



BOARD OF ZONING APPEALS MINUTES
MONDAY, January 22, 2024, 6:00 P.M.
COMMISSION ROOM, CITY HALL
LEAVENWORTH, KANSAS

CALL TO ORDER:

Board Members Present

Dick Gervasini
Kathy Kem
Daniel Bolling
Jan Horvath

Board Member(s) Absent

David Ramirez

City Staff Present

Michelle Baragary
Bethany Falvey

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

APPROVAL OF MINUTES: December 18, 2023

Chairman Gervasini asked for comments, changes or a motion on the December 18, 2023 minutes presented for approval. Commissioner Horvath moved to approve the minutes as presented, seconded by Commissioner Bolling and approved by a vote of 4-0.

OLD BUSINESS:

None

NEW BUSINESS:

1. ELECTION OF OFFICERS

Commissioner Kem volunteered for Chair. Chairman Gervasini moved that Commissioner Kem be elected as Chair, seconded by Commissioner Bolling, and approved 4-0. Commissioner Bolling volunteered for Vice Chair. Chairperson Kem moved that Commissioner Bolling be elected as Vice Chair, seconded by Commissioner Gervasini, and approved by a vote of 4-0.

2. 2024-03 BZA – 4618 S 4TH STREET

Hold a public hearing for Case No. 2024-03 BZA – 4618 S 4th Street, wherein the petitioner is seeking a variance to section 8.11 of the adopted Development Regulations to allow more than one sign for

an individual storefront, and to allow the sign surface to be greater than 10% of the wall surface for a property zoned General Business District (GBD).

Chairperson Kem called for the staff report.

City Planner Bethany Falvey stated the applicant is requesting a variance to allow 3 additional signs on the south side, 4 additional signs on the east (front) wall, and to exceed the maximum wall surface coverage for the attached signs from 10% to 18% on the east wall for a property zoned GBD, General Business District.

The U-Haul self-storage is located at 4618 S 4th Street in an area zoned GBD, General Business District. Per Article 8.11 of the Development Regulations, one attached sign per side is permitted in the GBD zoning district. Two attached wall signs, "DRIVE-IN STORAGE" were approved in June 2023, one on the front (east) wall, and one on the south wall. In June 2023, there was discussion with the same sign company that the other signs would not be permitted per our code. In early August 2023, the other signs were installed without a permit and notice of violation was sent to the property owner. The application for the other six signs were submitted in September 2023. A notice of violation was sent to the owner in December of 2023. We received a variance application after that second violation letter. The variance is being requested for signs that have already been installed and were denied due to exceeding the number and wall percentage allowed per sign.

The requested variance is to allow 3 additional signs on the south side, 4 additional signs on the east (front) wall, and exceed the maximum wall surface coverage for attached signs from 10% to 18% on the east wall for a property zoned GBD.

Chairperson Kem asked for questions about the policy report.

Commissioner Bolling asked if the signs staff is speaking of are the doors/windows and not the actual wording or letters on the signs.

Ms. Falvey responded in the affirmative stating those are signs.

Commissioner Bolling thought the doors/windows were just a picture.

Planning Assistant Michelle Baragary stated any wording or picture that represents advertising for that business is considered a sign according to our Development Regulations.

Commissioner Gervasini asked if the doors/windows are painted on the building.

Ms. Falvey responded they are signs.

Joshua McGinn, representative for U-Haul located at 4618 S 4th St., stated the panels are installed to represent storage doors in numerical order.

Chairperson Kem asked how many signs the applicant is asking for.

Ms. Falvey stated they are requesting 3 signs on the south side (U-HAUL SELF-STORAGE and the 2 door display signs) and 4 signs on the east wall (2 door display signs to the north or the east wall and 2 door display signs to the south on the east wall). The 4 signs on the east wall would be 18% of the total wall.

The Development Regulations states that 10% is the maximum allowable space of a wall that can be covered.

Chairperson Kem asked how this variance request fits with the proposed text amendments that will be reviewed by the Planning Commission next month.

