

**BOARD OF ZONING APPEALS**

**CITY OF MERRIAM, KANSAS  
9001 W. 62<sup>nd</sup> ST.  
COUNCIL CHAMBERS**

**MINUTES**

**February 21, 2018  
7:00 pm**

The Board of Zoning Appeals meeting for the City of Merriam, Kansas, was called to order by Chairman Bill Bailey on Wednesday, February 21, 2018, at 7:00 p.m. in the Council Chambers with the Chairman inviting everyone present to participate in the Pledge of Allegiance to the Flag.

**I.**

**ROLL CALL**

Members Present: William Bailey, Chairman  
Mitchell Fowler  
Russ Harmon, Secretary  
Joseph Kronawitter  
Shawn McConnell  
Terrie Stanker  
Cole Stephens, Vice Chairman

Members Absent:

Also Present: Bryan Dyer, Community Development Director; John Hollis, City Planner; Nancy Yoakum, Recording Secretary

**II. APPROVAL OF MINUTES OF OCTOBER 18, 2017**

Chairman Bill Bailey stated that the BZA board members had received a copy of the October 18, 2017 meeting minutes, and asked if there were any corrections or additions.

Hearing no comments, Chairman Bill Bailey entertained a motion.

**SHAWN MCCONNELL MOVED THAT THE MINUTES OF THE BOARD OF ZONING APPEALS MEETING OF OCTOBER 18, 2017 BE APPROVED. JOSEPH KRONAWITTER SECONDED THE MOTION. THE MOTION WAS UNANIMOUSLY APPROVED.**

### III. ITEMS OF BUSINESS

#### 1. Application BZA17-000002 – Cassy Wilson – 6624 Craig Rd.

Chairman Bill Bailey presented to the BZA board members a request for a variance from Section 74-219 (4) b.3.-Minimum rear yard: 25 ft. from the Merriam Zoning Regulations.

Community Development Director Bryan Dyer stated that the subject property is located at 6624 Craig Rd. Mr. Dyer reviewed the location of the home. Mr. Dyer stated the subject property is zoned R-1 (Single Family Residential) District and stated that the property is approximately 11,000 sq. ft. Mr. Dyer stated that the property owner also owns the adjoining lot south of the residence that is approximately 5,800 square feet. Mr. Dyer stated that the surrounded area is zoned R-1 and is developed with single-family residences.

Mr. Dyer stated the purposed for the request is to construct a conservatory/greenhouse. Mr. Dyer reviewed the location of the existing house and reviewed the recently constructed addition on the west side of the house. Mr. Dyer reviewed the location of the proposed greenhouse and stated the greenhouse would extend 16.4 ft. further to the west from the existing house. Mr. Dyer stated the reason for the variance request is that it will extended about 3.4 ft. into the required 25 ft. rear yard setback.

Mr. Dyer stated that with State statutes along with city ordinances it is required that the Board of Zoning Appeals must review the five (5) criteria, all of which must be met in order to approve a variance request.

Mr. Dyer reviewed both staff and the applicant's response to the five (5) criteria.

- (A) 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;**

*Applicant's Response:*

*Yes. This is a structure built to serve as a conservatory/orangery. This type of building comes with its own set of needs and doesn't fall into the categories of home addition, shed or garage.*

Staff Comment

State law specifies that the variance request rises from a "unique condition" that is associated with the subject property which is not ordinarily found in the same zone or district. The subject property is 11,601 square feet which is slightly greater than the minimum square footage requirement for R-1 District lots. However, the lot size is typical of lots within the subdivision. The residence was constructed in 1955 prior to the city's adoption of the current zoning setbacks.

Staff communicated to the applicant that there are several methods of constructing the proposed structure without the need for a variance. The structure could be reduced in size to accommodate the required 25 foot rear yard setback and be located in the proposed location. The structure could be constructed on the lot as a detached structure and meet required setbacks. The structure could attached to the residence in a different

location and meet setback requirements. Should the structure be located, attached or detached, on lots 43 or 44 the property owner would be required to place a deed restriction on those lots, indicating they may not be sold or separated from lots 39 thru 42.

Staff finds that the variance does not arise from a condition that is unique to the property and which is not ordinarily found in the same zone or district, and the variance is created by an action or actions of the property owner or applicant.

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

*Applicant's Response:*

*Yes. On the contrary, it could be argued that this variance would benefit the adjacent owners when compared to building a detached structure.*

Staff Comment

If granted, the variance will not adversely affect the rights of adjacent property owners or residents. The residence was constructed in 1955. The room addition to the west was constructed in 2017 with a setback of 38 feet. The proposed addition will encroach further into the existing rear yard setback and into the required 25 foot rear yard setback. Should the addition be constructed as a detached accessory structure, the building could potentially be located closer to the rear property line and neighboring property owner's structures.

