



**BOARD OF ZONING APPEALS MINUTES
MONDAY, June 15, 2020, 6:00 P.M.
COMMISSION ROOM, CITY HALL
LEAVENWORTH, KANSAS**

The Leavenworth Board of Zoning Appeals (BZA) met Monday, June 15, 2020. It was determined a quorum was met with the following board members present: Mike Bogner, Dick Gervasini, Ron Bates, Jan Horvath and Kathy Kem. Staff members City Planning Director Julie Hurley 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 March 16, 2020. Mr. Horvath moved to accept the minutes as presented, seconded by Mr. Gervasini and approved by a vote of 5-0.

1. CASE NO. 2020-13 BZA – 4501 S. 4TH STREET – VARIANCE REQUEST

Chairman Bogner called for the staff report.

City Planner Jackie Porter addressed the board stating the applicant is requesting an appeal to allow more than one sign on a wall for property zoned GBD, General Business District.

Ms. Porter further stated Zeck Ford is located at 4501 S. 4th Street zoned GBD, General Business District. The applicant has submitted a sign application to install a Zeck's logo sign on the west side of the building below the Ford logo. 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 sign allowed. Original signage was installed correctly per the regulations in effect at the time and is considered to be legal-nonconforming. There are currently four signs on the west side of the building. Section 8.15.A.2 state that, "Any maintenance, repair or alteration of a nonconforming sign shall not cost more than 25% of the current value of the sign as the date of alteration or repair".

The requested variance is to allow installation of a Zeck's logo sign on the west side of the building.

Mr. Horvath stated it appears this is not a maintenance, repair or alteration of a nonconforming sign but rather a new sign.

Ms. Porter stated staff reviewed it as the applicant adding their logo to the existing Zeck sign, therefore making it one sign and limiting the number of signage on the west wall of the building.

Planning Director Julie Hurley stated to calculate the area of a sign, staff would draw a box around the outside of the extent of the sign. For smaller signs or signs close together, a box would be drawn around the extent of the whole signage and consider as one sign. Therefore, the applicant would be modifying

an existing nonconforming sign. However, since the new Zeck logo the applicant is adding is more than 25% of the cost of the existing Ford sign, staff has to consider the Zeck logo as a new and separate sign, which is why the applicant has requested the variance.

Mr. Bogner asked if the new Zeck logo was not considered part of the existing Ford logo, would a variance be required.

Ms. Hurley responded a variance would still be required because they would be adding another sign and only one sign is allowed per side of the building and they already have four signs on that side of the building. Additionally, adding the new logo to the existing logo would not work because the cost of the new logo is greater than 25% of the current value of the Ford logo. Essentially, the applicant would be adding a fifth sign to the west side of the building.

Ms. Kem asked how close the applicant was to the 25% cost.

Ms. Hurley responded they were substantially off.

Ann Hoins, Young Sign Company representing Zeck Ford, stated in the past few years Zeck Ford has incorporated the Z logo into their brand. It has become an integral part of the company and is used on all their advertising and marketing. It would be difficult for a motor company to have only one sign, especially if they carry more than one brand of vehicle.

Ms. Hoins further stated the company has a large facility and has other signs, such as the Service Department, so people know where to go.

Ms. Hurley asked if Ms. Hoins could explain why they cannot swap out the Ford logo sign for the Z logo sign.

Ms. Hoins stated Ford Motor Company has strict guidelines and requirements for Ford dealerships, one being the Ford logo on the building. Zeck Ford sells more than just Ford vehicles and the Z logo is the branding, which identifies Zeck Ford.

Ms. Kem asked what the dimensions are on the existing Ford logo. Has the applicant considered installing the Z logo at the end of the existing Zeck Ford sign and would that meet the 25% cost requirement.

Ms. Hoins replied that installing the Z logo to the right of the existing Zeck Ford sign would make it look cramped. The Z logo fits proportionately under the Ford logo and that is where the main entrance is. Ms. Hoins further stated the Ford logo is about the same width of the Z logo, about 10' but is not sure the height of the Ford logo.

