

# BOARD OF ZONING APPEALS MINUTES

Gardner, Kansas

Wednesday, October 21, 2009

The Board of Zoning Appeals met in regular session on the above date at Gardner City Hall, 120 E. Main Street, Gardner, Kansas.

## I. Call to Order

Chairman Wilnauer called the meeting to order at 6:30 PM

## II. Roll Call

Member(s) present: Kipp Wilnauer, Mike Hutton, Andrew Copeland, and Tory Roberts.

Members absent: Neale Wooten

Staff present: Community Development Director Fred Sherman, Planner Amy Kynard, Planner Jennifer Dady.

Others present: Walter and Grace Zander, 111 W. Park St; Michael Riley 117 W. Park St; Melvin and Carrie Filkins, 125 W. Park St; Barb and Gene Altenahfen, 109 W Park St; Martin and Audra Quick, 1021 S. Clairborne St, Olathe; Cindy Weeks, 121 W. Park St.; Steve Jaso, 25447 W. 149<sup>th</sup> PI, Olathe.

## III. Consent Item

### 1. Consider approval of the minutes of the August 19, 2009, meeting.

Motion Hutton, second Copeland to approve minutes as written.

Motion approved. (4-0)

## IV. New Business

### 1. BZA-09-04

Consider a variance request from Section 18.45.060 R-5 – Apartment House District, Yard Regulations, *“To enclose, repair and improve an existing accessory structure [which lies within the 25’ rear yard]”* at 111 W. Park Street. The application was filed by Walter and Grace Ann Zander.

1. **APPLICANT:** Walter and Grace Ann Zander.

2. **REQUESTED ACTION:** Consider a variance request from Section 18.45.060 R-5 – Apartment House District, Yard Regulations.

*“To enclose, repair and improve an existing accessory structure [which lies within the 25’ rear yard].”*

3. **LOCATION:** The property is located at 111 W. Park Street – West 60’ of Lot 1, Block 2, Sponable’s First Addition to Gardner.

4. **PROPERTY DESCRIPTION:** This property is currently zoned R-5, Apartment House District.

5. **ZONING ORDINANCE VARIANCE REQUEST:**

The applicants would like to “enclose, repair and improve an existing [nonconforming] accessory structure.”

**Property Information** - This property located at 111 W Park Street, is within Sponable’s First Addition to Gardner subdivision, a plat which was recorded in 1902.

The Johnson County Appraiser’s Office estimates that the house was constructed in 1932. Due to the age of the structure, no construction plot plan is available; therefore, a survey would be needed to determine the exact locations of the lot lines, and the location of all buildings on the property in relation to the property lines.

The garage is located in the southeastern corner of the property, within both the rear and side yards. A small storage building is also located within the rear yard. The dates for construction of the garage and storage building are unknown. A building permit was issued in 1991 for the repair of damage that the house sustained in a fire.

**Zoning and Planning Compliance** - The property is currently zoned R-5 (Apartment House District), making the single-family home a legal nonconforming use. The properties on both the north and south sides of Park Street and the north side of Warren Street within about 300 feet west of Center Street is zoned to the R-5 zoning district with the adoption of the current version of the zoning ordinance in 1992 (Ord. 1733). The properties in this immediate area have been zoned for multi-family zoning since 1955.

The lot for this subject property is 60' wide and 120' deep; new residential lots in Gardner are required to be at least 70' in width.

This general area of Gardner, south of Main Street and west of Center Street, is shown on the Community Development Plan Map to be reserved for low-density residential uses, which does not correspond to the existing R-5 zoning district. This would seem to indicate intent to allow the property to maintain its status as a single-family residence despite its current zoning designation. Therefore, this property is a nonconforming lot with a nonconforming use and nonconforming accessory buildings even though it is in conformance with the Community Development Plan.

**Zoning Regulations in Gardner** - The zoning regulations for Gardner have changed many times throughout the years, generally becoming more and more restrictive over time. New versions of the Zoning Ordinance and new zoning maps were adopted in the years 1955, 1978, 1990, and 1992.

The current version of the zoning ordinance has had a number of amendments and changes adopted by council since 1992. For instance, all detached garages were only required in 1992 to be one foot from a property line; now they must meet the regular building setback requirements unless they are less than 250 square feet, in which case they must still be at least 5 feet from all property lines. The rear yard set back requirement for this subject property is 25 feet, and 5 feet for accessory structures less than 250 square feet in size. The side yard setback requirement is 7 feet.

**Pattern of Structures in the Older Parts of Gardner** - This older area of Gardner is unique, in that the land was platted with alleys and many of the existing residences don't conform to the current setback and yard area standards. In this particular case, there is a 16-foot wide platted alleyway at the rear of the subject property, and the existing accessory structures are constructed almost adjacent to the platted alleyway.

