

BOARD OF ZONING APPEALS

**CITY OF MERRIAM, KANSAS
9001 W. 62nd ST.
COUNCIL CHAMBERS**

MINUTES

**June 15, 2016
7:00 pm**

The Board of Zoning Appeals meeting for the City of Merriam, Kansas, was called to order by Vice Chairman Bill Bailey on Wednesday, June 15, 2016, at 7:00 p.m. in the Council Chambers with the Vice Chairman inviting everyone present to participate in the Pledge of Allegiance to the Flag.

I.

ROLL CALL

Members Present: William Bailey, Vice-Chairman
Russ Harmon, Secretary
Mitch Fowler
Cole Stephens

Members Absent: Shawn McConnell, Chairman
Joseph Kronawitter
Terrie Stanker

Also Present: Bryan Dyer, Community Development Director;
Nancy Yoakum, Recording Secretary

II. APPROVAL OF MINUTES OF AUGUST 19, 2015

Vice Chairman Bill Bailey stated that the BZA board members had received a copy of the August 19, 2015 meeting minutes, and asked if there were any corrections or additions.

Hearing no comments, Vice Chairman Bill Bailey entertained a motion.

MITCH FOWLER MOVED THAT THE MINUTES OF THE BOARD OF ZONING APPEALS MEETING OF AUGUST 19, 2015 BE APPROVED. COLE STEPHENS SECONDED THE MOTION. THE MOTION WAS UNANIMOUSLY APPROVED.

III. ITEMS OF BUSINESS

1. Application V-1-16 – Lindell Clark – 6626 Goodman Dr.

Vice Chairman Bill Bailey presented to the BZA board members a request for a variance from the Merriam Zoning Regulations.

Community Development Director Bryan Dyer stated that the subject property is located at 6626 Goodman Dr. and is zoned R-1 (Single Family Residential) District. The applicant is requesting a large driveway on the north side of the property.

Mr. Dyer reviewed the site map and neighboring properties. Mr. Dyer stated that the applicant owns approximately .7 acres and also owns the vacant property immediately to the rear of his residence which is approximately a half acre.

Mr. Dyer stated the applicant's garage sits to the north side of his house and he is requesting to add approximately 1,300 sq. ft. of additional driveway. The driveway is going to be in his front and side yard. Because the driveway will be in his side yard, the applicant will need three (3) variances. The first variance is having a driveway forward of the front building line, exceeding 12 ft. in width. The second variance is the driveway between the front and the rear building line exceeding 12 ft. in width. The third variance is no driveway extension which is not parallel to the driveway may exceed 12 ft. in width.

Mr. Dyer displayed and reviewed the applicant's proposal. The applicant is requesting a variance to be granted to allow a 36 x 40 ft. extension, about 1,300 sq. ft. The applicant also shows a possible accessory structure that will not require a variance.

Mr. Dyer stated that the applicant has ample side yard from the new driveway to the north property line. The new driveway will be approximately 54 ft. from the north property line. Typically, side yard set backs are 7ft. and for a driveway are 3ft. There is a significant amount more side yard than what is required in a R-1 (Single Family Residential) District.

Mr. Dyer stated that the applicant has a side entry garage which is atypical for a single family home. The applicant has an existing double car wide driveway. The current driveway is approximately 1,800 sq. ft. and the applicant is looking for a 1,300 sq. ft. addition, which comes to about 11% driveway coverage for the lot that the house sits on. The applicant also owns the lot to the west of his house.

Mr. Dyer stated that staff looked at surrounding situations that are similar to what the applicant is proposing. There is a home directly across the street to the east that is on a much smaller lot and has a driveway surface of 1,065 sq. ft. which is about 10% lot coverage which is very similar to the lot coverage the applicant is proposing.

Mr. Dyer stated that as part of the BZA deliberations both State Statutes and Merriam Municipal Code require that all five (5) conditions are met. Mr. Dyer then reviewed those conditions and staff's findings.

