gravel with concrete edging would satisfy the City.

Crick said yes, the containment of gravel with edging is appropriate. He reminded the Board that action in that direction would require a motion with conditions.

Gascon asked if the photo of 618 Walnut Street (depicting a driveway with concrete edging) is an acceptable form of construction to the applicant.

Asher said yes, it is acceptable.

PUBLIC COMMENT

Mr. Allen Johnson, 842 Elm Street, said he supports the use of gravel because it is cost effective, practical, and looks nice when properly maintained. He submitted a communication in support of the variance which was included in the packet.

ACTION TAKEN

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

Unanimously approved 6-0.

BOARD DISCUSSION

Gardner said he's ready to approve the variance with the conditions supported by staff.

Gascon asked if there was any other discussion on the variance.

Shipleigh asked for clarification about the options available to the applicant, with and without a variance.

Mortensen clarified the options available to the applicant.

Gascon asked if there is a difference between driveway edging and ribbons.

Crick explained that concrete ribbons are meant to be driven on, while the purpose of edging is to contain the driveway material. He discussed the function of the Driveway Committee.

Mahoney clarified that the City supports the use of concrete edging to contain gravel and the applicant is willing to install it, but it would require a variance.

Crick said that is correct.

Gascon asked if there are specifications for the concrete edging.

Mahoney said the staff report discussed specifications for edging. He felt they should expand their discussion to determine whether the variance request meets the five conditions.

Gascon asked about uniqueness.

Mahoney felt that the property's location in North Lawrence, the existing septic tank, the drainage issue, and location of the existing driveway contribute to the uniqueness of the property.

Gascon asked Gardner if he had any thoughts about the flood zone.

Gardner explained that many 500 year floodplains do flood. Generally, residential areas are not constructed on either side of a levee, the area is usually reserved for park or agricultural uses.

Gascon suggested that the proximity of the levee creates a hardship for adjacent land owners.

Shipleigh mentioned that there is a new pump station.

Gardner said the pump station is a mitigation method for anticipated flooding.

Mahoney concluded that a residential neighborhood next to a levee is unique.

Crick said the levee is certified at its height and capacity ratios by the stormwater engineer, and when it was constructed, North Lawrence was part of Jefferson County. He explained the Zone X designation.

Gardner noted that a smaller driveway improves the permeability of the property.

Mahoney asked how many homes in North Lawrence are on septic systems.

Crick said there aren't many.

Gascon said the property is adjacent to a levee in a flood zone and has a septic tank, factors which make it unique. He noted that all communications received from neighbors were in support of the variance request, and that the hardship arises from financial and safety concerns.

Crick reminded the Board that financial factors are not available for consideration.

Shipley said the desire to move the driveway is a hardship created by the owner.

Gardner asked staff to explain their alternative recommendation which supports the use of concrete edging with gravel.

Mortensen said the option was discussed with the Planning Director after the initial meeting with the applicant.

Shipley said the applicant has agreed to that recommendation.

Mahoney said it sounds like a compromise has been reached.

Gascon felt the first four conditions had been met but struggled to understand whether the request was against the spirit of the code since it seems the code is lacking in this area.

Wilbur agreed.

Mahoney explained that the intent of disallowing gravel within the City is for aesthetic and safety reasons, but that North Lawrence is the exception. He felt that the request was not opposed to the code because the staff report does support the use of gravel with concrete edging.

Gascon asked why they should bother with the concrete edging.

Mahoney said containment is important.

Wilbur said safety could be an issue without containment.

Clark noted that the apron also ensures public safety.

ACTION TAKEN

Motioned by Gardner, seconded by Wilbur, to approve the variance request, based on staff recommendation, with the condition that the applicant install a concrete pad adjacent to the accessory structure and concrete edging along both sides of the driveway.

Unanimously approved 6-0.

Clark told the applicant he appreciated the amount of effort she put into her application.

Shipley pointed out that this type of variance request seems to be common in the area. She asked what changes need to occur to eliminate the need for a variance.

Crick said a text amendment would be needed to amend the Land Development Code.

Shipley made a suggestion to the applicant that a request for a text amendment could be beneficial to others in the area.

