

LAWRENCE BOARD OF ZONING APPEALS

Meeting Minutes of February 24, 2016 (Rescheduled from February 4th) – 6:30 p.m.

Members present: Fertig, Gardner, Holley, Kimzey, Wilbur

Staff present: Cargill, Crick, Guntert

ITEM NO. 1 COMMUNICATIONS

Guntert said all communications received were included in the online packet.

Wilbur abstained from Item 3.

There were no agenda items deferred.

ITEM NO. 2 MINUTES

Consider approval of the minutes from the January 7, 2016 meeting of the Board.

ACTION TAKEN

Motioned by Gardner, seconded by Holley, to approve the minutes from the January 7, 2016 meeting.

Motion carried 4-0-1.

BEGIN PUBLIC HEARING:

ITEM NO. 3 OFF-STREET PARKING SPACE VARIANCE FOR RENOVATION OF AN EXISTING DUPLEX RESIDENTIAL USE; 1030 OHIO STREET [DRG]

B-16-00005: 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 a variance from the required number of off-street parking stalls calculated using the standards found in Section 20-902, "Off-Street Parking Schedule A" in the Development Code, which requires multi-dwelling structures to provide one off-street parking stall per bedroom for a duplex dwelling structure. The applicant is seeking a variance to reduce the number of parking stalls from the code required six (6) spaces to four (4) parking spaces, which will be accessed from the alley. The property is located at 1030 Ohio Street. Submitted by Abel Leon, President, Kolibri Ventures LLC, the property owner of record.

STAFF PRESENTATION

Guntert presented the item.

Fertig understands the property to be historic, and asked what makes it unique.

Guntert explained that the property is currently a duplex with each dwelling unit being two bedrooms. There were two parking spaces off the alley, which is two parking spaces short of the code requirement. The property is narrower than an Original Townsite lot - 44 feet instead of 50 feet. If the lot was the typical 50 feet width it would have allowed an additional parking space. These conditions were in existence when the property was purchased and not created by the applicant.

Fertig asked how long the property had been a duplex with four bedrooms and two parking spaces.

Guntert said he did not know.

Holley asked if the one-to-one ratio for parking accounts for guests.

Guntert said the parking standards address guest parking but only when there were 10 or more dwelling units on the property.

APPLICANT PRESENTATION

Mr. Brett Groene thanked staff and neighbors for their support of the project, noting that prior concerns by neighbors have been alleviated. He said it's a historic house that is crumbling and needs attention. As proposed, the project will restore its historical integrity. He could not recall the year the property became a duplex.

Mr. Abel Leon, property owner, said the previous owner took ownership in the early 90's; it was a duplex at that time. He added that they really only have one parking spot, due to the condition of the detached garage, which will be removed as part of the project improvements. He said the neighbor on the north would also gain a parking space as well because of the grading work they would be doing on the back side of the property adjacent to the alley.

Gardner asked the applicant to indicate on the map where the neighbor will gain a parking space.

Leon explained the situation and indicated the space on the map.

Holley suggested they could make the basement space a studio, and enter a shared use agreement for the extra space the neighbor will gain.

Groene said this is their third variation on the original project, but they have not explored that idea.

Fertig asked if there is currently one off-street parking space for that property.

Groene said yes.

PUBLIC COMMENT

Ms. Marci Francisco, 1101 Ohio Street, said many property owners in the neighborhood would like to increase the number of bedrooms they have and many properties need rehabilitation. Those factors did not make this project unique. She felt this is a self-inflicted hardship, partially due to the City's stacked parking determination for duplexes. She briefly discussed stacked parking. She suggested the applicant create four spacious one-bedroom apartments to decrease the amount of needed parking. She felt any new development in the neighborhood must adhere to the code required parking standards and appreciates the applicant's efforts to work with the neighborhood and preserve the historic structure.

Mr. Kyle Thompson read aloud Ms. Marcia Epstein's communication submitted and included in the online packet earlier today. Personally, he would like to see applicant be allowed to move forward with the project.

Mr. Jon Josserand brought up the Oread Design Guidelines, which are not officially adopted at this time. He said granting the variance will harm those who have relied on the parking regulations and felt it would set a precedent. He said it was not the purpose of this Board to remedy economic situations. He feels this is not a unique situation, and recommended the Board deny the project request.

