

LEAVENWORTH BOARD OF ZONING APPEALS

MONDAY, January 28, 2019 - 6:00 P.M.
COMMISSION ROOM, CITY HALL
LEAVENWORTH, KANSAS

AGENDA

CALL TO ORDER:

1. Roll Call/Establish Quorum
2. Approval of Minutes: August 20, 2018 **Action:** Motion

OLD BUSINESS:

None

NEW BUSINESS:

1. 2019-01 BZA – 5151 S. 4TH STREET

Hold a public hearing for Case No. 2019-01 BZA, wherein 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.

2. ELECTION OF OFFICERS

ADJOURN



BOARD OF ZONING APPEALS MINUTES
MONDAY, August 20, 2018, 7:00 P.M.
COMMISSION ROOM, CITY HALL
LEAVENWORTH, KANSAS

The Leavenworth Board of Zoning Appeals (BZA) met in regular session on Monday, August 20, 2018. It was determined a quorum was met with the following board members present: Mike Bogner, Dick Gervasini, Ron Bates, Kathy Kem and Jan Horvath. Staff members City Planner Julie Hurley and Administrative Assistant Michelle Baragary were present.

Chairman Bogner called the meeting to order at 7:00 pm and called for the first item on the agenda; approval of minutes from July 16, 2018. Mr. Horvath moved to accept the minutes with the necessary correction to criteria e) changed from 'Vote 0-4 to Vote 4-0', seconded by Mr. Gervasini and approved as corrected by a vote of 5-0.

The Chairman called for the next item on the agenda – **Case No. 2018-13 BZA – 2534 2nd Avenue – Variance Request** - and requested the staff report.

City Planner Julie Hurley addressed the board stating the applicant, Pastor Ron Suttles, is requesting a variance from the Development Regulations to allow for a reduction in required rear yard setback, an increase in the allowed impervious area, and a reduction in the required drive separation for a proposed church to be located at 2534 2nd Avenue.

The subject property is zoned R1-6, High Density Single Family Residential District, and is proposed to be developed with a new facility for the Body of Christ Outreach Ministries. Religious facilities are an allowed use within the R1-6 zoning district.

In order to facilitate the development of the site, the applicant is requesting three variances:

1. A reduction in the rear yard building setback from 25' to 5' along the western property line. Section 4.03 of the Development Regulations requires a minimum of 25' rear yard setback in the R1-6 zoning district.
2. An increase in the allowed amount of impervious surface from 50% to 61%. Section 4.03 of the Development Regulations allows a maximum lot coverage of 50% in the R1-6 zoning district.
3. A reduction in the distance between the proposed southern drive entrance and the existing driveway on the adjacent property to the south from 50' to 15'. Section 5.05 of the Development Regulations requires that a driveway for a non-residential use be a minimum of 50' from another access driveway.

Each variance request should be voted on separately.

Chairman Bogner called for questions or comments from the board about the staff report.

Ms. Kem asked what the required parking ratio is.

Ms. Hurley stated for a church, the required parking is 1 per 4 seats or 1 per 30 sqft if there is no fixed seating. The submitted plans does meet the parking requirements, which is 19 parking stalls.

Mr. Bogner asked about the requirement for two driveway entrances for the proposed church.

Ms. Hurley stated there is no requirement and the engineer would be better to provide an explanation for the design of two driveway entrances.

Mr. Bogner asked if the rear yard setback is from a particular structure.

Ms. Hurley stated the setback is from the property line.

Mr. Bogner asked if the rear setback only applies to a building or would it also apply to a parking lot.

Ms. Hurley stated the setback for pavement is only 2' from the property line and the 25' setback is for the principal structure.

Ms. Kem asked if staff received any comments from neighboring property owners.

Ms. Hurley responded in the negative.

Mr. Bogner asked if any other proposal for the layout were submitted.

Ms. Hurley stated no other proposal have been submitted.

Mr. Horvath asked if there are any safety issues with regard to the west boundary.

Ms. Hurley stated there are no safety issues. The setback is more for uniformity and yard area than for safety issues. Ms. Hurley further stated the property located behind the subject property is landlocked and owned by the person to the north of it. It is staff's understanding that the church had approached the property owner to purchase the empty lot. The property owner considered the purchase but then backed out of that arrangement.