**ITEM NO. 4 VARIANCE FROM THE FRONT BUILDING SETBACK FOR A
RESIDENTIAL DWELLING; 1415 E. 18TH STREET**

B-18-00100: 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 front setback standard required by Section 20-601(a) of the City Code for the RS7 (Single-Dwelling Residential) District. The applicant is seeking a variance from this code standard reducing the front setback to a minimum of 1 foot to allow for the construction of an attached car port. The property is located at 1415 E. 18th Street. Submitted by Napoleon S. Crews, Crews Law Firm, on behalf of Todd La Prad, property owner of record.

STAFF PRESENTATION

Crick presented the item.

APPLICANT PRESENTATION

Mr. Napoleon Crews, attorney for the applicant, acknowledged that the applicant's situation is not ideal. He explained that Mr. La Prad was in an auto accident and broke his back, and has been unable to work since. He said the main reason Mr. La Prad chose to construct a carport was to make maintaining his vehicle and driveway easier with his limited physical ability. He noted that the contractor who constructed the carport took advantage of Mr. La Prad, did not secure a building permit, and is no longer in the area. He felt the hardship aspect was not adequately addressed in Mr. La Prad's previous application for variance. He argued that the structure is not an eyesore, is not adverse to the public health and safety, and is well constructed. He also did not believe this would set a precedent in the area. He concluded that Mr. La Prad needs help now and cannot maintain his property on his own, and it will cost more to tear down the structure than it cost to build.

Mr. Todd La Prad, property owner, said the reason he didn't appear before the Board for his first variance request was because he was on morphine and couldn't drive.

Gardner said it was helpful that the property owner was present to answer questions.

Wilbur asked if the structure was built with a one foot setback based on a decision made by the contractor.

Mr. La Prad said the structure was built to accommodate the length of his truck.

No public comment.

ACTION TAKEN

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

Unanimously approved 6-0.

BOARD DISCUSSION

Gardner said the carport looks well built, and he noticed other carports in the neighborhood that appeared to encroach upon the setback. He felt the lack of space to build a carport within the setback makes the situation unique. He asked if the applicant's physical nature could be considered when determining hardship and uniqueness.

Gascon said they would defer that discussion until they've addressed the other conditions.

Mahoney asked staff to clarify the setbacks on the property.

Crick provided a visual indicating the property setbacks.

Mahoney asked if setback is measured from the center of the street.

Crick said it is measured from the property line.

Gardner asked what purpose the setback serves.

Crick explained that setbacks usually create a uniform front and/or protect certain items in the rights-of-way such as sewer lines, water lines, and sidewalks.

Gardner asked if setbacks include easements.

Crick said easements aren't necessary in the right-of-way, they only apply on private property.

Gardner concluded that the setback is removing the ability of the property owner to use his own property.

Clark asked staff to indicate what utilities are located in the property's right-of-way.

They discussed the City's ability to use setback areas for public infrastructure.

Gascon felt this case is a good example of an overbuilt street and is contrary to the idea that homes built closer to the right-of-way foster better connections between neighbors.

Shipley pointed out that the street doesn't currently have sidewalks.

Gardner noted that there are other properties in the area with carports that appear to be similar.

Crick explained that setbacks also provide reassurance to property owners that their neighbors won't impede their own access or ability to use and enjoy their property.

Gardner said the truck obstructs visibility with or without the carport structure.

Crick said the code does not differentiate between a structure that does or does not have walls, provided it is covered, it is subject to setback requirements.

Gardner didn't feel the carport added any safety issue that isn't already present when the truck is parked in the driveway.

Gascon agreed. He asked what action will be taken by the City if the variance is not approved.

Shipley asked if the applicant would need to tear down the structure.

Crick said that decision would be made by Code Enforcement and the Planning Director. He explained that work without a permit usually requires a remedy to correct the action.

Gardner asked if they can find uniqueness and hardship based on the applicant's condition and if so, whether it can be approved with a condition.

Crick said the variance runs with the land and not the owner, and could not be conditioned as such. In addition, the hardship originates from requirements of the Land Development Code, as opposed to needs of the property owner.

