

LAWRENCE BOARD OF ZONING APPEALS
Meeting Minutes of May 4, 2017 – 6:30 p.m.

Members present: Clark, Gardner, Gascon, Wilbur, Wisner

Staff present: Cargill, Crick, Walthall

ITEM NO. 1 COMMUNICATIONS

- a) Acknowledge communications to come before the Board.
- b) Board member disclosure of any ex parte contacts and/or abstentions from the discussion and vote on any agenda item under consideration.
- c) Announce any agenda items that will be deferred.

ACTION TAKEN

Motioned by Gardner, seconded by Gascon, to appoint Wilbur as temporary Chair.

Unanimously approved 5-0.

ITEM NO. 2 MINUTES

Consider approval of the minutes from the April 6, 2017 meeting of the Board.

Item deferred.

BEGIN PUBLIC HEARING:

ITEM NO. 3 VARIANCE FROM THE REAR BUILDING SETBACK FOR A RESIDENTIAL DWELLING; 303 PROVIDENCE ROAD [JSC]

B-17-00163: 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 feet rear building setback standard required by Section 20-601(a) of the City Code for the RS10 (Single-Dwelling Residential) District. The applicant is seeking a variance from this code standard to allow for construction of a 19 foot, 4 inch deck addition that will reduce the rear building setback to a minimum of 18 feet. The property is located at 303 Providence Road. Submitted by Grant Caffrey, property owner of record.

STAFF PRESENTATION

Crick presented the item.

Wilbur asked if the county club is the only adjacent property owner.

Crick said yes.

Wisner asked if the parcel is split.

Crick explained that platted lot 42 is in two different parts, half in 303 Providence Road and half to the neighbor to the north. The parcel encumbers the bulk of lot 42.

Gardner said the home's orientation is unique to the neighborhood. He asked if side yard setback in this case is the primary focus.

Gascon asked for the definition of side yard and rear yard.

Crick said that rear yard is defined as being parallel to the front yard setback; here, it is along Providence Road. The interior side yard setbacks run perpendicular to the front and rear side yards by code.

Gardner said the unique criteria seems to be met.

Clark asked if there is a height limit for structures affecting the setback.

Crick said anything over 30 inches above grade triggers a building permit and setback requirements.

Clark asked if the deck is taller than 30 inches.

Gardner said it is.

APPLICANT PRESENTATION

Mr. Grant Caffrey, property owner, said he built the deck without realizing he needed a permit. He mentioned that the deck backs up to open space and he's been working hard on improving the property.

Gardner asked if the brick pillars are for a fence.

Caffrey said yes.

Wisner asked how the property is situated in relation to the golf course.

Caffrey said it's pretty far from the nearest green and is slightly downhill from it.

Gascon asked how he became aware that he was out of compliance.

Caffrey said he received a certified letter.

Crick said staff believes it was the result of a complaint.

Wisner asked for the total deck area.

Caffrey said around 750 sq ft.

Wisner concluded that the portion of deck out of the setback is maybe 1/6.

ACTION TAKEN

Motioned by Wilbur, seconded by Gardner, to close public comment.

Unanimously approved 5-0.

BOARD DISCUSSION

Wilbur said they meet the uniqueness criteria and the circumstances are unique- the country club isn't going anywhere and the property backs up to green space.

Gascon said the setback code- specifically for rear yard setbacks- isn't serving a legitimate purpose.

Wisner said it's just a sliver of the deck that's out of compliance.

Gardner said it meets uniqueness and does not have an adverse effect, but they need to find that the request meets all five conditions including that of hardship.

They discussed how to define a hardship.

Clark asked what happens if the variance is denied.

Mr. Barry Walthall said the building permit could not be approved as submitted. He said it would need to be redesigned or the deck would need to be removed.

Clark asked staff for guidance as to the Board's role in making a proper determination.

Crick said their role is to make a ruling on the code itself using the five conditions. They're not questioning the code's existence, but whether it's being applied equally and fairly throughout.

Gardner asked for examples of a hardship if money is not one.

Wilbur said a change in zoning code is considered a hardship.

Gascon asked if the house violates the side yard setback.

Crick said it did not violate the side yard setback under the 1966 code.

Gascon said that the house was built under a different zoning code that allowed deviations from the code that are not permissible under the current code.

Crick said he wouldn't necessarily disagree with that but new construction must comply with the current code, not a code that has been superseded.

Clark noted that the letter from the country club was supportive and they are the only neighbor affected.

Wilbur asked Gascon to repeat the suggested hardship.

Gascon said the 1966 code that allowed deviance from the traditional setback created an orientation that is unique to the property, and because those deviations have changed, there is a hardship.

ACTION TAKEN

Motioned by Wilbur, seconded by Gardner, to approve the variance based on the uniqueness and hardship criteria due to the 1966 code at the time the home was built, and because the request meets the spirit of the code.

Approved 4-1 Clark dissenting.

ITEM NO. 4 MISCELLANEOUS

a) No other business to come before the Board.

ADJOURN 7:08 PM