



**BOARD OF ZONING APPEALS MINUTES
MONDAY, October 19, 2020, 6:00 P.M.
COMMISSION ROOM, CITY HALL
LEAVENWORTH, KANSAS**

The Leavenworth Board of Zoning Appeals (BZA) met Monday, October 19, 2020. It was determined a quorum was met with the following board members present: Mike Bogner, Dick Gervasini, Jan Horvath, Kathy Kem and Ron Bates. Staff members 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 August 17, 2020. Mr. Gervasini moved to accept the minutes as presented, seconded by Ms. Kem and approved by a vote of 5-0.

OLD BUSINESS:

None

NEW BUSINESS:

1. CASE NO. 2020-34 BZA – 3550 S. 4TH STREET – VARIANCE REQUEST

Hold a public hearing for Case No. 2020-34 BZA – 3550 S. 4th Street, wherein the applicant, St. John Hospital, is requesting a variance from Section 8.10 of the adopted Development Regulations to allow more than one sign per side of the building.

Chairman Bogner called for the staff report.

City Planner Jackie Porter stated the applicant is requesting a variance to allow more than one sign on a wall for a property zoned R1-9, Medium Density Single Family Residential.

St. John Hospital is located at 3550 S. 4th Street zoned R1-9, Medium Density Single Family Residential District. Public or semi-public facilities, like a hospital, are allowed signage as regulated and permitted in the Neighborhood Business District (NBD). The Development Regulations 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. St. John Hospital has one existing wall sign on the East wall, "Saint John Pavilion".

The variance request is for an additional sign on the east side of the building. The proposed sign is located on the Northeast portion of the building reading "Urgent Care", and is roughly 52 sqft.

The proposed sign meets the size requirement of the NDB zoning district, as allowed for hospitals.

Chairman Bogner called for discussion among the commissioners.

Mr. Gervasini finds it interesting the property is zoned R1-9.

Ms. Kem stated she has worked in planning cases across the nation and said public institutions such as hospitals and schools are often zoned and permitted in residential districts.

Mr. Gervasini wonders why no one has picked on the fact we may have a nonconforming organization in a R1-9 zoning district.

Ms. Porter stated the Development Regulations allow public to semi-public organizations in residential districts. Furthermore, Section 8 of the Development Regulations state "Churches, schools, libraries, community centers, hospitals, or other public/semi-public facilities located in a residentially zoned district shall be allowed signage as regulated and permitted in Section 8.10, Signs Permitted in the Neighborhood Business District (NBD)".

Mr. Bogner stated that in that area of St. Mary's, St. John Hospital, the shopping center, gas station, Wendy's, Walgreens, etc., there is not one residential property. Asked if the City should update the zoning map to property account for the types of actions that are permitted rather than the properties be nonconforming.

Ms. Porter responded in order to do that the City would need to initiate a full rezoning; go parcel by parcel to rezone them to the appropriate allocation.

Mr. Bogner asked if the City has any plans in the future to do a full rezoning.

Ms. Porter responded in the negative.

Ms. Kem asked for clarification that St. John Hospital is not nonconforming for zoning.

Ms. Porter responded in the affirmative.

Mr. Bogner stated the sign code being used is under NDB not residential districts. He believes the property should be zoned accordingly and not to use some other designation that more properly fits it.

Ms. Porter stated it would be a hurdle to have all schools, churches, etc. to have their own district.

Mr. Bogner stated he is only speaking of this one parcel.

Mr. Bogner asked if it will be a lighted sign.

Sam Allred, Director of Business Development at St. John Hospital and Providence Medical Center, stated the sign will be lit in the same fashion as the St. John Pavilion sign and run the same hours.

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 commissioners.

Mr. Gervasini asked if staff received any comment from property owners within the notification area.

Ms. Porter responded in the negative.

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 5-0

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 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 5-0

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 appeal to allow installation of one additional sign to the east side of the St. John Hospital building located at 3550 S. 4th Street. (Ms. Porter noted there was a typo in the policy report stating the appeal is for three additional signs).

Chairman Bogner stated the board approves the variance request for the one additional sign.

Ms. Kem stated the board has established a precedent of allowing additional signage for large structures, which is why she voted in favor of the additional sign.

