



**BOARD OF ZONING APPEALS MINUTES**  
**MONDAY, April 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, April 16, 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 January 22, 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. 2018-04 BZA – 908 Spruce Street – Variance Request** - and requested the staff report.

City Planner Julie Hurley addressed the board stating the applicant, Susan Jennaway, is requesting a variance from section 6.08 of the adopted Development Regulations to allow a 5-foot high solid fence in the front yard.

The subject property is zoned R1-6, High Density Single Family Residential District, and is located one lot east of the intersection of Spruce and 10<sup>th</sup> Streets. The applicant has constructed a 5-foot high (60”) solid wooden privacy fence on the top of an existing below grade garage in the front yard adjacent to Spruce Street. A fence permit was not obtained prior to construction of the fence.

Section 6.08 of the Development Regulations states the following in regards to fences in the front yard of a residential property:

- a) Open fences and hedges may be installed in all front yards on the property lines but may not exceed 48 inches above the natural contour of the ground.*
- b) No solid fences shall be constructed or reconstructed closer to the street line than the front wall of the residential structure. The front wall of the residential structure shall be determined by excluding porches, roof overhangs, dormers, or other extensions.*

The Development Regulations define “open fences” as those whose surface area is greater than 50% open (ex.: chain link, picket, etc).

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

Mr. Bogner asked if the garage is within the property line.

Ms. Hurley stated the garage is fully within the property and the fence is not constructed in the right-of-way.

Mr. Bogner asked if safety with the steep slopes on the sides and the stairs in front of the house were addressed.

Ms. Hurley stated that would be a question for the applicant.

The applicant, Susan Jennaway, addressed the board. She stated the trees to the west of the subject property have been removed due to drainage issues. The steps in the front yard have rails and are terraced with stone to help with safety issues. This is the first time Ms. Jennaway has had tenants with young children. The tenants have safety concerns for their children and Ms. Jennaway has safety concerns as well as liability concerns, which is why the applicant wants a fence higher than the 4 foot maximum required by the Development Regulations.

Mr. Gervasini asked if the garage was evaluated to ensure it could hold the fence/bench structure as well as the weight of people.

Ms. Jennaway responded in the affirmative.

With no further questions from the board, Chairman Bogner opened the public hearing.

The tenant, Katie Burson, addressed the board stating the structure is looks nice, adds value to the property and addresses the safety concerns she had for her children.

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

Mr. Horvath asked the property owner if neighboring properties were in support of the structure.

Ms. Jennaway stated the neighbors behind the subject property also have small children and have also expressed safety concerns, especially with people walking from the alley between the subject property and the property located to the west.

Ms. Hurley stated staff did not receive any input for or against the installation of the structure on the subject property.

Mr. Bogner asked staff for clarification that there are two issues they are dealing with: the height of the fence and the fence being closed.

Ms. Hurley stated that there are two issues: height and closed fence. The board would vote on both issues as one request; not each issue individually.

Mr. Bogner asked the applicant is there were any other options or alternatives in order to bring the fence structure into compliance.

Ms. Jennaway responded her biggest concern was the height and she did not see any other alternative due to the bench, which is attached to the inside of the fence.

Mr. Bogner asked what the negative effect would be on the property owner and the tenants if the variance request was denied.

Ms. Jennaway stated her first concern would be the safety and liability issues and the additional cost to modify the structure.

Mr. Bates stated the subject property is unique in that it has an existing below grade garage. He further understands the applicant's liability concern.

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)

**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.*

***Affirmative - Vote 4-0***

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

***Affirmative – Vote 4-0***

- 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.*

***Affirmative – Vote 4-0***

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

***Affirmative – Vote 4-0***

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

***Affirmative – Vote 4-0***

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 asked if there are any conditions, restrictions or further comments from the board.

Mr. Bates asked if the fence structure is bolted to the garage. The applicant responded it is.

Mr. Bates moved to approve the variance request for the height and the solid fence in the front yard, seconded by Mr. Gervasini. Variance request 2018-04 BZA passed by a unanimous vote 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 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 subject property is a 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 of the Shannon Woods subdivision and was intended to include approximately 38 additional residential 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 indicating opposition.

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

Mr. Bogner asked if Public Works staff made any comments about not constructing a driveway off a dead end street.

Ms. Hurley stated there was some concern expressed but there is no specific prohibition in the Development Regulations from doing that. This would be something requested from the property owner when acquiring a building permit; but again, it is not prohibited in the Development Regulations.

Mr. Bogner stated unless provided a plot plan showing a driveway to the house, we are just assuming that is the only frontage they have and the only likely solution. However, Mr. Bogner stated another solution would be to construct a cul-de-sac at the dead end of Edgewood Drive.

