# BOARD OF ZONING APPEALS

**CITY OF PRAIRIE VILLAGE, KANSAS**

**MINUTES**

**TUESDAY, JUNE 7, 2016**

## **ROLL CALL**

The meeting of the Board of Zoning Appeals of the City of Prairie Village, Kansas was held on Tuesday, June 7, 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: Jonathan Birkel, Melissa Brown, Jeffrey Valentino, 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; Serena Schermoly, Council Liaison and Joyce Hagen Mundy, Board Secretary.

## **APPROVAL OF MINUTES**

Patrick Lenahan moved the approval of the minutes of the March 1, 2016 meeting as presented. The motion was seconded by Nancy Wallerstein and passed by a vote of 4 to 0 with Gregory Wolf and Jeffrey Valentino abstaining.

BZA2016-04 Request for a Variance from PVMC 19.08.030 to allow the garage to encroach the rear yard setback by approximately 9 feet

 2015 West 79th Street

Audrey Chinook, 8419 Meadow Lane and Terry Woodward, 204 Redbud Lane, appeared before the Board requesting a variance that would allow them to remove an existing non-conforming garage replacing it with a new garage in the same location but extending four feet further to the side.

Chris Brewster stated the applicant is requesting a variance from Section 19.08 and 19.34.020A to replace an existing attached garage at the current location. The garage is 15.85 feet from the rear property line, instead of the required 25 feet and an allowance for as shallow as 18’ for certain attached garages. Replacement of the existing garage would be allowed for treatment as a non-conforming situation, except that the new garage is approximately 4.7 feet wider, thus increasing the extent of the non-conformance an additional 4.7 feet along the current 15.85 foot setback.

This variance request impacts several sections of the ordinance and requires a few interpretation considerations, prior to applying the setbacks and the variance criteria.

First, it requires a determination of what is the front lot line, so that appropriate lot and setback dimensions can be determined and applied in appropriate locations. Second, it impacts an exception to the rear setback for attached garages. And third it requires application of the non-conforming status of the current building.

This lot is a corner lot. The Zoning Ordinance defines front lot line as “the boundary between a lot and the street right-of-way on which it fronts. The front lot line of a corner lot shall be deemed as the least dimension adjacent to a street unless otherwise specified by the Building Official” [19.02.320]. The property is addressed from West 79th Street, the building is oriented to West 79th Street, and the lot has driveway access off West 79th Street. Therefore the Building Official has determined that the front lot line is the north boundary along West 79th Street. As a result, the lot is not typically shaped (it is much wider than it is deep) and that the south lot line (the line in question for the garage placement) is the rear lot line for setback determinations.

In general the rear setback in R-1B is 25 feet. However the accessory use section for single-family and two-family dwellings requires private garages, and has exceptions to the setbacks for detached garages or attached garages on corner lots [19.34.020.A.]. The exception allows an attached garage to extend into the rear setback to within 18 feet of the rear property line rather than the 25 feet otherwise required, and further provided it maintains a 25-foot setback from the side street line. The assumption is that this exception allows a different configuration for corner lots, where instead of having the garage accessed from the front (which ordinarily would be the shorter side), and the lot can be accessed from what would be the side street, and the garage can then project into the rear lot more to take advantage of this side access. This configuration allows the garage and the driveway access to be placed at a more discrete location of the lot in relation to the streetscape, and allows the principal building to have a more prominent orientation in relation to adjacent structures on each street frontage. Note that this configuration would be very similar to the existing and proposed configuration on this lot, except that the home still is oriented to West 79th Street, rather than the narrower street frontage on Cambridge.

Additionally, this lot apparently has a legal non-conforming status if the interpretation of the south interior boundary as the rear lot line is correct. In such cases, legal non-conforming structures may be maintained and may be built back at the same location provided the investment is less than 50% of the overall value [19.40.015]. However, this allowance to continue and to reinvest in non-conforming structures is limited to the extent that you do not expand the degree of the non-conformance. The fact that the proposed garage is 4.7 feet wider than the existing garage, thus increasing the degree of any non-conformance, is the reason this application for a variance is before the Board.

