

**LAWRENCE BOARD OF ZONING APPEALS  
AGENDA**

**JANUARY 5, 2012 – 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 December 1, 2011 meeting of the Board.

**BEGIN PUBLIC HEARING:**

**ITEM NO. 3            1110 HASKELL AVENUE [AAM]**

**B-12-11-11:** 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 from the provisions in Article 12, Section 20-1204(b) of the City Code as it pertains to development within the regulatory floodway. A variance is necessary for the City to be able to replace an existing canopy structure that protects the fuel station at 1110 Haskell Avenue. The application is submitted by the City of Lawrence, 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.

Memorandum  
City of Lawrence  
Planning & Development Services

**TO: Sign Code Board of Appeals**

**FROM: Barry Walthall, Building Codes Manager**

**C: Scott McCullough, Planning & Development Services Director**

**Date: December 27, 2011**

**RE: Request to Reconsider SV-9-4-11**

Staff requests that the Board reconsider the variance request for Douglas County Bank, 4340 West 6<sup>th</sup> Street to allow additional graphics on an existing monument sign. The reason for this request is to rectify a miscommunication that resulted in the applicant not being in attendance and able to speak in support of the variance at the original hearing on November 3, 2011.

Staff believed that the applicant had been informed of the meeting date and time when the variance application was received, but discovered this wasn't the case after the hearing. To avoid future incidents applicants will be contacted one week in advance to confirm the meeting date and time and to ensure the applicant has access to the meeting agenda and staff report. Staff apologizes to the applicant and the Board for the poor communication and inconvenience.

**BOARD OF ZONING APPEALS**  
**Meeting Minutes of December 1, 2011 –6:30 p.m.**

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Members present: Perez, Lowe, Edie, Holley  
Members excused: Christie, Mahoney  
Staff present: Guntert, Parker

**ITEM NO. 1                    COMMUNICATIONS**

Mr. Guntert stated communication was added to the packet regarding 2618 Missouri Street.

No abstentions from the discussion or vote on agenda items under consideration.

No items deferred.

**ITEM NO. 2                    MINUTES**

Motioned by Holley, seconded by Edie, to approve the October 6, 2011 Board of Zoning Appeals minutes.

Motion carried unanimously, 4-0

**BEGIN PUBLIC HEARING:**

**ITEM NO. 3                    2626 MANOR TERRACE [DRG]**

**B-11-9-11:** 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 involves a reduction of the rear yard building setback for a residential dwelling in an RS7 (Single Dwelling Residential) District from the required 30 feet requirement found in Section 20-601(a) of the City Code, to a minimum of 14 feet. The variance is needed for the owner to be able to build a master bedroom with accessible master bath and laundry area on the back side of the dwelling. The property is located at 2626 Manor Terrace. The application was submitted by Stan Flory for Jean R. Flory and Calvin F. Flory Trustees, 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.

Holley asked Staff how strict the guidelines were for the uniqueness requirement of a project.

Mr. Guntert stated each project case was based on its own merit. Other cases should not be used to establish precedent.

Lowe said the applicants' property was the only square lot in the cul-de-sac.

Perez asked if there were utility easements that ran between the properties in the rear yard.

Mr. Guntert stated there was a 15 feet easement centered on the common rear property line of the two adjacent lots. It did not interfere with the location of the proposed addition.

**APPLICANT PRESENTATION**

Mr. Flory said he had looked at a couple of different options for the project. He said there were three bedrooms on the main floor and he did not want to decrease the size of the current bedrooms. Mr. Flory stated the hallways on the main floor were not wide enough for a wheelchair or a walker. The bathroom was also undersized to accommodate a walker or wheelchair. He wanted to add the addition so his mother could stay in her home rather than have to look for other types of housing accommodations that were very expensive.

**PUBLIC COMMENT**

There was no public comment.

**PUBLIC HEARING CLOSED**

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

Motion carried unanimously, 4-0

**BOARD DISCUSSION**

Holley stated the proposal met the uniqueness requirement and he did not believe the property to the north of the project would be affected. There was a considerable amount of distance between the structures in this area and the addition did not seem to impact it greatly in his opinion.

