Monday, January 14, 2019
5:30 P.M.

Holliday Building
620 SE Madison, 1st Floor Holliday Conference Room

MEMBERS OF THE BOARD

Walter Schoemaker – Chairperson
Tim Carkhuff – Vice Chairperson
    Toni Beck
    Barbara Boudreaux
    Helen Crow
    Carole Jordan

- The Topeka Board of Zoning Appeals holds a public hearing on the second Monday of each month to consider certain appeals, variances, and exceptions as may be granted by the Comprehensive Zoning Regulations of the City of Topeka, Kansas.

- The following agenda identifies and describes each proposal to be considered by the Board.

- Each item to be considered by the Board will be introduced by the Planning Department Staff. The Board will then hear and consider arguments both for and against each proposal.

- Individuals wishing to address the Board are requested to state their name and address for the official hearing record.

- Motions on all matters, which require a decision by the Board, are made in the affirmative. On a roll call vote, Board members then vote yes, no, or abstain based on the affirmative motion.

- Any person, official or government agency dissatisfied with any order or determination of the Board may bring an action in the district court of the county to determine the reasonableness of any such order or determination. Such appeal shall be filed within 30 days of the final decision of the Board.

ADA Notice: For special accommodations for this event, please contact the Planning Department at 785-368-3728 at least three working days in advance.
A. Call to Order

B. Approval of Minutes from October 8, 2018

C. Public Hearings
   1. BZA19V/01 by Brian Roach, requesting variances to the minimum building setbacks required by section 18.60.020 of the Topeka zoning regulations to allow for the construction of a detached garage and storage shed at the rear of an existing residence at 1011 SW 16th Street. Requested variances apply to the required 3’ minimum building setback from the side property line, 5’ minimum building setback from the rear property line, and 10’ minimum building setback from the alley.

D. Election of Officers

E. Adjournment

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CITY OF TOPEKA
BOARD OF ZONING APPEALS

M I N U T E S
Monday, October 8, 2018
5:30PM - Holliday Building 1st Floor Holliday Conference Room

Members present: Tim Carkhuff, Walter Schoemaker (Chair), Carole Jordan, Helen Crow, Toni Beck (5)
Members Absent: (0)
Staff Present: Bill Fiander, Planning Director; Mike Hall, Current Planning Manager; Mary Feighny, Deputy City Attorney; Kris Wagers, Administrative Officer

Call to Order
The meeting was called to order by Walter Schoemaker, Chair. Roll was taken with 5 members present for a quorum.
Regarding the death of Mr. Marty Hazen, a member of the BZA, Mr. Schoemaker noted his years of service and expressed sadness at his recent passing.

Approval of Minutes from March 12, 2018
Motion by Ms. Crow to approve, second by Ms. Jordan. APPROVAL 5-0-0

Declaration of Ex Parte Communications
Mr. Schoemaker called for notice of ex parte communications:
Carkhuff – None
Jordan – None
Beck – None
Crow – None
Schoemaker – None

BZA18A/02 by Autumn Home Plus, Inc. appealing as provided for by Section 2.45.050 of the Topeka Municipal Code (TMC) a decision by the Planning Director to classify two or more Home Care Type I facilities in the R-1 Single Family Residential District on parcels adjacent to one another as a single use facility and thus restricted to a maximum of 8 residents per Home Care Type I facility and 12 residents for Home Care Type II facility with a Conditional Use Permit.

Mike Hall, Staff Planner, presented the staff report and staff recommendations as given on page 5 of the Appeal Evaluation:
1. Affirm the Planning Director’s finding that 747 NW Walnut Lane, as a facility licensed for 10 residents, does not comply with the zoning regulations, and that the use be discontinued until, upon the required application, the owner obtain a conditional use permit from the City of Topeka for a home care type II facility.
2. Affirm the decision of the Planning Director to consider two adjacent properties, specifically 747 NW Walnut Lane and 750 NW Walnut Lane (if 750 NW Walnut Lane is to be converted to a home care
use), that both properties constitute a single home care use and are thus subject to the maximum number of residents as defined by the Topeka zoning regulations.

Mr. Hall pointed to exhibit 5, Kansas Statutes regarding group homes and related issues. He also noted that staff had taken a phone call from the resident at 735 NW Walnut who wished to express his concern but was unable to attend the meeting. The resident feels these homes should be limited to no more than 4 residents due to the traffic they generate.

Mr. Carkhuff stated he is not aware of any previous cases where uses on adjacent properties have been aggregated and asked under what authority the Planning Director aggregates these properties.

Bill Fiander, Planning Director, stated that this is done with zoning lots; adjacent properties under the same ownership are considered one large zoning lot. The question is, can they be aggregated when they are adjacent but separated by right of way. He explained that when right of way is vacated, the property reverts back to the adjacent property and therefore these properties would be adjacent were right of way vacated. He stated that staff looks at this as a zoning lot, much like they do with adjacent properties having the same ownership.

Mr. Carkhuff asked if it would be different if properties had different ownership. Mr. Fiander stated staff did not review this, but his thought is that it would need to be the same ownership.

