

**CITY OF DE SOTO**  
**BOARD OF ZONING APPEALS**

City Hall, 32905 West 84<sup>th</sup> Street  
Tuesday, May 1, 2007, 7:00 P.M.

**MINUTES**

1. The meeting was called to order by Board Member Bill Sedgwick.
  
2. Roll Call:      Brazukas      Present  
                         Sedgwick      Present  
                         Zimmerman   Present

City staff present: Patrick Reavey, City Attorney, Steve Chick, Building Official, and Kim Buttrum, City Planner.

3. Agenda Items:
  - A. Nomination and election of Chairman of the Board.

Motion by Zimmerman to nominate Sedgwick as Chairman of the Board; second by Brazukas.

Members approved by “ayes”.

Motion carried.

- B. Consider a variance to Section 3 of Article 5 of the Zoning Regulations stating that no accessory structure shall be erected in any required or established front yard. The variance is requested for a 5.4 acre parcel located at 8825 Kill Creek Road. Chairman Sedgwick reviewed the request for the variance and introduced the applicants, Joe and Kathleen Webb.

Chairman Sedgwick asked Mr. Webb to state his request for the variance.

Joe Webb, 34255 W. 84<sup>th</sup> Terrace, said he also owns the subject property of 5.4 acres located at 8825 Kill Creek Road. Mr. Webb stated they have been cleaning up the property for about a year; they didn't realize until they started that clearing process how sloped the topography of the land is. It is very apparent when it rains. Mr. Webb provided the Board with topography handouts. There is a pre-existing non-conforming barn on the property, which he has been using to store his tractor and lawn mowers. He said the barn is not what he wants on his property, and he would prefer to construct something that blends in with his house. Mr. Webb said after clearing the land and seeing the water runoff, there were only two buildable home sites on the land. There is a creek on the eastern boundary and that limits the building within a potential flood area.

Mr. Webb stated they chose the highest part of the property on which to build their home. They poured a full basement, rather than a walk-out due to potential

flooding in the future should development upstream force the creek to broaden. Mr. Webb discussed the reasons he and his contractor chose the building location of the residence. Due to the topography of the property and the requirements for the lateral field, there wasn't much property left to build a home.

Mr. Webb stated if he is allowed to build the detached garage, it will be constructed and finished in the same manner as the residence. He needs a building to store his mowing equipment and would prefer to house it in a new garage that matches the residence, and tear down the old metal barn presently on the property. Mr. Webb reviewed the comments in his letter to the Planning Department dated March 23, 2007. He addressed each condition in his letter.

Mr. Brazukas asked Mr. Webb if he had taken this request before the Planning Commission. Mr. Webb stated he has not because of the timing involved in this project. Mr. Webb said he is aware the Planning Commission is looking at amending the regulations, but he didn't feel like he could wait another year while this matter goes through the Planning Commission process. Building materials are going up monthly and he needed to begin his new home this spring.

Discussion between Chairman Sedgwick and Mr. Webb on the location and size of the proposed garage. Mr. Webb said the setbacks are within the City's regulations, with the exception of the variance request for the front yard setbacks.

Chairman Sedgwick said the City Staff has stated this building would sit in the "front yard" in front of the new residence. Discussion by Brazukas regarding the accessory building and any permit issued to construct the garage in front of the new residence. Mr. Webb said no permit has been issued for the proposed garage. Further, there are many cases that would seem to be unfair as to use of the property, and he discussed the particular resident who could not build a garage because all of his property is in the front of his house and there isn't enough room to build behind the house because of the topography of the land.

Comments by Attorney Reavey regarding the reasons a variance can be granted or denied, according to state statute.

Continued discussion between Mr. Brazukas and Mr. Webb regarding the lateral fields and the reason for their location.

Chairman Sedgwick asked Planner Buttrum to present the City's opinion on this variance request. She said the property is north of 89<sup>th</sup> Street on Kill Creek Road. There were two accessory buildings on the property, and one has been demolished. The other is in disrepair, but it is grandfathered in as a non-conforming building. City Staff has visited the site; photographs and topographical printouts have been provided to this Board. The size of the proposed building is within the City's size regulations.

Planner Buttrum then read the paragraph from Article 5 of the Zoning Regulations relating to accessory buildings in an 'established' front yard. Planner Buttrum said the City Council has requested the Planning Commission review this part of Article 5 of the Zoning Regulations pertaining to accessory buildings

being prohibited in an 'established' front yard. The Planning Commission will be discussing this Article of the Zoning Regulations in future meetings.

Planner Buttrum described the property and the topographical aspects of the parcel, as set forth in the Staff Report dated April 26, 2007.

