



**BOARD OF ZONING APPEALS MINUTES
MONDAY, September 18, 2017, 7:00 P.M.
COMMISSION ROOM, CITY HALL
LEAVENWORTH, KANSAS**

The Leavenworth Board of Zoning Appeals (BZA) met in regular session on Monday, September 18, 2017. 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 July 17, 2017. As there were no comments or changes, Mr. Gervasini moved to approve the minutes as presented, seconded by Mr. Horvath. The minutes were approved 3-0; Bogner abstained as he was not at the July 17, 2017 meeting.

The chairman called for the next item on the agenda – **Case No. 2017-18 BZA – 621 S. Chestnut and 711 S. 7th Street – Variance Request** - and requested the staff report.

City Planner Hurley addressed the board stating the applicant, Tony Patton, is requesting a variance from section 4.03 of the adopted Development Regulations to allow the creation of two lots which are less than the minimum required lot size of the zoning district and by which the existing structures will not meet required setbacks. The subject property is located at the southeast corner of Chestnut and S. 7th Street and is zoned R1-6, High Density Single Family Residential District, with two separate existing homes on the lot. The existing homes are well established and were constructed prior to current regulations which allow only one primary structure on a residential lot.

The R1-6 zoning district requires a minimum lot size of 6,000 sqft, with front, corner side, and rear setbacks of 25' and interior side setbacks of 6'. The existing lot is 9,643 sqft in size. The applicant has commissioned a survey of the property, and is proposing to split the lot between the two existing homes, resulting in two separate lots. The resulting lots would be approximately 5,338 sqft (621 S. Chestnut) and 4,305 sqft (711 S. 7th Street) in size. The resulting rear setback for both 621 Chestnut and 711 S. 7th Street would be less than the required 25'. There are no other changes to the property as proposed.

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

Mr. Bogner asked if the south lot line will follow the existing fence line for 711 S. 7th Street. Ms. Hurley stated that is what it appears they will do.

Ms. Hurley stated the properties have been functioning as two separate properties but in order to sell them as two separate properties they must be legally split.

Mr. Bogner asked that when they the request for the variance, is it just for the square footage of the lots or does it also include the setbacks. Ms. Hurley stated the board will take into consideration any non-conformities that would be resulting from the proposed lot split, which will be the lot size requirement and the setback requirement.

Mr. Bogner asked that when the board goes through the motions can they do it just one time for all non-conformities. Ms. Hurley responded in the affirmative.

Mr. Gervasini asked when the buildings were built. The applicant, Anthony Patton, stated 711 S. 7th Street was built in 1850 in a town in Missouri and the house was eventually moved to Leavenworth. The owner of 711 S. 7th Street built the house at 621 S. Chestnut in the 1960's.

Mr. Horvath asked the applicant if he had any affidavits of support from his neighbors. Mr. Patton stated the only person who contacted him was his neighbor, Kevin Lis, who resides at 710 S. 7th Street. Mr. Patton stated Mr. Lis supports the lot split. Mr. Patton further stated, Jeffrey Marrin at 613 S. Chestnut also supports the lot split. Ms. Hurley stated staff received no comments either for or against the application since the notification was mailed out.

Mr. Bates stated he would be surprised if anyone in the neighborhood realizes this is even an issue.

Chairman Bogner opened the public hearing. With no one wishing to speak, the chairman closed the public hearing and read the following criteria regarding the Board's authority and reviewed each item.

BOARD OF ZONING APPEALS AUTHORITY:

The Board's authority in this matter is contained in Article 11 (Board of Zoning Appeals), Section 11.03.B (Powers and Jurisdictions – Variances)

B. **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:
 - a) *The Board shall make a determination on each condition, and the finding shall be entered in the record.*
 - b) *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.*

All board members agreed; the need for a variance was not created by an action(s) of the property owner/applicant.

Vote 4-0

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

All board members agreed; the granting of the variance would not adversely affect...

Vote 4-0

- d) *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.*

All board members agreed; the strict application of the Regulations would constitute unnecessary hardship...

Vote 4-0

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

All board members agreed; the variance desired will not adversely affect the public health, safety...

Vote 4-0

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

All board members agreed; granting of the variance will not be opposed to the general spirit and intent of the Development Regulations

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.

The chairman called for any additional comments and asked if any safeguards, conditions or restrictions should be considered for this request. No conditions or restrictions were recommended.

Chairman Bogner called for a motion to approve the variance. Mr. Gervasini moved to approve the variance. The Variance Request 2017-18 BZA was approved by a unanimous vote 4-0.

Finding no other business, chairman Bogner called for a motion to adjourn. Mr. Gervasini moved to adjourn, seconded by Mr. Horvath and passed by a unanimous vote 4-0.

The meeting adjourned at 7:13 pm.

JH:mb