

**LAWRENCE BOARD OF ZONING APPEALS  
AGENDA**

**APRIL 7, 2011 – 6:30 P.M., CITY COMMISSION MEETING ROOM, FIRST FLOOR OF  
CITY HALL AT SIXTH AND MASSACHUSETTS STREET, LAWRENCE, KANSAS**

**CALL THE MEETING TO ORDER**

**TAKE A ROLL CALL TO DETERMINE IF THERE IS A QUORUM OF MEMBERS PRESENT**

**ITEM NO. 1            COMMUNICATIONS**

Acknowledge any communications to come before the Board.

Board member disclosure of any ex parte contacts and/or abstentions from the discussion and vote on any agenda item under consideration.

Announce any agenda items that will be deferred.

**ITEM NO. 2            MINUTES**

Consider approval of the minutes from the March 3, 2011 meeting of the Board.

**BEGIN PUBLIC HEARING:**

**ITEM NO. 3            2218 – 2226 YALE ROAD [DRG]**

**B-3-3-11:** A request for a variance as provided in Section 20-1309 of the Land Development Code of the City of Lawrence, Kansas, 2009 edition. The request is for a variance to reduce the 20 feet rear yard building setback for residential dwellings from the rear property line required in Section 20-601(b) of the City Code to a minimum of 19.7 feet. The variance is requested for an existing residential structure that is built approximately 4 inches too close to the north property line at 2218, 2222 and 2226 Yale Road. Submitted by Rebecca Buford, Executive Director, Tenants to Homeowners, for LCHT Accessible Housing, LLC, the 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.**

**ITEM NO. 4            MISCELLANEOUS**

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

## BOARD OF ZONING APPEALS

### Meeting Minutes of March 3, 2011 –6:30 p.m.

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Members present: Kimball, Mahoney, Lowe, Edie, Christie, von Tersch

Members absent: Carpenter

Staff present: Guntert, Parker

#### **ITEM NO. 1            COMMUNICATIONS**

No communications came before the Board.

No agenda items deferred.

#### **ITEM NO. 2            MINUTES**

Motioned by Kimball, seconded by Christie, to approve the February 3, 2011 Board of Zoning Appeals minutes.

Motion carried unanimously, 6-0

#### **BEGIN PUBLIC HEARING:**

#### **ITEM NO. 3            711 CONNECTICUT STREET [DRG]**

**B-1-1-11:** A request for a variance as provided in Section 20-1309 of the Land Development Code of the City of Lawrence, Kansas, 2009 edition as it relates to the minimum number of off-street parking spaces required for multi-dwelling residential use. Section 20-902 of the City Code is the governing provision used to determine the minimum number of parking spaces for a specific land use. The applicant's variance request would reduce the number of parking stalls provided on the property from the Code required 7 spaces to a minimum of 6 spaces. The variance request is for the property commonly addressed as 711 Connecticut Street. Submitted by Michael L. Tubbs, Tubbs Law Firm, for James and Nancy Dunn, the 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.

Mahoney asked Mr. Guntert if the project would return to the Board of Zoning Appeals after the Planning Commission reviewed the project.

Mr. Guntert stated the applicant had numerous options regarding how many dwelling units could be built on the property which would affect the parking limitations. He stated the parking requirements were different for a multi-dwelling unit and a duplex with the same number of bedrooms. He said the applicant was seeking six dwelling units with six bedrooms which would require seven parking spaces. He said six parking spaces would be required if the applicant built a duplex with a total of six bedrooms. A duplex was not required to provide extra parking for guests.

Kimball asked Mr. Guntert if the applicant could build a six dwelling unit structure without a parking variance.

Mr. Guntert said several things needed to happen for the applicant to be able to achieve that density of dwelling units on the one lot. First, the zoning had to be approved to RM32 which would allow the applicant to build 3 dwelling units instead of 2 dwelling units on the lot. Second, a proposed text amendment to the Development Code pertaining to the RM32 District that would allow for an increase in density had to be approved by the City. If those two things happened, then it might be possible for the applicant to build six dwelling units on the property if they could meet all of the other development standards in the Code. He said a change in zoning would not affect the number of parking spaces required.

