



**BOARD OF ZONING APPEALS MINUTES
MONDAY, February 11, 2019, 5:30 P.M.
COMMISSION ROOM, CITY HALL
LEAVENWORTH, KANSAS**

The Leavenworth Board of Zoning Appeals (BZA) met Monday, February 11, 2019. This was rescheduled from the original meeting date of January 28, 2019, which was cancelled due to a lack of quorum. It was determined a quorum was met with the following board members present: Mike Bogner, Dick Gervasini, Jan Horvath, and Kathy Kem. Ron Bates was absent. Staff members City Planner Julie Hurley and Administrative Assistant Michelle Baragary were present.

Chairman Bogner called the meeting to order at 5:30 pm and called for the first item on the agenda; approval of minutes from August 20, 2018. Mr. Gervasini moved to accept the minutes as presented, seconded by Mr. Horvath and approved by a vote of 4-0.

The Chairman called for the next item on the agenda – **Case No. 2019-01 BZA – 5151 S. 4th Street – Variance Request** - and requested the staff report.

City Planner Julie Hurley addressed the board stating the applicant, Luxury & Imports, LLC, is requesting a variance from the Development Regulations to allow for an increase in the allowed impervious area for the property located at 5151 S. 4th Street.

The subject property is zoned GBD, General Business District, and is developed with the Citizen Savings and Loan Association. Luxury & Imports is currently under contract to purchase the rear portion of the bank property. Once the purchase is complete, the property will be replatted and the portion of property purchased from the bank will be incorporated into the existing Luxury & Imports lot. The resulting lot sizes will be 2.16 acres for the Citizens Savings and Loan, and 5.59 acres for Luxury & Imports. The portion of property being acquired by Luxury & Imports is currently undeveloped and could not be developed by any other user, as it has no direct road frontage.

The applicant has indicated that the intent is to construct a parking lot on the acquired property of approximately 40-50 parking stalls. The existing Luxury & Imports entrance on 4th Street will be closed, and shared access will be provided via the existing bank entrance on 4th Street. The existing access drive off of Eisenhower will remain open, available for use by the bank.

Section 4.03 of the Development Regulations allows a maximum lot coverage of 50% in the GBD zoning district. As the existing Luxury & Imports property has nearly 100% lot coverage, the addition of any impervious surface on the acquired property will result in a lot coverage of over 50% for the newly formed lot.

The Development Review Committee reviewed this proposal at their November 11, 2018 meeting. While no specific parking lot layout is proposed at this time, it is understood that any such development will be subject to water quality and water quantity standards as stipulated by the Public Works Department.

City Planner Julie Hurley also stated staff has put the issue of lot coverage for commercial properties on the next DRC agenda to discuss. No more than 50% impervious space is a burdensome amount.

Chairman Bogner asked for questions about the staff report.

Mr. Bogner asked if pervious pavement has been discussed with the applicant.

Ms. Hurley stated it has not.

Mr. Bogner asked if the current lot and lot size meets the requirement of no more than 50% impervious space.

Ms. Hurley responded the existing lot does not meet this requirement, as it is approximately 98% impervious.

Mr. Bogner asked if there are any definitive timelines for the construction of the new building and parking lot. If nothing was built in the near future, the assumption is the applicant would be in compliance with the current Development Regulations regarding impervious space; but would not be compliant once the parking lot or building was built.

Ms. Hurley stated she is not sure of a construction timeline. She further stated, if the purchase takes place and the lots are combined then the new lot would be in compliance with the current regulations; however, once construction begins they will quickly go over the maximum 50% impervious space.

Ms. Kem asked if there are any landscaping requirements for commercial properties.

Ms. Hurley responded there are landscaping requirements. Any plan brought in for a permit is subject to the landscaping requirements.

Ted Rea, representing Luxury & Imports, LLC, approached the board. Mr. Rea stated the construction would be done in phases; with the most important aspect being parking. The plan is to move the current employee parking, which is located behind the existing Luxury & Imports building, to a parking lot on the subject property.

Mr. Bogner asked if the 4th Street entrance will be a shared driveway.

Ms. Hurley stated the new property line would be just south of the entrance to the bank. The bank entrance on 4th Street would stay and there would be a shared-access agreement so both the bank and Luxury & Imports could use it. The existing Luxury & Imports 4th Street entrance will potentially be closed. The entrance off Eisenhower Road will be stay.

Ms. Kem asked if the existing building will stay.

Mr. Rea responded in the affirmative stating the Detailing Department will more than likely be moved into the new building.

Mr. Bogner asked the City Planner if there is a specific number/percentage the applicant is wanting to get approved.

Ms. Hurley suggests the action be worded "to approve or deny the request for a variance from the Development Regulations to allow an increase in allowed lot coverage, with the design of any development subject to review and approval by City staff in regards to water quantity and water quality issues.

Ms. Kem asked the Mr. Rea if Luxury & Imports already has a landscaping plan.

Mr. Rea stated there is not a landscaping plan. However, the agreement Luxury & Imports has with the bank is that the bank will approve the landscaping and buffer between the bank and the Luxury & Imports.

With no further discussion among the commissioners, Chairman Bogner closed the public hearing and 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 to 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.

- 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 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.

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 these Development Regulations.

Ms. Kem motioned to approve the request for the variance from the Development Regulations to allow an increase in allowed lot coverage, with the design of any development subject to review and approval by City staff in regards to water quantity and quality issues. The motion was seconded by Mr. Gervasini and passed by a unanimous vote 4-0.

Chairman Bogner called for the next item on the agenda – Election of Officers and proceeded to take nominations for the positions of chairman and vice-chairman. Ms. Kem moved to keep the status quo; Mr. Bogner as chairman and Mr. Gervasini as vice-chairman. The motion was seconded by Mr. Horvath and passed by a vote of 3-0 (Mr. Bogner abstained).

Other Business

Mr. Bogner asked about amending the five criteria/conditions used to determine if a variance should be approved.

Ms. Hurley stated staff will check state statutes to determine if the current language being used is the exact language in the statutes.

With no further business, Chairman Bogner asked for a motion to adjourn. Motion passed by a unanimous vote 4-0.

The meeting adjourned at 5:57 p.m.

JH:mb