



LAWRENCE BOARD OF ZONING APPEALS  
MEETING MINUTES FOR **FEBRUARY 1, 2018**

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Members present: Clark, Gardner, Gascon, Mahoney, Shipley, 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 agenda packet.
- B. There were no ex-parte communications and/or abstentions.
- C. No agenda items were deferred.

**ITEM NO. 2      MINUTES**

Consider approval of the minutes from the December 7, 2017 and January 4, 2018 meetings of the Board.

**ACTION TAKEN**

Motioned by Gardner, seconded by Clark, to approve the minutes from the December 7, 2017 and January 4, 2018 meetings of the Board.

Motion carried 5-0-2, Mahoney and Shipley abstained.

**BEGIN PUBLIC HEARING:**

**ITEM NO. 3      VARIANCE FROM THE PARKING AREA SETBACK FOR A RESIDENTIAL DWELLING; 900 ALABAMA STREET**

**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.

**STAFF PRESENTATION**

Crick presented the item.

Clark asked staff to describe the highlighted areas on the map.

Crick explained what each color signified on the map.

Clark asked if the northern area is in the setback.

Crick said that's correct.

Gardner asked if the property right next to it received a variance.

Crick said he isn't aware of a variance for that property or how it was constructed.

Gardner said it doesn't fit the triangle.

Crick said that's correct.

Gascon asked staff to clarify the applicant's request based on the proposed plan.

Crick explained the applicant's intent for the variance request, without which, the applicant cannot achieve their desired number of bedrooms.

Gascon said it appears that parking is driving the number of bedrooms allowed in the community, in this case.

Crick said the number of bedrooms drives the number of parking spaces required.

Gascon said the parking restriction forces them to reduce their proposed number of bedrooms.

Crick said that's possible, yes.

Gardner concluded that parking is controlling density.

Mahoney asked if the 25 feet setback on the northwest corner of the property is an issue.

Crick said the 25 feet setback is only for parking, not for building.

Gascon asked for the specific reasons why staff is recommending denial of the variance.

Crick said the hardship is induced by the request of the applicant, and there is nothing unique about the parcel or a unique platting situation. He explained the additional safety issues created by the absence of a clear sight triangle.

Gascon asked how many units are allowed by zoning on this lot if parking wasn't an issue.

Crick said a duplex use with no more than four unrelated occupants per unit would allow up to eight occupants.

Gascon asked if a different use would allow a higher density.

Crick said yes, if the zoning was different.

Gascon asked if this is the maximum use based on the current zoning.

Crick said yes.

Clark asked if, under Article 6, a house could be built into the 10 foot setback space.

Crick said the structure could be built into the 10 foot setback, pointing out that Article 6 pertains to building setbacks and Article 9 pertains to parking setbacks.

Gascon asked if stacked parking is allowed on this site.

Crick said no, stacked parking is prohibited by the Oread Neighborhood Design Guidelines.

Gascon asked when the design guidelines were enacted.

Crick said February of 2017.

Gascon asked when the property was purchased.

Crick said the applicant could answer that question.

#### **APPLICANT PRESENTATION**

Mr. Mark Kern, property owner, thanked the Board for considering his request. He addressed the number of units and discussed details of the proposed project.

Gascon asked when the property was acquired.

Kern said it was acquired in October 2017.

Wilbur asked if the applicant was aware of the revision in the Oread Neighborhood Design Guidelines prohibiting stacked parking.

Kern said yes, and the seller provided a letter from the City explaining that it was zoned for a duplex. He said they also own the property across the alley and have 16 spaces for that 8-plex.

Gascon asked if the 16 parking spaces are typically full.

Kern said very seldomly.

Gascon asked if they're providing two spaces per unit.

Kern said yes, they have 14 spaces and are allowed two stacked with the garage.

Gardner suggested a re-configuration of the project to accommodate the desired parking spaces.

Crick said the interior side setback is typically 5 feet but the Oread Neighborhood Design Guidelines requires an additional setback. He further explained how parking setbacks are calculated.

They discussed Gardner's suggested configuration.

Crick reminded them that the City Engineer would also have to weigh in on issues with the suggested re-configuration, and he's unsure whether it would be supported by the Historic Resources Commission.

Gascon asked if staff discussed the possibility off-site parking and/or a curb cut to allow parking from the front.

Kern said they did discuss shared off-site parking, but not a curb cut. He mentioned that language in the overlay didn't specifically mention shared parking as an option.

### **PUBLIC COMMENT**

Ms. Candice Davis, resident of the Oread Neighborhood, said she feels they should follow the code guidelines and not work to meet a request which clearly doesn't meet code.

### **ACTION TAKEN**

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

Unanimously approved 7-0.