### **APPLICANT PRESENTATION**

Michael Tubbs, Tubbs Law Firm, said the applicant wanted to build six bedrooms in some configuration which is why a parking variance was needed. He said the City Development Code stated off-street parking shall be provided with the minimum of one parking space per bedroom and one per ten units for visitors and guests. Mr. Tubbs stated the proposal was not for ten units rather the proposal was for six units. He said the City Development Code was clear and straight forward. He said there were parking spaces across the street in the public right-of-way and visitors could technically use those spaces during non business hours.

Lowe stated the five criteria for a variance needed to be met in order for the Board to grant a variance. He asked Mr. Tubbs to explain how the request met each of those criteria.

Mr. Tubbs stated there was a hardship on the property owner trying to meet parking requirements. He said the City Development Code was clear in describing the requirements. There was a commercial site across the street with thirty three City owned parking spaces and the church to the north of the property had ten parking spaces. Mr. Tubbs stated the situation was unique due to no parking on Connecticut Street. He said the Board was bound by the City Development Code. His opinion was they did not need to provide one parking space for guest or visitor parking because they were only proposing to have six dwelling units not ten. Mr. Tubbs stated the structure was structurally condemned by the City of Lawrence.

Kimball asked Mr. Tubbs how the property was unique from properties in the neighborhood.

Mr. Tubbs stated there were multi-family structures in the area and there was angle parking on the east side of Connecticut Street. He said the entire end of the block was heavily commercialized. The property was close to Downtown and the business nerve center of the City.

### **PUBLIC COMMENT**

Dennis Brown, Lawrence Preservation Alliance, stated he did not see a hardship to justify the approval of a variance; and, the application was speculative. He said there was an attempt to change the Development Code definition of a dwelling unit to allow more single bedroom apartments in the RM32 zoning district.

Mr. Brown stated the Historic Resources Commission had voted to deny the demolition permit and proposed new construction, the rezoning request, and the parking variance. He said the applicant was able to appeal the decision to the City Commission. Mr. Brown stated loss of a potential financial advantage did not constitute an unnecessary hardship.

K.T. Walsh stated the neighborhood was opposed to a change in zoning to the area. She said the block was primarily single family residential. Ms. Walsh said Mr. Dunn was not listed as the owner of the home on the county records. She said the house was a serious case of demolition by neglect.

Tony Peterson, 724 Rhode Island Street, stated there had been times when he could not park on the block due to Downtown employees and visitors.

### **PUBLIC HEARING CLOSED**

Motioned by Christie, seconded by Kimball, to close the public hearing.

Motion carried unanimously, 6-0

### **BOARD DISCUSSION**

Christie asked Mr. Guntert what the past practice had been in regards to the Development Code requirements for guest or visitor parking spaces.

Mr. Guntert stated one guest parking space is required per every ten units. If there was fewer than ten units the Code still required one guest or visitor parking space.

He also responded to the availability of public parking spaces in the street right-of-way on the east side of Connecticut Street. In February 2008, the Board approved a parking variance for the commercial area across the street. He said a use of right-of-way agreement for the parking spaces in front of the commercial development was a condition of the variance. Those parking spaces were associated with that development area.

### **ACTION TAKEN**

Motioned by Kimball, seconded by Mahoney, to deny the variance requests at 711 Connecticut Street, based on the findings of fact in the staff report.

Motion approved unanimously, 6-0

### **ITEM NO. 4            601 KASOLD DRIVE; WESTLAKE HARDWARE STORE IN WESTRIDGE SHOPPING CENTER [DRG]**

**B-2-2-11:** A request for a variance as provided in Section 20-1309 of the Land Development Code of the City of Lawrence, Kansas, 2009 edition. The request is for a reduction in the amount of off-street parking spaces available for customer use at Westridge Shopping Center. It is for a seasonal outdoor sales area that will occupy 41 parking spaces in the parking lot adjacent to the Westlake Hardware Store located at 601 Kasold Drive. Section 20-902 et seq. in the City Code contains the governing provisions for determining the minimum parking space requirements based upon the land use. Submitted by Robert Massengill, Corporate Counsel for Westlake Hardware, with the permission of Elizabeth Hird, Trustee, Carl Hird, Jr. Trust, the 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.

Mahoney asked if the dates mentioned would be yearly for seasonal sales.