2. 2020-35 BZA – 924 S. 4TH STREET – VARIANCE REQUEST

Hold a public hearing for Case No. 2020-35 BZA – 924 S. 4th Street, wherein the applicants, Kevin and Angela McHugh, are requesting variances from sections 4.03, 4.04 and 1.05 of the Development Regulations to allow a reduction in the required side yard setback for an accessory structure, an increase in the maximum allowable size of an accessory structure, and the expansion of an existing nonconforming structure.

Chairman Bogner called for the staff report.

City Planner Jackie Porter stated the applicants are requesting a variance from sections 1.05.C.2, 4.03.E.3 and 4.04.B.3 of the adopted Development Regulations.

- 1.05.C.2 – Any nonconforming structure may be enlarged, maintained, repaired or remodeled, provided however, that no such enlargement, maintenance, repair, or remodeling shall either create any additional nonconformity or increase the degree of existing nonconformity of all or any part of such structure.
- 4.03.E.3 – (Ms. Porter stated there was a typo in the policy report listing the section as 4.03.B.3). All accessory buildings in residential districts shall maintain a three-foot side setback and a three-foot rear setback (to the nearest part of the structure, that is no overhang may encroach on the setback).

- 4.04.B.3 – For single-family residences: a garage not to exceed 900 square feet on parcels less than one acre, and 1,200 square feet on parcels one acre or larger. Detached garages require construction of driveways to provide access in conformance with the parking provisions of the code.

The existing garage currently is considered a legal nonconforming structure. The lot is located at 924 S. 4th Street, which is currently zoned as Multiple Family Residential District, R-MF, operating as a single-family dwelling. The subject property is surrounded by properties to the North and Northeast zoned as General Business District and the properties adjacent to the South is zoned Office Business District, OBD, and West are zoned R1-6, High Density Single Family Residential District, and the property to the East and Southeast are zoned Multiple Family Residential District, R-MF.

The current accessory structure is built on the rear property line making it a legal nonconforming structure, as it does not meet the required 6-foot rear yard setback. (The 6-foot rear yard setback was stated in error. The rear yard setback for an accessory structure is 3 feet). The new addition would expand the nonconformance of the rear yard setback requirement 12 feet and 2 inches along the property line. A requirement for a single-family resident garage is that it cannot exceed 900 square feet on a parcel less than once acre. The current garage is 668 square feet and the expansion will increase it by 488 square feet making the total area 1,156 square feet. The total area exceeds the requirement by 256 square feet. The expansion will encroach the side yard setback, which requires a 3-foot setback, leaving only a few inches between the side of the new structure and the fence.

Mr. Bogner stated the outbuilding appears to be living quarters and not a garage. For application of the codes and the variance request, he asked if it matters if the existing use of the structure is living quarters.

Ms. Porter responded it does not.

Mr. Bogner asked if it were a stand-alone structure, would a variance be required.

Ms. Porter said a variance for the square footage would not be required but the structure would still need to be at least five feet from all other structures.

Mr. Bogner asked if the three variances need to be voted on individually.

Ms. Porter responded in the affirmative.

Mr. Bogner asked for clarification that the proposed structure is an open structure with no walls.

Ms. Porter responded in the affirmative.

Mr. Bogner said if the structure does not have walls or utilities how can it be considered a structure.

Ms. Porter stated the structure has a roof and will be attached to the existing structure.

Mr. Bogner asked about the stand-alone option, where the proposed structure is not attached to the existing structure.

Ms. Porter stating for building codes, the structure will need to be attached.

Mr. Bogner asked when the board decides which option they will be voting on: stand-alone option or attached lean-to option.

Ms. Porter stated the proposal is being presented as attached because of the building code. The stand-alone was presented to staff as general information at the beginning stages of discussing the project. Since the lean-to will be attached to the existing structure, that triggers the expansion of an existing nonconformity and the issues with meeting the required setbacks.

Kevin McHugh, applicant, stated he submitted both options; the stand-alone or lean-to. He further stated he was not informed there would be a code violation for the stand-alone option and asked for clarification.

Ms. Porter stated it becomes a building/fire code issue due to the overlap that's required for accessory structures.

Mr. McHugh stated the overhang on a stand-alone would be even with the existing carriage house.

Administrative Assistant Michelle Baragary asked for clarification from the property owner how close the stand-alone structure would be to the existing carriage house because the regulations require a 5-foot setback.