Ms. Falvey responded the proposed text amendments would not affect this variance request.

Commissioner Bolling asked if the property has a freestanding sign that denotes this business.

Mr. McGinn stated there is not a freestanding sign. They are having a hard time with the truck drivers that are coming to deliver boxes or pick-up boxes because there is not a U-Haul sign anywhere on this building.

Commissioner Bolling stated he is having a difficult time wrapping his head around this because it is such a large building with available space.

Ms. Falvey read the sign definition from the Development Regulations “any device, fixture, or placard on a structure that uses any color, form, graphic, illumination, symbol, or writing to advertise, announce the purpose of, or identify the purpose of a person or entity, or communicate information of any kind to the public. Flags are not signs. All signs must conform to the applicable city codes”.

Commissioner Horvath stated the signage is actually two-fold because we have the Drive-In Storage, which has already been approved, and then there are the door displays that are acting as a second portion of that sign.

Staff stated the door display signs are an identifier of the business, and separate sign applications were submitted for each of the door display signs.

Commissioner Horvath asked for clarification of the signs that the variance is being requested for.

Ms. Baragary stated it is the 2 door display signs on the south side, the 4 door display signs on the east side, and the one U-Haul Self-Storage sign for the south wall that has not been installed yet.

Ms. Falvey further stated on the east side is a variance request to increase the maximum 10% of wall surface to which signs are attached to 18% of wall surface.

Commissioner Gervasini asked if the 10% is for the one wall or the entire exterior space.

Ms. Falvey responded it is 10% of each wall.

Commissioner Horvath asked that if only the DRIVE-IN STORAGE portion of those signs were being displayed, and not the door panel displays, then the variance would only be for the U-HAUL SELF-STORAGE sign on the south wall because only one sign is allowed per side.

Ms. Falvey responded in the affirmative stating the U-HAUL SELF-STORAGE sign would still need a variance.

Commissioner Bolling asked if the only issue with the 4 door display signs on the southeast corner of the building is that those door display signs were not approved but the DRIVE-IN STORAGE signs were.

Ms. Falvey stated the door display signs were denied, and therefore, were not allowed.

Commissioner Bolling asked if the door panels were denied on the basis that they are considered signs, and you can only have one sign per wall.

Ms. Falvey responded in the affirmative.

Ms. Baragary stated the door display signs on the east wall were also denied because they are 8% over the maximum allowed coverage per wall.

Commissioner Bolling asked if it would have made a difference if the applicant had installed the sign on the east wall (southeast corner) as one sign.

Ms. Falvey responded the maximum size of a sign in the GBD zoning district is 500 sqft, and only 10% of the wall can be covered.

Commissioner Horvath asked if the board chooses to, they can deny the 6 door display signs but allow the variance for the one U-HAUL SELF-STORAGE sign that has not been installed yet on the south wall.

Ms. Falvey responded in the affirmative.

Referring to the door display signs, Commissioner Horvath asked for clarification that the door panels would exceed the allowable size and surface space.

Ms. Baragary responded that is correct for the east wall but the south wall is under the 10% maximum allowed surface space covered.

Commissioner Horvath said essentially, there are 7 additional signs that exceed the allowable surface space to be covered, and secondly, they also exceed the number of signs that are allowed.

Staff stated not all the signs exceed the maximum allowed coverage per wall. Only the signs on the east wall exceed the maximum 10% wall coverage.

Commissioner Horvath asked if the board could approve three signs on the south wall as a variance and approve no additional signs on the east wall.

Ms. Baragary responded in the affirmative stating that the board can vote on each sign separately. For example, the board can state they will first vote on the U-HAUL SELF-STORAGE sign for the south wall, and then proceed to vote on each of the 5 conditions. Then the board can run through the 5 conditions for the upper door display on the south wall, etc.

Commissioner Horvath asked if the board could state what they specifically allow and what they do not allow under "**ACTION**".

Staff responded in the affirmative.

Chairperson Kem asked if the door display signs were removed, is the material underneath the panels the same as the material around it.

Ms. Falvey responded in the affirmative.