Mr. Guntert stated the dates were identified by the applicant. It was the applicant's intent to have the seasonal sales area set up each year during those dates.

### **APPLICANT PRESENTATION**

Robert Massengill stated the set up of the parking lot would be similar to how it is done at the store at 23<sup>rd</sup> & Louisiana Street and would improve the quality of the store. He said the store manager had gone around and talked with most of the other tenants in the center about what they planned to do with the seasonal sales area. Those they were able to contact were in full support of the idea and had signed a petition in support of the parking variance. He gave copies of the petition to staff and the Board.

**PUBLIC COMMENT**

No one spoke to this item.

**PUBLIC HEARING CLOSED**

Motioned by von Tersch, seconded by Mahoney, to close the public hearing.

Motion carried unanimously, 6-0

**BOARD DISCUSSION**

Kimball stated he shopped at the store and had never had a problem with finding a parking spot. Other Board members agreed they had not experienced any problem with finding a parking space when they have been to the center.

**ACTION TAKEN**

Motioned by Christie, seconded by Kimball, to approve the variance for the seasonal outdoor sales area, at 601 Kasold Drive, based on the findings of fact in the staff report, and contingent on approval of a revised Site Plan to denote the seasonal outdoor sales area.

Motion approved unanimously, 6-0

**ITEM NO. 5 MISCELLANEOUS**

- a) Mr. Guntert stated a study session would be scheduled for the April 7<sup>th</sup>, 2011 Board of Zoning Appeals meeting at 5:30 in the City Commission room.

**ACTION TAKEN**

Motioned by Kimball, seconded by Mahony, to adjourn the Board of Zoning Appeals meeting.

Motion carried unanimously, 6-0

**ADJOURN – 7:43p.m.**

Official minutes are on file in the Planning Department office.

**ITEM NO. 3            2218 – 2226 YALE ROAD [DRG]**

**B-3-3-11:** A request for a variance as provided in Section 20-1309 of the Land Development Code of the City of Lawrence, Kansas, 2009 edition. The request is for a variance to reduce the 20 feet rear yard building setback for residential dwellings from the rear property line required in Section 20-601(b) of the City Code to a minimum of 19.7 feet. The variance is requested for an existing residential structure that is built approximately 4 inches too close to the north property line at 2218, 2222 and 2226 Yale Road. Submitted by Rebecca Buford, Executive Director, Tenants to Homeowners, for LCHT Accessible Housing, LLC, the property owner of record.

**B.     REASON FOR REQUEST**

*Applicant's Request - "A recent ALTA Survey prepared by Bartlett and West Engineers describes various encroachment to setback lines on all 3 buildings on this site:*

*2226 Yale - .2 foot encroachment on west setback*

*2222 Yale - .3 to .4 foot encroachment on west setback*

*2218 Yale - .3 to .56 foot encroachment on north setback and .3 foot encroachment on east setback.*

*These buildings have been there over 25 years."*

**C.     ZONING AND LAND USE**

Current Zoning & Land Use:                      CN2 (Neighborhood Commercial Center) District;  
residential development

Surrounding Zoning and Land Use:            CN2 (Neighborhood Commercial Center) District to  
the north, east and west; commercially developed  
shopping center with ancillary parking and office  
uses.

RM12D (Multi-Dwelling Residential) District and  
PCD [Westdale] (Planned Commercial Development)  
District to the south; church and office uses.

**D.     ZONING ORDINANCE REQUIREMENTS**

Section 20-601(b), "Nonresidential Districts Density and Dimensional Standards Table", contains the site area, setback and height standards for all commercial and industrial districts. In the case of a CN2 District, the rear yard setback is 20 feet for a single frontage lot and there is no minimum side yard setback when the property is adjacent to other nonresidentially zoned land.

The applicant only needs a rear yard variance for the building addressed as 2218 Yale Road (northeast building on ALTA Survey). The other two buildings are in compliance with the side yard setback standards of the CN2 District.

## E. SPECIFIC ANALYSIS

Section 20-1309(g)(1) in the Development Code lists the five requisite conditions that have to be met for a variance to be approved.

1. The variance request arises from such conditions which are unique to the property in question and not ordinarily found in the same zone or district; and are not created by an action or actions of the property owner or applicant.