- (a) that a variance 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 must is not created by an action of actions of the property owner or the applicant;**

Staff Finding: The applicant is requesting a variance be granted to allow for the installation of a thirty-six (36) ft. by forty-five (45) ft. driveway which is greater than allowed by the Merriam Code. The home has a side entry garage, which is reasonably unique in Merriam. The size of the lot is approximately 30,000 sq. ft. which is a larger size than most lots in Merriam.

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

Staff Finding: The proposed driveway expansion is consistent with the existing zoning and surrounding uses. The granting of a variance for this purpose will not adversely affect the rights of adjacent property owners or residents.

(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 Finding: A denial of this application will prevent the property owner from developing the property in the fashion that he has requested and additionally will hinder his desire for a detached accessory structure.

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

Staff Finding: This type of development is similar to the development that has occurred on adjacent properties. Staff finds that it will not have any adverse effect if the request of variance is granted.

(e) That granting the variance desired will not be opposed to the general spirit and intent of the zoning regulation;

Staff Finding: The applicant's lot is approximately three (3) times larger than a standard R-1 lot, additionally there are no immediate neighbors to the north, and staff finds that the request of the variance will not be opposed to the general spirit and intent of the zoning regulations.

Mr. Dyer stated that based upon the analysis discussed that the application meets the minimum requirements set forth in the state statutes and Merriam Municipal Code to be considered for approval with the following conditions:

1. The applicant obtain all required permits including building and right-of-way permits.
2. The applicant will not increase the width of the driveway at the street, property line or driveway approach.
3. The applicant will comply with all applicable zoning, code and building regulations.
4. The applicant will obtain a building permit within 12 months of the BZA approval of the variance otherwise the variance becomes null and void.

5. The driveway extension or parking area shall not be used for business related purposes.
6. Parking of RV's, campers, and trailers will be done in compliance with the Merriam Code.
7. The future detached garage shall not be constructed forward of the existing front building line of the single family residence.

Mr. Dyer stated he would answer any questions of the BZA board members and stated the applicant was present as well.

Vice Chairman Bill Bailey asked if the BZA board members had any questions for Mr. Dyer, hearing none he asked if the applicant would like to come forward.

Lindell Clark, 6626 Goodman St., Merriam, KS 66202 introduced himself to the BZA board members.

Mr. Clark stated that if the code were in effect that he would only be allowed more than 12 ft. in width which isn't enough room to be able to turn to enter into the driveway. Mr. Clark stated he wants to add additional parking because his wife is unable to access the driveway to the garage if his vehicle is parked on the driveway.

Vice Chairman Bill Bailey inquired if any of the BZA board members had any questions for the applicant.

Board member Russ Harmon inquired why Mr. Clark needed a large driveway extension and wanted to know what his plans were for the space.

Mr. Clark stated he wants to be able to park more vehicles.

Board member Russ Harmon stated to the applicant that vehicles being parked there cannot be used for business purposes.

Mr. Clark agreed.

Board member Russ Harmon stated that he looked at Mr. Clark's property and it appeared to him and apparently to Mr. Clark's neighbors that there is a business being run out of the home, and Mr. Harmon asked Mr. Clark if he was in fact running a business out of his home.

Mr. Clark stated that he was not running a business out of his home. Mr. Clark stated he has two large trucks and he is getting ready to sell one of the trucks.

Board member Russ Harmon stated he saw two large trees near the driveway and inquired if Mr. Clark had any plans to remove the trees.

Mr. Clark stated that he was planning on keeping the trees.

Board member Russ Harmon stated if the BZA board members were to approve the application he is concerned about working around the trees and the roots being cut and would recommend that Mr. Clark be very careful working around the trees.

Mr. Clark stated he would not be putting in a foundation that he would only be putting in a surface slab.

Vice Chairman Bill Bailey inquired if there would be a water ring placed around the trees so the trees can absorb water and not expire.

