

LAWRENCE BOARD OF ZONING APPEALS

Meeting Minutes of July 6, 2017

Members present: Clark, Gardner, Holley, Mahoney, Wilbur, Wisner
Staff present: Cargill, Crick

ITEM NO. 1 COMMUNICATIONS

- a) There were no additional communications to come before the Board.
- b) Wilbur said he would abstain from Item 4.
- c) No agenda items were deferred.

ITEM NO. 2 MINUTES

Consider approval of the minutes from the April 6, 2017, May 4, 2017, and June 1, 2017 meetings of the Board.

ACTION TAKEN

Motioned by Holley, seconded by Wilbur, to approve the minutes from the April 6, 2017 meeting of the Board.

Motion carried 5-0-1, Clark abstained.

Motioned by Gardner, seconded by Clark, to approve the minutes from the May 4, 2017 meeting of the Board.

Motion carried 5-0-1, Mahoney abstained.

Motioned by Gardner, seconded by Holley, to approve the minutes from the June 1, 2017 meeting of the Board.

Unanimously approved 6-0.

BEGIN PUBLIC HEARING:

ITEM NO. 3 VARIANCE FROM THE REAR BUILDING SETBACK FOR AN UNCOVERED HORIZONTAL STRUCTURE; 4821 W. 26th STREET [JSC]

B-17-00290: 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 12 feet to allow for the construction of an uncovered horizontal structure. The property is located at 4821 W. 26th Street. Submitted by Allison Wilson, property owners of record.

STAFF PRESENTATION

Mr. Jeff Crick presented the item.

Clark asked for clarification of the easements.

Crick explained the location of the Southern Star easement.

Mahoney asked if neighbors were notified.

Crick said a neighbor called this afternoon with general questions and did not indicate that he was opposed.

APPLICANT PRESENTATION

Mr. Matt Tait, applicant, emphasized that the pool will be above ground and will not be on top of any utility line.

NO PUBLIC COMMENT

ACTION TAKEN

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

Unanimously approved 6-0.

BOARD DISCUSSION

Holley said it seems like a no-brainer- it's not on a utility line and there are no neighbor complaints. He is in favor of approving the request.

Mahoney agreed.

ACTION TAKEN

Motioned by Gardner, seconded by Wisner, to approve the variance as outlined in the staff report.

Unanimously approved 6-0.

ITEM NO. 4 VARIANCE FROM THE REAR BUILDING SETBACK FOR A RESIDENTIAL DWELLING; 5120 CODY COURT [JSC]

B-17-00275: 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 12.5 feet to allow for the construction of a covered attached deck. The property is located at 5120 Cody Court. Submitted by Jim and Allison Nye, property owners of record.

STAFF PRESENTATION

Crick presented the item.

Clark asked if the removal of the deck is the issue.

Crick said that's correct. He said the deck can be repaired in place but removing it would require new deck construction to comply with current code.

Gardner asked if replacing the deck with current dimensions would be allowed.

Crick said general maintenance is allowed, but swapping out more than half the deck would be reviewed under current code standards.

Mahoney asked if they could add to the existing deck.

Crick said that would also require review under the current Land Development Code.

Clark asked how the proposed replacement deck compares to the original.

Crick presented a drawing of the proposed replacement.

Clark asked if they're asking to add a roof to the replacement deck.

Crick said that's correct.

Gardner asked if the deck is the exact same size as the original.

Crick said the applicant can answer that question.

Applicant was not present.

NO PUBLIC COMMENT

ACTION TAKEN

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

Unanimously approved 6-0.

BOARD DISCUSSION

Mahoney said he has a hard time with the five conditions, particularly the uniqueness condition. He said it would be nice if the applicant was present to answer some questions.

Gardner agreed.

Clark agreed. He said the addition of the proposed roof also increases the visual height.

Wisner said it looks like they are putting up the same size deck with a roof to replace the shade of the tree, but it would have been nice to get clarification from the applicant.

Holley doesn't feel a roof is equivalent to a tree.

ACTION TAKEN

Motioned by Clark, seconded by Holley, to deny the variance based on the staff report, Board discussion, and lack of presentation by the applicant.

Motion carried 5-0-1, Wilbur abstained.

