



CITY OF
TOPEKA

AGENDA

BOARD OF ZONING APPEALS

Monday, March 9, 2020
5:30 P.M.

Holliday Building
620 SE Madison, 1st Floor Holliday Conference Room

MEMBERS OF THE BOARD

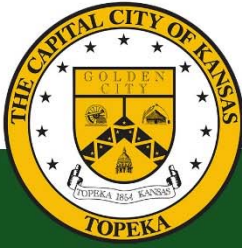
Walter Schoemaker – Chairperson
Tim Carkhuff – Vice Chairperson

Toni Beck
Barbara Boudreaux
Helen Crow
Carole Jordan
Travis Thomas

-
- The Topeka Board of Zoning Appeals holds a public hearing on the second Monday of each month to consider certain appeals, variances, and exceptions as may be granted by the Comprehensive Zoning Regulations of the City of Topeka, Kansas.
 - The following agenda identifies and describes each proposal to be considered by the Board.
 - Each item to be considered by the Board will be introduced by the Planning Department Staff. The Board will then hear and consider arguments both for and against each proposal.
 - Individuals wishing to address the Board are requested to state their name and address for the official hearing record.
 - Motions on all matters, which require a decision by the Board, are made in the affirmative. On a roll call vote, Board members then vote yes, no, or abstain based on the affirmative motion.
 - Any person, official or government agency dissatisfied with any order or determination of the Board may bring an action in the district court of the county to determine the reasonableness of any such order or determination. Such appeal shall be filed within 30 days of the final decision of the Board.



ADA Notice: For special accommodations for this event, please contact the Planning Department at 785-368-3728 at least three working days in advance.



CITY OF
TOPEKA

BOARD OF ZONING APPEALS

Agenda for Monday, March 9, 2020

A. Call to Order

B. Approval of Minutes from September 9, 2019

C. Declaration of Ex Parte Communications

D. Public Hearings

- 1. BZA20A/03 by Don Phillippi and Candi Bryant**, appealing, pursuant to Topeka Municipal Code (TMC) Section 2.45.070, a decision by the Planning & Development Director that the use of the property at 229 SW Edgewood Avenue for the short term rental of guestrooms is a “bed and breakfast inn” as defined by the Topeka Municipal Code 18.55.020 and, as a bed and breakfast inn, a conditional use permit is required per TMC 18.60.010.

E. Election of Officers

F. Review of By-Laws

G. Adjournment



ADA Notice: For special accommodations for this event, please contact the Planning Department at 785-368-3728 at least three working days in advance.



CITY OF TOPEKA BOARD OF ZONING APPEALS

MINUTES

Monday, September 9, 2019

5:30PM - Holliday Building 1st Floor Holliday Conference Room

Members present: Toni Beck, Barbara Boudreaux, Helen Crow, Carole Jordan, Walter Schoemaker (2019 Chair), Travis Thomas (6)

Members Absent: Tim Carkhuff (1)

Staff Present: Mike Hall, Current Planning Manager; Mary Feighny, Deputy City Attorney; Kris Wagers, Administrative Officer

Call to Order

The meeting was called to order by Walter Schoemaker, Chair. Roll was taken with 6 members present for a quorum.

Approval of Minutes from May 13, 2019

Motion by Ms. Jordan to approve, second by Ms. Beck. **APPROVAL 6-0-0**

Declaration of Ex Parte Communications

Mr. Schoemaker called for declarations of ex parte communications.

Mr. Thomas – none

Ms. Crow – None

Ms. Jordan – None

Ms. Boudreaux – none

Ms. Beck – none

Mr. Schoemaker – none

Mr. Schoemaker called the case, **BZA19V/04 by Brad and Sharon Avery** requesting a variance to the minimum building setbacks required by section 18.60.020 of the Topeka zoning regulations for the construction of a detached carport at the rear of an existing residence at 1254 SW Randolph Avenue. The requested variance applies to the required 10' minimum building setback from the rear property line and alley right-of-way.

Mike Hall, Staff Planner, presented the Variance Evaluation (staff report) and findings, then stood for questions from board members.

Mr. Schoemaker asked if the alley is used by traffic and for garbage collection. Mr. Hall confirmed that it is, as did the applicant (Mr. Avery). Mr. Schoemaker asked for and received confirmation that the requested carport would not impede traffic or garbage collection.

The applicants were given an opportunity to speak. They explained that when they purchased the house, there was an existing garage that encroached on the set-back. The structure became unsafe and they were forced to tear it down. They began building a new garage in somewhat the same footprint but were asked by the City to remove it. They had not gotten a permit for the new construction and the new garage did not meet setback requirements. Ms. Crow later asked and Mr. Hall verified that someone brought it to the attention to the City Permit Division that a structure was being built without a permit.

Ms. Boudreaux asked if there are other carports in the neighborhood and Mr. Avery stated that there's one next door to their property.

Ms. Jordan noted that she appreciates the efforts to make good use of the limited space available.

