



BOARD OF ZONING APPEALS MINUTES
MONDAY, June 21, 2021, 6:00 P.M.
COMMISSION ROOM, CITY HALL
LEAVENWORTH, KANSAS

CALL TO ORDER:

Board Members Present

Dick Gervasini
Ron Bates
Kathy Kem

Board Member(s) Absent

Mike Bogner
Jan Horvath

City Staff Present

Jackie Porter
Michelle Baragary
Julie Hurley

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

APPROVAL OF MINUTES: April 19, 2021

Vice Chairman Gervasini asked for comments, changes or a motion on the minutes presented for approval: April 19, 2021. Staff found a typo in the April minutes. Case No. 2021-19 BZA – 1008 Quincy Street should be Case No. 2021-09 BZA – 1008 Quincy Street. Mr. Bates moved to approve the minutes with the correction, 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. This item was tabled at the April 19, 2021 Board of Zoning Appeals meeting for additional information/consideration.

Vice Chairman Gervasini called for the staff report.

City Planner Jackie Porter stated the applicant is requesting a variance from sections 4.04.B2 and 4.04.B3 of the adopted Development Regulations to allow an accessory structure greater than the square footage of the primary use, and in excess of 900 square feet.

The applicant and owner, Bill Seber, is requesting a variance from the above noted sections of the adopted Development Regulations to allow construction of a detached garage that is larger in square footage than the primary structure, and that is greater than 900 square feet.

- *4.04.B.2 – The total square footage of all detached structures functioning as accessory use in residential districts shall be less than the square footage of the primary use on the parcel. In determining square footage of the primary use (residential), attached garages and unfinished space shall not be counted. No more than two detached accessory structures shall be allowed per building lot or parcel whichever is larger in area.*
- *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 applicant proposes to construct a 2,010 square foot detached garage at the northwest corner of the property, with direct access off the adjacent alley. The property is currently zoned as High-Density Single-Family Residential District, R1-6 with a single-family dwelling and two accessory structures. The applicant has agreed to remove one of the existing accessory structures prior to construction of the proposed garage in order to comply with the maximum number of accessory structures permitted on one residential lot.

The proposed garage has a footprint of 1,200 square feet with an 810 square foot second story, for a total of 2,010 square feet, which is in excess of the existing 1,114 square foot home on the property. The proposed use of the structure is to display years of collectables: toys, signs, cars, motorcycles, G scale train and track and other types of collectables, as well as storage of parts for the 1955 Chevy that will be built in the garage.

After the required notice was published, staff received one comment from a neighbor located at 1016 Quincy in favor of the variance request.

This item was previously heard at the April 19, 2021 BZA meeting and was tabled in order to provide clarification on the specific sections of the Development Regulations requiring a variance, and for clarification on the notification procedure. KSA 12-759 states that:

The board of zoning appeals shall administer the details of appeals from or other matters referred to it regarding the application of the zoning ordinance or resolution as hereinafter provided. The board shall fix a reasonable time for the hearing of an appeal or any other matter referred to it. Notice of the time, place and subject of such hearing shall be published once in the official city newspaper in the case of a city and in the official county newspaper in the case of a county at least 20 days prior to the date fixed for hearing. A copy of the notice shall be mailed to each party to the appeal and to the appropriate planning commission.

Staff has determined that the statutory notification requirements were met.

Vice Chairman Gervasini asked for questions about the staff report.

Referring to construction of driveways in section 4.04.B.3 of the Development Regulations, Ms. Kem asked if the applicant would be required to construct a driveway from the front of their property to the doors of the proposed detached structure.

Planning Director Julie Hurley responded if the property has an alley access, the driveway can come off the alley. The regulations allows for a gravel parking pad if it is coming directly off of an alley.

Ms. Kem asked if the garage doors will be facing the house or the alley.

Bill Seber, applicant and owner, stated the doors will face east.

Mr. Gervasini asked if the matter from April's meeting concerning the size of the detached structure has been resolved. Is the size based on the footprint of the accessory structure or is the loft included in the amount of space authorized.

Ms. Hurley stated the intent of the regulations is that the total square footage of any accessory structure be included; not just the footprint of the accessory structure. This language has been clarified in the revised Development Regulations, which was approved by the City Commission earlier this month. The language states that any second story of an accessory structure is included in that calculation.

Mr. Gervasini stated the minutes from the last meeting stated there will be no windows in the proposed structure; however, the drawing indicates several windows.

Ms. Porter stated that was a conceptual drawing. The applicant submitted a revised drawing which has no windows.

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

Mr. Bates asked the size of the two existing accessory structures.

Mr. Seber responded they are 8' x 8' each, and he can remove one or both if needed.

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

Ms. Kem stated she has concern with an accessory structure this big and which is bigger than the existing principle dwelling. Ms. Kem specifically cited criteria 2a "that the variance requested arises from such a 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".

With no further discussion, 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)

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 0-3
All board members voted in the negative.

- b) *That the granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents.*

Vote 0-3
All board members voted in the negative.