ITEM NO. 5 **CITY OF LAWRENCE FIRE STATION NO. 1 SITE AREA AND
STRUCTURE SETBACKS FROM ALL PROPERTY LINES; 745 VERMONT
STREET [JMB]**

B-17-00285: 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 to reduce the 40 foot minimum front setback requirement listed in Section 20-601(b) of the City Code to a minimum of 9 foot, 6 inches feet. The second request is for a variance to reduce the 40 foot minimum exterior side setbacks requirement listed in Section 20-601(b) of the City Code to a minimum of 16 feet from the west property line, and 37 feet from the eastern property line. The third request is for a variance to reduce the 15 foot minimum rear setback requirement listed in Section 20-601(b) of the City Code to a minimum of 9 feet, 5 inches. The property is located at 745 Vermont Street. Submitted by Jay Zimmerschied, Zimmerschied Architecture, for the City of Lawrence, Kansas, property owner of record.

STAFF PRESENTATION

Crick presented the item.

BOARD DISCUSSION

Clark asked for clarification about memorializing the existing building setbacks.

Crick explained that memorializing the setbacks allows the building to be rebuilt in the same footprint.

Wilbur asked if they lock that in forever.

Gardner asked if the variance is also for the addition and whether they must wait for an approval from the Historic Resources Commission (HRC) before taking action.

Crick said the addition will be in the southwest corner and will be heard by the HRC later this month. If the setbacks are being adjusted for the addition it would need to come back before the Board.

Clark asked about the setbacks for the parking lot structure to the north.

Crick said he believes it has either no setback or a 1 ft setback.

Gardner asked if this variance is conditioned upon HRC approval.

Crick said they can condition it to match what the HRC approves.

Holley asked if the dimensions of the structure can be moved up slightly through recommendations by the HRC.

Crick said it would be tight and would have to remain very similar to what is proposed on the current drawing.

Mahoney asked if they could go smaller in size.

Crick said yes.

APPLICANT PRESENTATION

Mr. Mark Bradford, Fire Chief, explained the project. He mentioned that the addition will meet their needs as proposed and could possibly go smaller, and they will continue to share space with the Senior Resource Center of Douglas County.

Gardner asked if the addition will be office space.

Bradford said that's correct. He explained the proposed layout.

Holley asked if the material for the addition will be similar or differentiated from the existing.

Bradford said they are proposing a blend of materials they believe the HRC will approve.

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 the request is cut and dry and feels it meets the five conditions for a variance. He does not believe they need to condition the variance but wouldn't necessarily oppose once either.

Clark said any conditions by the HRC would just be imposed by the HRC.

Gardner feels they need to condition their approval because they're approving a replacement footprint larger than the original building.

Clark asked if the addition and memorialization of the setbacks are two separate pieces.

Mahoney said the request is for setbacks only.

Crick said that's correct.

Mahoney explained that if the HRC doesn't approve of the plan it won't move forward as proposed.

Crick said that's correct.

Gardner said his concern is that they're allowing any building to be built in the proposed footprint in the future.

Mahoney said if the building is razed then a replacement structure isn't considered historic.

Gardner asked if a new structure can be built in the proposed setbacks with an approved variance if the building is razed.

Crick explained that the variance runs with the land and with the approved variance a replacement structure can rebuild using the proposed setbacks, but would be subject to current code standards. He noted that HRC requirements and height limitations for GPI (General Public and Institutional Use District) would still be in effect, and anything exceeding the in-ground building setbacks would require a new variance.

Mahoney feels Gardner's concern is the possibility to build anything in that footprint, but the new design would still have to be approved by HRC.

Crick said that's correct.

Gardner said he understands and withdrew his objection.

ACTION TAKEN

Motioned by Holley, seconded by Wilbur, to approve the variance based on findings in the staff report and Board discussion.

Unanimously approved 6-0.

ITEM NO. 6 **PARKING VARIANCE FOR A MIXED USE STRUCTURE; 1420 CRESCENT DRIVE [JSC]**

B-17-00284: 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 Article 9, "Parking, Loading and Access," requiring a minimum number of off-street parking spaces to be provided from a required 56 spaces to 30 spaces. The property is located at 1420 Crescent Road. Submitted by David Hamby, BG Consultants, Inc., on behalf of Axiom Equities, L.L.C., property owners of record.

STAFF PRESENTATION

Crick presented the item.

Wilbur asked if it's reasonable to assume that the majority of traffic will be foot traffic and if that is included in the matrix.

Crick said it's not worked into the matrix as a reduction but it's a recognized goal of the MU (Mixed Use) District. He said that the Planning Commission and City Commission have recognized that the MU designation doesn't fit everywhere because it's a very precise zoning application. The proposed use is permitted by right under the zoning district- the variance only speaks to the intensity of the use.

Wilbur asked how staff arrived at the conclusion that the second floor would also be considered a fast food use.

