



**CITY OF DERBY
MEETING OF THE BOARD OF ZONING APPEALS
March 31, 2016
6:30 PM**

MEETING MINUTES

1. MEETING CALLED TO ORDER AT 6:30 P.M.

2. ROLL CALL

Pat Baer	Present
Jessica Rhein	Present
Justin Smith	Present
Joe Waugh	Present
Van Willis	Present

3. CONSIDERATION OF MINUTES:

3. A. Minutes of the February 4, 2016 special meeting.

MOVED by Pat Baer, seconded by Joe Waugh, to approve the meeting minutes of the February 4, 2016 special meeting, as presented.

VOTE: 5-0

4. NEW BUSINESS

4.A. Request for Variance of Maximum Paved Surface Area within a Front Yard Setback in R-1 “Single-family Residential District”

GENERAL LOCATION: Northeast corner of Waters Edge St. and Waters Edge Ct.
Common Address: 1151 E Waters Edge St.

APPLICANT: Justin Smith, owner

REASON FOR REQUEST: Allow construction of a driveway to provide access to a detached garage

BACKGROUND:

- The owner of the residence at 1151 E Waters Edge St. has requested a variance from the zoning regulations restricting the maximum amount of paved surfaces within a required front yard to 850 sq. ft.
- The property involved consists of two adjacent platted lots, owned by a single owner and used as a single zoning lot, as defined in the zoning regulations.

- The zoning lot is used for a single-family residence and accessory uses permitted within the R-1 “Single-family Residential” zoning district.
- The second platted lot owned by the applicant could have been used for construction of a second single-family dwelling, which would have been permitted to have a driveway up to 850 sq. ft. in size.
- The applicant has chosen to use the second platted lot as additional yard for the existing home, and recently obtained a permit from the City to construct a new detached garage.
 - The owner desires to construct a driveway providing access to the detached garage. Approximately 600 sq. ft. of the proposed driveway would be located within the required front yard (25 ft. setback).
 - There is an existing driveway serving the existing garage attached to the house, approximately 800 sq. ft. of which is located within the required front yard (25 ft. setback).
 - The proposed total surface area of paving within the front yard setback is approximately 1,400 sq. ft.
- At the time of application for the garage, the applicant was advised that the driveway could not be constructed unless the Board of Zoning Appeals (“Board”) first approved a variance.
 - The applicant decided to proceed with construction of the garage and submitted the application for a variance.
- The applicant requests relief from Section 500.A.6.a.1 of the zoning regulation which restricts the total area of paved surfaces within a required front yard to 850 sq. ft.
 - The applicant is requesting to increase the total paved surface area within the platted 25 ft. front yard setback by approximately 550 sq. ft.
 - The attached exhibit illustrates the platted front yard setback and the existing and proposed driveways.
- City staff recommends approval of a variance to exceed the maximum paved surface area within the required front yard setback, subject to certain conditions necessary to fulfill the intent of the zoning regulations.

STAFF COMMENTS:

General

- The Board is authorized to grant a variance to the maximum limitation on paved surface area in a front yard in accordance with the standards established by state law and described in Section 1003.C.
- The application area is legally described as Lots 6 and 7, Block R, The Oaks Addition, Derby, Sedgwick County, Kansas.
- The request for a variance of the zoning regulations requires a public hearing:
 - The notice of public hearing was published in the *Derby Informer* on March 9, 2016.
 - Notices were mailed to neighboring property owners as prescribed by state law. The certified ownership list is on file at City Hall.
- At the time of this writing, city staff has heard from one owner of property within the notification area.
 - The owner expressed concern that private covenants of the Homeowners Association for the neighborhood may include language limiting the ability of the applicant to construct the detached garage.
 - City staff explained to the property owner that the City does not have authority to enforce private covenants, but that the detached

- garage was permitted and in compliance with all applicable City regulations.
- The owner also expressed concern that the variance being requested would be more or less a foregone conclusion since the garage was already under construction.
 - City staff explained that approval of the variance could only be granted by the BZA, and that the BZA also has the ability to deny the variance, or approve the variance with conditions if determined necessary to fulfill the intent of the zoning regulations.
- The owner was reminded that the public hearing provides an opportunity for them to share their concerns with the Board.
- An action to approve a variance requires adoption of a resolution.
 - A draft resolution was prepared by staff based upon staff's considerations of each finding as presented in this report. The draft resolution is attached.
 - The Board may instruct staff to modify the resolution as necessary to reflect the findings of the Board used as a basis for the Board's decision.
- The decision of the BZA on a variance request is final and does not require any further action.

