

LAWRENCE BOARD OF ZONING APPEALS
Meeting Minutes of February 2, 2017 – 6:30 p.m.

Members present: Clark, Gardner, Gascon, Mahoney, Wilbur, Wisner
Staff present: Cargill, Crick, Guntert, Larkin

ITEM NO. 1 COMMUNICATIONS

- a) There were no additional communications to come before the Board that were not included in the agenda packet.
- b) There were no abstentions.
- c) Item No. 4 has been deferred.

ITEM NO. 2 MINUTES

Consider approval of the minutes from the January 5, 2017 meeting of the Board.

ACTION TAKEN

Motioned by Gardner, seconded by Wisner, to approve the minutes from the January 5, 2017 meeting of the Board.

Motion carried 3-0-3.

BEGIN PUBLIC HEARING:

ITEM NO. 3 VARIANCE FROM THE EXTERIOR SIDE YARD BUILDING SETBACK FOR A RESIDENTIAL DWELLING; 1501 OAK HILL AVENUE [DRG]

B-16-00560: 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 20 feet exterior side yard building setback standard required by Section 20-601(a) of the City Code for the RS5 (Single-Dwelling Residential) District. The applicant is seeking the variance from this code standard to allow for extra buildable envelope width on the 46.3 feet wide corner lot. The property is located at 1501 Oak Hill Avenue. Submitted by J. Dean Grob, Grob Engineering Services, LLC, for Bruce D. and Sharon L. Livingston, the property owners of record.

STAFF PRESENTATION

Guntert presented the item.

Clark asked what merits a remodel.

Guntert said they would move the house onto a new foundation, particularly because they would like to create a second buildable lot.

Gardner asked if it would be moved closer to Oak Hill Avenue.

Guntert said it would be moved closer to Summit Street.

Wilbur asked if it would be a problem to demolish and rebuild the house with the same footprint.

Guntert said staff believes there are other design options that would meet the code standards.

Gardner asked if the house can only be built 21 ft wide.

Guntert said they could potentially do a lot line adjustment to possibly allow a 36 ft wide structure.

Gascon asked to view a graph on page 21 of the packet.

They discussed different lot line adjustments and design options that are possible for the site.

APPLICANT PRESENTATION

Mr. Dean Grob, applicant, said the subdivision regulations say you can't build across two lots. The owner doesn't feel it's worth moving the house, and the original setbacks wouldn't have allowed that. He said the setback requirements allow it to be reduced to 10 ft if the property to the rear is facing the other direction. He said they could do the

Gardner asked if they want to build only one house

Mr. Grob said no, they have two lots so they would like to build on both. He said the house would have to face Oak Hill Avenue because turning it to face Summit Street would create far less buildable space.

NO PUBLIC COMMENT

ACTION TAKEN

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

Unanimously approved 6-0.

BOARD DISCUSSION

Mahoney said he has a hard time seeing the hardship if they tear down the house, if the only incentive is economic.

Clark asked what the minimum lot width is for the zoning designation.

Guntert said 40 ft.

Clark said a minor subdivision would only move the lot line 6 ft.

Mahoney said he has no issue with the uniqueness of the lot.

Clark agreed and agrees with staff's recommendation.

Mahoney agreed.

Wilbur agreed and supports staff's recommendation.

ACTION TAKEN

Motioned by Clark, seconded by Wilbur, to approve the variance request with the condition that the existing house is kept intact/moved onto lot 37, based on recommendations in the staff report and Board discussion.

Motion carried 4-1-1. Gascon dissented and Gardner abstained.

BOARD DISCUSSION

Gascon said the zoning code has some issues.

ITEM NO. 4 **VARIANCE FROM THE ACCESSORY DWELLING UNIT BUILDING SIZE STANDARD AND PROPERTY OWNER OCCUPANCY REQUIREMENT; 737 ELM STREET [DRG]**

B-17-00001: 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 a variance from the code permitted maximum size accessory dwelling unit defined in Section 20-24(1)(i) of the City Code. The code standard limits the size of an accessory dwelling unit to no more than 33 percent of the living area of the primary dwelling or 960 square feet, whichever is less. The living area in the principal dwelling is 532 square feet which limits the size of an accessory dwelling unit to 177 square feet. The proposed size of the accessory dwelling unit is 780 square feet. The second request is a variance from the property owner occupancy requirement in RS Districts per Section 20-534(2)(iv) of the City Code. The property is located at 737 Elm. Submitted by Susan Raines, the property owner of record.