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

Brett Napier, engineer, and Ron Suttles, church representative, approached the board.

Mr. Napier stated the two entrances are for emergency vehicles and to help with flow of traffic. The property to the west is landlocked and undevelopable.

Mr. Bogner asked if they had attempted to change the plans to fit within the regulations and if so, what negative impact that would have on the project.

Mr. Napier responded that the plans were set around a metal building and the perimeters of the building because they church could get a good deal on the building. The plans submitted is the best-case scenario for the building on that lot. The building is set further to the west so if the opportunity arises for them to purchase the property to the west, they can expand. The 18' to the east of the building is for future expansion if they purchase the property to the west. Furthermore, there is an existing retaining wall along 2nd Avenue that will be removed.

Ms. Kem asked if the building could be moved forward and allow for future expansion to the west of the building should they ever purchase the property to the west.

Mr. Napier responded that moving the building further to the east would still require a variance.

Mr. Bates stated it is one thing to have a lot that is not developable because of the contour but if the neighbor to the west of the empty lot purchased it they could utilize it as part of their rear yard. Furthermore, moving the building forward 18' would still require a variance; but a variance for 24' of setback compared to 6' is a huge difference.

Mr. Napier stated if moving the building forward is what it takes to get the variances passed, they could do that. The setback variance request would change from a 5' setback to a 23' setback.

Mr. Bogner stated they could not guarantee it would pass but they can try to eliminate one of the three variances they are seeking.

Ms. Hurley stated the regulations allow staff to administratively approve a variance of up to 10% for things like setbacks. For a 25' setback, staff can administratively approve a reduction of 2-1/2 feet. Going from a 25' setback to a 23' setback we could have administratively approve that instead of bringing that request to the board.

Ms. Kem asked if it is possible to move the six parking spaces in the front on 2nd Avenue to the south side of the building and then move the building and the rest of the parking lot forward.

Mr. Napier stated he looked into that possibility and it will not work because you need to turn in and turn out. You need 20' and then another 24'.

Mr. Bogner asked if the permeability concern is about taking care of storm water on your property.

Ms. Hurley responded in the affirmative. If the variance is granted to increase the impervious area from 50% to 61%, it would be incumbent upon the engineer and applicant to work with Public Works to come up with a suitable solution for handling storm water runoff.

Mr. Bogner stated he did not think the board had the authority to waive that; that only the Public Works director could.

Ms. Hurley stated the board does have the authority to approve the increase in impervious area request. The board approving the request gives the Public Works Director the ability to work with the applicant to reduce that requirement.

Mr. Kem asked if one of the driveways were eliminated, would that take care of the permeability issue and the driveway separation distance.

Mr. Bates thought he needed both driveways to ingress/egress.

Mr. Napier stated it is not a requirement but is desired for emergency vehicles and for flow of traffic.

Ms. Kem believes there are a few things that could happen to make the requests more in the spirit of the ordinances.

Mr. Napier stated to reduce the impervious area they could make it one-way in and one-way out, which would decrease the impervious area by 24' and could possibly get them within the 50% allowed impervious area.

Ms. Kem asked if this would also eliminate the driveway separation requirement.

Ms. Hurley stated it would not. The separation requirement is 50' and by reducing the driveway to the south by half they will be at 37' separation.

Mr. Bogner asked if the applicant was amenable to these changes, if this would eliminate two of the variances: 1) the distance from the driveway and 2) the 11% increase of impervious area.

Ms. Hurley stated it would not relieve the driveway separation.

Mr. Bogner asked if they could move the driveway to the south.

Ms. Hurley stated if the southern driveway was moved further north, it would make circulation tough. Mr. Napier would need to figure the calculations to know if the impervious surface area would be within 50%.

Mr. Bates asked if the board passed the same variance for permeability to another church located on 10th Street a few months ago.

Mr. Bogner stated the board did but the area was on low ground whereas the subject property is on high ground.

Mr. Bogner would like to minimize the variances.

Ms. Hurley stated we could eliminate the need for the setback variance if the applicant were to shift the building to the east covering the green space. Depending on what the board wants to require for the drive entrances and what the applicant was amenable to, the variance for the drive entrance could be eliminated. The reduction in the drive width could eliminate the impervious area variance but Mr. Napier would need to verify the numbers.

