



BOARD OF ZONING APPEALS MINUTES
MONDAY, November 18, 2019, 6:00 P.M.
COMMISSION ROOM, CITY HALL
LEAVENWORTH, KANSAS

The Leavenworth Board of Zoning Appeals (BZA) met Monday, November 18, 2019. It was determined a quorum was met with the following board members present: Mike Bogner, Dick Gervasini, Ron Bates and Kathy Kem. Jan Horvath was absent. Staff members City Planning Director Julie Hurley, City Planner Jacquelyn Porter and Administrative Assistant Michelle Baragary were present.

Chairman Bogner called the meeting to order at 6:00 p.m. and called for the first item on the agenda – approval of minutes from September 16, 2019. Mr. Gervasini moved to accept the minutes as presented, seconded by Ms. Kem and approved by a vote of 4-0.

Chairman Bogner called for the next item on the agenda – **Case No. 2019-11 BZA – 114 N. 18TH STREET– Variance Request** - and requested the staff report.

Planning Director Julie Hurley addressed the board stating the applicant, Michael Minard, is requesting a variance from section 4.03 of the adopted Development Regulations to allow a detached garage within the required side yard. The subject property is a corner lot zoned R1-9, Medium Density Single Family Residential District, with an existing single family home on the lot. The subject property is surrounded by other single-family homes of a similar size and nature.

The R1-9 zoning district requires a minimum setback of 25' in both the front and street-side yards on corner lots. The existing house has a side setback of 16' on the Seneca Street side, and is considered legal nonconforming. The applicant is proposing to construct a 720 square foot detached garage behind the existing home, in line with the north wall of the home, resulting in a 16' corner side yard setback, as opposed to the required 25'. The proposed garage will meet the required rear yard setback of 3'.

Ms. Hurley asked for questions regarding the staff report.

Ms. Kem asked if the garage would be in-line with the neighbor's house.

Ms. Hurley responded it would not be. The houses on Seneca Street meet the 25' setback but Mr. Minard's house is a corner lot and the non-addressed side is Seneca Street therefore the garage will align with Mr. Minard's house but will be in front of the neighboring property's house.

Mr. Bogner asked if the applicant looked at the possibility of lining the garage up with the neighboring house and if so, why would this not be feasible.

Ms. Hurley responded the applicant did look at lining the garage up with the neighboring property. The applicant can speak more about the reasons why this option would not work. Ms. Hurley further stated

the applicant did provide signatures from the surrounding neighbors indicating their support of the proposed detached garage.

With no further comments or questions about the staff report, Chairman Bogner opened the public hearing.

Mike Minard, applicant, approached the board and stated one reason for choosing to align the garage up with his house is so he would not lose all of his backyard space. Additionally, it looks better and will be cheaper since he will be saving on the cost of adding an additional 10' to the driveway. Meeting the 25' setback would also require him to take out the deck to do dirt work.

With no further comments, Chairman Bogner closed the public hearing and asked for discussion among the board members.

With no further discussion among the commissioners, Chairman Bogner 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 the 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 3-1
Ms. Kem disagreed.

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

Vote 4-0

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 3-1

Ms. Kem disagreed.

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

Vote 4-0

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 3-1

Ms. Kem disagreed.

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 the Development Regulations.

Chairman Bogner stated the variance is approved to allow an accessory structure within the required side yard setback located at 114 N. 18th Street.

Chairman Bogner called for the next item on the agenda – **Case No. 2019-12 BZA – 721 MIAMI STREET – Variance Request** – and requested the staff report.

Planning Director Julie Hurley stated the applicants, Mark Bisbee and Edwina Tate, are requesting a variance from Section 4.04 of the adopted Development Regulations to allow operation of a home occupation in a detached garage. The subject property is zoned R1-6, Low Density Single Family Residential District, with an existing single family home on the lot. The subject property is surrounded by other single-family homes of a similar size and nature directly to the east and west. To the north is St. Joseph Church, and to the south across the alley are several multi-family structures. The properties on either end of the block are zoned Office Business District and Central Business District. Properties to the west, along Broadway Street, are occupied with commercial uses, and the property to the east end of the block is occupied by a day care.

