

**BOARD OF ZONING APPEALS
CITY OF PRAIRIE VILLAGE, KANSAS
MINUTES
TUESDAY, JULY 12, 2016**

ROLL CALL

The meeting of the Board of Zoning Appeals of the City of Prairie Village, Kansas was held on Tuesday, July 12, 2016 in the Multi-Purpose Room 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, James Breneman and Nancy Wallerstein. Also present in their advisory capacity to the Board of Zoning Appeals were: Chris Brewster, Planning Consultant; Mitch Dringman, City Building Official and Joyce Hagen Mundy, Board Secretary.

APPROVAL OF MINUTES

Nancy Wallerstein moved the approval of the minutes of the June 6, 2016 meeting as presented. The motion was seconded by Jonathan Birkel and passed by a vote of 5 to 0 with James Breneman abstaining.

**BZA2016-05 Request for a Variance from PVMC 19.06.030 (A) to allow the
construction of a house within 14 feet of the dwelling on the
adjacent lot
3009 West 71st Street**

Debra Hudacek, 8005 High Drive, stated the foundation of the new home is 1.5" to 2.5" too close to the foundation of the home on the adjacent property as the result of an error in a survey notation not discovered until after construction was well under way. This occurs at two 4'1/2" sections of the east wall. The majority of the house is well inside the setbacks required. Ms. Hudacek noted that only the foundation, not the framed wall of the house, is located outside of the required setback.

Gregory Wolf confirmed that the information submitted to City's Building Official was different than what was given to the contractor.

Chairman Gregory Wolf opened the hearing for comments.

Jill Rodick, 3005 West 71st Street, has lived in this area for the past 4 years. She feels that Prairie Village is losing its value in not enforcing strict building conditions particularly, but not only, in this area. Oversized homes are compromising the aesthetics of Prairie Village.

Michael Hill, 3014 West 71st Terrace, directly behind the applicant's property, stated he does not the building of homes in the area that are oversized. He noted on Springfield there is a \$600,000 home that completely fills the lot surrounded by \$150,000 homes.

He does not want to see the city continue to grant exceptions. He encouraged the city to look at the loss of green space on these properties. Mr. Hill acknowledged that this home is not overpowering in comparison to his such as those across the street.

Steve Rodrick, 3005 West 71st Street, of the Countryside East Design Guideline Board, stated he felt if the northeast area of the city would adopt guidelines similar to the Countryside East Overlay District this issue would be addressed.

Ann Gusewelle, 3103 West 71st Terrace, noted that two other homes have been torn down in this neighborhood resulting in a transformation of their street.

Joanne Scurato, 3009 West 71st Street, owner of the home stated the previous home was 1700 square feet. Their new home is 1800 square feet and one and a half story. It does not take up their entire lot.

With no further comments, the public hearing was closed at 6:45 p.m.

Chris Brewster noted that the plans for this home were approved showing a 14 foot separation between the proposed home and the home on the adjacent property; however, was constructed 13'9" to 13'10" from the neighboring home. He noted however, the foundation is located more than the required 5' from the side lot line.

Mr. Brewster noted that many of the comments addressed issues that the city has been discussing for the past several months. He noted some changes were recently adopted; however, this application was filed prior to their adoption and the current code prevails. He added that the issue of scale and mass is continuing to be discussed by the city.

Gregory Wolf confirmed that the plans submitted to and approved by the City met all the codes. Melissa Brown asked how the building line was established. Mitch Dringman replied by measurement from the existing structure. Mr. Wolf as if the City took on site measurements. Mr. Dringman replied he usually takes the measure from the survey submitted. The on-site measurement was taken as the result of a complaint received. The difference could have occurred in the process of setting of the foundation blocks.

Jeffrey Valentine confirmed that the measurement was taken from foundation to foundation and that the actual wall structures are within the required setback. Mrs. Brown asked if the foundation of the neighboring property could vary at different points as this one does. Mr. Dringman replied it could and that measurements were not taken at multiple locations.

Mr. Wolf asked what would happen if the variance was denied. Mr. Dringman replied the foundation above the grade would need to be shaved to come into compliance.

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

A. 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 required lot standard for this zoning district is 80' x 100'; however, many lots in this zoning district and in this specific vicinity are larger than this. The subject lot is an interior lot on a long block. It is 85' x 135'. Most lots on this block range in size from 80' to 100' wide. Lots on the north side of the block are typically 95' to 100' wide; lots on the south side of the block are typically 80' to 85' wide. All lots have a conventional rectangular configuration with few irregularities, except to accommodate slight curves in the street and lot frontage.