To be on the safe side, Mr. Napier would like to move forward with the variance for the impervious area.

Mr. Gervasini stated staff has the ability to reduce setbacks by 10% and would like to know if staff also has the ability to reduce the impervious space by 10%.

Ms. Hurley stated she believes that is true.

Mr. Bates feels the board should vote on the variance for the impervious area just in case the applicant is over 50%.

Ms. Kem asked if the board approved 55% impervious area could staff give an administrative variance for additional area.

Ms. Hurley stated staff is allowed to give one administrative variance per project.

During board discussions, Ms. Hurley stated the board can approve a variance contingent upon an agreed upon modification to the site plan.

Mr. Bogner asked if the board can change the 61% requested impervious area to a lower percentage.

Ms. Hurley stated they could do so as long as it is agreed upon with the applicant.

Ms. Kem asked what the engineer and applicant their thoughts.

Mr. Napier responded they could work with the following changes: setback variance reduced to 23', the impervious area reduced to 55% and 10% administrative variance for the driveway.

Ms. Hurley recapped the discussions. The board will be voting on two variances: 1) a reduction in the required 25' setback to the west and 2) an increase in the allowed amount of impervious surface. The variances shall be voted on separately. Staff will approve an administrative variance for the driveway separation.

With no further discussion among the commissioners, Chairman Bogner read the following criteria regarding the Board's authority and reviewed each item. The commissioners will have two series of votes. The first series of votes will be on the variance request from Section 4.03 of the adopted Development Regulations to allow a reduction in the rear yard building setback from 25' to 2' along the western property line.

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 4-1

Mr. Bogner disagreed.

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

Vote 5-0

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 5-0

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 5-0

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 5-0

Chairman Bogner stated the rear yard building setback passed.

Chairman Bogner stated the next series of votes will be on the variance request from Section 4.03 of the adopted Development Regulations to allow an increase in the allowed amount of impervious surface from 50% to 55%.

- 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 4-1

Mr. Bogner disagreed.

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

Vote 5-0

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 5-0

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 5-0

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 5-0

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.

Chairman Bogner stated the variance request to allow an increase in the allowed amount of impervious surface from 50% to 55% passed.

Chairman Bogner stated the variances shall be granted not with the plans submitted but on the agreement of the movement and placement of the building to the east covering the green space and reducing the width of the drive entrances.

Chairman Bogner called for a motion to approve the variances. Mr. Gervasini moved to approve the variances subject to moving the building and reducing the width of the drive entrances, seconded by Mr. Bates and approved by a unanimous vote 5-0.

The Chairman called for the next item on the agenda – **Case No. 2018-14 BZA – West Glen, 1st Plat – Variance Request** - and requested the staff report.

Ms. Hurley addressed the board stating the applicant, Mike Reilly, is requesting a variance from the Development Regulations to allow reduced front setbacks and side yard setbacks for specific lots in the West Glen subdivision.

The subject property is zoned R1-6, High Density Single Family Residential District, and is part of the West Glen 1st Plat. The property was rezoned from R1-25, Low Density Single Family Residential District, to R1-6 in 2017 to facilitate the development of the West Glen subdivision. The plat was approved at the same time.

Lots 27-49 of the plat are intended to be developed with maintenance-provided single-family homes. The variance request is being made to accommodate a more varied aesthetic to the development.

Section 4.03 of the Development Regulations requires a 25' front yard setback and a 6' side yard setback in the R1-6 zoning district. A variance to allow the following reductions is being requested:

Lots 27-30: Reduction in required front yard setback to 20'

Lots 31-34: Reduction in required front yard setback to 18'

Lot 35: Reduction in front yard setback to 15', and reduction in side yard setback on the north side of the lot to 0'. This lot abuts a tract to the north that will be maintained as open space.

Lots 40-41: Reduction in front yard setback to 20'.

Lot 47: Reduction in front yard setback to 18', and reduction in side yard setback on the north side of the lot to 0'. This lot abuts a tract to the north that will be maintained as open space.

Mr. Bogner asked if this has been done in any other subdivision.

Ms. Hurley stated this is the first subdivision we have had in 10+ years and is not aware of any subdivision approved for this type of variance.