### **BOARD DISCUSSION**

Mahoney doesn't think the variance application meets the necessary criteria. It is not unique, is against the general spirit of the code, and there appears to be potential safety issues. He doesn't think it will affect the rights of property owners.

Wilbur also doesn't feel it's unique and feels it might create a safety issue.

Wisner agreed it doesn't meet the criteria, but it is similar to other properties in the area.

Gascon said that's an important point, particularly with corner lots and the added complexity of determining uniqueness. In response to Ms. Davis' comment, he felt it was insulting to suggest that this Board would do anything but its fiduciary responsibilities to address criteria set forth in the code. He said the Board also takes great respect in assisting property owners when determining if criteria is met, and perhaps identify solutions for the future. He agreed with other Board members and felt they don't have a case to offer the variance for this request. He added that the current code is missing the mark and isn't providing what the community needs long term.

### **ACTION TAKEN**

Motioned by Mahoney, seconded by Wilbur, to deny the variance request based upon staff presentation, findings of fact, failure to meet the five conditions (specifically uniqueness), and to direct staff to prepare Findings of Fact.

Unanimously approved 7-0.

### **ITEM NO. 4      PARKING SETBACK VARIANCE FROM W. 6<sup>TH</sup> STREET ON BUILDING OR SETBACK LINES ON MAJOR STREETS OR HIGHWAY; 3900 W 6<sup>TH</sup> STREET**

**B-17-00687:** 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 50 foot setback from W. 6<sup>th</sup> Street standard required by Section 20-814(a)(2)(i) of the City Code. The applicant is seeking a variance from this code standard reducing the setback to a minimum of 40 feet to allow for the construction of a Vehicle Cleaning (Car Wash) structure. The property

is located at 3900 W. 6<sup>th</sup> Street. Submitted by Austin Davis, Wild Pines Ventures, L.L.C., on behalf of Lawrence Monterey Investors, L.L.C., property owner of record.

### **STAFF PRESENTATION**

Crick presented the item.

Mahoney asked if there are overhead electrical lines present.

Crick said yes.

Gardner asked if they must meet the same five criteria for a variance, and if so, whether staff feels the overhead electrical easement is unique.

Crick explained that staff could not recommend approval because it did not meet the five criteria, and although the easements are somewhat unique, it is not unlike other parcels with similar restrictions that constructed in different ways.

Gascon asked about the required parking for the proposed use.

Crick said he isn't handling the Special Use Permit but the applicant may be able to answer.

Gascon asked if it's a drive-thru car wash.

Crick said that's correct.

Gardner asked if the green space requirement stops at the street.

Crick explained that the green space buffer/setback is from the property line 50 feet into the parcel.

Gardner asked if the Board of Realtors across the street has the same 50 feet requirement.

Crick indicated on the map where the setback runs from Monterey Way to Folks Road and from Wakarusa Drive to K-10.

Gardner said the property across the street doesn't have the same setback.

Crick said that's correct.

Gascon asked if it's normal to have a large diagonal electrical easement.

Crick said this part of town does have a large area affected by this easement.

Wilbur asked if the easement affects any of the other mentioned properties along 6<sup>th</sup> Street or just this lot.

Crick said it encumbers portions of the HyVee lot as well as the building to the north, which runs at an angle to accommodate the easement. He mentioned that they are private utility easements.

Shipley pointed out that the buildings on the neighboring lots have been built to accommodate the easements.

Crick said that's correct. He explained that staff research indicates only two other variances have requested for this setback, both of which did not move forward with the Board.

Mahoney asked if the variance request involves the green space setback only and no other easement or building setback.

Crick said that's correct.

Gascon asked if the green space setback precludes the use of any pavement.

Crick said that's correct. He clarified that the ordinance establishes a 50 foot building and parking setback along W 6th Street.

### **APPLICANT PRESENTATION**

Mr. Matthew Gough, attorney for the applicant, introduced the applicants, owners, and representatives present. He said staff has categorized the green space buffer improperly, because the 1990 ordinance identifies it as a building and parking setback. He pointed out that the applicant isn't proposing to construct a building or parking in that setback, only an access drive. He argued that the property is unique and creates a hardship for the applicant.

Gardner asked if the southern turn into the car wash can be moved closer to the building.

Mr. Harlan Russell, GBA Architects, explained that they used the minimum turning radius possible to achieve the entrance as proposed.

Wisner asked about a comment on the application that says constraints on the lot were not known by the applicant until an offer was made on the property.

Gough said there is very seldom title work in place when a contract is signed.

Wisner asked if they had no idea there were easements.

Gough said he couldn't speak to that specifically.

Mahoney asked why they are here this evening if they don't believe a variance wasn't needed.

Gough said he was just recruited by the applicant this morning, but the applicant team doesn't have experience in Lawrence and doesn't know the code, so when staff told them this was a green space buffer and they need a variance, that's what they did.

