



**BOARD OF ZONING APPEALS MINUTES**  
**MONDAY, July 20, 2020, 6:00 P.M.**  
**COMMISSION ROOM, CITY HALL**  
**LEAVENWORTH, KANSAS**

The Leavenworth Board of Zoning Appeals (BZA) met Monday, July 20, 2020. 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 Jackie 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 June 15, 2020. Ms. Kem moved to accept the minutes as presented, seconded by Mr. Gervasini and approved by a vote of 4-0.

**1. CASE NO. 2020-23 BZA – 1325 S. 4<sup>TH</sup> STREET – VARIANCE REQUEST**

Chairman Bogner called for the staff report.

City Planner Jackie Porter stated the applicant, Wally Winstead, is requesting a variance from Section 4.03 and 1.05 of the adopted Development Regulations to allow an expansion of a nonconforming structure and allow rear yard setback to less than 25' in the General Business District (GBD). The property currently is a legal nonconforming structure that encroaches in the required rear yard. The lot is located at 1325 S. 4<sup>th</sup> Street, which is currently zoned as General Business District (GBD) occupied by Winstead Auto Sale. The subject property is surrounded by properties zoned General Business District (GBD) to the north, south and west and properties zoned R1-6, High Density Single Family Residential District, to the east.

The GBD requires a 25' rear yard setback. The current structure is a legal nonconforming structure encroaching the rear yard setback as close as 4' from the property line. The applicant is proposing a new addition of a two bay door to the north of the structure will measure roughly 11' from the property line.

Chairman Bogner asked for questions from the commissioners.

Ms. Kem asked which side is the rear.

Ms. Hurley stated Winstead Auto faces 4<sup>th</sup> Street to the west, to the north is an alley, and the rear is the east yard of the property.

Mr. Bogner stated it does not look like the expansion is going to come straight off the existing structure.

Wally Winstead stated they are extending it back four feet from the original wall so they can put workbenches there and because vehicles are longer than they used to be.

Mr. Bogner stated there appears to be room to expand in the front and just maintain the rear setback.

The applicant, Mr. Winstead, stated that would affect parking in the front. Furthermore, expanding straight off the current structure will be easier and will look nicer rather than moving the proposed expansion toward the front of the property. He further stated he owns the property to the east.

Ms. Kem asked if the 4' from the alley is acceptable.

Ms. Hurley responded that is considered a side yard and the GBD zoning district has a 0' side yard setback requirement so the 4' setback is permitted.

Mr. Bogner stated the structure looks crooked on the lot.

Ms. Hurley stated it appears the structure was not square on the lot when originally constructed.

Mr. Bogner asked if the applicant would have submitted a building permit to line it up against the back wall of the building, would a variance still be required.

Ms. Hurley responded in the affirmative because the rear yard setback would still be less than the required 25' rear yard setback. The existing building is legal nonconforming. Any addition needs to conform with the current Development Regulations.

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 stated she would prefer the expansion in-line with the existing building on the back.

Ms. Hurley stated if there is consensus that the proposed expansion be in-line with the existing building on the back and any offset be on the front of the building this may be added as a condition of the variance if all criteria is met for the variance request to be approved.

Mr. Bates asked for clarification that the proposed addition would be further from the neighboring property to the east than the current building.

Mr. Hurley responded in the affirmative.

Mr. Bogner stated the measurements on the drawing appear to be inaccurate. Asked for clarification that the proposed addition will line-up with the front of the existing building and will not be closer than 11' to the east property line.

Mr. Hurley stated that is correct.

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)

**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 3-1**

**Mr. Bogner 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 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.

**ACTION:**

**Approve or deny the request for a variance from Section 1.05 and 4.03 of the Development Regulations to allow an increase of a nonconforming structure and encroachment into the rear yard setback.**

Chairman Bogner called for a motion to approve the variance request with the added condition that the proposed addition be no closer than 11' to the rear property line. Mr. Bates moved to accept the motion, seconded by Mr. Gervasini and approved by a vote of 4-0.

**2. CASE NO. 2020-24 BZA – 550 MUNCIE RD – VARIANCE REQUEST**

Chairman Bogner called for the staff report.

Planning Director Julie Hurley stated the applicant, Odion Ativie, is requesting a variance from Section 4.40 of the adopted Development Regulations to allow an accessory structure on a lot without a principal building or use. The subject property is zoned R1-9, Medium Density Single-Family Residential District, and is currently vacant. The subject property is surrounded by single-family homes to the east, north and west, with vacant land and the Xavier Elementary School to the north.

Section 4.04 of the Development Regulations states the following:

*Accessory Uses. Accessory Uses are a structure or use with:*

- a. Is subordinate to and serves a principal building or principal use;*

At this time, there is no principal building or use for the subject property. The owner is proposing to construct a storage building, for the potential future development of outdoor athletic facilities on the lot.

Mr. Bogner asked the applicant if he owns any other property in this area.

The applicant, Odion Ativie, stated he only owns this one vacant lot.

Mr. Bogner asked if there will be any utilities in the proposed accessory structure.

