

BOARD OF ZONING APPEALS
MINUTES
February 24, 2009

The regular meeting of the Board of Zoning Appeals of the City of Wichita, Kansas was held at 1:30 p.m., on February 24, 2009, in the MAPC Conference Room, Tenth Floor of City Hall, 455 N. Main, Wichita, and Kansas.

The following board members were in attendance:

BICKLEY FOSTER, DWIGHT GREENLEE, STEVE ANTHIMIDES, JOHN MARKER,
AND JOSHUA BLICK

Board members absent:

CHARLES YOUNG
AND BENJAMIN STIFF

City of Wichita staff present:

HERB SHANER – Office of Central Inspection

City of Wichita staff absent:

SHARON DICKGRAFE– Law Department

The following Planning Department staff members were present:

JESS MCNEELY, Secretary.

YOLANDA ANDERSON, Recording Secretary arrived at 2:00PM

GREENLEE We will start the meeting at 1:30PM. We have a quorum. The first thing on our agenda is to approve the minutes of 10/28/2008.

FOSTER I move that the minutes of 1.27.09 be approved.

ANTHIMIDES Seconded

GREENLEE All in favor say Aye?

Motion carries 5-0 unanimously

GREENLEE We will now hear case request on BZA2008-72 a variance for a carport located at 732 S. Christine Ave.

McNEELY **BACKGROUND:** The applicant requests a variance to reduce the Zoning Code required front building setback from 25 feet to 4 feet and the side building setback from 6 feet to 0 feet for an existing metal carport structure. The carport was installed without a building permit, and cited within the past six months. The unenclosed metal carport structure is 22 feet wide in the north-south direction, and 26 feet long in the east-west direction (see the attached site plan). The Zoning Code Section III.E.2.e(1)(i) allows unenclosed carports to project up to 8 feet into a required front setback. The house on the site is 30 feet from the front property line. Therefore, an unenclosed carport in front of the

house on this site could legally be 13 feet long, projecting the allowed 8 feet into the 25-foot front building setback. Within the immediate surrounding neighborhood, no other carports exist in the front setback, nor do any structures encroach into the front setback. The result is a very uniform front yard and setback appearance created by the houses all at a similar distance from the street.

The application area was platted and built in 1949 under Zoning Code setback requirements identical to today's setback requirements. The house was built with a one-car attached garage. The house was built at the required 6-foot side setback from both side property lines. Neighboring houses north and south of this site are also built 6 feet from the side property line, resulting in 12 feet between houses. No rear alleys exist within the application area subdivision. All surrounding properties are also zoned TF-3 and developed with single-family residences.

ADJACENT ZONING AND LAND USE:

NORTH	TF-3	Single-family residences
SOUTH	TF-3	Single-family residences
EAST	TF-3	Single-family residences
WEST	TF-3	Single-family residences

The five criteria necessary for approval as they apply to variances requested.

UNIQUENESS: It is staff's opinion that this property is not unique. This property was developed in 1949 under the current Zoning Code setback requirements. This property is developed similarly to all surrounding properties.

ADJACENT PROPERTY: It is staff's opinion that granting the requested variance for a front and side setback reduction would adversely affect the rights of adjacent property owners. The requested front setback reduction from 25 to 4 feet obstructs neighboring properties' views up and down the street. The requested side setback reduction from 6 to 0 feet does not allow the applicant to maintain his property without encroaching onto the adjoining property, and subjects the north neighbor to a structure at the property line, six feet from the neighbor's house. The requested side setback reduction from 6 to 0 feet would cause stormwater runoff from this carport to land on the northern neighbor's property.

HARDSHIP: It is staff's opinion that the strict application of the provisions of the code could constitute a hardship upon the applicant, as the site could only be legally developed with a 13-foot long carport, shorter than the average 16-foot long car. Also, the applicant does not have vehicle access to the rear-yard; therefore the rear-yard could not be used for a carport. This hardship is not unique to this property, as this property is identical to all surrounding properties.

PUBLIC INTEREST: It is staff's opinion that the requested variances for a front and side setback reduction would adversely affect the public interest, as visibility on Christine Avenue would be constrained at this location.

SPIRIT AND INTENT: It is staff's opinion that granting the requested variance for a front and side setback reduction does oppose the general spirit and intent of the Zoning Code. The

reduction of the front setback would be contrary to the code intent of a uniform street building setback and the visibility created by that setback. Likewise, reduction of the side setback as requested would oppose the code intent of allowing space between a building and a property line for maintenance, storm-water runoff, and a uniform separation between buildings.