Zoning

- Lots 6 and 7, Block R, The Oaks Addition is located within the R-1 "Single-Family Residential" zoning district and is surrounded by R-1 zoning.
- For single- and two-family dwellings, accessory vehicle parking spaces are permitted to be located within a required front yard.
 - Accessory vehicle parking spaces in front yards of single- and two-family dwellings are required to be paved.
 - A required front yard is defined as the unoccupied open space located between the property line abutting a public street and the platted building setback line.
- The zoning regulations restrict the total paved surface area within a required front yard to 850 square feet.
- A variance, if approved, would allow the applicant to exceed the maximum 850 square feet limitation for paved surfaces within the required front yard, ultimately allowing the construction of the desired driveway.
 - The applicant has indicated that approximately 600 sq. ft. of additional paved area in the front yard setback would facilitate the proposed driveway.
 - City staff recommends that the total paved area within the front yard setback not exceed 1,500 square feet.
- The proposed driveway is otherwise compliant with all other applicable City regulations.

FINDINGS OF FACT

- The Board is authorized to grant variances from the terms of the zoning regulations in specific cases which will not be contrary to the public interest and where, due to special conditions, a literal enforcement of the provision of the regulations, in an individual case, results in unnecessary hardship, and provided that the spirit of the regulations shall be observed, public safety and welfare secured, and substantial justice done.
- State law establishes, and Section 1003.C of the zoning regulations includes standards for the development of findings of fact which act to support the Board's

actions. The Board may grant a variance upon making specific written findings of fact based upon the particular evidence presented to it at the hearing that all the standards required by state law have been met.

- The standards which must be considered for a variance are listed below with City staff's considerations of each of the findings included in *italics*:

Finding a)

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;

Staff Considerations:

The conditions in this case are unique because the property involved in the request consists of two adjacent platted lots which are used by the owner as a single zoning lot. "Zoning lot" is defined in the regulations as:

"A parcel of land that is designated by its owner or developer at the time of applying for a zoning permit as a tract all of which is to be used, developed or built upon as a unit under single ownership. As long as it satisfies the above requirements, such lot may consist of: (1) A single lot of record, or (2) a portion of a lot of record, or (3) a combination of complete lots of record, complete lots and portions of lots of record, or portions of lots of record."

Although it is possible for such a condition to exist in other residential neighborhoods, it is not ordinary for an individual owner to purchase multiple platted lots to be used for a single residence.

Finding b)

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

Staff Considerations:

The requested variance is proposed to allow a driveway for a detached garage that is accessory to a single-family residence. The additional space afforded by using two platted lots as a single zoning lot reduces the impacts of the amount of paved area within the front yard setback. The location and configuration of the proposed driveway is similar in size to other residential driveways which would normally be permitted in the R-1 "Single-family Residential" district. In this case, if the second platted lot owned by the applicant were developed as a single-family dwelling, a driveway with a paved area equal to or greater than the proposed driveway would be permitted. Allowing an increase in the total paved surface area on this larger zoning lot, should not be expected to infringe upon the property rights, or be a detriment to the value of adjacent properties.

Finding c)

That the strict application of the provisions of the zoning regulations of which variance is requested will constitute unnecessary hardship upon the property owner represented in the application;

Staff Considerations:

Strict application of the provisions of the zoning regulations would result in an inability to construct a driveway providing access to a detached garage which is a permitted accessory use within the R-1 "Single-family Residential" zoning district. Proper permit was issued for construction of the detached garage, and the structure complies with all applicable zoning regulations. The inability to access the permitted garage constitutes an unnecessary hardship upon the applicant.

Finding d)

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

Staff Considerations:

Granting a variance to exceed the maximum paved surface area within a required front yard setback will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare of the community. A driveway of similar size and configuration would have been permitted at this location if the second platted lot owned by the applicant was developed as a single-family residence.

Finding e)

That granting the variance desired will not be opposed to the general spirit and intent of the zoning regulations;

Staff Considerations:

The maximum limitation on paved surfaces within required front yards is intended to ensure that an adequate amount of open space and landscaping is provided and to ensure that aesthetics within the neighborhood are consistent with a residential setting. Staff is of the opinion that granting a variance to exceed the maximum square footage of paved surfaces within the required front yard of the subject property will not be contrary to the spirit and intent of the regulations.

RECOMMENDATION OF PROFESSIONAL STAFF:

Based upon the preceding findings, City staff recommends that the Board of Zoning Appeals grant a variance for the subject property to allow the applicant to exceed the maximum 850 square feet of paved surface area within a required front yard.

City staff's recommendation is subject to the following conditions:

1. The total area of paved surfaces within the required front yard shall not exceed a maximum of 1,500 sq. ft.
2. The grant of the variance is specifically conditioned upon platted Lots 6 and 7, Block R, The Oaks Addition remaining one zoning lot, owned by a single owner of record and used for uses permitted on properties zoned R-1 "Single Family Residential."
3. The grant of the variance is in accordance with and pursuant to the design and location of the paved surface to be located within the required front yard as identified on the attached exhibit.