Mr. Clark stated that he would be 8ft. away for the trunk of trees.

Board member Cole Stephens inquired if Mr. Clark had made any consideration for drainage such as the installation of a French drain and understands that drainage is one of the concerns of the neighbors.

Mr. Clark stated that he hadn't planned installing a drain, but if there were a problem with the drainage on the north end of his property he would consider putting in a retention pond.

Vice Chairman Bill Bailey asked the if the BZA board members had any additional questions for the applicant, hearing none, he asked if anyone from the public would like to speak.

Bill Pugh 6556 Goodman Dr., Merriam KS 66202. Mr. Pugh introduced himself to the BZA board members.

Mr. Pugh stated that Mr. Clark stated he is not running a business out of his home and he was unable to find any records that there is a business under his or his wife's name. Mr. Pugh submitted a picture to the BZA board members that was not submitted prior to the meeting. Mr. Pugh stated he does not know how many people live in Mr. Clark's house but that there are two box trucks, a flatbed truck and a station wagon. Mr. Pugh is concerned that Mr. Clark is going to have those same vehicles and possibly more if the variance is approved. Mr. Pugh stated the picture he provided the BZA board members shows that one of the trucks has construction trash in the back. Mr. Pugh stated that if Mr. Clark is not running a business then why does he have construction trash. Mr. Pugh stated there are too many trucks for a residential neighborhood and it makes it hard for people in the neighborhood to sell their house for fair market value.

Mr. Pugh provided a letter from a realtor stating his opinion of how having a neighbor that appears to be running a commercial business will devalue the retail value of surrounding homes.

Mr. Pugh stated he feels that Mr. Clark's request will affect the general welfare and safety of others because there is a vacant lot where there is traffic of kids on bicycles, kids walking with parents and it is a serious safety hazard as someone could get hurt because of the trucks on Mr. Clark's property backing in and out. Mr. Pugh stated that Mr. Clark should enter off of Hemlock instead of Goodman Dr. to avoid the foot traffic going to Antioch Park.

Mr. Pugh is also concerned with the water run-off. Mr. Pugh reviewed his storm water concerns on the site plan that was displayed. Mr. Pugh is concerned with Mr. Clark adding more concrete to his lot that is will create more of a drainage problem. Mr. Pugh stated that he is against the variance.

Mr. Clark asked if he would be allowed to approach the BZA board. Mr. Clark stated that he is in the process of selling one of his trucks. Mr. Clark stated that he has rental properties and that is why there is construction trash in the back of one of his trucks. Mr. Clark stated that the vacant lot is wooded and that there is an access road that doesn't have any curbs to direct the water. Mr. Clark has not changed any elevations to his property that would affect the neighbors water concerns.

Vice Chairman Bill Bailey inquired if Mr. Clark had any plans to build a large garage on his property.

Mr. Clark stated that he would like to build a 24sq. ft. x 24sq. ft. garage.

Vice Chairman Bill Bailey inquired if the garage would be to store vehicles or for storage.

Mr. Clark stated it would just be for storage of items.

Vice Chairman Bill Bailey inquired if it would be to store construction material.

Mr. Clark said it would probably be a combination of items and perhaps some construction materials.

Vice Chairman Bill Bailey inquired if the BZA board members had any additional questions for Mr. Clark.

Board member Cole Stephens inquired if all of the vehicles on Mr. Clark's property were licensed and insured.

Mr. Clark stated they were licensed and insured.

Vice Chairman Bill Bailey asked if there was anyone else from the public that would like to speak.

Robbie Robinson 6574 Goodman Dr., Merriam, KS 66202. Mr. Robinson introduced himself to the BZA board members.

Mr. Robinson stated that Mr. Clark had applied with the city before to build a Quonset hut to store construction material but was denied. Mr. Robinson has a tractor trailer of his own that is licensed and insured but he pays rent to park it off site from his residence. Mr. Robinson states that Mr. Clark is in the construction business but most of his work was associated with churches.

