



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

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

Acting Chair Kathy Kem called the meeting to order at 6:00 p.m. and called for the first item on the agenda – approval of minutes from November 18, 2019. Mr. Bates moved to accept the minutes as presented, seconded by Mr. Horvath and approved by a vote of 3-0.

Acting Chair Kem 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 addressed the board stating this item was tabled at the November 18, 2019 BZA meeting due to a tie vote.

The applicants, James and Tammy Pike, are requesting a variance from section 4.04 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, High 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 sqft. Detached garage on their property. Construction of any detached garage will require installation of a paved driveway, regardless of the size of the garage. The Development Regulations allow for a total of two detached structures on a lot, both of which could be a maximum of 1,200 sqft.

During the November 18, 2019 BZA meeting, board members inquired about the number of similar requests that have been heard by the board. Staff identified the following six cases since 2014:

2015-12-BZA, 3532 Lakeview, request to allow a 2,000 sqft storage building on an 8 acre lot. APPROVED.

2016-08 BZA, 2918 Virginia Circle, request a 1,500 sqft storage building on a .4 acre lot. DENIED.

2016-09 BZA, 1530 Kansas, request a 1,500 sqft storage building on a .4 acre lot. DENIED.

2016-22-BZA, 1936 Lecompton, request a 1,200 sqft storage building on a 1.65 acre lot. APPROVED.

2017-10-BZA, 771 Michigan, request to allow a 1,396 sqft garage on a .49 acre lot. DENIED.

2017-14-BZA, 4700 Lakeview, request to allow a 2,208 sqft agricultural building on a 13.66 acre lot. APPROVED.

With no questions about the staff report, Acting Chair Kem opened the public hearing.

The applicant, James Pike, approached the board stating the Development Regulations allows for two separate buildings but he does not feel like that would look better than one larger building. He already has a paved pad for the 2,400 sqft building.

Ms. Hurley stated there is no limit on the size of an impervious pad that he can install. The Development Regulations only limits the paved area to 50% of the lot coverage. Therefore, he could technically pave half of his lot if he chose to.

Ms. Hurley further stated at the last meeting a neighbor spoke in favor of the application. Included in the agenda packet are several signatures from neighbors supporting the application.

Mr. Horvath asked how large the paved pad is.

Mr. Pike responded the pad is 40' x 60'.

With no further comments, Acting Chair Kem closed the public hearing and asked for discussion among the board members.

Mr. Bates stated the problem he has always had was with the first condition, which is whether or not the condition is unique to the property. His reasoning for voting in the affirmative at the last meeting is not just the 1.1 acre size of the lot but the applicant also owns the property to the north and some to the west, which is over 4.5 acres total. Combine that with the problems in that area with transients and theft make it a unique condition to the property and not something the applicant created. To protect his property, Mr. Pike has requested the variance.

Ms. Kem stated she also struggles with the first condition stating if there were ever a place for a large garage, this property would be it; except, she does not find owning more land a unique circumstance. She further believes the condition is created by the applicant.

Mr. Horvath stated he was influenced by the neighbor who provided comments about how the applicant cares for and improves his property and how the improvements have increased the value of the property. Furthermore, Mr. Horvath believes the theft that has occurred at the applicant's property becomes a condition that the property owner would need to respond to in order to protect his property. Mr. Horvath does not believe the additional property owned by the applicant should be considered.

With no further discussion among the commissioners, Acting Chair Kem 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)

Variations: 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 2-1

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 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 2-1

Ms. Kem disagreed.

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

Vote 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 2-1

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.

Acting Chair Kem stated the variance is approved to allow a 2,400 sqft detached garage located at 1400 Sanders Street.

Acting Chair Kem called for the next item on the agenda – **Case No. 2019-17 BZA – 1205 FRANKLIN STREET – Variance Request** – and requested the staff report.

City Planner Jackie Porter stated the applicant, Linda Skeen, is requesting a variance from section 6.08 of the adopted Development Regulations to allow a reduction in the required setback for a fence on a side corner lot.

