

LAWRENCE BOARD OF ZONING APPEALS
Meeting Minutes of August 7th, 2014 – 6:30 p.m.

Members present: Fertig, Gascon, Holley, Kimzey, Mahoney
Staff present: A. Miller, Cargill, Guntert, Halm, Larkin

ITEM NO. 1 COMMUNICATIONS

Acknowledge communications to come before the Board.

Guntert said he just received a new communication from neighbors in Old West Lawrence regarding the appeal item.

No board members disclosed any ex parte contacts and/or abstentions from the discussion or vote on any agenda items under consideration.

There were no agenda items deferred.

ITEM NO. 2 MINUTES

Consider approval of the minutes from the July 24, 2014 meeting of the Board (rescheduled from the original July 10th meeting date).

ACTION TAKEN

Motioned by Fertig, seconded by Gascon, to approve the minutes from the July 24, 2014 meeting of the Board.

Motion carried 3-0-2.

BEGIN PUBLIC HEARING:

**ITEM NO. 3 FLOODPLAIN DEVELOPMENT VARIANCE FOR THE CITY OF LAWRENCE
WAKARUSA WASTEWATER RECLAMATION FACILITY, 2300 EAST 41ST
STREET [AAM]**

B-14-00281: A request for a variance as provided in Section 20-1309 of the Land Development Code of the City of Lawrence, Kansas, 2013 edition. The request is from the provisions in Article 12, Section 20-1204(e)(1)(i), "Provisions for Flood Hazard Reduction, General Development Standards," of the City Code as it pertains to development in the Regulatory Floodplain Overlay District. The variance request is related to the proposed new City of Lawrence Wakarusa Wastewater Reclamation Facility which is planned to be developed on the property addressed as 2300 East 41st Street. The subject property is generally located on the south side of the Wakarusa River approximately .7 mile east of Haskell Avenue (E 1500 Road) using N 1175 Road. Submitted by Brian Austin with Bartlett & West Engineers, Inc., for the City of Lawrence, property owner of record. **The legal description for each application is found in the respective project case file which is available in the Planning Office for review during regular office hours, 8-5 Monday - Friday.**

STAFF PRESENTATION

Miller presented the item.

PUBLIC HEARING

Mr. Gary Holladay asked if staff could better explain the variance request, specifically where the fill will be located.

Miller explained where the fill will be located.

Holladay asked what will be done.

Miller reiterated the variance request.

Holladay asked what the setback area is.

Miller said she would have to look.

Mahoney said he appreciates his curiosity on the subject and asked if Mr. Holladay had any statements he would like to make or questions for staff.

Holladay said he was just curious as to what was going on and that he has a lot of general questions about the sewage plant.

Mahoney said they are not dealing with that this evening; the discussion is just for the floodplain variance.

Holladay asked how much fill will be down there.

Mahoney said he did not know that specifically.

Miller offered to discuss the fill and grading plan with Mr. Holladay at a later time.

Holladay said he would appreciate that, but asked if it would be too late once they approve the variance.

Mahoney asked if Mr. Holladay had a position on the variance.

Mr. Holladay said he did not. He said the letter he received just stated that there would be a hearing.

Mahoney said they will listen to any comments he has on the subject.

Holladay said he just wants to know what is going on. He asked why he should meet staff tomorrow if the Board makes a decision tonight.

Mahoney said that was his choice, but the Board will make a decision this evening.

Holladay said that it was a waste of his time then to have come to the meeting.

Mahoney said that is his opinion.

Holladay asked what good he is doing if staff is putting him off until tomorrow and the Board is making a decision tonight.

Mahoney said they are present to have a civil discourse regarding the floodplain variance and he has been given the opportunity to speak on the matter. Staff has presented the item and provided answers that don't need to be provided, but if he has something to say regarding the item he is welcome to do so. Mahoney reminded him that this is a public meeting, the subject

matter of which has been posted and available for weeks, and if he has questions for City staff he should contact them tomorrow. He apologized that his particular questions would not be answered this evening.

There were no other members of the public present to speak about this agenda item.

ACTION TAKEN

Motioned by Fertig, seconded by Kimzey, to close the public hearing on Item 3.

Unanimously approved 5-0.

BOARD DISCUSSION

Mahoney said these variances seem to be more of a technicality and he hopes the code review next spring will change the standards to make this type of variance unnecessary.