Ms. Candice Davis said she's lived in the neighborhood for 18 years and worked hard to stabilize it. She said parking impacts density. They were working hard on the neighborhood plan with design guidelines that would be implemented as conservation overlay districts to combat the stacked parking problem. She doesn't feel the project is appropriate for this property due to the narrow lot and steep grade, which will create more water runoff issues.

Leon read through minutes from the most recent Historic Resources Commission (HRC) meeting, specifically Ms. Marcia Epstein's comments regarding this project. The minutes stated that she was in favor of a variance for a few parking spaces, which was an important part of their decision and current proposal. He said they have staff and HRC support, in addition to the three neighbors who wrote letters in support. He read the letter of support sent by Mr. Arthur Neis.

ACTION TAKEN

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

Unanimously approved 5-0.

BOARD DISCUSSION

Fertig said the project is tricky because Oread parking is a struggle. She said there's currently a deficit of two parking spaces which is forcing tenants to park on the street. The HRC approved the project for two extra bedrooms, but she is struggling with the uniqueness factor.

Holley said the HRC doesn't address the parking, but it sounds like the developer is doing what he should by working with the neighborhood. He is also stalled on the uniqueness.

Fertig said it's a 44 feet wide lot, which is unique.

Holley said it's not unique to this neighborhood.

Fertig said other parking arrangements have been shot down.

Holley acknowledged the hard work the applicant has put into the project, but the Board is still tasked with finding a uniqueness factor that he can't find.

Kimzey asked if it's unique because the proposed project doesn't make the parking problem worse than it already is.

Fertig did not recall any similar variance requests like this one.

Gardner said the property is unique based on the lot width and the decisions made by the HRC. He has no problem approving the variance since it will add to the available parking and not worsen the parking deficit.

Fertig said that would speak to whether it would not adversely affect the adjacent property owners or the public health and safety.

Holley said if he was the owner he would have every interest in maximizing the parking, but doesn't know if that makes this unique.

Fertig said the history of the project is discussed in the staff report, but there is no mention as to what is unique about the property.

Kimzey was not sure the project presents anything unique; it had to be related to the property.

Fertig believed the request met all the criteria for a variance except the uniqueness factor.

Holley agreed, but was also unsure if they met the hardship criteria.

Fertig loved everything about the project but cannot get past the lack of uniqueness to meet that condition.

Kimzey agreed and feels satisfied the request meets the other four criteria.

ACTION TAKEN

Motioned by Holley, seconded by Fertig, to deny the variance for failure to meet the condition of uniqueness.

Motion carried 3-1-1.

**ITEM NO. 4 SIDE YARD BUILDING SETBACK VARIANCE FOR NEW ROOM
ADDITION ON AN EXISTING RESIDENTIAL DWELLING; 5750 YANKEE
TANK COURT [DRG]**

B-16-00006: 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 to reduce the 20 feet side yard building setback required in Section 20-601(a) of the City Code to a minimum of 4.6 feet, which will allow construction of a 16 feet by 22 feet kitchen addition on the northeast corner of the residential dwelling. The property is located at 5750 Yankee Tank Court. Submitted by Monte L. and Molly C. Soukup, the property owners of record.

STAFF PRESENTATION

Guntert presented the item.

Wilbur asked if the hardship is incurred if the kitchen must be built in a different location.

Guntert said relocating it would require a total revamp of the home's floor plan.

APPLICANT PRESENTATION

Mr. Monte Soukup, property owner, said the house was previously a rental property and not well maintained. He explained why the proposed kitchen placement is the best solution.

Gardner asked if they would have been able to build the kitchen before the property was annexed.

Guntert explained that it would not have been possible as proposed.

NO PUBLIC COMMENT

ACTION TAKEN

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

Unanimously approved 5-0.

BOARD DISCUSSION

Wilbur believes it's a reasonable request that meets the criteria for a variance.

Kimzey doesn't see an issue since it was originally built in a different zoning classification.

Fertig agreed and said she doesn't see any negative impact on the neighbors.

ACTION TAKEN

Motioned by Wilbur, seconded by Gardner, to approve the variance as proposed in the staff report.

Unanimously approved 5-0.