The Board noted the neighbors did not seem to have any problem with the request based upon no one showing up for the meeting or sending correspondence in opposition to the reduced setback.

**ACTION TAKEN**

Motioned by Holley, seconded by Edie, to approve the variance request at 2626 Manor Terrace, based on the recommendation of staff, the testimony of the applicant, and findings of fact in the staff report.

Motion carried unanimously, 4-0

**ITEM NO. 4            2618 MISSOURI STREET [DRG]**

**B-11-10-11:** 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 involves a reduction of the 5 feet accessory building setback from an interior lot line in residential zoning districts found in Section 20-533(3) of the City Code, to a minimum of 3 feet. The variance is requested so the owner can build a 10 feet by 12 feet storage shed 2 feet closer to the south property line. The property is located at 2618 Missouri Street. The application was submitted by Travis J. Alexander, 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. He added that the neighbor to the south had submitted a letter to the Planning Office indicating his concerns with the request and objections to the granting of a setback variance. The letter was part of the online materials for this agenda item.

Lowe asked Staff if the shed would be moved to the north to meet the three feet setback.

Mr. Guntert said the slab was closer to the south property line than three feet. The applicant planned to build the south wall of the shed one foot from the edge of the slab so the setback from the south property line would be 3 feet. The slab edge was 2 feet from the south property line.

Holley asked if the new wooden fence was built directly on the property line.

Mr. Guntert said the fence was set away from the property line approximately one-half foot.

Perez stated there appeared to be gravel under the fence that had washed away onto the neighbor's property.

Mr. Guntert said the neighbor was concerned about the shed creating a drainage problem. He pointed out that the existing drainage pattern was from the northwest corner to the southeast corner of the property. He thought it might be possible to create a slight swale along the south side of the yard to divert water away from the neighbor's property. Naturally, the water wanted to go that direction because of the topography of the land in this area.

Perez did not think the location of the slab would affect the drainage.

Lowe asked Staff if he had been to the site to view the project.

Mr. Guntert said he had been by the site but did not go into the back yard to look around. The wooden fence screened the area where the shed will be built. He did not believe a 2 feet variance from the required 5 feet setback for the shed would create any sort of adverse hardship to the neighbor.

Lowe said there was a steep hill. He did not think the structure would create additional run off for the neighbor.

Perez said it looked like water had washed gravel under the fence.

Mr. Guntert said he was not sure if the gravel was already in place before the fence was built or if it was laid down after the fence was constructed. The applicant would be able to answer that question for the Board.

### **APPLICANT PRESENTATION**

Travis Alexander stated the gravel was new after the fence was installed. He had shoveled it to the area and some of it must have gone under the fence onto his neighbor's property. He said he would attempt to move it back to where it belonged. He did not think the placement of the shed would create a drainage issue. The property had always sloped from the northwest to the southeast.

He researched the City Code before starting the project to see if he needed a building permit to construct the shed. He found that a permit was not required for an accessory structure less than 200 square feet in size; his would be smaller than that. So, he proceeded to build the concrete pad a few feet away from his south property line on the most level area he has in his back yard. He later learned that the shed needed to be a minimum of 5 feet set back from the side property line and the slab was too close for that to work.

Mr. Alexander stated he had notified his neighbor of his intentions to build the shed before starting the project and he received no response from the neighbor to indicate he had any concerns he needed to be aware of.

Lowe asked Mr. Alexander if he had photos prior to the fence being installed.

Mr. Alexander stated he did not have photos prior to the fence being built.

Holley asked Mr. Alexander if there was gravel all along the fence line.

Mr. Alexander stated there was only gravel along the southwest corner of the fence.

Lowe asked Mr. Alexander if the neighbor installed pavers.

Mr. Alexander said the pavers were just recently installed by the neighbor. Mr. Alexander stated his driveway was built next to the property line.

Holley asked Mr. Alexander the relationship of the slab to the shed.

Mr. Alexander said the concrete was 13x11. He said the shed would be 12x10 and there would be a foot wide edge on the west and the south side.

Perez asked Mr. Alexander if there was any other spot in his yard to place the shed.

Mr. Alexander said the flattest spot in the yard was the location where he proposed to build the shed. He said the lawn slope was more aggressive from the northwest to the southeast.

