

DRAFT MINUTES
Of the City of Crystal Lake Park
Meeting of the Board of Adjustment
Thursday, May 28, 2009
Frontenac City Hall, 7:30 p.m.

Board Members: Present: Susan Kusama, Chair; Jonathan Carey-Voris, Vice-Chair; Mary Elbert; Nancy Brooks; Amin Haider

City Officials: Present: Attorney Paul Martin, City Planner Ada Hood, Building Inspector Neil Cantwell, City Clerk and Recording Secretary Bonnie Taylor for Cathryn Terrell, and Court Reporter Karen Russo.

Preliminary Instructions Made by CLP Attorney Paul Martin:

The meeting was called to order at 7:30 p.m. to discuss the variance requests made by Kari Lomo and Tom Barrett, owners and residents of 2225 Cleek. Prior to the swearing in of city officials and residents, Paul Martin gave a thumbnail sketch of Missouri State Law as it applies to the granting of variance requests. He defined setbacks and made reference to the municipal code for Burden of Proof.* Martin emphasized that "hardship" is based on the conditions that are unique to the property and not personal to the owner. Something in the lay of the property must merit the granting of the Board's approval without changing the character of the street or compromising the comprehensive plan and existing building codes. Martin advised that a motion may be made to approve the variance as granted or grant it with conditions. If four of the members vote in the affirmative, then the motion passes. Before the meeting officially began, Martin introduced Ada Hood, the new City Planner replacing Building Commissioner John Littlefield, and Neil Cantwell, the new Building Inspector.

Pledge of Allegiance

Roll Call and Move to Approve the Agenda:

As all Board members were present and a quorum was constituted, Attorney Martin advised that the hearing begin. Following the pledge of allegiance and a roll call, the agenda was accepted as read.*. Carey-Voris corrected Sunroom to Greenhouse.

Old Business:

Susan Kusama reminded those present that the Board will meet when there is a submission made requesting a variance, and the meeting time will regularly fall on the fourth Thursday of the month.

Jonathan Carey-Voris proceeded to give an update on the previous meeting at which the owners of the property at 2122 East (District D) made a variance Request for greater roof height due to a lot that is not level. The Board of Adjustment granted the variance, but the Planning and Zoning Commission / Architectural Review Board voted unanimously to deny the drawings as presented. Although the footprint was in compliance with new setbacks, members felt that the design of the new home would not be compatible with the neighboring houses and would alter the look of the street. Members asked the representing architect to submit a modification of the design. Instead, the architect and owners withdrew the project from further consideration and plan to sell or rent the property.

Draft Minutes Board of Adjustment Meeting 5-28-2009 Variances for Lomo Residence 2225 Cleek Ct.

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New Business:

Ada Hood described her role in the review process and presented her findings to the Board accompanying her analysis with evidence that included eight (8) exhibits: 1) a certified copy of the Land Use regulations, 2) the CLP Comprehensive Plan, 3) the Zoning Map, 4) notices that were posted pursuant to Missouri statutory requirements, 5) the notice provided to property owners/residents at least 24 hours prior to the meeting date, 6) Ada Hood's memo dated May 24, 2009, 7) Neil Cantwell's memo dated May 21, 2009, and 8) architectural plans (11 sets) submitted to officials by the applicant on May 22, 2009 and distributed to Board members May 26, 2009. Typically, complete plans are submitted to Board members ten (10) days prior to the scheduled meeting for their thorough review.

Hood's memo summarizes the parts of the code that are applicable to the variance request within the context of CLP's comprehensive plan. She reminded the Board and those in attendance that the comprehensive plan reflects a concern about building too close to the City's streets, and that there has been discussion about reviewing land use regulations to determine whether the City needs to adjust setbacks. The purpose of the zoning code is to make certain that all residents and properties are in compliance with it; however, some properties present difficult conditions for building and so, the code cannot always be applied uniformly to each lot. Therefore, in submitting a request for variance, a resident may make the case for conditions that present hardship.

Hood cautioned that variances adhere to the land and not to the property owner, because any changes the owner may make as a result of the granting of the variance are irreversible. Since the criteria for building applies to all residents, it is the responsibility of the Board to determine whether the building complies and, if there is a request for variance, the variance is justified using the burden of proof ordinance.* The criteria for decision-making is based on 1) how substantial the variance is in relation to the requirement, 2) the potential effect of the increased population density produced on the available government facilities, 3) the potential to produce a substantial change in the character of the neighborhood or a substantial detriment to adjoining property owners, 4) the ability to obviate the difficulty by some method, feasible for the applicants to pursue, other than the variance, and 5) in view of the manner in which the difficulty arose and considering all of the above factors, whether the interest of justice would be served by granting the variance. The ordinance goes on to say: In presenting any application for a variance, the burden of proof shall rest with the applicant to prove that the harm complained of is not self inflicted. Hood recommended that the evidence be examined to determine if the burden of proof had been met. There were no questions at this point in the meeting, so owner Lomo proceeded with the presentation of her plans for renovation and addition as well as the specifics for each variance request with discussion and decisions to follow.

Lomo introduced her presentation with a list of goals in her plans for the renovation and addition. She wants to maintain the integrity of the house, rather than create a new construction. In addition to using the existing structure, she wants to be mindful of green space and avoid removing trees, if possible. As part of her argument, Lomo distributed one letter and two emails from neighbors expressing support of her plans.* One neighbor (Jim Gerst, 2233 Cleek) was in attendance to testify on her behalf.