Crick said there is a method used by the Planning Director to make an equivalent use determination, since zoning code doesn't always cover every possible scenario. The Planning Director determined that, due to the mobility between the first and second floors, the second floor would also be considered fast order food.

Clark asked if that decision was made after the application was submitted with 40 parking spaces.

Crick said that's correct.

Clark asked what use was used to determine they needed 40 parking spaces.

Crick said that is what triggered the determination by the Planning Director, because the listed use was a library-type use, which isn't in the City's code, and it didn't have the components to be assembly space.

Holley asked if the 400 ft rule would include stops made by KU on Wheels.

Crick said yes, KU on Wheels and Lawrence Transit are the same under the code.

Clark asked if the current parking is metered.

Crick said it is not on campus and is not metered.

Mahoney said it's just a private lot and anyone can park there as determined by the owner.

Wisner pointed out that a site plan was approved in 1989 with a requirement of 37 spaces, and wondered what changed to only require 30 spaces if there were no modifications to the building.

Crick said there have been no modifications to the building but the site has been modified to include a dumpster and recycling enclosure.

Wisner asked if a retail use requires only 34 spaces.

Crick said correct.

APPLICANT PRESENTATION

Mr. Jason Hoskinson, BG Consultants, said this is a unique site that City code doesn't fully address. He feels the Board should consider the location and the types of patrons using McClain's Bakery. He said the parking calculations used to get 56 spaces are similar to that of the McDonalds on 6th Street or Panera Bread on 23rd Street, which are isolated commercial areas. McClain's expects most of their patrons to be on foot or bicycle. He noted that 300 buses pass this location daily, carrying roughly 15,000 people, and those transit stops were in front of the subject property until somewhat recently, which would have provided a credit of 20 parking stalls. He explained that the second floor is intended to be an assembly area for studying, not restaurant space. He pointed out that forcing customers to park far away is not in owner's best interest and they don't anticipate that happening.

Holley asked if they explored the idea of a parking deck.

Mr. Mike O'Connell, Axiom Equities, said they have not explored that option.

Wisner asked what other parking options they have considered.

O'Connell said their only real options are alternative uses, other than a multi-level parking garage, which he believes would not be received well by the neighbors.

Mr. Greg Hirleman, McClain's Bakery, said coffee is the basis for the entire design of the second floor- there will be no service- it will be quiet just like a coffee bar atmosphere. He said they were really attracted to the space because it has two floors which allows them to have two separate concepts: restaurant on the first floor and coffee bar/study area on the second.

O'Connell added that the intent is to serve the people in the immediate area- neighbors, pedestrians, and students. If/when the parking lot is full, there's little damage to the neighbors because patrons can't park in the residential area and any other parking requires a fee, so the risk is on the owners.

Holley said they might be underestimating the probability of overflow parking going into the neighborhood. He asked how they plan to regulate parking time restrictions.

Hirleman said parking will be restricted to guests, but it would be tricky to police. He believes parking will be less than two hours overall and employees will be encouraged to park elsewhere, and are likely to be students living in the area. He mentioned that they operate another location with remarkable foot traffic that has no parking area and has had no issues. He feels very confident about the number of pedestrians that will use the proposed location.

BOARD DISCUSSION

Wilbur asked about the parking restrictions in the surrounding neighborhood.

Crick said some streets have no parking on both sides, but the majority have parking on only one side, and the realignment of Naismith Drive up to this location removed the ability to turn left at this intersection.

Gardner said he drove by the site today and getting there by vehicle is challenging.

PUBLIC COMMENT

Ms. Jan Sheldon, 1511 Crescent Rd, said she and her husband are opposed to the variance request for a number of reason. First, they believe the reduction from 56 to 30 spaces is large, and the developer knew from the beginning what the requirement would be. They believe the request will adversely affect the neighborhood by creating spillover parking into the neighborhood, and creating a safety hazard for small children in the area by increasing traffic. She noted that the City has made several efforts to calm traffic in the area and she appreciates that.

Gardner asked what street she lives on.

Sheldon said she lives on Crescent Road. She noted that there is no parking allowed along Jayhawk Boulevard.

Wilbur asked what the parking was like when Jayhawk Bookstore was still there.

Sheldon said currently, parking on her street is restricted from 8 am to 5 pm Monday through Friday and is open after 5 pm and on the weekends. Normally, there would be no parking on game days or special event weekends.

Ms. Debbie Schroeder, 1501 Crescent Rd, said her driveway has been closed for 17 days due to City construction, but her biggest concern is the possibility of a parking structure.

