



BOARD OF ZONING APPEALS MINUTES
MONDAY, September 16, 2019, 6:00 P.M.
COMMISSION ROOM, CITY HALL
LEAVENWORTH, KANSAS

The Leavenworth Board of Zoning Appeals (BZA) met Monday, September 16, 2019. It was determined a quorum was met with the following board members present: Dick Gervasini, Jan Horvath and Kathy Kem. Mike Bogner and Ron Bates were absent. Staff members City Planning Director Julie Hurley and Administrative Assistant Michelle Baragary were present.

Vice Chairman Gervasini called the meeting to order at 6:00 p.m. and called for the first item on the agenda – approval of minutes from April 22, 2019. Ms. Kem moved to accept the minutes as presented, seconded by Mr. Horvath and approved by a vote of 3-0.

The Vice Chairman called for the next item on the agenda – **Case No. 2019-10 BZA – 5000 10th Avenue – Variance Request** - and requested the staff report.

Planning Director Julie Hurley addressed the board stating the applicant is requesting an appeal to allow more than one sign on a wall for a property zoned GBD, General Business District. The existing Walmart store is located at 5000 10th Avenue in an area zoned GBD, General Business District. The applicant has submitted a sign application to install a “FedEx Office” sign on the east side of the building. The Development Regulations were updated in 2016 to limit the number of wall signs allowed for each side of a structure or part of a structure clearly identified as a storefront to one sign. Previously, there was no limit on the number of wall signs allowed. Original signage was installed correctly per the regulations in effect at the time and is considered to be legal-nonconforming. Any new signage proposed requires approval of a variance. A sign variance was previously approved by the City Commission on May 23, 2017 to allow installation of “Vision Center” and “Pickup” signs, both on the east side of the building.

Planning Director Julie Hurley further stated at some point in the past, staff started sending sign variance requests to the City Commission. The current City Attorney pointed out the City Commission does not have jurisdiction to make a decision on variances, regardless of what the variance is for. The City Attorney directed staff to bring variance requests back to the Board of Zoning Appeals.

Ms. Kem asked if the placement of the FedEx sign is closest to where the FedEx location is within Walmart.

Tony Russell, Midwest Sign Company, approached the board. Mr. Russell stated he is not familiar with this particular Walmart but generally the signs are being installed on the side of the building near the FedEx location.

Mr. Gervasini asked if when the sign codes were rewritten in 2016, was any consideration given to the size of the building.

Ms. Hurley responded that was intentionally not included. Staff's thinking was that the codes were being written to cover for 95% of the buildings in town knowing there is always be a case that we cannot account for, which is why the variance process is in place.

Ms. Kem asked if the FedEx sign is located on the other side of the Walmart building for some stores.

Mr. Russell stated it depends on the location of the FedEx office inside the Walmart.

Ms. Kem asked if the FedEx sign is the same size as all other FedEx signs installed on Walmart buildings.

Mr. Russell stated they are all about the same size; anywhere between 10 – 18 sqft.

Mr. Horvath stated one of the criteria is that the variance will not adversely affect the rights of adjacent property owners or residents. Mr. Horvath asked if Walmart looked into this with the adjacent property owners.

Ms. Hurley responded that the city mailed certified letters to all property owners within 200' of the subject property. No property owner contacted the city after receipt of the notification.

With no other questions, Vice Chairman Gervasini opened the public hearing.

Mr. Russell stated there are numerous cities that have the same regulation allowing only one sign per façade. Mr. Russell asks the board to take into consideration that FedEx is a separate company from Walmart. This is just a separate space for FedEx inside of Walmart.

Mr. Gervasini asked if the sign will be mounted on the façade of the building.

Mr. Russell stated the sign will be to the right of the current Grocery & Pharmacy sign and will be parallel with that sign.

Ms. Kem asked if it will be a box sign or individual letters.

Mr. Russell responded they are individual channel letters mounted on a raceway. The raceway will be painted the same color as the building.

With no further discussion among the commissioners, Vice Chairman Gervasini closed the public hearing and read the following criteria regarding the Board's authority and reviewed each item.

BOARD OF ZONING APPEALS AUTHORITY:

The Board's authority in this matter is contained in Article 11 (Board of Zoning Appeals), Section 11.03.B (Powers and Jurisdictions – Variances)

Variances: To authorize in specific cases a variance from the specific terms of these Development Regulations which will not be contrary to the public interest and where, owing to special conditions, a literal enforcement of the provisions of these Development Regulations will, in an individual case, result in unnecessary hardship, provided the spirit of these Development Regulations shall be observed, public safety and welfare secured, and substantial justice done. Such variance shall not permit any use not permitted by the Development Regulations of the City of Leavenworth, Kansas in

such district. Rather, variances shall only be granted for the detailed requirements of the district such as area, bulk, yard, parking or screening requirements.

1. The applicant must show that his property was acquired in good faith and where by reason of exceptional narrowness, shallowness or shape of this specific piece of property at the time of the effective date of the Zoning Ordinance, or where by reason of exceptional topographical conditions or other extra-ordinary or exceptional circumstances that the strict application of the terms of the Development Regulations of the City of Leavenworth, Kansas actually prohibits the use of his property in the manner similar to that of other property in the zoning district where it is located.
2. A request for a variance may be granted, upon a finding of the Board that all of the following conditions have been met. The Board shall make a determination on each condition, and the finding shall be entered in the record.

a) *That the variance requested arises from such condition which is unique to the property in question and 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.*

Vote 3-0

All board members voted in the affirmative.

b) *That the granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents.*

Vote 3-0

All board members voted in the affirmative.

c) *That the strict application of the provisions of the Development Regulations from which the variance is requested will constitute unnecessary hardship upon the property owner represented in the application.*

Vote 3-0

All board members voted in the affirmative.

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

Vote 3-0

All board members voted in the affirmative.

e) *That granting of the variance desired will not be opposed to the general spirit and intent of the Development Regulations.*

Vote 3-0

All board members voted in the affirmative.

3. In granting a variance, the Board may impose such conditions, safeguards, and restrictions upon the premises benefited by the variance as may be necessary to reduce or minimize any potentially injurious effect of such variance upon other property in the neighborhood, and to carry out the general purpose and intent of these Development Regulations.

Ms. Kem stated she does not have any conditions other than the sign should be installed according to the plans submitted, particularly the raceway color match so it does not contrast with the light color behind it.

Vice Chairman Gervasini stated the variance is approved to allow to installation of a FedEx Office sign on the east side of the Walmart store located at 5000 10th Avenue.

With no further business, Vice Chairman Gervasini called for a motion to adjourn. Mr. Horvath moved to adjourn, seconded by Ms. Kem and passed by a unanimous vote 3-0.

The meeting adjourned at 6:19 p.m.

JH:mb