Ms. Kem asked if calculations were done to see if it would meet the 25% cost of the current sign if it was installed next to the Zeck Ford sign.

Ms. Hoins responded she did not.

Ms. Hurley stated since the 25% is related to the cost of the sign, it probably would not have made a difference.

Mr. Horvath asked if any neighboring property owners had contacted the City regarding the sign.

Ms. Hurley stated all property owners within 200' of the subject property were notified and the City did not hear back from anyone.

With no further questions about the staff report, Chairman Bogner opened the public hearing. With no one wishing to speak, Chairman Bogner closed the public hearing and asked for discussion among the board members.

Ms. Kem asked if there is a precedent since we have the new sign ordinance.

Ms. Hurley responded Walmart has had one sign variance for an additional sign.

Ms. Kem stated Walmart was for FedEx, which is more of an additional use whereas that is not the case for the current variance request.

Mr. Bogner stated it was his understanding that when the ordinance changed there was no grandfather clause so if a business had more signs than allowed they had to go through this process.

Ms. Hurley responded companies that had more signs than were allowed prior to the regulation update in 2016 are considered legal-nonconforming and can keep their existing signs with no additional steps necessary. The issue would come when they go to add or change a sign; they would need to come into conformance with the current regulations.

Mr. Bates asked if any writing on the outside of the building would be considered a sign, such as "service".

Ms. Hurley stated there are provisions for directional signage, which is meant to direct people around a property. There are size restrictions for directional signage. The sign currently on the Zeck building for "service" is larger than the size restrictions for directional signage; therefore, it would just be considered signage and not directional signage.

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 4-1
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 5-0
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 5-0
All board members voted in the affirmative with comments.
Mr. Bates stated it seem now more than ever that businesses are using branding to market their business. He feels if the applicant cannot brand their product or services, this would be an unnecessary hardship.
Mr. Horvath stated there is an extremely large freestanding sign for the Ford logo. He feels that the business owner should also be able to display their business logo.
Mr. Bogner stated he feels it is unnecessary for an established business that already has numerous signs should have to go through this process for another sign when the building already has numerous signs.
Ms. Kem stated she feels the 25% of the cost is too restrictive

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

Vote 5-0
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 4-1
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.

ACTION:

Approve or deny the appeal to allow installation of a Zeck's logo sign on the west side of the Zeck Ford car dealership located at 4501 S. 4th Street.

Chairman Bogner stated the variance is approved.

2. CASE NO. 2020-14 BZA – 4820 S. 4TH STREET – VARIANCE REQUEST

Chairman Bogner called for the staff report.

Planning Director Julie Hurley stated the applicant is requesting a variance to allow accessory structures forward of the main building line for a property zoned GBD, General Business District.

The property is located at 4820 S. 4th Street, site of the former K-Mart and Sears stores, was recently acquired by U-Haul Company of Northern Kansas and developed as a U-Haul moving and storage facility. As part of the redevelopment, the applicant has installed three separate rows of accessory storage units in the parking lot in front of the main building.

Section 4.03.E.1 of the Development Regulations restricts placement of accessory structures as follows:

No accessory buildings shall be erected in any required front or side yard, or at any other place forward of the main building line.

Ms. Hurley asked for questions from the commissioners.

Ms. Kem asked if the applicant should have obtained a building permit but did not.

Ms. Hurley stated staff pulled the building permit and plans when staff noticed the placement of the storage units. The storage units were shown on the plans for the building permit indicated by rectangular symbols but the Building Inspections Department did not catch this when the plans were submitted.

Mr. Bogner stated these are not permanent buildings and do not have a foundation under them. He asked if there is a requirement for a foundation.

Ms. Hurley responded that is not part of the definition for accessory structures.