Mr. Ativie responded the building is to store materials and equipment. Will only have a security light outside.

Mr. Bogner asked the applicant what he intends to do with the property.

Mr. Ativie stated he intends to build a 3-story apartment complex containing 41 or 47 units.

Ms. Hurley stated the property is not zoned for multi-family development. That would need to go to the Planning Commission for rezoning and a site plan would need to be submitted.

Mr. Bogner asked the applicant if he would like to delay action on the variance request until the applicant has a better idea on what he wants to do with the property.

Mr. Ativie stated he already has a site plan and 3-D drawing of what the future apartment building will look like.

Ms. Kem reiterated to the applicant that a multi-family structure is not permitted because of the current zoning of the property.

Mr. Ativie stated that he showed his plans to the Planning Director Julie Hurley some time ago.

Ms. Hurley stated staff has not received an application for the rezoning. Furthermore, there are several access uses with Muncie being one-way. Since staff has not received a formal submittal, there has not been a formal review.

Mr. Bogner asked if the City has any plans for improvements on Muncie Rd.

Ms. Hurley stated not in the immediate future.

Ms. Kem asked the applicant if he is not able to build the multi-family unit building, what does he plan to use the storage building for.

Mr. Ativie stated he will be able to build the multi-family unit building and he will have the resources eventually.

Mr. Bogner stated that is a different board that would approve or deny the multi-family building.

Mr. Gervasini asked exactly what he plans to store in the structure.

Mr. Ativie stated building materials, lawn mowers and bobcat.

Mr. Bogner asked if the property was rezoned to allow a multi-family building, what is the maximum size for the accessory structure.

Ms. Hurley stated as the lot currently is, the structure can be up to 2400 sqft.

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

Steve Flannigan, 4700 Lakeview Dr., stated his concerns are both Muncie Rd and Lakeview Dr. are hard-pressed to support additional traffic and Muncie Rd is one-way. Furthermore, he would like to know what the plans would be for sewer and sidewalks if an apartment complex would be permitted.

With no one else wishing to speak, Chairman Bogner closed the public hearing and asked for 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 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 0-4**  
**All board members voted in the negative.**

- 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 0-4**  
**All board members voted in the negative.**

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

**Vote 2-2**  
**Mr. Bogner and Mr. Gervasini disagreed.**

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

**Vote 0-4**  
**All board members voted in the negative.**

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 request for a variance from Section 4.04 of the Development Regulations to allow an accessory structure on a lot without a principal building or use.**

Chairman Bogner called for a motion to deny the variance request. Mr. Gervasini moved to deny the variance request, seconded Ms. Kem and passed by a vote of 4-0.

**3. CASE NO. 2020-26 BZA – 1014 MICHIGAN AVE – VARIANCE REQUEST**

Chairman Bogner recused himself from Case No. 2020-26 BZA – 1014 Michigan Ave.

Vice Chairman Gervasini called for the staff report.

Planning Director Julie Hurley stated the applicant, Kyle Doelz, is requesting a variance from Section 4.04 of the adopted Development Regulations to allow more than two accessory structures on his residential property. The subject property is 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.

Section 4.04 of the Development Regulations states the following:

*No more than two detached accessory structures shall be allowed per building lot or parcel whichever is larger in area.*

There are two existing accessory structures on the lot, a detached garage and a shed. The applicant is proposing to add an above ground swimming pool. Section 4.04 further defines accessory structures to include private swimming pools.

Vice Chairman Gervasini called for questions from the commissioners about the staff report. Mr. Bates asked what is between the house and the detached garage.

Ms. Hurley stated it is a carport that is attached to the house. Since it is attached to the house, the carport is not considered an accessory structure.

Mr. Bates asked if the applicant extended the carport to attach to the garage if that would eliminate the garage as being an accessory structure.

Ms. Hurley responded that would get into some significant building code issues and would probably not be allowed.

Mr. Gervasini asked if the pool was an in-ground pool, if it would still be an accessory structure.

Ms. Hurley responded in the affirmative.

Ms. Kem asked if the shed on the property is used often.

The applicant, Kyle Doelz, stated he stores his lawnmower and other yard equipment in the shed.

Mr. Gervasini asked the size of the shed.

Mr. Doelz stated the shed is approximately 16' x 12'.

Ms. Hurley stated the shed measures 20' x 14'.

Mr. Bates asked if the applicant built the shed.

Mr. Doelz stated the shed was there when he purchased the home. Mr. Doelz built the 2-car detached garage.

Mr. Gervasini asked about the setbacks for the pool.

Ms. Hurley stated the setback for the pool from the property line is only 3'.

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

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)

**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 2-1**  
**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 negative.**

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 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.

**ACTION:**

**Approve or deny the request for a variance from Section 4.04 of the Development Regulations to allow more than two accessory structures at 1014 Michigan Avenue.**

Vice Chairman Gervasini called for a motion to approve the variance request. Mr. Bates moved to approve the variance, seconded by Mr. Gervasini and approved by a vote of 3-0.

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

The meeting adjourned at 6:46 p.m.

JH:mb