Holley asked Mr. Alexander if the 2x4 he had installed was the entire length of the fence.

Mr. Alexander said the 2x4 and gravel was not the full length of the fence. He said the 2x4 did not create a dam along the fence.

### **PUBLIC COMMENT**

There was no public comment.

**PUBLIC HEARING CLOSED**

Motioned by Edie, seconded by Perez, to close the public hearing.

Motion carried unanimously, 4-0

**BOARD DISCUSSION**

Perez stated added concrete affects drainage but the flow was not enough to cause an issue because the slope had been there previously.

Lowe stated water was naturally draining towards the southeast corner of the applicant's property. He thought the applicant's intent was in the right place and he was not aware of the setback requirement before he began.

**ACTION TAKEN**

Motioned by Holley, seconded by Perez, to approve the variance request at 2618 Missouri Street, based on the recommendation and findings of fact in the staff report.

Motion carried unanimously, 4-0

**ITEM NO. 5 MISCELLANEOUS**

- a) Mr. Guntert stated the Board of Zoning Appeals 2012 calendar was in the packet for approval.

**ACTION TAKEN**

Motioned by Edie, seconded by Holley, to adjourn the Board of Zoning Appeals meeting.

Motion carried unanimously, 4-0

**ADJOURN- 7:33 p.m.**

Official minutes are on file in the Planning Department office.

**ITEM NO. 3            1110 HASKELL AVENUE [AAM]**

**B-12-11-11:** 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 from the provisions in Article 12, Section 20-1204(b) of the City Code as it pertains to development within the regulatory floodway. A variance is necessary for the City to be able to replace an existing canopy structure that protects the fuel station at 1110 Haskell Avenue. The application is submitted by the City of Lawrence, the property owner of record.

**B.        REASON FOR REQUEST & PROJECT SUMMARY**

The applicant seeks a variance from the requirements in Section 20-1204 (b) of the development code related to development in the regulatory floodway in order to replace an existing four-post canopy over the fuel station island located at 1110 Haskell Avenue. The fuel canopy is located in the regulatory floodway. Section 20-1204 (b) of the Development Code restricts development in the floodway, except for listed development types. This development does not qualify as any of those listed development types and is therefore not permitted without a variance.

The applicant will also need to obtain a floodplain permit in order for this development to proceed.

**C.        ZONING AND LAND USE**

Current Zoning and Land Use	GPI (General Public and Institutional Use) District; existing public works site including fuel station.
Surrounding Zoning and Land Use	OS (Open Space) District to east; existing park.  IG (Industrial General) District to north; existing industrial uses.  RS10 (Single-Dwelling Residential) District to the south; existing business.  GPI (General Public and Institutional Use) District to the west and north; existing maintenance garage and sewer plant.

**D.        ZONING ORDINANCE REQUIREMENTS**

Section 20-1309(a) Authority and Applicability.

The zoning variance procedures of this section authorize the Board of Zoning Appeals to approve, in specific cases, variances from specific zoning standards of this development code that will not be contrary to public interest and where, owing to special conditions, a literal enforcement of zoning standards would result in unnecessary hardship.

**Section 20-1204(b) Floodway Restrictions**

Any encroachment, including fill, New Construction, substantial improvements, or other Development is prohibited within the Regulatory Floodway, except for the following Structures:

- (1) Flood control and stormwater management Structures;
- (2) Road improvements and repair;
- (3) Utility Easements/Rights-of-Way; and
- (4) Public improvements or public Structures for bridging the Floodway.

**Section 20-303 FP, Floodplain Management Regulations Overlay District**

The FP, Floodplain Management Regulations are implemented as an Overlay District. The established regulatory provisions affecting land in the FP District are set out in Article 12, Floodplain Management Regulations.

**Section 20-1201(b) Floodplain Overlay District – Property within the City Limits on 03/01/03**

- (1) The Floodplain Overlay District boundaries for properties within the city's corporate limits as of March 1, 2003 shall be consistent with the Base Flood Elevations and Floodplain widths identified by the FIS and Flood Insurance Rate Map (FIRM) for "Douglas County Kansas and Incorporated Areas dated August 5, 2010".

