# BOARD OF ZONING APPEALS

**CITY OF PRAIRIE VILLAGE, KANSAS**

**MINUTES**

**TUESDAY, JANUARY 5, 2016**

## **ROLL CALL**

The meeting of the Board of Zoning Appeals of the City of Prairie Village, Kansas was held on Tuesday, January 5, 2016 in the Council Chambers of the Municipal Building at 7700 Mission Road. Chairman Gregory Wolf called the meeting to order at 6:30 p.m. with the following members present: Jim Breneman, Jonathan Birkel, Jeffrey Valentino, Melissa Brown, Patrick Lenahan and Nancy Wallerstein. Also present in their advisory capacity to the Board of Zoning Appeals were: Chris Brewster, Planning Consultant; Wes Jordan, Assistant City Administrator; Mitch Dringman, City Building Official; and Joyce Hagen Mundy, Board Secretary.

## **APPROVAL OF MINUTES**

James Breneman noted two typographic errors on page one and moved the approval of the minutes of the November 3, 2015 meeting of the Board of Zoning Appeals as corrected. The motion was seconded by Melissa Brown and passed by a vote of 7 to 0.

BZA2016-01 Request for a Variance from Section 19.08.030 of the Zoning Ordinances to encroach the rear yard setback by approximately 17 feet

7044 Cedar

Andrew Marten, 7732 Colonial Drive, stated he is seeking approval to tear down the existing home at 7044 Cedar and replace it with a larger footprint (approximately 1,800 s.f.) one and a half-story home with orientation parallel to Cedar Street. A single-car front-loaded garage will be kept, but the driveway will also provide access to a detached garage at the farthest depth of the lot along the south lot line. This configuration will place the principle structure approximately 7’6”” from the closest lot line on the northwest corner of the structure, which is interpreted as the rear lot line and requires a 25 foot setback.

Chris Brewster noted that the lot is located on the end of a block formed by Cedar Street, 71st Street, Fonticello Street and W. 70th Terrace. The lot fronts on Cedar Street along with the adjacent lot to the south, and two corner lots face Cedar but have a corner orientation (two front setbacks, two side setbacks, but no rear setback). The two interior lots fronting on Cedar (the subject lot and the lot to the south) have irregular rear lot lines that deepen at a severe angle when compared to the front lot line, resulting in one side yard being substantially shorter (88’) than the other (172’). The existing home is a small footprint (1,383 s.f.) single-story home. The home is situated on an angle on the lot – not parallel to the street – possibly due to the angled configuration of the rear lot line and setback.

Mr. Brewster reviewed the codes interpretation of rear yard setback for oddly configured lots where no rear lot line exists. The interpretation was presented to provide perspective on the magnitude of this variance request. On its face, a variance from 25’ to approximately 7’6” seems substantial. However, where this interpretation applied on the subject lot, the lot line and setback interpretations would be both reasonable and in conformance with existing setbacks in the neighborhood. The proposed building is situated in a manner that is contemplated by the zoning ordinance for odd-shaped lots, and the review of the proposed variance at the closest location could be compared to a side setback relationship.

Mr. Brewster noted that the proposed home violates the rear setback at its closest point on the northwest corner at approximately 7’6”. Because the rear lot line falls away quickly at an angle, the bulk of the principle structure becomes more closely compliant with the required 25’ setback internal to the lot, and is fully compliant beyond the first 15’ of the structure. This portion is also the deepest portion of the structure. While it could be argued to “flip” the plan and footprint of the house to align the deepest part of the structure with the deepest part of the lot, the benefit of the detached rear garage and single-car front-loaded garage on the front streetscape would be lost.

In all other aspects the application complies with city regulations, except the applicant is also seeking a building height elevation increase that will be considered by the Planning Commission later this evening.

Melissa Brown confirmed the application meets the required side yard setback. James Breneman confirmed that the proposed detached garage meets city code for accessory structures.

Jonathan Birkel confirmed the single car garage does not have any space above it and that the driveway would have the standard curb cuts allowed by code. He asked if the application met lot coverage requirements. Mitch Dringman, City Building Official replied the proposed structure is well under the maximum lot coverage allowed by code.

Nancy Wallerstein confirmed the driveway would be poured concrete and questioned if this substantial addition of impervious surface would create drainage issues for the adjacent property owners. James Breneman replied that the property to the south closest to the driveway has a higher elevation than the applicant’s property. Jonathan Birkel also noted that the grading pushes the water to the back of the home.

Chris Brewster reminded the Board that the detached structure and driveway meet all of the applicable zoning ordinance requirements, and that the variance criteria only needs to be applied to the issue of the rear setback in relation to the principle structure.