Applicant response: *"The original subdivision plat had setback requirements that were typical for the time period over 25 years ago. It is obvious now that the encroachments were created when the buildings were built and not created by the current owner."*

This residential development was built in 1986 by another owner after the City approved a site plan for the 12-unit residential complex. The approved site plan showed three 4-plex buildings with building setbacks that comply with the zoning requirements of the district. When the building foundations were laid out on the lot, the building in the northeast portion of the property was apparently staked too close to the rear property line by 4" – 6". The encroachment was undetectable to the eye and remained unknown until a recent ALTA improvements survey was made for the current property owner as part of the requirements for loan refinancing. The applicant did not have anything to do with the initial development of the property. They are merely trying to clean up this minor setback encroachment.

2. That the granting of the variance will not adversely affect the rights of adjacent property owners or residents.

Applicant response: *"Since this issue has existed over 25 years without discovery, it is doubtful that any adjacent property owners will have an issue with correcting this minor encroachment."*

In staff's opinion, granting a 4" – 6" variance for an existing residential structure that has existed on this property for more than 25 years will not adversely affect the rights of adjacent property owners or residents. The residential building in question backs upon a parking area at the rear of a commercial structure in the shopping center to the north. No one knew of this encroachment until recently when an ALTA survey was done in concert with refinancing the property. Staff has not received phone calls from neighbors who were notified of the application for variance.

3. That the strict application of the provisions of this chapter for which variance is requested will constitute unnecessary hardship upon the property owner represented in the application.

Applicant response: *"Demolition or moving of the buildings, all less than .6 feet, would not be a practical or economically sound solution."*

As previously stated the amount of this building encroachment is very minor. The residential development has existed this way for more than 25 years without anyone's knowledge of the building setback infraction. Now, it would be extremely difficult to correct the problem. Staff believes the strict enforcement of the Development Code would create an unnecessary hardship for the property owner.

4. That the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare.

Applicant response: *"Again, this situation has existed for over 25 years without adverse affect to the public health, safety, morals, order, convenience, prosperity or general welfare. This technical correction is not going to change the status quo."*

In staff's opinion, granting a variance to reduce the rear yard setback by 4" – 6" for the existing residential structure will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare. No adverse affect has been shown to exist during the more than 25 year time span since the property was developed.

5. That granting the variance desired will not be opposed to the general spirit and intent of this chapter.

Applicant response: *"These minor variances apparently were created when the buildings were built over 25 years ago and should have been corrected before the buildings were built. Unfortunately, we have to deal with them now and they are so minor. They do not oppose the spirit and intent of the Code."*

In staff's opinion, approving the variance for the existing residential structure (addressed as 2218 Yale Road) to be located 4" – 6" closer to the rear property line than required by Code is not opposed to the general spirit and intent of the Development Code. This minor encroachment into the setback was unnoticed and apparently caused no problems for anyone for more than 25 years. It was only because of the recent ALTA improvement survey, required for refinancing the property, that it has come to everyone's attention. Approval of the variance clears up the question of the structure encroachment once and for all.

**Conclusions:** Staff's analysis of this variance application finds the request meets the five conditions set forth in Section 20-1309(g)(1) of the Development Code that the Board must find existing to grant a variance.

**Recommendation:**

Staff recommends approval of a variance from the provisions of Section 20-601(b) of the City Code to allow a 4" – 6" reduction in the rear yard building setback for the residential structure located in the northeastern portion of the subject property based upon the findings in the staff report that conclude the applicant's request meets all 5 conditions outlined in Section 20-1309(g)(1) needed for variance approval.