The subject property is a single-family home located at 1205 Franklin Street. The applicant is proposing to replace an existing chain link fence with slats on the property. The Development Regulations require a 15' setback for fences on the non-addressed side of a corner lot. The non-addressed side of the subject property abuts Quincy Street, which has a right-of-way width of approximately 62' at this location. The existing fence is located along the north property line. The fence proposed is going to extend the fence along the property line to the West to be flush with the front of the building, and to the East to the back of the accessory building. The fence proposed by the property owner is to replace and expand the existing fenced area on the property line, requiring a variance of 15'.

The existing fence is considered a nonconforming structure, as it does not meet current standards for setbacks. The Development Regulations allow for the continued existence and maintenance or repair of such structure, but a full removal, replacement, and expansion necessitates approval of a variance.

Section 6.08 of the Development Regulations regarding fences in side yards reads as follows:

On corner lots, both yards adjacent to streets are considered front yards. In this instance, the fence on the addressed side must be erected in accordance with subsection 2; on the other side a solid fence not exceeding 72 inches in height above the natural contour of the ground may be built with a setback of 15 feet from the property line, or 50 percent of the existing setback if the distance from the house to the property line is less than 15 feet.

The setback of the proposed fence is zero feet, thereby requiring a variance to be granted by the Board of Zoning Appeals. The proposed fence would meet all other applicant requirements.

Planning Director Julie Hurley stated the applicant was issued a fence permit four or five years ago and at the time that permit was issued in error and a variance should have been required at that time. As stated, the existing fence is allowed to stay as a permit was issued for it at that time.

Ms. Kem asked if the accessory building is legal.

Ms. Hurley stated that is another situation. However, since the shed has been there for quite some time, it is considered legal non-conforming.

Mr. Bates asked if the fence is being proposed to be moved closer to the street.

Ms. Hurley stated the fence will be extended further along Quincy Street toward the west. The chain link fence with the slats would be replaced with a privacy fence.

Ms. Porter stated this is particular regulation will be reviewed for possible changes.

Ms. Hurley stated the intent for the setback for fences is to keep the fence away from the curb line on a corner lot. As the Development Regulations are currently written, it does not take into account the areas where there is an exceptionally wide right-of-way.

Ms. Kem asked if staff has a suggested setback from the lot line in the new Development Regulation proposal.

Ms. Hurley stated the proposal has not been written yet. She believes the intent is to keep the fence 15' from the pavement and out of any sight distance triangles at a corner. In this particular location, the property line is already about 24' from the pavement.

With no questions about the staff report, Acting Chair Kem opened the public hearing.

The applicant, Linda Skeen, approached the board stating through the years she has slowly made improvements to the house and property. There is a creek in the rear part of the property. When it floods, water comes up to the back part of the house. During rainstorms, she is forced to move the lawnmower and bikes to higher ground to avoid the flooding. Furthermore, there has been several times she has found syringes near the back corner. She has a six-year old, who plays outside and an extended privacy fence will help with keeping the child and her property safe.

Ms. Skeen provided a picture of the front view of the home showing the new fence posts. It shows the fence meeting at the front of the house. In no way is the fence blocking the view of traffic.

Mr. Horvath asked for clarity that the proposed fence will not exceed the property line.

Ms. Skeen responded in the affirmative.

Mr. Horvath asked staff if the proposed fence goes out to the current property line, will there still be a 15' distance between the current property line and proposed fence and the street.

Ms. Hurley stated there is approximately 24' between the street and the proposed fence.

With no further questions, Acting Chair Kem closed the public hearing and called for discussion amongst board members.

With no further discussion among the board members, Acting Chair Kem 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 3-0
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 the Development Regulations.

Acting Chair Kem stated the variance is approved to allow a 15' reduction in the required setback for a fence on a side corner lot located at 1205 Franklin Street.

Acting Chair Kem called for a motion to adjourn. Mr. Bates moved to adjourn, seconded by Mr. Horvath and approved by a vote of 3-0.

The meeting adjourned at 6:30 p.m.

JH:mb