Mrs. Avery explained further that when they purchased their house in 1989, there was a small garage that was right on the alley. It was this structure that they had to have torn down in July of this year because it had become structurally unsound. She said that since they're unable to build another garage, their best option is a carport. The other properties on the block have garages or carports. They would like to have shelter for their vehicle(s), and they are concerned that *not* having a either a garage or carport would harm the value of their own property and, by extension, the property values of their neighbors. Ms. Avery noted the small lot their home is built on and she and Mr. Avery further explained that they intend to build the carport in such a style that it will fit in well with their house and neighborhood. They plan to mimic the roofline and materials used on the roof of their home. Mrs. Avery also spoke to the fact that parking on the street is not a good option for them or for the traffic on the street.

Ms. Beck stated she had driven by and noted the compactness of the Avery lot. She appreciates the fact that they are attempting to build a structure that will fit in well with the neighborhood. Mr. Schoemaker agreed, as did other board members. Ms. Boudreaux stated she appreciates them being pro-active about removing the old garage rather than allowing it to stand as a dangerous structure. Mr. Thomas stated he appreciates the thoughtfulness of design and understands their desire to protect their vehicles.

Mr. Schoemaker asked if the concrete slab is up to code and Mr. Avery stated that part of it will likely have to be re-done.

No neighbors were present to speak in support of or opposition to the request. Mr. Hall passed around a letter of support from Amy Hayse of 1260 SW Randolph, which is next door to the applicants.

Mr. Schoemaker noted that state law and city ordinance require the board to make findings that each of the 5 conditions be met in order to allow and grant the variance; Ms. Feighny confirmed this.

Motion by Ms. Jordan to APPROVE a variance to the required 10' setback from the east property line at the alley right-of-way, allowing for a setback of 3 feet, approval subject to conditions listed on page 6 of the Variance Evaluation, namely:

1. Maintain a setback of 3 feet from the rear property line at the alley right-of-way. The setback shall be determined by locating the outside of the supports (posts) for the carport no closer to the edge of the slab than 4' 6". Alternatively, the owner may engage a professional surveyor to identify the location of the rear property line and place the building a minimum of 3 feet from the property line as determined by the surveyor.
2. The eave of the carport roof may encroach no more than 30 inches into the required setbacks.

Second by Ms. Beck. **APPROVAL** (6-0-0)

Mr. Schoemaker welcomed Travis Thomas to the Topeka Board of Zoning Appeals.

The meeting adjourned at 6:03PM



APPEAL OF ADMINISTRATIVE DECISION TO THE BOARD OF ZONING APPEALS

CITY OF TOPEKA PLANNING DIVISION

620 SE MADISON, 3RD FLOOR (UNIT #11) | TOPEKA, KS 66607-1118
PHONE 785.368.3728 | EMAIL: PLANNING@TOPEKA.ORG

RECEIVED
DEC 18 2019
TOPEKA PLANNING
DEPARTMENT

Applicant Information

Name: Don Phillippi and Candi Bryant

Address: 1915 Bluestem Terrace, Manhattan Kansas 66502

Phone: 909-262-4839

Email: dphillip@ksu.edu

For Planning
&
Development
Use Only

Property Information

Location of property: 229 SW Edgewood Avenue, Topeka Kansas 66606

Legal description of property: (attach if necessary)

BATES SECOND ADDITION, BLOCK 2, Lot 16
+, SECOND WAS PARK AVE BLK 2 N 40FT OF
S 100FT OF LOTS 16-17-18-19 & N 40 FT OF S
100FT OF W 20FT OF LOT 20 BATES 2ND ADD

Current Use of property: Single Family Dwelling in an R-2 zone

Proposed Use of property: Single Family Dwelling in an R-2 zone

Decision being appealed:

The City of Topeka Planning Division has defined a new use for the property as a "Bed and Breakfast Inn".

Case #

BZA 20A103

Hearing Date:

7-10-2020 3.9.19

Legal Ad Date:

1-20-20 2.12.20

Explanation of Administrative Error:

Use is actually a Single Family Dwelling as defined by Topeka Municipal Code.

See attached.

December 16, 2019

Date

Applicant's Signature

Application for Appeal of Defined Use

RECEIVED
DEC 18 2019
TOPEKA PLANNING
DEPARTMENT

Background Information, Definition of a "Bed and breakfast home":

"Bed and breakfast home": means a private, owner-occupied single-family dwelling where no more than four guestrooms are provided for overnight paying guests for not more than seven consecutive nights. The dwelling shall be the primary residence of the owner with no employees permitted, other than permanent residents of the dwelling. Food service may be provided for guests.

According to the Kansas Department of Agriculture, a "Bed and breakfast home" means a boarding house that is a private residence where the owner or manager resides and provides lodging and meals for guests. Any licensee operating a bed and breakfast home may serve food only to the licensee's overnight guests, unless the licensee obtains a food service license.

City of Topeka Planning Division's Position for 229 SW Edgewood Avenue:

Definition: "Bed and breakfast inn" means a single-family structure or portion thereof that provides not more than 10 guestrooms for overnight paying guests. Food service may be provided for guests and sometimes in conjunction with social events.

Commentary:

We do not reside at (nor does a manager reside at) 229 SW Edgewood Avenue and we do not provide meals, so therefore we do not have a "Bed and breakfast home".