B-3-3-11



**City of Lawrence  
Douglas County**  
PLANNING & DEVELOPMENT SERVICES

**Lawrence Douglas County  
Metropolitan Planning Office**  
6 East 6<sup>th</sup> Street, P.O. Box 708, Lawrence, KS 66044  
(785) 832-3150 Fax (785) 832-3160  
<http://www.lawrenceks.org/pds/>

**RECEIVED**  
MAR 02 2011  
City County Planning Office  
Lawrence, Kansas

**APPLICATION FOR  
VARIANCE FROM UNNECESSARY HARDSHIP**

**OWNER INFORMATION**

Name(s) LCAT Accessible Housing, LLC.  
Contact To Tenant to Homeowners - Rebecca Buford  
Address 2518 Ridge Court, Ste. 103  
City Lawrence State KS ZIP 66044  
Phone (785) 842-5494 Fax (785) 842-7570  
E-mail rbufordefird@yahoo.com Mobile/Pager (785) 760-2058

**APPLICANT/AGENT INFORMATION**

Contact \_\_\_\_\_  
Company \_\_\_\_\_  
Address \_\_\_\_\_  
City \_\_\_\_\_ State \_\_\_\_\_ ZIP \_\_\_\_\_  
Phone (\_\_\_\_) \_\_\_\_\_ Fax (\_\_\_\_) \_\_\_\_\_  
E-mail \_\_\_\_\_ Mobile/Pager (\_\_\_\_) \_\_\_\_\_  
Pre-Application Meeting Date \_\_\_\_\_ Planner \_\_\_\_\_

**PROPERTY INFORMATION**

Present Zoning District RM12 Present Land Use Multi Family Residential  
Proposed Land Use Multi Family Residential  
Legal Description (may be attached) Lot 1, Block 1, Accessible Residential Options West Subdivision  
Address of Property 2218, 2222, 2226 Yale St.  
Total Site Area .81 acres m/l  
Number and Description of Existing Improvements or Structures 3 four-plexes, one story and 2 bedroom units



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**Description of variance requested:**

A recent ALTA Survey prepared by Bartlett and West Engineers describes various encroachment to setback lines on all 3 buildings on this site:

2226 Yale - .2 foot encroachment on west setback

2222 Yale - .3 to .4 foot encroachment on west setback

2218 Yale .3 to .56 foot encroachment on north setback  
and .3 foot ~~var~~ encroachment on east setback

These buildings have been there over 25 years.

Survey is attached



**UNNECESSARY HARDSHIP CRITERIA**

The Board of Zoning Appeals may approve a zoning variance if it finds that all of the following criteria have been met. The Development Code places the burden on the applicant to show that an application complies with such criteria. Please respond to each criterion to the best of your knowledge. (Attach additional sheets if needed.)

- 1. That the variance request arises from such conditions which are unique to the property in question and not ordinarily found in the same zoning or district and are not created by action(s) of the property owner or applicant:**

The original Subdivision plat had setback requirements that were typical for the time period over 25 years ago. It is obvious now that the encroachments were created when the buildings were built and not created by the current owner.

- 2. That granting the variance would not adversely affect the rights of adjacent property owners or residents:**

Since this issue has existed over 25 years without discovery, it is doubtful that any adjacent property owners will have an issue with correcting this minor encroachment.



3. That strict application of the provisions of this chapter for which the variance is requested would constitute unnecessary hardship upon the property owner represented in the application:

demolition or moving of the buildings, all less than .6 feet, would not be a practical or economically sound solution

4. That the variance desired would not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare:

Again, this situation has existed for over 25 years without adverse effect to the public health, safety, morals, order, convenience, prosperity or general welfare. This technical correction is not going to change the status quo.



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**5. That granting the variance desired would not be opposed to the general spirit and intent of the Development Code:**

These minor variances apparently were created when the buildings were built over 25 years ago, and should have been corrected before the buildings were built. Unfortunately, we have to deal with them now and they are so minor. They do not oppose the spirit and intent of the Code.

**SIGNATURE**

I/We, the undersigned am/are the **(owner(s))** (duly authorized agent), (Circle One) of the aforementioned property. By execution of my/our signature, I/we do hereby officially apply for variances as indicated above.

Signature(s): Rebecca Buford Date 2/23/11

\_\_\_\_\_ Date \_\_\_\_\_

\_\_\_\_\_ Date \_\_\_\_\_

**STAFF USE ONLY**

Application No. \_\_\_\_\_

Date Received \_\_\_\_\_

BZA Date \_\_\_\_\_

Fee \$ \_\_\_\_\_

Date Fee Paid \_\_\_\_\_

**Exhibit A, Legal Description**

**Lot 1, Block 1, Accessible Residential Options West Subdivision, a Subdivision in the city of Lawrence, Douglas County, Kansas.**