



**BOARD OF ZONING APPEALS MINUTES
MONDAY, OCTOBER 18, 2021, 6:00 P.M.
COMMISSION ROOM, CITY HALL
LEAVENWORTH, KANSAS**

CALL TO ORDER:

Board Members Present

Jan Horvath
Ron Bates
Kathy Kem

Board Member(s) Absent

Dick Gervasini
Mike Bogner

City Staff Present

Julie Hurley
Michelle Baragary

Board Member Kem called the meeting to order at 6:00 p.m. and noted a quorum was present.

APPROVAL OF MINUTES: September 20, 2021

Board Member Kem asked for comments, changes or a motion on the minutes presented for approval: September 20, 2021. Mr. Bates moved to approve the minutes as presented, seconded by Mr. Horvath and approved by a vote of 3-0.

OLD BUSINESS:

None

NEW BUSINESS:

1. CASE NO. 2021-27 BZA – 806 N. BROADWAY STREET

Hold a public hearing for Case No. 2021-27 BZA – 806 N. Broadway Street, wherein the applicant is requesting a variance from the adopted Development Regulations to allow an accessory dwelling unit (ADU) at a property in which neither the principal dwelling nor the accessory dwelling will be occupied by the owner.

Board Member Kem called for the staff report.

Planning Director Julie Hurley stated the applicant is requesting a variance to allow an accessory dwelling unit (ADU) at a property in which neither the principal dwelling nor the accessory dwelling will be occupied by the owner.

The property located at 806 N. Broadway is currently occupied by a single family dwelling unit with an existing detached garage. The detached garage is accessed from the alley located to the rear of the property. The owner, Phillip Robbins, intends to convert the upper level of the existing detached garage into a separate dwelling unit, or accessory dwelling unit, which will be rented. Accessory dwelling units are allowed with issuance of a Special Use Permit based on the requirements of Section 4.04 of the adopted Development Regulations:

Accessory Dwelling Units (ADUs) may be approved by Special Use Permit in any residential zoning district subject to the following conditions:

- (1) Shall be compatible with the design of the principal dwelling unit.*
- (2) Shall respect the general building scale and placement of structures to allow sharing of common space on the lot, such as driveways and yards.*
- (3) Shall not have a separate driveway entrance from the street(s) to which the property is adjacent.*
- (4) Shall be 900 square feet or smaller in size, not to exceed 33% of the floor area of the principal dwelling unit.*
- (5) Either the principal dwelling unit or the accessory dwelling unit must be occupied by the owner of the premises.*
- (6) Shall meet all building code requirements for a single family dwelling unit.*
- (7) Lots containing accessory dwelling units shall contain a minimum of two off-street parking spaces, exclusive of garage space.*

The owner has indicated that he does not intend to live in either the principal dwelling nor accessory dwelling unit after June, 2022, and that he intends to rent both the principal and accessory units separately. Should the variance request to allow an accessory dwelling unit on a property in which neither the principal nor accessory dwelling is occupied by the owner be approved, a Special Use Permit would need to be approved to allow the accessory dwelling, subject to the variance.

Board Member Kem called for questions from the Board about the staff report.

Mr. Bates asked what the City's position is for somebody who intends to live in their residence and gets a Special Use Permit (SUP) for an accessory dwelling unit but then for whatever reason has to move at a later date. Would the SUP be withdrawn.

Ms. Hurley stated the SUP would carry with the property but would be subject to all of the seven regulations/requirements for ADUs. For example, if an owner received a SUP to allow an accessory dwelling unit on their property, and then they sold their property the new owners would be required to meet all of the same requirements or the special use permit would not be valid. As with any SUP, once those requirements are not met, the SUP is no longer valid.

Mr. Bates asked if staff has a tracking procedure for SUPs.

Ms. Hurley responded in the affirmative stating SUPs require a renewal every year through the City Clerk's Office, at which time the requirements are checked to be sure they are still being met.

Mr. Bates asked if there is a possibility, the variance is granted and then the SUP is denied.

Ms. Hurley stated that would always be a possibility; but all the other requirements for an accessory dwelling unit have been met with this particular variance request beside the requirement of the

property owner living in one of the units. If the variance request is granted, staff would recommend approval of the special use permit to the Planning Commission.

Ms. Kem asked what the intent is of the ordinance.

Ms. Hurley responded the requirement of the property owner to live in one of the units is a standard requirement. The intent is to keep the property from becoming a multi-family property where both units are being rented.

Ms. Kem asked if there are multi-family properties near the subject property.

Ms. Hurley responded the North Broadway Apartments and The Landmark Apartments are across the street. Staff would not recommend rezoning because that would be spot zoning.

Mr. Bates asked if a property is sold that has an existing ADU on the property, would the new property owners be subject to the ADU.

Ms. Hurley responded in the negative stating a change in ownership does not trigger a nonconforming use to come into compliance with the Development Regulations.

With no further discussion about the staff report, Board Member Kem opened the public hearing.

Philip Robbins, applicant and property owner, stated he purchased the property a few months ago and will be moving after CGSC in June 2022. A previous owner framed in a four room apartment over the detached garage for a bedroom, bathroom, living room and kitchen. Parking inside the detached garage would be for the primary dwelling. Parking for the ADU would be a parking pad accessed through the double gate from the alley. Mr. Robbins does not believe there will be an adverse effect if the ADU is permitted.

Ms. Hurley stated staff did not receive any feedback from neighboring property when the notifications were mailed.

Ms. Kem asked if it was possible to split the lot.

Ms. Hurley stated that would not be possible as alley access is not considered street frontage. Ms. Hurley further stated this is the first time the Board has dealt with a variance request for an Accessory Dwelling Unit. This would be the time for the Board to think about the regulations for an ADU, i.e. do they want the owner to necessarily have to live in one of the dwelling units, etc.

Ms. Kem does understand the dilemma that if you are not occupying either unit, then why is that not multi-family. Additionally, the subject property is in a single-family district.

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

Mr. Bates asked if the city has a position on mother-in-law apartments where people install a bedroom and kitchenette in the basement.

Ms. Hurley responded if someone added a kitchenette in their primary dwelling, that is not considered a separate dwelling unit according to building codes so that would not fall under an ADU.

Mr. Bates said it would be a multi-family unit.

Ms. Hurley stated technically it could be but based on building codes it does not meet the requirement for a multi-family dwelling unit. For multi-family dwelling units, there would be specific fire separation walls, separate entrances and kitchen/bathroom requirements for separate dwelling units. Ms. Hurley further stated if someone wanted to rent out their basement as a separate unit then that would be a different discussion; however, if someone is just adding a mother-in-law suite in their basement, they are not trying to meet the building code requirements for a separate dwelling unit.

With no further discussion, Board Member Kem 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 3-0

All board members voted in the affirmative.

- 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 2-1

Ms. Kem 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 1-2

Ms. Kem and Mr. Bates 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 of the Development Regulations to allow an accessory dwelling unit on a property in which neither the principal nor accessory dwelling are occupied by the owner of the property, as described herein and subject to subsequent approval or a Special Use Permit.

Board Member Kem stated based on the findings, the board was unable to find in favor for all five conditions and therefore, the variance is denied.

Ms. Hurley stated there are no items on the agenda for next month's BZA meeting.

Board Member Kem called for a motion to adjourn. Mr. Bates moved to adjourn, seconded by Mr. Horvath and passed 3-0.

The meeting adjourned at 6:24 p.m.

Minutes taken by Administrative Assistant Michelle Baragary.