Since 229 SW Edgewood Avenue does not meet the definition of "Bed and breakfast home" (we do not have an owner or manager reside there), the City of Topeka Planning Division has sought to define the use as a "Bed and breakfast inn", which ignores the fact that we do not provide meals.

Note that a higher number of "guestrooms" are permitted with an "Inn" versus a "home" (ten versus four) and yet according to the City of Topeka Planning Division, this would be done without an on-site manager. Clearly, an "Inn" refers to an establishment that has individual guestrooms where any one of them may be rented separately and because renters come and go, an on-site manager is needed. We do not rent individual guestrooms, only the entire house.

Our Position for Edgewood (the definitions that fit our use):

"Dwelling, single-family detached" means a dwelling which is designed for and occupied by not more than one family and surrounded by open space or yards and which is not attached to any other dwelling by any means. "Residence" means a home, dwelling or place where an individual is actually living at a specific point in time.

Commentary:

"Dwelling, single-family detached" fits our occasional use of the residence, and also fits short or long term tenants. Note that the length of time for a short or long term rental is not currently defined by the City of Topeka.



CITY OF TOPEKA

**Development Services
Permitting**
620 SE Madison, Unit 6
Topeka, KS 66607

Richard Faulkner, Division Director
Tel: 785-368-3704
Fax: 785-368-1650
www.topeka.org

November 18, 2019
PHILLIPPI, DONALD & BRYANT, CANDI
1915 BLUESTEM TER
MANHATTAN KS 66502

Property ID#:
0972503021011000
Property Address:
229 SW EDGEWOOD AVE

RE: Business in Residential

Dear Property Owner,

We have recieved a concern about the use of a property that is owned by you.
Please refer to the municipal code below:

Please contact this office prior to the next scheduled inspection for details and to apply for the permit.

Your property is zoned "R-2". It is being used as a Bed and Breakfast. Because you do not occupy the home, this use would not be permitted without a conditional use permit.

Please contact me if you have any questions or if we may further assist you in any way prior to my re-inspection, on or around 12/2/2019, to be in compliance.

Sincerely,

Becky Esopi
Zoning Inspector III
City of Topeka
(785) 368-3012

City of Topeka Planning Department
Bill Fiander, AICP, Director
785.368.3728

Airbnb.com Viewed on Feb 26, 2020 for availability May 10-12, 2020



Entire house

★ 5.0 (7)

Topeka Charm! 3 bedroom in quiet Auburndale!

