

LAWRENCE BOARD OF ZONING APPEALS
Meeting Minutes of January 7, 2016 – 6:30 p.m.

Members present: Gardner, Holley, Kimzey, Mahoney
Staff present: Cargill, Crick, Guntert

ITEM NO. 1 COMMUNICATIONS

There were no communications to come before the Board.

No board member disclosed any ex parte contacts and/or abstentions.

There were no agenda items deferred.

ITEM NO. 2 MINUTES

Consider approval of the minutes from the December 3, 2015 meeting of the Board.

ACTION TAKEN

Motioned by Mahoney, seconded by Holley, to approve the minutes from the December 3, 2015 meeting of the Board.

Motion carried 2-0-2 with Gardner and Kimzey abstaining.

BEGIN PUBLIC HEARING:

**ITEM NO. 3 OFF-STREET PARKING, PARKING AREA DESIGN STANDARDS, AND
DIMENSIONAL & DENSITY STANDARDS VARIANCES FOR AN
EXISTING NONRESIDENTIAL USE PROPERTY; 239 ELM STREET [DRG]**

B-15-00581: 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 involves variances from the code standards contained in Article 9, "Parking, Loading and Access," requiring a minimum number of off-street parking spaces to be provided in an improved parking lot on the same property as the land use or on nearby property under the same ownership as the land use. The second request seeks variances from the density and dimensional standards in Section 20-601(b), "Nonresidential Districts," of the Development Code which are being requested to address the existing site conditions found on this property. The property is located on the northwest corner of Elm Street and N. 3rd Street, having an address of 239 Elm Street. Submitted by Joy Rhea, architect with Paul Werner Architects, representing Lawrence Kansas Rentals, LLC, the property owner of record. *Deferred from the December 3rd meeting.*

STAFF PRESENTATION

Guntert presented Items 3 & 4 concurrently.

Mahoney asked if the parking lot to the south satisfies the shared parking agreement, or if it must be submitted to the City.

Guntert asked which lot he is referring to.

Mahoney realized he was referring to the lot to the north. He asked if the lot would satisfy the required number of parking spaces.

Guntert said the proposed parking layout has 10 spaces so they are three spaces short of what they are required to provide for the restaurant use. He said they need to find three spaces, which could be done with a shared use parking agreement, or the Board could grant a variance for the three parking space deficit. The applicant would need to site plan the use and off-site parking lot together so it was clear that the two were considered to be one development project.

Mahoney asked if a site plan could be a condition of the variance.

Guntert said that would be the next step for the applicant, depending on the outcome of the variance request.

Holley asked if the parking space variances would be a non-issue if there was an agreement in place with the City for customers to use some of the parking in that lot.

Guntert said parking would be a non-issue if they came up with a shared use parking agreement. He did not have any information about what might be happening with regard to the applicant approaching the City to consider entering into a shared use parking agreement. The applicant could also possibly pursue a shared use parking agreement with another nearby property owner to fulfill the required number of parking spaces they need for the restaurant use.

APPLICANT PRESENTATION

Mr. Evan Holt, prospective business tenant, explained why he and his wife chose the cafe location and shared details of the business and hours of operation. He explained the challenges with the small size of the property.

Mr. Paul Werner, Paul Werner Architects, emphasized the size of the property and target customer base for the café. He said he might prefer that the Board defer the item as discussion continues on Item 4, because the pavement is difficult for that item. He feels that gravel is the best answer due to the challenges with storm water in North Lawrence, and because this is a minimal use with low customer volume.

Mahoney decided it was best to hold the public hearing so other members of the public that want to speak about these two requests can get their comments and concerns on record. If the applicant felt they needed to defer based on the direction the Board's discussion was going they would be given that opportunity before the Board acted on each request.

PUBLIC COMMENT

Mr. Jon Davis, property owner, explained that they approached the project this way because they feel this will alleviate neighborhood concerns about parking in the neighborhood.

Mr. Ted Boyle, North Lawrence Improvement Association (NLIA), said the residents would like to see the café succeed, and even recommended the lot at 3rd & Locust Streets be used for parking. He said the main concern for residents is off-street parking. He mentioned the storm water problem and feels that gravel is the best solution to that issue, or possibly recycled asphalt. He mentioned that all other surrounding lots are gravel, except the City lot.

Mahoney thanked Mr. Boyle for his comments.

Mr. Nate Clark, nearby resident, said he would like to see the café succeed. He said no one comes to North Lawrence for much other than the levy trail, so those people would be well served.

