

**LAKESWOOD BOARD OF ADJUSTMENT
PUBLIC MEETING
MINUTES**

October 6, 2009

MEMBERS PRESENT:

Alan Beshany
Michael Carollo
Gene Kohls
Madie Martinek
Sharon Montague
Heidi Snyder
Cathy Young

STAFF PRESENT:

Timothy Gelston, Manager, Development Review
Mark Doering, Principal Planner, Development Review
Walter Jauch, Secretary to the Planning Commission

Following are the minutes of October 6, 2009 Lakewood Board of Adjustment Public Meeting. A permanent set of these minutes is retained in the office of the City Clerk.

ITEM 1: ROLL CALL

The roll having been called, a quorum was declared and the following business was conducted:

ITEM 2: APPROVAL OF MINUTES OF THE SEPTEMBER 1, 2009 REGULAR MEETING

Minutes from the Regular Meeting of September 1, 2009 approved by unanimous voice vote.

ITEM 3: VM-09-001 – WHITTENBURG VARIANCE

There are three requests from the minimum standards in the 1-R zone district with this variance application. They are:

1. To allow the existing lot to be split into two residential lots with a minimum lot width less than the required 100 foot minimum lot width. The applicant is seeking to create lot widths of 72.4 feet and 85.6 feet.
2. To allow the side setback to be a minimum of 5 feet on the south side of the proposed lot that would include the existing home. The required minimum side setback is 15 feet.

3. To allow the side setback to be a minimum of 5 feet on the north side of the proposed lot that would be vacant. The required minimum side setback is 15 feet.

MR. RODNEY WHITTENBURG, Applicant, 2490 Garland Street, Lakewood, CO 80215, presented information about his requested variances. Originally the property was part of the town of Edgewater. His father was one of the first to purchase property in the Kawanee Gardens subdivision area. His grandparents eventually purchased the property on Garrison Street adjoining the subject property. He has resided on this property since his birth and has seen the development of the area. He purchased the property from his stepmother when his father passed away and lived there with his family. A mother-in-law unit was built for the grandparents to live close by. He has two sons that have expressed an interest in the property when he passes on. One son would take the north part of the property, the other the south lot with the intent of building a new dwelling on that portion. His oldest son would live in the dwelling on the north while the new home on the south portion is being built. Once completed, the eldest son would move into the new dwelling, the youngest son would take possession of the older home on the north portion, and they would do away with the rear dwelling unit. If this request is denied, then the property would have to be sold or rented. He feels that it would be better for his family, and the neighborhood, for this variance request to be granted.

MR. VINCE HARRIS, Baseline Corporation, 1536 Cole Blvd, Golden, CO, 80401 spoke on behalf of the Applicants. Eric and Carol Whittenburg would like the opportunity to build a home on the southern portion of property and raise their family on this property. The lot widths proposed are very similar to nearly all of the 151 lots platted in the 1920s. Essentially, most of the lots were platted approximately one acre in size and many have since been split into one-half acre sizes. In 1981, the City of Lakewood remapped and rezoned the entire city creating a new Zoning Ordinance and standards. Many of the lots became non-conforming due to new 1-R district lot width standards. By 1990, 120 of the 151 Kawanee Gardens lots had been split with approval from either Jefferson County or the City of Lakewood. Since 1990, five more lots have been split with the approval of the City of Lakewood. There are now only 17 lots left in the Kawanee Gardens subdivision with their original large lot size of approximately one acre. He put to the Board that the character of the Kawanee Gardens neighborhood is one-half acre lots. He commented that the 1-R district standards call for a minimum size of 12,500 square feet and the proposed subdivision will result in lot sizes of approximately 18,600 to 20,000 square feet. The Applicants are respectfully requesting that they be allowed to split their property as so many others have done since the 1920s. He further stated that the Applicant concurs with all recommendations presented in the Staff Report supplied to the Board.

MS. CAROL WHITTENBURG, Applicant, 5649 S Swadley Court, Littleton, CO 80217, wished to convey to the Board and the neighbors that they appreciate what the area offers to property owners and that they understand the neighbors care about their community. She stated that their intentions are to build a new home in the neighborhood, live in that home, and raise their children next to the grandparents. They do not have a goal of ruining the character of the neighborhood, but wish to enjoy the neighborhood for the same reasons as the other neighbors. Recently remodeled or built homes have improved the area and she appreciates that these owners have valued the neighborhood enough to invest in it. They also value the neighborhood enough to invest in it by building a new home.

