



**BOARD OF ZONING APPEALS MINUTES
MONDAY, SEPTEMBER 20, 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

Board Member(s) Absent

Jan Horvath

City Staff Present

Jackie Porter
Michelle Baragary

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

APPROVAL OF MINUTES: August 16, 2021

Chairman Bogner asked for comments, changes or a motion on the minutes presented for approval: August 16, 2021. Mr. Gervasini moved to approve the minutes as presented, seconded by Ms. Kem and approved by a vote of 3-0. Mr. Bogner abstained.

OLD BUSINESS:

None

NEW BUSINESS:

1. CASE NO. 2021-24 BZA – 1820 S. 4TH STREET

Hold a public hearing for Case No. 2021-24 BZA – 1820 S. 4th Street, wherein the applicant is requesting a variance from the adopted Development Regulations to allow the use of an existing nonconforming sign after a change in business name and ownership.

Chairman Bogner called for the staff report.

City Planner Jackie Porter stated the applicant and owner, Niyam LLC, Priya Paten Managing Partner, is requesting a variance from the above noted section of the adopted Development Regulations to allow the use of an existing nonconforming sign after a change in business name and ownership. Section

8.15.A of the current Development Regulations require that a nonconforming sign be modified to conform, replaced with a conforming sign, or removed if there is a change in business name or ownership.

- *8.15.A Nonconforming: 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, replace 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.*
 2. *Any maintenance, repair or alteration of a nonconforming sign shall not cost more than 25% of the current value of the sign as of the date of alteration or repair.*

The subject property is zoned R1-6, High Density Single Family Residential District, and was previously occupied by Connie's Liquor Spot. Retail liquor sales are not an allowed use in R1-6 zoning. However, as an existing nonconforming use, the business is permitted to continue. Section 8.15.E of the Development Regulations allows nonconforming uses which are otherwise permitted by the regulations to display signage in conformance with the least intensive zoning district in which the use is permitted by right. RMX, Residential Mixed Use, is the least intensive zoning district in which food and beverage sales are permitted by right.

The business was purchased in May 2021, by Niyan, LLC. At the time of purchase, the name of the business was changed to Topsy's Liquor. There is an existing free standing sign associated with the business, which is located off of the property and in the right-of-way. Current regulations for signage in the RMX district require that no part of a free standing sign structure shall be closer than 5 feet to any property line, and no permanent signage is allowed in the right-of-way, making the existing sign nonconforming.

After the required notice was published, staff has received one comment from a neighbor representing 1817 Rose in favor of the variance.

Chairman Bogner asked for questions about the staff report.

Mr. Bogner asked if the State of Kansas has any requirements the City of Leavenworth must meet since it is in the State's right-of-way.

Ms. Porter responded in the negative, stating the State defers to the local regulations.

Mr. Bogner asked if the sign structure itself is proposed to increase in size.

Ms. Porter responded it is not. The applicant is proposing to keep the sign as is and just change the logo.

Ms. Kem asked if staff has any plans to relook at the sign code and if so, are there any portions that are being considered that would affect this kind of situation.

Ms. Porter responded in the negative, stating most of the sign regulations are for signs located on the property versus that of the right-of-way.

Ms. Kem asked for clarification that if the applicant wanted to rezone the property it would not make a difference because the sign is in the right-of-way.

Ms. Porter responded in the affirmative.

Mr. Gervasini asked if the issue is because the sign is in the right-of-way or because the applicant wants to change the name on the sign.

Ms. Porter stated the issue is with both. The sign is legal nonconforming before the change of a business owner and the name of the business. However, the change in business ownership and the change in the name of the business triggers the requirement for the sign to come into conformance.

Mr. Gervasini asked hypothetically, if the applicant wanted to keep the same name on the sign as Connie's Liquor Spot and since it is already in nonconformance since the property is zoned R1-6 then the applicant would not need to request a variance.

Ms. Porter stated if the ownership changed, the business name changed, tenant changed or type of business changed then a variance would be required.

Chairman Bogner asked if the applicant would like to speak.

Gary Nelson, attorney for applicant, stated it is his understanding some years ago the State of Kansas expanded the right-of-way, which then caused the subject sign to be in the right-of-way. Prior to the State expanding the right-of-way, the sign was not in the right-of-way. Furthermore, the sign sits close to the building, it's several feet off the street and is between the sidewalk and the building.

Mr. Bogner stated the biggest problem is not that the sign is in the right-of-way but it is the nonconforming use and the change of ownership. Mr. Bogner further stated it does not appear there will be any substantial change to the physical structure, just a new logo replacing the old logo.

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, 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 3-1

Ms. Kem voted in the negative stating she can agree with the last part of the condition because expanding the right-of-way by the State is not of the applicant's own doing. However, the property is not unique and there are properties all down 4th Street that have the same problem.

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

Vote 3-1

Ms. Kem voted in the negative stating the intent of the Development Regulations is to eliminate nonconforming signs, particularly those located in the right-of-way.

- 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 3-1

Ms. Kem voted in the negative stating it will be a financial hardship but that is not something the board can consider by law.

- 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 3-1

Ms. Kem 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.

Mr. Bogner stated the sign regulations should be reviewed and updated.

Ms. Kem stated she has worked on sign regulations across the United States and every one of them will have a similar version of the sign code Leavenworth has because it is a universal clause in almost every zoning ordinance.

Mr. Bates asked if the size of the sign will remain the same as it currently is and that the applicant is only installing a new logo.

The applicant responded in the affirmative.