Wilbur excused himself from the rest of the meeting.

ITEM NO. 5 FRONT AND EXTERIOR SIDE YARD BUILDING SETBACK VARIANCES FOR AN EXISTING FRONT PORCH AND A NEW ROOM ADDITION ON A RESIDENTIAL DWELLING; 845 ILLINOIS STREET [JSC]

B-16-00008: A request for variances as provided in Section 20-1309 of the Land Development Code of the City of Lawrence, Kansas, 2015 edition. The requests are for a variance to reduce the 20 feet front yard and exterior side yard building setbacks required in Section 20-601(a) of the City Code, to a minimum of 15.87 feet and 11 feet, respectively. The variances are requested for an existing front porch and a proposed 10 feet x 24 feet addition on the east side of the residential dwelling. The property is located at 845 Illinois Street. Submitted by Mike Logan, property owner of record.

STAFF PRESENTATION

Crick presented the item.

APPLICANT PRESENTATION

Mr. Mike Logan, property owner, described the current porch situation and explained that he would like to square things off and open up that area of the home.

PUBLIC COMMENT

Mr. Tony Backus said the house has improved over the years and he believes Mike has done some good things with it. He felt it needs an addition to make it a modern home and supports the variance.

ACTION TAKEN

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

Unanimously approved 5-0.

BOARD DISCUSSION

Holley said it's a great addition to the neighborhood; he fully supports the variance and believed it meets the five conditions.

ACTION TAKEN

Motioned by Gardner, seconded by Holley, to approve the variance based on the staff report.

Unanimously approved 5-0.

ITEM NO. 6 FRONT, REAR, SIDE AND EXTERIOR SIDE YARD BUILDING SETBACK VARIANCES, AND OFF-STREET PARKING SPACE VARIANCE FOR A NEW RESIDENTIAL DWELLING; 945 MISSOURI STREET [DRG]

B-16-00007: A request for variances as provided in Section 20-1309 of the Land Development Code of the City of Lawrence, Kansas, 2015 edition. The first request is for variances from the code required 25 feet front yard, 25 feet exterior side yard, 20 feet rear yard, and 5 feet interior side yard building setbacks required in Section 20-601(a) of the City Code to a 5 feet front yard, 11 feet exterior side yard, 6 feet rear yard, and 3 feet interior side yard setbacks for a new single-family residential dwelling which is proposed on a nonconforming lot. The second request is a variance from the required number of off-street parking stalls calculated using the standards found in Section 20-902, "Off-Street Parking Schedule A" in the Development Code, which requires a detached dwelling to provide a minimum of two (2) off-street parking stalls. The applicant proposes to provide the parking spaces in the public right-of-way adjacent to the property with a use of right of way agreement with the city. The property is located at 945 Missouri Street. Submitted by Paul Werner, Paul Werner Architects, representing the property owner of record, Geneva L. Swartzel Trustee.

STAFF PRESENTATION

Guntert presented the item.

APPLICANT PRESENTATION

Mr. Paul Werner, Paul Werner Architects, said it's rare that someone takes a triplex and converts it back to a single-family home. He explained details of the project, and mentioned that the right-of-way agreement is currently being reviewed by city legal staff.

Holley asked how many parking spaces are included in the right-of-way agreement.

Werner explained that the agreement doesn't specify the number, but the site plan shows four.

Fertig asked if that plan is incorporated into the right-of-way agreement.

Werner said it's an exhibit to the right-of-way-agreement.

PUBLIC COMMENT

Mr. Jon Josserand thanked the applicant. He said he's supportive of their application. His only suggestion is to make sure there were four parking spaces, as shown on the site plan.

ACTION TAKEN

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

Unanimously approved 4-0.

BOARD DISCUSSION

Holley said it seems like a solid project.

Fertig said it's in desperate need of repair and there has clearly been some type of parking arrangement. She suggested they find parking by some other means as a condition of approval, if they can't come to an agreement with the City. She supports the applicant's recommendation in that regard.

Gardner asked if addressing parking is stepping beyond their purview.

Fertig asked if that recommendation is based on the fact that the property is currently out of compliance with parking requirements.

Guntert said parking should be provided on the same property as the development; in this case, it's off-premise in the city street right-of-way.