RECOMMENDED MOTION:

Adopt a resolution granting a variance to exceed the maximum limitation on total paved surface area within the required front yard on Lots 6 and 7, Block R, The Oaks Addition, subject to a maximum paved area of 1,500 square feet, and further subject to continued maintenance and use of the driveway for single-family residential purposes.

Attachments: Location map
 Proposed driveway exhibit
 Draft resolution
 Written statement from applicant

Chairman Smith announced that he was the applicant for Agenda Item 4.A. Smith recused himself from the Board in order to represent himself as the applicant. **Vice-Chair Rhein** presided for Agenda Item 4.A.

PUBLIC HEARING OPENED

Rhein opened the public hearing and determined that a quorum was present. **Cody Bird, City Planner** announced that proper notice had been in accordance with state law. **Rhein** asked board members to report any *ex parte* communications. No *ex parte* communications were reported.

Bird presented the staff report.

Pat Baer asked if notification had been sent to the Home Owners Association. **Van Willis** followed by asking if the HOA was aware of the project. **Smith** responded that the project has the approval of the Home Owners Association Design Committee. **Rhein** asked if the property was considered one lot or two lots, and how the 850 sq. ft. of allowable paving is applied. **Bird** replied that if the properties are platted as two separate lots and under the same ownership they are considered one zoning lot. The 850 sq. ft. of paving applies to the entire zoning lot. **Willis** asked if there was a presumption that the driveway was preapproved. **Smith** replied no. The driveway at this location would be nice to have but is not necessary to access the garage/pool house. **Rhein** asked for any closing comments. **Bird** commented no other written communications were submitted to City staff regarding this case. He added that Mr. Smith had spoken with him in his capacity as the Zoning Administrator early in the project to get an idea as to how the hearing process would work and what kind of timeline was involved. **Joe Waugh** asked if the building permit application required a driveway to access garages. **Bird** replied that there is not a requirement that accessory structures have driveways.

PUBLIC HEARING CLOSED

The board deliberated the findings of fact and adopted the written findings as presented in the staff report.

MOVED by Willis, seconded by Baer to adopt a resolution granting a variance to exceed the maximum limitation on total paved surface area within the required front yard on Lots 6 and 7, Block R, The Oaks Addition, subject to a maximum paved area of 1,500 square feet, and further subject to continued maintenance and use of the driveway for single-family residential purposes.

VOTE: 4-0

Smith returned to the bench and resumed the role of Chairman.

5.B. Request to Extend Approved Variances 180 Days – Menard, Inc.

DESCRIPTION: Request to Extend Approved Variances 180 Days

GENERAL LOCATION: Southwest corner of Patriot Ave. and Buckner St.

APPLICANT: Menard, Inc.

REASON FOR REQUEST: Extend variances approved for development of the site for a home improvement store

BACKGROUND:

- Menard, Inc. owns property at the southwest corner of Patriot Ave. and Buckner St. for the construction of a proposed home improvement store and accompanying outdoor storage yard.
- Menard, Inc. requested variances to increase the height of the fence around the outdoor storage yard as well as to increase the maximum allowed sign area for wall signs on the building.
- The Board of Zoning Appeals conducted the required public hearings on September 13, 2012, and subsequently adopted resolutions approving the requested variances.
- Approved variances are valid for a period of 180 days from the date of approval unless the applicant applies for an extension of the approved variances.
- Section 1003.F of the zoning regulations authorizes the Board to grant additional 180 day extensions of variances without further notice or hearing.
- The Board has previously granted extensions of the approved variances each 180 days since the initial approval.

STAFF COMMENTS:

- The last 180 day extension granted by the Board was set to expire February 27, 2016.
- Menard, Inc. submitted a letter January 29, 2016 requesting that the approved variances be extended 180 days.
 - A regular meeting of the Board was not scheduled during the time between when the request was submitted and the expiration of the previous 180 days.

- The request for extension was submitted within the 180 days of the previous approval, and therefore, the Board may still grant an extension.
- If the request is granted, the new expiration date of the approved variances would be September 27, 2016.

RECOMMENDED MOTION:

- Approve 180 day extensions of the approved variances to increase the height of a fence and to increase the maximum allowed square footage for wall signs.

Attachment: Written Application for Extension

Bird presented the staff report.

MOVED by Rhein, seconded by Willis to Approve 180 day extensions of the approved variances to increase the height of a fence and to increase the maximum allowed square footage for wall signs.

VOTE 5-0

5. ADJOURNMENT

MOVED by Baer, seconded by Smith to adjourn at 7:30 p.m.

VOTE: 5-0

Stephanie Cox
Recoding Secretary

Justin Smith
Chairperson