



**BOARD OF ZONING APPEALS MINUTES**  
**MONDAY, May 21, 2018, 7:00 P.M.**  
**COMMISSION ROOM, CITY HALL**  
**LEAVENWORTH, KANSAS**

The Leavenworth Board of Zoning Appeals (BZA) met in regular session on Monday, May 21, 2018. It was determined a quorum was met with the following board members present: Mike Bogner, Dick Gervasini, Ron Bates and Jan Horvath. Kathy Kem was absent. 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 April 16, 2018. As there were no comments or changes, Mr. Gervasini moved to approve the minutes as presented, seconded by Mr. Horvath. The minutes were approved 4-0.

The chairman called for the next item on the agenda – **Case No. 2018-05 BZA – 1850 Edgewood Drive – Variance Request** - and requested the staff report.

City Planner Julie Hurley addressed the board stating the applicant, Bruce Wiley, is requesting a variance from section 4.03 of the adopted Development Regulations to allow construction of a single family house on a lot with less than the required minimum lot width.

The Board of Zoning Appeals considered this item at the April 16, 2018 meeting and voted to table the item until May 21, 2018 to allow the applicant time to produce specific house plans and discuss with neighbors. Since that time, the applicant has indicated that there is no longer a potential buyer for this property. However, he would like to proceed with his variance request to aid in the future marketing of the property to potential buyers.

The subject property is 14.41 acre lot zoned R1-9, Medium Density Single Family Residential District, and is located in the Shannon Woods subdivision. The property was included in the original Preliminary Plat for the Shannon Woods subdivision and was intended to include X lots. The Preliminary Plat was approved in 2002. A Final Plat was never recorded for the subject property, and the Preliminary Plat became invalid one year after approval. The owner has indicated that there are no plans to develop more lots as were shown on the Preliminary Plat.

Section 4.03 of the Development Regulations requires a minimum lot width of 75 feet for properties zoned R1-9. "Lot width" is defined as:

*The distance between the side lot lines, measured along the front setback line as established by this ordinance. Where the front setback line is curvilinear, lot width shall be measured along the tangent to this curve.*

"Front setback" is defined as"

*A line fixed parallel to the lot line beyond which a building cannot extend under the terms of the Development Regulations. It is equivalent to the yard requirement.*

Generally, staff has interpreted the required lot width to mean "frontage", or, the width of the side of a lot nearest the street. Staff has not interpreted "frontage" to include the width of a dead-end street. Based on these interpretations and the irregular configuration of the subject lot, the property has approximately 34 feet of lot width or "frontage" as measured along Edgewood Drive.

The Development Review Committee reviewed this application on March 22, 2018. Several other issues were identified, including access to sewer and the property being identified as a Geological Hazard Area. These items would be addressed at the time of building permit.

Notice was sent to property owners within 200' of the subject property as required by State Statute. Staff has received inquiries from 4 property owners regarding the use of the request, no specific objection or support was expressed. Staff has received a call from one property owner, located to the south of the subject property, indicating opposition.

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

Mr. Bogner asked if staff received plans for where the house would be located.

Ms. Hurley stated since the owner no longer has a buyer no plans were submitted. The variance is to allow construction of a house without the required lot frontage. Any home that would potentially be constructed would need to comply with any other City regulations at the time of applying for building permits.

Mr. Bogner stated the subject property was part of a Phase II for the Shannon Woods subdivision. Mr. Bogner asked if the subject property has its own identity, does it have a lot that goes in sequence with the neighboring lots or does it need to be platted.

Ms. Hurley responded the subject property was a preliminary plat back in 2002. Since a final plat was not filed within 12 months, the preliminary plat is no longer valid. The subject property is not part of the Shannon Woods subdivision. If someone chose to divide the property to construct several homes the property would need to be platted. If a single family home is constructed, the property would not need to be platted.

Mr. Bogner asked if there are any issues with utilities.

Ms. Hurley stated there are some minor location issues with sewer. Public Works staff has gone over the issues with the property owner. Also part of the property is identified as a geological hazard area. This would affect where a house can be constructed. The area in question is to the eastern part of the property.

Chairman Bogner opened the public hearing.

Bruce Wiley, property owner, approached the board. Mr. Wiley stated the property has been for sale for the past three years. The potential buyer he lost was a quality buyer; would have constructed a nice home keeping with the standards of the Shannon Woods subdivision. Mr. Wiley stated the buyer got nervous about the street issue and therefore lost interest in purchasing the property.

Mr. Bogner verified the potential buyer was not in attendance at the meeting held April 16, 2018.

Mr. Wiley confirmed the potential buyer was not at the April 16, 2018 meeting due to medical issues.

Mr. Bogner asked if the potential buyer had any concerns about fitting a driveway off the dead end street and winding the driveway to the house.

Mr. Wiley responded he did not. Mr. Wiley further stated it takes a special buyer to purchase 14 acres within the city limits and his potential buyer has been the only prospect in the past five years. Mr. Wiley is here today looking for a solution, as this same issue will come up again with future prospective buyers.