**E. SPECIFIC ANALYSIS**

**Section 20-1309(g)(2) lists the criteria required to be met for the granting of a variance from the Flood Protection Regulations:**

(i). The Board of Zoning Appeals may approve a variance from the flood protection regulations of Article 12 only after finding that the requested variance meets all of the following criteria:

(i)a. A determination by the Board of Zoning Appeals that the variance is the minimum necessary, considering the flood hazard to afford relief;

This development involves utilizing the existing below ground level structure and only replacing the above ground portion of the fuel canopy. Therefore the surface of the ground is not being disturbed. In addition, the fuel station was originally constructed prior to floodplain regulations and maps. The granting of this variance is the minimum necessary, considering the flood hazard, to afford relief.

(i)b. A showing of good and sufficient cause;

The applicant has shown sufficient cause for the granting of this variance, considering the minimal nature of the improvements and the fact that there will be no disturbance of ground below grade.

(i)c. A determination by the Board of Zoning Appeals that failure to grant the variance would result in an Unnecessary Hardship to the applicant, as that term is defined in Section 20-1309(g)(1); and

The existing canopy is in extremely poor condition and needs to be replaced in order to protect the fuel island and its equipment. A hardship would exist if not granted as the canopy would not be allowed to be replaced.

(i)d. A determination by the Board of Zoning Appeals that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or in victimization of the public, or conflict with existing local laws or ordinances.

This application is for the replacement of an existing structure and therefore will cause no additional increase to flood heights. In addition, there will be no additional adverse affects to public safety, no additional public expenses, and no increased nuisances as a result of this project.

(ii). The Board of Zoning Appeals may approve a zoning variance from the flood protection regulations of Article 12 only after considering all technical evaluations, relevant factors, and standards specified in Article 12 and meeting the terms of K.S.A. 12-734. In addition, the following factors shall be considered:

(ii)a. The danger of injury from materials swept onto other lands;

This variance is only for the replacement of a permanent structure that will be firmly anchored.

(ii)b. The danger of life and property due to flooding or erosion damage;

The proposed replacement structure is designed to withstand flood waters and will not cause danger to life or property due to flooding or erosion damage.

(ii)c. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner or occupant;

The structure is an open sided canopy supported by four posts. In the event of a flood, water will be able to pass under the canopy. Also, the canopy structure is designed to withstand a flood event.

(ii)d. The importance of the services provided by the proposed facility to the community;

This facility provides fuel for all City-owned vehicles, including police vehicles, emergency services vehicles, public works vehicles, etc.

(ii)e. The necessity to the facility of a waterfront location, where applicable;

Not applicable to this application.

(ii)f. The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;

This is a minor project that only involves the replacement of the existing canopy structure. While other locations may be available, this is an established site provided for the Public Works Department at this time. In staff's opinion, the minor replacement of the canopy does not justify a recommendation for the moving of the fuel station. However, future improvements that may become

necessary may justify a staff recommendation for moving the fuel station to a location outside of the regulatory floodplain.

(ii)g. The compatibility of the proposed use with existing and anticipated development;

This is an existing use that is compatible with the surrounding Public Works site and the industrial properties.

(ii)h. The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;

The replacement of the canopy structure requires floodplain permit, in addition to the granting of this variance. Ideally, the fuel station would not be located in the regulatory floodplain, however it is an existing improvement that was constructed prior to floodplain maps and regulations. In staff's opinion, the minor replacement of the canopy does not justify a recommendation for the moving of the fuel station. However, future improvements that may become necessary may justify a staff recommendation for moving the fuel station to a location outside of the regulatory floodplain.

(ii)i. The safety of access to the property in times of flood for ordinary and emergency vehicles;

The replacement of the canopy will not alter the access to the property.

(ii)j. The expected heights, velocity, duration, rate of rise and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site; and

This application is for the replacement of the fuel canopy and therefore none of the above factors will be altered because of this project.

(ii)k. The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.

This application is for the replacement of the fuel canopy and therefore none of the above factors will be altered because of this project.

(iii) Generally, variances from flood protection standards may be issued for a Significant Development Project to be erected on a Lot of one-half acre or less in size contiguous to and surrounded by Lots with existing Structures constructed below the Regulatory Flood level, providing items Section 20-1309(g)(2)(ii)a through Section 20-1309(g)(2)(ii)j have fully been considered. As the lot size increased beyond one-half acre, the technical justification required for issuing the variance increases.

