



**BOARD OF ZONING APPEALS MINUTES
MONDAY, AUGUST 16, 2021, 6:00 P.M.
COMMISSION ROOM, CITY HALL
LEAVENWORTH, KANSAS**

CALL TO ORDER:

Board Members Present

Dick Gervasini
Ron Bates
Kathy Kem
Jan Horvath

Board Member(s) Absent

Mike Bogner

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: July 19, 2021

Vice Chairman Gervasini asked for comments, changes or a motion on the minutes presented for approval: July 19, 2021. Ms. Kem moved to approve the minutes, seconded by Mr. Horvath and approved by a vote of 4-0.

OLD BUSINESS:

None

NEW BUSINESS:

1. CASE NO. 2021-23 BZA – 940 EISENHOWER RD

Hold a public hearing for Case No. 2021-23 BZA – 940 Eisenhower Rd, wherein the applicant is requesting a variance to allow a reduction in the required number of parking spaces for a retail use.

Vice Chairman Gervasini called for the staff report.

City Planner Jackie Porter stated the applicant, BEL Investments, and property owner, HGS Developers, LLC are requesting a variance from sections 5.02.A of the adopted Development Regulations to allow a reduction in the required number of parking spaces for a retail use.

Section 5.02.A of the adopted Development Regulations reads in part as follows:

- *Table 5.01 Parking Rates – Specific Use: Retail Required Parking Rate: 1 per 200 sqft.*

The lot is located at 940 Eisenhower Road, which is currently zoned PUD, Planned Unit Development. The PUD was established in 2004 as commercial PUD for the Three B's Commercial Centre Subdivision. The subject property is adjacent to properties that are part of the Three B's Commercial Centre Subdivision PUD, and Lansing City limit is located to the south.

The proposed development is a Dollar Tree retail store and will be 9,000 square feet. Submitted site plans show a total of 29 parking spaces. Based upon the required 1 space per 200 sqft. for a retail use, the required number of spaces for the proposed site is 45. This amounts to a shortfall of 16 spaces. There is currently no share parking agreement in place with adjacent owners.

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

Vice Chairman Gervasini asked for questions about the staff report.

Ms. Kem asked what the parking ratio requirement is for commercial districts not in PUDs.

Planning Director Julie Hurley responded the parking requirement is based on the use and not the zoning; therefore, the ratio is still one for every 200 sqft. of retail use.

Mr. Gervasini asked what the rationale was for zoning this area PUD.

Ms. Hurley responded the rezoning was done in 2004. From looking at the file, it is her understanding the rezoning was based on some internal circulation issues and maybe some curb cuts on Eisenhower Rd.

Mr. Horvath stated the policy report indicates there was no feedback from adjacent property owners and asked if that had changed.

Ms. Hurley stated one of the Bohannon's, who owns the Three B's Commercial Centre Subdivision, did call our department today to be sure staff was aware there is no shared parking agreement for this retail use to utilize other parking spaces in that development.

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

Matt Gibbs, HGS Developers, stated HGS Developers have owned the subject property since 2008 and would like to either develop the property or sell it. The property is surrounded by four drive lanes, which is somewhat unique to have a cross-access internal drive system that borders all four sides, which does limit some ability to develop the site. Additionally, on the south side of the cross-access agreement that runs on the south of the subject property to Casey's, from the entrance on Eisenhower there is a large retaining wall that is anywhere from 5' to 15' in height. This renders the whole sliver of ground to the south of the retaining wall unusable.

Mr. Gibbs further stated they have been through four or five different iterations of the site plan trying to determine how to add more parking to the site. Originally, they started with a 10,000 sqft Dollar Tree building. The building has now been reduced to Dollar Tree's smallest national prototype of 9,000 sqft in order to get the 29 parking spaces currently on the site plan.

Mr. Gibbs went over his memorandum, included in the policy report, which discusses the five criteria the Board votes on: unique conditions, adjacent properties, hardship, public welfare and development regulations.

Richard Ogburn, BEL Investments, stated Dollar Tree typically develops 10,000 sqft stores with 50 parking spaces. This particular Dollar Tree store will be 9,000 sqft. Traffic studies have been done and Dollar Tree feels 29 parking spaces for this location is adequate.

Ms. Kem asked is the access would be off the same driveway that is on Eisenhower and there would be no additional curb cuts.

Mr. Ogburn responded there are two access points; one on Eisenhower and one of 10th Street.

Ms. Kem asked staff if there are any other properties within this PUD that has received variances.

Ms. Hurley responded in the negative.

Mr. Gervasini asked if any attempts have been made to use shared parking.

Mr. Gibbs responded in the affirmative. There have been ongoing conversations with Three B's Commercial Centre but have not come to an agreement as of this date.

Mr. Bates asked how many additional parking spaces would be available if they were to enter into a shared parking agreement.

Mr. Gibbs stated there could potentially be another 8 parking spaces added in the detention area with a shared parking agreement.

Mr. Bates asked staff if the city finds it acceptable to have parking spaces across a traffic way/driveway.