ACTION TAKEN

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

Unanimously approved 4-0.

COMMISSION DISCUSSION

Mahoney said this is unique since there are two variances related and almost dependent on each other. He thanked the applicant for the ambition to use a structure already in place. He feels the general idea of the business would be beneficial to the neighborhood. He thought the plans look great. He doesn't see any issue with the setback request. He feels the reduction of parking is the more pressing matter, and views it to be a reduction to 10 spaces. He would be in favor of reducing the required number of parking stalls from 13 to 10.

Gardner thought the public lot to the west is likely going to be used by customers who also were there to use the levy trails. He felt the parking demand for the café is already met by that lot.

Holley said they can only guess that is accurate. He occasionally goes to North Lawrence to use the levy trails, but would be much more inclined to go there for the café and would prefer closer parking than the public lot.

Mahoney said they can't expect the City to provide offsite parking for every property. He thought there was other parking available in the area the owner could look at for possible share use parking. He felt a variance reducing the code required number of parking spaces from 13 to 10 spaces with other parking available in the area was reasonable.

Holley agreed, but questioned how the variance might impact future tenants.

Mahoney asked if the variance stays with the property.

Guntert said yes a variance runs with the land, not ownership.

Mahoney said that concern is valid.

Holley suggested the applicant could make a shared use parking agreement with themselves since they were the owner of both properties.

Mahoney said if there were 13 spaces available with a shared use parking agreement in place for the café then a variance would not be necessary.

Guntert said that is correct. The site plan would tie those properties together as one development site for the café use.

Werner suggested the Board approve a variance for a reduction in parking to 10 spaces.

Gardner asked if there was a way to fit more than 10 parking spaces on the property.

Werner said 10 was the best they could do while being respectful to the neighbor to the west.

Gardner said he would support the parking space reduction to 10 spaces.

Kimzey said he wouldn't be comfortable with approving a variance for fewer than 10 parking spaces.

ACTION TAKEN

Motioned by Kimzey, seconded by Holley, to approve the variance for the existing building setbacks based on recommendations and findings of fact in the staff report.

Unanimously approved 4-0.

Motioned by Mahoney, seconded by Gardner, to approve the variance for parking, based on findings of fact and meeting discussion, with the condition that a site plan is approved showing a 10 stall off-street parking lot on a nearby applicant owned property or evidence is provided to the City of a shared-use parking agreement with another property owner.

Unanimously approved 4-0.

ITEM NO. 4 OFF-STREET PARKING AREA PAVING STANDARDS, AND PARKING AREA SETBACKS FROM STREET RIGHTS-OF-WAY FOR A NEW PARKING AREA SERVING AN EXISTING NONRESIDENTIAL USE PROPERTY; SW CORNER OF N. 3RD & LOCUST STREET [DRG]

B-15-00623: 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 involves variances from the code standards contained in Article 9 Section 20-913(e), "Parking and Loading Area Design Standards, Surfacing," requiring a paved surface parking area with concrete curb and gutter around the perimeter of the lot. The second request is for parking area setback variances from the required 15 feet setback from a street right-of-way per Section 20-908(c), "LOCATION, Nonresidential Districts," to a minimum of 10 feet from Locust Street and 0 feet from N. 3rd Street. The applicant seeks approval to build a gravel surface parking area with railroad ties or similar treatment around the edge of the parking area proposed to be built on the southwest corner of N. 3rd Street and Locust Street. Submitted by Joy Rhea, architect with Paul Werner Architects, representing KelJon of Lawrence LLC, the property owner of record.

Staff presented the item during Item 3

Kimzey asked what the precedence or requirement is for curbs in the area.

Guntert said curbs and gutters are not required for residential driveways, but they are required for other development projects such as multi-family housing, commercial, office, or industrial development.

Kimzey questioned how parking stalls are controlled and delineated with gravel surfacing and no curb for striping.

PUBLIC COMMENT

Mr. Ted Boyle, NLIA, said housing developments typically don't need curbs and gutters if they provide open ditches, which percolate water effectively. He said any additional concrete or asphalt contributes to issues of flooding.

Mr. Paul Werner said parking blocks or railroad ties would delineate parking spaces effectively. He liked the idea of using crushed asphalt for the parking surface, thought it was a great option, and appreciated Mr. Boyle suggesting they use it on the new parking lot.

Gardner asked if you can paint lines on crushed asphalt.

Boyle said you can because it becomes solid over time but it still remains pervious for water to run through.

ACTION TAKEN

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

Unanimously approved 4-0.

