

**BOARD OF ZONING APPEALS**  
**Meeting Minutes of March 7, 2013 –6:30 p.m.**

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Members present: Kimzey, Lowe, Mahoney, Holley, Edie, Fertig

Members excused: Perez

Staff present: Guntert, Larkin, Parker

Chair Mahoney introduced Sarah Fertig as the newest member appointed to the Board of Zoning Appeals.

Ms. Fertig said she was an attorney working in the Kansas Attorney General's Office. She was interested in learning about local zoning and land use and thought this would be a good way to find out more about it.

**ITEM NO. 1      COMMUNICATIONS**

Acknowledge communications to come before the Board.

- a) Staff requests the Board of Zoning Appeals to authorize the Chair to execute a Notice and Waiver of Conflict of Interest, permitting the City Attorney's Office to represent jointly the City and the BZA in *DeKosky v. City of Lawrence, et al.*, Case No. 2013cv0013, in which case Ms. DeKosky challenges a citation for being in violation of the City's occupancy limits.

Mr. Larkin stated this matter was presented to the Board on December 6, 2012, and the Board found there was not an error in the City's issuance of a Notice of Violation dated October 15, 2012. Mr. Larkin stated Ms. DeKosky filed suit against the City of Lawrence on January 11, 2013. He said the City filed a Motion to Dismiss the suit on grounds of lack of subject matter jurisdiction. Mr. Larkin stated Ms. DeKosky filed an amended petition and named the Board of Zoning Appeals as the Defendant. He said, although their interests were currently aligned, there was a potential conflict of interest between the City and the Board of Zoning Appeals. Accordingly, he asked the Board of Zoning Appeals Chair to sign a Notice and Waiver of Conflict allowing the City Attorney's Office to represent both the City and the Board of Zoning Appeals in the case. He noted that a hearing was scheduled for March 8, 2013 on the Motion to Dismiss.

- b) No other communications received.

No Board member disclosure of ex parte contacts or abstentions from the discussion or vote on agenda items under consideration.

**ACTION TAKEN**

Motioned by Holley, seconded by Lowe, authorizing the Board of Zoning Appeals Chair to sign a Notice and Waiver of Conflict allowing the City Attorney's Office to represent both the City and the Board of Zoning Appeals in the DeKosky case.

Motion carried unanimously, 6-0

No agenda items deferred.

**ITEM NO. 2      MINUTES**

**ACTION TAKEN**

Motioned by Lowe, seconded by Edie, to approve the January 3, 2013 Board of Zoning Appeals minutes.

Motion carried, 4-0-2 Holley & Fertig abstained

## **BEGIN PUBLIC HEARING:**

### **ITEM NO. 3 REAR YARD SETBACK; 436 WALNUT STREET [DRG]**

**B-13-00032:** A request for a variance as provided in Section 20-1309 of the Land Development Code of the City of Lawrence, Kansas, 2011 edition. The request is for a variance to reduce the 30 feet rear yard building setback measured from the rear lot line which is required in Section 20-601(a) of the City Code to a minimum of 2'-6" from the rear lot line. The request is made for a proposed new addition on the west side of the existing residence. The subject property is located at 436 Walnut Street. Submitted by Kenneth A. Peters, KAP Builders Inc., for Cynthia E. Lester, property owner of record.

**The legal description for the property in the appeal and the case file for the public hearing item are available in the Planning Office for review during regular office hours, 8-5 Monday - Friday.**

### **STAFF PRESENTATION**

Mr. Guntert presented the item. Staff recommended approval of the reduced rear yard building setback to a minimum of 2' at the closest point of the addition subject to the property owner obtaining a construction permit from the Corps of Engineers because of its proximity to the Kansas River Levee in North Lawrence.

### **APPLICANT PRESENTATION**

Kenneth Peters, KAP Builders, stated he represented his wife Cynthia Lester who submitted the variance application. They had lived in the home at 436 Walnut Street since 1993. It was their understanding that the house had been moved onto the property sometime following the 1951 Flood. The house was on the property at the time the land for the levee was acquired. The levee land acquisition left the lot in a long triangle that narrows down from east to west along the property frontage. As a result of this unique property shape, the existing house does not comply with the required rear yard setback from the south property line. The addition would maintain the south wall line of the house and extend toward the west. At the closest corner of the addition it would be approximately 2 ½' from the rear lot line. Mr. Peters stated the only shared property line was to the east of the property.

### **PUBLIC COMMENT**

There was no public comment.

### **PUBLIC HEARING CLOSED**

Motioned by Holley, seconded by Kimzey, to close the public hearing.