This application is for the replacement of a fuel canopy and not a Significant Development Project. Therefore, the above standard does not apply.

(iv) Any applicant to whom a variance is granted shall be given written notice that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

If a floodplain variance is granted, the applicant will receive written notice as part of the action letter that there may be additional cost for flood insurance at this location.

(v) The Planning Director shall maintain the records of all variances and report any variances to the Federal Insurance Administration upon request.

Permanent records of BZA request, hearings, and action are kept in the Planning Office and are available upon request.

As part of our community's participation in the National Flood Insurance Program, staff is required to report any variances granted through bi-annually reporting and cyclical on-site audits. The NFIP allows land owners in the community to purchase flood insurance and the City's participation in the CRS (Community Rating System) program allows people to obtain a discount on that flood insurance.

**RECOMMEDATION:**

Based upon the findings as identified, the Staff's recommendation is for approval of the variance from the floodplain regulations with respect to development in the regulatory floodway, subject to the following condition:

1. Approval of a local Floodplain Development Permit.

**From:** [Amy Miller](#)  
**To:** [Lori Parker](#)  
**Cc:** [David Guntert](#)  
**Subject:** BZA File  
**Date:** Thursday, December 01, 2011 5:00:55 PM

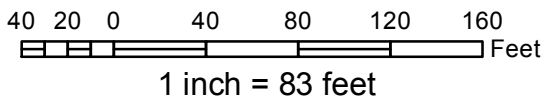
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Lori,

Please open a BZA file for a floodplain variance for 1110 Haskell Ave. Applicant is the City of Lawrence. Owner is the City of Lawrence. It is for the replacement of the fuel canopy on the public works site. I'll get you an application, but wanted to get it logged in before the deadline for the January meeting.

Thanks,

**Amy Miller, AICP, CFM** *Long-Range Planner* - [amiller@lawrenceks.org](mailto:amiller@lawrenceks.org)  
Planning Division | [www.lawrenceplanning.org](http://www.lawrenceplanning.org)  
P.O. Box 708, Lawrence, KS 66044  
Office 785.832.3166 | Fax 785.832.3160