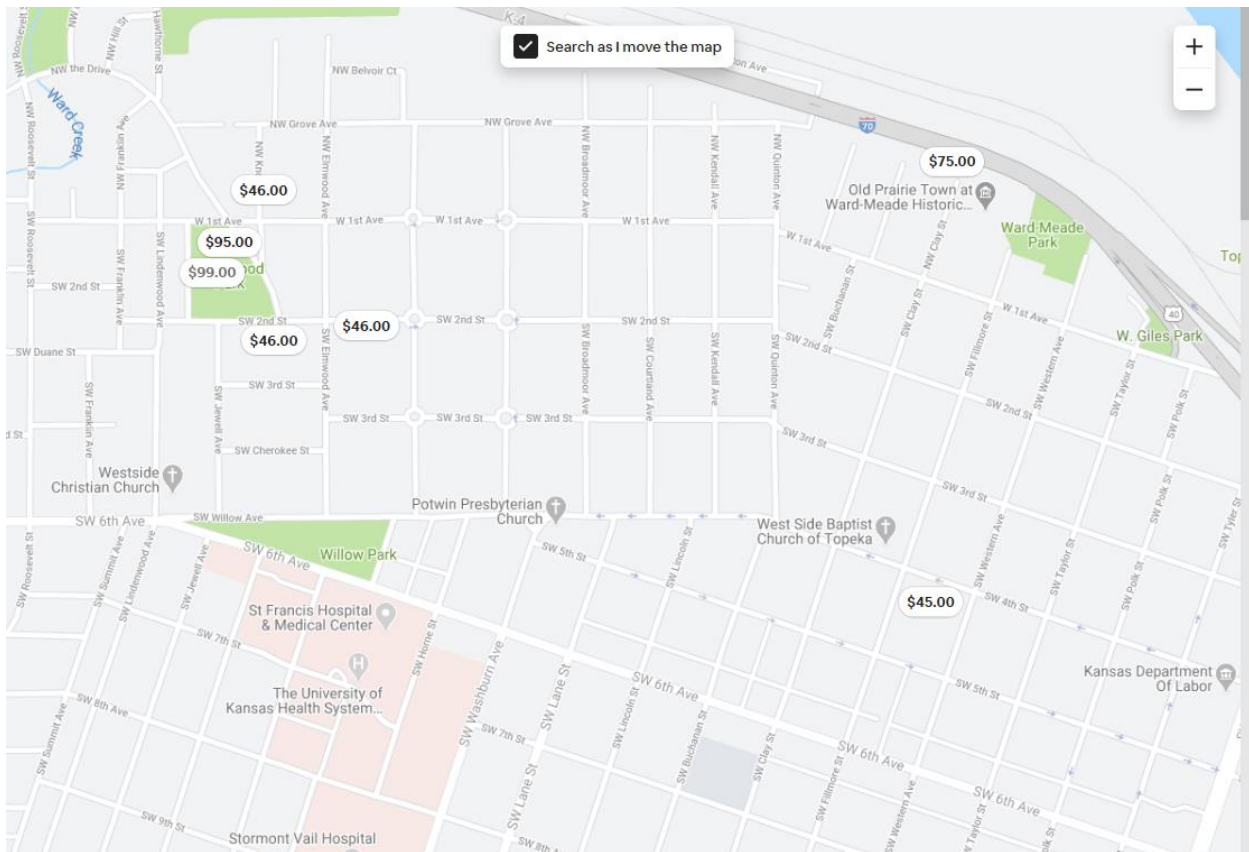
6 guests · 3 bedrooms · 4 beds · 1 bath

Wifi · Kitchen · Free parking · Heating

\$99.00 / night

\$300.00 total ?