Staff finds that the granting of the permit for the variance will not adversely affect the rights of the 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;**

*Applicant's Response*

*Yes. Making it detached would cost significantly more and making it smaller would eliminate the ability for it to be a multi-use structure for outdoor therapeutic living space.*

Staff Comment

The strict application of the zoning regulations would prevent the property owner from adding the greenhouse, as proposed, to the existing structure. However, the structure could be reconfigured or located elsewhere on the property, either attached or detached and comply with ordinance requirements for setbacks. The property owner even states in their BZA application "We could build a detached structure without a variance...". (Application attached)

Staff finds that the strict application of the provisions of the zoning regulations from which variance is requested will not constitute unnecessary hardship upon the property owner.

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

*Applicant's Response:*

*Yes. It will not affect anyone else or be seen from the street.*

Staff Comment

Granting the variance will allow the construction of a 426 square foot greenhouse addition to the existing 2,199 square foot residential structure. The addition would increase the total square footage of the residence to 2,625 square feet, which is in compliance with Merriam Code. A non-compliant detached accessory structure will need to be removed.

Staff finds that granting the proposed variance will have not have an adverse effect on the public health, safety, morals, order, convenience, prosperity, or general welfare.

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

*Applicant's Response:*

*Yes. On the contrary, this variance is a prime example of being within the general spirit as it benefits everyone around and allows the structure to be used as intended instead of trying to force it into a classification it is not, i.e., garage, shed, etc.*

Staff Comment

Merriam's Code bulk regulations for residential districts were written to create a uniform set of standards for development and provide for adequate separation between structures. Attaching the greenhouse structure to the residence will cause the primary structure to be located closer to the rear property line and the neighboring residence to the west. This creates a situation where a large mass (the residence) is located in the 25 foot rear yard setback.

The intent of the zoning regulations is to keep the rear setback open and free of larger structures such as residences. It is true that if the greenhouse was constructed as a detached structure it could be located seven (7) feet from the property line, but it would need to be at least 10 feet from the primary structure. This separation between the two structures prevents having one large structure located in the 25 foot rear yard setback.

Staff finds that granting the variance will be opposed to the general spirit and intent of the zoning regulations.

Following his presentation, Mr. Dyer stated he would answer any questions the board may have.

Board member Terrie Stanker inquired if there has been any opposition from the neighbors behind the Wilson residence.

Mr. Dyer stated that he had received no comments regarding this application.

Board member Terrie Stanker inquired if residents were notified.

Mr. Dyer stated they were notified.

Board member Shawn McConnell inquired about the fencing that encompasses both the residential property and empty lot.

Mr. Dyer stated the fence belongs to the applicant.

Board member Shawn McConnell inquired if the applicant could build the structure to the south of the house.

Mr. Dyer stated that the applicant could build the structure on the southwest corner of the house.

Board member Shawn McConnell inquired if the greenhouse could be placed on the existing concrete pad.

Mr. Dyer responded that would be a question for the applicant.

Chairman Bill Bailey inquired if there were any other questions from the board members, hearing none; he invited the applicant to address the board members.

Cassy Wilson, 6624 Craig Rd, Merriam, KS 66202 introduced herself to the Board of Zoning Appeals members.

Ms. Wilson stated she is present this evening to ask permission to build a greenhouse/conservatory next to their patio living space in the backyard. Ms. Wilson stated they are plant enthusiasts and they have many tropical plants and cacti.

Ms. Wilson stated that through their recent home addition they took great care to preserve as many trees as possible on their property.

Ms. Wilson stated that the greenhouse they want to build would be made of high quality materials of aluminum and glass. Ms. Wilson stated that her neighbors directly behind their home are ecstatic about them moving forward with this project.

Ms. Wilson stated that the structure would serve two purposes; to house the plants, and will provide an outdoor living space.

Ms. Wilson stated that it was mentioned in the staff reports that they could technically build the structure in other areas. Ms. Wilson stated one of the suggestions would be to build a detached structure without needing a variance. Ms. Wilson stated that if they build a detached structure, it will not be able to serve as a multi-function extension of their outdoor living area.

Ms. Wilson stated that the south end of their home would provide no access to the green house.

Ms. Wilson stated if the variance was granted it would keep all of the building lines very clean and consistent.

Ms. Wilson stated that they do not feel they would be encroaching on their neighbor's space.