Fertig agreed, she said if the City Code is not meant to capture these types of scenarios, she would strongly support a revision when it is up for review.

Kimzey said this looks to be the second variance of this type at this location.

Fertig said it was a little bit further west.

Miller said a previous similar request was for Menards.

ACTION TAKEN

Motioned by Fertig, seconded by Kimzey, to approve the variance with conditions as per the staff report.

Unanimously approved 5-0.

ITEM NO. 4 **APPEAL ADMINISTRATIVE DETERMINATION DENYING ACCEPTANCE OF MINOR SUBDIVISION FOR 706 ILLINOIS STREET [DRG]**

B-14-00276: Consider an appeal filed by Allen Belot, Allen Belot Architects, on behalf of his client Haris and Alisa Mehmedovic, owners of the real property at 706 Illinois Street. The appeal challenges an administrative determination, issued by letter dated June 30, 2014, from Ms. Sheila M. Stogsdill, Planning Administrator, in the City of Lawrence Planning and Development Services Department, which denied the acceptance of a Minor Subdivision involving the lot line boundaries of the property owned by the appellant. The appeal was filed under the guidelines of Sections 20-813(f)(1) and 20-1311 in the Land Development Code of the City of Lawrence, Kansas, 2013 edition. Reasons for filing this appeal are cited by the appellant in their appeal packet received in the Planning Office on July 3, 2014. **The legal description for each application is found in the respective project case file which is available in the Planning Office for review during regular office hours, 8-5 Monday - Friday.**

STAFF PRESENTATION

Guntert presented the item.

Mahoney explained that the current City Code does not allow the expansion of a non-conforming use if it increases the number of dwelling units. He asked staff if that includes buildable lots without an existing structure.

Guntert said staff considered this nonconforming use to be both existing lots the way they're configured as a package of property with two dwelling units on it. There are two lots now but they are encumbered because the structure extends over the common line. This minor subdivision would have shifted that common line creating a potential buildable lot.

Gascon asked if the common line can be identified by a survey.

Guntert said they did file a minor subdivision plat that was prepared by a registered land surveyor and it shows where the current property line is located.

Fertig asked staff to explain how this project would expand the nonconforming use.

Guntert said the registration of the nonconforming use was based on the legal description filed with the application that includes the west half of the two lots that were combined by the county in their parcel records kept for appraisal purposes. He explained that it's a registered nonconforming use duplex on the two lots, and the minor subdivision would create a separate lot that could potentially allow the construction of another dwelling unit if they were to reduce the number of units in the existing structure to meet zoning requirements.

Holley asked if they can add a second unit on the parcel to the south if the duplex is converted to a single unit.

Guntert said yes because there would be one dwelling unit on each lot if they were to do that.

Mahoney thanked staff.

APPLICANT PRESENTATION

Mr. Allen Belot, appearing on behalf of the Mehmedovics, said staff is cross pollinating a lot of terms and drawing assumptions that aren't correct, so they have a friendly disagreement. First, he said the new communication received by staff in opposition to the project is concerning because he talked with Richard Andrade at length and explained that there is nothing sinister going on and there will be no rental unit. He explained that the Mehmedovics live on a five acre parcel west of town, their kids are in college and gone, so they would like to downsize to a house like the one proposed to use as their personal residence, not a rental (he showed a drawing to the Board). He said off-street parking would be taken care of on the two lots - they would neither take away street parking nor would they add to it. As staff explained, there are two lots: the west half of Lot 3 and the west half of Lot 4, that were platted before 1863 and have continued that way ever since. Until now, he explained, no one has attempted to split them or combine them, and the only people who can legally do that are the property owners, not staff. He said staff can't declare it a development parcel since there is no such term in the zoning ordinance, so it's not a development parcel because that is not a legal term. Belot explained that the Mehmedovics bought the house in 2011 and intended to refurbish the 706 Illinois Street structure, beginning with the electrical system. When electrical work was inspected, they were told it is a nonconforming use and must prove the duplex existed prior to the zoning ordinance, so they did. He said the house sits at 706 Illinois Street on a lot separate from the other lot. He placed the survey for the minor subdivision on the overhead. He further explained that the property line would be abandoned because, in the minor subdivision replat, the south property line of Lot 2 would move four feet to the south. The reason this happened, he said, is because Mr. Mehmedovic built a porch to cover one of the units that appeared to encroach on the property, and a survey later indicated that the porch was encroaching a foot or so over the property line. Belot said he felt they should do a minor subdivision instead of tearing down the porch, which was added in 2012. He explained that the only purpose of the minor subdivision is to move the property line to the south to encompass