Mr. Carkhuff stated that it seems to him the question of ownership is irrelevant when talking about land uses and the impact on a neighborhood. Mr. Fiander agreed and stated that it makes determination simpler when ownership is the same. At this time, ownership plus the same use makes the conclusion easier to come to for staff. They are not being asked right now to make a determination on similar use but different ownership.

Mr. Carkhuff asked Mr. Fiander if he could point to any state statute or municipal ordinance that grants the Planning Director the power to aggregate uses on adjacent properties. Mr. Fiander stated that the zoning law / our zoning code is the closest thing that staff to make that determination. He added that a Conditional Use Permit (CUP) is required for anything beyond a certain number of people, so clearly there was some thought given to the intent of our zoning code that when you have more than a minimum number of people for this particular type of use, there should be a higher level of scrutiny. The fact that a CUP is required for more than 8 residents tells staff that there is a higher level of scrutiny required when you have more than 8 people in aggregate.

Ms. Crow asked for clarification on whether local zoning could be more restrictive than state law. Deputy City Attorney Mary Feighny explained that the state law protects group homes with up to 8 residents and 2 staff. She stated that the Fair Housing Act provides protection to disabled people who live in a group setting. She stated that there may be a violation of the Fair Housing Act if the decision to aggregate is confirmed in the absence of any authority given by state law or city ordinance. Ms. Crow asked if this would apply to all group homes (i.e. “half-way houses”), and Ms. Feighny stated that it does not.

Ms. Beck asked whether the suggestion by the resident of 735 NW Walnut that the homes be limited to 4 residents was even something that could be considered. Mr. Fiander stated that it was a comment, not something staff is advocating for. He added that staff would not necessarily advocate for a prohibition of anything, but rather ask that they go through the Conditional Use Permit process in these types of situations. Ms. Beck asked if there is any sort of a limit on how many group homes are allowed within a certain radius or one residential block. Mr. Fiander stated that there is not; the question at hand is if, when they considered adjacent, does that constitute a defacto Type II care facility (more than 8 and up to 12), which would require a Conditional Use Permit.

Mr. Carkhuff asked Ms. Feighny which prevails when there is a conflict between state law and a city ordinance. Ms. Feighny stated that state law says you need a license for this type of home, but does not address zoning. Cities are allowed to have their own zoning requirements. Ms. Feighny stated that requirements may be inconsistent but not in conflict.
Mr. Carkhuff asked about the circumstances/zoning codes in force in 2007 when the house at 747 NW Walnut Lane was licensed. Mr. Fiander stated that to the best of his recollection there was no home care facility definition in our zoning code until 2012, so in 2007 staff attempted to fit the request into another definition to allow for the home. There was brief discussion about the 2012 appeal.

Mr. Carkhuff asked if a Certificate of Occupancy is required to operate a business such as this. Mr. Fiander stated that from a building standpoint, it would only be required if there were remodeling that required a building permit. State or local fire inspections are required according to the state license.

Mr. Schoemaker asked for verification that the City of Topeka’s zoning code was properly approved by the Governing Body and Ms. Feighny stated it was. He then asked if the decision of the Planning Director is appealable by the applicant since the applicant does not own the property in question. Ms. Feighny explained that the applicant wants to know the decision before they buy the property; the appeal is appropriate.

Ms. Crow asked for verification – if the Planning Director's decision is upheld, will the applicant need to apply for a Conditional Use Permit (CUP). Mr. Hall stated there are two issues at hand: first, whether the home at 747 NW Walnut Lane, which is state licensed for 10 residents, requires a CUP since zoning only allows for 8; second, whether it’s appropriate to aggregate the homes and consider the two as a single facility since they are considered adjacent.

Mr. Carkhuff asked Mr. Fiander if he was aware of examples where aggregating properties had been applied. Mr. Fiander explained that staff’s inquiry and ultimate determination was that these are two detached buildings, separated only by a right of way, under same ownership being operated as a single entity business and thus does constitute a single use. He recognized that it’s not clear cut. He further noted that uses are aggregated if they are on the same zoning lot and staff has applied that concept in this instance.

With no further questions for staff, Mr. Schoemaker invited the applicant or representative to speak.

Jason Creollo and his wife Missy came forward as the owners of Autumn Home Plus. He referred to the 2012 cases and stated it resulted in a lot of attorney fees, etc.

Mr. Creollo explained that he was confused when he received the letter from the City’s zoning department in July 2018. He noted that he’d had a conversation with the current owner about the possibility of purchasing the home, but there was nothing formal and he wasn’t sure “how the word spread”. He stated he’s never been contacted by authorities regarding concerns with the facilities currently operates.

Mr. Creollo noted that they are governed solely by the state; they do not go through the City when opening one of these homes. They work with the state fire marshal, Kansas Department of Aging, and an extensive state process. He referred to/read from the state statute regarding the type of facility Autumn Home is licensed as, noted the extensive process for opening a home, annual inspections by the state as well as inspection by the City fire department. They are expected to comply with all life, health and safety codes. He noted that although they are licensed by the state, Home Plus facilities are treated differently by various communities and cities. He proposed the city and state get together and align their regulations so these types of problems don’t occur in the future.

