



LAWRENCE BOARD OF ZONING APPEALS
MEETING MINUTES FOR **DECEMBER 7, 2017**

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

ITEM NO. 1 COMMUNICATIONS

- A. There were no communications not included in the agenda packet.
- B. Disclosure of ex-parte communications and/or abstentions for specific agenda items:

Gardner said he ran into the applicant for Item No. 3 at a restaurant but they did not discuss the case.

- C. There were no agenda items deferred.

ACTION TAKEN

Motioned by Gardner, seconded by Wisner, to elect Gascon as temporary Chair.

Unanimously approved 5-0.

ELECTION OF OFFICERS FOR 2017-2018

Accept nominations for and elect Chair and Vice-Chair for the coming year.

ACTION TAKEN

Motioned by Gardner, seconded by Wisner, to elect John Gascon as Chair and Patrick Wilbur as Vice Chair.

Unanimously approved 5-0.

Motioned by Gascon, seconded by Gardner, to elect Jeff Crick as Secretary.

Unanimously approved 5-0.

ITEM NO. 2 MINUTES

Consider approval of the minutes from the September 7, 2017 and October 20, 2017 meetings of the Board.

ACTION TAKEN

Motioned by Clark, seconded by Wisner, to approve the minutes from the September 7, 2017 meeting of the Board.

Motion carried 3-0-2, Wilbur and Gardner abstained.

Motioned by Clark, seconded by Gardner, to approve the minutes from the October 20, 2017 meeting of the Board.

Motion carried 3-0-2, Gascon & Wisner abstained.

BEGIN PUBLIC HEARING:

ITEM NO. 3 VARIANCE FROM THE REAR BUILDING SETBACK FOR A RESIDENTIAL DWELLING; 2801 WINTERBROOK DRIVE

B-17-00638: 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 30 foot rear 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 rear setback to a minimum of 21.5 feet to allow for the construction of an addition. The property is located at 2801 Winterbrook Drive. Submitted by Jyl and David Haynes, property owners of record.

STAFF PRESENTATION

Crick presented the item.

Clark asked if the setback will still allow for the utility easement on the southwest side of the property.

Crick said yes, the easement cannot be encroached upon.

Gardner said the easement on the other side was an issue as well.

Crick explained the difference between a drainage easement and a utility easement.

Gascon noted that property owners can build at their own risk.

Crick agreed.

APPLICANT PRESENTATION

Ms. Jyl Haynes, property owner, briefly explained details of the variance request.

No public comment.

ACTION TAKEN

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

Unanimously approved 5-0.

BOARD DISCUSSION

Gardner said it's a slam dunk.

ACTION TAKEN

Motioned by Gardner, seconded by Wilbur, to approve the variance as recommended in the staff

report.

Unanimously approved 5-0.

Mr. David Haynes, property owner, explained their history with the property.

**ITEM NO. 4 VARIANCE FROM THE FRONT BUILDING SETBACK FOR A
RESIDENTIAL DWELLING; 541 PERRY STREET**

B-17-00642: 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 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 14.85 feet to allow for the construction of a balcony. The property is located at 541 Perry Street. Submitted by Berniece Garber, for Robert M. Gibler and Jeffrey W. Gibler, property owner of record.

STAFF PRESENTATION

Crick presented the item.

Gardner said he's confused how a balcony will be incorporated into a one-story home.

Crick said staff also inquired about the logistics of the balcony. He said staff did not receive any real clarification so it is assumed there will be a second story modification of some sort.

Gascon asked for more information about the building permit condition.

Crick explained that a variance expires after 24 months if a building permit is not issued, and is also contingent upon compliance with the Board of Zoning Appeals (BZA) approval. The building permit cannot exceed the scope proposed in the variance.

Wilbur asked if the condition includes all changes or just larger changes.

Crick replied that a larger scope would not be approved.

Gascon clarified that the variance is restricting the amount of encroachment as well as the potential square footage.

Crick said that's correct- any deviations should come back before the Board.