Gardner argued that the hardship is created by the setbacks and the lack of a carport is a safety hazard to the property owner.

Wilbur asked if the city is concerned that the carport would need to be removed or altered if future work is planned within the right-of-way.

Crick said it is a possibility, but typically there are easements in place, and given the age of the waterline, utility work might be imminent.

Gascon said the chances of the carport interfering with the waterline is unlikely.

Mahoney asked if there are Fair Housing or ADA regulations at play in this situation.

Crick was not aware of any requirements that would pertain in this instance.

Mahoney said he didn't think ADA requirements would apply to a residence.

Gascon said it won't look good forcing a disabled gentleman to tear down his carport.

Mahoney asked Board members to keep in mind that the action was taken by the applicant, that there was no building permit pulled, and homeowners should be expected to complete their due diligence. The Board's role is to determine whether the conditions for a variance are met, and if the variance is denied, the City will make any subsequent decisions.

Gascon asked the Board to review the request as if it had not yet been built.

They discussed the applicable conditions and agreed that while the carport overall does not have a negative impact, the uniqueness condition has not been met.

Gardner asked if the applicant had any additional information that would help the Board's decision.

La Prad said the gas lines were just replaced last year. He said the waterline replacement is planned and, based on utility markings, it doesn't appear that will interfere with the carport.

Gardner said that is helpful information, although the Board's challenge is to meet all five of the conditions, including the uniqueness.

Crews argued that the setback and lack of space for a carport on any other portion of the property makes the property unique. He also argued that the property owner completed his due diligence to the best of his ability given his physical condition.

ACTION TAKEN

Motioned by Gascon, seconded by Gardner, to approve the variance with the condition that there could be no additional structures built in the setback or alterations to the existing structure on the site.

Motion failed 2-4, Clark, Mahoney, Shipley, and Wilbur dissented.

Motioned by Mahoney, seconded by Clark, to deny the variance request because it does not meet the five conditions, subject to Findings of Fact provided by the City.

Motion passed 4-2, Gascon and Gardner dissented.

Gascon expressed his empathy to the applicant and acknowledged that his situation is difficult and unfortunate.

Shipley said that Code Enforcement doesn't always follow up on items, such as the driveway apron mentioned in the previous case.

Crick explained that a driveway apron is a Public Works enforcement issue.

**ITEM NO. 5 ADOPT FINDINGS OF FACT FOR BOARD OF ZONING APPEALS
DECISION DENYING A PARKING AREA SETBACK FOR A
RESIDENTIAL DWELLING AT 900 ALABAMA STREET**

Consider adopting findings of fact as reasons for the Board's decision in the matter of the following appeal:

B-17-00664: 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 25 foot parking area setback standard required by Section 20-908(b) of the City Code for a Residential District. The applicant is seeking a variance from this code standard reducing the parking setback to a minimum of 10 feet to allow for the construction of a parking area. The property is located at 900 Alabama Street. Submitted by Mark Kern, JJMT, L.L.C., property owner of record. Heard by the Board of Zoning Appeals on February 1, 2018.

ACTION TAKEN

Motioned by Mahoney, seconded by Clark, to authorize the chair to sign Findings of Fact for the Board's decision denying a parking area setback for a residential dwelling at 900 Alabama Street.

Unanimously approved 6-0.

Gardner asked how the Findings of Fact are applied.

Crick clarified that the Findings of Fact are specific to the Board's action on the case for 900 Alabama Street and are not applicable to surrounding properties.

ITEM NO. 6 MISCELLANEOUS

- A. Correspondence with Mark Kern, re: 900 Alabama Street
Crick explained that the applicant sent an email to staff after the item was heard, and this correspondence was staff's response.

Gascon asked if they must take any action.

Crick said no. He welcomed any questions about the correspondence.

Gascon said there was originally confusion about the number of bedrooms and parking spots.

Mahoney said he's comfortable with the findings in the case.

- B. Upcoming Annual Training
Crick explained the need to schedule a training session.

They chose to schedule training in the fall just prior to a regular meeting.

- C. Consider any other business to come before the Board.
Crick mentioned there are items scheduled for the May meeting.

ACTION TAKEN

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

ADJOURNED 8:15pm.