Mr. Gervasini asked how many more lots along 4th Street are nonconforming.

Ms. Porter stated she does not know the exact number but there are quite a handful.

Mr. Gervasini asked if most of the properties on 4th Street between Linn and Marion are commercial; and how many of those businesses are nonconforming.

Ms. Porter stated most of that strip is commercial. She further stated about two years ago Donut Palace had to bring their pylon sign into conformance with the Development Regulations. That particular sign was too tall so the owner had to cut it down to bring it into conformance.

Mr. Bogner asked if the Donut Palace was nonconforming due to zoning or something else.

Ms. Porter stated it was a nonconforming sign.

Mr. Gervasini asked to alleviate some of the problems that are generated by the nonconformance of the lots, would the city initiated rezoning of the lots or would the zoning board.

Ms. Kem stated the rezoning, even in the current case, would not affect the sign and the owner would still have the same issues.

Mr. Gervasini wants to know how many more people will need to request a variance if somebody buys a piece of property that is nonconforming with the residential district.

Administrative Assistant Michelle Baragary responded even if the property was not in a residential district, the change in business ownership and name would still require the owner to request a variance.

Ms. Porter stated it is a nonconforming sign because it is located in the right-of-way.

Mr. Gervasini responded the sign is nonconforming but the property is in a nonconforming status because it is residential. Mr. Gervasini would like the city to look into this.

ACTION:

Approve or deny the request for a variance from section 8.15.A of the Development Regulations to allow the use of an existing nonconforming sign after a change in business name and ownership at 1820 S. 4th Street.

Chairman Bogner stated based on the findings, the board is in favor of granting the variance to allow the use of an existing nonconforming sign after a change in business name and ownership at 1820 S. 4th Street with no conditions or restrictions.

2. 2021-25 BZA – 44 LIMIT STREET

Hold a public hearing for Case No. 2021-25 BZA – 44 Limit Street, wherein the applicant is requesting a variance from the adopted Development Regulations to allow a detached garage greater than 900 square feet on a parcel less than once acre.

Chairman Bogner called for the staff report.

City Planner Jackie Porter stated the applicant and owner, Kevin Cox, is requesting a variance from the above noted section of the adopted Development Regulations to allow construction of a detached garage that is greater than 900 square feet on a parcel less than once acre.

- *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 1,200 square foot detached garage at the northeast corner of the property, with access off the adjacent alley. The property is currently zoned as Medium Density Single Family Residential District, R1-9, with a single-family dwelling. The primary structure has calculated area of 1,680 sqft and the lot is 0.29 acres.

The proposed use of the detached garage is for storage and restoration of an antique vehicle. The extra space will be used for storage of belongings that are currently in a storage unit.

After the required notice was published, staff has not received comment from any neighbors.

Chairman Bogner asked for questions about the staff report.

Mr. Bogner asked if the primary dwelling has a garage facing Limit Street.

Ms. Porter responded not that she is aware of.

Kevin Cox, property owner, stated the house does have an attached garage facing Limit Street.

Mr. Bogner asked if there is an updated picture of the proposed garage.

Mr. Cox stated the building will be designed like the picture included in the policy report but the color will be barn red with white trim.

Mr. Bogner asked if the garage on Limit Street is a one or two car garage.

Mr. Cox responded the garage is a two-car garage but it is very difficult to fit two vehicles in it.

Mr. Bogner asked if the proposed garage will be a three-car garage and if it will have an attic or loft.

Mr. Cox responded the garage would be a three-car garage and there will not be anything above it.

Mr. Gervasini asked if access will be strictly off the alley.

Mr. Cox responded in the affirmative.

With no further questions about the staff report, 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 staff if there are restrictions on the number of entrances into the garage, such as the number of garage doors, or is it just restricted on the total square foot of the building.

Ms. Porter responded it is restricted to the total square foot of the building.

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 0-4

All board members voted in the negative.

Mr. Bates stated in the past several meetings the board has heard several variance requests such as this. The regulations state a garage cannot exceed 900 sqft. on a parcel of this size. If the board approves a request for 1,000 sqft because it is only 100 sqft. more than the maximum allowed and then approves the current variance request because it is only 300 sqft. more than the permitted square footage, where is the line. According to the regulations, the line has been drawn at 900 sqft.

The other three board members disagreed with the condition for the same reasons.

- 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 0-4

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 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 0-4

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.3 of the Development Regulations to allow a 1,200 square foot detached garage at 44 Limit Street.

Chairman Bogner stated based on the findings, the variance request has been denied.

The board requests staff to review along 4th Street from Linn to Marion how many nonconforming uses, if a property owner applied for a special use permit, and how many nonconforming signs there are. Additionally, the board would like the sign code reviewed.

Mr. Bogner asked if staff plans to review the sign code and what the timeline for that would be.

Ms. Porter stated the sign code was reviewed and updated this year stating nonconforming uses which are otherwise permitted by the Development Regulations may obtain permits for signage in conformance with the least intensive zone district in which the use is permitted by right. In regards to the current sign variance request, the least intensive district liquors are permitted in by right is the NBD, Neighborhood Business District; therefore, the sign code for the NBD would be used for sign requirements.

Mr. Bogner would like a copy of the sign code emailed to the board. The board agrees review of the sign code by staff is not necessary at this time. However, the board has requested staff to look at nonconforming uses along 4th Street.

Ms. Porter stated there is one item on the agenda for next month's BZA meeting October 18, 2021.

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

The meeting adjourned at 6:34 p.m.

Minutes taken by Administrative Assistant Michelle Baragary.