The Zoning Ordinance does contain some code provisions that are sensitive to the fact that the older areas of town have unique characteristics, and many of the buildings may not conform to modern zoning standards. For example, the Height and Area Exceptions section of the Zoning Ordinance provides a front yard exception provision that allows the establishment of the required front yard based on 40% or more of the existing homes within a block. This accounts for many of the older homes with attached front porches, or houses constructed closer to the street in the older parts of town. The front yard setback for these areas is less than required by within the zoning district (18.155.010.B1). While there are a number of garages and other accessory structures within this block of West Park Street that are located in a very close proximity, or even adjacent to the alleyway, this zoning exception provision applies only to the front yard setback requirement of the zoning district and can not be used to allow the construction of a replacement garage in the proposed location without the granting of a variance by the BZA.

**Alley Exceptions** - The Zoning Ordinance does provide an exception provision for properties adjacent to an alleyway. 18.155.010.B.9 states:

*In computing the depth of a rear yard for any building where such yard abuts an alley, one-half of such alley may be assumed to be a portion of the rear yard.*

The rear yard set back for most residential zoning districts in Gardner is 25 feet, or 5 feet for smaller accessory structures less than 250 square feet in total size. Staff does not believe it is the intent of this exception provision to allow smaller accessory buildings to be constructed within the rights-of-way of the alley. However, this exception does provide a standard to allow all buildings and accessory structures to be located, by right, closer to the rear lot line of a property adjacent to an alley than to the rear lot line of a property not adjacent to an alley. This exception provision also provides some relief in terms of calculating the rear yard area in determining the maximum size of accessory structure allowed on a property.

**Size of Accessory Structure Allowed** - The maximum size of an accessory building allowed on a residential property is 1,000 square feet. However, in no instance shall the accessory building or structure exceed one-third of the habitable living area of the residence located on the parcel. The height of the accessory structure shall not exceed the height of the primary structure (18.140.100.B). The accessory structure also may occupy not more than 30 percent of a rear yard (18.155.010.B.6)

The Johnson County Appraiser's Office estimates that the house has approximately 1,188 square feet of living area; one-third of this would be only 396 square feet. The rear yard area is calculated to be about 3,150 square feet in total area, which includes half of the platted alley. Thirty percent of this would be 945 square feet. The existing carport is about 425 square feet in area, and the existing storage shed is only about 100 square feet in size.

The applicant is proposing to construct a 24 foot by 24 foot enclosed garage, which would be about 575 square feet in size, and remove the storage shed structure. Given the size of the primary structure, a variance would need to be granted to allow for the proposed 24' x 24' detached garage based on the size of the existing house on this subject property.

- VARIANCE CRITERIA:** Pursuant to the requirements of K.S.A. 12-715 and Chapter 18.190 of the City Code, The Board of Zoning Appeals may grant a variance from the Zoning Ordinance provided that the Board finds that all of the following five conditions have been met. The applicant has provided responses to each of the five conditions; these responses have been provided below along with staff's responses.

**Does the variance request arise from such condition which is unique to the property in question and which is not ordinarily found in the same zone or district; and is not created by an action or actions of the property owner or applicant?**

Applicant's Response

*Yes. Our lot is a smaller, older (1910 - 1920?) lot in the downtown quarter. This lot is much smaller than the typical new residential lots.*

Staff's Response

Yes. This property is within one of the oldest neighborhoods in Gardner. Most, if not all, of the properties in this neighborhood are nonconforming to current codes, and as a result must be analyzed differently with respect to their context in the neighborhood.

**Will the granting of the permit for the variance adversely affect the rights of adjacent property owners or residents?**

Applicant's Response

*No. Because we will be enclosing and repairing an existing structure.*

Staff's Response

No. Granting of this request will not adversely affect any adjacent property owners or residents.

**Will the strict application of the provisions of the Zoning Ordinance of which the variance is requested constitute unnecessary hardship upon the property owner represented in the application?**

Applicant's Response

*Yes! Our existing structure is in badly need of repair. We need a safe, secure location for storage.*

Staff's Response

This is somewhat debatable, as it is difficult to define how much storage space a single-family residence needs or is entitled. However, if the Board agrees that the applicants should be allowed to increase the square footage of their garage, there would be no way to position it on the small, nonconforming lot to where it would meet current regulations.

**Will the variance desired adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare?**

Applicant's Response

*No. Because we are improving an existing structure. By updating this structure, it adds to the general charm and aesthetic value to the area – a benefit to all concerned.*

Staff's Response

No. By repairing and enclosing an existing structure, the variance would be more likely to have a positive effect on the public health, safety, morals, order, convenience, prosperity, and general welfare.

**Will the granting of the variance desired be opposed to the general spirit and intent of the Zoning Ordinance?**

Applicant's Response

*No. Our carport is an approved accessory structure in the R-1 zoning district.*

Staff's Response

No. It's clear that some of the Height and Area Exceptions are intended to address the unique issues facing older residential lots; however, they fall short of addressing all issues. Staff believes that this request fits within the character of the neighborhood and is therefore not opposed to the general spirit and intent of the Zoning Ordinance

7. **STAFF RECOMMENDATION:** Staff recommends that the Board of Zoning Appeals approve a variance from required rear and side yard regulations, and a variance from the maximum size of an accessory building allowed on a residential property for the property located at 111 W Park Street, to allow the construction of a 24 foot by 24 foot detached accessory building to be located adjacent to the side and rear property lines.

