

BOARD OF ZONING APPEALS
MINUTES
September 30, 2008

The regular meeting of the Board of Zoning Appeals of the City of Wichita, Kansas was held at 1:35 p.m., on August 26, 2008 in the Planning Department Director's Conference Room, Tenth Floor of City Hall, 455 N. Main, Wichita, and Kansas.

The following board members were in attendance:

BICKLEY FOSTER, CHARLES YOUNG, JOSHUA BLICK and BENJAMIN STIFF

Board members absent:

JERRY HOGGATT, DWIGHT GREENLEE and STEVE ANTHIMIDES

City of Wichita staff present:

HERB SHANER – Office of Central Inspection present.

SHARON DICKGRAFE– Law Department

The following Planning Department staff members were present:

JESS MCNEELY, Secretary.

YOLANDA ARBERTHA, Recording Secretary

FOSTER We will start the BZA hearing at 1:33PM on September 30, 2008. The first thing on our agenda is to approve the minutes of 8/26/2008

BLICK Moved

YOUNG Seconded.

Motion carried 4-0

FOSTER The first case on the Agenda is BZA2008-41. This is a variance request of a minimum lot size from 5000 square feet to 2000 square feet.

McNEELY, Good Afternoon, I am Jess McNeely, Planning staff, here to present case BZA2008-41. **BACKGROUND:** The applicant requests a variance to reduce the Zoning Code minimum required lot size from 5000 to 2000 square feet in SF-5 Single-family Residential ("SF-5") zoning for a 2000 square-foot lot. The site is developed with a single-family house built in 1942. The applicant sought to register the property as "legal non-conforming" (commonly called "grandfathered") but was unable as the Zoning Code minimum lot size was 2500 square feet when the residence was built, therefore the lot never conformed to the Zoning Code. The application area is the eastern 40 feet of a lot which was originally 130 feet deep; this property was originally developed with a house in 1920. The subject property was split off from the original lot at some point in time, creating a non-conforming, or illegal, lot. This non-conforming lot has been bought and sold numerous times, and has now been identified as non-conforming by a lender. Therefore, the applicant seeks a variance to reduce the minimum required lot size from 5000 to 2000 square feet in order to complete a sale of the property.

The code now prevents accessory dwellings from being split off on a separate lot by requiring that the primary and accessory dwelling be on the same water, sewer, and power utilities. While the SF-5 zoning district requires 5000 square foot lots, multi-family zoning, as well as commercial and office zoning would permit 2500 square-foot single-family lots.

The immediate neighborhood is a mixture of single-family, two-family, and multi-family residential zoning. North of the site is an SF-5 zoned single-family residence. Northeast and northwest of the site are two schools, a middle school and an elementary school. South and west of the site are SF-5 zoned single-family residences. East of the site is a TF-3 Two-family Residential (“TF-3”) zoned duplex. One block west of this site, on the other side of Martinson Street, is an MF-18 Multi-family Residential (“MF-18”) zoned triplex, with an SF-5 zoned single-family residence on the rear 40 feet of the lot. Therefore, similar situations of smaller lots exist within the immediate neighborhood.

ADJACENT ZONING AND LAND USE:

NORTH	SF-5	Single-family residence, schools
SOUTH	SF-5	Single-family residence
EAST	TF-3	Two-family residence
WEST	SF-5, MF-18	Single-family residence, tri-plex

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

UNIQUENESS: It is staff’s opinion that this property is unique, as it was developed with a house and split off from the original property in 1942.

ADJACENT PROPERTY: It is staff’s opinion that granting the requested variance for reduction in lot size from 5000 to 2000 square feet would not adversely affect the rights of adjacent property owners, as the property has existed in this manner since 1942 without any apparent negative effect on surrounding properties. The application area is well maintained, and does not detract from the immediate neighborhood. Likewise, the application area’s lot size is not entirely uncommon; similarly sized lots exist within the neighborhood.

HARDSHIP: It is staff’s opinion that the strict application of the provisions of the code would constitute a hardship upon the applicant. Without a variance, this 2000 square-foot lot becomes unusable, and previous investments into the site could be lost. It would be difficult if not impossible for this property to be financed without a variance making the lot legal.