MR. ERIC WHITTENBURG, Applicant, 5649 S Swadley Court, Littleton, CO 80217, stated that he was privileged to be raised on this property and has great memories of growing up at 2490 Garland Street. His children have been raised on this property, too, but only temporarily. They had moved away as it was not practical for a growing family to live in a two-bedroom home. They hope to pass this land along to future generations of Whittenburgs. They are not requesting the changes to this property to jeopardize the area, but to enjoy the benefits it provides.

MR. HARRIS wanted to point out that the Applicant is supplying 21 signatures by neighboring property owners of support to the Board. They were entered into the record as Exhibit #2

MR. MARK DOERING, Principal Planner, requested that the staff report, case files, Lakewood Zoning Ordinance and Subdivision Ordinance, the Comprehensive Plan, Community Resources Master Plan, all amendments, neighborhood and corridor plans and all associated materials be entered into the record.

MR. DOERING pointed out that a letter was submitted in opposition to the variance from Mr. Roger Schneider after packets were sent to the Board and this letter is being supplied to the Board tonight.

MR. DOERING stated that this variance is requesting relief from the 1-R zone district standards for minimum lot width and setback in order to subdivide the property. If the Applicant's requests are granted in this hearing, then they would be required to move through the subdivision process as the next step. The Board has the authority to grant variances on numerical items, such as heights, setbacks, lot widths, lot area, and parking spaces. The Board cannot grant variances to the use of a property, but can grant variances from the numeric standards of a particular zone district.

The Applicants are proposing to split this property into two lots with a property line running east to west, approximately through the middle of the property. The northernmost property has a dwelling and carport, the southernmost property is currently vacant with a new single-family dwelling to be built in the future.

The Kawanee Gardens area was subdivided in 1928 with 151 lots and homes were built in that year. In 1941, Jefferson County zoned the properties R-1. The City of Lakewood incorporated in 1969 with a zoning designation given to the area at that time of R-2. The R-2 zoning allowed single-family and two-family dwellings in the area. The R-2 designation allowed a single-family lot to be 75 feet wide and a duplex property to be a minimum of 100 feet wide. Also, the R-2 zone district allowed one side setback to be a minimum of 5 feet.

The majority of lots had been split prior to 1975. In 1975, the City of Lakewood and the State of Colorado passed subdivision regulations that require a formal subdivision process to approve separate parcels of land for sale. Prior to 1975, approximately 134 of the Kawanee Gardens lots had been split without benefit of a subdivision.

In 1981 the City of Lakewood rezoned the Kawanee Gardens lots to a 1-R zone district. The purpose was to allow large animals on the property, to support the efforts to remove the ability to have two-family dwellings, and to minimize the ability to perform a flag lot subdivision. Since then, 5 subdivisions have been approved with 3 of those receiving a variance in order to allow the subdivision to occur.

Public Comment OPENED at 7:44 p.m.

MR. DAVID GULBENKIAN, 2475 Garland Street, Lakewood, CO 80215, read a the letter from Mr. Roger Schneider who resides at 2525 Garland Street, Lakewood, CO 80215 that was submitted on October 1, 2009 as Exhibit 1. He stated that the 1981 zoning designation came about as a result of a petition that he had personally circulated. This petition in 1980 was to stop a subdivision taking place at 2421 Garland Street. He stated that this petition had overwhelming support from the whole block , 20th Avenue to 26th Avenue, and also the adjacent parts of Hoyt Street. The City Council was sympathetic to the cause, but the existing 2-R zoning gave them no choice. However, when the Planning Department completed the rezoning they used the evidence of this petition to change the designation to 1-R. He feels that this area enjoys a bit of the country due to the big lots. They have a special area and the residents appreciate this. He fears that if this property is subdivided it will create a precedent and those who are selling their properties will subdivide them in order to maximize the dollar amount they can get.

MS. LINDA SUNDINE, 8315 W 19th Avenue, Lakewood, CO 80215, President of the Morse Park Neighborhood Organization. The Morse Park Board is in opposition to this request, as they believe this should be a rezoning and not a variance request since the changes would result in major differences to the property. They are concerned that this request will set a precedent and want to see this case presented to the Planning Commission.

