

BOARD OF ZONING APPEALS
MINUTES
August 22, 2006

The regular meeting of the Board of Zoning Appeals of the City of Wichita, Kansas was held at 1:30 p.m., on September 26 2006, in the Planning Department Conference Room, Tenth Floor of City Hall, 455 N. Main, Wichita, and Kansas.

The following board members were in attendance:

BICKLEY FOSTER, ERMA MARHAM, DWIGHT GREENLEE, STEVEN ANTHIMIDES, JUSTIN GRAHAM, and JOSHUA BLICK ,JAMES RUANE arrived at 1:32pm

Board members absent:

none

City of Wichita staff present:

HERB SHANER – Office of Central Inspection present.

SHARON DICKGRAFE – City of Wichita, Law Department

The following Planning Department staff members were present:

JESS MCNEELY, Secretary.

YOLANDA ARBERTHA, Recording Secretary.

FOSTER We have a quorum with five in attendance. We will start the meeting at 1:33pm. (Ruane and Blick came in shortly after hearing started making it 100% attendance).

FOSTER First thing on the agenda is to approve the 6/27/06 minutes, are there any changes requested?

FOSTER If not, who would like to move?

MARKHAM Moved.

GREENLEE Seconded

Motion Carried 5-0

FOSTER Second agenda item is BZA2006-00052

McNEELY **BACKGROUND:** The applicant requests a variance to reduce the street-side setback to zero for a covered, screened porch structure in the applicant's back yard. The proposed structure is to utilize an existing cedar fence for the north and east walls, thereby not changing the public view of the property. The Unified Zoning Code (UZC) requires a 15-foot street side setback in TF-3 zoning. The applicant's lot is unique in that the north property line is eight feet from the English Street sidewalk, most property lines are at the sidewalk. Likewise, the property was developed in 1912, prior to the current UZC setback requirements, and the house on the property does not meet the UZC 15-foot setback requirement.

The proposed covered porch is to be placed on a foundation, enclosed on the north and east sides by the existing cedar fence, and enclosed on the south and west sides with wood and screening. Any form of uncovered deck or porch may be built up to the property line, the proposed structure requires a variance specifically because it is covered, although it is of a less permanent nature than typical residential structures. Because the application area is within the environs of a registered historic structure, the Wichita Historic Preservation Board will review this project before a building permit may be issued.

The application area is developed with a single-family house, a detached garage, a back yard swimming pool and pergola structure. North of the site is a "B" Multi-family zoned apartment complex, south of the site is a TF-3 zoned single-family house. East and west of the site are "SF-5" Single-family Residential zoned single-family residences. The application area was platted in 1909 within Block D, of the Knoll Addition.

ADJACENT ZONING AND LAND USE:

NORTH	"B"	Multi-family residences
SOUTH	"TF-3"	Single-family residences
EAST	"SF-5"	Single-family residences
WEST	"SF-5"	Single-family residences

UNIQUENESS: It is the opinion of staff that this property is unique inasmuch as the property was platted in 1909; the residence on the lot was constructed in 1912 with a 10-foot street side setback, conforming to the zoning code at that time. The zoning regulations that established the 15-foot street side setback did not exist until 1996, long after the property had been developed. This property is also unique in that the property line is eight feet south of the sidewalk (most property lines are at the sidewalk) and 25 feet south of the street, with landscaping between the property line and the street. The proposed structure is unique in that it is a covered/screened porch, and less permanent than most residential construction.

ADJACENT PROPERTY: It is the opinion of staff that granting the requested variance would not adversely affect the rights of adjacent property owners. The proposed setback variance is for the street side setback, therefore not abutting any property, the proposed structure will be a landscaped 25 feet from the street. The proposed structure will utilize the existing cedar fence for the north and east walls, therefore public view of the property will not change.

HARDSHIP: It is the opinion of staff that the strict application of the zoning regulations constitutes an unnecessary hardship upon the applicant, as requiring the applicant to comply with the 15-foot street side setback will prevent the applicant from improving his property with no corresponding public benefit.

