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Press Release

Board of Zoning Appeals votes 2-1 to approve pair of variances

Approved split creates two nonconforming yards, one with 10-foot back yard

ARKANSAS CITY, Kan. (March 16, 2016) — The Arkansas City Board of Zoning Appeals approved two variances for a lot split during a regular meeting Monday night at City Hall, 118 W. Central Ave.

Both motions were approved 2-1, with board chair Mary Benton dissenting. Charles Jennings and Carl Mills cast the approving votes. Board members JoLynn Foster and Marcia Weston were absent.

The lot at 819 S. Summit St. was split roughly in half at the request of its owner, Mary Merz, in order to help to facilitate a sale of the western half of the property to adjacent owners Albert and Hazel Robb.

But the lot split that was approved creates two nonconforming yards, one of which fails to conform to two different zoning regulations. Merz's attorney, Jason Brewer, argued that it was for the greater good.

"We're trying to decrease the mowing for Mary, help the Robbs get a little better use of their property, and that's why we proposed this lot split," he said. "We're not requiring rezoning. We're not requiring different services. I just don't see there being an effect upon the neighboring properties."

The lot split previously had been denied administratively because it creates lots of 2,963 square feet and 3,151 square feet, both less than the minimum lot size of 5,600 square feet.

Additionally, the eastern lot will have a rear yard of 10 feet, half of the requirement, between the house and a retaining wall that divides the two halves of the property. There is no alley in that block.

But Brewer pointed out that the new lots match the splits to the north and the south, both of which were grandfathered in under older zoning regulations. Furthermore, he said, the Robbs fully intend to purchase the western lot and eventually add it to their property at 818 S. First St.

That combined lot would be compliant, said City Planner Josh White, essentially swapping a current nonconforming lot (818 S. First) for a new nonconforming lot (the house at 819 S. Summit).

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White said that although the adjacent properties match the proposed splits, the conditions are not unique to the property and granting the variances technically perpetuates noncompliance in the area.

But his chief concern, he said, is the risk of increasing density and fire risk in the area with the construction of future buildings. If the western half were not sold, a house or garage could be built there.

“Yes, if a house were built on the back lot, it would make it more dense,” Brewer admitted. “I don’t see that being the case.” Both he and the Robbs said they have no intention of building on the property.

The Robbs, who also were being represented by Brewer, said they will use it to turn trailers around when parking them. Another neighbor often parks there illegally, but they hope to put a stop to that.

Brewer contended that not approving the variances would create a hardship for both owners.

“If this is not approved, there probably won’t be a sale, but all is not lost,” he said. “The Robbs would have to buy the whole thing. But we’re hoping to avoid that if at all possible (because of the house cost).”

Jennings admitted he was uneasy with granting yet another deviation to the established zoning regulations that were revised just a few years ago, but said the intent behind the request was noble.

“I have no problem with what you’re trying to do. In fact, I think it’s neighborly,” he said. “You get something for it, but you’re helping out a friend also.”

Merz’s late husband, Leon, owned several rentals under Merz & Merz Building LLC. Brewer said Mary Merz is struggling to keep up with mowing all of the properties.

Because there is no alley, a utility easement will be required on the western lot for a sewer line.

All decisions of the Board of Zoning Appeals are final and do not require approval by the City Commission. The board’s decisions only can be appealed in district court.

In other business, the board received a handout and heard a presentation on the Kansas Open Meetings Act from Public Information Officer Andrew Lawson.