MR. BRIAN PAULSON, 1810 Brentwood Street, Lakewood, CO 80214, Treasurer of the Morse Park Neighborhood Organization. He believes that this should be a rezoning request. He stated that the Staff Report is sympathetic to the Applicant's request and defies the rules of the 1-R zoning at every turn. He does not see how denying this request, and it's subsequent subdivision, creates any type of hardship for the property owners. He asked why the family, who owned the property in 1981 when the zoning designation was changed, chose not to subdivide at that time like other property owners. He pointed out that of the five of the subdivisions approved since the rezoning, three were for variances to subdivide properties that were non-compliant with the 1-R zoning because they had two single-family residences on the property. The granting of these variances allowed the subdivision of those properties into two lots, each with one dwelling and in compliance with the 1-R zoning. He further stated that these subdivisions were not opposed by adjoining landowners. This is not the case with this request.

He is not sure why the Board now has the authority to grant a variance up to 25% for minor variances, but believes major variances should be considered more conservatively. Parcel 'B', the vacant lot is proposed to be 72.4 feet wide, a variance of 27.6% from the required 100 foot width.

He mentioned that, according to the City's website, the Board hears and makes decisions on requests by property owners for variances from zoning regulations. The most common requests relate to fences, setbacks, and building heights. The Board was not established to circumvent the rezoning process, as he believes is the case with the Whittenburg's request.

MR. PAT CRESS, 2550 Garland Street, Lakewood, CO 80215 stated that he favors the granting of the Whittenburg's request and doesn't understand why the neighbors are not supportive. He believes that a one-half acre lot is still a large lot. He pointed out that the Morse Park Neighborhood Organization's statement that the Whittenburgs should have subdivided in 1969 should recognize that the grandfather made that decision, and Rod Whittenburg did not purchase the property until 1985. He stated that most of those in opposition are people that live on one-half acre lots and are not considering maintenance and costs of larger lots. He further stated that this community is not a one-acre area as there are few lots of that size and that Rod is only matching the neighborhood.

MS. PHYLLIS HENDRICKSON, 1801 Brentwood Street, Lakewood, CO 80214, founder of the Morse Park Neighborhood Organization. She stated that one of the major objectives of the Organization is to protect the uniqueness of this part of the City. They have some different features to offer the City in comparison to newer parts. One of these features is the large lots within the whole of Morse Park. The benefits are numerous, such as having horses, large-estate feel, great lawns and gardens, and the privacy.

The Board of the Morse Park Neighborhood Organization is charged with maintaining the standards that attract people to the neighborhood. They feel there is no need to rezone, subdivide, or allow variances within the properties unless it is to add to an existing home. Other than this reason, it will cause more population, noise, traffic, and safety problems.

The Morse Park Board placed information about this subdivision in their newsletter and response was 100% opposed to the variance or subdivision. She further stated that the trend to subdivide and build more homes would ruin the country feel of the neighborhood, which keeps the property values high and affords them a better future.

She personally has a smaller lot, but she is adamant that the area stay mixed. They have setback measures for a reason so as not to intrude on the neighbors and to prevent unsafe conditions by having buildings set too close together. They do have to respect a homeowner's rights, however they believe the Whittenburgs are not playing by the rules and that City Staff is looking at past data that is not representative of the current situation. They believe this will harm the neighborhood and there is no guarantee that the Whittenburg sons will remain in the neighborhood.

MR. MATT GIRARD, 2261 Estes Street, Lakewood, CO 80214, has questions as to why this issue is before the Board of Adjustment. He believes this should be a rezoning request. He provided 11 signatures that illustrate the mixed feelings about this subdivision.

He asked how this property has been in this size and configuration, in this family's possession, and in the current zoning designation for some time and is suddenly becoming a hardship.

With regard to the variance process, he believes it is intended to focus on building permit issues, not on subdivision issues, as provided in 17-4-5.

He stated most of the previous subdivisions were done before 1975, in 1981 the entire area was rezoned, in 1987 the City's Comprehensive Plan went into effect, and in 2005 the Morse Park Neighborhood Plan went into effect creating four new sets of rules. They are asking that all these rules be honored and that the variance request should be denied and the Applicant be referred to a rezoning process. He submitted Exhibit #3 – List of Residents Formally Opposed to Rezone or Variance with Parcel at 2490 Garland Street with 11 signatures.

MR. DON STEVENSON, 2426 Garland Street, Lakewood, CO 80215, he stated that he has talked to most of the neighbors around the subject property and most are in favor of this request. In addition, most of them live on one-half acre lots. He wishes there were more helpful neighbors like Rod and believes that most people opposed to this request do not live in the immediate neighborhood.

