



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

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

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 October 19, 2020. Mr. Gervasini moved to accept the minutes as presented, seconded by Mr. Horvath and approved by a vote of 4-0.

OLD BUSINESS:

None

NEW BUSINESS:

1. CASE NO. 2020-36 BZA – 708 SHAWNEE STREET – VARIANCE REQUEST

Hold a public hearing for Case No. 2020-36 BZA – 708 Shawnee Street, wherein the applicant is requesting a variance to allow refacing of a nonconforming freestanding sign located less than five feet from a property line.

Chairman Bogner called for the staff report.

City Planner Jackie Porter stated the applicant is requesting a variance to allow refacing of a nonconforming freestanding sign. The existing sign is located less than five feet from a property line as required in CBD, Central Business District.

Young Sign Company is applying for the variance on behalf of Raymos Pawn & Gold. Raymos Pawn & Gold is located at 708 Shawnee Street zoned CBD, Central Business District. The Development Regulations state that no part of a free standing sign face or sign structure shall be closer than five feet to any property line and shall not obstruct traffic vision. The location has an existing nonconforming freestanding sign that has been vacant longer than 6 months that Raymos Pawn & Gold would like to reface.

The Development Regulations also states the reuse of a vacated, nonconforming sign, or any of its appurtenances shall require altering the sign to comply with this sign code. A new business use intending

to reuse a conforming sign base or pole properly capped and vacated shall obtain a sign permit in accordance with this sign code.

The requested variance is to allow the refacing of a nonconforming freestanding sign that is less than five feet from the property line.

Chairman Bogner called for discussion among the commissioners.

Mr. Bogner stated there are at least five more signs just like the subject sign down the same street. Mr. Bogner asked when the sign code was changed that made this sign nonconforming.

Planning Director Julie Hurley stated it was some time prior to the 2011 update of the sign regulations.

Ms. Kem asked if the only nonconforming issue with this sign is the distance to the street.

Ms. Hurley responded in the affirmative.

Mr. Bogner asked if there are any restrictions if the sign is illuminated.

Ms. Hurley stated there are not.

Mr. Bogner asked if Raymos is actually located in the building.

Ann Hoins, Young Sign Company, responded that Raymos is waiting for approval on the sign variance request. Ms. Hoins further stated Raymos also owns the property to the east with the gray and white building. However, Raymos Pawn & Gold will be located in the brick building that sits further from the street back at 708 Shawnee. The sign will not be lit and the property owners have already repainted the sign pole so it looks much better than what the photo in the policy report renders.

Mr. Bogner asked if staff has any issues with the sign hanging over the sidewalk.

Ms. Hurley responded in the negative stating the sign is not low enough to obstruct the ROW.

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.

Ms. Hurley stated staff did not receive any comments after notifications were mailed out.

Mr. Gervasini asked if staff knew when the sign pole was installed.

Ms. Hurley responded staff has no records of when the pole was installed but has been there for a very long time.

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 4-0
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 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 4-0
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 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 variance to allow the refacing of a nonconforming freestanding sign at 708 Shawnee Street.

Chairman Bogner stated the board approves the variance request for the refacing of the existing sign pole located at 708 Shawnee Street.

Ms. Hurley stated there are two items on the agenda for December. Administrative Assistant Michelle Baragary will send an email to the board members to check availability as the meeting is scheduled for December 21, 2020, the week of Christmas.

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

The meeting adjourned at 6:13 p.m.

JP:mb