Ms. Wilson stated she also wanted to address the question of why they cannot build the greenhouse 3.5 feet smaller. Ms. Wilson stated they had to take into account the trees they have to plant in the green house and the loss of the 3.5 ft. would make it impossible to accommodate the trees. Ms. Wilson provided an example of the greenhouse, although not exact, to provide a visual representation of what they are proposing.

Ms. Wilson asked if the Board of Commissioners had any additional questions and if they would like her to go on addressing each of the five criteria questions individually.

Chair Bill Bailey inquired what the board members would like to do.

Board member Shawn McConnell stated that he had a few questions. He stated he understood why they did not want to build the structure on the concrete patio. He inquired if there will be direct access from the house to the greenhouse.

Ms. Wilson stated there house will not have direct access to the greenhouse.

Board member Joseph Kronawitter inquired about the proposed location and if it would be attached to a common wall with the new addition.

Ms. Wilson stated that was correct. Ms. Wilson stated it would help to reduce the cost of the project by 25%. Ms. Wilson stated if they were to build the green house to the south of their property, they would not be able to do that without combining the two lots, and assume that would be costly.

Board member Joseph Kronawitter inquired that Ms. Wilson had heard from her neighbor from the west, and inquired if she had heard from any other neighbors.

Ms. Wilson stated that she had not.

Board member Terrie Stanker inquired after seeing the proposed picture if they were planning to add the stone veneer.

Ms. Wilson stated they are unsure at this time as it depends on the height of the structure.

Board member Terrie Stanker inquired if the green house would be higher than their current residential roofline.

Ms. Wilson stated that it would not.

Board member Cole Stephens inquired when the concrete patio was built.

Ms. Wilson stated it is not the original patio, which was torn out and enlarged.

Board member inquired of Mr. Dyer if patios have the same setback requirements.

Mr. Dyer stated they do not because they are not considered a structure.

Board member Terrie Stanker inquired about the existing accessory structure that did not comply with municipal code.

Ms. Wilson stated the shed located north of the house is not in compliance, and she has no issue with removing the structure.

Board member Terrie Stanker inquired of Mr. Dyer if the shed needed to be torn down before the application could be approved.

Mr. Dyer stated that if the BZA approved the application, the shed would have to be torn down before a building permit would be issued, and would be a condition of approval.

Board member Terrie Stanker inquired how that would be reinforced.

Mr. Dyer stated that a building permit for the green house would not be issued until the non-complaint shed was removed.

Ms. Wilson continued reviewing her application and stated that she felt her condition is unique to the property.

Ms. Wilson stated that if the greenhouse were to be a detached structure it would not serve as a multi-use structure. Ms. Wilson stated there are other arguments in regarding to having to move their HVAC system, the roofline not matching up, or large trees that would cast shade on the green house.

Board member Mitchell Fowler inquired that if they plan to have a dirt floor, how they are going to control run-off water when it rains and drainage in the structure.

Ms. Wilson stated that there will be several tropical plants inside and is not concerned there would be an issue.

Board member Joseph Kronawitter inquired if they wanted the greenhouse close to the house to be able to have easy access to the outdoor living space.

Ms. Wilson stated that was correct.

Board member Joseph Kronawitter inquired of Mr. Dyer that there is no place to put the structure on the property other than this location that would be adjacent to the concrete patio.

Mr. Dyer stated that there is no placement by the patio that would not be in violation of the rear yard setback.

Board member Joseph Kronawitter inquired to Mr. Dyer about Ms. Wilson's previous statement that they could not put the structure on the south of the property without combining lots.

Mr. Dyer stated that similar situations the property owner files a statement with the county tying the properties together.

Ms. Wilson stated that if the greenhouse was built to the south they would have to remove three large trees.

Ms. Wilson continued reviewing her application and stated that not granting the variance would be a hardship because, if they decided to build the greenhouse, there would be a large expense of removing the large trees on the south end of her property.

Ms. Wilson stated she realizes each case is unique; however, it sets a precedent. Ms. Wilson stated her request is for a 3.5-foot setback vs. a 7ft. setback. Ms. Wilson stated if cost were a hardship, then detaching her structure from her home would be a significant hardship, as she would have to pay for 25% more materials. Ms. Wilson stated another

hardship is they currently have a family room and she is expecting a baby. Having the plants in the same building would create a danger for their new child.

Board member Terrie Stanker asked what is staff's objection to the proposed greenhouse?

Mr. Dyer stated that this is not a unique lot and the greenhouse could be put in a different location or could be made a different size to meet the requirements of the setback requirements.