Mr. Bogner asked about Public Works thought on the dead end street.

Ms. Hurley stated Public Works did not have much of a concern about the dead end street as much traffic would not be heading in that direction.

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

Mr. Bogner asked if the opposition received from the April 16, 2018 meeting is still valid and should still be considered.

Ms. Hurley responded in the affirmative.

Mr. Bates stated the property owner to the south who purchased land in speculation he could do something with it does not apply to the criteria about how the variance would affect neighboring property owners.

Mr. Bogner agrees stating the property owner to the south took a legitimate risk when purchasing the landlocked property and unfortunately it did not go in his favor.

Mr. Gervasini asked if a roundabout or cul-de-sac at the end of the stub (dead end street) would solve all the problems.

Mr. Bogner asked if that would be a requirement imposed by Public Works.

Ms. Hurley responded in the affirmative. The variance in question is just for the lot width requirement. Should the board decide to deny the request that would be an option for the property owner to install a cul-de-sac head to solve the problem.

Mr. Bogner asked if the board could impose restrictions on the width of the driveway.

Ms. Hurley stated the Development Regulations require pavement be setback two feet from the property line. The driveway located at 1842 Edgewood Drive is approximately 19' from the property line. A driveway at 1850 would need to be 2' from the property line; therefore, there would be approximately 21' from both driveways.

Mr. Bogner asked if there is a maximum entrance width for a driveway.

Ms. Hurley stated you are limited to a percentage of the lot width with a maximum of 30'.

Mr. Bates asked for the distance between the east corner property line at 1842 Edgewood Drive to the end of the street heading east and then down to the corner property line located at 1901 Woodridge Drive.

Ms. Hurley stated the distance is approximately 95', if you include the width of the dead end street. However, it has been practice not to include the width of dead end street as lot width or lot frontage.

Mr. Bates asked what the frontage is for property located at 1930 Woodridge Drive.

Ms. Hurley stated the frontage is approximately 65'.

Mr. Bates asked what the lot frontage should be.

Ms. Hurley stated it should be 75' in that particular zoning district.

Mr. Bates asked how this was approved.

Ms. Hurley stated this was on the plat that was submitted in 2002 and she is not sure if certain properties were given some allowance as to the lot frontage.

Mr. Gervasini stated that if the property owner was in agreement with installing a bump-out at the end of the dead end street then the problem would be solved. He then asked if more than one house was to be built as an extension off the bump-out if the property would then be required to go through the platting process.

Ms. Hurley responded a bump-out would not necessarily work in this situation. A cul-de-sac head would need to be installed, which is a much higher cost. If more than one house was to be built, the property would need to be platted.

Mr. Bates asked if a modular home can be placed inside city limits.

Ms. Hurley responded that the regulations specifically prohibit modular homes except for in the Mobile Home Park District.

Mr. Gervasini asked for clarification that the board is not allowed to stipulate that any property developed on the subject property must comply with the homeowners association for Shannon Woods Subdivision.

Ms. Hurley stated that is correct.

Mr. Bogner asked if the homeowners association for the Shannon Woods Subdivision is still active.

Ms. Hurley stated she does not have that information.

Mr. Horvath asked if the remedy is to extend the road.

Ms. Hurley stated that is correct. If the property owner were willing to go to the expense to extend the road another 40' and dedicate some right-of-way then it would not be before this board.

Mr. Horvath asked how much that expense would be.

Ms. Hurley stated she is not sure the cost of construction per linear foot of street. However, the City has very specific requirements and standards that would need to be met, which are costly. It's not a simple as installing asphalt. Her guess would be a couple hundred thousand dollars.

With no further discussion among the commissioners, Chairman Bogner 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)

**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.*

**Vote 4-0**

**All board members voted in the affirmative.**

**Mr. Bogner stated it is important the criteria states ‘...action or actions of the property owner...’ as it was the property owner’s brother who subdivided and developed the Shannon Woods Subdivision and planned Phase II, not Bruce Wiley.**

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

**Vote 3-1**

**Mr. Gervasini voted in the negative.**

**Mr. Bogner agreed stating the primary objections at the April 16, 2018 meeting were based on speculation of the second phase, which did not happen, and therefore were not caused by the applicant.**

- 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.**

**Mr. Bogner agreed stating Public Works was not willing to do anything with the street to modify the condition; which he believes the City would have some ownership in and is not the fault of the applicant.**

- 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.**

**Mr. Bogner agrees on the basis it is a single family home and that if in fact some developer decides to install more than one home the property would need to be platted and that process would protect neighboring properties.**

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

**Vote 0-4**

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 there is no need to discuss conditions, safeguards and restrictions because all five criteria must be met for the variance to be granted. Based on the vote the variance has been denied.

Chairman Bogner called for a motion to adjourn. Mr. Gervasini moves to adjourn, seconded by Mr. Horvath and approved by a unanimous vote 4-0.

The meeting adjourned at 7:36 p.m.

JH:mb