



**BOARD OF ZONING APPEALS MINUTES
MONDAY, March 15, 2021, 6:00 P.M.
COMMISSION ROOM, CITY HALL
LEAVENWORTH, KANSAS**

CALL TO ORDER:

Board Members Present

Mike Bogner
Dick Gervasini
Kathy Kem
Jan Horvath

Board Member(s) Absent

Ron Bates

City Staff Present

Julie Hurley
Jackie Porter
Michelle Baragary

Mike Bogner, Dick Gervasini, Jan Horvath, Julie Hurley, Jackie Porter and Michelle Baragary were present in the Commission Chambers. Kathy Kem participated remotely. Ron Bates was absent.

Chairman Bogner called the meeting to order at 6:00 p.m. and noted a quorum was present.

APPROVAL OF MINUTES: January 25, 2021

Chairman Bogner asked for comments, changes or a motion on the minutes presented for approval: January 25, 2021. Mr. Gervasini moved to approve the minutes as presented, seconded by Mr. Horvath and approved by a vote of 4-0.

OLD BUSINESS:

1. ELECTION OF OFFICERS

Mr. Gervasini moved to nominate Mr. Bogner as Chairman, seconded by Ms. Kem approved by a vote of 3-0 (Mr. Bogner abstained). Mr. Bogner moved to nominate Mr. Gervasini as Vice Chairman, seconded by Mr. Horvath and approved by a vote of 3-0 (Mr. Gervasini abstained).

NEW BUSINESS:

1. CASE NO. 2021-05 BZA – 1901 SPRUCE STREET

Hold a public hearing for Case No. 2021-05 BZA – 1902 Spruce Street, wherein the applicant is requesting a variance to allow a sign to exceed the maximum allowed square footage for a property zoned R1-9, Medium Density Single Family Residential District.

Chairman Bogner called for the staff report.

City Planner Jackie Porter stated the applicant is requesting a variance to allow a sign to exceed the maximum square footage required for an attached sign for a property zoned R1-9, Medium Density Single Family Residential District.

Kansas City Kansas Community College (KCKCC) is located at 1901 Spruce Street zoned R1-9, Medium Density Single Family Residential District. Public or semi-public facilities, like a school, are allowed signage as regulated and permitted in the Neighborhood Business District (NBD). The Development Regulations require the maximum size of a wall sign 96 square feet or 10% of wall surface whichever is less. KCKCC is proposing a sign on the north wall with a total size of 224.25 sqft in white lettering, "KANSAS CITY KANSAS COMMUNITY COLLEGE".

The variance request is for a sign on the north side of the building to exceed the maximum size requirement of a sign on a single side.

Chairman Bogner called for questions about the staff report.

Mr. Gervasini asked if the sign will be lighted.

Ann Hoins, Young Sign Company representing the applicant, stated the sign is not a lighted sign. The letters need to be large in order to be seen, as the building sits far back from the road.

With no further questions from the board members, Chairman Bogner opened the public hearing. With no one wishing to speak, Chairman Bogner closed the public hearing, and opened it up for discussion among the board members.

Mr. Bogner asked if there would be an issue if at a later date they decided to put lights up next to the sign but not as part of the sign.

Planning Director Julie Hurley stated that would not be an issue.

Mr. Horvath asked if any neighboring property has contacted the City in opposition of the sign variance.

Ms. Porter stated staff has not received any comments in opposition of the variance request.

Mr. Horvath asked the size of the wall surface.

Ms. Hoins stated she does not have the exact dimensions, however, she stated it's approximately 100 foot wide radius; plus the building continues out to the north and south. Because the building is so far back from the road, the letters do not appear that large.

With no further discussion, 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 appeal to allow the installation of a sign that exceeds the maximum size requirement to be 224.25 sqft on the north side of the Kansas City Kansas Community College building located at 1901 Spruce Street.

Chairman Bogner stated the board approves the variance request to install a sign that exceeds the maximum size requirement to be 224.25 sqft on the north side of the Kansas City Kansas Community College building located at 1901 Spruce Street. No conditions, safeguards or restrictions were imposed.

2. **CASE NO. 2021-06 BZA – 312 N. 2ND STREET**

Hold a public hearing for Case No. 2021-06 BZA – 312 N. 2nd Street, wherein the applicant is requesting a variance to allow the display of two wall signs and one projecting sign for a nonconforming commercial use in a district zoned R1-6, High Density Single Family Residential District.

Chairman Bogner called for the staff report.

Planning Director Julie Hurley stated the applicant is requesting a variance to allow two wall signs and one projecting sign for a nonconforming commercial use in a district zoned R1-6, High Density Single Family Residential District.