Ms. Wilson stated this is a unique condition and a unique building and if she were to make it detached, she would have to follow the guidelines for building a garage.

Board member Joseph Kronawitter inquired of Mr. Dyer if that was correct, if it was built as a stand-alone structure that the applicant would have to have a garage door.

Mr. Dyer stated that is correct that she would have to build it as a garage because the maximum size for a shed is 250 sq. ft.

Ms. Wilson continued to review her application and stated granting the variance did fit with the general spirit of the zoning regulation because it would allow the greenhouse to be attached to her home and be placed further away from her neighbor's house than building it as a detached accessory structure.

Ms. Wilson asked if there were any additional questions from the board members and stated that was all she had at present.

Board member Shawn McConnell stated he had a question for Mr. Dyer. Mr. McConnell inquired why the original ordinance was created for the original 25ft. rear property lines.

Mr. Dyer stated that dates back to the 1970's and the purpose of that was to create uniform setback for rear property lines, and to keep space open and is a standard setback for all communities in an R-1 district.

Board member Shawn McConnell inquired if the design was for fire safety.

Mr. Dyer stated that set back is mainly for open space purposes, aesthetics and uniformity.

Board member Terrie Stanker stated she does like the fact that the structure is transparent vs. something solid, and would still maintain an open feel.

Board member Shawn McConnell inquired about her statement regarding setting a precedence, and that it has always been his interpretation that the Board of Zoning appeals is not a place of setting precedence; that is a job for City Council and codes. Mr. McConnell stated that he believed that the Board of Zoning Appeals is to deal with cases that deal with deviations from precedence.

Mr. Dyer stated that the applicant this evening has referenced other cases and is trying to establish a precedence based on other cases.

Board member Shawn McConnell stated she is making those statements, but it does not necessarily mean that is true.

Mr. Dyer stated that is true. Mr. Dyer stated the Board of Zoning Appeal decision, if challenged; the applicant would have to take the case to District Court.

Mr. Dyer stated in regard to setting a precedence, this is not a unique situation. Mr. Dyer stated most of the Board of Zoning Appeals cases that have been approved were unique cases concerning lot sizes, lots that are not standard shapes or are extremely large and from staff's perspective, this is not a unique situation.

Ms. Wilson stated there is not another structure like this in the city and city staff is only looking at the property.

Chair Bill Bailey stated that he does not see a uniqueness to this condition, and there are rules that need to be followed to keep from having this type of structure just pop up anywhere, and staff has recommended denial of the variance request because the applicant has not met all five criteria. Chair Bill Bailey stated that the applicant has options that could be pursued, and that the applicant is not locked into one option. Chair Bill Bailey stated that he understands the economic burden, but that is the applicant's choice to pursue this project.

Board member Terrie Stanker stated that she drove by the applicant's property and it is well maintained and she likes the idea. Ms. Stanker stated she has lived in an area before where the homes were placed too close together and she did not like it. Ms. Stanker does believe the greenhouse could be made smaller, but would not be able to serve as a multi-use structure, without being perfect. Ms. Stanker asked if she does not get approval for the variance if the applicant is not going to build the structure.

Ms. Wilson stated it is a \$35,000-\$40,000 structure so if it can serve as a multi-use structure it is hard to justify that kind of expense. Ms. Wilson stated she knows the economic decisions are hers, but in the other variances, the applicant was allowed to build within a setback because it would be more expensive.

Board member Joseph Kronawitter stated that he doesn't see this as setting precedence; each case is different. Each case is unique and the Board of Zoning Appeals review cases that don't fit the norm.

Board member Joseph Kronawitter stated if the board grants the variance, he doesn't see how this would be setting a precedence for other cases; that's how he views this case.

Board member Russ Harmon stated that he feel it is a unique situation since it is a greenhouse that will have a dirt floor and it's only going to encroach 3.5 ft. into the setback. Mr. Harmon stated that if it were to be built as a separate structure it would encroach further and be more intrusive. Mr. Harmon stated that he would vote to grant the variance.

Board member Joseph Kronawitter stated he has the utmost respect for staff and that staff does an amazing job, but this is one of those rare instances that the structure does seem to fit. Mr. Kronawitter stated if it is built as a separate structure a garage door would have to be added, then the building wouldn't seem like a greenhouse. Mr. Kronawitter stated if it is moved to the other portion of the land, the applicant would have to combine lots, move her air conditioning unit and take down some trees. Mr. Kronawitter stated that it would be an additional cost and wouldn't have the continuity with the existing roof line. Mr. Kronawitter stated he would make a motion.