Section 4.04 of the Development Regulations states that “a carport, garage, or any accessory structure may not be used for home occupations”, and that “home occupations shall be conducted entirely within the principal residential building”. The applicants are proposing to conduct a small engine repair and

tune-up business in their recently constructed detached garage. The business focuses on small engines, such as lawnmowers, and does not involve automobile repair.

The applicants obtained a building permit in July 2019 to construct the detached garage for the sole purpose of conducting their home occupation in the structure. Prior to constructing the garage, the applicants contacted the City regarding requirements for their business. Through discussions with city staff in other departments, the applicants were under the impression that their home occupation would be allowed in the detached garage.

Chairman Bogner asked for questions about the staff report.

Ms. Kem asked how this is related to a "use" variance.

Ms. Hurley stated the use itself is allowed as a home occupation; rather it is the location on the property that is the cause for the variance (detached garage).

Mr. Bogner asked for clarification that the property owner would be the only one who can operate the business from the garage.

Ms. Hurley responded in the affirmative; there will be no other employees.

Mr. Bogner asked if the fence around the property was a requirement.

Mark Bisbee, property owner, stated the privacy fence was already there. He just added a section to the west side of the house to prevent his dog from going into the rear yard.

Mr. Bogner asked about customer parking.

Mr. Bisbee stated there is no customer parking. Customers will only be dropping off and picking up.

Mr. Bogner asked city staff if customer parking is something the board needs to be concerned with.

Ms. Hurley stated the only thing the board is to address is having a home occupation in a detached garage.

Ms. Kem asked about the thought process on why home occupations are not allowed in accessory structures.

Ms. Hurley stated she is unsure of the thought process because this is an allowed home occupation and it would make sense for this type of home occupation to be in a garage. Ms. Hurley further stated every year the Planning Commission reviews the Development Regulations for needed changes and this particular item is on the list to discuss at January's Planning Commission meeting.

With no further questions about the staff report, Chairman Bogner opened the public hearing.

Mr. Bisbee stated this is not a full-time occupation. It is more of a hobby and a needed business in Leavenworth.

Mr. Bates asked the property owners if they knew they could not conduct this business in a detached garage would they still have built the detached garage.

Mr. Bisbee responded in the negative.

With no further questions, Chairman Bogner closed the public hearing and called for a discussion amongst the board.

With no further discussion among the commissioners, Chairman Bogner 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 the 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 4-0

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 4-0

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 4-0

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 4-0

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 4-0

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 the Development Regulations.

Mr. Gervasini asked if it would be appropriate to add a condition to ensure noise control.

Ms. Hurley stated they could add that the property owners must comply with the existing noise ordinance in effect in the City of Leavenworth.

Ms. Kem believes it is understood that the applicant must meet and comply with all ordinances.

Mr. Bates asked if the condition is added and they do not comply, does the board have any recourse.

Ms. Hurley stated the board would have no recourse and the noise ordinance is enforced by the Police Department.

Chairman Bogner stated the variance is approved without any added conditions, to allow a home occupation in a detached garage located at 721 Miami Street.

Chairman Bogner called for the next item on the agenda – **Case No. 2019-13 BZA – 1116 N. BROADWAY – Variance Request** – and requested the staff report.

City Planner Jacquelyn Porter stated the applicant, Russell Hopper, is requesting a variance from Section 4.03 and 1.05 of the adopted Development Regulations to expand a nonconforming structure and increase the maximum lot coverage. The property currently exceeds the maximum lot coverage area but is considered a legal nonconforming structure. The lot is located at 1116 N. Broadway, which is currently zoned as General Business District occupied by “Popcorn Pit Stop”. The subject property is surrounded by properties to the north and east zoned as GBD, General Business District and the properties to the south and west are zoned R1-6, High Density Single Family Residential District.