Kusama suggested that the Board consider each request separately beginning with the carport.

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Carport Enclosure and Extension of it into 15' Setback:

City Planner Hood made it clear that if an extension or overhang, such as an eave, extends into the setback, there is no need for a variance. The variance is needed when the extension is structural. Lomo argued that by enclosing the carport, access to the house would be limited and would require her to walk out of the (new) garage to enter it. The additional space would allow her more storage for trash and recycling containers. Attorney Martin asked if the owners of the property at 2224 Cleek had been granted a variance when they converted their carport into a garage. No one could supply the answer.

Greenhouse Addition into rear yard 25' Setback:

In resident Lomo's presentation, she stated that the proposed greenhouse to be constructed at the rear of the existing house structure would encroach into the setback by 7'6". Lomo pointed out that the greenhouse would be "submerged" from view because of the 6' privacy fence on the property line and the floor of the greenhouse being at basement level. The fence extends several feet beyond the end of the concrete pad used for a patio. In determining the need for the specific size of the greenhouse, resident Marianne Stuart (11742 South) asked if the greenhouse was a modular structure. The representative constructing the greenhouse said yes, but qualified his answer by saying he would have to make certain modifications to fit within the existing wall and on the grade. A question was asked by Board member Haider whether the patio was out of compliance since it extended beyond the building line. Hood replied that, with flatwork, the code does not apply—only with a structure. Martin requested clarification on the lot size. It is 98.5 by 99.4 feet, a common lot size for District C. Residents Rita Brinkmann (2104 Oak) and Stuart requested clarification on the setbacks after encroachment. After the greenhouse, the setback from building line to property line would be 17'3" approximately 8' less than the required 25 feet. After the garage, the setback from building line to property line in the front of the house would be approximately 13'5".

Attorney Martin suggested that Board Chair Kusama ask Board members and attendees if anyone wished to speak in favor of the requests and if anyone wished to speak against them. No comments were made.

There were questions from Board members about what precedents these variances would be setting. Martin and Hood reminded members that each request is handled on a case-by-case basis, and the Board is not bound to make similar grants unless they deem them justified. Other questions posed concerned hardship and whether the variances were substantially different from the code requirements, if the house would appear too close to the street, and what the advantages would be to the neighbors. Regarding the carport, Carey-Voris remarked that the garage would make storage and trash less visible to the street and that Lomo's neighbors seem to be in support of the plans.

Vote on Carport Extension:

Martin asked the Board if it felt ready to make a motion. Carey-Voris moved to approve the carport extension, and Kusama seconded. Taylor took the roll call for a vote: Kusama-aye, Carey-Voris-aye, Elbert-aye, Brooks-aye, and Haider-aye. The vote was unanimously in favor, and the motion to grant a variance for the carport/garage extension was passed.

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With regard to the second variance request, Attorney Martin reminded the Board that they could grant the variance with amendments to specify certain requirements. Questions were posed by the Board as to why the greenhouse could not be located elsewhere on the property. Lomo replied that a southern location would block light to the house and may cause existing trees to be felled. Interested in the issue of density on a lot, Elbert added that a rear greenhouse would make the structure less visible from the street. There would be more of a perception of green space by leaving the south side of the yard open. Other questions concerned proper screening of the greenhouse, the legality of the privacy fence on the property line, and whether the greenhouse at some point could be converted and added to the structure. Again, the Board discussed the extent of the variance and precedence. Building Inspector Cantwell reminded the Board that a fence on the property line should only be 5 feet in height and a percentage of see-through. He indicated that if the fence were replaced (sections or support posts), the non-conforming fence would have to be made conforming unless there was another variance request on fencing. Attorney Martin suggested modifying the variance request in order to require maintenance of the fence or shrubs for screening purposes.

Vote on Greenhouse Addition:

Kusama made the motion to approve the greenhouse addition provided the addition would be used only for a greenhouse of the same dimensions proposed and constructed as in the owner's Exhibit A* and that, if the fence is replaced, it would be replaced in compliance with the existing code, or, if the fence is removed, the owner is required to install shrubs for screening purposes. Carey-Voris seconded the motion to approve the amended variance request. Taylor took the roll call for a vote: Kusama-aye, Carey-Voris-aye, Elbert-aye, Brooks-aye, and Haider-aye. The vote was unanimously in favor, and the motion to grant a variance for the greenhouse addition was passed.

It was discussed that City officials Ada Hood, Neil Cantwell, and Paul Martin need to clarify the Building Permitting Procedures with regard to the specific steps required for making application and submission of plans for review, and that these amendments would be presented to the Board of Alderpersons and to the Planning and Zoning Commission/Architectural Review Board at their next regularly scheduled meetings.

Adjournment: 9:00 p.m. The next meeting will be scheduled when a variance request is submitted. The plans for the Lomo residence will be submitted to Planning and Zoning/Architectural Review Board Thursday, July 9.

MINUTES RECORDED BY _____

**Sitting in for City Clerk Cathryn Terrell,
I am Bonnie Taylor**

ATTEST: _____

Susan Kusama, Chair, Board of Adjustment/Presiding Officer

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