Mr. Bogner asked if the variance is approved and the applicant later decides to expand the storage units or relocate them to a different spot on the lot, if that is allowed or would they need to request another variance.

Ms. Hurley suggested to make that a condition. Therefore, if the variance were to be approved it would be approved pending the existing location or approved pending a revised location.

Ms. Kem asked the applicant how many units are on the inside and how many units are outside.

Richard Castaneda, applicant, stated there are roughly 500 units inside and approximately 100 units outside.

Ms. Kem asked how many per outside pod.

Mr. Castaneda stated there are 25 for each pod. The pod closest to 4th Street only has 12 that would be used because the side closest to the grass (north side) will not be used.

Mr. Bogner asked if they plan to add more outside storage pods.

Mr. Castaneda stated they plan to put a few more rows to the north of the property.

Ms. Kem asked the occupancy of the inside units.

Mr. Castaneda replied approximately 100 out of the 500.

Ms. Kem asked the Planning Director, if this was a new construction for a storage facility, would the configuration the applicant has be allowed.

Ms. Hurley responded that even with new construction, any accessory structure in front of the primary building line would require a variance.

Ms. Kem asked if the applicant owns the empty lot to the north.

Ms. Hurley responded in the affirmative.

With no further questions about the staff report, Chairman Bogner opened the public hearing. With no one wishing to speak, Chairman Bogner closed the public hearing and called for discussion/comments from the commissioners.

Ms. Kem stated should this be approved, it could set a precedent the board may not want set. Furthermore, the storage pods are unsightly and the applicant has plenty of storage units inside the main building. Ms. Kem believes this goes against the intent of the ordinance.

Mr. Bogner asked if staff received any comments from neighboring property owners.

Ms. Hurley responded notification was mailed to property owners within 200' of the subject property and staff did not receive any comments.

Mr. Bates asked if the storage pods were there when Starbucks made their decision to build where the old Payless Shoe Source was located.

Ms. Hurley believes it was around the same time but guesses Starbucks had already selected their site. Ms. Hurley further stated Starbucks has been in contact with U-Haul about parking trucks.

Mr. Bates asked if the storage facility on Spruce Street built something in their front yard.

Ms. Hurley stated they installed a fence and are storing items inside the fence but she is unaware of any accessory structures being erected.

Mr. Bates asked the applicant if their decision to start a business in Leavenworth was made based on a business plan that the outside storage pods were allowed.

Mr. Castaneda responded in the affirmative. He further stated the outside storage pods provide visibility to potential customers.

Mr. Bates agrees with Ms. Kem about the unsightliness of the buildings placed next to 4th Street. Mr. Bates asked the applicant if they would be willing to move the pod nearest 4th Street back to align with the other two pods.

Mr. Castaneda stated they would prefer not to move it but if they had to in order to keep the pods, they would.

Ms. Kem asked if the applicant had other U-Haul storage facilities or if this is the only one.

Mr. Castaneda responded there are 10 of them in the state of Kansas.

Ms. Kem stated Leavenworth is not the only city that does not allow accessory structure in front of the main building line and asked the applicant what they do in other situations like this.

Mr. Castaneda responded he has not seen a U-Haul company that is 100 yards off the front strip. Typically, the building is closer to the road and they put fake storage doors on the front building to show the display storage.

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 5-0
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 5-0
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 4-1
Ms. Kem disagreed.

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

Vote 5-0
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 4-1
Ms. Kem disagreed. Ms. Kem further stated should the variance request be approved she believes all the pods should be moved to the far north side of the property.
Mr. Bogner agrees and proposes a condition be set about the placement of the pods should the variance be approved.
Mr. Gervasini agrees and is in favor of a condition for the location of the storage pods.

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.

ACTION:

Approve or deny the variance to allow installation of accessory storage units forward of the main building line at 4820 S. 4th Street.