ITEM NO. 5 **APPEAL OF AN ADMINISTRATIVE DECISION INVOLVING THE DENIAL OF EVIDENCE TO SUPPORT REGISTRATION OF A 5-UNIT NON-CONFORMING RESIDENTIAL USE AT 433 OHIO STREET [DRG]**

B-16-00522: Consider an appeal filed by Paul R. Horvath, Morning Star Management, LLC, representing Jason E. Horvath, property owner of record of the real property at 433 Ohio Street. The appeal challenges an administrative determination, issued by letter dated November 21, 2016, from Ms. Sandra Day, AICP, Planner II, in the City of Lawrence Planning and Development Services Department, which determined the documentation provided to staff was not sufficient to certify registration of the property, located at 433 Ohio Street, as a five-unit non-conforming residential use. The appeal was filed under the guidelines of Section 20-1311 in the Land Development Code of the City of Lawrence, Kansas, 2015 edition. Reasons for filing this appeal are cited by the appellant in their appeal packet dated December 7, 2016, and received in the Planning Office on December 7, 2016.

STAFF PRESENTATION

Guntert presented the item.

Mahoney said in 1978 it went from RM1 to RS2. He asked if there was a grandfather clause.

Guntert said the old zoning code did have nonconforming use provisions in it, but that's referring to legal nonconforming uses, and in staff's opinion the zoning has never supported five units.

Mahoney asked if there was also a change in property owners after 1978.

Guntert said that was correct.

Wisner asked if they round down to the whole number for dwelling units.

Guntert said that's correct.

Wilbur asked about the rental license issue.

Guntert said rental licenses were issued on two separate occasions but that doesn't have any bearing on the full assessment of the property.

Clark asked staff to speak to the delineation between this type of use and a boarding house.

Guntert said these are separate units with a kitchen and bathroom in each. A boarding house shares common areas, including the kitchen, and those are site planned under today's zoning rules. He said the prior zoning did not permit boarding houses.

Clark asked what the zoning was prior to 1927.

Guntert said there was no zoning prior to 1926.

Clark asked if there were any rules prior to 1926.

Guntert said no.

Clark asked if any transition from a boarding house type to an apartment type would have required a building permit.

Guntert said it definitely would today and he believes it would have when those building improvements were probably made.

Gascon asked if staff believes it was not five units prior to 1927.

Guntert said staff has been provided no evidence that it was.

Gascon asked if a building permit would have been required prior to 1927.

Guntert said he's not sure if the City processed building permits prior to 1926.

Gascon asked what position the appellant would be in if they could prove five units before 1926.

Guntert said the burden to provide that evidence is on the appellant and so far, it has not been provided.

Gascon asked if the appellant can come back with additional evidence.

Mahoney said they are only trying to determine whether staff erred in their determination.

Larkin said the next appeal would be to District Court.

Clark thanked staff for the presentation of such an elaborate issue.

APPELLANT PRESENTATION

Mr. Paul Horvath, appellant, thanked the Board for the opportunity to appeal this decision. He said, "there are multiple issues here, and I find it ironic that our constitution says we're innocent until proven guilty and the burden of proof lies on the accuser. Here, with the zoning, I guess it works backwards, that we're basically guilty of "violating" the zoning ordinance unless we can prove otherwise. And in the process I've learned, as a property owner, a property owner in essence has to be smarter and more familiar with the law than the staff, because if the staff makes an error it falls on the property owner, not the staff. Let me say this- there are- this property has been in our family for over 20 years and during that time, we purchased it as a five unit building and we have not altered the physical structure. The property has multiple electric meters. I asked the City to provide copies of when the permit was issued for those meters because if, as I understand it, a permit is required for an electrical meter. These are more recent meters, they're on breaker boxes, it probably has essential fire alarm system, so that's an indication the breakers are more recent. So there should have been permits issued for those multiple meters which means the City- if the City staff now is correct then the City staff then was in error for issuing those meters. Ever since I've owned the property, on a multi-family property, if you

got one- in this case multiple electric meters- one gas meter, one water meter, since the City supplies water if you have a multi-family property your bill is based on number of kitchens, or units. So, your estimated bill is five times, in this case, the number of one unit. Ever since we've owned the property the City has been billing us for five units. So, as a property owner, we were very surprised when the City questions, "well are you legal non-conforming?". I always assumed that we were based on the multiple electric meters, based on the billing for five kitchens, based on the fact that we were issued two years in a row license for five units. So in essence what's happening here, and in the bigger picture what's at risk is all property owners in any older family neighborhood, single or multi-family, because in essence if anybody ever questions if your garage is built properly, is the setbacks proper, in essence if you can't show in 1926 that it was proper then you're in trouble. And technically speaking, the tenants could be told they have to move, they have to vacate, even though there's a rental license, But in the bigger picture you're opening up, I think, a can of worms because most older multi-family properties are not going to be able to show documentation going back to 1926. Now clearly we were able to show that in 1961, according to the directory, there were five different individuals living in that property, I provided the picture from circa 1960-1961. Did you provide that? Is it in the packet?"