Motion carried unanimously, 6-0

### **BOARD DISCUSSION**

Lowe said he would be interested to hear if the U.S. Army Corps of Engineers will allow the addition to the structure. He said this was the most unique piece of property the Board had looked at in a long time.

#### ACTION TAKEN

Motioned by Lowe, seconded by Fertig, to approve the variance request at 436 Walnut Street, based on the recommendation and findings of fact in the staff report, with the following condition:

- 1) The property owner obtains a construction permit from the U.S. Army Corps of Engineers for the proposed residential room addition.

Motion carried unanimously, 6-0

#### ITEM NO. 4      1621 EDGEHILL ROAD; PHI DELTA THETA PARKING LOT [DRG]

**B-13-00033:** A request for variances as provided in Section 20-1309 of the Land Development Code of the City of Lawrence, Kansas, 2011 edition. The first request is for a variance to reduce the 25 feet parking lot setback from a street right-of-way in any residential zoning district required in Section 20-908(b) of the City Code to a minimum of approximately 3 feet from the north property line, 2 feet from the east property line, and 6 feet from the west property line. These setbacks pertain to the west parking lot. The applicant also needs a variance from the same parking lot setback provision for the parking along the east side of Court Street. The parking spaces are configured as 90-degree stalls directly off the street right-of-way so the request is for a 0 feet setback from the right-of-way. Additional variances involve the perimeter parking lot landscaping/buffer yard and interior parking lot landscape requirements contained in Article 9 and Article 10 of the Development Code. These requests are submitted for a proposed house remodel and parking lot circulation improvements being planned for the Phi Delta Theta Fraternity located at 1621 Edgehill Road. Submitted by George Higgins, Architect with NSPJ Architects, for Kansas Alpha of Phi Delta Theta Alumni Corporation, property owners of record. **The legal description for the property in the appeal and the case file for the public hearing item are available in the Planning Office for review during regular office hours, 8-5 Monday - Friday.**

#### STAFF PRESENTATION

Mr. Guntert presented the item.

Holley asked Mr. Guntert if additional landscape would be added to the west side of the property.

Mr. Guntert stated landscaping issues would be addressed with the site plan approval process. There are residential homes on the west side of Louisiana Street. He felt it would be appropriate to require landscape screening to shield the parking lot lights from the residents.

Kimzey asked Mr. Guntert if the current parking lot was built according to the zoning codes in effect in 1988.

Mr. Guntert said the property had been researched for a variance on the setback for parking. The applicant provided the old site plan but staff had not found evidence of a variance application in 1988. Older aerial imagery from 1984 appears to show a parking lot on the property.

Kimzey said it did not appear that the shape and size of the parking lot would change significantly with what the applicant wanted to do. It mainly involved improvements to the parking layout, access and circulation pattern.

Mr. Guntert said there will be extensive remodeling of interior areas in the fraternity house but it was his understanding the occupancy would not be increased because of the interior remodeling work. He added that a basketball court would also be built south of the house.

Kimzey asked if a variance would still be needed if the parking lot across the street was not going to be reconfigured.

Mr. Guntert said a variance would be needed because of the parking spaces located along the east side of Court Street, which is a public street.

Edie asked how many parking spots were currently available in the west parking lot.

Mr. Guntert said the site plan indicated the west lot had 47 parking spaces - 18 compact spaces, 28 full size spaces and 1 accessible space. The new configuration would provide 53 full size spaces and 2 accessible spaces for a total of 55 spaces. All of the parking spaces will be wider stalls to better match the type of vehicles the fraternity members were driving.

Holley said it appeared the total amount of paving directly adjacent to the east side of Court Street would be increased but some area currently paved would be returned to green space immediately southwest of the fraternity house.

### **APPLICANT PRESENTATION**

George Higgins, NSPJ Architects, said the fraternity house was designed and built in 1988. The structure needed to have the mechanical equipment updated. He said the interior of the structure would also undergo a major remodel. Mr. Higgins stated the compact car parking stalls were only 7 ½ feet wide. He said to reconfigure the lot an additional four feet of paving was needed along the west side. He said the students now tandem park in the area south of the house. He said by adding additional parking spots on Court Street they would be able to provide some green space on the south side of the structure.

### **PUBLIC COMMENT**

Gary Smith, 1612 Louisiana Street, asked if the parking lot would be extended on the west side of the structure. He said there was a hedge row on top of the east side retaining wall and he would like to see the same type hedge row on the west side. He said the parking lot had a lot of landscape and he would like to see the landscape remain. Mr. Smith said Court Street was used a lot for a turnaround area and wondered how the proposed new parking arrangement might impact that pattern.