Sites in Auburndale and Adjacent Neighborhoods



Search as I move the map

LCMS Kansas District

Topeka Bible Church

Faith Temple Church

Asbury-Mt Olive Untd Methodist

Shiloh Baptist Church

GraceMed Capitol Family Clinic

Central Church of Christ

Westminster Presbyterian Church

Boswell Square Park

Volunteer Services

El Shaddai De Alabam

Church of Christ

Central Park Community Center

JM Staffing

Kansas Bureau of Investigation

Topeka Housing Auth Polk Plaza

Topeka Workforce Center

Charles Curtis House Museum

SW 10th Ave

SW 11th St

SW 12th St

SW 13th St

SW 14th St

SW 15th St

SW 16th St

SW 17th St

SW 18th St

SW 19th St

SW 20th St

SW 21st St

SW 22nd St

SW 23rd St

SW 24th St

SW 25th St

SW 26th St

SW 27th St

SW 28th St

SW 29th St

SW 30th St

SW 31st St

SW 32nd St

SW 33rd St

SW 34th St

SW 35th St

SW 36th St

SW 37th St

SW 38th St

SW 39th St

SW 40th St

SW 41st St

SW 42nd St

SW 43rd St

SW 44th St

SW 45th St

SW 46th St

SW 47th St

SW 48th St

SW 49th St

SW 50th St

SW 51st St

SW 52nd St

SW 53rd St

SW 54th St

SW 55th St

SW 56th St

SW 57th St

SW 58th St

SW 59th St

SW 60th St

SW 61st St

SW 62nd St

SW 63rd St

SW 64th St

SW 65th St

SW 66th St

SW 67th St

SW 68th St

SW 69th St

SW 70th St

SW 71st St

SW 72nd St

SW 73rd St

SW 74th St

SW 75th St

SW 76th St

SW 77th St

SW 78th St

SW 79th St

SW 80th St

SW 81st St

SW 82nd St

SW 83rd St

SW 84th St

SW 85th St

SW 86th St

SW 87th St

SW 88th St

SW 89th St

SW 90th St

SW 91st St

SW 92nd St

SW 93rd St

SW 94th St

SW 95th St

SW 96th St

SW 97th St

SW 98th St

SW 99th St

SW 100th St

SW 101st St

SW 102nd St

SW 103rd St

SW 104th St

SW 105th St

SW 106th St

SW 107th St

SW 108th St

SW 109th St

SW 110th St

SW 111th St

SW 112th St

SW 113th St

SW 114th St

SW 115th St

SW 116th St

SW 117th St

SW 118th St

SW 119th St

SW 120th St

SW 121st St

SW 122nd St

SW 123rd St

SW 124th St

SW 125th St

SW 126th St

SW 127th St

SW 128th St

SW 129th St

SW 130th St

SW 131st St

SW 132nd St

SW 133rd St

SW 134th St

SW 135th St

SW 136th St

SW 137th St

SW 138th St

SW 139th St

SW 140th St

SW 141st St

SW 142nd St

SW 143rd St

SW 144th St

SW 145th St

SW 146th St

SW 147th St

SW 148th St

SW 149th St

SW 150th St

SW 151st St

SW 152nd St

SW 153rd St

SW 154th St

SW 155th St

SW 156th St

SW 157th St

SW 158th St

SW 159th St

SW 160th St

SW 161st St

SW 162nd St

SW 163rd St

SW 164th St

SW 165th St

SW 166th St

SW 167th St

SW 168th St

SW 169th St

SW 170th St

SW 171st St

SW 172nd St

SW 173rd St

SW 174th St

SW 175th St

SW 176th St

SW 177th St

SW 178th St

SW 179th St

SW 180th St

SW 181st St

SW 182nd St

SW 183rd St

SW 184th St

SW 185th St

SW 186th St

SW 187th St

SW 188th St

SW 189th St

SW 190th St

SW 191st St

SW 192nd St

SW 193rd St

SW 194th St

SW 195th St

SW 196th St

SW 197th St

SW 198th St

SW 199th St

SW 200th St

SW 201st St

SW 202nd St

SW 203rd St

SW 204th St

SW 205th St

SW 206th St

SW 207th St

SW 208th St

SW 209th St

SW 210th St

SW 211st St

SW 212nd St

SW 213rd St

SW 214th St

SW 215th St

SW 216th St

SW 217th St

SW 218th St

SW 219th St

SW 220th St

SW 221st St

SW 222nd St

SW 223rd St

SW 224th St

SW 225th St

SW 226th St

SW 227th St

SW 228th St

SW 229th St

SW 230th St

SW 231st St

SW 232nd St

SW 233rd St

SW 234th St

SW 235th St

SW 236th St

SW 237th St

SW 238th St

SW 239th St

SW 240th St

SW 241st St

SW 242nd St

SW 243rd St

SW 244th St

SW 245th St

SW 246th St

SW 247th St

SW 248th St

SW 249th St

SW 250th St

SW 251st St

SW 252nd St

SW 253rd St

SW 254th St

SW 255th St

SW 256th St

SW 257th St

SW 258th St

SW 259th St

SW 260th St

SW 261st St

SW 262nd St

SW 263rd St

SW 264th St

SW 265th St

SW 266th St

SW 267th St

SW 268th St

SW 269th St

SW 270th St

SW 271st St

SW 272nd St

SW 273rd St

SW 274th St

SW 275th St

SW 276th St

SW 277th St

SW 278th St

SW 279th St

SW 280th St

SW 281st St

SW 282nd St

SW 283rd St

SW 284th St

SW 285th St

SW 286th St

SW 287th St

SW 288th St

SW 289th St

SW 290th St

SW 291st St

SW 292nd St

SW 293rd St

SW 294th St

SW 295th St

SW 296th St

SW 297th St

SW 298th St

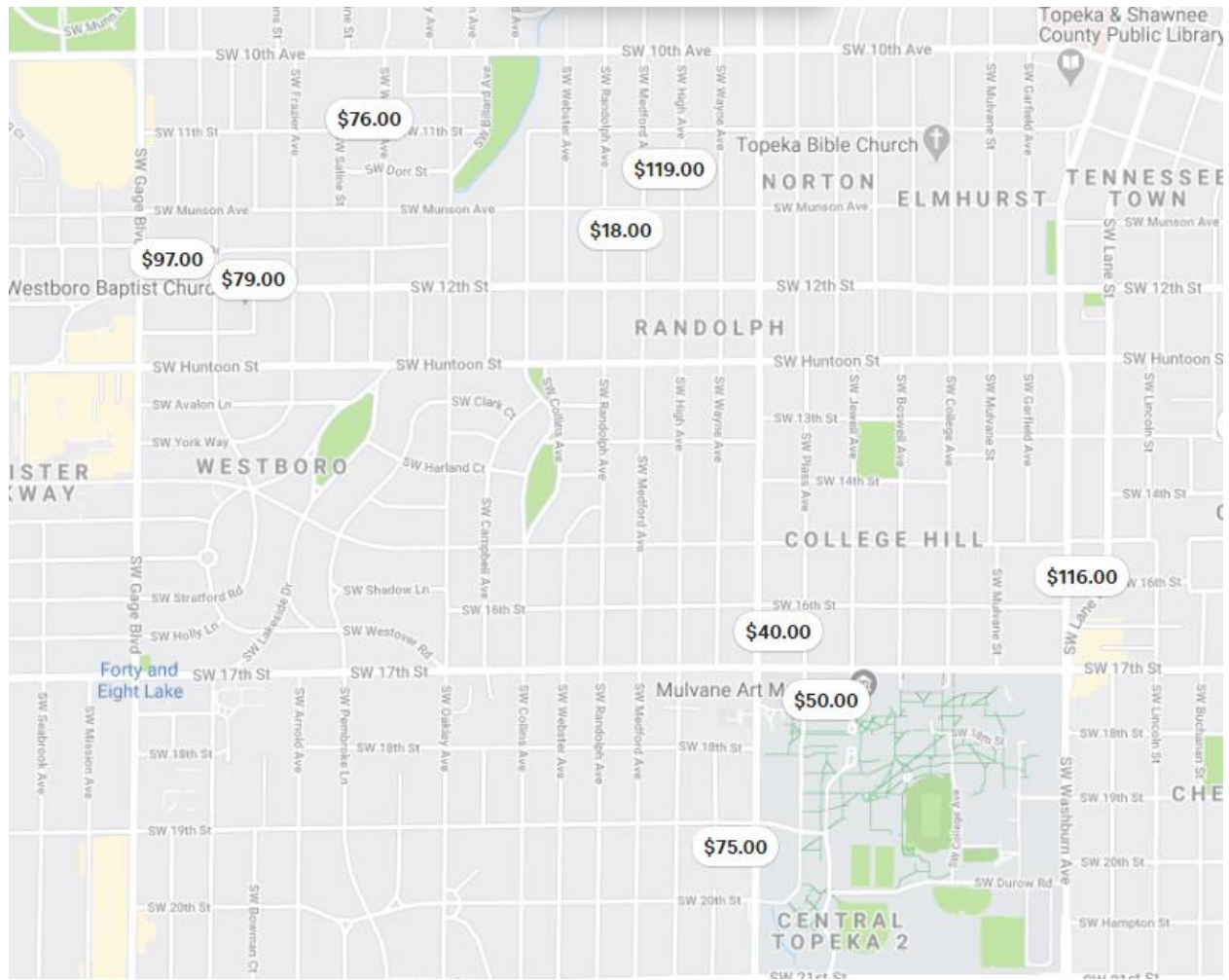
SW 299th St

SW 300th St

SW 301st St

SW 302nd St

Central Topeka 2





BZA20A/03 by Don Phillippi and Candi Bryant



BZA20A/03 by Don Phillippi and Candi Bryant



BZA20A/03 by Don Phillippi and Candi Bryant

ZONING MAP BZA20A_03

**APPEAL EVALUATION
CITY OF TOPEKA PLANNING DEPARTMENT**

Case No. BZA20A/03

Date of Hearing: March 9, 2020

Applicant Name: Don Phillippi and Candi Bryant

Address: 1915 Bluestem Terrace, Manhattan, KS 66502

Property Data:

Address of
Subject Property: 229 SW Edgewood Avenue (located in the Auburndale Neighborhood)

Zone for Property: "R-2" Single-Family Dwelling District

Property Size: .11 acre (4,792 square feet)

Decision Being Appealed

The decision by the Planning & Development Director that the use of the property at 229 SW Edgewood Avenue for the short term rental of guestrooms is a “bed and breakfast inn” as defined by the Topeka Municipal Code (TMC) 18.55.020 and, as a bed and breakfast inn, a conditional use permit is required pursuant to TMC 18.60.010.

Authority of Board of Zoning Appeals

Pursuant to TMC 2.45.050, the Board of Zoning Appeals (BZA) exercises the “*power to determine appeals where it is alleged there is error in any order, requirement, decision or determination made by an administrative official in the enforcement of the zoning regulations.*”

Notice of Hearing

Notice of the public hearing was published in the Topeka Metro News on February 17, 2020 in compliance with TMC 18.45.090.

Notice of the public hearing was mailed to adjoining and adjacent property owners on February 18, 2020 in compliance with TMC 18.45.090.

Actions Leading to the Appeal Application

In November 2019 the Planning and Development Department received complaints from neighboring property owners about the use of the property as an overnight rental for guests. The owner (Mr. Phillippi) had been listing the property on Airbnb.com. The Airbnb.com listing confirms the claims of neighbors. The property is currently listed on Airbnb.com along with several other properties in Auburndale and other neighborhoods in Central Topeka.

The City of Topeka Zoning Inspector sent a letter notifying the owner of the zoning violation on November 18, 2019. (Letter attached) Mr. Phillippi contacted the Planning Division to determine how to gain compliance and spoke with the Current Planning Manager, who told the owner that Topeka's zoning regulations (TMC18.60.010) require a conditional use permit. Mr. Phillippi and his property manager (Rental Management Solutions) met with the Current Planning Manager and Zoning Inspector on December 6, 2019 to discuss the conditional use permit application process. Mr. Phillippi was reluctant to apply for a conditional use permit, so staff advised him of his right to apply for appeal of the decision. Mr. Phillippi submitted the application for appeal on December 18, 2019.

Pertinent Zoning Regulations, Topeka Municipal Code

18.55 Definitions

18.55.020 “B” definitions.

“Bed and breakfast home” means a private, owner-occupied single-family dwelling where no more than four guestrooms are provided for overnight paying guests for not more than seven consecutive nights. The dwelling shall be the primary residence of the owner with no employees permitted, other than permanent residents of the dwelling. Food service may be provided for guests.

“Bed and breakfast inn” means a single-family structure or portion thereof that provides not more than 10 guestrooms for overnight paying guests. Food service may be provided for guests and sometimes in conjunction with social events.

18.55.040 “D” definitions.

“Dwelling, single-family detached” means a dwelling which is designed for and occupied by not more than one family and surrounded by open space or yards and which is not attached to any other dwelling by any means.

“Dwelling unit” consists of one or more rooms, including a bathroom and complete kitchen facilities, which are arranged, designed or used as living quarters for one family or household.

18.55.060 “F” definitions.

“Family” means an individual or two or more persons related by blood, marriage, or legal adoption, or a group of not more than five persons (excluding servants) not related by blood or marriage, living together as a single housekeeping unit with common kitchen facilities in a dwelling unit.

18.55.080 “H” definitions.

“Hotel” means a building or group of buildings offering transient lodging accommodations normally on a daily rate to the general public, where access to the rooms is made through a lobby, and with or without accessory uses, such as restaurants, meeting rooms, or recreational facilities.

18.55.130 “M” definitions.

“Motel” means a building or group of buildings offering transient lodging accommodations normally on a daily rate to the general public, where access to each room is provided directly by an exterior door, and with or without accessory uses, such as restaurants, meeting rooms, or recreational facilities.

18.60.010 Use Tables

Use	Description	Allowed / Conditional / Prohibited
Bed & Breakfast Home	Owner-occupied home with up to 4 guest rooms	Conditional use permit required in R-1, R-2, R-3, , M-1, M-1a, MS-1, X-2, D-3, and RR-1 districts; allowed subject to specific use standards in residential districts M-2 and M-3 districts; allowed in X-1, X-3, D-1, and D-2 districts.
Bed & Breakfast Inn	Single family dwelling for up to 10 guests	Conditional use permit required in R-1, R-2, R-3, , M-1, M-1a, MS-1, O&I-1, O&I-2, O&I-3, X-2, D-3, and RR-1 districts; allowed subject to specific use standards in residential districts M-2 and M-3 districts; allowed in all “C”, “I”, X-1, X-3, D-1, and D-2 districts.

