



**BOARD OF ZONING APPEALS MINUTES  
MONDAY, April 19, 2021, 6:00 P.M.  
COMMISSION ROOM, CITY HALL  
LEAVENWORTH, KANSAS**

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**CALL TO ORDER:**

**Board Members Present**

Mike Bogner  
Ron Bates  
Kathy Kem

**Board Member(s) Absent**

Dick Gervasini  
Jan Horvath

**City Staff Present**

Jackie Porter  
Michelle Baragary

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

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

**APPROVAL OF MINUTES:** March 15, 2021

Chairman Bogner asked for comments, changes or a motion on the minutes presented for approval: March 15, 2021. Mr. Bates moved to approve the minutes as presented, seconded by Ms. Kem and approved by a vote of 3-0.

**OLD BUSINESS:**

None

**NEW BUSINESS:**

**1. CASE NO. 2021-09 BZA – 1008 QUINCY STREET**

Hold a public hearing for Case No. 2021-09 BZA – 1008 Quincy Street, wherein the applicant is requesting a variance to allow a detached garage greater than 900 sqft on a parcel less than one acre in the R1-6 zoning district, High Density Single Family Residential District.

Chairman Bogner called for the staff report.

City Planner Jackie Porter stated the applicant and owner Bill Seber is requesting a variance from sections 4.04.B.3 of the adopted Development Regulations.

- 4.04.B.3 – For single-family residences: a garage not to exceed 900 sqft on parcels less than one acre, and 1,200 sqft 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 proposed accessory structure is going to be located at the Northwest corner of the lot. The lot is located at 1008 Quincy Street, which is currently zoned as High Density Single Family Residential District, R1-6, with a single-family dwelling and an accessory structure located on the Northeast corner of the lot. The subject property is surrounded by properties that 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 applicant wants to build a 1,200 sqft accessory structure with the intent to have an 810 sqft loft to display years of collectibles: toys, signs, cars, motorcycles, G scale train and track and other types of collectibles, as well as storage of parts for the 1955 Chevy that will be built in the garage.

We received one comment from a neighbor located at 1016 Quincy in favor of the variance request.

Chairman Bogner asked for questions about the staff report.

Mr. Bogner asked what the total square footage is to include the loft.

Ms. Porter responded the total accessibility is 2,010 sqft.

Mr. Bogner stated that exceeds the square footage of the main residence based on the tax records. Mr. Bogner asked if there is an issue with an accessory structure being larger than the principle dwelling.

Ms. Porter stated it is based on the footprint of the accessory structure, which is 1,200 sqft, not the total square footage.

Mr. Bogner stated there will be a second floor that is going to be habitable.

Ms. Porter stated her understanding is that it is just the footprint of the accessory structure not the actual usable space exceeding the primary dwelling.

Mr. Bogner stated there are two different matters: 1) the accessory structure exceeds 900 sqft and 2) since it is going to have a habitable space above it, the total square foot of that structure is larger than the principle structure.

Ms. Porter stated to make it habitable would require water. The loft will be to store collectibles.

Mr. Bogner stated the accessory structure will still exceed the square footage of the main dwelling unit. Furthermore, there is already two sheds on the property and the maximum number of accessory structures is limited to two.

Bill Seber, applicant, stated he plans on installing a foundation where the patio is in the backyard to add a dining room and a bathroom.

Mr. Bogner asked if the garage will be a standalone garage or will it somehow be attached to the house.

Mr. Seber responded the garage would not be attached to the house. Furthermore, the dining room addition would be approximately 14' x 26'.

Mr. Bogner asked if there would be plumbing (bathroom, sinks, etc.) in the loft area of the detached accessory structure.

Mr. Seber responded there would be a toilet, urinal and sink.

Referring to the GIS map, Ms. Porter stated it appears there is only one other accessory structure on the subject property.

Mr. Bogner and Ms. Kem stated they drove by the subject property and there are two existing sheds on the property.

Ms. Porter stated that triggers an additional variance that would need to be applied for. A new application would be required in order to send notification of the additional variance to property owners within 200' of the subject property. Ms. Porter further informed the Mr. Seber an additional variance would not be required if he removed one of the existing sheds.

Mr. Bogner stated rather than a second variance, the board could make the approval contingent upon one of the existing accessory structures being removed prior to building the proposed detached garage.

Ms. Kem asked if the issue of the square footage of the detached garage and loft in relation to the square footage of the house has been resolved.

After reviewing the Development Regulations section 4.04.B.2.e, Ms. Porter responded the unfinished portion, which is the loft, would not be considered toward the total square footage of the detached garage.