Robin Smith, 1616 Louisiana Street, stated the real concern was the location of the new entrance/exit area. He said the current entrance would be closed and relocated to where the exit is now. Mr. Smith stated the parking lot was at the crest of a large hill and Edgehill Road was a one-way street. He had seen cars traveling east bound along Sunnyside Drive continue against the flow of traffic to access Court Street or the west parking lot. The location of the entry/exit was just over the crest of the hill so it was very difficult to see cars driving up the hill. Mr. Smith said he would like to see the entrance repositioned to a safer location.

Mahoney said he had a concern with moving the entrance/exit. He said students should not be driving the wrong direction on the one-way street but it would happen if the entrance was thirty feet away or 100 feet away.

Robin Smith said there was a problem with traffic enforcement in the area; if the entrance/exit was repositioned where sight distance was better it would eliminate problems. He pointed out there were no extra parking spaces for delivery vehicles or employees of the fraternity. He wondered where they were expected to park. Trash collection in the area was another concern; he asked how many trash containers would be supplied to the fraternity.

Mr. Smith asked Mr. Higgins if the existing storage shed would be removed.

Mr. Higgins understood the storage shed would be demolished.

Gary Smith said there would be a problem if the entrance/exit was relocated due to the ridge line creating a blind spot.

Jackie Gibbs, House Manager of Sigma Delta Tau Sorority at 1625 Edgehill Road, said the end of Court Street was the only place the sorority could use for access to a very limited parking area on their property. She had concerns with what the fraternity proposed to do on their property in this same area. There was a lack of parking, numerous blind spots in the area and a lot of congestion. She didn't want to see it get worse.

Robin Smith said 25 years ago the parking area on the south end of Court Street was to be a no parking area and for delivery vehicles only. He was also concerned with water runoff in the area; there was a drain at the corner of the parking lot he often had to clean out to keep it open.

### **PUBLIC HEARING CLOSED**

Motioned by Kimzey, seconded by Holley, to close the public hearing.

Motion carried unanimously, 6-0

### **BOARD DISCUSSION**

Mahoney stated the main concern for him with the variance was the safety issue on the northwest corner of the west parking lot. He asked Mr. Guntert if the zero feet parking setback related to the parking spaces along Court Street.

Mr. Guntert said it was for the 90-degree parking stalls along the east side of Court Street. The three northern most parking stalls were proposed by the applicant; staff had advised them that those spaces were too close to the intersection of Edgehill Road and it was unlikely that staff would support them. He said the issue would be discussed in more depth during the site plan application submittal and review process.

Kimzey asked Mr. Guntert if the variance request was to extend the parking lot four feet to the west.

Mr. Guntert said the variance request was to deal with the existing parking setback on Sunnyside or Edgehill Road, Court Street and Louisiana Street. There was also the landscaping element of the request as it related to the code required interior parking lot landscaping within the west parking lot.

Lowe asked Mr. Guntert if landscaping was a Site Plan issue.

Mr. Guntert said landscaping was a site plan requirement but the applicant was seeking a variance from the interior parking lot landscape requirements of the code.

Holley asked Mr. Guntert if the Board could approve only the west parking lot portion of the variance. He asked if the issue would come back to the Board if the entrance/exit was repositioned through the site plan process.

Mr. Guntert said the project would not come back to the Board of Zoning Appeals if the entrance/exit was repositioned. The Board could choose to act only upon the west parking lot variances. If they did so they needed to defer or deny the variances associated with the parking on the east side of Court Street since that was part of the request.

Holley said the main parking lot on the west would alleviate congestion in the neighborhood. He thought moving the entrance/exit to the northwest side of the parking lot might create more safety issues because of the shortened distance it would be from the Louisiana Street-Sunnyside Drive-Edgehill Road intersection.

#### **ACTION TAKEN**

Motioned by Holley, seconded by Edie, to approve the off-street parking setback and interior parking lot landscape area variances requested by Phi Delta Theta Fraternity, except for the 3 parking stalls proposed on the east side of Court Street just south of the Edgehill Road intersection. The motion for approval was based upon the comments received from the public, the deliberations of the Board, the recommendation and findings of fact in the staff report, and included the following conditions:

1. The three proposed parking stalls shown on the application drawing toward the northeast end of Court Street near Edgehill Road are not approved by the Board's variance approval action. Those proposed parking stalls shall be removed from the site plan drawing.
2. Approval of a site plan by the City for the parking and outdoor activity area improvements proposed by the fraternity.

Motion carried 5-1 with Mr. Lowe voting against the motion.

#### **ITEM NO. 5 MISCELLANEOUS**

- a) No other business came before the Board.

#### **ACTION TAKEN**

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

Motion carried unanimously, 6-0

#### **ADJOURN- 7:46 p.m.**

Official minutes are on file in the Planning Department office.