COMMISSION DISCUSSION

Mahoney said he's not sure if it's wise or within their power to require a certain material. He feels this is a unique situation because there are clear drainage issues in North Lawrence, but there are good alternatives to gravel, such as pavers. He said he's not in favor of gravel, and is unsure about the crushed asphalt.

Holley agrees with staff and Mahoney about the setback, but he's unsure about the crushed asphalt option. He doesn't support gravel for a commercial lot.

Mahoney agreed, and said the margin of spaces could be an issue.

ACTION TAKEN

Motioned by Holley, seconded by Gardner, to approve the variance for the parking area setbacks based on the staff report and Board discussion.

Unanimously approved 4-0.

BOARD DISCUSSION

Mahoney said he did not have a problem with the parking lot setback variances from the street right-of-way. He was having a hard time finding all of the conditions for variance approval were met on the parking surface and perimeter curb variance knowing there are other alternatives in the development code the applicant can use.

Holley agreed with Mahoney. He said they could easily come back with a variance for another alternate material that was not listed in the development code.

Mr. Werner suggested they could work with the City's stormwater engineer on an alternative permeable surface.

Mahoney thought the Board would favorably consider an alternate permeable material recommended by City staff.

Guntert said the City Engineer has the authority to approve the parking lot design and could include other pavement material types. He mentioned that concrete was the only option in the code for curbs.

Gardner asked if the concern about gravel was due to the commercial nature of the property, since many residential properties in the area have gravel parking.

Mahoney said yes. He mentioned that some properties utilized gravel driveways before the development code was in place.

Kimzey asked if the applicant must use a pervious surface or if they can go with asphalt, if they so choose.

Mahoney said asphalt is approved in the code if that's what they choose to use. He asked staff if the site plan would include a review by the City Engineer.

Guntert said the site plan would include a review by the City Stormwater Engineer as well as the City Engineer.

Werner felt that input from the City Stormwater Engineer on a pervious surface would be beneficial.

Mahoney said they can only approve with conditions or deny the variance as is. He felt it was up to the applicant to work with the City to find a solution.

Holley said he would strongly support any use of alternative pavers or permeable asphalt, and would support any solution Matt Bond finds suitable, whether it can be approved administratively or not.

ACTION TAKEN

Motioned by Holley, seconded by Gardner, to approve the parking area setback variances from the public street right-of-way based on the testimony presented during the hearing and the findings of fact in the staff report.

Unanimously approved 4-0.

Motioned by Mahoney, seconded by Holley, to deny the perimeter curb and parking area surface material variances based on the testimony presented during the hearing, Board discussion, the staff report and findings of fact.

Unanimously approved 3-0-1 with Gardner abstaining.

Mahoney thanked the applicant and the public for the discussion.

ITEM NO. 5 FRONT YARD BUILDING SETBACK VARIANCE FOR TWO NEW CONGREGATE LIVING RESIDENTIAL STRUCTURES; 1731 & 1735 KENTUCKY STREET [JSC]

B-15-00624: 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 25 feet front yard building setback required in Section 20-601(a) of the City Code to a minimum of 17.5 feet, which will allow for the construction of an 8 feet wide covered porch on the front of the new congregate living structures. The property is located at 1731 and 1735 Kentucky Street. Submitted by Paul Werner, Paul Werner Architects, representing the property owners of record, Fadila Boumaza and Chaudhry I. Wahla.

STAFF PRESENTATION

Crick presented the item.

Mahoney asked for the current setback of the existing structures from the front property line.

Crick said the average is 23 ½ feet or so.

Mahoney asked if most of the houses on the block are within the setback.

Crick said most are one or two feet short of meeting the 25 feet setback requirement.

Gardner asked if the two units would be the same size as current housing.

Crick said they would be equivalent to the massing of the buildings.

Kimzey asked if the average setback estimate is measured from the front porch or from the building.

Crick said they were likely measured from a porch or stoop of some kind.

APPLICANT PRESENTATION

Mr. Paul Werner, Paul Werner Architects, said they desire to provide a nice front porch, but it's difficult to swap living space for front porch space. He mentioned that the Oread Design Guidelines emphasize that one shouldn't be penalized for putting a front porch on a structure, and that this neighborhood (Babcock) and the Oread Neighborhood are very similar. He explained that most of the surrounding houses have less than the required 25 feet setback. Based on the surrounding area and proximity to the Oread Neighborhood, he feels this is the best design.

Gardner asked if they are restricted from pushing the house farther back on the property.