Ms. Hurley stated any additional construction of right-of-way would be put on the developer or property owner, as the developer is responsible for the construction of any roads.

Mr. Bates asked if there are safety issues involved with the frontage issue or is it just aesthetics.

Ms. Hurley responded it is to keep continuity.

Mr. Horvath asked about the geological hazard area.

Ms. Hurley stated after speaking with the City Engineer, the City has some soil reports. The hazard area is more the eastern portion of the lot. The area where the proposed home would be is on the western portion of the lot, which is not considered a hazardous area.

Mr. Gervasini asked about the staff report; specifically where it states something to the effect that the regulations are "generally interpreted" as 70 feet.

Ms. Hurley stated the lot width is required to be 75 feet. General interpretation is staff's interpretation as to determining what the lot width would mean. In a typical residential lot, it is clear where the front yard, side yard and rear yard are. When dealing with irregular shaped lot such as this, staff has to interpret those regulations and make judgment calls.

Mr. Horvath asked about the four property owners who contacted the City regarding this case.

Ms. Hurley stated the general question from the property owners was if the subject property was going to be a subdivided for more lots.

Mr. Horvath asked about the property owner who indicated opposition.

Ms. Hurley responded that property owner is here and he owns the property to the south of the subject property.

Mr. Bates asked if there is any other property in the city where there is just an entrance to a large lot where only one home is located.

Ms. Hurley stated she cannot think of one in Leavenworth.

Mr. Bogner stated he knows of two lots that had to get easements from neighbors in order to access their lot.

With no further questions or comments from the commissioners, Chairman Bogner opened the public hearing.

Bruce Wiley, property owner, addressed the board. 100 acres were split into three separate lots. Bruce's brother, Willard Wiley, developed his section of the property, which is Phase I of Shannon Woods subdivision, but Phase II fell through, which is the subject property in this case. Mr. Wiley further stated he has had the subject property on the market for approximately 4 years but was unable to find a developer. He finally found an individual who is interested in purchasing the property to build a nice single family dwelling on the 14.41 acres. Mr. Wiley addressed the commissioner's concerns about safety entering the subject property. He stated the current roundabout forces drivers to slow down. He also mentioned the possibility of installing "No Outlet" signage.

Mr. Bogner asked for clarification that the intent is to sell all of tract 2 to a single owner to build one house on the 14.41 acres and abandon all plans to subdivide the property.

Bruce Wiley responded in the affirmative.

Mr. Bogner asked if there was any consideration in building a cul-de-sac or adding an end to Edgewood Drive so there would not be this issue with the driveway. He also asked about the large pile of rocks located there.

Bruce Wiley stated he is leaving the rock pile up to the potential buyer as to what he would like to do with them. However, Mr. Wiley is not opposed to moving them if the potential buyer requests that.

Mr. Bogner asked Bruce Wiley what was said at the Development Review Committee about what the city's intent is with the end of Edgewood Drive.

Bruce Wiley stated he was not instructed to do anything. He stated he offered to donate some right-of-way if that would help. He is selling the property for a reasonable price and constructing a cul-de-sac would be extremely costly.

Mr. Bogner asked the City Planner if the city owns the street.

Ms. Hurley stated streets are typically installed by developers and then dedicated to the city to maintain.

Mr. Bates doesn't feel that building a cul-de-sac would fix the problem because they would have to plat it because they would still need to have the required 75 feet of road frontage.

Ms. Hurley responded that if a cul-de-sac bulb was built, the road frontage would be measured along the radius of the cul-de-sac bulb to meet the required 75 feet.

Plaudy Meadows, 1816 Edgewood Court, addressed the board. His property is located to the south of the subject property. He originally only purchased the property located at the end of Edgewood Court, which is lot 40 in the Shannon Woods subdivision (indicated by the dotted lines). In 2015, Bruce Wiley and Willard Wiley offered to sell him 10 acres of land, which is to the south of the subject property, to build additional houses. The Wiley's stated Mr. Meadows may need to purchase one lot from Tract 2 in order to access the 10 acres. That is no longer an option if the subject property is sold and not subdivided. Mr. Meadows' 10 acres is now landlocked.

Mr. Meadows further stated that most residents in his neighborhood are happy the subject property is not being subdivided; however, they are a bit concerned with what will be built on the property as no plans have been submitted. He further reiterated a major personal concern for him is the 10 acres that will be landlocked; causing the value of his property to plummet. Mr. Meadows would have liked someone to have approached him to talk with him about how to get access to his 10 acres; such as, possibly purchasing additional land to so he would have access to the 10 acres.