Mr. Creollo spoke of the background of the location at 747 NW Walnut Lane and noted concerns about not being able to purchase the home due to the time it takes to get a CUP. He stated he doesn't understand the difference between having 1, 2 or 3 homes since no problems have arisen since the first home was opened in 2007. He noted that the residents are like a family; they are in the 80-90 year age range and generally don’t drive cars. He discussed staffing and the fact that most visitors come during holidays. There are no commercial truck deliveries.

Mr. Creollo stated that they are protected by the Fair Housing Act 12-736 and he doesn’t understand how the city can require a CUP. He stated that city code doesn’t align with state code, which allows up to 12
individuals rather than the 8 allowed by the city. He stated he understands that home at 747 NW Walnut Lane does not comply with City zoning requirements (max 8). If they are forced to discontinue service while applying for a CUP, he'll be forced to move 80/90 year old residents out of their home and their families will be forced to make new living arrangements for them.

In regard to the City’s suggestion that the two homes be combined together with a maximum of 8 residents, Mr. Creollo stated that it will shut his business down. He employs over 30 people and it would require him to lay off help. He recommends 8 residents be allowed per home and not looking at 2 homes as one with a maximum of 8 residents.

Mr. Carkhuff asked Mr. Creollo if he owns other group homes in Topeka or Shawnee County. He stated he just owns, in addition to his private residence, the two residences on Walnut Lane.

Ms. Beck asked what staff the state requires Autumn Home Plus to have. Mr. Creollo stated they are required to have a supervising RN overseeing; theirs is available on an on-call basis. State requires them to staff according to need. He stated they have a full-time Director of Nursing and staff for 24/7 8 hour shifts.

Ms. Feighny asked what the state license will allow if they purchase the home at 750 NW Walnut Lane. Mr. Creollo stated, based on the home’s number of rooms and restrooms, it will likely be licensed for 6. He added that he has invested a lot of money in the two homes he already owns on Walnut Lane and stated that they are probably the best looking houses on the street; if he purchases the house at 750 it will be the 3rd best looking house on Walnut Lane.

Ms. Feighny asked for and received confirmation that 747 NW Walnut Lane is licensed for up to 10. Ms. Feighny asked how many residents currently reside there and Mr. Creollo stated they have 7. He believes they probably average 8. He added that they are also licensed for an adult day care at that address and that takes up one of the slots the state licenses for.

Ms. Feighny asked for confirmation that the license would only be for 6 at the 750 location and Mr. Creollo stated that for now, that’s true. He anticipates doing some remodeling that would allow him to increase that number.

Mr. Schoemaker opened the floor for public comments.

Douglas Brier of 701 NW Walnut Lane came forward and stated that Mr. Creolle stated more than once that they are a small business. Mr. Brier pointed out that subdivision restrictions that have been in effect since before he moved into the neighborhood in 1974 state that businesses are not allowed in the subdivision.

Mr. Brier stated that he and others have concerns about property values and noted that parking is an issue, especially at the 720 Walnut Lane address; mostly visitors. He stated it should be the owner’s responsibility to tell people where they can park and ask them not to park across the street. He said he doesn’t pester the police department but that doesn’t mean there aren’t parking issues. He stated there have been times when people parked such that it made it difficult for residents to get into their driveways and at times people have parked partially in his yard.

Mr. Brier concluded by stating that he understands this is part of the Fair Housing Act but wonders how many facilities should be allowed to be in a small neighborhood such as theirs. He stated they already have two and believes a third is unreasonable.

Scott Able came forward and stated he and his sister together own the property at 750 NW Walnut Lane. He stated that he’d had only casual conversations with Mr. Creollo about the possibility of purchasing the property and wasn’t certain how it had become an issue for the BZA.
Mr. Able stated that there will be plenty of parking at the residence and noted there’s never been a problem with parking on this street. He stated that parking and traffic issues are part of life and you learn to accept it. He stated that because the street is between the 747 and 750 addresses, he doesn’t believe there’s any way they could be considered adjacent properties. He stated that the other residences owned by Mr. Creollo are well maintained and that “everything that is progress in this area turns into a complaint by some people.”

Councilperson Mike Lesser (District 9) came forward to speak. He noted that he is a fan of this type of facility and believes it a fantastic way to care for our elderly citizens rather than institutions. He also noted that he is Chairman of the Board for SLI, which provides similar homes in the community for MRDD clients. He added that the intent of the legislature to allow these homes was not the saturation of our neighborhoods. He noted that to his understanding the residents of the neighborhood are not asking for the other two facilities to be shut down but rather they are saying that one, maybe two are fine, but three is too many. Councilperson Lesser stated he agrees with that and believes that property values will be affected by saturation of this or any type of home business.

Councilperson Lesser stated that he has spoken with Rep. Fred Patton of the 50th District who, while unable to attend the meeting, gave Councilperson lesser permission to share that he too would have concerns about saturation in any type of smaller area.

