



**BOARD OF ZONING APPEALS MINUTES
MONDAY, March 16, 2020, 6:00 P.M.
COMMISSION ROOM, CITY HALL
LEAVENWORTH, KANSAS**

The Leavenworth Board of Zoning Appeals (BZA) met Monday, March 16, 2020. It was determined a quorum was met with the following board members present: Dick Gervasini, Ron Bates, Jan Horvath and Kathy Kem. Mike Bogner was absent. Staff members City Planning Director Julie Hurley and Administrative Assistant Michelle Baragary were present.

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

Vice Chair Gervasini called for the next item on the agenda – **Case No. 2020-03 BZA – 4824 S. 4TH STREET – Variance Request** - and requested the staff report.

Planning Director Julie Hurley addressed the board stating the applicant is requesting an appeal to allow a freestanding sign in excess of 15' in height for a property zoned GBD, General Business District.

The property located at 4824 S. 4th Street, site of the former Payless Shoe Source store, is being redeveloped as a Starbucks. As part of the redevelopment, the existing building will be demolished to allow for construction of a new building, and the existing freestanding sign for the former Payless Shoe Source store will be removed.

Section 8.11 of the Development Regulations restricts freestanding signs in the GBD zoning district to a height of 15', with the potential for an additional 10' in height, up to a maximum of 25', with additional setback requirements as follows:

Freestanding signs shall not exceed 15 feet in height. Where a sign is located across the street from a property zoned for commercial or industrial uses, the height of the sign may be increased to a height of 25 feet, provided that the nearest edge of the sign is setback from the property line 2 feet for each additional 1 foot in height.

Based on drawings submitted by the applicant, the proposed sign will be placed approximately 15' from the eastern property line, which would allow for an additional 7.5' in height, up to 22.5'. The existing Payless Shoe Source sign is 22' in height.

Given the location of the property with the proximity to other surrounding signs, utility poles, buildings, vehicles, and adjacent billboard, the applicant is requesting the variance to allow for maximum visibility for the proposed Starbucks signage.

Mr. Bates asked if the distance is measured from the pole to the property line.

Ms. Hurley responded the Development Regulations state the height of the sign may be increased to a height of 25' provided that the nearest edge of the sign is setback from the property line 2 feet for each additional 1 foot in height. The sign cabinet would be the nearest edge of the sign.

Mr. Gervasini asked how tall the proposed building will be.

Starbucks architect stated the building will be 22' in height.

Mr. Horvath asked if the Starbucks located in Price Chopper, approximately 2 miles to the north, had any objection.

Brandon Haverty, representing LEV4 LLC, stated the new Starbucks would have not impact to any existing Starbucks in the area.

Ms. Kem asked if this section of the Development Regulations is currently being reviewed for any potential changes.

Ms. Hurley responded it is not.

With no further discussion among the commissioners, Vice Chairman Gervasini opened the public hearing.

Mr. Haverty stated Leavenworth is a market that Starbucks has been interested in for some time now. When Payless Shoe Source closed, this provided Starbucks an opportunity to open a store in Leavenworth. Mr. Haverty further stated the location of the proposed sign can get a little lost due to the large billboard to the south and the U-Haul vehicles parked to the north.

Ms. Kem asked what the prototypical height is for a Starbucks sign.

Mr. Haverty stated it depends on the allowable height per municipality but he believes 25' is a good average and is what Starbucks believes is needed in order to be visible due to the location.

Ms. Kem asked how much closer the proposed Starbucks building will be to 4th Street than what the current building is.

Joe, architect for Starbucks, stated he believes the old Payless building is about 8 feet further back from the main building line on the east side of the Starbucks site plan. The building will be moved closer to 4th Street in order to get adequate parking and also for the drive-thru lane.

Ms. Hurley stated the city prefers buildings closer to the street with the parking in the rear.

With no further discussion among the commissioners, Vice Chairman Gervasini 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, variations 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

Ms. Kem and Mr. Horvath 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.

Vice Chairman Gervasini stated the variance is denied.

Vice Chairman Gervasini called for the next item on the agenda – **Election of Officers**. Mr. Horvath moved to table the issue until all officers are available to vote; approved by a vote of 4-0.

Ms. Hurley stated there are two items on the agenda for the April 20, 2020 meeting.

Vice Chairman Gervasini called for a motion to adjourn. Ms. Kem moved to adjourn, seconded by Mr. Horvath and approved by a vote of 4-0.

The meeting adjourned at 6:19 p.m.

JH:mb