RECOMMENDATION: It is staff's opinion that the requested variance does not meet the five criteria necessary to grant a variance. The Board of Zoning Appeals has granted variances to setbacks for unenclosed carports in the past, but historically those variances were not as significant in reductions as this request. Likewise, similar variances previously approved by the BZA were on properties platted and developed under outdated Zoning Code setback standards (unlike this case), with similar setback encroachments in the surrounding neighborhood (unlike this case) and with circumstances that would have no effect on neighboring properties, such as a significantly greater separation between neighboring property structures. Therefore staff recommends that the variance be DENIED. However, should the Board determine that the conditions necessary for the granting of a variance exist, the Secretary recommends that the variance to reduce the front setback from 25 to 4 feet and the variance to reduce the side setback from 6 to 0 feet be subject to the following conditions:

1. The site shall be developed in conformance with the approved site plan.
2. The setback reduction shall apply only to the 22x26 foot unenclosed carport structure as illustrated on the approved site plan. All other structures or additions on the subject property shall conform to the setbacks permitted by the Unified Zoning Code unless a separate Zoning Adjustment or Variance is granted.
3. The applicant shall obtain all permits necessary for the improvements within one year of the granting of the variance.
4. The applicant shall file a joint building setback agreement, ensuring a minimum six foot separation between buildings on adjoining lots, prior to receiving a building permit for the unenclosed carport.
5. The carport structure on the site shall conform to all other codes, to include but not limited to building and fire codes.
6. The above conditions are subject to enforcement by any legal means available to the City of Wichita.

Are there any questions of staff? The applicant is here to speak.

GREENLEE Does the Board have any questions for Jess?

FOSTER I noticed the other houses have a garage. Does this property have a garage?

MCNEELY Yes, the staff report addresses that this house was originally developed with a one-car garage.

FOSTER We have had a number of these carport cases over a period of time but I will comment on that later.

GREENLEE Are there any more question from the Board Members?

BLICK Jess, it looks like a rail that goes around the base of the carport. Is this fixed or is it bolted down into the concrete?

MCNEELY This structure is bolted down. It can be unbolted and moved fairly easily.

GREENLEE Does the applicant have any comments that he would like to make?

McNEELY Laura Hernandez with the City of Wichita is present to interpret.

JOSE PEREZ, speaks through interpreter.

My name is Judith Proctor, I serve as an interpreter in the City of Wichita for the last 27 years. He request assistance to help him understand some questions. Also, he has some documents here to share today. My address is 1112 S. Pershing. I've lived at the Hilltop Manor housing for 26 years and my telephone number is 316. 667-4640. I am listed in the business pages as a Spanish-English communication service. He asked if I would be his interpreter. He briefly explained what is happening. He has comments signed by some neighbors that support his petition for a variance request today.

My name is Jose Perez, 732 S. Christine, Wichita, KS 67218. I am the owner of the house where I've resided for the past 13 years. I built this carport because it was my understanding that it was within my property limits. Since I was living in this house for this long, I did not realized that I needed to request a permit because I am the owner of that property. In my understanding I realize that I am not occupying anyone's territory, I am not exceeding any property boundaries that are not mine. When I built the carport, I did not think I was offending anyone, the neighbors or the City rules. I made application to the City to see if I can keep the carport on my property. I want to know if any neighbors are complaining about my carport. I brought some letters from the neighbors. They want you to know what they think about what I have on my property. I asked if I had gone over the neighbors boundaries. I do not want to be against the City or the City to be against me. I want to conform with the City and the neighbors in order to keep my carport. I want to know what I can do to keep this carport. The reason for the carport is the garage is very small. The garage is now being used for tools and household items. The reason why the carport is in the front is that there is no other place around the property to place it. I want to know what I can do in order to keep the carport where it is now. I purchased the carport to keep my vehicles protected from the snow, rain or drastic weather. The neighbors say the carport looks good. All I am trying to do is make everything around the property look nice. If you think the location of the carport is not good, I can do something else. I do need a carport. There is no space behind the house to place the carport. Here are the letters of the neighbors for you to read. May I pass them around? He has seen in other areas carports similar to his. There is a carport located at 2619 Scott Forth and it is constructed the same way as the one at 732 S. Christine, at 3153 Ranch has a carport sitting in front of an enclosed garage, at 3021 S Fork Court there is a wooden carport, and at 1091 S. Fork Ct there is a wooden carport, at 2937 Timberlane there is a carport, and at 2901 E. Sunnybrook. I have spoken to the each of these owners. They each have had their carport for nearly 10 years. They have had no problem from the City. I did not know that I needed a permit.

