



**BOARD OF ZONING APPEALS MINUTES**  
**MONDAY, June 19, 2017, 7:00 P.M.**  
**COMMISSION ROOM, CITY HALL**  
**LEAVENWORTH, KANSAS**

The Leavenworth Board of Zoning Appeals (BZA) met in regular session on Monday, June 19, 2017. It was determined a quorum was met with the following board members present: Mike Bogner, Kathy Kem, and Jan Horvath. Dick Gervasini and Ron Bates were 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 May 15, 2017. As there were no comments or changes, Mr. Horvath moved to approve the minutes as presented, seconded by Ms. Kem. The minutes were unanimously approved 3-0.

The chairman called for the next item on the agenda – **Case No. 2017-10 BZA – 771 Michigan Street – Variance Request** - and requested the staff report.

City Planner Hurley addressed the board stating the applicant, Paul Giddens, is requesting a variance from section 4.04 of the adopted Development Regulations to allow a detached garage in excess of 900 square feet.

The subject property is a single family home located at 771 Michigan Street. There is an existing detached garage at the rear of the property, accessed by an existing paved driveway extending to Michigan Street. The existing detached garage is approximately 1,200 square feet for single-family residences on parcels less than one acre. The subject property is approximately 0.49 acres in size. The applicant is proposing to add 196 square feet to the existing garage in order to “square off” the structure to allow additional space for storage of a lawn tractor.

As the existing garage is in excess of the allowed 900 square feet, it is considered a legal nonconforming structure. The Development Regulations allow for any nonconforming structure to be enlarged, maintained, repaired or remodeled, provided that no such work increases the degree of existing nonconformity. The proposed addition would increase the degree of existing nonconformity in relation to the allowed size of the structure, thus a variance is required.

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

Ms. Kem asked if the Development Regulations can be interpreted in one of two ways. One, it cannot be enlarged beyond its nonconforming status. Two, you can increase the nonconformity only if you have a variance. Are we making a determination that this would be permitted if we give the variance or is this an application that is not considered legal.

Ms. Hurley stated the interpretation is that it would not be allowed by right but would be allowed with a variance. There is nothing in the Development Regulations that state specifically a variance cannot be granted for this type of request.

Mr. Bogner asked if the garage meets the rear and side yard setbacks. Ms. Hurley responded the rear and side yard setbacks are three feet and the applicant does meet the required setbacks.

Mr. Bogner asked if this particular structure was already on the property when it was purchased by the applicant. The applicant, Paul Gidden, stated he built the rear garage approximately 18 – 19 years ago. The garage near the house was already in existence when the property was purchased.

Mr. Bogner asked the applicant if he needed an additional 200 square feet to store a tractor. Mr. Gidden stated it will also be used for additional storage and to park a vehicle. The other garage contains snow removal equipment, a riding lawnmower and a vehicle.

Mr. Bogner asked if the current addition to the south and the requested addition will have the same roofline as the current larger building. Mr. Gidden responded in the affirmative.

With no further questions or comments from the board, the chairman 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 disagreed; the need for a variance was created by an action(s) of the property owner/applicant.***

***Vote 3-0***

- 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 3-0***

- 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 disagreed; the strict application of the Regulations would not constitute unnecessary hardship...***

***Vote 3-0***

- 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...***

***Vote 3-0***

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

***All board members disagreed; granting of the variance will be opposed to the general spirit and intent of the Development Regulations***

***Vote 3-0***

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 advised that based on the Board's findings and the vote tally, the variance request (2017-10 BZA) did not pass.

Chairman Bogner called for a motion to deny the variance. Ms. Kem moved to deny the variance, seconded by Mr. Horvath. The Variance Request 2017-10 BZA was denied by a unanimous vote (3-0).

Finding no other business, Chairman Bogner called for a motion to adjourn. Mr. Horvath moved to adjourn, seconded by Ms. Kem and passed by a unanimous vote 3-0.

The meeting adjourned at 7:16 pm.

JH:mb