Chairman Gregory Wolf opened the hearing for comments. No public comments were made and the public hearing was closed.

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 is a corner lot, and a determination has been made that the front lot line is the longer side, which is not typical of most corner lots according to the ordinance definition. This results in a wider lot that is much wider than the required width for R-lb lots (120’ compared to 60’) with a shallow depth which is less than the required lot depth for R-lb lots (87’ compared to 100’). As a result of this determination and its unique context, it also fronts on the park across the street. When applying the typical setbacks to this lot, it results in a different building envelop than typical corner lots – much wider but very shallow (approximately 101 feet wide by 32 feet deep).

Nancy Wallerstein moved the Board find favorably on Criteria A “Uniqueness”. The motion was seconded by Jeffrey Valentino and passed by a vote of 6 to 0.

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 proposed application is a slight extension of an existing situation. The current home and attached garage are built at the same location as the proposed extension, and it currently exists on a large portion of the side boundary. The additional extension is not close to the existing structure to the south as this portion of the lot backs to the back yard of the adjacent lot. Further, the relationship of the home to the east exceeds all required side setbacks for this boundary substantially (4’ are required with 12’ from the existing structure and 22’ are proposed).

Jonathan Birkel moved the Board find favorably on Criteria B “Adjacent Property”. The motion was seconded Nancy Wallerstein and passed by a vote of 6 to 0.

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 ordinance requires all single-family dwellings to have a garage. The current structure has the same or similar pattern and relationship as proposed with the new garage. Compliance with the rear setback at this location, when considering the exception to allow corner lots to have as little as 18 feet rear setbacks for garages, would force the garage to be shifted closer to the street, and be offset event further than the current home. This could negatively affect this property compared to similarly situated lots in the area. Further, shifting just the expanded portion of the garage (the 4.7 feet of the additional non-conformance) would be impractical.

Nancy Wallerstein moved the Board find favorably on Criteria C “Hardship”. The motion was seconded by Patrick Lenahan and passed by a vote of 5 to 1 with Jonathan Birkel voting in opposition.

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 with the exception of the current non-conforming status on the south property line based on the Building Official’s determination. This building relationship with the property to the south is less than required for rear setbacks, but is more than would be required for side setbacks. The building relationship with the property to the east is much greater than required for side setbacks, and similar to what is required for rear setbacks. Further, the extent of the variance is minimal as it is a small extension of the current building footprint.

Nancy Wallerstein moved the Board find favorably on Criteria D “Public Interest”. The motion was seconded by Melissa Brown and passed by a vote of 6 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 small portion of the extension of a legally non-conforming structure. Further, the proposed pattern of the garage and lot appears to be consistent with the intent for an exception for corner lots granted by 19.34.020A. That is the garage is accessed from the “long side” of the corner lot, the garage is placed at a location most remote from the public streetscape in the interior most corner, and the garage has an appropriate relationship to adjacent structures. If this lot were determined to be fronting on Cambridge Street rather than West 79th Street, the proposed garage would meet the standards for side setbacks, street side setbacks and the exception for rear setbacks.

Nancy Wallerstein moved the Board find favorably on Criteria E “Spirit and Intent of the Regulation”. The motion was seconded by Patrick Lenahan and passed by a vote of 6 to 0.

Nancy Wallerstein confirmed that the applicant had received and was in agreement with the conditions of approval recommended by staff.

Nancy Wallerstein moved that finding favorably on all five criteria as required by State Statues the Board approve BZA 2016-04 granting a variance only to the extent shown on the submitted plans and only for the proposed addition extending an additional 4.7 feet on the current building line up to an 15.85’ setback on the southeast corner and that the variance be recorded with the County Register of Deeds within 1 year of approval.

The motion was seconded by Patrick Lenahan and passed by a vote of 6 to 0.

**OLD BUSINESS**

There was no Old Business to come before the Board.

**NEXT MEETING**

Board Secretary Joyce Hagen Mundy reported the filing deadline for the July meeting with is the second Tuesday in July in June 10 and to date no application have been filed for the Board.

**ADJOURNMENT**

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

Gregory Wolf

Chairman