Councilperson Lesser concluded by stating that he believes Council will be looking with the issue of saturation of facilities in neighborhoods.

Stacy Treinen and Don Howe of 700 Walnut Lane expressed concern about the 720 NW Walnut Lane site, which is right next door to their house. Stacy stated that cars have been parked in her driveway, and during remodeling of the 720 house, construction trucks/trailers parked partly in her yard and she came home to find construction workers playing football in her yard. Ms. Treinen explained that she has a special needs child and no longer feels safe allowing him to play outside. She said that the Autumn Homes houses in the neighborhood are not, in fact, the nicest kept homes. She believes this to be a good option for elderly people but there is not adequate parking for the number of people there. She also expressed concern about the hours people are coming and going. Mr. Howe also noted issues with cars pulling into Ms. Treinen’s driveway and noted that they have tried to speak with the owners and do not call the police. There have been a number of issues with construction workers. Ms. Treinen continued to explain that she chose the neighborhood in 2005 specifically because it was a quiet neighborhood and she believed it would be a good place for her autistic child. She firmly believes that 3 houses in the same neighborhood are too much.

Don Sloyer of 633 Walnut Lane stated that he “takes exception” to many of the things the applicant said about the homes he owns on the block, especially that they are the nicest on the block. He said that he has called the police about obstructions in the street.

Barbara & Kenneth Bailey of 649 Walnut Lane came forward to speak. Mrs. Bailey stated that they’ve lived in the neighborhood since 1979. She remembered the first Autumn Home that went in and noted that when the second went in, there began to be problems with parking and traffic. She stated that the Autumn Homes are not, in fact, the nicest homes on the block. She believes that the neighborhood homes are a good idea but thinks that putting a third in one neighborhood is too much. She concluded by asking if others would like to have three nursing facilities, or businesses, in their neighborhood because businesses are what neighbors see them as.
Councilperson Sandra Clear (District 2) came forward and commended all for becoming educated on the situation and trying to learn facts. She appreciates all for attending and becoming involved in what they believe in.

Betty Carswell came forward and introduced herself as the founder of Autumn Home Plus. She stated she has never had any neighbors complain to her about traffic.

Ms. Carswell gave some of the history of the business. Regarding the subdivision rules spoken of earlier, she stated that her lawyer, Mr. Jarboe, told her that the rules were created back in the 60’s and they no longer stand as the people who made the rules are no longer living.

Ms. Carswell spoke about the driveways and traffic at the existing houses. She stated that there have been parking problems at the 720 location and they’ve asked people not to park across the street from the Autumn Home house because they’re “the only people who complain”. She stated that if people want to complain, they should call the owner; “don’t call the business and talk to the employees”. She stated that if employees have been rude to callers, she apologizes. She spoke to the construction issues at the 720 location and apologized if construction workers had been on other peoples’ property.

Ms. Carswell stated she doesn’t understand the concept of aggregating the homes; they’re on separate properties and are taxed separately.

Ms. Carswell concluded by saying she doesn’t believe there are traffic problems. She acknowledged there may be parking problems, especially if a person passes away or on holidays when a lot of family comes to visit. She stated again that if there are parking problems, neighbors should call the owners rather than calling the home and speaking with the employees.

Joe Weir of 641 NW Walnut Ln came forward to speak. He stated that he and his wife are neutral on the issue. He spoke to concerns about property values, stating that 20 years ago he had a broker’s license in real estate and dealt with real estate and property values. He believes location is the key, and other things that affect property values are crime rates, bad neighbors, and home sale prices. He stated the location is good, the crime rate low, neighbors are all good, and Autumn Homes have, he thinks, paid top dollar for the homes they’ve purchased. He stated that if you didn’t know the Autumn Homes were Homeplus facilities, you wouldn’t know the difference between them and the other houses. He noted there could be a concern about saturation, but he suggested that neighbors meet the people in the homes and the owners and get to know them.

Al Best of 721 NW Sandord (right behind 720 Walnut) stated that he has noticed an increase in traffic over the past couple months but doesn’t think it has anything to do with the Autumn Homes going in. He noted they keep the houses nice and he enjoys visiting with the staff and residents of 720 Walnut. He also noted that the activity at the house likely keeps crime down.

With nobody else coming forward to speak, Mr. Schoemaker declared the public comment section of the meeting closed.

Discussion ensued about the home at 747 NW Walnut Lane and requirement of a CUP. Mr. Carkhuff noted that considerations about the operations at 747 had not been publicly noticed and therefore could not be considered by the BZA at the current meeting. Ms. Feighny confirmed that the public notice was solely about the decision of the Planning Director to classify two or more Home Care Type I facilities in the R-1 Single Family Residential District on parcels adjacent to one another as a single use facility and thus restricted to a maximum of 8 residents per Home Care Type I facility and 12 residents for Home Care Type II facility with a Conditional Use Permit.
Mr. Carkhuff stated there should be some sort of mechanism to limit the number of these types of uses within a given geographic area, but he doesn’t believe this is the best way of going about doing that. He has concerns about whether the Planning Director has the authority to take this sort of action and cannot support a motion affirming the decision.