the porch. He explained the history of the property. In response to staff's concerns, he said public records indicate that the two parcels have been conveyed as one since as early as 1942, and in that statement, they replat the property- two legal parcels of land into one. After looking at records of that entire subdivision through the appraiser's office online he noticed there are often two legal descriptions for two lots with the term "combined" and the year. For example, he said, 706 Illinois Street was combined in 2008, 705 Mississippi Street was combined in 1988, 734 Illinois Street was divided in 2004. He was told by the Appraiser's Office that there are two possible scenarios for the aforementioned to occur. If the property owner has a deed, like the Mehmedovics', that conveys ownership of two lots on one deed, the Appraiser's Office does not separate the lots, thus the term "combined" in the legal description. He said the reason he mentions 730 Illinois Street is because he came before the Board of Zoning Appeals in the 1980's to request a variance for a garage and it was not granted. Later, someone bought the lot and built a house on it and that's when the Appraiser's Office divided the two properties. He said staff is basing their argument on the Appraiser's record conveying the property as a unit since the 1940's, but the Appraiser's Office indicates that conveyance in that manner only applies to ownership. He explained that the only other way the record will indicate "combined" is if the owner requests it, which requires a replat or minor subdivision, so staff can't legally combine two lots into one. 706 Illinois Street is a legal nonconforming use on a separate lot with a porch encroachment they intended to correct with a minor subdivision. He mentioned that 724-26 Illinois Street is on a 50 ft lot and doesn't have the benefit of an extra lot, but these duplexes are a vestige of our past and can exist in harmony with the rest of the neighborhood. He felt it wasn't right that staff wants to add the other lot to make it legal in their terms. He offered to answer any questions.

Fertig asked if, in his research, Belot came across a reason why the Sanborn map depicts 706 Illinois Street as one unit as opposed to two lots.

Belot said Sanborn maps are for insurance purposes, they are not legal and not for planning purposes. Belot said the county appraiser shows this as one ownership entity and does not describe a legal entity. The legal entity, he said, is the two half lots, as indicated by the public record. He said the purpose of platting is to create a record and provide equal access to it.

Kimzey said he's confused about the combined aspect of the lots. He asked why they are not one lot if they're combined as stated in the legal description.

Mahoney suggested Kimzey wait to address his question with staff when the applicant is finished. He then asked Belot to confirm that he was the applicant on the Application for Registration of a Nonconforming Use for this property, dated February 3, 2012.

Belot said yes he can confirm that.

Mahoney asked if he knows that this property is registered as a nonconforming use.

Belot said he knows that 706 Illinois Street is registered as a nonconforming use. That was all he dealt with.

PUBLIC HEARING

Mr. Steve Maceli said he is the property owner of 714 Illinois Street, another double lot. He submitted a letter based on what neighbors felt would happen knowing it is a rental unit. He said there are 22 neighbors that want to make sure that it does not become a rental unit. Just because there are plans for a single-family home this year doesn't mean it won't become a rental next year. He said they don't have an alley so many people park on the street. He said if the lots are split, he and other neighbors are not convinced that parking will not encroach upon their ability to park along the street. He mentioned that 720 Illinois Street was reclaimed

from a rental property and is now owner occupied, which will be in the Healthcare Access Holiday Homes Tour in 2015.

Mr. Haris Mehmedovic, property owner, said he bought the property in 2004. He said the property was a rundown duplex containing two apartments when he bought it and he went through a lot of trouble to make it legal and to rehabilitate it. He said he understood the neighbors' concerns about not wanting a rental property and that he just wanted to build a house on the adjacent lot. He thanked the Board for their time.

ACTION TAKEN

Motioned by Holley, seconded by Fertig, to close the public hearing for Item 4.

Unanimously approved 5-0.

BOARD DISCUSSION

Mahoney asked Belot what he would like to add to the discussion.