Mr. Bates stated the Shannon Woods Subdivision has homes that are right up to the street. Mr. Bates asked if that would have been approved through a variance.

Ms. Hurley stated the Shannon Woods Subdivision should have the same setback requirements as West Glen, 1st Plat.

Mr. Bogner asked if all other conditions are met for the size of the lots.

Ms. Hurley responded in the affirmative.

Chairman Bogner opened the public hearing.

Mike Reilly, with JMK Partners, addressed the board stating the plat was recently approved a few months ago. The first 10 building permits have been filed but nothing has been built vertically as of yet. Mr. Reilly attended a summit with the Kansas Homeowners Association where he learned mixing setbacks creates movement from an eye perspective. Believes the movement idea and creating that differential or 5, 7 or 10 feet of the front garage would make more sense than having every garage lined up. JMK Partners is trying to adapt how they develop; no longer looking at individual lots but rather as a whole development from a landscaping perspective. Mr. Reilly further stated a couple side yard setbacks in the cul-de-sac are needed because they are close to a gas line.

Overall, the reasoning behind the request is to create movement; a fresh look at density and mixed-use to maintenance provided communities and to bring in what the development community has seen regionally and nationally.

Mr. Bates asked if the lots were not long enough to keep the required setbacks and move the houses back further.

Mr. Reilly responded the lots are not long enough. Moving the houses back would cause a rear yard setback issue.

Mr. Bates asked about the concern about parking cars in the driveway; if the vehicle would be blocking the sidewalk.

Mr. Reilly said there would not be an issue with one car, however, there could be an issue with two cars parked behind each other; but that is an issue throughout the city.

Mr. Gervasini asked if they are one or two car garages.

Mr. Reilly responded two car garages at a minimum but some have three car garages.

Ms. Kem asked the City Planner if there is a section that addresses the long-range plan in terms of aesthetics or the desirability of how the houses are sited.

Ms. Hurley stated not in the comprehensive plan but there are in the design guidelines section of the Development Regulations. The developer should try to stagger in, vary the appearance or orientation of the garages as much as possible within a subdivision.

Mr. Bogner stated most of the current houses have the garages four feet or so in front of the front door; therefore the undulating effect is already created by the style of house built.

Mr. Reilly stated looking directly at the house may give that effect but as you are driving down the street that is not the effect you have because the garages will always be on the high side of the lot for drainage purposes; therefore, all you will see driving down the street is garage after garage.

Mr. Bogner asked why a variance was not requested for all the lots.

Mr. Reilly stated after visiting with the engineer it was decided that this would visually make more sense.

Mr. Bogner asked if the intent is continue with staggering the homes with phase 2 or is this just a test case.

Mr. Reilly stated the target is for the maintenance provided villas, which are everything highlighted in yellow on the preliminary plat, which will include some villas for phase 2.

Ms. Kem asked if there is another way to accomplish what Mr. Reilly is trying to do with something like architectural styles rather than changing the setback.

Mr. Reilly stated they have done that and you will see a mix of product; but as it sits today there will be garages all lined up at the minimum setback.

Mr. Bogner stated his issue is that this is all experimental. If there were examples of what did not work and that this is the solution to those problems, Mr. Bogner would be more inclined to have an open mind; but he does not see the need for it.

Ms. Kem stated she has seen this in other parts of the country but it is usually in a walkable community and the garages are flushed with the front doors. She does not think this concept work as well with a snout garage.

Mr. Reilly does not feel it is a question of solving a problem but rather be visually more appealing.

Mr. Bates asked if typically the people moving into the maintenance provided homes are older.

Mr. Reilly stated yes, they are appealing to a marketplace that does not want a big yard or maintenance. Mr. Reilly further stated they can continue without the variance but after attending the summit he felt the staggering would make more sense.

From a personal perspective, Ms. Kem feels it is more than just moving the homes closer to the road. Other elements that go along with that should also be looked at. However, the lots with the unique shapes should be discussed further.

Brett Napier, engineer, addressed the board. Mr. Napier asked if the side yard setback for lots 35 and 47, which are adjacent to Tract C and Tract D, could be approved.

Mr. Bates stated he is not in opposition of any of the setback requests.

Mr. Bogner asked who will maintain Tract C and Tract D.

Mr. Reilly stated it would be maintained by the homeowners association.