Ms. Beck summarized, stating that affirming the decision of the Planning Director would in effect mean there are only two Autumn Home Pluses in the neighborhood, although there would actually be three homes. Mr. Hall explained that this is the case, and it would further mean that the two being aggregated would require a Conditional Use Permit (CUP) limiting the total number of people the homes combined could be licensed to serve to a maximum of 12. Without aggregating, per zoning regulations, the maximum number each home can serve is 8.

Ms. Beck asked Ms. Feighny if she believes the Planning Director has the authority to aggregate the two properties, and Ms. Feighny stated she does not believe there is legal authority to support aggregating.

Ms. Crow expressed appreciation for the comments of Councilman Lesser when he stated that the City Council will begin discussing possible issues of saturation because she’s deeply concerned about the potential for it. She stated that from her 45 years of experience selling real estate, she believes that what influences property values is perception, and she’s concerned that people’s perception of a neighborhood that has a number of businesses in it would affect property values. She understands that that Board of Zoning Appeals does not that the authority to decide based on issues such as property values and that’s why she’s glad that City Council intends to begin working on potential issues.

There was a motion and second to not affirm the decision of the Planning Director. Following additional discussion about the correct language for a motion and the tradition of the BZA to state motions in the positive, the motion was amended. **Motion** by Ms. Crow to affirm the decision of the Planning Director to consider two adjacent properties, specifically 747 NW Walnut Lane and 750 NW Walnut Lane (if 750 NW Walnut Lane is to be converted to a home care use), that both properties constitute a single home care use and are thus subject to the maximum number of residents as defined by the Topeka zoning regulations; second by Ms. Jordan. **Motion failed to pass by a vote of 0-5-0** with all members voting no.

Mr. Fiander thanked the board members for their thoughtful deliberations and stated that he feels groundwork has been layed this evening to consider alternative ways to deal with the issues that were discussed.

Following brief discussion, Ms. Crow encouraged people to call their City Council representative to share their views.

With no further business, the meeting was adjourned at 7:37PM
Date of BZA Meeting: January 14, 2019
Case No.: BZA19V/01

Applicant Name: Brian Roach
Address of Property: 1011 SW 16th Street
Parcel ID No.: 1410101029003000
Zoning of Property: "R-2" Single-Family Dwelling District

**Regulations from which a Variance is Requested:** The applicant is requesting variances to the minimum building setbacks required by section 18.60.020 of the Topeka zoning regulations for the construction of a detached garage and storage shed at the rear of an existing residence at 1011 SW 16th Street. Requested variances apply to the required 3’ minimum building setback from the side property line, 5’ minimum building setback from the rear property line, and 10’ minimum building setback from the alley.

The following table describes proposed and required setbacks.

<table>
<thead>
<tr>
<th>Setback Required per Section 18.60.020</th>
<th>Setback Proposed (See note)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Side (west) Property Line</td>
<td>3 feet</td>
</tr>
<tr>
<td>Rear (south) Property Line</td>
<td>5 feet</td>
</tr>
<tr>
<td>Alley (east) Property Line</td>
<td>10 feet</td>
</tr>
</tbody>
</table>

Note: Building setbacks are typically measured from exterior walls to the property line, with the eaves allowed to extend into the required building setback. According to the applicant the proposed setbacks are measured at the building eaves, and the eaves extend 6 to 7 inches beyond the exterior wall on all sides.

**Other Applicable Standards:**

<table>
<thead>
<tr>
<th>% of Principal Building Coverage (sf of accessory buildings divided by sf of principal building footprint)</th>
<th>Coverage Limits per Section 18.60.020</th>
<th>Coverage with Proposed Building</th>
</tr>
</thead>
<tbody>
<tr>
<td>% Building Coverage (sf all buildings footprint divided by sf of zoning lot)</td>
<td>50% maximum</td>
<td>45%</td>
</tr>
</tbody>
</table>

90% maximum | 47%
Project and Property Data:

Proposed Garage / Shed: Prefabricated building by local vendor. See attached for specifications.

Exterior wall dimensions are 14’11” wide x 28’11”. Building footprint is 431 square feet (sf). Roof eaves extend approximately 7 inches beyond the exterior walls.

Height is 16 feet high at ridgeline per applicant. Estimated height is 11 feet (per attached specifications for 14 foot wide lofted barn truss). Therefore, estimated average height is 13.5 feet, below the maximum height permitted for a detached accessory building in the R-2 zoning district.

Size of Principal Dwelling: 920 sf ground floor building footprint

Property Dimensions: 33 feet wide x 90 feet deep

Size: 2,970 sf

Property Description: East 33 feet of Lots 570, 572, 574, and 576, Edwards Tract

Existing Land Use and Property Characteristics: A rectangular lot containing a single family residence with two full stories plus an attic. The east side of the house estimated to be 3 feet or less from alley. Property has a small back yard with no off-street parking. Parking on-street is limited with one space adjacent to the property.