The General Business District requires a 50% maximum coverage of the lot. Current impervious surface is 8,716 sqft, or 83.4%. The applicant is proposing to construct a 744 sqft addition to the east side of the building, and remove the 404 sqft concrete slab located in the southeast corner of the property. The proposal of the 744 sqft addition and the removal of the concrete slab increases the impervious surface by 340 sqft, or 3.25%, resulting in a total lot coverage of 86.65%.

Additionally, there is a third variance request, which was mistakenly omitted from the staff report. This is a variance request from Section 4.03 of the adopted Development Regulations to decrease the required rear yard setback.

Mr. Bogner asked since they are adding to the impervious surface, this now brings up all the other faults that were "grandfathered" in.

Ms. Hurley further stated the impervious surface for commercial properties is another item that is on the list to be reviewed as part of the Development Regulations updated. Most cities do not have an impervious surface limit on commercial properties; it is more of a ratio and taking into account storm water considerations.

Ms. Kem asked if storm water issues have already been considered or discussed.

Ms. Hurley stated that will occur when the applicant applies for a permit.

Ms. Kem asked what the new rear setback will be.

Ms. Porter responded the rear setback will be at 13' instead of the required 25'.

Mr. Bogner asked if Public Works reviews based on the ordinances of the Development Regulations or if that is two separate processes.

Ms. Hurley responded it is two separate processes. Public Works has their own set of criteria they review.

Mr. Bogner asked if Public Works criteria is more restrictive or if the Development Regulations are.

Ms. Hurley responded the Development Regulations would be more restrictive at this point with the 50% lot coverage restriction for commercial properties.

Mr. Bogner asked even if this board approves the variance request, Public Works will still review it based on their considerations and could stop the project if their criteria is not met.

Ms. Hurley responded in the affirmative. When the applicant comes in for the building permit, engineering will review it. Any issues/concerns will be addressed at that time.

Mr. Bates asked how close will the proposed addition be to the detached garage to the south.

Ms. Hurley stated General Business District has a zero side yard setback requirement; therefore, the addition lining up with the current building meets the setback requirements.

With no further questions about the staff report, Chairman Bogner opened the public hearing.

Mr. Bogner asked the applicant what the purpose is for the addition and the reasoning for the size of the addition.

Russell Hopper, applicant, stated he chose the length of the building to get as much out of it as he can. The purpose is for warehouse storage. Currently, all pallet deliveries are unpacked outside in the elements and then individually brought into the existing building. With the proposed addition, there will be door where the pallets can be brought in and then unpacked at a later time.

Willard Wiley, contractor, approached the board stating the roofline would stay the same; so aesthetically, you would not be able to tell there was an addition to the existing building. Mr. Wiley also discussed options for runoff.

Mr. Bogner stated that most properties around there do not appear to have the required rear yard setback so the applicant would not be making anything any worse.

With no one else wishing to speak, Chairman Bogner closed the public hearing.

Mr. Bates asked if consideration is taken for nearby lots, such as the substation and the fact that the lots surrounding it must be kept vacant, when considering calculations for individual lots.

Ms. Hurley responded in the negative.

The Board will be voting on three variances: 1) to allow an expansion of a nonconforming structure, 2) increase the maximum allowed lot coverage, and 3) to allow a reduction in the rear yard setback. The variances shall be voted on separately.

With no further discussion among the commissioners, Chairman Bogner read the following criteria regarding the Board's authority and reviewed each item. The commissioners will have three series of votes. The first series of votes will be on the variance request from Section 1.05 to expand a nonconforming structure.

BOARD OF ZONING APPEALS AUTHORITY:

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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 the 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 4-0
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 4-0
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 4-0
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 4-0
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 4-0
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.

Chairman Bogner stated the variance to expand of a nonconforming structure passed.

Chairman Bogner stated the next series of votes will be on the variance request from Section 4.03 of the adopted Development Regulations to allow an increase in the allowed amount of impervious surface from 83.4% to 86.65%.