Belot said he also understands the concerns of the neighbors and they don't intend to do anything sinister, the property owner just wants to live there. He said they will handle the parking, and if he knew that was an issue, he would have brought a sketch to show how that could be handled.

Mahoney reminded the Board that their task is to find whether staff was correct in denying the usage based on an expansion of a nonconforming use.

Fertig said she is struggling to understand how this is an expansion of the nonconforming use, and asked if it's because the lot will be larger and will create a buildable lot.

Larkin said it's a duplex with a nonconforming use and it overlaps the lot line, so moving the lot line increases the nonconforming use to allow three units instead of two.

Miller said they should discuss the difference between lots and parcels. She said this property is two halves of lots and one parcel. The parcel is for ownership purposes, and the combination occurs with the county after they've been in common ownership after a certain amount of time. The application for the nonconforming use was filed for both halves, with a legal description for both halves of both lots, so it is staff's position that the nonconformity was granted for the parcel, which is the two halves of the two lots.

Holley said he is also confused. He said right now they have a single parcel and two lots that are each zoned separately as a nonconforming use.

Guntert said the nonconforming use is registered for the west half of Lot 2 and Lot 3, Block 4, Lane's First Addition, which is the two properties known as 706 Illinois Street by address. He said according to the aerial photo provided, you'll notice a driveway accessing the accessory structure that overlaps the common line, and it is clearly on the south lot of those two combined lots. Both lots have been developed as a package in staff's opinion.

Kimzey said then that the nonconforming use is tied to both lots, not just Lot 2.

Guntert said yes.

Holley asked if only Lot 2 would be nonconforming if the porch is torn down.

Guntert said the City's registration was based on the legal description filed with the application that included both lots. He said there is one other structure they indicate will be demolished, the existing garage, but it is also overlapping the line shared by those two half lots.

Gascon asked staff to confirm or deny whether there are two lots.

Larkin said there are two lots.

Miller said there are two halves of two lots, technically speaking, and there is one parcel.

Kimzey asked if both halves are nonconforming.

Miller said that is what the nonconforming use registration was issued for.

Kimzey asked if one of the restrictions of a nonconforming use is the number of dwelling units cannot increase.

Guntert said that is correct.

The Board discussed their interpretations of the expansion of a nonconforming use.

Kimzey asked if the south lot was registered as nonconforming before the porch was built.

Miller said Section 20-1502(b)(2)(i) of the City Code only says that a nonconforming use expansion in a residential district is only allowed when it does not increase the number of dwelling units.

Gascon said that doesn't specify lot or parcel.

Miller said that is correct, it is the nonconforming use.

Fertig asked if it would be incorrect to summarize the situation as a single nonconforming use that encompasses two halves of two lots that are collectively one parcel, and the expansion would create an additional dwelling unit within the existing nonconforming use registration.

Miller said, expanding on that, the minor subdivision would adjust the lot line so they could build another dwelling unit on the south. The south could become conforming, but the nonconforming use was granted to the entire parcel, commonly known as 706 Illinois Street.

Gascon asked what the goal is.

Mahoney said they are here to affirm or reverse a decision made by the City that stated this would be an expansion of a nonconforming use based largely on Sections 20-1502(b)(2)(i) and 1502(b)(3)(i) of the City Code that state that a nonconforming use may not expand or change in a way that would result in an increase of dwelling units on the site. He felt the confusion was stemming from whether they're dealing with two lots or one parcel. It is his opinion that, since the nonconforming use was granted in 2012 for 706 Illinois Street which includes two lots, reversing staff's decision would result in the expansion of the nonconforming use at 706 Illinois Street.

Belot interjected.

Mahoney apologized, and asked Belot to stop as a point of order because they had closed the public portion of the meeting and said he'd had his turn to speak. He said the Board is to determine whether staff made the right decision.

Fertig looked at the Application for Registration of a Nonconforming Use that does apply to the west half of Lots 2 and 3, commonly known as 706 Illinois Street. She felt that, in keeping with the code, allowing an additional structure would expand the nonconforming use, so she agreed with staff's interpretation.

Mahoney asked Fertig if she was reading from page 46.

Fertig said yes.

Mahoney agreed with Fertig's statement.

Gascon asked how it would affect this judgment if the applicant noted on their application for the nonconforming use that the application was for the west one half of Lot 2.

Larkin said that may have made a difference in the decision.