Surrounding Land Uses: Detached Single-Family Dwellings; Central Park less than one block to northwest.

Zoning of Property: R-2 Single Family Dwelling District

Zoning of Surrounding Property: R-2 Single Family Dwelling District

Neighborhood: Central Park

Neighborhood Health: Located in the “Intensive Care” area of the Neighborhood Health Map. Property improvements may be eligible for Neighborhood Revitalization Program property tax rebate.
Applicant’s Stated Grounds for Variances

Per the application received December 4, 2018 addressed the findings as follows.

Conditions Unique to the Property, etc. (finding a): Left blank.

Effect of the Variances on Adjacent Property Owners (finding b): There are no buried utilities or right-of-ways blocked if approved.

Application of Zoning Requirements Constitute an Unnecessary Hardship (finding c): We need a garage and more storage and workspace to protect cars and property, as well as work on hobbies.

Potential for Adverse Effect on the Public Health, Safety, Morals, Order, Convenience, Property, and General Welfare (finding d): This variance will allow for a more secure way of living by using all space available and not allowing “dead space” between properties for vagrants to hide or do illegal activities.

Variances is not in Conflict with the General Spirit and Intent of the Regulations (finding e): It will help add value to property and help to improve the look and security of neighborhood.

Analysis:

The applicant is requesting variances to allow construction of a building for the parking of one car or truck and storage of personal items. The property currently has no off-street parking and the on-street parking is very limited. The applicant’s request is reasonable and the construction of the proposed garage is an investment that generates a benefit to the general neighborhood. Investment in this neighborhood is important because it is designated “intensive care” on the City’s Neighborhood Health Map.

The dimensions and overall size of the property are not unique but are unusual. The depth of the zoning lot is 90 feet, when typical zoning lots in this neighborhood and in other Central Topeka neighborhoods have a depth of 140 feet or more.

Variances to the required setbacks at the south and west property lines potentially harm adjacent properties because of the requirement for building separation by building codes. Building separation is required to prevent the rapid spread of fire.

A variance to the required 10’ setback from the alley does not negatively affect adjacent properties and is necessary to relieve a hardship to the property owner. Without a variance to this setback it is difficult if not impossible to build a one-car garage. A five foot setback is necessary, however, to allow property entrance to and exit from the garage. A minor variance to the 3’ setback from the west property line is warranted to allow for the desired garage.
Findings

Pursuant to K.S.A. 12-759, and as set forth in TMC 2.45.110, the Board of Zoning Appeals shall find that all of the following conditions are met before a variance may be granted.

a. That the variance request 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 action of the property owner or applicant;

The small size of the property and the limited land area between the rear of the house and the rear property line provide some support for a variance to setbacks. The size of the property, with a width of 33 feet and depth of 90 feet, is unusual but not unique because the three properties to the west of the subject property have similar and slightly smaller dimensions. On the other hand, the depth of the subject parcel, at 90 feet, is unusually shallow and the narrow width of the lot (33 feet) makes compliance with the required setback required from the alley difficult.

As shown in the attached exhibit, most of the parcels (aka “zoning lots”) in the surrounding neighborhood are larger in overall size and have depths, measuring from front to back, of 140 feet or more. Typical zoning lot widths range from 37.5 feet to 50 feet, and these dimensions are typical for other central Topeka neighborhoods in which R-2 zoning predominates.

The applicant’s site plan indicates the distance between the rear of the house and the rear property line is 25’6”. However, staff estimates the distance to be approximately 36’ per the City GIS map. With the requested variances the distance between the proposed building and the house is 20 feet. If the proposed building complies with the 5’ setback required by section 18.60.020 of the zoning regulations that distance will be limited to 15 feet.

In conclusion, the restrictive dimensions and small overall size of the property support variances to the required setbacks.

b. That the granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residences;

The applicant’s investment in a new detached garage is expected to have a positive effect on adjacent property owners, and the applicant has indicated he will continue to own and reside at the address. Owner occupancy and investment tend to have positive effects on neighborhood health, and the property is in an area designated “Intensive Care” on the Neighborhood Health Map.

The construction of a building at or within one foot of the west and south property lines negatively affect neighboring property owners because it restricts their ability to building near the property line because of building codes. There is an existing detached building on the lot south and that building is at or near the applicant’s south property line. The City’s building code requires 6 feet of separation between buildings unless extraordinary construction measures are taken for fire-rated walls with separation of less than 6 feet.
The variance requested for the setback from the east lot line (at the alley) is not likely to negatively affect neighboring property owners, although it will restrict the owner’s ability to enter and exit the proposed garage. The alley right-of-way is 15 feet wide (according to the original subdivision plat). The proposed 3’ setback and 15’ alley give the owner 18 feet for entering and exiting the garage. A minimum of 24 feet is required for drives accessing 90 degree angle parking spaces (18.240 off-street parking requirements). It is the opinion of Planning staff that 20 feet is the minimum necessary for the turning movements required for use of the garage, although the minimum distance needed depends on the vehicle.