PUBLIC INTEREST: It is the opinion of staff that the requested variance would not adversely affect the public interest, as the public has an interest in supporting the logical development of residential properties, including permitting upgrades and redevelopment of existing properties through the approval of variances in areas where non-conformities with the current zoning regulations are common. The proposed structure will utilize the existing cedar fence for the north and east walls, therefore public view of the property will not change.

SPIRIT AND INTENT: It is the opinion of staff that granting the requested variance would not be opposed to the general spirit and intent of the zoning regulations, as the primary intent of the street side setback is to maintain sufficient separation between structures and the residential street right-of-way for public safety reasons. The requested variance does not negatively impact this intent. English Street is a local residential street, serving the immediate area. The placement of the covered porch structure as proposed, 25 feet from the street, will have no impact on safe vehicular and pedestrian traffic along this portion of English Street.

RECOMMENDATION: Staff finds that the requested variance meets the five conditions necessary for a variance. Should the Board concur and determine that all five conditions necessary for a variance exist, then the Secretary recommends that the variance to reduce the street side setback from 15 to zero feet be GRANTED, 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 “covered/screened porch” 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 “covered/screened porch” structure shall utilize the existing cedar fence for the north and east walls, thereby not changing the public view of the site from English Street.
4. The applicant shall obtain all permits necessary to construct the improvements, and the improvements shall be constructed within one year of the granting of the variance.
5. The resolution authorizing this variance may be declared null and void upon findings by the Board that the applicant has failed to comply with any of the foregoing conditions.

The applicant is here for questioning. And is there any questions of staff?

FOSTER On the English side, would they be required normally a ft foot setback?

McNEELY Yes.

FOSTER Under normal conditions if they were setback from the sidewalk, where they are already setback 8 feet, if this were a normal case on the sidewalk, they would be asking for a 7-foot reduction of the 15 feet instead of the zero, correct?

McNEELY Yes.

FOSTER Do you know how high the covered screen porch is? Will the roof exceed the height of the fence a little bit?

McNEELY I can see where the roof would protrude and be visible above the fence line. I believe the roof would be visible above the fence. The fence is around 7 feet high. Yes the roof will be visible outside the fence line.

FOSTER Do we have, in the zoning code, any maximum coverage because this is becoming a lot here?

MCNEELY Yes, we do have maximum lot coverage. Adding this covered porch to the lot coverage percentage does not maximize the lot coverage percentage.

FOSTER But the lot coverage does not cover the whole lot, is that what you are saying?

McNEELY Yes, but it does not exceed the maximum lot coverage. Are there other questions? We will call on the applicant and anyone else who would like to speak. Please identify yourself by giving your name and address please.

MARK BACHRODT, I live at 350 S Clifton.

FOSTER Do you have anything to add?

BACHRODT He covered it thoroughly. Jess do they have the drawing?

McNEELY Yes.

BACHRODT The HPB made a recommendation that they wanted it to be more craftman style and we have made those changes.

RUANE What is the pitch of the roof?

BACHRODT Not exactly sure, but we want it as minimal as possible. No more than 3-5 feet above the fence line, as you can see from the photos, there are trees near.

FOSTER Have you had a chance to read the staff report and do you have any concerns?

BACHRODT Yes, I read the report and I have no concerns. I just would like to get it completed, so I can get a permit and get started.

FOSTER Are there any other questions from the members? Are we ready to close the public discussions?

RUANE I move to approve the variance with the information provided in the secretary's report and move that the board accept the findings as fact as set forth in the secretary's report.

GREENLEE Seconded.

Motion carried 7-0 unanimously approved.

FOSTER We will here the next case BZA 2006-54?

McNEELY **BACKGROUND:** The applicant requests a variance to reduce the side setback to zero for an attached car port north of the applicant's house, over the existing 11-foot driveway. The Unified Zoning Code (UZC) requires a six-foot side setback in SF-5 zoning. The applicant's lot is unique in that the house was built in 1932, within 12 feet of the north property line, with a drive between the house and the north property line leading to the detached

garage west of the house. Likewise, the property north of the site was developed with a greater than 75 foot setback from the property line.

