



**CITY OF DERBY
MEETING OF THE BOARD OF ZONING APPEALS
REGULAR MEETING
January 14, 2016
6:30 PM**

MEETING MINUTES

1. CALL MEETING TO ORDER

2. ROLL CALL

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

3. CONSIDERATION OF MINUTES:

3. A. Regular Meeting Minutes of October 8, 2015.

Moved by Jessica Rhein, seconded by Joe Waugh to approve the minutes of October 8, 2015, as presented.

VOTE: 4-0-1

Other: Van Willis (Abstained)

4. PUBLIC FORUM

5. NEW BUSINESS

5.A.

DESCRIPTION:

The applicant is appealing a decision of the Zoning Administrator to deny building permits for construction of an attached covered deck and an attached covered carport at 1003 E Madison Ave., pursuant to Section 401.F.1 of the City's Zoning Regulations.

GENERAL LOCATION:

South of Madison Ave., west of Willow Dr.
Common Address: 1003 E Madison Ave., Derby, Kansas

APPLICANT: Richard G. Coleman

BACKGROUND:

- The owner of real property located at 1003 E Madison Ave. (the “Property”) has filed a notice of appeal challenging a decision of the Zoning Administrator (the “Administrator”) to deny building permits for construction of an attached covered deck and an attached covered carport.
 - The notice of appeal was filed under the guidelines of Section 1006 (later amended to 1002) of the Zoning Regulations. Reasons for filing this appeal are cited by the applicant in a written statement included with the application for appeal received by the City. The application and written statement are attached.
- The Property was annexed into the city in 1975, and was zoned R-1 Single-family Residential in accordance with the City’s zoning regulations.
- The boundaries of the Property were established when the land was platted in 2001.
- The existing residence on the Property was constructed in 2002. County property records and property records at the City indicate that the total floor area of the principal structure is 3,255 sq. ft. (1,645 sq. ft. first floor and 1,610 sq. ft. finished basement).
- Subsequent to the principal structure being built, a previous owner constructed an attached building addition east of the house. The addition was originally constructed for use as a photography studio.
 - Photography studios are typically considered a business use, and would not be permitted within the R-1 Single-family zoning district.
 - At the time of construction, city staff determined that the photography studio would be permitted as a home occupation. A letter from city staff to the previous owner of the Property memorialized the conditions which allowed the construction of the building addition (Letter dated May 13, 2004, attached):
 - The letter identifies that the approved building addition must be permanently attached to the existing residence (principal structure) by a “breezeway or other ‘connection room.’”
 - The total area of the building addition is 1,662 sq. ft. (1,512 sq. ft. photography studio and 150 sq. ft. existing breezeway).
- The applicant purchased the Property in 2013, according to Sedgwick County public records. The applicant was not involved in the construction of the existing structures on the Property.
- On October 14, 2015, Mr. Joplin Emberson, acting as agent for the applicant, contacted City staff inquiring what would be required in order to allow the connecting breezeway to be enlarged to be used as a carport. He also inquired about the possibility of an attached covered deck.
 - After researching property records, the Administrator advised Mr. Emberson that the applicable use limitation restricting building additions to no more than 50% of the principal structure’s floor area would not allow the proposed addition because the size of the existing addition already exceeds the maximum 50% of the principal structure’s floor area (401.F.1. of the zoning regulations), classifying it as a nonconforming structure.
- The applicant submitted an application for an attached covered deck on November 5, 2015 and it was denied by the Administrator.
 - Written notice of the denial was mailed to the applicant on November 12, 2015 (letter attached).
- After receiving the letter denying the application, the applicant met with the Administrator to discuss the denial and again inquired about the possibility of enlarging the connecting breezeway to be used for a carport. The Administrator explained that the same use

limitation prohibiting the addition of a covered deck would also prohibit an addition of a covered carport.

- After this meeting, the applicant submitted an application for an attached covered carport on November 17, 2015 and it was denied by the Administrator.
 - Written notice of the denial was mailed to the applicant on November 20, 2015 (letter attached).
- On December 11, 2015, the applicant filed a timely notice of appeal challenging the decision of the Administrator.