Planner Kynard gave a PowerPoint presentation that included:

- Existing zoning map of the area
- Aerial view of the area
- Oblique photos of the subject property
- Zoning Ordinance provisions – current and historical
- Variance Criteria – five criteria
- Staff Recommendation

It was noted that the older parts of Gardner are unique with alleys, and that the Zoning Ordinance does provide some exception provisions. However, a variance would be needed to construct this proposed garage.

The size of the proposed garage would be larger than allowed given the restrictions of the current zoning ordinance provision that accessory buildings or structures shall not exceed one-third of the habitable living area of the residence located on the parcel. The proposed structure would be smaller than the maximum size allowed of 1,000 total sq. ft.

Staff recommends approval of the variance to the side and rear yard setback, and a variance from the maximum size allowed.

Walter and Grace Zander, 111 W. Park Street, the applicant for this variance request, noted that they initially were not aware of what the zoning ordinance did and did not allow. They only want to improve the existing structure and they need additional space for storage.

Cindy Weeks, 121 W. Park Street stated that she lives two doors down from this subject property, and that she is in support of the variance request. Ms. Weeks noted that there could be 40 to 50 lots in this part of town that have similar situations, and that the board's ruling on this variance request could impact the character of the neighborhood.

Barb Altenahfen, 109 W Park St, noted that she lives next door to the east, and she is in support of this request.

Board member Hutton asked the applicant about installing rain gutters to handle storm water from the building, given the close proximity of this proposed building to the existing structure on the lot to the east.

Steve Jaso, with C & L Homes, identified himself as the contractor that would be hired to construct the garage. Mr. Jaso noted that he has constructed several new homes in town, and he plans to build the structure according to all building codes, including rain gutters.

Board member Copeland asked if this would be a completely new structure, or simply an improvement to the existing carport.

It was noted that the garage would be of new construction.

Board member Hutton asked if property insurance issues are a concern given that the proposed garage will be so close to another structure to the east.

Walter and Grace Zander noted that their homeowner insurance carrier visited the site when they purchased the property, and they did not have concerns with providing insurance on the existing carport, which is in the same location as the garage is to be constructed.

Motion Copeland, second Hutton to close public hearing.

Motion Copeland, second by Hutton to approve a variance from required rear and side yard regulations, and a variance from the maximum size of an accessory building allowed on a residential property for the property located at 111 W Park Street, to allow the construction of a 24 foot by 24 foot detached accessory building to be located adjacent to the side and rear property lines.

Motion approved 4-0 (Wooten absent)

## 2. Bylaws

Discuss creating bylaws for the Board of Zoning Appeals.

Director Sherman gave a PowerPoint Presentation that included:

- Definition of the Board of Zoning Appeals
- Chapter 18.190 of the City Municipal Code
- Title 2 - Administration and Personnel of the City Code.

Director Sherman noted that when the entire City Code was codified in 2008, the code provisions that define many of boards and commissions within the city, like the Planning Commission, the Airport Advisory Board, and the Electrical Utility Board, as well as the City Council, are all defined in Title 2 of the City Code. The code provision that creates the Board of Zoning Appeals was left in Title 18 of the City Code, which is the Zoning Ordinance.

Since then, the City has adopted new Floodplain and Storm Water regulations as part of Title 16 of the City Code. These new regulations identify the Board of Zoning Appeals as the body to consider and grant variances to these regulations. Staff is also considering other ordinance changes which could also identify the Board of Zoning Appeals as the body to consider variance requests and appeals from other code provisions outside of the Zoning Ordinance. As such, there is the need to modify the existing City Code to define the Gardner Board of Zoning Appeals as part of Title 2 of the City Code, in addition to adopting Bylaws for the Board.

It was noted by Director Sherman that the existing code provisions set quorum for the Board of Zoning Appeals at 4 of the 5 members. Many other local municipalities set the quorum for their BZA only at a simple majority. It is not clear to staff why the existing code provisions set the quorum for the Board of Zoning Appeals at 4 members.

Board member Copeland stated that he has some concerns with the requirement for having 4 members defined as a quorum. This could lead to some situations where the Board would not be able to conduct business.

Other members of the Board stated that they don't have strong feelings one way or the other about requiring the need for 4 members, or requiring only a simple majority of 3 members for quorum. Many stated that they see pros and cons for both options.

Director Sherman noted that the adoption of Bylaws by the Board of Zoning Appeals needs to occur about the same time as any ordinance changes are made to the Board of Zoning Appeals section of the Zoning Ordinance.

There was some discussion about the need to set a specific day of the week for meetings. It was noted that with the notification requirements for some applications, that not having a set meeting schedule makes it difficult to process applications for variance requests.

Staff will continue to work on creating Bylaws for the Board, and work on identifying the necessary ordinance changes.

## V. Adjourn

Motion Hutton, second Copeland to adjourn meeting at 7:12 PM

Unanimously approved (4-0)