The property located at 312 N. 2nd Street is the site of Bailey's Irish Pub, formerly occupied by Marfield's Pub. The property is zoned R1-6, High Density Single Family Residential District. Restaurant uses are not permitted in the R1-6 zoning district, however, the property had operated as a restaurant for several decades, and was considered a "nonconforming use" as defined in section 1.05.A of the Development Regulations:

Nonconforming Use: An existing use which does not comply with the use regulations applicable to new uses in the zoning district in which it is located.

In regards to the abandonment or discontinuance of a nonconforming use, section 1.05.D of the Development Regulations states:

When a nonconforming use is abandoned for a period of 24 consecutive months any subsequent use or occupancy of such land after this period shall comply with the regulations of the zoning district in which such land is located.

Marfield's Pub restaurant closed in January 2019. Bailey's Irish Pub opened in May 2019. As the nonconforming use of a restaurant operation had not lapsed for a period of more than 24 months, and there was no change in the type of nonconforming use, the use of the property as a restaurant was allowed to continue.

Marfield's Pub displayed one projecting sign as well as three painted wall sign for "Esplanade Tavern" during its operation. Section 8.15 of the Development Regulations states in regards to nonconforming signs:

A nonconforming sign existing lawfully at the time of the passage of this sign code may be continued under the terms as hereinafter provided that such nonconforming signs shall be modified to conform, replaced with a conforming sign or removed according to the following:

1. *If there is a change in business ownership, tenant, name or type of business.*

Thus with the change in business ownership, tenant, and name of business, any signage displayed must conform with sign regulations for the R1-6 zoning district. No commercial signage is permitted in the R1-6 zoning district under the adopted Development Regulations without approval of a variance request.

Bailey's Irish Pub is currently displaying one projecting sign sized 4'x4', and two wall signs sized 4'x4' each. The painted wall signs reading "Esplanade Tavern" have been painted over. Permits for the projecting and wall signs were approved in April 2019 and August 2020, respectively. The permits were inadvertently approved by staff without informing the owner of the need for a variance at that time. The issue has recently come to staff's attention, and the owner was requested to submit a request for the necessary variance in order to bring the signs into compliance.

Chairman Bogner asked for questions about the staff report.

Mr. Bogner asked if the applicant kept the same structure and just painted a new logo on it.

Ms. Hurley stated Bailey's installed a round projecting sign in the same location but it is a different sign. The building has been painted so everywhere it read Esplanade Tavern or Café has been painted over. Bailey's also installed two round wall signs on the north and south side of the building.

Ms. Hurley further stated the owner's did come in for sign permits in April 2019 and August 2020. The sign applications were approved inadvertently by staff without requesting them to apply for a variance. When staff caught this error, they spoke with the owners about applying for the variance so they will be in conformance with the Development Regulations and the owners were happy to do so.

Chairman Bogner asked for questions about the staff report.

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

Mr. Bogner asked if it is a little overkill to have three signs, when the projecting sign is clearly visible in both directions.

Jack Judy, an owner of Bailey's Irish Pub, stated he is not sure if it is overkill but they have not received any complaints from neighboring property owners.

Ms. Hurley stated staff also did not receive complaints from property owners within the 200' notification radius.

With no one else wishing to speak, Chairman Bogner closed the public hearing and called for discussion among the board members.

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)

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 4-0

All board members voted in the affirmative.

Mrs. Kem stated this may be one of those situations where the sign code may need to be modified. It would be unreasonable to allow a commercial business to continue as a nonconforming use but not allow the business to have signage.

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 request to allow display of one projecting sign and two wall signs for Bailey's Irish Pub, located at 312 N. 2nd Street, as described herein.

Chairman Bogner stated the board approved the variance request to allow display of one projecting sign and two wall signs for Bailey's Irish Pub, located at 312 N. 2nd Street. No conditions, safeguards or restrictions were imposed.

3. CASE NO. 2021-07 BZA – 402 S. 20TH STREET

Hold a public hearing for Case No. 2021-07 BZA – 402 S. 20th Street, wherein the applicant is requesting a variance to allow the display of a wall sign and sandwich board sign for a nonconforming commercial use in a district zoned R1-9, Medium Density Single Family Residential District.

Chairman Bogner called for the staff report.

Planning Director Julie Hurley stated the applicant is requesting a variance to allow a wall sign and sandwich board sign for a nonconforming commercial use in a district zoned R1-9, Medium Density Single Family Residential District.

The property located at 402 S. 20th Street is the site of The Suburban, formerly occupied by Mama Mia's restaurant. The property is zoned R1-9, Medium Density Single Family Residential District. Restaurant uses are not permitted in the R1-9 zoning district, however, the property had operated as a restaurant for several decades, and was considered a "nonconforming use" as defined in section 1.05.A of the Development Regulations:

Nonconforming Use: An existing use which does not comply with the use regulations applicable to new uses in the zoning district in which it is located.