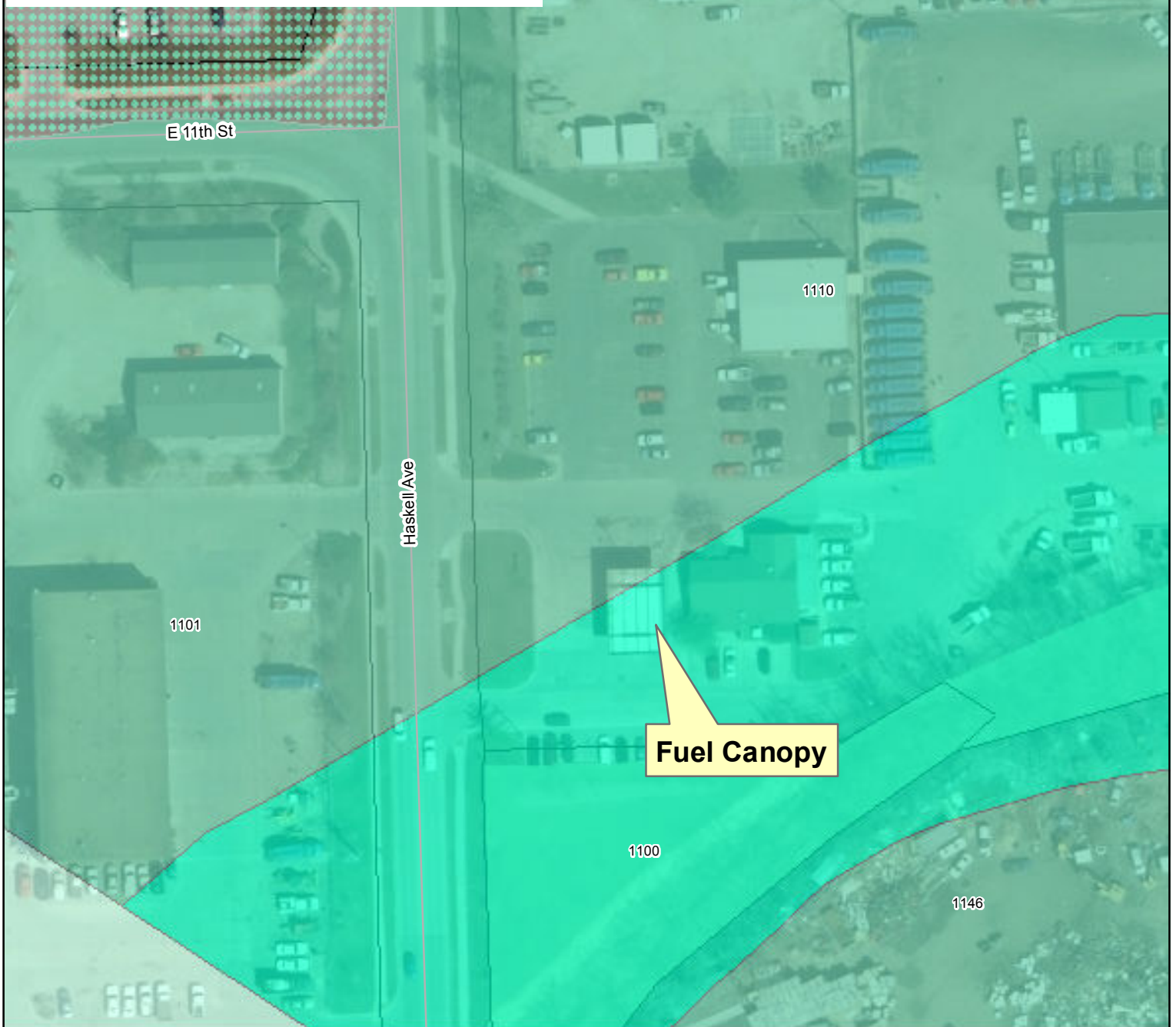
DISCLAIMER NOTICE  
The map is provided "as is" without warranty or any representation of accuracy, timeliness or completeness. The burden for determining accuracy, completeness, timeliness, merchantability and fitness for or the appropriateness for use rests solely on the requester. The City of Lawrence makes no warranties, express or implied, as to the use of the map. There are no implied warranties of merchantability or fitness for a particular purpose. The requester acknowledges and accepts the limitations of the map, including the fact that the map is dynamic and is in a constant state of maintenance, correction and update.