In conclusion, the narrow width of the property supports a variance to the required 10’ setback but effective use of the garage - without negatively affecting the property on the east side of the alley - indicates a minimum setback of 5 feet from the east property line is appropriate.

c. That the strict application of the provisions of this chapter of which the variance is requested will constitute an unnecessary hardship upon the property owner represented in the application;

As an owner, occupant, and investor in the property the applicant’s request for relief from setbacks for the purpose of parking and storing his cars and other property is reasonable. The property currently has no off-street parking and the available on-street parking is very limited. There is room for only one vehicle on the street parallel to the curb at the front of the property. Construction of a garage that satisfies the owner’s need for secure parking and storage also creates value for the property and the neighborhood. Denying the owner the ability to build a garage constitutes an unnecessary hardship.

The proposed garage has interior dimensions of roughly 14’ wide and 28 feet long, which is large enough to allow a limited amount of storage at one end of the garage, not including any loft storage. Typical one-car garages have an interior width of 12 to 16 feet and an interior length of 20 to 24 feet. Consider the City of Topeka off-street parking requirements dictate minimum dimensions of 9’ x 18’ for a parking space.

If the proposed garage meets the required rear setback of 5 feet the owner will be left with an estimated usable rear yard of 15 feet (between the house and the garage) by 33 feet (the width of the lot). The resulting rear yard is small but does not create an egregious hardship for the applicant.

In conclusion, denial of a variance to the alley setback constitutes an unnecessary hardship for the owner. Requiring a setback of 5 feet from the alley and 3 feet from the west property line leaves 25 feet of distance to accommodate the length of the garage. A garage of that length will have an interior length dimension of 24 feet, enough for parking a vehicle but with limited space for storage. A variance reducing the required setback from the alley from 10 feet to 5 feet is warranted, and reducing required setback from the west lot line from 3 feet to no less than 1 foot is warranted in order to overcome the hardship imposed by the required setbacks.
d. That the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare;

Granting relief from required setbacks, allowing in particular a variance to the required setback from the alley, is warranted as it will allow the owner to build a reasonably sized garage for parking and storage. The benefit that accrues to the property owner is also a positive outcome for the neighborhood and community providing standards directly related to public safety, such as the separation between buildings required by the City’s building code, are met.

e. That granting the variance desired would not be opposed to the general spirit and intent of this chapter.

Granting a variance to the required setback from the alley is not opposed to the general spirit and intent of the City’s variance provisions in Chapter 2.45 nor does such a variance conflict with the spirit and intent of the zoning regulations in Title 18 of the city code. The unique conditions of the property are documented herein and, therefore, approval of the variances requested does not set a precedent for future administration and enforcement of setback standards.

Planning Staff Recommendation

Based on the above findings staff recommend the Board of Zoning Appeals decide the following for each of the variances being requested.

Regarding the 5’ required rear setback at the south property line, staff recommend the Board of Zoning Appeals DISAPPROVE the variance requested.

Regarding the 3’ required side setback from the west property line, staff recommend the Board of Zoning Appeals disapprove the variance requested but APPROVE a variance of 1.5 feet from the required setback, resulting in a required setback of 1.5 feet.

Regarding the 10’ required setback from the east property line at the alley right-of-way, staff recommend the Board of Zoning Appeals disapprove the variance requested but APPROVE a variance of 5 feet from the required setback, resulting in a required setback of 5 feet.

Staff recommend the following as conditions of approval.

Conditions of Variance Approval

1. As a condition of any setback less than 5 feet from the rear (south) property line or any setback less than 3 feet from the side (west) property line, the owner shall obtain a survey from a licensed professional surveyor to locate the west and south property lines and determine the precise setbacks of the garage.

2. The owner may select or build a building of an alternate design from what was indicated in the application but any building so constructed or installed shall:
   a. Have wood siding or wood-composite siding.
   b. Have a shingled roof. A roof of metal or material other than shingles is not permitted.
c. The roof design shall be either a barn, gable, or hip style.
d. The height of the building shall not exceed 15 feet, measured in accordance with the definition of “height of building” in the City of Topeka’s zoning regulations.

3. A building permit is required. In the event of a conflict between building code separation and zoning-related setbacks, the most restrict shall apply.

Staff Report by: Michael Hall, AICP, Current Planning Manager

Exhibits:

1. Variance Application
2. Variance Site Plan
3. Building Design Specifications
4. Zoning Map
5. Aerial Map
6. Photos of Property and Adjacent Properties
7. Typical Lot Dimensions in Neighborhood
APPLICATION TO THE
BOARD OF ZONING APPEALS

Variance/Exception

Planning Office Use Only

Case No. 822A19V1/01 Hearing Date: 1/14/19

Filing Fee $ 150

Make checks payable to "City of Topeka".