PUBLIC INTEREST: It is staff’s opinion that the requested variance for a reduction in lot size from 5000 to 2000 square feet will not adversely affect the public interest, as building and fire codes are followed, and no public right-of-way is affected by the proposed lot size reduction. The Wichita City Council has expressed through the adopted Comprehensive Plan that increasing residential density in the core areas of the City is in the public interest. Increased residential density can be achieved with smaller lot sizes.

SPIRIT AND INTENT: It is staff's opinion that granting the requested variance for a reduction in lot size from 5000 to 2000 square feet does not oppose the general spirit and intent of the Zoning Code, as the neighborhood has a mixture of zoning categories, some of which would allow a lot size near the size of the requested reduction. The Zoning Code objective of maintaining neighborhood character is met, as existing lots of this size are within the neighborhood.

RECOMMENDATION: It is staff's opinion that the requested variance meets the five criteria necessary to grant a variance, and recommends that the variance be APPROVED. Should the Board determine that the conditions necessary for the granting of a variance exist, and then the Secretary recommends that the variance for reduction in lot size from 5000 to 2000 square feet be GRANTED, subject to the following conditions:

1. The site shall be developed in conformance with all applicable codes, to include but not limited to zoning, building, fire, housing, and health codes.
2. The site shall be developed in conformance with the approved site plan.
3. The above conditions are subject to enforcement by any legal means available to the City of Wichita.

The applicant is present and are there any questions of staff?

FOSTER Jess, does this property have its own utilities?

MCNEELY Yes

FOSTER I did not see the parking. Is there any parking provisions?

McNEELY Yes, it does have parking off of the alley where the carport is shown on the south side of the property

FOSTER We are talking about developing under the zoning, building, fire and so forth. Nothing has to be redone from what is present there now?

McNEELY Right and they will have to continue to maintain conformance to those codes now.

FOSTER The site plan shown now is the one that they submitted today on the screen, correct?

McNEELY Yes

FOSTER Any more questions of staff. Thank you Jess, We will call upon the applicant to make a presentation.

BROWN I am Chris Brown with Realty Executive Center the listing agent of the property. It wasn't until we placed this property under contract when we realized that we were going to deal with this.

FOSTER Which one of you is taking the podium? Sir, are you the owner of the property?

MARTOFF My current address is 128 S. Lynnwood in Andover. My name is Chris Martoff.

FOSTER Do you agree with staff report?

MARTOFF Yes, sir.

FOSTER Do you agree with the three conditions of staff?

MARTOFF Yes

FOSTER That was the nicest letter this board has received, did you write it?

MARTOFF No, Chris Brown wrote it.

FOSTER Is there anything else you want to add?

MARTOFF No.

FOSTER Any more questions for the applicant? That was easy wasn't it? Is there anyone else who would like to speak?

Chris Brown, 1556 N Park place, Real Estate agent with Realty Executive Center, I am proud to sell Chris Martoff's house. It has been a unique experience going through this. We were surprise at this happening when the house has sold so many times since 1942. From now on when I see a small pick of land I will raise the red flag. Chris and his wife work hard on restoring the home. They have out grown it with their children. For you to allow this change, it is wonderful. The lady that is in the house now, Chris allowed the woman to rent the house for a small amount until this matter is resolved.

FOSTER Are there any questions? Is anyone else here to speak on this case?

BLICK I like to make a motion to approve this case. Mr. Chairman, 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 not to exist and that the variance be denied.

STIFF Seconded

FOSTER All in favor say aye?

Motion carried 4-0

FOSTER Next will we hear case number BZA2008-43.

McNEELY Good afternoon Jess McNeely, Planning Staff, here to present case number BZA2008-43. **BACKGROUND:** The applicant requests a variance to reduce the Zoning Code required side building setback from 6 feet to 3.9 feet. The application area is developed with a home, which was sold to the applicant/owner approximately one year ago. The side setback encroachment was not discovered until the abutting home to the west was completed. The original home builder is acting as the agent on the owners behalf. Zimmerly Street is curved at this location, the home on the subject site and the next home to the west are staggered, and not directly adjacent to one another (see the attached site plan). Because the two homes are not directly adjacent to one another, and the homes have over 12 feet of separation, no building code or fire code problems exist.

All surrounding properties are also zoned SF-5 Single-family Residential (“SF-5”). North of the site, across Zimmerly, are vacant lots and newly constructed homes. South of the application area are older, large lot single-family residences. East of the site is a home under construction, owned by a development company. West of the site is a recently constructed residence still under the ownership of a builder.