Ms. Kem stated the setback variance for lots 35 and 47 would make sense as they are unusual lots and are adjacent to an open space.

Mr. Gervasini asked if the board would be setting a precedence if they approve all the setback requests for this application.

Mr. Bogner responded in the affirmative.

Mr. Bates stated there has not been a development of this kind in the last ten years. He believes the precedent would only apply if someone else wants to develop an area with this many homes in a maintenance provided community.

Mr. Bogner stated the restriction must indicate that it is only for maintenance provided community. He is not in favor of a blanket approval so it sets a precedent.

Ms. Kem asked the City Planner if it would be acceptable to approve only two of the lots.

Ms. Hurley stated if the decision were made to not vote on the other lots, then the board would only vote on the side yard reduction for lots 35 and 47 and no other of the requests.

Mr. Bogner asked if the board would need to deny the front yard requests and then vote again on the side yard requests.

Ms. Hurley stated that as the Chairman reads the criteria, it should be noted that the board is only considering the side yard setbacks for lots 35 and 47.

Mr. Bogner feels it would be difficult to do that with the layout of the variance request.

Mr. Bates asked if they board can vote twice; once for the side yard setbacks for lots 35 and 47 and once for the front yard setbacks for all the lots.

Ms. Hurley stated this should be similar to what the board did on the previous application. The board decided before they went through the voting process they were not going to consider the driveway separation. In the board's discussion now, the board is stating they will not consider the front yard setbacks and will only consider the side yard setbacks requests; so that is what the board should consider in their voting.

After discussions, the board agreed to vote on all the front yard setback requests and then in a separate vote, vote on the side yard setback requests.

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

With no further discussion among the commissioners, Chairman Bogner read the following criteria regarding the Board's authority and reviewed each item. The commissioners will have two series of votes. The first series of votes will be on the variance requests for a reduction in the required front yard setbacks.

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.

4. 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.

5. 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 1-4

Mr. Horvath, Mr. Bogner, Mr. Gervasini and Ms. Kem disagreed.

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

Vote 2-3

Mr. Bogner, Mr. Gervasini and Ms. Kem disagreed.

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 1-4

Mr. Horvath, Mr. Bogner, Mr. Gervasini and Ms. Kem disagreed.

d) *That the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare;*

Vote 2-3

Mr. Bogner, Mr. Gervasini and Ms. Kem disagreed.

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

Vote 1-4

Mr. Horvath, Mr. Bogner, Mr. Gervasini and Ms. Kem disagreed.

Chairman Bogner stated the variance requests for the front yard setbacks did not pass.

Chairman Bogner stated the next series of votes will be on the variance requests for a reduction in the side yard setbacks for lots 35 and 47.

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 4-1

Mr. Gervasini disagreed.

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

Vote 5-0

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 5-0

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 5-0

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 5-0

All board members voted in the affirmative.

6. 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.

Chairman Bogner stated the variance requests for the side yard setbacks passed and called for a motion to approve the variances. Mr. Horvath moved to approve the variances for the side yard setbacks for lots 35 and 47, seconded by Mr. Bates and approved by a unanimous vote 5-0.

Chairman Bogner asked if there was any other business.

Ms. Hurley stated there is no other business; however, at the last meeting it was discussed briefly about changing the meeting time from 7:00 p.m. to 6:00 p.m.

Mr. Bogner asked when the change would take effect.

Ms. Hurley stated it would take effect at the next meeting.

All board members were in agreeance to change the meeting time to 6:00 p.m.

With no further business, Chairman Bogner asked for a motion to adjourn. Mr. Gervasini motioned to adjourn, seconded by Mr. Bogner and approved by a unanimous vote 5-0.

The meeting adjourned at 8:26 p.m.

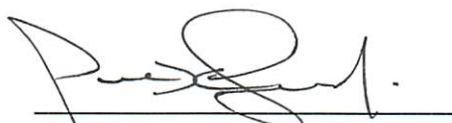
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**Board of Zoning Appeals Agenda Item
Variance Request
2019-01-BZA
5151 S. 4th Street**

JANUARY 28, 2019



Prepared By:
Julie Hurley
City Planner



Reviewed By:
Paul Kramer
City Manager

SUMMARY:

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

DISCUSSION:

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.