Mr. Thomas Schroeder, 1501 Crescent Rd, said noted that there's never been 56 parking spaces on the property.

Clark said that's correct, it would be the new requirement.

Gardner clarified that they don't have a problem with the reduction of spaces they just don't want a parking structure.

Mr. Schroeder said that's correct.

Ms. Faye Watson, 1516 Crescent Rd, said this will be open 6 am until midnight and they'll be selling beer and wine, not just bakery items. She questioned whether students will really be over there studying with beer and wine available that late. She said trash is already an issue on this street and fraternities and sororities sell their parking which creates spillover parking.

Clark asked if she is opposed to the variance request.

Watson said she is not opposed to the development or the parking but feels other things need to be considered.

Mr. Kris Kaase, 1506 Crescent Rd, said the streets are heavily used for parking, but his main concern is preserving safety in a family neighborhood, noting the late hours of operation and the sale of alcohol.

Wisner asked if his concern is the parking or the nature of the business.

Kaase said both are concerns because the amount of parking is very limited already, particularly in the evening and on the weekends.

Mr. Schroeder clarified that he and his wife are in favor of the business, but they agree with concerns about trash and the hours of operation.

Mr. Kurt Look, 1513 Crescent Rd, said he is in favor of the business if they are accurately characterized as a bakery, but would not support it as a drinking establishment. He hopes the 30 proposed parking spaces will be sufficient because he doesn't believe the neighborhood can support any overflow parking. He does not want to see "no parking" signs removed in the future due to that issue.

ACTION TAKEN

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

Unanimously approved 6-0.

BOARD DISCUSSION

Mahoney said he knows that parking is a stressful situation that close to campus and he understands neighbors' concerns. He agrees that businesses should do their due diligence. Similarly, there are issues that come with living in close proximity to a major university, and 20 cars likely won't make a difference. He is an advocate for developers using existing structures and often we need to make concessions to do that. He noted that the neighbors don't want parking to go up in height, and he's not sure if that is even possible, and would likely be out of the purview of the Board of Zoning Appeals.

Gardner asked if the property was used as a food establishment before it was a bookstore.

A woman said it was Shakespeare's Pizza.

Gardner asked if they only used space on the bottom floor.

The woman said yes, it used only the first floor.

Gardner said parking requirements don't fit every situation. He asked if they can start operating with only the first floor and later show that the parking isn't an issue as a condition to expand to the second floor.

Crick said the parking must be addressed at this time. He said the Planning Commission and City Commission could apply similar conditions during the site plan process but it is beyond the ability of this Board.

Gardner said he feels most of the traffic will be pedestrian and doesn't feel 56 spaces will be needed.

Crick added that the site plan is currently under review but it has not been approved or denied

as of this time.

Wisner agreed Gardner. He asked if there is any way the Board can condition how the parking is used or enforced.

Mahoney doesn't think the board has the authority because it's a privately-owned lot.

Crick said it's a little beyond their authority because the enforcement would require a level of staff dedication which is beyond the City's ability.

Wilbur feels Criteria 4 & 5 have not been met.

They decided to discuss each condition individually.

Mahoney feels the situation is unique, and they all agreed.

Clark mentioned the levee café was granted a variance because they knew foot traffic would be certain.

Mahoney said they don't base decisions on precedence.

They agreed that the variance would not affect the rights of adjacent property owners, as stated in Criteria 2.

Mahoney feels Criteria 3- which determines hardship caused by strict application to the code- is tricky. This is definitely a mixed-use project that will most certainly see a lot of foot traffic. He feels some of the hardship could almost be tied to financial gain, because a less intensive use might meet parking requirements, and it's ultimately a choice by the developer. He's on the fence when it comes to determining unnecessary hardship, and welcomed thoughts from other Board members.

Holley and Wilbur agreed with Mahoney's comments.

Mahoney moved on to discuss Criteria 4, regarding the effect on public health, safety, prosperity, and welfare. He said some neighbors might say that this project threatens some of those items. He questioned whether spillover from 26 cars would be noticeable spread throughout the neighborhood. He stressed that he understands the frustration with the parking but he doesn't believe this project will be the cause of any significant issues.

Clark asked if the intent of parking requirements to serve the tenant or the surrounding neighborhood.

Mahoney feels the requirement is there to alleviate parking in other areas.

Gardner said he sees an unnecessary hardship (Criteria 3) due to the MU zoning.

Mahoney asked if he feels strict application of the code would constitute unnecessary hardship.