The applicant was not yet present.

PUBLIC COMMENT

Mr. Richard Macheca, 527 Perry Street, said his concern is not with the balcony, but that the house caught fire three years ago and has yet to be repaired. He would like to make sure someone is looking into the condition of the property.

Crick said the Board is not able to address any other issue but the porch, but Code Enforcement is aware of the condition of the property.

Gardner said he wondered about the purpose of the tarp.

Crick said Code Enforcement can certainly follow up on the property.

Gascon asked if the home is vacant.

Mr. Macheca said yes.

Gascon asked if Mr. Macheca has any issue with the property owner building on the front of the house.

Mr. Macheca said he is fine with building in front of the house he just wants to see some rehabilitation to the property.

Crick said Code Enforcement has been in contact with the property owner.

ACTION TAKEN

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

Unanimously approved 5-0.

BOARD DISCUSSION

Wilbur said it's good they're moving forward and their request seems reasonable.

Gascon asked for the current setback.

Crick said the setback is 25 ft.

Gascon noted another approximately 15 ft between the property line and the road.

ACTION TAKEN

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

Unanimously approved 5-0.

APPLICANT PRESENTATION

Ms. Berniece Garber, applicant, presented a proposed construction drawing and explained the project and variance request.

Gascon asked if staff has seen the drawing presented.

Crick said no.

Gascon asked about the carport.

Garber indicated on the drawing where the existing home ends.

Gascon asked if the carport is the absolute front of the new design and if it will stick out farther than the concrete patio.

Garber said it would not. She noted that many houses on Perry Street are closer to the street than this property's patio.

Gascon asked if staff estimated the average front setback for homes on the street.

Crick said no, the applicant has presented new information that was not included in staff's evaluation. He noted that the new information was also not included in the legal notice.

Clark asked if the presented drawings is an architectural rendering or just a concept.

Garber said it's a concept- she didn't want to draw up plans if the variance isn't approved.

Gascon asked if the rendering was made specifically for the property or if it was taken from somewhere else.

Garber said it was taken from somewhere else.

Gascon said the rendering shows an encroachment beyond the scope of the variance request. He asked if the applicant is asking for an encroachment for the entire width of the property.

Garber said the rendering she presented is what she would like to build.

ACTION TAKEN

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

Unanimously approved 5-0.

PUBLIC COMMENT

Mr. Richard Macheca, 527 Perry Street, suggested they reverse the orientation of the plan but he has no objection to it.

ACTION TAKEN

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

Unanimously approved 5-0.

BOARD DISCUSSION

Wilbur asked staff if they need to clarify that the Board cannot approve the conceptual design presented.

Crick said the Board is procedurally allowed to consider the originally advertised variance request, which is for a balcony over the slab. Any subsequent encroachments into the setback will require separate application and consideration by the Board. He reminded the Board they are only empowered to approve with recommended condition or deny the variance request.

Gardner asked if the proposed condition allows the applicant to build within the front edge of the porch for the length of the building.

Crick said no, the applicant can only stay within the confines of the slab, as was reviewed in the staff report and advertised for the case. He noted that the Board can modify the condition but he advised them to use careful wording if they choose to do so.

Gardner asked if they can word the condition to include the length of the building as long as it stays within other setback requirements.

Gascon pointed out the language in the staff report that indicates a setback of a minimum of 14.85 feet for the construction of a balcony, and the definition of "balcony" is not defined.

Crick advised the Board to consider the application as presented in the staff report, and if an additional variance application is required for an addition that can be addressed. He reminded them that the legal publication was for a balcony and not for an addition to a house.

Gascon said the application was quite vague, but asked to use the precedence of the encroachment to improve the rest of the property in that encroachment area.

Crick said that's correct. He said staff followed up with the applicant in an email, which is included in the packet, indicating the request was for the purpose of a balcony. He read aloud the legal publication for the item.

Gascon asked if there is precedent for allowing encroachment and approving something different than what was advertised.