- 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 4-0

All board members voted in the affirmative.

Mr. Bogner stated he agrees because it already exceeded the limit when he purchased the property.

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

Vote 4-0

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 4-0

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 4-0

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 4-0

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.

Chairman Bogner stated the variance to allow an increase in lot coverage passed.

Chairman Bogner stated the next series of votes will be on the variance request from Section 4.03 of the adopted Development Regulations to allow a reduction in the rear yard setback from 25' to 13'.

- 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 4-0
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 4-0
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 4-0
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 4-0
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 4-0
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.

Chairman Bogner stated the variance for a reduction in the rear yard setback from 25' to 13' passed.

To recap, the following three variances for Case No. 2019-13 BZA – 1116 N. Broadway passed: 1) to allow an expansion of a nonconforming structure, 2) to allow an increase in lot coverage from 83.4% to 86.65%, and 3) to allow a reduction in the rear yard setback from 25' to 13'.

Chairman Bogner called for the next item on the agenda – **Case No. 2019-14 BZA – 1400 SANDERS – Variance Request** – and requested the staff report.

Planning Director Julie Hurley stated the applicants, James and Tammy Pike, are requesting a variance from Section 4.40 of the adopted Development Regulations to allow a detached garage larger than 1,200 square feet. The subject property is a 1.01 acre corner lot zoned R1-6, Low Density Single Family Residential District, with an existing single family home on the lot. The subject property is surrounded by other single-family homes of a similar size and nature. The applicants also own three additional lots directly to the north of their home totaling approximately 3.5 acres. The additional lots are separated from the subject property by the right-of-way for Sherman Avenue, which is not currently developed as a street, but is dedicated right-of-way.

Section 4.04 of the Development Regulations states that for single-family residences, detached garages on parcels one acre or larger may not exceed 1,200 square feet. The applicants are proposing to install a 2,400 square foot detached garage on their property. Construction of any detached garage would require installation of a paved driveway, regardless of the size of the garage.

Chairman Bogner asked for questions about the staff report.

Mr. Bogner asked if there is a minimum width for the required paved driveway.

Ms. Hurley responded there is not a minimum width requirement; however, pavement must be at least two feet from the property line.

Ms. Kem asked if we knew what the purpose is for such a large detached garage.

Ms. Hurley stated she believes it is to store work vehicles and equipment for his job. For security purposes and visually it will be better to have the vehicles/equipment stored in a garage. The applicant could answer this question better than staff.

Ms. Kem asked if this size of a garage would be permitted on any of the other parcels to the north, which are owned by the applicant.

Ms. Hurley stated no; the maximum allowed structure anywhere in the city is 1,200 sqft. If you are over an acre, you can go up to 1,200 sqft; under an acre, the maximum size is 900 sqft.

Mr. Bogner asked how this is different from the earlier request they had tonight about a home business conducted in a garage.

Ms. Hurley responded the applicant is not proposing to conduct a business out of the garage and does not even know if the applicant owns his own business. The applicant is better suited to answer questions about what will be stored in the garage.

Mr. Bogner stated if this is like another piece of property he knows of, employees will drive their personal vehicles to the applicant's house, park their vehicles there and then drive the construction vehicles to the jobsite. Then you are dealing with employee's vehicles parked around the applicant's house.

Ms. Hurley stated the property owner would need to address that concern.

Mr. Bogner stated he is concerned because the last time the board approved a request for a larger garage it ended up being a commercial business at a later date.

With no further questions about the staff report, Chairman Bogner opened the public hearing.

Ms. Kem asked the applicant how he plans to use the structure and his justification for the size of the structure.

James Pike, applicant, stated he does not own a business, therefore, there will not be employees coming and going. He has three trailers, a few mowers, pick-up truck, and a work vehicle that he intends to store in the garage.

Ms. Kem asked why he has so many trailers.

Mr. Pike stated he has mowers he uses the trailers for.

Ms. Kem asked if he has a mowing business.