In regards to the abandonment or discontinuance of a nonconforming use, section 1.05.D of the Development Regulations states:

When a nonconforming use is abandoned for a period of 24 consecutive months any subsequent use or occupancy of such land after this period shall comply with the regulations of the zoning district in which such land is located.

Mama Mia's restaurant closed in September 2019. The Suburban restaurant opened in July 2020. As the nonconforming use of a restaurant operation had not lapsed for a period of more than 24 months, and there was no change in the type of nonconforming use, the use of the property as a restaurant was allowed to continue.

Mama Mia's restaurant displayed an attached wall sign during its operation. Section 8.15 of the Development Regulations states in regards to nonconforming signs:

A nonconforming sign existing lawfully at the time of the passage of this sign code may be continued under the terms as hereinafter provided that such nonconforming signs shall be modified to conform, replaced with a conforming sign or removed according to the following:

1. *If there is a change in business ownership, tenant, name or type of business.*

Thus with the change in business ownership, tenant, and name of business, any signage displayed must conform with sign regulations for the R1-9 zoning district. No commercial signage is permitted in the R1-9 zoning district under the adopted Development Regulations without approval of a variance request.

The Suburban restaurant is intending to display one wall sign sized 4'x2' (8 square feet), and on sandwich board sign sized 2' x 3.75' (7.5 square feet).

Chairman Bogner asked for questions about the staff report.

Mr. Bogner stated the sandwich board sign does not look like a permanent sign and asked if a sign will be added to the frame that fits well in the frame.

Ms. Hurley responded sandwich board signs are defined as their own sign type in the sign codes. Sandwich board signs are intended to have the changeable display. Sandwich board signs are permitted as a one time permit; they are not permitted as a temporary sign. Placement must be out of the right-of-way, cannot block intersections or sidewalks, etc.

Ms. Hurley further stated staff received two letters in opposition of the variance request. One letter is included in the agenda packet. The other letter was received from Morgan and Mary Bean, who reside at 2005 Choctaw. The questions in the letter included the dimensions of the sign, will the sign be lighted, what direction it will be facing and where the sign will be located. Staff feels there may have been some confusion that the applicant was requesting additional sign to what is already out there. For clarification purposes, Ms. Hurley stated the applicant is not requesting any additional signage to what is currently there at this time.

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

Jason Wiggin, an owner of The Suburban, stated the subject property has been a restaurant dating back to the 1940's. The requested signs are small and blends in with the décor. The sandwich board sign is placed in the same place Mama Mia's had their sandwich board sign and the wall sign is only 3' x 2'.

Referring to the letter submitted by Dewey Gillette, Mr. Horvath asked if there will be any signs in addition to the two signs the applicant is requesting a variance for.

Ms. Hurley responded the applicant is only requesting the two signs; the wall sign and sandwich board sign.

Again referring to Mr. Gillette's letter, Mr. Horvath asked if The Suburban has an agreement with The Eagle's to allow overflow parking to flow into The Eagle's parking lot.

Mr. Wiggin stated when they purchased the building they spoke with The Eagle's and have been granted access to certain parts of their parking lot.

Ms. Bean stated her primary concern is with the sandwich board because there was an issue previously with the sign obstructing views for traffic on 20th Street when the property was Mama Mia's.

Mr. Bean stated when they would turn onto 20th Street from Choctaw, there used to be a tree there and it would obstruct the view. Other than that, Mr. and Mrs. Bean do not have any objections.

Mr. Wiggin stated the sandwich board sign is in the parking lot and is never be placed near sidewalks or anywhere outside of The Suburban's parking lot. He believes Mr. Bean is speaking of a tree that used to be on the corner of Choctaw and 20th Street, which has since been removed.

Mr. Bogner asked who the policing authority is for the sandwich board sign should there ever be a problem.

Ms. Hurley responded Code Enforcement.

Mr. Wiggin stated the sandwich board sign has sand in the bottom making it durable and preventing the sign from blowing away.

Mr. Bogner asked if this variance would allow the sign to be replaced if needed without the owner coming back to this board.

Ms. Hurley responded in the affirmative. Should this variance be approved, and the sign is damaged or worn and needed replacing, with the approval of the variance the owners would be allowed to replace the sandwich board sign per the regulations governing sandwich boards.

With no one else wishing to speak, Chairman Bogner closed the public hearing and called for discussion among the board members.

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)

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 4-0

All board members voted in the affirmative.

Mrs. Kem reiterated her comment about the sign code being reviewed to allow signage for a commercial business which is allowed to continue as nonconforming.

- 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 request to allow display of a wall sign and sandwich board sign for The Suburban restaurant located at 402 S. 20th Street, as described herein.

Chairman Bogner stated the board approved the variance request to allow display of a wall sign and sandwich board sign for The Suburban restaurant located at 402 S. 20th Street. No conditions, safeguards or restrictions were imposed.

With no further business, 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 6:46 p.m.

Minutes taken by Administrative Assistant Michelle Baragary.