Gascon asked if the Board's decision today would prevent the applicant from applying for the one half of Lot 2.

Larkin supposed there could be an amendment to it, but there would have to be an application for it and it would need to be approved.

Gascon said they are splitting hairs on whether they are looking at two lots. If Lots 2 and 3 are included, the applicant gives up his ability to separate Lot 3. If you were to put this application on Lot 2 staff would have a hard time using the nonconforming use argument against Lot 3, which would allow the applicant to achieve his goal.

Holley agreed with Gascon. Since it's not possible to go back in time, he felt they need to rule on whether staff was correct, and he agreed with Fertig's previous interpretation.

Gascon asked if it's possible that the Board of Zoning Appeals will see this issue again if ruled on as suggested by other Board members.

Larkin said it could happen.

Belot asked if he can postpone the decision.

Mahoney said no.

Belot asked if he could withdraw on behalf of his client.

Mahoney asked for guidance from Larkin.

Larkin said he can make a motion to withdraw and it would be up to the Board to consider it, which would be a separate motion.

Mahoney said he appreciated the offer from Belot, but he felt they should make a decision on the matter and have enough facts to do so.

ACTION TAKEN

Motioned by Fertig, seconded by Kimzey, to uphold staff's determination dated June 30, 2014 that denied the acceptance of a minor subdivision for 706 Illinois Street.

Motion carried 4-0-1.

Larkin suggested the Board should direct staff to prepare findings of fact for review at the next meeting.

Mahoney directed staff to prepare findings of fact for review at the September 2014 Board of Zoning Appeals meeting.

ITEM NO. 5 PERIMETER BUILDING SETBACK VARIANCE FOR ARTERRA, 2161 QUAIL CREEK DRIVE [DRG]

B-14-00277: A request for a variance as provided in Section 20-1309 of the Land Development Code of the City of Lawrence, Kansas, 2013 edition. The request is for a variance from the minimum 30 feet perimeter building setback requirement from the boundary of a planned commercial development district (approved under the terms and conditions of the previous zoning code) as required by reference in Section 20-222(e) of the City Code. The applicant seeks variance approval to reduce the perimeter building setback to a minimum of 10 feet from the west property boundary so they can build an addition on the west side of the existing commercial structure. The property is located at 2161 Quail Creek Drive. Submitted by Allen Belot, Allen Belot Architects, for Arterra, LLC, the property owner of record. **The legal description for each application is found in the respective project case file which is available in the Planning Office for review during regular office hours, 8-5 Monday - Friday.**

STAFF PRESENTATION

Guntert presented the item.

APPLICANT PRESENTATION

Mr. Allen Belot said he was in agreement with staff's recommendation. Generally, he said, the purpose of setbacks is to provide protection to adjacent property owners, open space, and drainage, but the Alvamar golf course is a huge setback and they have no objection to this.

No public comment

ACTION TAKEN

Motioned by Gascon, seconded by Holley, to close the public hearing for Item 5.

Unanimously approved 5-0.

BOARD DISCUSSION

Mahoney feels it speaks volumes that this was previously approved. He said it doesn't appear it would encroach closer to the rear property line than the previously granted variance for parking. He sees no problem and thinks it will be an enhancement to the property.

Fertig agreed, she said it appears the building is barely in the 25 ft setback now, but this is minimal.

Kimzey asked if it is a 25 or 30 ft setback.

Guntert said there is a lot of dimensional information on the development plan, so it's difficult to know for certain, but the code standard is 30 ft for the periphery setback, which is what the building setback should be.

Fertig said there are no neighbors to aggravate so she can't see how there would be any objection.

ACTION TAKEN

Motioned by Holley, seconded by Fertig, to approve the variance with conditions as per the staff report.

Unanimously approved 5-0.

ITEM NO. 6 MISCELLANEOUS

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

Guntert said staff has no other items but there are items for review at the September 4th meeting.

Mahoney asked if those items are for the Board of Zoning Appeals or Sign Code Board of Appeals or both.

Guntert said there are three variances for the Board of Zoning Appeals and he is not aware of any sign variances at this time.

ACTION TAKEN

Motioned by Fertig, seconded by Kimzey, to adjourn the August 7, 2014 Board of Zoning Appeals meeting.

Unanimously approved 5-0.

ADJOURN 7:52