Applicant: Brian Koch Date: 12/3/2018

Applicant Address: 1011 SW 16th St. Topeka KS 66604
(Street) (City) (State) (Zip) Phone: 338-6640

Property Address: 1011 SW 16th St. Topeka KS 66604

Legal Description: (use additional sheets if necessary)

Action Sought:

X A variance from a provision of the Zoning Ordinance (Section to be appealed: Rear)

An exception from a provision of the Zoning Ordinance (Section to be appealed: )

Description of Action Sought: Placement of Garage/Storage Shed in rear of property

Applicant offers the following as grounds for this action: (In accordance with Section 48-34.10 of the Comprehensive Zoning Regulations, the Board of Zoning Appeals must determine that ALL of the following conditions governing unnecessary hardship have been met before a variance may be granted.) All items must be addressed or the application will be deemed incomplete.

1. 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 of the property owner or applicant (The problem must relate to the land. Community needs or personal hardships do not qualify as legitimate grounds for issuing a variance.); 8/21/97
2. That the granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents; These are no buried utilities or right of ways blocked if approved.

3. That the strict application of the provisions of this chapter of which variance is requested will constitute unnecessary hardship upon the property owner represented in the application; We need a garage & more storage & workspace to protect cars & properties, as well as work on hobbies.

4. That the variance desired will not adversely affect the public health, safety, morals, order, convenience, property, or general welfare; This variance will allow for a more secure way of living by using all space available & not allowing "dead" space between properties for vagrants to hide or do illegal activities.

5. That granting the variance desired will not be opposed to the general spirit and intent of this chapter. It will add value to property & help to improve the look & security of neighborhood.

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Property Data:

Zoning District: ___________ Building Height: ___________ # of Stories: ___________

Parcel Size: ___________ Lot Dimensions: ___________
Authorization:

Property Owner(s):

I/We the undersigned owner(s) of record hereby authorize the filing of this application and declare that all required materials are submitted along with this application and that the information and material is complete and accurate. I/We hereby acknowledge that all appropriate procedures, policies, and regulations have been reviewed and also understood that this application will be processed in sequence with respect to other submittals.

Printed Name of Owner(s): [Signature]

Authorized Agent:

If the owner(s) of record are to be represented by legal counsel or an authorized agent, please complete the following information so that communications and correspondence pertaining to this application may be forwarded to such individual.

Printed Name of Agent: [Signature]

Mailing Address: ____________________________
  (Street) (City) (State) (Zip)

Phone Number: ____________________________

Printed Name of Applicant: [Signature]
GENERAL NOTES:

2. TOP CHORD LIVE LOAD: 20 PSF
   BOTTOM CHORD LIVE LOAD: 10 PSF

3. WIND LOADS ARE BASED ON THE FOLLOWING:
   DESIGN WIND SPEED, V = 105 MPH
   HSB CATEGORY I
   EXPOSURE CATEGORY B

4. SNOW LOADS ARE BASED ON THE FOLLOWING:
   GROUND SNOW LOAD, Pg = 30 PSF
   FLAT ROOF SNOW LOAD, Pt = 20 PSF
   EXPOSURE FACTOR, Ce = 1.0
   IMPORTANCE FACTOR, I = 0.8
   THERMAL FACTOR, Ct = 1.2

5. ADJUSTMENT FACTORS:
   ROOF LIVE LOAD: 1.25
   SNOW LOAD: 1.15
   WIND LOAD: 1.40
   REPEATED MEMBER: 1.15

6. MAXIMUM TRUSS SPACING = 24" O.C.

7. TRUSS TOP CHORD SHALL BE BRACED W/ STRUCTURAL WOOD SHEATHING OR METAL ROOFING ATTACHED DIRECTLY TO TRUSS.

8. ALL TRUSS MEMBERS ARE TO BE SPF #2 OR BETTER.

9. TRUSS PLATES ARE TO BE A MINIMUM OF 20 GAGE (NT20) HYDRAULICALLY PRESSED IN PLACE REAL EACH SIDE OF TRUSS, PROVIDE 24" PLATES AT ALL 24" TRUSS MEMBER JOINTS AND 36" PLATES AT ALL 24" TRUSS MEMBER JOINTS.

10. WIND REACTIONS ARE BASED ON MAXIMUM END ZONE PRESSURES. INDIVIDUAL MEMBERS DESIGNED FOR COMPONENTS AND CLADDING WIND PRESSURE.

11. MINIMUM REQUIRED BEARING = 1/2".

12. DEFLECTION CRITERIA: LIVE LOAD (L240) TOTAL LOAD (L/180)

LOFTED BARN--KANSAS--IBC 2012

PROJECT NO: S-33-LB
DATE: 03-14-2017
DRAWN BY: KLN
CHECKED BY: KLN
REVISION: 1/0
SCALE: 1/4" = 1'-0"
BZA 19V/01 - Roach, Brian (1011 SW 16th St.)  EXHIBIT 4

Topeka Planning Department
1011 SW 16th (Subject Property)
View south down alley; Applicant's house on the right

View from Alley Looking West along South Property Line. Building at left is on neighbor’s property.
View from Alley Looking toward Southwest Corner of Subject Property

Adjacent Buildings

1009 SW 16th / Adjacent to East
1015 and 1017 SW 16th / Adjacent to West

1534 SW Central Park Ave / Adjacent to North
Typical Lot Dimensions in Neighborhood

EXHIBIT 7