Mr. Robinson is concerned with water run off on his property. He currently has a sump pump and window seals. Mr. Robinson stated there are railroad ties in the wooded area and when there is excessive rain, there are waterfalls that come over the railroad ties.

Mr. Robinson doesn't know if Mr. Clark is running a business from his home or not, but states most people do not drive a box truck unless they are hauling materials for a business.

Mr. Robinson is opposed to Mr. Clark's application because he is concerned about an increase in possible water runoff, and a construction company adjacent to his property because the largest investment a person will ever make is their home and doesn't want the value to depreciate.

Vice Chairman Bill Bailey inquired if there was anyone else from the public that would like to speak.

Brenda O'Dell Pugh, 6556 Goodman Dr., Merriam, KS 66202. Ms. O'Dell-Pugh introduced herself to the BZA board members.

Ms. O'Dell-Pugh stated she is adamantly against the approval of this variance. Ms. O'Dell-Pugh stated that Mr. Clark's residence already looks like a commercial business with three large trucks that are parked there daily which is not acceptable in a residential zoned district. Ms. O'Dell-Pugh stated the letter from Reece Nichols real estate confirms that Mr. Clark's property will devalue the surrounding properties and make it more difficult for anyone to sell their property. Ms. O'Dell-Pugh states that no one knows what Mr. Clark plans to do with the extra driveway space for which he is requesting the variance. Ms. O'Dell-Pugh stated in the past Mr. Clark has had a bobcat parked on his property and that Mr. Clark has had a history of pushing the envelope with the city.

Ms. O'Dell-Pugh states that Mr. Clark tried to block the wooded path adjacent to his property with a 6ft. pile of gravel which the city made him remove. After that Mr. Clark tried blocking the path with a 6ft. pile of leaves which the city addressed as well. Ms. O'Dell-Pugh heard he did this because Mr. Clark didn't like all the people using the path to go to the park as he was concerned about the safety of the equipment on his property.

Ms. O'Dell-Pugh stated the neighbors have no guarantee of what he will do with the additional driveway space that is already in addition to the circle drive he has.

Ms. O'Dell-Pugh is concerned with the drop in elevation and the deluge of water that already runs over to neighboring properties and is concerned that if Mr. Clark has additional paved surface it will exacerbate the problem that already exists. Ms. O'Dell-Pugh feels it would be irresponsible for the BZA board to approve a variance for one individual to pave such a large area that could subject three (3) to four (4) neighbors to the south to more water runoff and flooding. Ms. O'Dell-Pugh thanked the BZA board for acknowledging that the residents have a right and a reasonable expectation to enjoy and protect their property as well as the neighborhood.

Vice Chairman Bill Bailey asked if anyone else from the public would like to speak.

Fred McCraw 6555 Goodman Dr., Merriam, KS 66202. Mr. McCraw introduced himself to the BZA board members.

Mr. McCraw stated he is concerned about Mr. Clark using his home for a business and being that it is a residential neighborhood, he feels the variance is inappropriate. Mr. McCraw is concerned about Mr. Clark coming to city for a permit to build a garage if the driveway variance is granted, and the process will never end. Mr. McCraw is concerned about the drainage the variance will create and how this will affect his neighbor's properties.

Vice Chairman Bill Bailey asked if there was anyone else from the public that would like to speak.

Mr. Dyer suggested that the BZA board members discuss the issues, ask any additional questions and state the position of each BZA board members prior to making a motion in order to determine if there is a majority of members in support of approval or denial of the request.

BZA board member Russ Harmon inquired to Mr. Dyer if there is a limit of how many vehicles Mr. Clark would be able to park on his property.

Mr. Dyer stated there are no limitations, however there are city ordinances that limit the parking of RV's, trailers and boats as well as construction equipment. Mr. Dyer stated that as long as the vehicles are operable, have current tags, no flat tire, there is not a limit on the number of vehicles.