Chairman Bogner proposed the following condition be included in the variance: the pod closest to 4th Street must be moved back so it is in the same grouping as the two pods nearest the building and no other approval of such structures shall be granted unless they are permanent and accompanied by a site plan.

Mr. Bates stated he is in agreement with the proposed condition.

Ms. Kem believes this is in contrary to the intent of the ordinance; therefore, the commissioners should try to get as close to the intent of the ordinance as possible and suggests all the pods be moved to the far north end of the property. This will put the pods more in the side yard versus the front yard directly in front of the main building.

Mr. Bates stated the applicant decided to bring his business to Leavenworth and was approved for a permit through the Building Inspections Department and therefore does not agree to moving all the pods to the far north side.

Mr. Bogner asked the applicant if there is intent in the future to install permanent structures or just to continue to use the current relocatable pods.

Mr. Castaneda responded it will only be the relocatable pods.

Mr. Gervasini asked how long the current pods are.

Mr. McGinn, property owner, stated the grouped pods are 20' wide and 100' in length and each module is 20' x 10'.

Ms. Kem asked how many modules there are currently on the property.

Mr. McGinn replied the two grouped pods nearest the building consist of two rows of 10 individual modules.

Mr. Bogner asked for clarification from staff that the applicant did in fact apply and receive a building permit.

Ms. Hurley responded in the affirmative. The building permit package covered the entire interior renovation of the building. The Building Inspection Department did not notice the rectangles, which represented the pods that were on the site plan.

Mr. Bogner commented that the applicant is being penalized for something staff missed.

Ms. Hurley stated if staff would have noticed the pods on the site plan, the applicant would have been required to get a variance at that point regardless.

Mr. Bates asked for clarification that this variance request is only for the three current pods and is not a blanket coverage for additional pods. Additional pods would require the applicant to request another variance.

Mr. Bogner replied in the affirmative. Furthermore, he believes the two pods closest to the building shall and the pod nearest 4th Street should be moved further away from 4th Street. His reasoning is when the applicant applied and was approved for the building permit, the applicant was under the impression the placement of the pods were allowed.

Mr. Bates moves to approve the variance request and add a condition the pod closest to 4th Street must be moved and cannot be forward of the two existing pods, seconded by Mr. Gervasini and approved by a vote of 5-0.

Chairman Bogner stated the variance is approved with a condition.

3. CASE NO. 2020-19 – 814 SHAWNEE – EXCEPTION REQUEST

Chairman Bogner called for the staff report.

City Planner Jackie Porter stated the applicant, Brandon Close, is requesting an exception from section 1.05.D.7 of the adopted Development Regulations to allow an expansion of a nonconforming structure.

The property currently is a nonconforming two-family dwelling in the R1-6 High Density Single Family Residential District. Two-family dwellings are allowed in R1-6 with a Special Use Permit. The current property does not have a Special Use Permit to allow for the use of a two-family dwelling. The lot is located at 812/814 Shawnee, which is currently zoned as High Density Single Family Residential District, R1-6. The subject property is surrounded by properties that are zoned R1-6, which are located north, south and west of the subject property. The property to the east is zoned General Business District, GBD. The use of the property to the east, that is zoned GBD, is multi-family. Property to the north, that is zoned R1-6, is currently a two-family dwelling. The adjacent property to the west is currently an empty lot. Adjacent properties to the south are single-family dwellings.

The applicant is proposing to convert the lower level of the two-family dwelling to a finished apartment to create a total of three units. The property sustained fire damage in 2017, and was purchased by the applicant in May 2018. Renovation for 814 Shawnee began in late 2018. In 2019, it came to the attention of city staff that the applicant was converting the lower level to a habitable living space, and a stop work order was issued to hold all further permits.

Chairman Bogner called for questions about the staff report.

Mr. Bates ask if the property directly east of the subject property is a four-plex and how that is considered a single-family dwelling.

Ms. Porter stated the property directly east is zoned General Business District but the current use is multi-family, which is legal nonconforming.