Gardner said he does.

Clark feels 26 cars is a drop in the bucket for this high traffic area and will not be detrimental.

Mahoney feels Criteria 5 is open to interpretation; either way, it's hard not to meet Criteria 5 if you meet the others.

Wisner said he completely agrees.

Holley mentioned they would have received a reduction in spaces if the transit stop hadn't been moved, which is still very close.

Mahoney asked what the parking requirements would be if the second floor was determined to be general assembly.

Crick said general assembly is not in the code, so the equivalent would probably be event center use, which would be a different parking load calculation altogether.

Mahoney guessed it would still require a considerable amount of parking.

Hoskinson explained assembly parking calculations for the second floor. Ultimately, he said that there would be a 16 space reduction if the second floor was not considered fast order food.

Crick explained that a small event center use would require 1 space per 3 occupants for maximum occupancy of the structure, but ultimately that calculation would be subject to agreement by the Planning Director.

Mahoney asked if they might have around 12 employees.

Gardner said that's a maximum number of employees for peak hours.

Mahoney said it's a significant reduction, but as some Board members have mentioned, they're not sure if it's significant in this neighborhood.

Wilbur agreed, but if you live there you feel it, so

Clark asked if the MU 20 credit is all or nothing.

Crick said that's correct.

Gardner said they moved the bus stops for safety reasons- he asked when they were moved.

Crick said they moved the stops within the last 12-18 months at the recommendation of the transit administrator due to congestion issues and safety concerns. He noted that bus stops can be moved at any time based on that type of recommendation.

Gardner asked when the property owner purchased the property.

O'Connell said they purchased it about eight months ago. Regarding due diligence, they were instructed to provide a parking calculation on their application based on what they intended to do, but weren't provided a determination until after they submitted an application. They have never intended a high intensity use for second floor, and feel the unnecessary hardship is the somewhat arbitrary parking calculated based on the determination for the second floor.

Hirleman stressed that they have always visualized the second floor as a living room study parlor space.

Gardner feels the transit stop proximity is a factor in considering the variance.

Mahoney asked if they're close to 200 feet from the transit stop.

Crick said yes, approximately.

Clark said he feels the intent of that measurement is to establish foot traffic and that location couldn't be more appropriate in that regard.

Holley agreed.

Ms. Schroeder asked if the variance applies to a future business on the property, such as a McDonald's.

Crick said the variance follows the property, but confirmed that a more intense use would require another variance, while a less intense use would not.

Holley said the interpretation of the use as fast food would allow another fast food to come in.

Mahoney said they have, in the past, tied the variance to the business.

Crick said it is possible to condition the variance based on the existing structure or configuration of the present lot, or if the building is remodeled or changed significantly. The variance ultimately runs with the land and uses will change over time.

Gardner said the Board has conditioned things before based on the use.

Mahoney said the issue here is that the use will be fast food. He asked whether there is an alternative classification for the second floor that would reduce the parking requirements for the second floor.

Crick said fast order food is one of the most intensive parking ratios you'll see in the code. The requirements and purpose of the parking code is to provide adequate offsite parking, but there's an even comment that it needs to be flexible. General retail sales would require 1 for 300 feet, so that would reduce the requirement significantly.

Wisner said he's a little uncomfortable penciling things out with hypothetical reductions because there are lots of mitigating factors based on the location. He's comfortable making a motion but asked if any conditions are possible.

Hirleman mentioned that they introduced alcohol to only one other location. They're a family business, not a bar. They plan to sell premium beer and wine which they don't believe will attract students. He said if it becomes a problem it will be eliminated.

Crick clarified that the liquor license is granted by the City Commission.

Mahoney said it's not an issue for him.

Holley said that relieves his reservations regarding Criteria 4. He feels the tenant is legitimately concerned about the neighborhood and his only concern is future tenants.

Crick said that any condition would need to be well placed under the ability of the Board.

Gardner asked if there is any better use classification for the second floor.

Crick said that is the best fit per code.

ACTION TAKEN

Motioned by Clark, seconded by Wisner, to approve the variance request based on findings of fact, staff presentation, applicant presentation, and neighbor discussion, and because it meets the five conditions for a variance.

Motion carried 4-2, Wilbur & Mahoney were opposed.

Ms. Schroeder asked if a change in use will affect the variance.

Mahoney said the variance will follow the property.

Crick said another variance would be required if the use is intensified. A site plan will also be required for any significant changes.

ITEM NO. 7 MISCELLANEOUS

a) No other business to come before the Board.

ADJOURN 8:43 PM