With no further questions about the staff report, Chairperson Kem opened the public hearing.

Mr. McGinn stated the Hastco document that is in the policy report, the black and white document showing the different elevations, is the document that was approved when the paperwork was submitted to the City for a building permit. This document shows windows although they are not real windows. They are the storage doors, and these storage doors have brought in more business in the last six months.

Ms. Falvey stated these are the building plans that were approved through the Building Inspection Department.

Ms. Baragary responded that it was stated at the Development Review Committee meeting that separate permits are required for signage.

With no one else wishing to speak, Chairperson Kem closed the public hearing and asked for discussion among the commissioners.

Commissioner Horvath stated he understands the violation of the Development Regulations on the east side of the building. Those door panels, if they do not violate the surface space restriction, do give a great representation of what is in that building. Part of what this board is doing is, along with ensuring that the regulations are enforced and the spirit of the regulations are enforced, we want to encourage successful business.

Commissioner Horvath further asked if the two rows of door panels and the DRIVE-IN SELF-STORAGE sign on the south wall exceed the 10% maximum allowable surface coverage.

Ms. Falvey stated that signage is under the 10% maximum surface coverage. However, only one sign is allowed per side of the building.

Commissioner Horvath asked if the board could allow certain elements of each requested variance but not allow other elements. Could the board allow the signage on the south side of the building, even though it exceeds the allowable number of signs on the wall but it does not exceed the percentage of covered surface on that side of the building.

Ms. Falvey responded in the affirmative.

Commissioner Horvath stated the east side of the building exceeds both the percentage allowed and the number of signs allowed by four additional signs. The board could allow the DRIVE-IN SELF-STORAGE sign but not allow the other four door display signs that way the east wall is not exceeding the allowed percentage of the wall surface. Commissioner Horvath believes the door display signs on the southeast corner of the building does more for the business, and does not feel that the door panels on the north end of the east wall offers anything additional for the business.

Commissioner Gervasini stated the southeast corner is the larger attraction because that is what you see driving south on 4th Street. The door panels on the north end of the east wall is not seen as well because for the most part there is stacking of structures of some sort along the east side. The big impact side is on the southeast corner. Installing the U-HAUL sign in the middle of the south wall and removing the door panels on the north end of the east wall would be the way to go.

Chairperson Kem stated she agrees with most of what the other commissioners are saying about the impact of the signs on the southeast corner of the building. However, the applicant wants 7 more signs

that are not identifying something different on the inside of the building. For example, Walmart has a slew of signs on the front wall but each one of those signs are identifying something that is on the inside of building but is different from Walmart, such as FedEx or the Pharmacy, etc. In the case before us, storage is the only thing going on in this building. Chairman Kem stated she does agree that “U-HAUL” should be somewhere on the building but the rest of the signage is really aesthetic. It gives you a great idea of what is in the building but believes the board might be going down a slippery slope for future cases if the board is not careful. If the board is going to allow one sign or seven signs, the board needs to be able to justify that against our State Statute, which is what these five conditions are that the board votes on. These five conditions are not from the City of Leavenworth. The conditions are Kansas law that the board has to meet.

Ms. Falvey stated she would like to stress that the applicant had been made aware a while ago that they were not allowed more than the one approved sign per side.

Commissioner Gervasini stated he looks at the door display signs on the southeast corner as one sign per side, instead of multiple signs.

Ms. Baragary stated the applicant submitted separate sign applications for each of the door display signs. The applicant could have submitted the two door display signs on the south wall as one sign application, and the two door display signs on the south end of the east wall as one sign application but they chose not to submit the applications like that. Additionally, if the two door display signs were submitted as one application, then the space in between the doors would need to be included in the total square footage because the entire area within a single continuous perimeter enclosing all elements of the sign is used to compute the sign face.

Commissioner Gervasini stated he still sees the signage on the south wall as one sign.

Staff stated that technically there are three different signs on the south wall. The applicant submitted three separate applications for the signage on the south wall, and that was the applicant’s choice, not staff’s decision.