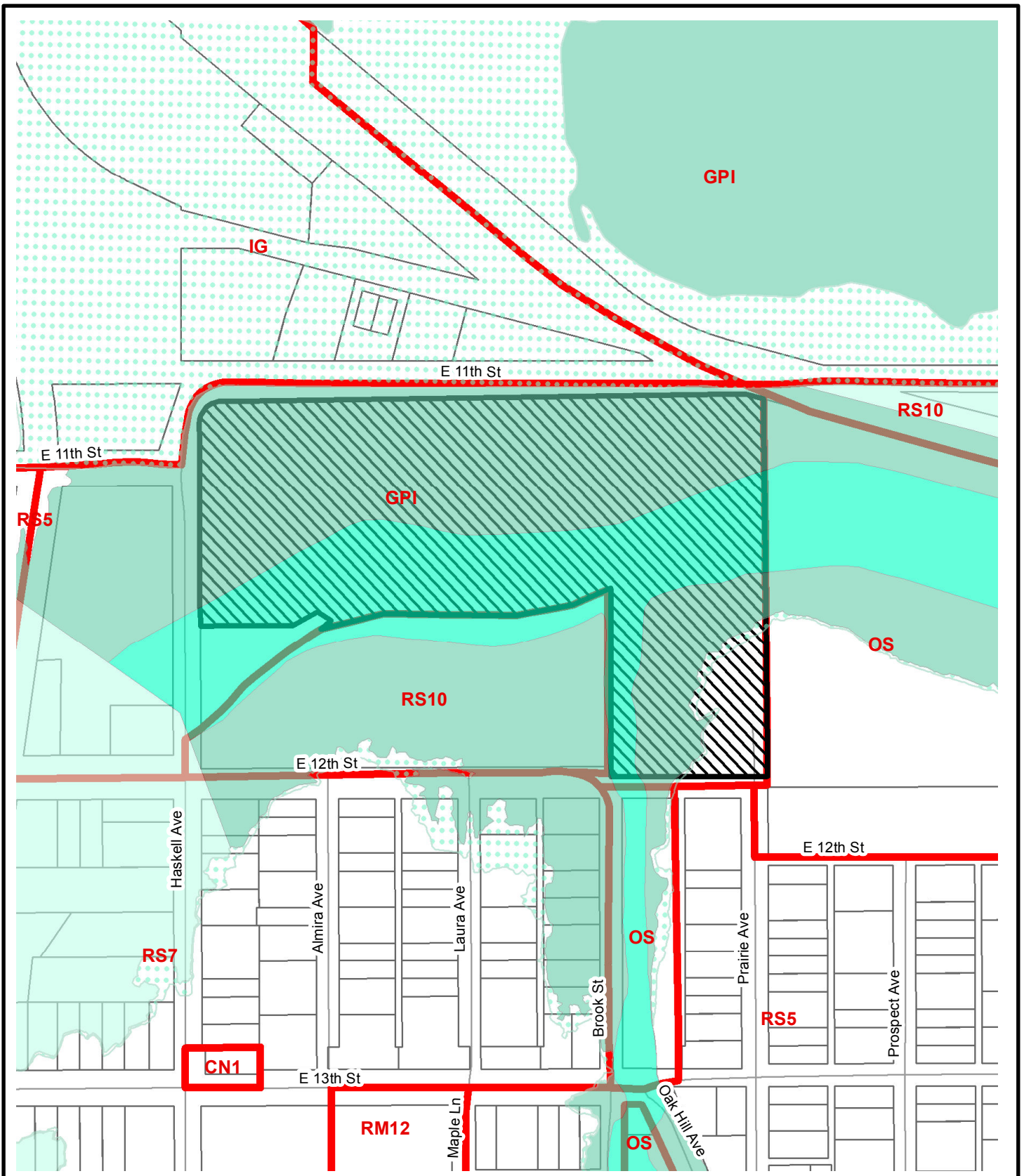
Date: 12/28/2011

## Legend

### August 5, 2010 FEMA Flood Maps FLD\_ZONE, FLOODWAY

-  500 YEAR, 0.2 PCT ANNUAL CHANCE ,
-  100 YEAR, ZONE A
-  100 YEAR, ZONE AE
-  100 YEAR, ZONE AE, FLOODWAY
-  100 YEAR, ZONE AH
-  ZONE X PROTECTED BY LEVEE





**B-12-11-11: Variance from Floodplain Management Regulations to Allow Canopy Replacement in Floodway at 1110 Haskell Avenue**

Lawrence Planning & Development Services Dept  
December 12, 2011



Area Requested

Scale: 1 Inch = 300 Feet

## 2012 SCHEDULE

### LAWRENCE BOARD OF ZONING APPEALS

<u>AGENDA ITEMS DEADLINE</u>	<u>BOARD MEETING</u>
December 2, 2011	January 5, 2012
January 6, 2012	February 2
February 3	March 1
March 2	April 5
April 6	May 3
May 4	June 7
June 1	July 5
July 6	August 2
August 3	September 6
September 7	October 4
October 5	November 1
November 2	December 6
December 7	January 3, 2013

**NOTE:** Time for submittal of applications on a deadline day is 3:00 p.m. Please adhere to the deadline dates and time. Any item not received in full by the Planning Office on or before a particular deadline will not be placed on that particular meeting agenda, rather, it will be scheduled for the next regular meeting of the Board.

If an application is located in a historic district or within the environs of a historic property or district, the BZA will delay hearing the application until after the application is considered by the Historic Resources Commission or approved by the Historic Resources Administrator.

Board of Zoning Appeals (BZA) meetings will usually be held at 6:30 p.m. the first Thursday of the Month in the Commission Meeting Room at City Hall, Sixth and Massachusetts Streets, Lawrence.

Special meetings of the Board will be called in accordance with the By-Laws of the Lawrence Board of Zoning Appeals.