Fertig asked if approval of the variance might inadvertently approve the current parking situation.

Guntert said they need to provide it on their property.

Werner said he likes the idea that the variance acknowledges the parking agreement, that staff supports it, and that there may be other ways of providing parking.

ACTION TAKEN

Motioned by Fertig, seconded by Gardner, to approve with conditions as recommended in the staff report and based on Board discussion.

Unanimously approved 4-0

ITEM NO. 7 ACCESSORY STRUCTURE SETBACK VARIANCE FROM AN INTERIOR LOT LINE; 607 ELM STREET [DRG]

B-16-00009: 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 to reduce the 5 feet accessory building setback from an interior lot line required in Section 20-533(3), "General Standards for Accessory Structures, Density and Dimensional Standards," in the City Code, to a minimum of 1.5 feet from the rear lot line. The property is located at 607 Elm Street. Submitted by Tony Backus, Backus Construction Company, representing the property owner of record, Matthew F. Gilhousen.

STAFF PRESENTATION

Guntert presented the item.

Gardner asked about the structure to the west.

Guntert said it is a detached garage on the property next door which uses N. 6th Street for its driveway access.

Gardner asked about the setback requirement for it.

Guntert said it should have a 5 feet setback from the property line, but it does not appear to meet that setback standard based upon the City's GIS mapping layers. Another accessory structure further to the east also appears to be located closer to the rear property line.

Fertig asked if her understanding of the situation is accurate.

Guntert said the building permits were issued based upon code compliant drawings showing the accessory garage with a 5 feet setback from the rear property line. A separate building permit was issued for the new dwelling which is now finished. The lean-to addition on the accessory garage was not included in the garage permit; and a decision was made between the owner and contractor to move the garage closer to the rear property line. The project is

completed but the City is withholding a final Certificate of Occupancy until the accessory structure building setback issue is resolved.

Fertig asked (since staff is recommending denial) if the solution is to demolish the structure and build it back with the correct setback.

Guntert said the building could be lifted off its foundation and moved further away from the rear property line; or, they could remove some of the building to comply with the minimum 5 feet setback. Staff could not find how this variance was necessary because of conditions unique to the property; it was totally the result of actions of the property owner or applicant. He agreed that granting the variance will probably not affect the surrounding property owners in any way.

Holley said he doesn't see how it meets the first condition. He asked if the variance can be tied to the structure and not the property, since it was obviously an honest mistake.

Guntert said they could craft a condition that the variance would expire with the demolition/destruction of the structure.

Gardner asked if it would be possible for the properties to the north to build closer to the rear property line if there were no easements along the back of those lots.

Guntert said the zoning to the north is RSO, which has a 25 feet rear yard building setback. The two platted easements totaled 25 feet, so a principal structure could not be built any closer. Accessory structures should not be located in utility easements, but it happens sometimes because they don't always require a building permit if the size of the structure does not exceed 200 square feet.

APPLICANT PRESENTATION

Mr. Tony Backus explained the variance request and how the building mistake was made. He feels the structure meets the spirit of the code, and he explained the unique features in the home.

NO PUBLIC COMMENT

ACTION TAKEN

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

Unanimously approved 4-0.

BOARD DISCUSSION

Gardner said it originally looked like an intentional mistake, but he no longer feels that way.

Fertig agreed and did not want to blame the property owner for a builder's mistake.

Gardner asked how they could approve it without setting a precedent.

Fertig said it sounds like an innocent mistake by the builder, and a denial would result in a severe consequence. She said they could approve and make the variance applicable only to the existing structure. If that structure is removed, any new structure would have to follow the current zoning setback rules in effect at that time.

Kimzey said he also agrees but is concerned about setting a precedent.

Fertig said it would be a different situation if this was an undeveloped property. She supported the variance.

Gardner & Holley agreed.

ACTION TAKEN

Motioned by Fertig, seconded by Holley, to approve the variance based on a finding that the request met all five criteria for a variance, subject to a condition that the variance only covers the currently existing accessory structure and does not apply to any future additions or new structures that might be built on this property.

Unanimously approved 4-0.

ITEM NO. 8 MISCELLANEOUS

a) There was no other business to come before the Board.

ADJOURN 8:45 pm