GREENLEE We have another person listed on this case. Does she have anything to say?

PROCTOR She agrees with what he has been said. She came to support her husband. Mr. Perez wants to know who is the complaining neighbor? There is a neighbor whose house is filthy in the front and back yard. That owner said he is Mexican and she is going to do her very best to make certain he moves away from here. With all the other neighbors, we have gotten along well. She is the only neighbor who has ever yelled at us. That neighbor thinks we are illegal and wants us out of the country. I live here and I pay my taxes like everyone else and it should not be a problem to anyone.

GREENLEE This board is charged with the responsibility for the zoning code. You are bringing up a lot of other problems that belong before another board or agency.

PEREZ With the neighbor calling me names, I did think it had something to do with the carport. He thinks she is bothered with him living there.

GREENLEE Would you stay at the podium, the board members have a few questions for the applicant.

BLICK Is this carport structure fixed or is it loose? Is it bolted to the cement?

PEREZ The carport is connected with the cement and it is anchored 30 inches down. The bolts are installed into the cement floor about 30 inches down.

FOSTER How did the carport get there? Who installed the carport? Was it install by a contractor or was it installed by the applicant?

PEREZ He followed an advertisement to order a carport. You call in an order and pay for it and you can install it yourself. After ordering, the carport parts arrived within 4- 6 weeks.

FOSTER Did you purchase it in Wichita?

PEREZ It was shipped in from Arkansas.

FOSTER It was ordered out of state?

PEREZ He went into a local office and it was ordered.

FOSTER Did any of them tell you that you had to get a permit to put up the carport?

PEREZ They never asked him whether he had a permit or told him that he needed a permit to put up a carport. They were only concerned about what size he wanted.

FOSTER Jess, I think we need to have all carport sales company to provide permitting

instructions? This has nothing to do with the neighbors. We have to look at whether the zoning codes and permitting regulations have been followed. It is not a matter as to whether neighbors like it or do not like it.

PEREZ He did not know he was making a mistake and he apologized for violating the City code. He thought he could improve his property and because the carport had open sides and front, he did not think it obstructed anyone's view. He did what he thought was necessary for his household. He did not intend to offend or violate anyone. He apologizes for his mistake and for taking your time. Thank you.

GREENLEE Anyone from the audience here to speak?

David Babash, I live at 4431 Ironwood in Wichita Kansas. I am here to ask that you deny this variance. I became aware as a member of Wichita Independent Neighbors. I am not speaking for the Wichita Independent Neighborhoods. They do encourage neighborhoods to get together and to address issues of concerns to them. The Neighborhood of Fabrique came to the attention of District II advisory board with the Kellogg expansion. The neighborhood of Fabrique is not a Homeowner's Association which is protected by a covenant; therefore, they depend on the BZA Board to represent their interest. I realize this is a Quasi-Judicial organization. This property is similar in size appearance and function as the adjoining properties; and has been for 60 years. The granting of the permit for the variance will adversely affect the rights of adjacent property owners because the building will dramatically affect property values and is directly adverse to the aesthetics of the neighborhood. The strict application of the zoning code should not constitute a hardship upon the applicant because the property was purchased with no reason to believe it could be altered from the existing codes. It had a one-car garage when he brought and it has one-car garage now. I will add, in the absence of the carport he would have a double-car driveway to park on without the cover. The variance request would adversely affect order, prosperity, general welfare and the harmonious development of the neighborhood. There are no other protruding carports violating setbacks in the area. Finally, granting the variance would be opposed of the general spirit and intent of this code because the setbacks were designed to conform with neighboring properties for purposes of aesthetics, safety, access, and property values. So for those reasons, this application is supposed to satisfy all those purposes and in my judgment this variance does not satisfy any of the five. I ask that you deny the request and thank you for acting in behalf of the Frabrique Neighborhood and City of Wichita and for your service to the City. I stand for any questions.

GREENLEE Are there any questions from the board? Is there anyone else from the audience who would like to speak?

I am Charolette Foster, President of the Fabrique Neighborhood Association, 702 Courtley. No, I am not a relative of Blickley Foster. Yes, I have been the President since it started as and Neighborhood Association about 6 years ago. I work hard to keep our neighborhood up. That street is a nice looking street. We do not want that carport there. You have my letter. The variance request should be denied. The side-yard setback is being violated. When you look down the street, you are supposed to look down the street and see a straight row and the carport violates a nice open space. It is that plain and simple. We take pride in our

neighborhood and we want to keep it up. I understand that he works with cement and he just put it up. Thank God for zoning codes.