Ms. Hurley responded if parking spaces were added there that would meet the requirement for shared parking but there would need to be a written agreement in place between the two property owners. There would need to be a pedestrian crossing/walkway installed.

Dale Bohannon, Three B's Commercial Centre, does not see how being short so many parking spaces would work. The liquor store has a drive thru and is always busy. If Dollar Tree has a minimal amount of parking spaces and they overflow onto the street, it is going to impede people being able to get in and out of the drives.

Mr. Bohannon further stated in 2007 they were four spots short of having enough spots for this particular property to be developed; and this Board would not allow them build there without those additional four parking spaces. This is a PUD so everybody in this subdivision shares the roadway expense; the city has nothing to do with it.

Mr. Bates asked if semi-tractor trailers service the electrical company located in the northeast corner.

Mr. Bohannon stated they have a 53' trailer that brings supplies once every two weeks.

Ms. Kem asked the size of the electrical building.

Mr. Bohannon stated it is 6,000 sqft; however, 4,800 of it is warehouse.

Ms. Hurley stated that parking requirement was most likely based on it being more of a warehouse type use.

Mr. Bates asked the developer how much of the Dollar Tree building would be retail and how much would be storage.

Mr. Ogburn stated about 18% of the 9,000 sqft is dedicated to stock room; and 7,380 sqft to retail.

Mike Reilly, 608 Delaware, is in favor of the Dollar Tree development and the variance request. Mr. Reilly stated he looks at things from a competitive standpoint at a local level. Dollar Tree has looked at locations in Kansas City Kansas, Shawnee and Lansing, to name just a few, at 3 parking spaces per 1,000 sqft. If this project were to go directly across the street in Lansing, the parking requirement would fall almost within the margin of error where staff could probably recommend approval without going through Lansing's variance process. This brings up the question of whether or not Leavenworth's Development Regulations just need to be adapted.

Mr. Reilly further stated Casey's site is smaller than the subject property site. From a traffic impact standpoint, a convenience store like Casey's is much more impactful than a Dollar Tree store or any retail store would be. There are semi trucks for fuel, food, beverage, etc. Another Casey's General Store can be built on this site and would be well within any parking requirement according to the regulations. Casey's, the liquor store and car wash generates more traffic than a Dollar Tree store would and yet the proposed site of the Dollar Tree would have more parking per 1,000 sqft. than any of those previously mentioned.

Mr. Reilly further stated, if it's not a Dollar Tree or Dollar General, at some point in time, something is going on this site that will have a semi attached to it for deliveries and that has clients attached to it for parking. The average 15 minutes shopping span for a Dollar Tree customer is less impactful and less intensive on neighboring property owners than the current Casey's General Store. A variance should apply in this case because of the unique nature that the development regulations are too heavy for this type of use, especially when you factor in where retail is going. Retail is heading to less daily traffic and more shipping traffic.

Mr. Reilly concluded by saying looking at the surrounding area and this particular development, from a pure traffic impact, ingress/egress standpoint, another Casey's could be put on this site today and it would be much more detrimental to this development area than a Dollar Tree would be. Or imagine a very successful drive-thru restaurant placed on this site and the traffic that would be stacked up in a drive-thru line versus the limit traffic of a Dollar Tree.

Fredonia Grissom, 905 Lewis Dr., stated she did not know it was a Dollar Tree store for this site. She further stated is against the variance request because there will be too many people, a lot of lights and

delivery trucks causing a lot of noise. Stated the traffic on 10th Street is already bad. Ms. Grissom said she does not know the hours of operation but would think deliveries would be early morning or in the evening around 7 p.m.

Ms. Grissom asked if the detention basin will be taken away and replaced with parking stalls.

Ms. Hurley responded the detention basin is located at 930 Eisenhower and is not a part of this development. Because it is a detention area, 930 Eisenhower will never be developed.

Mr. Ogburn stated he wanted to address a couple of Ms. Grissom's concerns. The hours of operation are 9 a.m. to 9 p.m. Generally, Dollar Tree has two truck deliveries per week.

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

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 4-0

All board members voted in the affirmative.

Ms. Kem stated planning in general is moving away from minimal parking standards across the nation and hopes the city council and staff will consider reviewing the planning requirements in the future. Ms. Kem further stated this site is unique in the fact there are driveways on all four sides and they have no other place they can put these parking spaces. She encourages further negotiations of a shared parking agreement.

- 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 3-1
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.**

Mr. Bates stated the regulations creates a requirement for a certain number of parking spaces based on the size but believes the applicant has made a good argument as to why that should not apply to them and therefore would not oppose the general spirit of the Development Regulations.

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 5.02.A of the Development Regulations to allow a reduction in the required number of parking spaces for the proposed retail development at 940 Eisenhower Road.

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

Ms. Hurley stated there are two items on the agenda for next month's BZA meeting September 20, 2021 and reminded the board of the training with the City Attorney Monday, August 30th.

Vice Chairman Gervasini called for a motion to adjourn. Mr. Bates moved to adjourn, seconded by Ms. Kem and passed 4-0.

The meeting adjourned at 6:40 p.m.

Minutes taken by Administrative Assistant Michelle Baragary.