Mr. Guntert said it should be.

Mr. Horvath said, "there's a photograph from the historic museum that shows five mailboxes, the same that are there now, and based on the car- I dunno if- this car is like 1960 or 1961. So somewhere in the early 60's this photo was taken, shows five mailboxes, those same five mailboxes are still there. There's a sister house- there were two brothers, the um, Braver brothers who ran a heating company, they built two sister houses. The sister house to this one is 1017 Rhode Island. 1017 Rhode Island the structure is very similar, um, they look similar. 1017 has an accessory building but that has five units. 1017 Rhode Island. The same as 433. So they both have five units. I used to own 1017 Rhode Island, the kitchens, the sinks are the same, circa 1926, in the property. Which tells me that they were put in there by these plumbers back when they built this house. So in summary I guess I am concerned that no property owner is secure if they can't rely on the number of electric meters, they number of billings the City is billing for in terms of the water, in terms of the licensing, we have no assurance. So the bigger issue is the problem with the code, and how it's haphazardly being enforced, it's haphazardly being enforced because they don't have the staff to go and personally inspect every property. This just happened to come up on their radar. So, questions?"

Wilbur asked if he feels the City has certified this as legal non-conforming because they've billed it as five units.

Horvath said yes, they've paid for five units since they purchased the property. He said there are four electric meters, and he understands you must show conformity with the code to obtain multiple meters.

Gascon asked if Horvath knows the current use for 1017 Rhode Island Street.

Horvath said there are five units there.

Gascon asked if it was an approved non-conforming use when he owned it, or if he knows.

Horvath said it's probably the same situation. He said he's owned many properties that would be very difficult to show documentation all the way back to 1926. He spoke about crafting an ordinance that would help navigate this issue, one that he feels will only become more prevalent since banks will not lend on properties that aren't legal non-conforming.

NO PUBLIC COMMENT

ACTION TAKEN

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

Unanimously approved 6-0.

BOARD DISCUSSION

Mahoney said he understands this is a frustrating situation for the appellant, but if it is not the property owner's responsibility to know the history of a property, he's not sure who else would.

Wilbur said the City has sent confusing signals.

Mahoney agreed.

Wilbur said he doesn't see an error in the correspondence over the past year, but nothing specifically says the error has to be within the past year.

Mahoney said his issue is with the lack of evidence that the property has ever been a conforming use.

Wilbur agreed but also thinks there's some kind of passive approval if the City is billing and licensing five units.

Mahoney said it would take more time and resources than is possible to actively enforce that code. This particular property was brought to staff's attention by an appraiser.

Wilbur implied that rental inspections should catch these situations.

Mahoney said he understands that rental inspections are based on adherence to building code.

Larkin said that's correct. He said that any mistake by the City in providing water meters and/or rental licenses is an estoppel issue because City staff doesn't have the authority to change the law to make a property conforming. Only the City Commission has that authority.

Gardner said it's been a five unit rental for at least 57 years.

Guntert said there are five mailboxes in the provided picture, but that could mean five people living in a home, it doesn't definitely mean there were five units.

Gascon feels the argument referencing the "sister" house on Rhode Island Street is compelling because he thought it was the same house. He feels the zoning code is failing and talked about the lack of code that supports density.

Mahoney said he agrees it's an unfortunate situation but unfortunately their task this evening is to determine whether staff erred in their determination.

ACTION TAKEN

Motioned by Mahoney, seconded by Clark, to approve staff's decision to issue their written determination that the property at 433 Ohio Street cannot be certified as a legal non-conforming use based on the evidence provided by the appellant, the zoning history of the property, staff's presentation and Board discussion.

Motion carried 3-2-1, with Wisner and Gardner dissenting and Gascon abstaining due to lack of evidence.

Horvath asked if there's another appeal to this Board.

Larkin clarified that if new evidence is brought forward it can be reopened and brought forward at the next meeting. Otherwise, he said Findings of Fact would be prepared based on the action taken this evening.

They discussed process going forward and what evidence they feel is pertinent.

Guntert said staff emailed Mr. Horvath and asked if he had additional information before this meeting and no new information was received.

ITEM NO. 6 MISCELLANEOUS

a) Consider any other business to come before the Board.

Clark said he received an email about a meeting at the Library.

Mahoney said that meeting is for representatives of City advisory boards to educate the public about how each board functions.

ADJOURN 7:56 PM