Mahoney asked what type of hardship this creates for the applicant.

Gough said the proposed type of building involves a lot of necessary machinery that dictates the size of the building.

Clark asked if they have discussed the easement with Westar Energy.

Russell said this is a major electrical line and in his experience, they've never been successful in moving buildings under this type of easement. He mentioned the gas main on the property is also very large.

Gough mentioned that many current parking spaces will be converted back to green space.

Gascon asked Russell for the size of a typical gas main and if a 16 inch gas main like the one on this property is rare.

Russell said it is likely a transmission pipeline, not a service line. He said the gas company has very specific restrictions when doing pavement and trees. He explained which trees will be saved and where trees and other landscaping will be added.

They further discussed trees and line of sight down the corridor

Mr. Chris Michael, franchisee and distributor for Tommy's equipment, spoke to the uniqueness of their car wash operations.

Mr. Austin Davis, applicant, thanked the Board for their time.

**No public comment.**

**ACTION TAKEN**

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

Unanimously approved 7-0.

**BOARD DISCUSSION**

Mahoney talked about the uniqueness of the lot due to the green space buffer and its location along a US Highway.

Gardner felt the buffer and easements combined make it unique.

Gascon felt that the buffer seems inconsistent making the intent a bit dubious.

Mahoney agreed the inconsistency might warrant review at a later date.

Wilbur agreed that it's unique in comparison to other surrounding properties.

Mahoney explained that neighboring properties were able to build around the easements, so the only uniqueness comes from the green space buffer.

Wilbur noted that the easements have been there for a long time.

Gascon felt the combination of a major gas line and overhead electrical easement make the property unique.

Mahoney stated that financial hardship is not sufficient to grant a variance, and he is unsure whether the hardship to the applicant is solely financial.

Gascon pointed out their restrictions with the machinery for the car wash.

Clark said the applicant knew the requirements going into the project.

Gascon pondered whether the variance would even be needed if the access drive was dirt.

Crick said the setback would be in place regardless of what type of pavement materials are installed.

Gascon asked why.

Crick said setbacks are determined by property lines and by the ordinance

Gascon pointed out that they aren't proposing a building or parking in the setback.

Crick explained that the Planning Director has determined in the past that pavement of any kind is potentially available for parking.

Wisner asked why the ordinance was originally created.

Mahoney read part of the ordinance.

Gardner noted that the applicant is providing the visual green space desired by the ordinance.

Mahoney was unsure whether the hardship was anything other than financial.

Gascon and Gardner both noted that the significant combined easements were a unique hardship.

Gascon discussed the term "unnecessary hardship".

Crick read the definition of "unnecessary hardship" from Article 17.

Shipley noted that other types of businesses could locate on this property without hardship.

Clark said the site is still usable.

Gascon asked for the square footage of the encroachment into the setback.

Mr. Harlan Russell replied that it was less than 200 square feet.

Gascon asked for total size of the site.

Russell said it is about 1.33 acres equal to 60,275 square feet.

Board members agreed they don't have a problem with uniqueness.

Gardner said the drive couldn't be used for parking and they've added landscaping.

Wisner asked staff if the Board has the authority to determine that the applicant does not need a variance.

Crick said he has no knowledge of that type of determination in the past, but the Board should take action of some sort based on the request before them- approve, approve with conditions, or deny the item.



They discussed conforming uses. Crick clarified that the applicant is seeking a rezoning approval in addition to their Special Use Permit request.

Mahoney asked if a variance approval can be conditioned upon an approval of a site plan.

Crick said that is an option, to condition upon the approval of the Special Use Permit.

**ACTION TAKEN**

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

Unanimously approved 7-0.

**PUBLIC COMMENT**

Mr. Harlan Russell, GBA Architects, asked for clarification about the proposed condition.

Mahoney explained that the variance would be approved upon the condition that a Special Use Permit is also granted. Without the Special Use Permit, the variance is void.

**ACTION TAKEN**

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

Unanimously approved 7-0.

**BOARD DISCUSSION**

Clark said he doesn't feel there is hardship, and that the request arises from convenience.

Gascon said it sounds like he defined the hardship, because the property cannot accommodate this particular car wash.

Mahoney felt they met the five conditions for a variance.

**ACTION TAKEN**

Motioned by Mahoney, seconded by Gardner, to approve the variance based on meeting all five conditions, staff and applicant presentations, and Board discussion, with the condition that a Special Use Permit is approved for the applicant.

Motion carried 6-1, Clark dissented.

**ITEM NO. 5 MISCELLANEOUS**

A. There was no other business to come before the Board.

**ACTION TAKEN**

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

**ADJOURNED 8:12 PM**