Crick said the Board is not allowed to consider something that wasn't advertised to the public.

Gascon asked where the responsibility falls if the legal publication is different from the original request.

Crick explained that the Board would not have heard the item because staff would have caught the error.

Gascon asked what happens if a mistake is actually made.

Crick said if, for example, a setback variance is advertised greater than the request, the applicant is empowered to build to the greater setback. If the setback variance is advertised less than the request, an additional variance would be necessary.

Wilbur said he understands where Gascon is going with his line of thinking but he doesn't feel it's relevant to the request at hand. He noted the original application and the email clarifying the purpose of the variance.

Clark said the applicant is also expected to make an informed application and to exercise due diligence. He feels the staff recommended condition is appropriate and he's comfortable approving the request as is.

Gascon agreed. He asked if there's precedent set by the Board to approve encroachments that line up with the most forward building line, provided it is properly advertised as such.

Crick said the Board has reviewed and approved variances of that design aesthetic that were advertised as such. He said it's not unheard of for an addition to become level with the rest of the structure.

Gascon asked if there might be any issues if the variance is approved as recommended.

Crick said an applicant is able to apply for a variance after they've already received one- the approval of one does not preclude the approval of another.

Gascon asked if the second variance might make the first moot.

Crick said that's possible.

Gardner asked how a balcony could be considered if a second floor is implied to achieve a balcony.

Gascon asked staff to read the last two sentences of the legal publication, specifically the sentence referring to the balcony.

Crick read the excerpt from the legal publication.

Gascon said his concern is not properly notifying the public of the intended project.

Wisner said the drawing presented tonight appears it will need some other approvals if it is constructed.

Gardner noted that it would need a building permit.

Crick said a building permit does not require public notice, but a variance does.

They discussed issues with approving something different than what was legally advertised.

ACTION TAKEN

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

Unanimously approved 5-0.

PUBLIC COMMENT

Ms. Berniece Garber asked if there is another fee for a new variance.

Crick said yes.

Garber asked if there is anything that can be modified with the proposed request to avoid paying a new fee.

Crick said that staff could have considered the concept plan in the staff report if it had been provided during the review process.

Gascon asked if the Planning Director has the authority to waive fees in scenarios where it might be appropriate.

Crick replied that he does, but with discretion.

Gascon suggested that it might be excessive to double the cost if the applicant provided insufficient information but was possibly rushed through the process.

Crick said that if the application was incomplete and not ready for consideration, staff would have

held it for that reason. He explained that staff is not able to compel applications, only to accept them, and if they meet the completion criteria staff is compelled to bring them before the Board. He noted that staff works to provide as much information as possible.

Garber asked if she could still bring the second floor out the entire width of the building to the requested setback.

Gascon said that's not likely but the Board can't speak to that issue.

Garber asked if it would be considered a balcony if there is nothing underneath it.

Gascon read the definition of a balcony, which implies that any enclosed space is not a balcony. He felt the ultimate issue was the information provided in the application that uses the word "balcony".

ACTION TAKEN

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

Unanimously 5-0.

BOARD DISCUSSION

Gascon noted that it's a complex process and everyone needs to understand the process. He said the ultimate goal is to improve the property, and when possible, the Board strives to allow property owners to do that within guidelines of the code.

ACTION TAKEN

Motioned by Clark, seconded by Wisner, to approve the variance for the proposed balcony with the condition as recommended in the staff report.

Unanimously approved 5-0.

ITEM NO. 5 MISCELLANEOUS

- A. Approval of the 2018 Meeting Calendar

ACTION TAKEN

Motioned by Gardner, seconded by Wilbur, to approve the 2018 meeting calendar.

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

Crick mentioned that Courtney Shipley was just recently appointed to the Board and will join the Board next month.

Gascon asked about the review process when new information is submitted after the original application.

Crick explained the review process and the pre-submittal process.

ACTION TAKEN

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

Unanimously approved 5-0.

ADJOURNED 7:44 PM