Chairperson Kem does not believe it would make a difference if the applicant resubmitted an application as one sign rather than two signs.

Staff agreed stating they would still have more than one sign per side, and would be over the maximum allowed surface coverage on the east wall, which would still require a variance.

Commissioner Horvath stated the board could add in a corrective, and even though the applicant applied for a variance and called it 3 separate signs on the south wall, the board could tell them that they need to set that up so that it is one sign.

Chairperson Kem stated that is not how the application was submitted, and since the request for a variance was advertised as 7 signs, then that is how the board needs to look at the request.

With no further questions or discussion, Chairperson Kem closed the public hearing, and read the following criteria regarding the Board’s authority and reviewed each item. For clarity purposes, the board agreed to separate the signs when reviewing the five conditions:

1. U-Haul sign on the south wall.
2. Both door display signs on the south wall.
3. Both door display signs on the east wall, north end.

4. Both door display signs on the east wall, south end.

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.

Chairperson Kem stated the following five conditions are for the U-Haul sign on the south wall.

- 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.

- 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 4-0

All board members voted in the affirmative.

- e) *That the 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. Chairperson Kem believes it is important for that building to be identified as U-Haul.

Chairperson Kem stated the variance request for the U-Haul sign is granted.

Chairperson Kem stated the next five conditions are for the door display signs on the south wall.

- 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 1-3

Commissioner Horvath voted in the affirmative.

Commissioners Kem, Gervasini and Bolling 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 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 3-1

Commissioners Horvath, Gervasini and Bolling voted in the affirmative.

Commissioner 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 3-1

Commissioners Kem, Gervasini and Horvath voted in the affirmative.

Commissioner Bolling voted in the negative.

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

Vote 2-2

Commissioners Horvath and Bolling voted in the affirmative.

Commissioners Kem and Gervasini voted in the negative. Chairperson Kem stated she does not necessarily agree with the sign definition but the way the ordinance is written these signs go against the general spirit of the Development Regulations.

Chairperson Kem stated the variance request for the door display signs on the south wall are denied.

Chairperson Kem stated the next five conditions are for the door display signs on the east wall, north end.

- 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.

The remaining four conditions were not considered with the first condition failing.

Chairperson Kem stated the variance request for the door display signs on the east wall, north end are denied.

Chairperson Kem stated the next five conditions are for the door display signs on the east wall, south end.

- 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

Commissioners Horvath, Gervasini and Bolling voted in the affirmative.

Commissioner Kem 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 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 3-1

Commissioners Horvath, Gervasini and Bolling voted in the affirmative.

Commissioner 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 4-0

All board members voted in the affirmative.

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

Vote 3-1

Commissioners Horvath, Gervasini and Bolling voted in the affirmative.

Commissioner Kem voted in the negative.

Chairperson Kem stated the variance request for the door display signs on the east wall, south end are granted.

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 8.11 of the Development Regulations to allow 3 additional signs on the south wall, 4 additional signs on the east (front) wall, and exceed the maximum wall surface coverage for attached signs from 10% to 18% on the east wall for U-Haul located at 4816 S. 4th Street.

Chairperson Kem stated based on the findings, the variances for Case No. 2024-03 BZA is granted for one additional sign on the south wall and two additional signs on the south end of the east wall. The variance requests for the two door display signs on the south wall, the two door display signs on the north end of the east wall, and exceed the maximum wall surface coverage on the east wall are denied. Below is a breakdown of the Board's determination for the seven requested signs:

- 1) One additional U-Haul sign on the south wall is granted.
- 2) Two door display signs on the south wall are denied.
- 3) Two door display signs on the north end of the east wall are denied.
- 4) Two door display signs on the south end of the east wall are granted.

With no further discussion, Ms. Falvey stated there is one item on the agenda for the February 26, 2024 meeting.

With no further business, Chairperson Kem called for a motion to adjourn. Commissioner Gervasini moved to adjourn, seconded by Commissioner Bolling, and passed 4-0.

The meeting adjourned at 6:50 p.m.

Minutes taken by Planning Assistant Michelle Baragary.