



**BOARD OF ZONING APPEALS MINUTES**  
**MONDAY, July 16, 2018, 7:00 P.M.**  
**COMMISSION ROOM, CITY HALL**  
**LEAVENWORTH, KANSAS**

The Leavenworth Board of Zoning Appeals (BZA) met in regular session on Monday, July 16, 2018. It was determined a quorum was met with the following board members present: Dick Gervasini, Ron Bates, Kathy Kem and Jan Horvath. Mike Bogner was absent. Staff members City Planner Julie Hurley and Administrative Assistant Michelle Baragary were present.

Vice Chairman Gervasini called the meeting to order at 7:00 pm and called for the first item on the agenda; approval of minutes from May 21, 2018. As there were no comments or changes, Mr. Horvath moved to approve the minutes as presented, seconded by Mr. Bates. The minutes were approved 4-0.

The Vice Chairman called for the next item on the agenda – **Case No. 2018-08 BZA – 63 Logan Street – Variance Request** - and requested the staff report.

City Planner Julie Hurley addressed the board stating the applicant, Michael Gabrick, is requesting a variance from the Development Regulations to allow a driveway which does not lead to a garage, carport, rear yard parking area, or other allowed parking space.

The subject property is zoned R1-6, High Density Single Family Residential District, and is surrounded by other similar single family homes. The existing house does not have a garage, and the applicant is requesting the variance to allow the driveway for accessibility issues. On the same block, there are several other homes with existing driveways in the front yard that do not lead to a garage or carport, which were installed prior to the adoption of current regulations prohibiting such, making them “legal non-conforming” driveways.

Article 12 of the Development Regulations defines a “driveway” as:

*A parking lane which leads from a street or an alley to a garage, carport, rear yard parking area, a parking space established in accordance with the provisions of this ordinance, or to another street or alley. Such driveway may extend in front of, alongside of, or in the rear of a principal structure either planned for or erected upon a building site.*

The chairman called for questions or comments from the board about the staff report.

Mr. Bates asked if the applicant submitted a drawing indicating where the driveway would be installed.

Ms. Hurley responded the applicant did not submit a drawing.

Mr. Bates asked if the board has the authority to state where the driveway would be allowed.

Ms. Hurley stated the board could do that. She further stated the applicant has indicated he intends to install the driveway up to the front porch.

Mr. Bates asked if there will be a problem with the distance to the side property line.

Ms. Hurley responded the driveway meets the required minimum distance of 2' from the property line. Furthermore, there are a few other houses on this block that have an existing front yard parking area. Some of the existing parking areas are gravel, which would not be allowed. The driveway would have to be paved and up to today's standards.

Ms. Kem asked if the reason for not entering from the rear yard is due to the incline on the property.

Ms. Hurley stated that was correct. Due to the incline and the steps that are in the rear yard.

Vice Chairman Gervasini opened the public hearing.

Michael Gabrick, applicant, approached the board stating he is on oxygen and is unable to walk any distance and his wife walks with a cane; therefore, they need to be able to park close to the house. Mr. Gabrick proceeded to ask if he could install a carport directly in front of his porch (east side of the front bedroom). The carport would be approximately 12' x 18'.

Ms. Hurley stated the carport could not protrude in front of the wall of the front bedroom. If the applicant can get the carport to fit in that area, then it would be allowed.

Mr. Gervasini stated the variance would not be needed if the applicant could fit a carport in the area east of the front bedroom.

Ms. Hurley agreed. However, since this variance request has already been submitted it would be best if the board would go ahead and take action, especially since the applicant is not sure if he can get a carport to fit and meet the required setbacks.

The neighbor at 59 Logan approached the board stating Mr. and Mrs. Gabrick both have significant health issues. Having the ability to park in the front yard close to the entrance of the home is a necessity for them.

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

With no further discussion among the commissioners, Vice Chairman Gervasini 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.

Vice Chairman Gervasini asked if the board wants to impose any conditions, safeguards and restrictions upon the premises.

Mr. Bates asked if the board gives a blanket approval of the variance request, can the applicant move the driveway to anywhere he wants it.

Ms. Hurley believes the driveway has been formed. The board can make the condition that the driveway remain where it has been formed already.

Vice Chairman Gervasini stated the variance shall be granted with the stipulation that the driveway to installed where it is currently formed.

Vice Chairman Gervasini asked for any other comments, questions or business to discuss.

Ms. Hurley stated there was another request for the property located at 2500 S. 4<sup>th</sup> Street, however, the applicant withdrew the application.

Vice Chairman Gervasini called for a motion to adjourn. Ms. Kem moved to adjourn, seconded by Mr. Horvath and approved by a unanimous vote 4-0.

The meeting adjourned at 7:19 p.m.

JH:mb