18.70 R-2 Single-Family Dwelling District

18.75.010 Purpose – Intent

This district is established to provide for the use of detached single-family dwellings together with specified accessory uses and other uses as may be approved. It is intended that the character and use of this district be for housing and living purposes free from the encroachment of incompatible uses.

18.240.030 Required number of off-street parking spaces.

One (1) off-street parking space is required per sleeping room.

Analysis and Findings:

The BZA is advised to consider whether the Planning and Development staff erred in its interpretation and decision that the use of 229 SW Edgewood as overnight rental for guests is a *bed and breakfast inn* as defined by TMC 18.55.020. The BZA is not being asked to determine if the use is appropriate at this location. As a *bed and breakfast inn* the owner will be required to apply for a conditional use permit. A conditional use permit requires a public hearing and recommendation by the Topeka Planning Commission and a decision by the Governing Body.

As the basis for the appeal the applicant asserts:

- The “use is actually a single family dwelling as defined by Topeka Municipal Code.”
- The Planning & Development Department’s interpretation and decision ignores the fact that the owner does not provide meals to guests.
- “An ‘inn’ refers to an establishment that has individual guestrooms where any one of them may be rented separately and because renters come and go, an on-site manager is needed. [They] do not rent individual guestrooms, only the entire house.”
- “Dwelling, single-family detached” fits the owner’s occasional use of the residence and applies to short and long-term tenants. The length of time is not currently defined by the City of Topeka.

Staff encourages the BZA to read the applicant’s entire explanation in the attached application.

Staff provides the following to support the interpretation and decision being appealed:

- The zoning regulations include “bed and breakfast home” and “bed and breakfast inn” in the land use matrix (TMC 18.60.010) and definitions (TMC 18.55.020) for the purpose of regulating the use of single-family structures as *guestrooms for overnight paying guests*, distinct from the use of single family dwellings for residence by a *family*, as family is defined by the code.
- The definition of *bed and breakfast inn* includes the statement “food service may be provided for guests” but does not state that “food service” is a necessary element of a *bed and breakfast inn*.
- Single family dwellings listed on Airbnb.com and similar sites are clearly targeted at people looking for short term lodging as an alternative to lodging in a hotel or motel. The common feature of bed and breakfast homes, bed and breakfast inns, hotels, and motels is that all four use categories provide *transient lodging accommodations* typically on a daily rate. All four use categories are commercial in nature and not residential.
- The appellant seems to claim that a bed and breakfast inn needs to have an on-site manager. The definition of *bed and breakfast inn* does not include any mention of an on-site manager and, therefore, an on-site manager is not an essential element of the use.
- The appellant claims that he and his co-owner (Candi Bryant) occasionally use the dwelling at 229 SW Edgewood. The Topeka zoning regulations do not define, in terms of length of stay, what constitutes a *residence* as distinct from *overnight lodging*. Occasional use by the owner is not sufficient to constitute a single-family residential use. The property is used substantially for *overnight lodging of guests*. The primary use of 229 SW Edgewood is a *bed and breakfast inn* and not a *single family dwelling*.

Although the intent of the bed and breakfast regulations is clear, the zoning regulations might be improved by better defining what constitutes *guestrooms for overnight paying guests* distinct from a single family dwelling used as a residence.

Staff Recommendation

Based on the above analysis and findings, staff concludes that the use of property is a *bed and breakfast inn* and, as a *bed and breakfast inn* on the property classified R-2 Single Family Dwelling District, requires a conditional use permit. Staff recommends that the Board of Zoning Appeals affirm the decision of the Planning & Development Director by concurring with the findings as set forth herein.

Exhibits

1. Application and Statement of Grounds for Appeal
2. Letter from Zoning Inspector Becky Esopi dated November 18, 2019
3. Airbnb.com Listing and Other Properties Listed in Auburndale and Adjacent Neighborhoods
4. Aerial Map
5. Zoning Map

Staff: Michael Hall, AICP
Current Planning Manager and Acting Secretary of Board of Zoning Appeals

TOPEKA BOARD OF ZONING APPEALS BYLAWS

ARTICLE I

- Section 1.** **Name.** The name of this organization shall be the Topeka Board of Zoning Appeals. The term “Board” in the following sections of these bylaws shall mean the Topeka Board of Zoning Appeals.
- Section 2.** **Membership.** Membership of the Board shall be as established in the Comprehensive Zoning Regulations of the City of Topeka which specifies the number, method of appointment, and term of office.

ARTICLE II

Purpose

- Section 1.** **Bylaws.** The purpose of these bylaws is to establish rules for the internal organization of the Board and for procedures of operation.
- Section 2.** **Board of Zoning Appeals.** The function, powers, actions, and duties of the Board are quasi-judicial, and carry the power of law as provided for by the Comprehensive Zoning Regulations. The Board, however, adopts its own set of rules and policies for procedure, consistent with its powers.