Mr. Bates stated the board has the ability to put conditions on anything approved. He asked the City Planner if the board approved the variance, could the board require the potential buyer to only put a single family home on the property.

Ms. Hurley responded that the property is zoned for a single family home so the board would not need to add that condition. The subject property would need to be subdivided further in order to build additional homes in that area.

Mr. Bates stated the value of the additional 10 acres Mr. Meadows purchased relies on somebody doing something in the future to get access to it through land that Mr. Meadows does not own. Building a cul-de-sac also would not help Mr. Meadows with his issue of the 10 acres not being accessible.

Mr. Meadows responded that is the case unless he is able to purchase property from the subject property to get access to his 10 acres.

Mr. Bogner stated the only thing that would work in conjunction with Mr. Meadows' future plan would be to implement a portion of the proposed Phase II, which would include the road that would run south.

Mr. Bogner asked Mr. Meadows if he was aware that the current owner was looking at potential developers and if that would have been a good time to for Mr. Meadows to possibly mention something about a joint effort in order for him to be able to develop his 10 acres in the future.

Mr. Meadows stated he knew the land was for sale but thought it was going to be sold to a developer to move forward with phase II of the Shannon Woods subdivision.

Willard Wiley addressed the board and spoke about the phase II plans. He stated he told Mr. Meadows that he may need to purchase an additional lot during the phase II development in order to access the 10 acres to the south. He also recommended to the potential buyer of the subject property to build his house to the north of where Edgewood Drive was originally to go, which would allow the property to be subdivided at some point in the future if he chose to do so.

Willard Wiley further stated he believes a cul-de-sac is a mistake. Instead, an extension of the street would allow the 75 feet frontage and have the home built to the north or south of the street. This would also give Mr. Meadows access to his 10 acres.

Bruce Wiley stated he is representing the potential buyer due to health issues. The potential buyer does not have any plans on developing any portion of the subject property. He is only looking for a 14 acre estate.

Mr. Bogner stated the request for the variance is just for the driveway and the other things that have been discussed are concerns with the neighbor to the south, Mr. Meadows. Mr. Bogner thinks the three of them should get together (Bruce Wiley, potential buyer and Mr. Meadows) for further discussions on where the buyer plans to build the home.

Bruce Wiley stated it would be a matter of negotiations between the buyer and Mr. Meadows to see if Mr. Meadows could buy an easement or something like that.

Mr. Meadows asked how he requests an easement.

Mr. Bogner stated he would have to deal with the current property owner or future property owner. That is not something the board deals with.

Carl Fischer, 1832 Edgewood Court, addressed the board. He referenced the drawing showing a large RV storage area. He stated something like that would not be allowed in his neighborhood. Even though this is an adjoining property to

the neighborhood and not actually part of the neighborhood, he and his neighbors would have to look at whatever was built on the subject property.

Mr. Bogner asked the City Planner if the subject property is part of the subdivision and should be held accountable to all the current regulations as the current neighborhood is held to.

Ms. Hurley responded the subject property was not included in the final plat of Shannon Woods.

Mr. Fischer stated that most neighbors are ecstatic about a single family home built on the subject property. Their concerns are what kind of home and accessory structures are going to be built on the property, such as the RV storage.

Mr. Bogner asked if the subject property will be required to following the same regulations as the neighbors.

Ms. Hurley responded that it would be required to follow the regulations provided in the Development Regulations; however, if the neighbors have an HOA, the subject property is not subject to any additional rules of the HOA because it is not part of the Shannon Woods subdivision.

Mr. Bogner asked if an RV is allowed to be parked in the zoning district.

Ms. Hurley responded an RV may be parked in the front or side yard between April and October and parked in the rear yard of the home on a paved surface anytime.

Mr. Meadows stated the closed wooden fence from the previous case heard this evening is not allowed in the Shannon Woods subdivision according to their HOA. Mr. Meadows asked for clarification that this would not apply to the subject property.

Ms. Hurley responded in the affirmative.

Mr. Bogner asked as a condition of the variance could that be added to the recommendation.

Ms. Hurley stated she is not sure if legally you can require a property owner to join an HOA. The city attorney would need to be consulted on this issue.

Mr. Bates stated he believes the seller can make the purchase of the property contingent on adhering to the regulations of the HOA but not require the seller to join the HOA.

Willard Wiley stated he has met with the potential buyer who plans on putting an attractive \$700,000 home on the property with a pool and what he believes to be a garage for storage of an RV.

Mr. Bogner asked city staff if the board can make a condition of the variance that the buyer must build the home on a specific spot on the property as decided by the commissioners.