Werner said the structure wouldn't fit because they have a garage and parking in the rear.

Gardner asked for the distance between the garage and the rear property line.

Werner said 24 feet.

Werner suggested a 6 feet porch might be a better choice.

Mahoney said the removal of the 8 feet porch would put them a foot or two under the setback.

Werner said they're at 25 ½ feet currently.

Mahoney asked if it's an open or screened porch.

Werner said open and elevated slightly to look like a real porch.

No public comment

ACTION TAKEN

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

Unanimously approved 4-0.

COMMISSION DISCUSSION

Mahoney said there's no issue if the porch is simply removed. He studied the five conditions. He said it's hard to grant a variance without a building. He said he likes the idea and the site plan looks fantastic- his only issue is that it doesn't meet the variance conditions as presented.

Gardner asked if a lot of the houses in the neighborhood have porches due to their age.

Mahoney said yes. He asked if the code required setback in the Oread Neighborhood is different than Babcock.

Guntert said it is not, since the proposed Oread Design Guidelines have yet to be approved.

Mahoney felt the project does not adversely affect the neighborhood, but there was no unnecessary hardship since the structures do not exist.

Holley agreed, he feels a porch is more desirable, but everything comes down to the number of tenants and the design proposed by the applicant.

Werner said the hardship would be giving up living space for the porch, or having no porch. He noted that the two houses to the south mess up the average setback for the block. He

suggested that maybe it's better to request a variance from the average setback as opposed to the required setback.

Kimzey asked how many parking spaces are required.

Werner said they have seven on each side and must include ADA elements.

Holley asked about the access to the garage.

Werner said they have a shared double-width driveway on Kentucky Street.

Holley asked if they tried any designs with the garage rotated 90 degrees to alleviate the need for a variance.

Werner said they've exhausted all the options, and explained why this is the best proposal.

Mahoney asked if they are 1.4 feet short of the neighborhood average front setback.

Guntert said yes.

Mahoney said he has a hard time seeing the hardship since it is simply a design choice.

Kimzey agreed.

Gardner asked the applicant to point out each parking space.

Werner indicated parking spaces on the plan.

Gardner asked what prevents the tenants from parking in a different configuration.

Werner said the parking will be part of the site plan.

Mahoney thought the Board likes everything about the proposal, but they cannot come up with a valid finding that the unnecessary hardship condition is met.

Werner said they have to meet every requirement of the Development Code which includes parking for all cars, an improvement for the property and neighborhood.

Gardner asked about the difference between the Oread Neighborhood and this one.

Werner said the Oread Neighborhood has been through years of guidelines that address parking issues and property improvement. He mentioned that the Oread Design Guidelines look favorably on traditional designs with porches.

Crick provided some background on the Draft Oread Design Guidelines.

Holley said he's also stuck on the hardship issue, but looks forward to the time when the Babcock Neighborhood has its own set of design guidelines.

ACTION TAKEN

Motioned by Holley, seconded by Mahoney, to deny the variance based on recommendations and findings of fact in the staff report, evidence presented in the hearing, and Board discussion.

Unanimously approved 4-0.

ITEM NO. 6 **FRONT YARD AND SIDE YARD BUILDING SETBACK VARIANCES FOR AN EXISTING RESIDENTIAL STRUCTURE BEING RENOVATED AS A DUPLEX USE; 1338 OHIO STREET [JSC]**

B-15-00625: A request for variance 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 25 feet front yard building setback required in Section 20-601(a) of the City Code to a minimum of 7.5 feet; and, a variance from the 5 feet interior side yard building setback required in said section of the City Code to a minimum of 2.5 feet. These variances are requested to allow for the construction of a covered porch on the front of the existing residential structure, which is being remodeled as a duplex. The property is located at 1338 Ohio Street. Submitted by Paul Werner, Paul Werner Architects, representing the property owner of record, Cole Rentals LLC.

STAFF PRESENTATION

Crick presented the item.

APPLICANT PRESENTATION

Mr. Paul Werner, Paul Werner Architects, said he agrees with the staff report.

No public comment

ACTION TAKEN

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

Unanimously approved 4-0.

COMMISSION DISCUSSION

Mahoney thought there is a hardship present with this property. The proposed porch setback was representative of other developed properties in the block.

ACTION TAKEN

Motioned by Gardner, seconded by Holley, to approve the variances with the condition the variances only apply to the existing principal structure and not to any future accessory structures.

Unanimously approved 4-0.

ITEM NO. 7 **MISCELLANEOUS**

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

ADJOURN 8:47 PM