Mr. Bogner stated the loft is finished space because it will have a bathroom.

Ms. Porter stated the bathroom would be in the downstairs portion of the garage.

Mr. Seber confirmed this.

Mr. Bogner asked what the definition is of unfinished space.

Referring back to section 4.04.B.2.e of the Development Regulations, Mr. Bates stated the unfinished space refers to the principle dwelling:

“In determining square footage of the primary use (residential), attached garages and unfinished space shall not be counted”.

Mr. Bates further stated he feels as though the square footage of the loft should be included in the total square footage of the accessory structure. Much like the square footage of the second level of a two-story house would be included in the total square footage of the house, not just the footprint of the house.

Ms. Porter stated the intent is the intensity of use; how large the structures footprint is in itself. Ms. Porter stated her interpretation is ground coverage versus total square footage.

Mr. Bogner stated that is not how the tax assessor measures it. The tax assessor measures livable finished space.

Ms. Porter stated she only deals with exterior footprint.

Mr. Bogner stated that is incorrect.

Ms. Kem asked what the size of the house is.

Mr. Bogner stated according to county records, the calculated area and main floor living area are listed as the same at 1,114 sqft. The requested detached garage would be 1,200 sqft plus 810 sqft for the loft.

Ms. Kem asked if the detached garage will be heated.

Mr. Seber responded in the affirmative.

Ms. Kem asked if the requested detached accessory structure will need to go through a site plan review.

Ms. Baragary stated a site plan review would be required before issuance of a building permit.

Ms. Kem stated her concern about the steep grade that would need to disappear to get the structure back there and what that will do to water runoff.

Ms. Porter stated that would go through Building Inspections and Public Works.

Mr. Seber stated he has already contacted the City about looking at the alley because there are problems with runoff coming out of the alley. Mr. Seber would like to install a curb when he installs the detached garage so the water stays in the alley instead of crossing over into his yard.

Ms. Porter stated the requested variance will include 4.04.B.3 and 4.04.B.2.e to allow for the requested detached structure to be larger than the principle dwelling.

Ms. Kem asked how the board can include an additional variance if it was not included in the original application. Legal requirements will not allow the board to add to a variance application. New notifications would need to be sent/published in order to meet state statute requirements.

Ms. Baragary stated the board can add the additional variance request for the accessory structure to be larger than the principal dwelling because the request is for the same accessory structure and the intent has not changed.

Mr. Bates stated he feels this item should be tabled because the applicant would need to submit a new variance request to allow the accessory structure to be larger than the main building; and the new variance request would need to be advertised.

Ms. Kem stated the board could proceed with the case but would not approve the structure for the full 1,200 sqft. Instead, the accessory structure would be approved for the number of square feet the board finds permissible on however they interpret this ordinance.

Ms. Porter explained to the applicant, the board can move forward with the variance request but the accessory structure would need to be under 1,100 sqft.

Mr. Bates stated that is assuming they are not counting the loft area as a part of the total square feet of the building.

Mr. Seber asked if a 30' x 30' accessory structure with a loft be allowed.

Staff stated if the loft space is included in the total square footage, then a variance would be required.

Ms. Kem stated most jurisdictions she has worked in typically uses the footprint of the accessory structure and does not count the loft as part of the square footage.

Mr. Bogner stated if that area was not heated, cooled and had electricity that the definition of a loft would be different in this particular case.

After some research, Ms. Porter stated the board may continue with the two variances: 1) an accessory structure larger than 900 sqft and 2) an accessory structure larger than the main structure. The reasoning is the second variance is for the same accessory structure and not a different accessory structure. The intent is still to have a 1,200 sqft accessory structure with an 810 sqft loft.

Mr. Bogner and Ms. Kem stated they are not comfortable moving forward with the second variance request since it was not included on the application.

Mr. Bogner called for a motion.

Ms. Kem moved to table the item for additional information/consideration, specifically whether or not the square footage of the loft is counted toward the square footage of the accessory structure, if an accessory structure can ever be larger than the principal building and even if it's permitted would an additional variance be required to allow an accessory structure bigger than the principal structure. Mr. Bogner seconded the motion and the motion to table the item was approved by a vote of 3-0.

Ms. Kem also requested a scale drawing of how the accessory structure is going to fit on that site to include distance from the principal structure, shed and property lines.

Mr. Seber stated the garage will not have windows.

Mr. Bogner requested a more accurate picture depicting what the accessory structure will look like.

Mr. Bates moved to adjourn, seconded by Ms. Kem and approved by a vote of 3-0.

The meeting adjourned at 6:46 p.m.

Minutes taken by Administrative Assistant Michelle Baragary.