Mr. Wolf stated that he does believe that the uniqueness criteria has been met for this application. Nancy Wallerstein moved the Board does not find favorably on Criteria A "Uniqueness". The motion was seconded by Gregory Wolf.

Jeffrey Valentino noted that looking at the façade of the building as a whole 99.9% is in compliance with code. Jonathan Birkel noted that in the new code adopted the Building Official is allowed to approve a minimal variance of height from plans during the building process and asked if a construction tolerance could be applied in this situation. Mr. Wolf stated this property is not unique as required by statute. The requested variance is from a condition created by the applicant.

The motion was voted on and passed by a vote of 4 to 2 with Mr. Breneman and Valentino voting in opposition.

B. Adjacent Property

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

The requested variance would place the foundation 1.5" to 2.5" closer to the structure to the east than is permitted by ordinance. The subject property is approximately 5.3' from the side lot line and the structure to the west is approximately 7.6' from the side lot line - both meeting the required setback from the lot line.

Gregory Wolf stated the minimal distance for which the variance is requested does not adversely affect the adjacent property owners or residents. Nancy Wallerstein moved the Board find favorably on Criteria B "Adjacent Property". The motion was seconded James Breneman and passed by a vote of 6 to 0.

C. 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 lot is 85' wide. Meeting both the side setback and building separation requirements would yield a potential buildable area of approximately 5,120 to 6,000 square feet. (using a depth of 80' - 135' deep lot, minus 30' front setback and 25' rear setback). The 85' wide lot produces a width of the buildable area between 64' (if each adjacent building were built within 5' of the side lot lines, and this lot needed to provide 9' on each side) and 75' (if each adjacent building were 9' or more from the side lot lines and this lot only needed to meet the 5' setback). The actual width of the buildable area based on the existing location of adjacent buildings is approximately 74', yielding a potential buildable area of 5,920 square feet.

Gregory Wolf noted the structure meets the property line setback; however, the location of the adjacent house requires the additional distance. The location of that home was not created by the applicant and the resulting strict application of code requiring changes to the existing foundation would result in significant hardship to the application. Nancy Wallerstein moved the Board find favorably on Criteria C "Hardship". The motion was seconded by James Breneman and passed by a vote of 6 to 0.

D. 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, and with the 5' lot line portion of the side setback. The deviation requested from the building separation requirement is small - amounting to less than 2% of the required building separation.

Jonathan Birkel moved the Board find favorably on Criteria D "Public Interest". The motion was seconded by James Breneman and passed by a vote of 6 to 0.

E. 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 extent of the deviation from the required building separation is small. The intent of the ordinance is to allow some flexibility for location of buildings and buildable areas in relation to the lot (5' minimum side setbacks on fairly wide lots), but also require appropriate relationships to adjacent buildings (14' separation between buildings. This results in the 4' difference to be managed between the abutting lots (at least 5' on each side, less the 14' minimum). In this case 2.6 feet of that 4' is coming from the adjacent lot and the remaining 1.4 feet is to be made up by this lot.

Nancy Wallerstein moved the Board find favorably on Criteria E "Spirit and Intent of the Regulation". The motion was seconded by James Breneman and passed by a vote of 6 to 0.

Nancy Wallerstein moved that the Board reconsider their finding on the uniqueness criteria and approve BZA 2016-05 granting a variance only to the extent shown on the submitted plans and only for the existing foundation; only for the extent shown on the plans (no extension of the side building line for any portions of the structure); and only to

the depth shown (between 1.5” and 2.5”) and that the variance be recorded with the County Register of Deeds within 1 year of approval. The motion was seconded by James Breneman.

James Breneman felt the measurement should be taken from exterior wall to exterior wall and not foundation to foundation, noting with that measurement this home would be in compliance with code. Jeffrey Valentino felt the Board is overstepping its direction when it considers only the measurement from foundation to foundation and not the exterior wall. Mr. Breneman felt this was simply a minor construction error and had it been greater he would have voted differently. Mrs. Wallerstein stated that overall this application meets the criteria for approval. The motion and passed by a vote of 5 to 1 with Gregory Wolf voting in opposition.

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 August meeting has past and no applications were filed for the Board for consideration in August.

ADJOURNMENT

Chairman Gregory Wolf adjourned the meeting of the Board of Zoning Appeals at 7:05 p.m.

Gregory Wolf
Chairman