Ms. Hurley again stated she is not sure if the board is allowed to make such conditions.

Mr. Bogner asked if the board can state the variance is granted in accordance with the drawing provided.

Ms. Hurley responded in the affirmative since the drawing was provided by the applicant.

Willard Wiley suggested the road be extended 75 feet and the buyer install his driveway to the north. This keeps the option open to extend the road in the future.



Ms. Hurley stated staff did suggest that to the potential buyer. The buyer's concern was with cost as the road would need to be built to city street standards.

Willard Wiley stated there is already 34 feet of road. The buyer would only need to build an additional 41 feet to meet the requirement of the Development Regulations.

Bruce Wiley stated we are planning the future of a street when the buyer may not even want a street. It is not the buyer's intention to ever develop the subject property.

Mr. Bates asked if the applicant would like the board to table the request so he may have more time to discuss the issues or if he would like the board to vote on it.

Bruce Wiley said he would like a vote tonight.

Mr. Gervasini stated the current property owner is asking for the variance. Whatever Bruce Wiley says should be used for the board to make their decision unless he wants to delay the decision until he can talk with his buyer. Based on what the applicant is requesting a variance for and how the board votes, is final as far as the board is concerned. The board needs to focus on the applicant's desires.

Mr. Brothers, 1839 Edgewood Drive, addressed the board stating he has no objection to a single family home. All the talks about the type of home to be built are immaterial because no one is bound by that and future plans fall through all the time. He asked if the variance was granted if the buyer could build a home with the minimum standards required by the regulations.

The board and city staff responded in the affirmative.

Mr. Bates stated that is why he asked if the applicant wants to table the request so he can speak with the buyer and get specifics about exactly what the buyer plans on building. If the board had that information they could grant the variance contingent on the buyer doing just that. Mr. Bates does not feel the board has enough information.

Bruce Wiley stated he would table the request to speak with the buyer about where exactly he plans on building but he does not see the relevance on getting information about what the home would look like.

Mr. Bates stated the reason the board needs more information is because the commissioners need to find the five requirements/criteria in the affirmative in order to grant the variance. If one of the criteria is found in the negative the variance is denied, i.e. will not adversely affect the rights of adjacent property owners or residents.

Bruce Wiley said he is under no obligation to provide an easement for other property owners. If the buyer chooses to build a \$750,000 house at a specific location on the property then he should be able to do so if he purchases the property.

Mr. Bates asked what if he doesn't build a \$750,000 home. Or if the home he builds makes the neighborhood look terrible.

Bruce Wiley stated he spoke with the buyer about the house he plans on building and it sounds like it will be one of the nicer homes in the neighborhood. Mr. Wiley asked what criteria the buyer needs to meet to build a home on the property. At what point do we need a judgment on how his house looks other than meeting the city's standards. How does the sightlines of a house factor into the variance request.

Mr. Bogner stated three or four neighbors feel as though they do not have enough information to support the project.

Bruce Wiley stated the buyer could supply the building plan but the easement would be up in the air because the buyer does not intend to subdivide the property or to extend the road. Mr. Wiley asked if a drawing of the house is what the board is looking for.

Mr. Bogner stated the board is asking Bruce Wiley to get with the neighbors to resolve their concerns.

Bruce Wiley stated he could submit a plan to the board but he is unsure on how to bring the neighbors in to look at the buyers building plans to see if they like it or not.

Mr. Bogner stated notifications are sent stating there will be a public hearing. It would be up to the neighbors to either attend the meeting or provide staff with a letter in favor of or opposition of the request.

Ms. Hurley stated the city does not send re-notification at a public hearing. It would be up to the property owner to contact neighbors on his own.

Bruce Wiley stated he believes the buyer would be willing to build a home to the HOA's standards.

Mr. Gervasini stated he does not think the neighbors are concerned with the size or look of the house. The neighbors have concerns outside of just the house. As the property owner, Mr. Wiley should get with the neighbors and possibly the buyer to find out the neighbor's concerns and alleviate those concerns.

Bruce Wiley stated he will get with the neighbors and have them provide him with something in writing for him to go on.

Willard Wiley believes a plat needs to be provided indicating where the house will be built and where the driveway will be installed.

The board believes submitting a plat would be a good idea.

Mr. Bates moves to continue the matter to the next regular scheduled meeting date of May 21, 2018, seconded by Mr. Gervasini and approved by a unanimous vote 4-0.

Mr. Gervasini moves to adjourn, seconded by Mr. Horvath and approved by a unanimous vote 4-0.

The meeting adjourned at 8:33 p.m.

JH:mb