Mr. McHugh responded it would be closer than five feet to the existing structure, which would require a variance.

Ms. Porter stated the fire code would become an issue and we cannot do variances for fire code; therefore, the stand-alone option will not work.

Mr. Bogner asked if the applicant could just extend the roofline.

Ms. Porter stated they could do that, which will trigger the three variances the board is discussing tonight.

Mr. Bogner does not see extending the roof as creating another structure.

Ms. Porter stated it is not creating a new structure but rather expanding a nonconforming structure and encroaching into the side yard setback.

Mr. Bogner asked what the maximum square footage that could be added without being nonconforming.

Ms. Baragary stated any addition to the east or west along the rear property line would increase the nonconformity because of the required setback. Adding an addition to the south would not increase the nonconformity because a nonconforming structure may be enlarged as long as the enlargement does not increase the nonconformity.

Mr. Bogner asked if the side yard setback is the problem.

Ms. Porter responded the issue is with the side yard and rear yard setback.

Mr. Bogner asked what can be done to minimize the variance requests and asked if options other than what is presented today were looked.

Ms. Porter responded she had several discussions with the applicant on his intent, why he wanted the lean-to at proposed location and other options available to him.

Mr. Bates asked what the current distance is between the existing structure on the west side to the fence.

Mr. McHugh responded ten feet.

Mr. Bates asked if the contour of the land on the east side of the existing carriage house prevents the proposed lean-to from being installed on the east side.

Mr. McHugh stated that is correct. The retaining wall is on that side of the property.

Mr. Horvath asked the applicant if the neighbor to the west has voiced any concerns or issues with the proximity of the proposed lean-to so close to the property line.

Mr. McHugh stated he has spoken with his neighbor, Georgia, several times and she has no issues with the proposed lean-to. Mr. McHugh asked if staff received any comments from the notifications that were mailed out.

Ms. Porter stated staff did not receive any comments.

Ms. Kem asked if the variances are approved, the applicant will still need to go through the building permit process and regulate how the lean-to will need to be attached to the existing structure.

Ms. Porter responded in the affirmative.

Mr. Bates asked if the permit process covers how water will drain from the structure.

Ms. Porter 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 among the board members.

Ms. Kem asked the applicant where he currently parks.

Mr. McHugh responded he currently parks on Pine Street. His concern is the safety of his vehicles parking on Pine Street.

With no further discussion among the commissioners, Chairman Bogner read the following criteria regarding the Board's authority and reviewed each item. The Board voted on each variance request in the following order:

- 1) Section 1.05.C.2
- 2) Section 4.03.E.3
- 3) Section 4.04.B.3

The following criteria applies to Section 1.05.C.2.

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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.

Ms. Kem commented she typically has a hard time with this first condition because of the statement "...is not created by an action or actions of the property owner or the applicant"; however, in this particular case there are extenuating circumstances because of the slope of the property and the existing structures that are already on the lot line, which is why she voted in favor of.

- 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.

Mr. Gervasini commented he votes in favor of all three variances because there has been no negative comments from neighbors.

- 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.

- 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 5-0

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.

The following criteria applies to Section 4.03.E.3.

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

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.

The following criteria applies to Section 4.04.B.3.

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

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.C.2, 4.03.E.3, and 4.04.B.3 of the Development Regulations to allow a 1,156 square feet accessory structure with a less than 3-foot side setback and an increased degree of nonconformity for the existing rear setback.

Mr. Bates suggested that even though it is probably covered through the permitting process that a condition should be added requiring a gutter system be installed on the west side so water does not flood into the neighbor's yard.

Mr. Bogner responded the Board could say drainage issues are to be addressed.

Mr. Bates stated he would like the condition specifically requiring a gutter system to drain into the alley.

Mr. Gervasini asked if the proposed lean-to will have a concrete floor.

Mr. McHugh responded he can install a gravel or a concrete floor.

Mr. Gervasini stated there could be issues with gravel flooring.

Ms. Porter stated Building Inspections will handled the flooring through the permitting process.

With no further discussion, Chairman Bogner stated all three variances have been approved with the condition a guttering system must be installed.

Chairman Bogner called for a motion to adjourn. Mr. Gervasini moved to adjourn, seconded by Mr. Horvath and approved by a vote of 5-0.

The meeting adjourned at 6:43 p.m.

JP:mb