MR. JAMES ACRES, 1955 Yarrow Street, Lakewood, CO 80214, commented that in his section of the neighborhood there have been two recent subdivisions and he has been involved in this process. He had accepted those subdivisions since they met the requirements. However, this property does not fit the requirements. He does not believe the request should be granted for this reason.

Public Comment CLOSED at 8:07 p.m.

MEMBER MADIE MARTINEK asked why this property has not been put through a rezoning process.

MR. DOERING responded that the Applicants are entitled to apply for a variance and that this request is appropriate for the Board to hear with regard to the numerical criteria of the 1-R zone district. The Applicants could also have chosen the rezoning process.

MR. GELSTON further responded that the criteria between the two processes are significantly different.

MEMBER MICHAEL CAROLLO asked if there is any other property zoned 2-R in the Kawanee Gardens subdivision.

MR. DOERING responded there is one property zoned as 2-R on the same block as the Applicant's property. That request for zoning to a 2-R designation was recommended for denial by the Planning Commission, but was approved by the City Council in 1982. That property has two residential dwellings and lots that are smaller than 12,500 square feet.

MR. CAROLLO asked if large animals are allowed on 2-R.

MR. DOERING stated that large animals are not allowed in a 2-R zone district.

MEMBER CATHY YOUNG asked if subdividing the property turns it into a 2-R zone district.

MR. DOERING responded that the property would remain a 1-R property.

MEMBER YOUNG asked if two more dwellings are to be built on the property.

MR. DOERING stated that, with the testimony heard tonight, two dwelling units are currently on the property, one marked as 'FRAME GARAGE' on the map supplied in the packets. The Applicants are proposing to split the property into two, with Parcel 'A' having the two existing dwellings and Parcel 'B' will allow a new single-family dwelling to be built.

MEMBER SHARON MONTAGUE asked if there is enough room for a driveway on Parcel 'B' without a smaller setback.

MR. HARRIS responded that they believe a non-garage dominated home could be built on the southern property within the required 15-foot setbacks. This parcel already has a driveway, too.

MEMBER MONTAGUE asked if the trees would have to be removed from the front of Parcel 'B'

MR. HARRIS answered that the Whittenburg family would like to keep as many trees as possible, but may have to remove one or two of them where the home may be placed.

He also stated that Staff discussed the rezoning process with the Whittenburgs and zoning a single property is an inappropriate zoning application. He doesn't believe the neighbors would support a 2-R zone district on this property. They also discussed with Staff a flag lot, but that does not provide the type of character or an appropriate lot type for the Kawanee Gardens area. He does not believe the City would be supportive of a 2-R spot zoning in a 1-R zoned area.

MEMBER ALAN BESHANY wished for clarification to the setback requirements regarding driveways.

MR. DOERING responded that the setback does not have a bearing on the location of a driveway.

MEMBER MICHAEL CAROLLO asked if the Board has to vote on each of the requests separately.

MR. DOERING responded that each request needs a separate vote.

MEMBER MICHAEL CAROLLO made a MOTION for APPROVAL of the first variance request to allow the existing lot to be split into two residential lots with a minimum lot width less than the required 100-foot minimum lot width.

Motion was SECONDED by MEMBER CATHY YOUNG.

MEMBER MARTINEK felt this should be a rezoning request and before the Planning Commission. She is not supportive of the variance request.

VOTE TAKEN -

Six Ayes - Members Beshany, Carollo, Kohls, Montague, Snyder, and Young

One Nay – Member Martinek

MOTION PASSED.

MEMBER MICHAEL CAROLLO made a MOTION for APPROVAL of the second variance request to allow the side setback to be a minimum of 5 feet on the south side of the proposed lot that would include the existing home.

Motion was SECONDED by MEMBER GENE KOHLS.

VOTE TAKEN -

Seven Ayes - Members Beshany, Carollo, Kohls, Martinek, Montague, Snyder, and Young

Zero Nays

MOTION PASSED.

MR. GELSTON clarified that the Applicant has essentially withdrawn their third request by agreeing with the recommendation in the Staff Report, so a motion is not necessary.


GENERAL BUSINESS:

MR. GELSTON provided information about the new amendments to Titles 16 and 17 supplied to the Board and also an updated Board Member Listing.

ADJOURNMENT

Meeting adjourned at 8:26 PM.

October 29, 2009
Date Approved


Walter M. Jauch, Secretary
to the Board of Adjustment