ADJACENT ZONING AND LAND USE:

NORTH	SF-5	Single-family residences, vacant
SOUTH	SF-5	Single-family residences
EAST	SF-5	Single-family residence under construction
WEST	SF-5	Single-family residence, vacant

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

UNIQUENESS: It is staff’s opinion that this property is unique, as it is along a curved road, resulting in staggered buildings that are not directly adjacent.

ADJACENT PROPERTY: It is staff’s opinion that granting the requested variance for a side setback reduction from 6 to 3.9 feet would not adversely affect the rights of adjacent property owners, as the adjacent building affected still maintains a 12-foot separation between buildings.

HARDSHIP: It is staff’s opinion that the strict application of the provisions of the code would constitute a hardship upon the applicant, as the builder followed permitting and inspection processes, resulting in a completed home purchased by the applicant. It would be a hardship on the applicant to demolish some portion of the existing building in order to conform to the 6-foot setback requirement.

PUBLIC INTEREST: It is staff’s opinion that the requested variance for a side setback reduction from 6 to 3.9 feet will not adversely affect the public interest, as building and fire codes are followed, and no public right-of-way is affected by the proposed setback reduction.

SPIRIT AND INTENT: It is staff’s opinion that granting the requested variance for a side setback reduction from 6 to 3.9 feet does not oppose the general spirit and intent of the

Zoning Code, as the desired 12-foot separation between buildings is still maintained due to the staggered construction of the homes.

RECOMMENDATION: Staff would note that the Zoning Code permits administrative adjustments of 20 percent to side building setbacks. Therefore staff could administratively adjust a setback from 6 feet to 4.8 feet; the applicant requests less than one foot of reduction from that dimension to 3.9 feet. It is staff's opinion that the requested variance meets the five criteria necessary to grant a variance, and recommends that the variance be APPROVED. Should the Board determine that the conditions necessary for the granting of a variance exist, then the Secretary recommends that the variance to reduce the 6 foot side setback to 3.9 feet be GRANTED, subject to the following conditions:

1. The site shall be developed in conformance with the approved site plan.
2. The above conditions are subject to enforcement by any legal means available to the City of Wichita.

The property owner and the builder are present. Are there any questions of staff?

FOSTER Any questions from the board?

BLICK Jess, the house on the west was built after the existing structure that we are now talking about.

MCNEELY Yes, the existing structure we're talking about now has been purchased and is lived in. The one to the west is still under the ownership of the builder.

BLICK If they would have had the property line perpendicular, like you were saying, would they be in violation?

McNEELY No, if the property line ran roughly northeast to southwest like this arrow here, if it ran this direction then they would meet the setback requirement. However, this lot can not be replatted because there are more lots further down to the west. They all have been aligned with due north south property lines.

BLICK Is the code 6 foot or 6.7 foot?

MCNEELY Code is 6 foot.

FOSTER Any more questions? Thank you, Jess, would the property owner please come forward.

Good afternoon, I am Ruth Martinez; I live at 12507 E. Zimmerly in Wichita.

FOSTER Do you prefer questions or do you have a presentation?

MARTINEZ You can ask questions.

FOSTER Do you have any idea how this happen?

MARTINEZ No, you will need to talk to the builder.

FOSTER Do you agree with staff report? And with the two imposed conditions?

MARTINEZ Yes, I accept them.

FOSTER Well you are getting off easy after making it through security.

MARTINEZ They went through my purse very well. ha!

Joe Lee, 2427 Timber Creek Ct, I have built about 2000 house since 1976. This is the second time I have to appear on behalf of the variance. The first time was a driveway. I have no idea how this happen other than our superintendent and inspection department goof.

FOSTER What was the time difference between building these two houses?

Lee Ours were built first and the other one came along about 6 months later.

FOSTER So, the people building the first one had no knowledge of the second one being built.

LEE Our Superintendent and the inspectors when they looked for the property line, I do not know what they were looking for when they were searching the property lines. They goof and we did not know it until after Mrs. Martinez house was built. It was obvious to us by then. I think the curvature of the street mess them up. They set the corners of the house wrong. We did not realize it until after the house was built.

FOSTER Anymore questions?

Richard Hayden, 12600 E Lynn, is there any elevation restrictions on either of these two properties? We all are experiencing changes and I am concerned with flooding. Are there any legal regulations on how much they can raise the land?