ARTICLE III

Organization

- Section 1.** **Officers.** The officers of the Board shall be a chairperson, a vice-chairperson. The chairperson and vice-chairperson shall be elected by the Board at its regular meeting in January of each year. Their terms in office shall be one (1) year. No person may serve more than two (2) consecutive terms. The Director of Planning, or his/her representative, shall serve as secretary to the Board.
- Section 2.** **Chairperson.** The chairperson shall preside over all Board meetings, unless the chairperson designates someone to preside in his/her stead. The chairperson shall have the authority to appoint all committees and be an ex-officio member of all committees. The chairperson shall perform all the duties assigned to his/her office by the city and county governing bodies.
- Section 3.** **Vice-Chairperson.** The vice-chairperson shall act as chairperson in the absence of the chairperson. In the event the office of chairperson becomes vacant, the vice-chairperson shall succeed to that office for the unexpired term, and the Board shall select a new vice-chairperson for the unexpired term at the next regular meeting.
- Section 4.** **Secretary.** The Director of Planning, or his/her representative, shall serve as secretary to the Board. The Secretary shall prepare the agenda and the order of business for each regular meeting in consultation with the chairperson. The secretary shall keep the Board informed on all communications. The secretary

shall record the minutes of all meetings and shall provide copies to all members of the Board. The Secretary shall:

- a. Accept and prepare all routine communications on Board matters;
- b. Give or serve all notices required by law, these bylaws, or adopted procedures, and
- c. File all variances granted by the Board with the Shawnee County Register of Deeds.

Section 5. **Attendance.** Any member who is absent from three consecutive meetings without demonstration of extenuating circumstances shall have such absence reported by the chairperson to the appointing authority for possible replacement. Members who accrue absences beyond a total of four in any calendar year will be requested to relinquish their appointments.

Section 6. **Planning Office/Staff Support.** The Planning Department shall provide professional and technical assistance to the Board. Staff planners shall present recommendations to the Board, as well as all meeting agendas, Findings of Fact, and other documentation as may be required by the Board.

ARTICLE IV **Meetings**

Section 1. **Regular Meetings.** The Board shall meet the second Monday of each month. All Board meetings shall be open to the public.

Section 2. **Special Meetings.** Special meetings of the Board may be called by the chairperson or by a majority of the members appointed. Notice of special meetings shall be given by the Planning Director not less than three (3) business days prior to the meetings. The notice shall state the purpose and time and place of the meeting. Notice may be by telephone or mail.

Section 3. **Agenda.** Agendas for all regular meetings shall be available at the Planning Department at least one week prior to each meeting. Between meetings of the Board, the planning department staff will be available to provide information on matters which come before the Board.

Section 4. **Quorum Requirements.** A quorum of the Board shall consist of four (4) members. No official business shall be conducted by the Board in the absence of a quorum. In the absence of a quorum at any meeting, the presiding officer, after consultation with those members present may adjourn the meeting to a specified date, time, and place. A quorum is not lost when a member or members abstain from voting.

ARTICLE V **Conduct of Meetings**

Section 1. **Parliamentary Authority.** In all applicable cases, all meetings shall be conducted according to Robert's Rules of Order, provided said rules are not inconsistent with these bylaws, and the Comprehensive Zoning Regulations.

- Section 2.** **Staff Reports.** Staff reports on all agenda items shall be prepared and transmitted to the Board members a minimum of seven (7) days prior to the time of the meeting.
- Section 3.** **Appearance Before the Board.** Petitioners or their representatives, members of the community at large or individuals or their representatives who feel that they will be affected by any action taken by the Board may appear before the Board to present views and statements either for or against agenda items. After an initial staff presentation of each case before the Board, the public may address their comments or concerns to the Board either in person or in writing. The Chairperson may limit the length of presentation or discussion to ensure the orderly conduct of Board business.
- Section 4.** **Board Action.** The Board shall function as authorized by Article 34 of the Comprehensive Zoning Regulations of the City of Topeka and shall include, but not be limited to, the following functions:
- a. **Motions.** Motions before the Board on all public hearing items shall be restated by the Chairperson prior to vote on that item.
 - b. **Voting.** Voting may be by collective voice vote or by individual voice vote on all items at the discretion of the Chairperson. A majority of those voting in the affirmative shall be considered approval of a motion. A tie vote shall not be considered in the affirmative to approve a motion. Records of all votes shall be tallied by the secretary.
 - c. **Conflict of Interest.** It is the duty of each member to vote on each issue. No member of the Board, however, shall participate in, discuss, or vote on a matter in which he or she has a substantial interest as defined by K.S.A. 75-4301 et seq. Should any member have such a substantial interest on a matter coming before the Board, the Chairperson shall declare the abstention for each affected Board member for that item on the agenda.
 - d. **Record of Proceedings.** The secretary shall keep a record of the proceedings of each meeting as a matter of public record and shall present such minutes to the Board for approval.

ARTICLE VI

Amendments

- Section 1.** These bylaws may be amended by a majority of the Board at any regular meeting, provided the members have been notified one (1) month in advance and the proposed amendment has been placed on the meeting agenda.

____Timothy Carkhuff____
Chairman

____7/10/06____
Date

____Dean Diediker____
Secretary

____7/10/06____
Date