The proposed attached carport is considered a part of the primary (house) structure. Residential building code requires a minimum separation of six feet between structures on abutting lots. The applicant indicates that he will file a joint building setback agreement, to be signed by the property owner to the north, ensuring that a six-foot minimum will be maintained between structures. This should not be a future issue, as the house to the north sits over 75 feet from the property line. The application area is within the environs of a registered historic district, the Wichita Historic Preservation Board has reviewed this building request and recommended approval.

The application area is developed with a single-family house, a detached garage, and will soon have a back yard swimming pool. North, south, and west of the site are single-family residences. East of the site is a church. The application area was platted in 1912 as lots 41 through 44 of the Merriman Park Place Addition.

ADJACENT ZONING AND LAND USE:

NORTH	“SF-5” Single-family residences
SOUTH	“SF-5” Single-family residences
EAST	“SF-5” Church
WEST	“SF-5” Single-family residences

UNIQUENESS: It is the opinion of staff that this property is unique inasmuch as the property was platted in 1912. The residence on the lot was constructed in 1932 with an 11-foot drive between the house and the property line. The zoning regulations that established the six-foot side setback did not exist until long after this property had been developed. This property is also unique in that the property to the north is developed with a house over 75 feet from the property line. The proposed structure is unique in that it is an open-air carport, not enclosed living space.

ADJACENT PROPERTY: It is the opinion of staff that granting the requested variance would not adversely affect the rights of adjacent property owners. The proposed setback variance would place a carport at the north property line, still over 75 feet from the residence north of the site. The applicant will be required by building code to have a joint building setback agreement, ensuring a minimum six feet between structures on adjoining lots. The proposed carport will have extensive landscaping screening it from the north neighbor.

HARDSHIP: It is the opinion of staff that the strict application of the zoning regulations constitutes an unnecessary hardship upon the applicant, as requiring the applicant to comply with the six-foot side setback will prevent the applicant from improving his property with a carport with no corresponding public benefit.

PUBLIC INTEREST: It is the opinion of staff that the requested variance would not adversely affect the public interest, as the public has an interest in supporting the logical development of residential properties, including permitting upgrades and redevelopment of existing properties through the approval of variances in areas where non-conformities with the current zoning regulations are common. The proposed structure is within the environs of a registered historic

district; the request has been reviewed and recommended for approval by the Historic Preservation Board.

SPIRIT AND INTENT: It is the opinion of staff that granting the requested variance would not be opposed to the general spirit and intent of the zoning regulations, as the primary intent of the side setback is to maintain sufficient separation between structures. The requested variance does not negatively impact this intent, as the nearest house is over 75 feet to the north. The conditions of the variance may require the applicant to file a joint building setback agreement, ensuring future adequate separation between buildings.

RECOMMENDATION: Staff finds that the requested variance meets the five conditions necessary for a variance. Should the Board concur and determine that all five conditions necessary for a variance exist, then the Secretary recommends that the variance to reduce the side setback from six to zero feet be **GRANTED**, subject to the following conditions:

6. The site shall be developed in conformance with the approved site plan and elevation.
7. The setback reduction shall apply only to the “attached 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.
8. 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 proposed structure.
9. The applicant shall obtain all permits necessary to construct the improvements, and the improvements shall be constructed within one year of the granting of the variance.
10. The resolution authorizing this variance may be declared null and void upon findings by the Board that the applicant has failed to comply with any of the foregoing conditions.

The applicant is here if you like to ask any questions of him and are there. Are there any questions of staff?

FOSTER May I have more information about the neighbor having to file a joint setback agreement with a minimum of six feet from each other? Are you talking about a minimum of 6 feet between structures are you talking about between the portico and the neighbor to the north or what?

McNEELY Yes, the joint setback agreement with a minimum of 6 feet is what would be required by building code to keep structures a minimum of 6 feet from each other. The side setback requirement would normally be 6 feet but it can be reduced to 3 feet administratively on the back half of your lot on any structure that is further west than the midway point of the length of the lot. Therefore, it is common for detach garages to be built within 3 feet of the property line because they are in the back half of the property. So, there is generally a minimum of 6 feet maintained between structures. The joint setback agreement requiring 6 feet between structures would ensure no structure on the property north of the application area would be build within six feet of the portico.