FOSTER Are you in the second house.

HAYDEN No sir, I live on East Lynn. It is south of this property and slightly east. I am here on a street that runs one way. I live here and these are platted but built and there is a lot of building going on in this area and this property has been raise significantly and I think it is an opportune time to ask about regulations on how much they can raise the land.

MCNEELY You are referring to what height any building was and is? That is governed by the subdivision plat; the elevation is designated by the engineer to design accordingly. The elevations are restricted by the plat and there are laws that

the drainage have to comply to and will function accordingly to the way the plat drawing is designed to function. The elevation set on the plat has been approved and the property has to be built to the elevation set for the plat which has been approved. You can get a copy of the plat and plats are a public record.

FOSTER Where would he find copies of the plat? In other words the drainage is filed here.

McNEELY We have copies of them here and on 7th floor.

McNEELY He can find the subdivision plat in our office here as well as the Sedgwick County Courthouse.

FOSTER Is that Neil? He would see about the plat. He would need to check the drainage plan on that plat.

McNEELY Yes.

FOSTER Anyone else who wishes to speak to us? I will confine the discussion to the board.

STIFF Will there be any adverse conditions if they were to build on due north?

FOSTER I believe what Jess was saying is that they be not allowed to do that, right Jess?

McNEELY Correct. With our recommended conditions, the site be developed and maintained subject to this site plan that would prevent the application area from building further north then it would result in these two structures being closer than twelve feet. Twelve feet is a zoning code standard. It is not a building code or fire code. Two structures can be within 6 feet of each other and still maintain fire code standards. The probability of these two properties violating any other codes is very low. If this property conforms to this site plan there will never be a problem.

BLICK So the one on the Northwest if they decide to add on a patio or porch they will be in violation.

McNEELY The subject property would be the only property that would be governed by the variance resolution and the site plan. The property to the west would still maintain their 6 feet from the property line and by maintaining there 6 feet they will continue to meet building and fire code.

FOSTER For the record the property to the north was notified of this case. You have had no calls or concerns about this case?

McNEELY No.

FOSTER Any one ready to make a motion?

YOUNG I move to make a motion Mr. Chairman, 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 not to exist and that the variance be denied.

STIFF Seconded.

FOSTER All in favor say aye?

MOTION CARRIES 4-0 UNANIMIOUSLY

SHANER Herb Shaner with OCI, the only thing exciting about this case is that it was on Rock Rd and Kellogg. Billboard installed, permits pull on BZA2006-78, and it was a variance to permit an off-site sign in the Northeast corner of Kellogg and Rock.

FOSTER What land use was that next to?

SHANER There was a Spangle's in that area they are gone now.

FOSTER We have a truck riding around with a LED slides on it in the back of the truck. What does the code have to say about that?

SHANER As long as they do not stop for any length of time, then there is nothing under the code that would be violated.

McNEELY The regulation does not speak to signage on a vehicle when it is in a public Right-A-Way. Right-a-ways are unzoned. We normally do not have anything built in right-a-way unless it is a bridge or structure to pave a street. When someone is driving a vehicle with a sign on it the zoning code has no jurisdiction over it. If the city leaders or governing body feels that it is a problem. They will need to address it through so other code and not the zoning code. Now if they stop on any lot then we have a problem because that lot is not fitted for that sign.

FOSTER Has this question ever been raised? Has anyone seen it stopped any length of time or is anyone monitoring it at this time?

McNEELY We have had calls but I do not know whether any action is being made on those complaint but those issues would not come before the zoning code or MAPC.

FOSTER It is almost a traffic code violation. It is distracting.

McNEELY If it is in violation and if the governing body wants to pursue an ordinance to regulation this it okay.

FOSTER Do we have more than one running around?

SHANER Whenever I see one and it stops, I will pull over and see what is going on whether they are on break or using the bathroom. This particular one let his dog out to use the potty. I keep an eye on them.

FOSTER How long is long?

SHANER If they are taking a break that is 15 minutes. If they are on a lunch break then that could be as much as an hour.

McNEELY If they stop on private property, they could violate that property owner zoning regulation.

FOSTER So, they would be turning off the lights when they take a break. I saw several of them driving by; we need to keep an eye on this so it does not get out of hand. Do we have a case for next month?

McNEELY Yes, we have a case schedule for next month. We will be electing officers for three positions.

2:25 the meeting is adjourned.