BASIS OF ZONING DECISION:

- The Property is zoned R-1 Single-family Residential District.
 - R-1 zoning is intended for medium density single-family dwellings and to allow certain public facilities. Uses permitted within the R-1 zoning district include single-family detached dwellings, residential design manufactured homes, group homes as defined in the zoning regulations, public parks or playgrounds and public or private schools.
 - In addition to applicable lot size requirements and bulk regulations, properties zoned R-1 are subject to use limitations which include that “the square footage of any new addition to an existing principal structure shall not exceed 50% of the original structure’s floor area” (401.F.1 of the City’s Zoning Regulations).
- Pursuant to 401.F.1 of the Zoning Regulations, the Administrator used the below calculations to determine that the size of the existing attached building addition exceeds the maximum 50% of the principal structure’s floor area (also enumerated in the November 12, 2015 letter):

Principal structure’s first floor	1,645 sq. ft.	
+ Principal structure’s finished basement	1,610 sq. ft.	
Principal structure’s floor area	3,255 sq. ft.	
Existing building addition (studio)	1,512 sq. ft.	
+ Existing building addition (breezeway)	150 sq. ft.	
Total existing building addition	1,662 sq. ft.	
Total existing building addition	1,662 sq. ft.	= 51%
Principal structure’s floor area	3,255 sq. ft.	

- Based upon the above calculation, the Administrator determined that the existing building addition is a nonconforming structure.
 - In accordance with 802.B. of the Zoning Regulations, enlargements or alterations to a nonconforming structure are not permitted if the enlargement or alteration create any additional nonconformity, or increase the degree of existing nonconformity of all or any part of the structure.
- The applicant contends that each application for an addition should be considered independent of prior additions.
- In reaching the determination, the Administrator determined that 401.F.1 of the regulations is specifically intended to prevent the possibility of multiple successive applications being used to incrementally construct a building addition that would otherwise not be permitted by the regulations.

- The Administrator considered and communicated in the November 12, 2015 letter that other reasonable alternatives to achieving the purposes of the attached covered deck can be permitted in accordance with applicable zoning regulations.
- The November 20, 2015 letter also suggests that it would be possible for the applicant to construct a detached carport or detached garage at another location on the Property if desired. A detached carport or detached garage is an accessory structure, and is not included in the calculations for a building addition.

LEGAL CONSIDERATIONS:

- The BZA (the “Board”) has the power to hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by the Zoning Administrator in the enforcement of the zoning regulations.
- An appeal of a decision of the Zoning Administrator requires a public hearing:
 - Notice of the public hearing was published in the *Derby Informer* on December 23, 2015.
 - Notices were mailed to neighboring property owners as prescribed by state law.
 - The official ownership list of the notification area is on file at City Hall.
- Prior to hearing from interested parties at the public hearing, Board members should disclose any *ex parte* communications and information received regarding the appeal.
- Any order or determination of the Board on an appeal of a decision is final. However, in accordance with K.S.A. 12-764, within 30 days of the final decision of the Board, any person aggrieved thereby may maintain an action in the Sedgwick County District Court to determine the reasonableness of such final decision.

BZA OPTIONS:

- In exercising the powers of the Zoning Administrator, the Board, in accordance with state law, may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination, and to that end shall have all the powers of the officer from whom the appeal is taken, may attach appropriate conditions, and may issue or direct the issuance of a permit.
- The following are the Board’s options with respect to the Zoning Administrator’s decision:
 1. Affirm and uphold the decision of the Zoning Administrator.
 2. Modify the decision of the Zoning Administrator, which may include the attachment of conditions in the issuance of one or both building permits.
 3. Reverse the decision of the Zoning Administrator and issue one or both building permits.
 4. Continue discussion of the appeal for further consideration.

RECOMMENDED MOTION:

- Instruct city staff to draft a resolution based on the Board’s findings and application of city zoning regulations, and present said resolution for consideration at the next meeting of the Board.

PUBLIC HEARING

Chairman Smith 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.