Mr. Pike said he and his son-in-law do a little bit of mowing one the side. Furthermore, the property and area are unique. The parcel is over an acre. Additionally, there is a sign that says "no outlet" at the end of Sanders Street so they get quite a bit of rift-raft going through there dumping stuff or stealing things. He has had several items stolen from him, to include a vehicle. Furthermore, the rear of the property where the proposed structure would be installed is screened by a heavily wooded tree line.

Mr. Bogner asked the applicant to again explain why he needs 2,400 sqft structure.

Mr. Pike stated he has an enclosed trailer; the trailer and his truck take up about a third of the space. Additionally, there is a 14' trailer, a smaller trailer, golf cart and a work vehicle.

Ms. Kem stated to her it reads as a commercial use in a residential district.

Mr. Bogner asked where the vehicles and trailers are now because he drove around and did not see anything.

Mr. Pike stated they are in the rear yard near the wooded tree line.

Ms. Kem stated the commissioners probably did not see the vehicles when they drove by due to the heavily wooded tree line on 14th Street.

Mr. Pike stated he cleared out a flat area in the rear yard for his trailers and vehicles but left the wooded area to help block the view because there are several homeless people living and camping around that area. Mr. Pike further stated at no time will this be a commercial use. He purchased the property behind him (to the north) just so someone could not have a commercial use there. Furthermore, there is not much you could do with the property to the north because it is bottom ground and a creek runs through it.

Ms. Kem asked staff how many accessory structures are allowed.

Ms. Hurley stated the applicant is allowed two accessory structures. Therefore, the applicant could have two 1,200 sqft garages next to each other if he wanted to without requesting a variance. The applicant could also pave a 2,400 sqft parking pad in the rear yard and park all of the trailers, vehicles, mowers, etc. on it. However, the applicant would still face the security issues with just a paved parking pad.

Mr. Bogner asked staff what safeguards are in place if the board approves the request that it will not become a home business in the future. Is the application periodically reviewed to ensure the applicant is in compliance.

Ms. Hurley stated there is no formal review process. If code enforcement notices something or if something is reported to staff by a neighbor, then staff would send them a violation letter.

Ms. Kem stated she understands the applicant is allowed two 1,200 sqft structures. However, she believes the impact of two 1,200 sqft structures is not as bad as one 2,400 sqft structure.

Mr. Bates stated as far as visual for the neighborhood, he believes two 1,200 sqft structures built close to each other would look worse than one nice larger building. 40' x 60' may sound big, but Mr. Bates stated he knows people with buildings much bigger than that and the building does not seem that big when it is put in an area with as much open space as the applicant has.

Ms. Kem does agree the applicant has plenty of space. However, she feels the request clearly goes against the spirit of the ordinance to allow a structure twice the size of what is allowed.

Mr. Bates stated the alternatives are to force the applicant to build two structures, which is not only an additional cost but would look worse, or force the applicant to pour 2,400 sqft of concrete to create a parking pad and fence that in to secure his property. The one larger building is the lesser of the evils.

Ms. Kem stated she does not believe aesthetics is something the board can consider in terms of a variance.

Mr. Gervasini stated as far as aesthetics go, you cannot even see it when you drive down 14th Street; and the leaves are falling now. In the spring and summer, you will not be able to see anything with all the foliage.

Mr. Bogner asked if there are any requirements for the distance from the house.

Ms. Hurley stated detached structures must be five feet from the primary dwelling. The rear setback is three feet and since the property is on a corner lot, the 14th Street side has a setback of 25'. According to the site plan, the proposed structure will be lined up behind his house so the applicant has plenty of room to work with.

Mr. Bates asked the applicant how far away the structure will be from the house.

Mr. Pike stated 100' – 125' from the house.

Mr. Bates asked if anyone remembered how big the horse barn was that the board approved some time ago.

Mr. Bogner thought it was a four bay structure.

Mr. Bates thought the structure was larger than what the current applicant is requesting and Mr. Gervasini agreed.