Mr. Bogner asked if the city inspectors went inside to verify it is new construction.

Ms. Hurley stated it was discovered by one of the city's building inspectors, who noticed a third meter was being added for a third unit, which the property previously did not have.

Mr. Bogner asked if two means of egress is still required.

Ms. Porter stated the applicant will need to meet all building codes and the property owner has been in contact with the Building Inspections Department to meet these codes.

Ms. Kem asked if the exception request is so the applicant would not need to get a Special Use Permit.

Ms. Hurley responded the exception would be to allow a change or expansion to an existing nonconforming use. There are only a couple instances where an exception is specified in the Development Regulations, and this is one of those instances.

Mr. Bogner asked if the applicant is present.

Ms. Hurley stated he is not but he did submit pictures of the interior.

With no further questions about the staff report, Chairman Bogner opened the public hearing. With no one wishing to speak, Chairman Bogner closed the public hearing and called for further discussion among the commissioners.

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 XV (Board of Zoning Appeals), Section 11.03.C (Powers and Jurisdictions – Exceptions)

Exceptions: To grant exceptions which are specifically listed as permitted in these Development Regulations. In no event shall exceptions to the provisions of the Development Regulations be granted where the exception contemplated is not specifically listed as in the Development Regulations of the City of Leavenworth, Kansas. An exception is not a variance. Further, under no conditions shall the Board have the power to grant an exception when the conditions of this exception, as established by these Development Regulations, are not found to be present.

1. The Board shall not grant an exception unless it shall, in each specific case, make specific written findings of facts directly based upon the particular evidence presented to it, that support conclusions that:

- a. The proposed exception complies with all applicable provisions of these Development Regulations, including intensity of use regulations, yard regulations, and use limitation.*

Vote 5-0

All board members voted in the affirmative.

- b. The proposed exception at the specified location will contribute to and promote the welfare or convenience of the public.*

Vote 5-0
All board members voted in the affirmative.

- c. *The proposed exception will not cause substantial injury to the value of other property in the neighborhood in which it is to be located.*

Vote 5-0
All board members voted in the affirmative.

- d. *The location and size of the exception, the nature and intensity of the operation involved or conducted in connection with it, and the location of the site with respect to streets giving access to it are such that the exception will not dominate the immediate neighborhood so as to prevent development and use of neighboring property in accordance with the applicable zoning district regulations. In determining whether the exception will so dominate the immediate neighborhood, consideration shall be given to:*
 - (1) *The location, nature and height of buildings, structures, walls, and fences on the site, and*
 - (2) *The nature and extent of landscaping and screening on the site.*

Vote 5-0
All board members voted in the affirmative.

- e. *Off-street parking and loading areas will be provided in accordance with the standards set forth in these Development Regulations, and such areas will be screened from adjoining residential uses and located to protect such residential uses from any injurious effect.*

Vote 5-0
All board members voted in the affirmative.

- f. *Adequate utility, drainage, and other such necessary facilities have been or will be provided.*

Vote 5-0
All board members voted in the affirmative.

- g. *Adequate access roads or entrance and exit drives will be provided and shall be so designated to prevent traffic hazards and to minimize traffic congestion on public streets and alleys.*

Vote 5-0
All board members voted in the affirmative.

ACTION:

Approve or deny the request for an exception of section 1.05 of the Development Regulations to allow the expansion of a nonconforming use to a triplex dwelling in R1-6 zoning district.

Chairman Bogner stated the exception is approved.

4. ELECTION OF OFFICERS

Chairman Bogner called for nominations for the positions of chairman and vice-chairman. Mr. Bates moved to maintain the status quo. The motion passed by a vote of 5-0.

Ms. Hurley stated there are items on the agenda for July and August.

Chairman Bogner moved to adjourn the meeting, seconded by Mr. Gervasini and approved by a vote of 5-0.

The meeting adjourned at 7:21 p.m.

JH:mb