BOARD OF ZONING APPEALS AUTHORITY:

The Board's authority in this matter is contained in Article XV (Board of Zoning Appeals), Section 11.03.B (Powers and Jurisdictions – Variances)

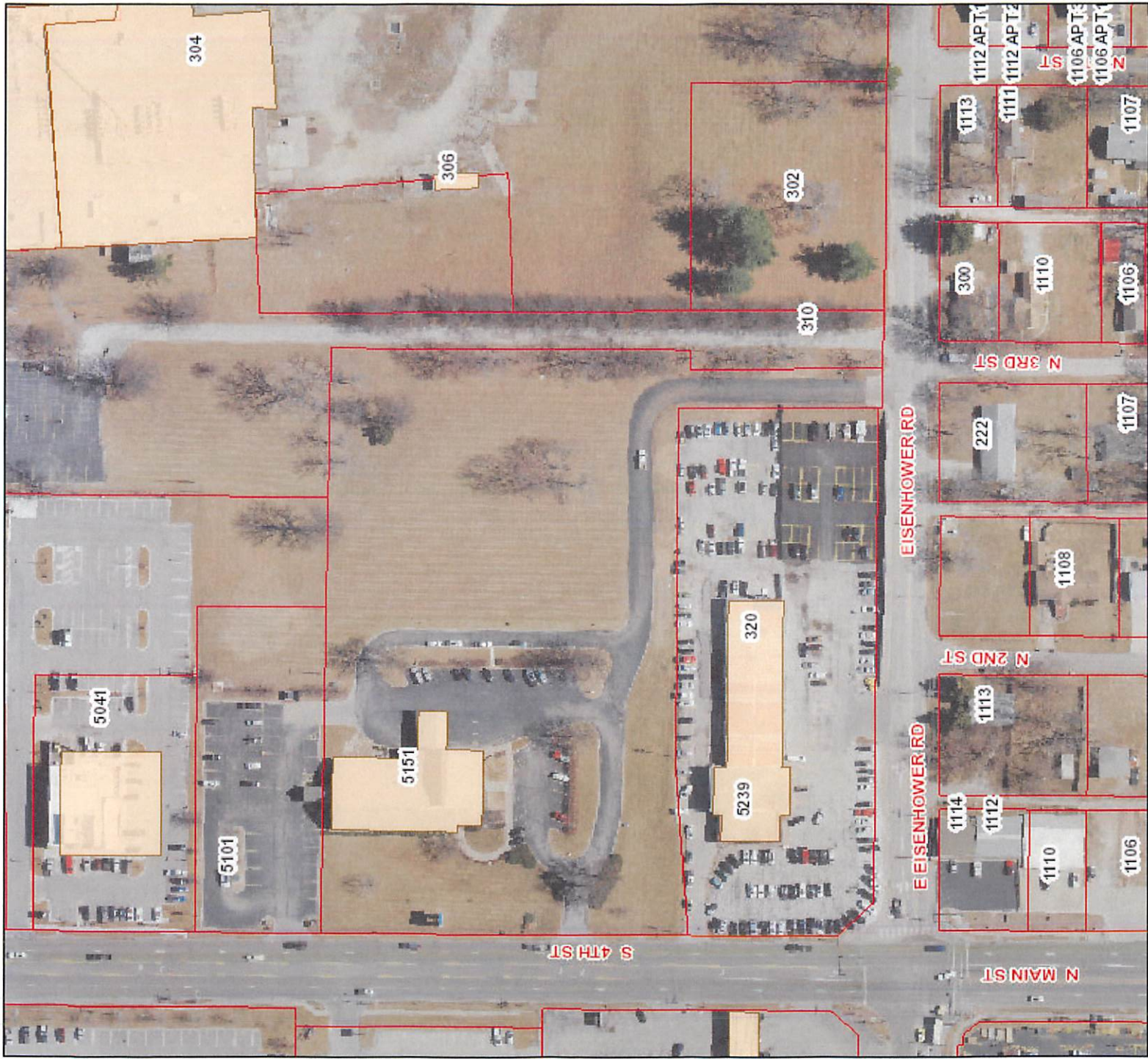
Variations: To authorize in specific cases a variance from the specific terms of these Development Regulations which will not be contrary to the public interest and where, owing to special conditions, a literal enforcement of the provisions of these Development Regulations will, in an individual case, 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, variations 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.*
 - b) *That the granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents.*
 - 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.*
 - d) *That the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare;*
 - e) *That granting of the variance desired will not be opposed to the general spirit and intent 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 these Development Regulations.