Smith asked board members to report any *ex parte* communications.

Jessica Rhein commented that she had spoken to Bird regarding general zoning questions but none particular to the case.

Bird presented the staff report.

Richard Coleman, Applicant, presented background information and descriptions for the projects he desires to build. He included that the existing breezeway was not constructed with the original building addition, but was added after the fact. There is damage to the existing breezeway which needs to be demolished to address the needed repairs. Mr. Coleman stated that he did not feel the 50% limitation for building additions was intended to apply to the sum of building additions. He added that he had spoken with his neighbors and they expressed support for his plans and thought it would improve the existing homes exterior.

Pat Baer asked if the 810 sq. ft. proposed on the original permit application was for just the carport area or if it included the covered deck as well.

Coleman replied that it was for the carport area only. According to his calculations, the project would be under the 30% lot coverage restriction.

Rhein asked if the roofing materials would match.

Coleman replied that the materials would match.

Van Willis commented that sometimes the intent of the regulations and the black letter of the law can become confusing. He asked if the Applicant's intent is to make the home and building addition more aesthetically pleasing and consistent with the current structure.

Coleman replied that's correct.

Willis asked Bird if he could explain why this property was or was not in violation at the time it was built.

Bird replied that existing records on file at the City indicate that the only way the photography studio could be permitted was if it was attached to the principle structure. However, the existing structures as they were built exceed the 50% building addition restriction. A letter from previous City staff did not overlook this fact, but instead clearly documented that the only way the studio would be allowed was if it was attached with a breezeway. Any enlargement to the existing structures would be a violation.

Joe Waugh asked if the regulations limiting building additions to 50% were in place when the existing structures were built. He said it seems the original structures were built with only the 30% lot coverage restriction in place, and subsequently, the 50% requirement of 401.F.1 was added. Now any new additions are subject to the applicable 50% restriction.

Baer referenced a letter from City staff regarding the original approval of the photography studio. The calculations used at that time were based on the floor area of the home, and related to 25% of the home's total floor area.

Bird clarified that the calculations noted in the 2004 letter from City staff indicates that the size of the studio was intentionally designed to maximize the square footage allowable for a home occupation. Bird added that the home occupation restrictions were in place when the existing structures were built, and has not changed since that time.

Baer asked Bird to clarify if the carport is included in the equation for the 50% restriction on additions if it is not used as living space.

Bird replied that the carport is included because it meets the definition of a "building" because it is a covered structure with supports.

Rhein commented that she had reviewed the definition of "building" as used in the zoning regulations. She read the definition into the record: "Any structure with a permanent roof, separated on any or all sides from adjacent open space by walls, built for the shelter or enclosure of persons, animals, chattels or property of any kind and which is permanently affixed to the land." She explained that when she reads the definition, her interpretation is that there has to be a wall between the inside structure and the outside world. She felt the definition did not apply to the breezeway, carport or covered deck. Based on the definition, she thinks of an inside room with a roof structure.

Baer stated that he understands why these regulations are in place and believes that staff appropriately interpreted the regulations. He also stated he understands that staff's hands are tied, but the improvements the Applicant is proposing are reasonable, will not be a detriment to the neighborhood and are less than the 30% lot coverage restriction. For those reasons, there

is good reason and good grounds to allow the construction of both the carport and the covered deck.

Rhein agreed with Baer's statement. She asked Bird if the structures would be in compliance with the regulations if the breezeway was completely removed.

Bird replied if the breezeway connecting the principle structure and the addition were permanently removed, it would not be in compliance because the result would be two residential structures on one residential lot, which is not permitted.

Rhein asked if the existing breezeway were repaired, could a separate carport be built and remain in compliance.

Bird replied that repairs to existing breezeway are not prohibited by the regulations provided it is not expanded or enlarged. A detached covered carport could be permitted as long as it meets the minimum 10 ft. separation requirement from existing structures. The 10 ft. separation is a zoning regulation requirement and a fire separation setback.

Willis stated that he supported Mr. Baer's comments and added that the proposed projects would be an improvement for the property.