BLICK I would like to make a motion to deny the request to grant the variance of setback in BZA2008-72. I move that the board accept the finding of fact as set forth in the secretary's report that all five conditions set out in 2.12.590 B as necessary for the granting of a variance have been found to not exist.

FOSTER Seconded.

GREENLEE Any further discussions?

FOSTER I think the applicant deserves some type of explanation. We have had these cases in the past. We do not have them very often but we have had about 6 cases and approved about 2 or 3. The problem is we do not allow them to put carports in the front of the house. I remember we had an elderly couple who bought a house. The garage was already converted into a room. They needed a carport to ease a hardship on the ailing couple. There has been a long standing policy to not permit carports in the front of the house.

MCNEELY You can put a carport on this property as long as it does not encroached upon the setbacks.

DICKGRAFE He can have a 13 feet deep and 16 feet wide carport.

McNEELY You can have a carport that does not violate the side setback to the left or the north; you can put a carport on this property 13 feet long and be within the 8 feet that the zoning code allows for carports to extend into the front setback.

FOSTER Are there any limitations on the width?

MCNEELY The carport width is irrelevant as long as it does not encroach into the side setback.

FOSTER I think the theory of allowing an 8 foot one is to allow people to have one where they can physically get in and out of the car and not be in the weather. It allows for some personal protection.

DICKGRAFE He could have a 13 foot deep with a 16 foot wide carport as long as it is not in that side setback. I think that is important to have explained to the applicant as a remedy.

ANTHIMIDES I am a member of this neighborhood Association. I think I agree with Blickey, that companies selling these products should include the local zoning codes. I do not think this applicant erected the carport to offend anyone. Of course, we have regulations to adhere to.

MCNEELY The key is he needed a building permit. If he knew there was a building permit required, they would have ensured it was not in the zoning code setbacks.

GREENLEE Is there anyone else here to make any comment at this time? If so, would you please come to the podium and state your name and address?

Charolette Foster, 702 Courtley, All three of us are members of Wichita Independent Neighborhood. Maybe we need to do a better a job of educating the public about getting permits. How do we accomplish that? In our neighborhood meeting, we are preaching to the choir. When it comes to our newsletters, the ones who read it are not the ones who need the information. How do we get the information out?

FOSTER I use to go to a hardware store named Alexander's and they knew the law. Today, we have Home Depot and Lowes and employees come and go unlike the when employees worked long term and they really knew how to advise on building requirements.

Laura Hernandez, Office of Central, ask to come to interpret. The majority of the problem is that we now have a large Mexican population and many do not understand the rules and regulations. They think because it is their property they can do whatever they want on it. It is my job to make certain that they understand they need a permit to make improvement to their home. OCI has pamphlets written in Spanish that explains the rules and regulations to explain what is needed as far as roof replacement, foundation, carports, and building permits. There needs to be pamphlets translated in Spanish to explain these issues to the Spanish population. The problem is most of these people do not understand what needs to be done. Lowes and Home Depot need to advise the public about building permits. This is a language barrier. This man did not mean any harm. He did not understand the rules and regulations. When Spanish speaking people come to OCI, I have to explain the rules and regulation. The problem is the language barrier and not understanding what the City ordinances.

GREENLEE I am closing the discussions. All in favor say aye.

Motion carries 4-0 unanimously denied

PEREZ If the neighborhood Association has a president. I do not know her. If she is the president of the Neighborhood Association, why is she just now making comments about my property? There are several problems of the neighborhood so why am I the only one that they have found a problem with? If she is the president of the neighborhood why isn't she concern with cleaning up the trash in the alley way? I have been there for 12 years and I clean up all around the place for the first 5 years. I stopped doing the cleaning. I am only saying this to presidents in high position that they need to look at all the other problems in the area and maintain those problems area also. He wants to know how long can he keep the carport in place. He is now interest in selling the property and he will take the carport elsewhere.

McNeely It is an enforcement issue now. You need to get with OCI to find out how long you have to remove it. From a legal standpoint, it was never permitted, therefore it should not be there now. You need to find out from OCI how long you have.

GREENLEE Is there a motion to adjourn?

ANTHIMIDES Motion

STIFF Seconded

2:13 Adjournment