



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

CALL TO ORDER:

Board Members Present

Dick Gervasini
Ron Bates
Kathy Kem
Mike Bogner
Jan Horvath

Board Member(s) Absent

City Staff Present

Jackie Porter
Michelle Baragary
Julie Hurley

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

APPROVAL OF MINUTES: June 21, 2021

Chairman Bogner asked for comments, changes or a motion on the minutes presented for approval: June 21, 2021. Ms. Kem moved to approve the minutes, seconded by Mr. Gervasini and approved by a vote of 4-0. Mr. Bogner abstained.

OLD BUSINESS:

None

NEW BUSINESS:

1. CASE NO. 2021-20 BZA 804 S. 4TH STREET

Hold a public hearing for Case No. 2021-20 BZA – 804 S. 4th Street, wherein the applicant is requesting a variance to allow a porch to project into a required front setback a distance exceeding 10 feet and less than 15 feet to the property line.

Chairman Bogner called for the staff report.

City Planner Jackie Porter stated the applicant and owner, Aree Proctor, is requesting a variance from sections 4.03.C.2.f of the adopted Development Regulations.

- 4.03.C.2.f – An open and unenclosed porch or stoop may project into a required front setback a distance not exceeding 10 feet, but no closer to the property line than 15 feet in any case...

The primary structure is a legal nonconforming structure that encroaches the required setback of 25 feet. It currently sets on or over the existing property line. Section 1.05.C.03 of the Development Regulations states:

A structure which is in nonconformance with respect to a side or rear yard setback shall not use the existing setback in expanding or enlarging but may be enlarged if the new part of the structure complies with the setbacks of the district.

The proposed changes involve an addition on the south side of the existing structure to allow cover porch/deck. The lot is located at 804 S. 4th Street which is currently zoned as High Density Single Family Residential District, R1-6. The subject property is adjacent to properties that are zoned R1-6, High Density Single Family Residential District, and GBD, General Business District. Adjacent properties to the south and southeast are zoned GBD, and the surrounding properties to the west, north, northeast and east are zoned R1-6.

The applicant is proposing to add on an unenclosed covered porch/deck to the south of the building where a door has been added for access. The proposed location of the cover porch/deck is going to be 6 feet from the front property line.

Staff has not received any comment in regards to this case.

Chairman Bogner asked for questions about the staff report.

Mr. Bogner asked for clarification that the covered deck will not extend beyond the front face of the house and will not be any closer to the street than the existing house.

Planning Director Julie Hurley responded in the affirmative. As far as staff can tell, the existing house is right on the property line and the proposed deck will be six feet back from the property line.

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

Pat Proctor, 624 Kickapoo (spouse of applicant and property owner), stated the house was built on the property line. The front door used to be on the 4th Street side and the porch was inside the easement. The porch was in bad repair so they removed the porch. Mr. Proctor feels that exiting and entering on the side of the house would be better so you are not walking out directly onto 4th Street. Therefore, he is proposing to install a porch extending 8 feet and front door on the south side of the house.

Mr. Bogner asked if the parking for the tenants will be where the pick-up truck is located in the picture included in the policy report.

Mr. Proctor stated the patch to the west of the proposed front door will be for parking.

Mr. Bates asked if the parking area is gravel.

Mr. Proctor stated the City did some work in that area so currently there is just dirt.

Planning Director Julie Hurley confirmed the City has done a sanitary sewer project in this area and at one point the parking area had been gravel. Since that was an existing gravel parking area, it can remain a gravel parking area.

Mr. Gervasini asked if the porch will have a roof.

Mr. Proctor responded it will be a covered deck but will not be enclosed.

Steve Lambeth, contractor for proposed project, stated the deck will have a gabled roof tied into a 912 pitch, which will be very appealing.

Susan Pierce, executor for the Arthur Ruppenthal Trust at 801 S. 4th Street, stated she was on a task force for the City for an overlay district where the entrance on 4th Street and part of 7th Street could not face a different way; the main entrance had to face the main street. Ms. Pierce asked if there will still be a front door facing 4th Street.

Mr. Bogner stated that would not affect the porch unless the porch is going to be the primary entrance for the house.

Mr. Proctor stated he is confused on Ms. Pierce's discussion about an overlay district.

Ms. Hurley stated she is not familiar with the task force Ms. Pierce is speaking of about an overlay district or when that was discussed. This is not part of the city's current design regulations that are part of the adopted Development Regulations. Ms. Hurley further stated the issue for the Board of Zoning Appeals is not the location of a front door. The issue for the board is just the setback of the proposed porch.

Ms. Pierce (inaudible).

Ms. Hurley responded for the Board of Zoning Appeals the only issue that they are able to consider when they have an application before them is the section the applicant is requesting a variance from, which in this case is the section regarding the setback for a porch.

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

Mr. Bates asked if the issue with the front door facing 4th Street is part of the Development Regulations.

Ms. Hurley responded it is not part of the Development Regulations. She further stated at some point a number of years ago there had been an overlay district discussed as part of 4th Street but it is not part of the current regulations.

Mr. Bogner asked if the Planning Commission would be the board to adopted an overlay district.

Ms. Hurley responded something like that would typically be reviewed by the Planning Commission and then adopted by city ordinance through the City Commission.

Ms. Kem asked if typically a site plan review by this board would not be required for the proposed project.

Ms. Hurley stated the reason this even came up is the Proctor's had purchased this property and were in the process of rehabbing it when staff noticed the issue with the porch. Previously just to the north of the subject property there was a two-story brown multi-family structure that burned several years ago and then was demolished. The subject property is located on the same lot as the demolished multi-family structure was on. The subject house had been sitting vacant and in disrepair for a number of years when the Proctors purchased it and came in for their building permits. At this time is when staff noticed the issue with the porch; but no, typically for something like this we would not be looking at a site plan.

Mr. Horvath asked if there are any property owners in the audience who are adjacent to or across from the subject property who oppose the building of the porch. (No one spoke up).

Patrick Swift, 405 Olive, stated he is in favor of the proposed porch.

Ms. Kem asked for clarification that the entrance facing 4th Street will be closed.

Mr. Proctor responded in the affirmative.

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 5-0

All board members voted in the affirmative.

Ms. Kem stated she agrees due to the exceptional narrowness of this property and the easements which have moved over time.

- 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 request for a variance from section 4.03.C.2.f of the Development Regulations to allow a reduction in the required setback for an unenclosed porch at 804 S. 4th Street.

Chairman Bogner stated based on the findings, the board is in favor of granting the variance with no conditions or restrictions.

Ms. Hurley further stated there is one item on the agenda for the next BZA meeting August 16, 2021.

Chairman Bogner called for a motion to adjourn. Mr. Gervasini moved to adjourn, seconded by Ms. Kem and passed 5-0.

The meeting adjourned at 6:21 p.m.

Minutes taken by Administrative Assistant Michelle Baragary.