Jacque Butler, City Attorney commented that if the Board is inclined to grant one or both of the permits that have been denied, the motion should be made subject to compliance with all other applicable zoning regulations due to the fact that reconstruction of the breezeway or making it a carport involves other zoning regulations that are not a part of this appeal but will still need to be met.

Waugh asked if the proposed deck met applicable setback requirements.

Bird replied that the minimum setbacks were met.

Smith stated that as he understands, aside from meeting other applicable zoning requirements, the Board is allowed to make a reasonable decision based on what the Board considers to be a reasonable enhancement to the property.

Butler replied the Board has the authority to modify, affirm or reverse the decision by the Zoning Administrator. The Board has broad discretion in applying the regulations, which includes the authority to attach conditions. She encouraged the Board to provide some specificity as to what the Board's decision is based upon in order to guide city staff in drafting a resolution.

Joplin Emberson, introduced himself as the Pastor of Crossway Church and a friend of the Applicant. He explained that he has professional experience as a contractor, and that he is working with the Colemans on their projects. He expressed that he has been frustrated with the entire application, permitting and approval processes, as well as the related zoning regulations. He said he had the feeling that it was determined from the beginning that these applications would be denied. He stated that he felt there was plenty of room within the intent of the written regulations to be able to approve the proposed buildings.

Willis commented that as a resident of the City and a member of the Board, he has not heard anything about a predetermined objective. Ordinances, codes and laws are put in place through an administrative process. Decisions are based on the evidence presented.

Emberson replied that he fully understands and appreciates that the City has regulations. He added that he had been frustrated in his personal experiences dealing with the City of Derby over the last 10 years. He expressed that he felt the goal of the City is to say no, but even with the current code, it should be easy to find a way to approve these projects. He added that he has considered moving into the county so he would not need to worry about city regulations if he decides to begin a home project of his own.

Jennifer Coleman stated that she was told by City staff that a separate two-car garage could be built elsewhere on the property, but that was not what she wanted and was not consider that option. She also stated that the proposed covered deck, if approved, would be the same size and square footage on the property as an uncovered deck, the latter of which city staff told her could be permitted.

Chairman Smith asked if there were any others present who desired to address the Board. Seeing none, he asked if any other written communications had been received by City staff.

Bird replied that no written communications were received.

Bird reminded the Board that if the existing breezeway is removed, it would create a different violation of the zoning regulations because the lot would then have two separate residential structures on the same lot.

PUBLIC HEARING CLOSED @ 7:45 p.m.

Willis asked if the Board makes a determination that differs from the Zoning Administrator's, would it still be within the rules.

Butler stated that the Board is an independent body and has extremely broad discretion under both State law and as adopted by the City's zoning regulations and can craft solutions and interpret these regulations differently than City staff.

Smith stated he thinks the Board is getting hung up in the details and that the Board is allowed to make reasonable decisions.

Rhein reminded the Board that there are two separate permits that need to be addressed in the motion. Rhein also restated that she felt the breezeway was different from the definition of "building" and that she felt the owner's intent was to make the property look better.

Moved by Pat Baer, seconded by Joe Waugh, to instruct City staff to draft a resolution reversing the decision of the Zoning Administrator and issuing both building permits based on the Board's discussion of this specific case.

Moved by Pat Baer, seconded by Joe Waugh to amend the previous motion by including that the improvements meet all applicable zoning regulations and building code requirements.

VOTE: 5-0 (to Amend Motion)

VOTE: 5-0 (Prime Motion)

Moved by Van Willis, seconded by Joe Waugh to hold a special meeting on Thursday, February 4, 2016 at 6:00 p.m. in the Council Room at Derby City Hall for the consideration of a resolution to reverse a decision of the Zoning Administrator and issue building permits at 1003 E Madison Ave.

VOTE: 5-0

6. ADJOURNMENT

Moved by Jessica Rhein, seconded by Joe Waugh to adjourn at 8:15 p.m.

VOTE: 5-0

Stephanie Cox
Recoding Secretary

Justin Smith
Chairperson