Board member Terrie Stanker asked the applicant if she intends to build what is shown in the picture she provided.

Ms. Wilson stated that the materials would be the same as far as color, aluminum and glass. Ms. Wilson stated she is not sure whether they would be taking the glass to the ground or using the stone at the base, depending upon cost.

Board member Terrie Stanker stated she likes the stone and thinks it dresses it up rather than just setting the structure on the ground.

Mr. Dyer stated that if the board members are considering approving the variance, the motion will need to address the criteria for granting a variance.

Chair Bill Bailey polled the Board and a majority indicated that they were in favor of approving the variance request.

Mr. Dyer worked with the Board members to craft a motion containing findings to satisfy Merriam Code and State Statutes.

Chairman Bill Bailey asked if there were any more questions, hearing none, he entertained a discussion or a motion.

**JOSEPH KRONAWITTER MOVED THAT THE BOARD OF ZONING APPEALS APPROVE APPLICATION BZA17-000002 FOR PROPERTY LOCATED AT 6624 CRAIG RD. BASED ON THE FOLLOWING:**

- **THE REQUEST IS UNIQUE BASED UPON THE PROPOSED STRUCTURE BEING A GREENHOUSE WHICH IS LIGHT, AIRY AND DOES NOT PRESENT THAT SAME MASS AS A TYPICAL BUILDING. THE PROPERTY IS UNIQUE BECAUSE OF ITS TOPOGRAPHY AND SIZE. THE PRESENCE OF LARGE TREES AND HVAC EQUIPMENT THAT WOULD HAVE TO BE REMOVED OR RELOCATED IN ORDER TO CONSTRUCT THE STRUCTURE WITHOUT A VARIANCE IS NOT A CONDITION CREATED BY THE PROPERTY OWNER.**
- **THE FINDING CONTAINED IN THE STAFF REPORT THAT THE VARIANCE WILL NOT ADVERSELY AFFECT THE RIGHTS OF THE ADJACENT PROPERTY OWNERS OR RESIDENTS.**
- **THE STRICT APPLICATION OF THE ZONING REGULATIONS WILL CONSTITUTE A HARDSHIP ON THE PROPERTY OWNERS. THE STRICT APPLICATION OF THE ZONING REGULATIONS WOULD CAUSE THE PROPERTY OWNERS TO CONSTRUCT A GREENHOUSE THAT IS TOO SMALL AND NOT IN THE PROPER LOCATION TO BE UTILIZED IN THE FASHION THE PROPERTY OWNER DESIRES.**
- **THE FINDING CONTAINED IN THE STAFF REPORT THAT THE VARIANCE WILL NOT HAVE AN ADVERSE EFFECT ON THE PUBLIC HEALTH, SAFETY, MORALS, ORDER, CONVENIENCE, PROSPERITY, OR GENERAL WELFARE.**
- **THE PROPOSED GREENHOUSE IS A STRUCTURE THAT IS LIGHT AND AIRY. IF CONSTRUCTED AS AN ATTACHED STRUCTURE IT WILL HAVE A MORE PLEASING APPEARANCE WITH LESS OF AN IMPACT ON ADJACENT PROPERTY OWNERS; THUS GRANTING THE VARIANCE WILL NOT BE**

**OPPOSED TO THE GENERAL SPIRIT AND INTENT OF THE ZONING REGULATIONS.**

**AND WITH THE CONDITIONS STATED IN THE STAFF REPORT. RUSS HARMON SECONDED THE MOTION. THE MOTION WAS APPROVED WITH FIVE (5) AYES AND 1(ONE) NAY, WITH BOARD MEMBER SHAWN MCCONNELL VOTING NAY AND CHAIRMAN BILL BAILEY ABSTAINING. THE MOTION WAS APPROVED.**

**IV. BUSINESS FROM THE FLOOR**

Community Development Director Bryan stated there needed to be a 2018 vote for the Election of Officers.

**JOSEPH KRONAWITTER NOMINATED BILL BAILEY FOR CHAIRMAN; COLE STEPHENS FOR VICE-CHAIRMAN AND RUSS HARMON AS SECRETARY. SHAWN MCCONNELL SECONDED THE MOTION. THE OFFICERS WERE UNANIMOUSLY APPROVED.**

**V. UNFINISHED BUSINESS**

None

**VI. ADJOURNMENT**

There being no further business, **MITCHELL FOWLER MOVED FOR ADJOURNMENT.** The meeting was adjourned at 8:10 p.m.

Respectfully submitted,

Bryan P. Dyer, AICP  
Community Development Director

Approved: April 18, 2018