BZA board member Cole Stephens inquired to Mr. Dyer if there is any civil engineer that would say if the driveway were to be put in how much more of an impact it would have in relation to drainage, and if it could be mediated with a drain.

Mr. Dyer stated that due to the small amount of impervious surface that Mr. Clark is requesting a drainage study is not required by city code. Mr. Dyer stated since the area is less than one (1) acre in size a drainage study is not required. Mr. Dyer stated that if there is a recommendation from the BZA board members to add a stipulation regarding drainage to the variance it may be appropriate.

BZA board member Cole Stephens inquired to Mr. Dyer how much of an impact of Mr. Clark's variance will have on neighboring properties.

Mr. Dyer stated that a stipulation could be added to the variance being granted if the drainage is a concern of the BZA board members.

BZA board member Mitch Fowler stated that he is he is reluctant to approve the variance due to the concerns of the neighbors.

Vice Chairman Bill Bailey suggested that each of the BZA board members state their position.

BZA board member Russ Harmon stated that he has reservations about the parking of vehicles and some appear to be business related, and that he doesn't see the need to have a parking area that large in a residential zoned district. Mr. Harmon stated he would vote to deny the variance.

BZA board member Cole Stephens stated he is concerned about the comments from the neighbors, however considering the adjacent property has a similar driveway percentage of coverage he would vote to approve the variance with the stipulation of adding a drain be installed to ensure there would be no water runoff.

BZA board member Mitchell Fowler stated he is reluctant to approve the variance because of the comments from the neighbors about the vehicles and has concerns about additional water drainage.

Vice Chairman Bill Bailey stated he is concerned about the parking of vehicles, the applicant coming in for future building permits for large building structures and is concerned about water runoff. Mr. Bailey stated that even though having a business outside of a residence, sometimes the business can carry over to the residence and property. Mr. Bailey stated he would vote to deny the variance.

Mr. Dyer stated that if the motion is for a denial the motion should include the reason for the denial in relation to one or more of the state and city required conditions that are in the staff report.

RUSSELL HARMON MOVED THAT THE BOARD OF ZONING APPEALS DENY APPLICATION V-1-16 AS IT IS NOT AN UNNECESSARY HARDSHIP TO THE PROPERTY OWNER AS THERE IS AMPLE SPACE IN HIS REAR YARD TO CONSTRUCT A LARGE DRIVEWAY. MITCHELL FOWLER SECONDED THE MOTION. COLE STEPHENS VOTED NAY. THE MOTION WAS APPROVED 3 (THREE) TO 1 (ONE) WITH BZA BOARD MEMBER COLE STEPHENS VOTING NAY.

2. 2016 Election of Officers

RUSS HARMON NOMINATED BILL BAILEY FOR CHAIRMAN; MITCHELL FOWLER SECONDED THE MOTION. THE MOTION WAS UNANIMOUSLY APPROVED.

BILL BAILEY NOMINATED MITCHELL FOWLER FOR VICE-CHAIRMAN. MITCHELL FOWLER DECLINED.

RUSS HARMON NOMINATED COLE STEPHENS FOR VICE CHAIRMAN. MITCHELL FOWLER SECONDED THE MOTION. THE MOTION WAS UNANIMOUSLY APPROVED.

BILL BAILEY NOMINATED RUSS HARMON FOR SECRETARY. COLE STEPHENS SECONDED THE MOTION. THE MOTION WAS UNANIMOUSLY APPROVED.

IV. BUSINESS FROM THE FLOOR

None

V. UNFINISHED BUSINESS

None

VI. ADJOURNMENT

There being no further business, **MITCHELL FOWLER MOVED FOR ADJOURNMENT.**
The meeting was adjourned at 8:09 p.m.

Respectfully submitted,

Bryan P. Dyer, AICP
Community Development Director

Approved: 12/21/2016