1. Uniqueness: Staff discussed the language criteria for "uniqueness", and staff determined it is clear the variance request has arisen from conditions that have been caused by the actions of the applicant. Staff's finding is therefore negative, against granting the variance.
2. Adjacent Property: Planner Buttrum reviewed Staff's findings relating to adjacent properties; and, it is therefore positive, in favor of granting the variance.
3. Hardship: Though the applicant's own actions have restricted the use of the property, it may be seen that a strict application of the Zoning Regulations does create a hardship in that large, detached accessory buildings are a common feature in the rural residential neighborhood. Staff's finding relating to hardship is therefore neutral, neither in favor of nor against granting the variance.
4. Public Interest: Staff's finding relating to public interest is therefore positive, in favor of granting the variance.
5. Spirit and Intent: Staff's finding relating to the spirit and intent of the Zoning Regulations is therefore positive, in favor of granting the variance.
6. Minimum Variance: Staff's finding relating to the minimum variance is therefore positive, in favor of granting the variance. She further stated that the overall finding is one negative, one neutral, and four positive. If only one criteria is considered "negative", staff cannot recommend a variance unless it finds in support of all six criteria.

Chairman Sedgwick asked Steve Chick, Building Official, to explain the lateral lines on the subject property. Mr. Chick said the City likes the septic systems to work at their best potential and these are gravity line systems. Mr. Chick stated he errs on the side of being cautious and that is why the lateral field is moved away and back from the creek. He discussed the layout of the proposed lateral field with Chairman Sedgwick and the lateral field location.

Chairman Sedgwick opened the public hearing for comment:

Toni Caldwell, 8412 Corliss Road, said her sister-in-law lives near this subject property on Kill Creek. She said it is all about the variance; he (Mr. Webb) can move the house up and put the shed behind it. She said the proposed shed would block their view on the south. There is also concern about the lateral field and the flow of water from the adjoining property. She said the lateral lines are also coming pretty close to their property and they have a concern about that should there be flooding in the future.

Chairman Sedgwick discussed the location of the house on the north of Mr. Webb's property.

Mrs. Caldwell said that if there is a problem, at least these concerns were stated for the Minutes, and they will have some recourse in the future.

Mr. Webb stated that regardless of where the buildings are placed on his property, there could be flooding from anyone who builds in the surrounding area along Kill Creek. The property along Kill Creek has a slope down towards the creek, so any building could cause runoff. He also commented that his view to the north would be looking at the two metal barns on the adjoining property.

Steve Davidson, 8300 Frederick Court, said he is the contractor, SK Davidson, for the Webb's. Mr. Davidson said that as far as the water runoff, there will be a culvert placed so that water will be running south and east away from the lateral fields and the current old barn.

Chairman Sedgwick closed the public hearing.

Further comments by the Board and Mr. Webb regarding the water runoff of the property. Attorney Reavey reiterated the Kansas Statutes regarding the determination, and the effect of the decisions of the Board to direct City staff. Discussion ensued by the Board on the criteria. Chairman Sedgwick discussed the negative finding on Uniqueness by the City Staff. He said he isn't sure he would come to the same conclusion as Staff has.

Mr. Brazukas stated he has used Mr. Webb in the past in some real estate transactions. He asked Attorney Reavey if he should vote. Mr. Reavey explained the City's Code of Ethics policy to Mr. Brazukas. Mr. Brazukas said the one objection the City has is that City Staff disagrees with Mr. Webb's decision on where to lay out his home. He feels that it is hard to infringe on someone's judgment.

Comments from Michelle Smith regarding the proposed building. She said that if there are flooding issues, at least the concern has been stated for the Minutes and she can then sue if she has a problem on her property.

For the record, Attorney Reavey stated under Kansas law, the City cannot be held liable for approving a plan to build, and that approval does not give another person a claim to sue the City of De Soto.

Upon discussion with Attorney Reavey, Mr. Brazukas stated he is comfortable with voting on this variance request.

Chairman Sedgwick requested the City Clerk call for the vote, based on the required criteria.

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|----|--------------------|-----------|-----|
| A. | Uniqueness:        | Brazukas  | Yes |
|    |                    | Sedgwick  | Yes |
|    |                    | Zimmerman | Yes |
| B. | Adjacent Property: | Brazukas  | Yes |
|    |                    | Sedgwick  | Yes |
|    |                    | Zimmerman | Yes |

C.	Hardship:	Brazukas	Yes
		Sedgwick	Yes
		Zimmerman	Yes
D.	Public Interest:	Brazukas	Yes
		Sedgwick	Yes
		Zimmerman	Yes
E.	Spirit and Intent:	Brazukas	Yes
		Sedgwick	Yes
		Zimmerman	Yes
F.	Minimum Variance	Brazukas	Yes
		Sedgwick	Yes
		Zimmerman	Yes

Motion by Zimmerman to grant the minimum variance allowing for encroachment within the established front yard not to exceed 110 feet; second by Brazukas.

All members of the Board voted by “ayes”.

Motion carried.

No further comments by the Board. Chairman Sedgwick thanked the audience for their participation.

Motion by Zimmerman to adjourn at 8:05 p.m.; second by Brazukas.

All members approved by “ayes”.

Respectfully submitted:

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Lana R. McPherson, MMC  
City Clerk