Ms. Kem stated a structure that large would adversely affect the adjacent property owners, even though those property owners immediately affected by it might agree with it at the moment.

- 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 0-3
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 1-2
Mr. Bates voted in the affirmative. Ms. Kem and Mr. Gervasini voted in the negative.

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

Vote 0-3
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.B.2 and 4.04.B.3 of the Development Regulations to allow a 2,010 square foot accessory structure at 1008 Quincy with the following condition:

1. One of the existing accessory structures shall be removed prior to the issuance of a building permit for the proposed detached accessory structure.

Vice Chairman Gervasini stated based on the voting the variance is denied.

2. CASE NO. 2021-16 BZA – 1187 RANDOLPH STREET

Hold a public hearing for Case No. 2021-16 BZA – 1187 Randolph Street, wherein the applicant is requesting a variance to allow a detached garage greater than 900 sqft on a parcel less than once acre in the R16 zoning district (High Density Single Family Residential District) and to allow a reduction to the required side yard setback.

Vice Chairman Gervasini called for the staff report.

City Planner Jackie Porter stated the applicant and owner, Tom Roemer, is requesting a variance from sections 4.03.E and 4.04.B.3 of the adopted Development Regulations to allow a reduction to the required accessory structure setback, and to allow an accessory structure larger than 900 square feet.

- 4.03.E – No accessory buildings shall be erected in any required front or side yard, or at any other place forward of the main building line.
- 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 proposed changes involve an addition on the south side of the existing accessory structure to allow additional covered parking. The lot is located at 1187 Randolph Street, which is currently zoned as High Density Single Family Residential District, R1-6.

The applicant is proposing to add on an additional single car space to accommodate the additional car that was recently purchased. This proposed addition will result in the accessory structure being roughly 1,260 sqft overall. It will also increase the existing nonconformity of the structure, since the additional will be built at the existing 13 foot setback and not meet the required 25 foot setback.

Staff has received one comment from a neighbor located at 1140 Ironmoulders Street in favor of the variance request.

Vice Chairman Gervasini asked for questions about the staff report.

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

Tom Roemer, owner/applicant, stated he has done nothing but continuously made improvements to his property and is proposing to add a lean to on the south side of the existing detached garage.

Mr. Bates asked if the proposed structure will be enclosed on the side and in the back.

Mr. Roemer responded the lean to will be totally enclosed with two garage doors; one in the front of the structure and the second door in the rear. He is proposing a lean to so he does not have to tear into the existing structure of the slope of the roof of the existing garage. The proposed lean to will match the front of the garage and will have a smaller maintenance type door on the backside of it for his lawnmower. Mr. Roemer further stated the proposed lean to will not interfere with sight lines in the alley. He spoke with his neighbors and they do not have any issues with his proposal.

Mr. Gervasini asked if the backside of the outbuilding is encroaching in the rear setback.

Ms. Porter responded the outbuilding is encroaching on the setback on the Franklin Street side. On corner lots, both yards adjacent to streets are considered front yards; therefore, the setback on Franklin Street is 25'.

Mr. Gervasini asked when the existing garage was built.

Mr. Roemer responded June 1994.

With no further questions, Vice Chairman Gervasini closed the public hearing and asked for discussion among the commissioners. With no further discussion, 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 1-2

Mr. Gervasini voted in the affirmative. Ms. Kem and Mr. Bates voted in the negative. Ms. Kem stated the owners have done a beautiful job improving and maintaining the property; and they do have a perfect spot for a garage addition. However, because of this one phrase that requires the board to find agreement in the State statutes, she has to disagree as much as she would love for the owners to be able to build the proposed extension to the existing garage.

- 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 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 1-2

Mr. Gervasini voted in the affirmative. Ms. Kem and Mr. Bates 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 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 0-3

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.E and 4.04.B.3 of the adopted Development Regulations to allow a reduction in the required setback for an accessory structure and to allow a 1,260 square foot accessory structure at 1187 Randolph Street.

Vice Chairman Gervasini stated based on the voting the variance is denied.

Vice Chairman Gervasini asked if there was another other business to discuss.

Planning Director Julie Hurley stated last year and earlier this year there have been a few requests for sign variances for legal nonconforming businesses; businesses that are allowed to exist but the way the regulations were worded the business owner could not get a sign without a variance. At the Board's

request, the regulations have been revised to allow those legal nonconforming businesses to be able to get a sign in conformance with the Development Regulations without needing a variance. This does not mean the Board will not ever see a sign variance request if the business owner wants something more than what they are allowed to get but staff has tried to make it more business friendly for them to get their signs when the business is already allowed.

Ms. Hurley further stated there is one item on the agenda for the next BZA meeting July 19, 2021.

Vice Chairman Gervasini called for a motion to adjourn. Mr. Bates moved to adjourn, seconded by Ms. Kem and passed 3-0.

The meeting adjourned at 6:30 p.m.

Minutes taken by Administrative Assistant Michelle Baragary.