FOSTER This would eliminate the person on the north from going to 3 feet?

McNEELY Yes, this restricts the neighbor to the north. The neighbor to the north does not see this as a problem. The existing house is 75 feet from the property line.

FOSTER Is this common?

McNEELY What is common is that in the past, property owners have built carports right up to the property line.

BLICK In between the pool and the two-car garage, is that going to be an overhang or carport or patio?

McNEELY A patio.

BLICK The steps that are going down for the carport, is that going to be enough room?

McNEELY The applicant is here, you may ask him that question.

FOSTER Are there any more questions of staff? Thank you, Jess. May we hear from the applicant?

ROBERT CHISHOLM, I live at 141 S Crestway.

FOSTER Have you had an opportunity to review the staff report?

CHISHOLM The joint agreement is a loose agreement and that means that anyone, be it my wife or the neighbor can revoke the agreement. And that means, I would have to remove the carport at the time the request is made. Is there anything that can be done to ensure that this agreement is reflected on the properties that both neighbors are in agreement?

FOSTER He will have to file with the Registrar of deeds.

RUANE The case is a model of how someone can work through a variance with neighbors and the city office. Therefore, the average Joe can look out for himself.

FOSTER Any other questions for Mr. Chisholm. The only other person that could be affected by this variance is the neighbor to the north.

GREENLEE I move that the variance be approved with the information provided in the secretary's report and move that the board accept the findings as fact as set forth in the secretary's report with all conditions.

MARKHAM Seconded.

Motion Carried 7-0 unanimously approved.

FOSTER We are moving on the last item on the agenda. Do you have anything to report?

SHANER I have nothing to report.

RUANE What can be done to ensure that the variances approved by the BZA Board for several schools sites are in compliance with the conditions set forth in the requests. There are several schools around Wichita that have not met the conditions of the BZA variance request. There is landscaping yet undone and the board officials are not aware that these are not completed. What can we do to enforce compliance?

FOSTER Is there a specific time they were to complete the landscaping?

SHANER It is to be completed within 1 year.

FOSTER The question I have is , should it be treated as an enforcement or should we bring it before the board?

McNEELY If they are out of compliance with the variance conditions then the variance is void and null.

DICKGRAFE Pull the variance, send a letter and ask why conditions were not met.

RUANE I will go along with that as long as the City contacts every school that is not in compliance.

McNEELY I will figure out what is not in compliance and get an accurate analysis of it by next month.

DICKGRAFE Normally, we should go out and make sure the conditions are met.

FOSTER Are there any other questions?

GREENLEE If they have not met the condition over a period of time, is not the variance null and void?

DICKGRAFE You have to give them a chance to explain when it can be completed.

McNEELY I do not have a copy of the resolution but the fence would not be a part of the variance because they can have a fence right up to the property line.

RUANE I move that this is an agenda item in September.

FOSTER They need to be told that they have to come before this hearing.

MARKHAM Can I get all the possibilities prior to the meeting?

DICKGRAFE You can schedule an executive meeting with me to discover all your legal options.

FOSTER Will this be an agenda item or will it come under Herb's report?

DICKGRAFE I think it needs to be on the agenda to give them an opportunity to respond to the notice.

McNEELY We will set it as an agenda item on the September 26 meeting.

GREENLEE Seconded. Will they be given a notice?

FOSTER I motion and a second and all in favor?

Motion Carried 7-0 unanimously approved

GREENLEE On BZA2006-13, how long do they have to comply before the sign comes down?

McNEELY Because we denied their variance, it comes under enforcement on when it should come down.

McNEELY As far as we are concern the sign is not legal.

FOSTER So, it is up to Shaner to enforce it.

SHANER I will see what has been done.

MARKHAM You keep saying case, case, case, we need to look at this to see what happened before we ask them to come in.

FOSTER The staff will look at this and discover what they have not done before we call them in.

Adjourned 2:49pm