Mr. Gervasini further stated the barn does not have any foliage like the subject property has.

Ms. Hurley asked if they are speaking of the property off 20th Street.

Mr. Gervasini stated it is the property off Lakeview; the first property to the south where Lakeview Circle splits and goes around. The structure sits out in the field.

Mr. Gervasini further stated there is a property that backs up to Shrine Park Road, which has an accessory structure that is larger than this one.

Ms. Kem and Mr. Gervasini stated both these variances were granted by the Board of Zoning Appeals.

Mr. Pike stated he wants his property to look nice and clean. He does not want his trailers, vehicles, lawnmowers, etc. scattered around his property. He wants everything nicely secured in the proposed accessory building.

Mr. Bates stated having the proposed structure tucked away in the rear yard will look much smaller than one may think.

Mr. Gervasini concurred.

Mr. Bogner asked if the applicant plans on having a workshop in the building.

Mr. Pike stated he plans on having a toolbox and such.

Mr. Bogner asked for clarification that the applicant was not going to have an office or living quarters in there.

Mr. Pike responded in the affirmative.

Mr. Bogner stated this board had a variance request some time ago where it ended up being an apartment in the upstairs.

Michael Turner, 1401 Sanders, stated he is in favor of the building. In all the years he has lived there, the Pikes have done nothing but increase the value of their property. He believes this building will also increase the value.

With no one else wishing to speak, Chairman Bogner closed the public hearing and opened it up for discussion among the board members.

With no further discussion among the commissioners, Chairman Bogner 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 the 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 2-2

Mr. Bogner disagreed stating he knows the property is unique but it is residential and even though the garage is not a business it is considerably larger than any garage he has seen in a residential area.

Ms. Kem disagreed stating even though the land is perfectly suited for the requested garage, she is unable to agree due to the last portion of the condition "...is not created by an action or actions of the property owner or the applicant". Having the garage twice the size of what is allowed in the ordinance cannot meet that portion of the condition.

Chairman Bogner asked staff is the applicant reduced the size of the garage to 1,200 sqft, would the applicant need to come before this board.

Ms. Hurley responded in the negative.

Mr. Bogner asked for clarification that this does not kill the option of having a garage it is just reviewing if a 2,400 sqft garage would be acceptable.

Mr. Gervasini stated the applicant could build two 1,200 sqft garages on his property.

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

Vote 4-0

All board members voted in the affirmative.

Mr. Bates asked if it is necessary to go through all the criteria since it cannot pass with a tie vote on the first criteria. If one criteria does not pass in the affirmative then the variance request fails.

Ms. Hurley responded that the request could be tabled until next month and hopefully have a full board.

Mr. Gervasini asked if the applicant is allowed two 1,200 sqft structures without a variance.

Ms. Hurley responded in the affirmative.

Mr. Gervasini asked if the structures need to be side-by-side.

Ms. Hurley stated they do not. So long as the setback are met, the applicant can build two 1,200 sqft structures anywhere on his property and in any layout (side-by-side, back-to-back, one on each side of the property, one running north/south and the other running east/west, etc.).

Chairman Bogner asked for a motion to table the item until December's meeting.

Ms. Kem believes the item cannot be tabled indefinitely; the board is required to hear the item within a certain time frame.

Ms. Hurley believes the item must be heard within 90 days.

The next Board of Zoning Appeals meeting is December 16, 2019. There is a consensus to table the request for next month's Board of Zoning Appeals meeting, December 16, 2019 and the board members present will be in attendance. The applicant is in agreeance. Staff will contact Commissioner Horvath to verify his availability.

Chairman Bogner moved to table Case No. 2019-14 BZA to December 16, 2019 at 6:00 p.m. Motion was approved by a vote of 4-0.

Chairman Bogner called for a motion to adjourn. Mr. Gervasini moved to adjourn, seconded by Mr. Bates and approved by a vote of 4-0.

The meeting adjourned at 7:31 p.m.

JH:mb