Chairman Gregory Wolf opened the public hearing.

Patricia Davis, 4911 West 70th Terrace, noted the existing house was on a slab and expressed concern that the new home not be of mammoth size similar to others on 71st Street. Mr. Marten replied that the proposed home would be a one and a half story home and reviewed his plans with her. Mrs. Davis stated as long as the proposed house would not be of excessive size she did not have any objection; although she noted it would probably increase her property taxes.

The public hearing was closed at 6:48 p.m.

The Board reviewed the criteria required for granting a variance as presented in the staff report.

1. **Uniqueness**

**That the variance requested arises 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 the applicant.**

**In order for the property to meet the condition of uniqueness, it must have some peculiar physical surroundings, shape, or topographical condition that would result in a practical difficulty as distinguished from a mere inconvenience to utilize the property without granting the variance.**

The lot has an irregular shape on the end-grain of a block, with corner-oriented homes on either side of it. It has a very shallow side lot line on the north (88’) and a very deep side lot line on the south (172’), compared to the required depth of 100’ for a standard lot. This produces a sharp angle of the rear lot line and an atypical buildable footprint on the lot.

James Breneman moved the Board find favorably on Criteria A “Uniqueness”. The motion was seconded by Jonathan Birkel and passed by a 7 to 0 vote.

1. **Adjacent Property**

**That the granting of the permit for the variance would not adversely affect the rights of adjacent property owners or residents.**

The property that could be most affected by this application is the lot to the north and north west. However this is the rear of each of these homes and lots, and they already have a close association of buildings due to the “corner orientation” of the lot immediately to the north (where it has two front yards and two side yards for purposes of setbacks, but no rear yard – placing the structures closer together.) Only a portion of the proposed extension would project further than the home to the north. This extension would be approximately 10 feet from the north property line.

James Breneman moved the Board find favorably on Criteria B “Adjacent Property”. The motion was seconded Jeffrey Valentino and passed by a 6 to 1 vote.

1. **Hardship**

**That the strict application of the provisions of these regulations from which a variance is requested will constitute an unnecessary hardship upon the property owner represented in the application.**

The proposed addition allows the homeowner to have a reasonable use of the house, with driveway access and garage parking that is compatible with the predominant character of the neighborhood. Applying the rear setback strictly would significantly impact the proposed plan, as it has also impacted to location and orientation of the smaller footprint existing home (which also violates a rear setback line applied on the north west corner.

James Breneman moved the Board find favorably on Criteria C “Hardship”. The motion was seconded by Jonathan Birkel and passed by a vote of 6 to 1.

1. **Public Interest**

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

The proposed building complies with all other setback and building coverage standards for this district and has a similar orientation and arrangement as other homes in the area. While the proposed home is larger than the existing home, the footprint is not out of scale with others in the area.

James Breneman moved the Board find favorably on Criteria D “Public Interest”. The motion was seconded by Jeffrey Valentino and passed by a vote of 7 to 0.

1. **Spirit and Intent of the Regulation**

**That the granting of the variance desired would not be opposed to the general spirit and intent of these regulations.**

The variance would be for only a portion home closes to the northwest corner, and after 15’ the principle building is compliant. The ordinance does provide for different interpretations of oddly configured lots to treat some areas as side setbacks instead of rear. While this lot is not clearly eligible for that interpretation, it does demonstrate the spirit of the ordinance, and the proposed building does comply with all side setback locations.

James Breneman moved the Board find favorably on Criteria E “Spirit and Intent of the Regulation”. The motion was seconded by Jeffrey Valentino and passed by a vote of 7 to 0.

James Breneman moved that finding favorably on all five criteria as required by State Statues the Board approves BZA 2016-01 granting a variance only to the extent shown on the submitted plans dated 12/3/2015 and only for that portion of the structure in the closest 15 feet to the north lot line subject to the following conditions:

1. That the variance be conditioned on an exception to the building elevation provisions of 19.44.030 , OR if an exception is not given the proposed home would need to be built to the plans shown except for the first-floor elevation. All other changes to the plans, setback, building orientation or design would require a new application.
2. The variance, if approved, be recorded with the County Register of Deeds within 1 year of approval.

The motion was seconded by Jonathan Birkel and passed by a vote of 7 to 0.

**OLD BUSINESS**

There was no Old Business to come before the Board.

**NEXT MEETING**

Board Secretary Joyce Hagen Mundy stated that no applications have been filed for consideration by the Board for February 2, 2016 meeting.

**ADJOURNMENT**

Chairman Gregory Wolf adjourned the meeting of the Board of Zoning Appeals at 6:50 p.m.

Gregory Wolf

Chairman