ACTION:

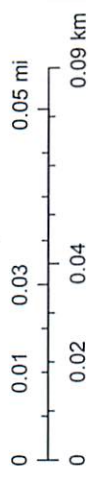
Approve or deny the request for variations from the Development Regulations to allow an increase in allowed lot coverage, with the design of any development subject to review and approval by City staff in regards to water quantity and quality issues.

2019-01-BZA



1/23/2019, 12:10:58 PM

1:2,257





Case No. 2019-01 BZA

BOARD OF ZONING APPEALS
CITY OF LEAVENWORTH, KANSAS

Application No. 5131
Fee (non-refundable) \$350.00
Filing Date 12-17-18
Fee Paid \$350.00

Property Zoning GBD

PETITION

Petitioner: Luxury + Imports, LLC
(name typed or printed)

Petitioner Address: 3239 S. 4th Street

Email: _____ Telephone: 913-772-7200

Location of Property Involved: 5151 S. 4th Street, Leavenworth

Legal Description: (Attach full legal description provided by the REGISTER OF DEEDS OFFICE or a TITLE COMPANY)

Petitioner's Interest in Property: under contract to purchase

Purpose of Petition: Variance to pave more than 50% of lot

- Appeal of Administration Decision _____ Date of Decision _____
Section 11.03.A
- Variance:
Section 11.03.B
- Exception:
Section 11.03.C

Site Plan or drawing attached: Yes No

I, the undersigned, certify that I am the legal owner of the property described above and that if this request is granted, I will proceed with the actual construction in accordance with the plans submitted within four (4) months from the date of filing or request in writing an extension of time for the Board's consideration

Property Owner Name: Teo Dea, Luxury Imports
(print name)

Signature: [Signature] Date: 12-14-18

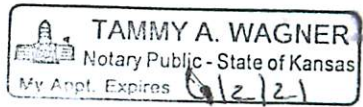
State of Kansas)

County of Leavenworth)

Signed or attested before me on 12-14-18 by Teo Dea

[Signature]
(Signature of Notary Public)

My commission expires: 6/2/21 (Seal)



FOR OFFICE USE ONLY:	
Date of Publication <u>1-4-19</u>	Date of Hearing: <u>1-28-19</u>
<input checked="" type="checkbox"/>	Supporting documentation: Site plan, plot plan, a drawing and any other pertinent data
<input checked="" type="checkbox"/>	Current list of names and addresses of the owners and the tax identification number of all properties within 200'
<input checked="" type="checkbox"/>	A filing fee of Three Hundred- fifty dollars (\$350)



**Development Review Committee Meeting
Thursday, November 29, 2018**

Committee members present: City Manager Paul Kramer, Assistant City Manager Taylour Tedder, City Planner Julie Hurley, Police Chief Pat Kitchens, Chief Building Inspector Hal Burdette, Director Public Works Mike McDonald and Administrative Assistant Michelle Baragary

OLD BUSINESS:

1. 5239 S. 4th Street – Luxury & Imports Plat

- Attendees – Mike Reilly and owners Troy and Ted
- Purchasing the rear section of the bank. Would like shared access for the entrance off 4th Street. Part of the agreement is that Luxury Imports must provide the bank access to Eisenhower.
- Employee parking lot to be installed on the acquired property (east side of the bank). 40-50 parking stalls.
- Design the front of Luxury Import's lot to expand towards the entrance of the bank (if shared access is approved by the bank)
- Water quality/quantity and sewer
- KDOT permit required for changing use of drive entrances. If sharing the existing bank entrance, Luxury & Imports existing north entrance on 4th Street will need to be closed.
- Cars for sale should not be parked in the easement or ROW on 4th Street
- Pavement has a 2' setback requirement from property line
- Only 50 percent of a lot can be impervious. Variance request goes through BZA.
- Requests to not pay into the sewer buy-in fee during the plat process goes to the City Manager.

OTHER BUSINESS:

None

Meeting adjourned at 1:58 p.m.