

**BOARD OF ZONING APPEALS
CITY OF PRAIRIE VILLAGE, KANSAS
MINUTES
TUESDAY, OCTOBER 1, 2024**

ROLL CALL

The meeting of the Board of Zoning Appeals of the City of Prairie Village, Kansas was held on Tuesday, October 1, 2024, at 6:30 p.m. in the Council Chambers of the Municipal Building at 7700 Mission Road. Chair Jonathan Birkel called the meeting to order at 6:30 p.m. with the following members present: James Breneman, James Kersten, Greg Wolf, Melissa Brown, Melissa Temple and Jeffrey Valentino.

The following individuals were present in their advisory capacity to the Board of Zoning Appeals: Chris Brewster, Multistudio; Nickie Lee, Deputy City Administrator; Mitch Dringman, Building Official; Adam Geffert, City Clerk/Board Secretary.

APPROVAL OF MINUTES

Mr. Wolf moved for the approval of the minutes of the June 4, 2024, Board of Zoning Appeals meeting as presented. Mr. Breneman seconded the motion, which passed unanimously.

PUBLIC HEARINGS

BZA2024-04 Variance of required side setback
 3507 W. 79th Street
 Zoning: R-1A
 Applicant: Jake Vanderlugt

Mr. Brewster stated that the applicant was requesting a side setback variance from 6' to approximately 5' on the west side lot line for an existing deck. The deck is approximately 8' wide and 13' deep and sits within a reverse corner on the northwest side of the home. The 8' width places the deck approximately 5' from the west property line.

The property is zoned R-1B and is used as a single-family dwelling. R-1B districts require 6' side setbacks, or 3' for open and uncovered porches, decks and patios less than 30" high. The deck is 36" above grade so it is subject to the 6' side setback requirement. It extends to the rear of the house remaining even with the side setback for approximately 13'. The adjacent house is approximately 9' from the house, but the deck is more than 12' from any adjacent structure due to the floor plan of the adjacent house.

Mr. Brewster said that Section 19.54.030 of the zoning regulations required the board to find that all five of the following conditions are met in order to grant a variance. If the board finds that any one of these conditions is not met, a variance should not be granted:

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.

The property is a 60' wide by 130' deep lot (the minimum lot width in R-1B is 60', although there are wider lots and irregular patterns of 80-, 100-, and 120' wide lot on blocks to the south and north. The house was built in 1951, prior to adoption of the zoning regulations and is a legal non-conforming structure. The R-1B zoning district was amended in 2018 to change the side setback from 4' to 6'. The deck is situated in a reverse corner of the building on the northwest side and has a door from the house onto the deck.

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 existing house and deck are legal nonconforming structures, and are situated approximately 5' from the west property boundary. The existing house on the adjacent lot is approximately 4' from the property boundary (9' separation of buildings) although the building is off set at the portion of the property where the deck is and is more than 12' from the deck. Both homes are single-story gabled structures approximately 17' high, and the deck is open and unenclosed with a privacy screen on the west side boundary.

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 existing house and deck are legal nonconforming structures, and a replacement that complies with the required setback would either involve shortening the deck to approximately 7' wide, lowering the deck two steps down from the doorway, or cantilevering the deck over foundational elements that comply with the setback.

D. Public Interest

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

The deck is a replacement of a current situation, with only a slight expansion towards the rear yard, not towards the adjacent property. The setback limit is generally intended for large structures between 30" and 29'; this structure is only 36" high and would remain open and unenclosed. Lower structures can encroach closer to the side property line than what is proposed in this case (up to 3' if below 30", while this deck is 5' at 36"). All of this activity occurs on the rear portion of the property and will not have any impact on the streetscape, or other property in the vicinity of these two lots.

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.

Side setbacks are intended to manage the relationship of adjacent buildings. In this case, the buildings will maintain a relationship similar to the current condition. The deck is proposed as a continuation of the side setback line of the principle structure, and will not encroach into the setback more than the principal structure or existing deck. The deck is at or below the first-floor elevation of the existing home and will remain open and unenclosed.

Mr. Brewster said that if the board finds that all five conditions can be met as required by state statutes and Section 19.54.030 of the Prairie Village Zoning Ordinance, then it may grant the variance. If the board does approve the variance, it should be subject to the following conditions:

1. That the variance be granted only to the extent shown with the submitted application and based on submitted plans.
2. The variance, if approved, shall be recorded with the County Register of Deeds within one year of approval.

Mr. Wolf asked if the deck had already been constructed prior to requesting a variance from the BZA. Mr. Brewster said that it had, and that the application for a variance had only been submitted after the side setback issue had been discovered by a codes officer.

Property owner Jake Vanderlugt and contractor Colin Gardner, 15717 Chadwick Street, Overland Park, were present to discuss the application. Mr. Vanderlugt noted that he had purchased the home from Mr. Gardner, and was unaware that the deck had not been constructed to meet City code. He added that he had become involved in the application process because Mr. Gardner had not been responsive to City staff. Aside from a railing that was added after purchasing the home, the deck was fully constructed by Mr. Gardner.

Mr. Valentino noted that there was a 6' fence on top of the deck, and expressed concern that its overall height was too tall.

Mr. Birkel asked if the deck's non-compliance was disclosed by the real estate agent that sold the home. Mr. Vanderlugt said that it was not.

Mr. Dringman stated that the building permit for the deck was submitted after the deck had been built.

After further discussion, Mr. Birkel opened the public hearing at 7:01 p.m.

Mr. Gardner said that he had not originally intended to build a deck at the property, but due to a steep grade in the back yard, it was installed for safety purposes.

Mr. Wolf asked Mr. Gardner whether he knew that he needed to get a permit prior to building the deck. Mr. Gardner stated that the deck was intended to be built at a height of 30" which did not require a permit, but once built, it ended up being 31". Mr. Dringman said that all decks required permits, but that decks 30" in height or less from grade could be within 3' of the side property line.

With no one else present to speak, Mr. Birkel closed the public hearing at 7:07 p.m.

Mr. Wolf asked what the consequences were for these types of code compliance violations. Ms. Lee said that it was a unique circumstance, but that it was being considered by the municipal court, and would likely result in a fine assessed on the contractor.

After further discussion, Mr. Wolf made a motion to approve the variance with the conditions recommended by staff, with a note encouraging the municipal court judge to take as strong an action as possible against the contractor for the violation, and to consider taking action against the seller's real estate agent for not disclosing the violation. Ms. Temple seconded the motion, which passed unanimously.

OTHER BUSINESS

None.

ADJOURNMENT

Chair Jonathan Birkel adjourned the meeting of the Board of Zoning Appeals at 7:19 p.m.

Adam Geffert
City Clerk/Board Secretary