

LEAVENWORTH BOARD OF ZONING APPEALS

MONDAY, May 15, 2017 - 7:00 P.M.
COMMISSION ROOM, CITY HALL
LEAVENWORTH, KANSAS

AGENDA

CALL TO ORDER:

- A. Roll Call/Establish Quorum
- B. Approval of Minutes: January 23, 2017 **Action:** Motion

OLD BUSINESS:

None

NEW BUSINESS:

- A. 2017-04 BZA – 701 Fawn Creek Street

Hold a public hearing for Case No. 2017-04 BZA, wherein the petitioner seeks a variance from section 6.08 of the adopted Development Regulations to allow a reduction in the required setback for a fence on a side corner lot.

ADJOURN



BOARD OF ZONING APPEALS MINUTES
MONDAY, January 23, 2017, 7:00 P.M.
COMMISSION ROOM, CITY HALL
LEAVENWORTH, KANSAS

The Leavenworth Board of Zoning Appeals (BZA) met in regular session on Monday, January 23, 2017. It was determined a quorum was met with all board members present. Staff members City Planner Julie Hurley and Administrative Assistant Michelle Baragary were present.

Chairman Bogner called the meeting to order at 7:03 pm and called for the first item on the agenda; approval of minutes from July 18, 2016. As there were no comments or changes, Mr. Bates moved to approve the minutes, as presented, seconded by Ms. Kem. The minutes were unanimously approved.

The chairman called for the next item on the agenda – Election of Officers and proceeded to take nominations for the positions of chairman and vice-chairman. Mr. Payne moved to keep the status quo; Mr. Bogner as chairman and Mr. Gervasini as vice-chairman. The motion was seconded by Ms. Kem. Mr. Bogner was nominated to serve in the role as chairman by a vote of 4-0 (Bogner abstaining). Mr. Gervasini was nominated to serve in the role as vice-chairman by a vote of 4-0 (Gervasini abstaining).

The chairman called for the next item on the agenda – **Case No. 2016-21 – Galen and Irena Peak – 510 S 5th Street – Variance Request** - and requested the staff report.

City Planner Hurley addressed the board stating the applicants, Galen and Irena Peak, are requesting a variance from section 5.02 of the Adopted Development Regulations to allow a reduction in required off-street parking for their proposed bakery business located at 510 S 5th Street.

The property is zoned OBD (Office Business District) and is surrounded by a mix of uses, including the DaVita Dialysis Center to the north, and the multi-tenant building housing Kaw Valley Behavioral Health to the east. The location is approximately two blocks south of the Central Business District, and the Carnegie lofts are one block south of the proposed bakery.

Parking for retail uses is required at a rate of 1 per 200 square feet of space accessible to the public. The applicant has indicated that there will be 600 square feet of public space in the building, resulting in a requirement of 3 parking spaces. The Development Regulations allow for the required off-street parking to be reduced by up to 50% for each on-street space within 500 feet. Ample on-street parking exists within 500 feet of the site to accommodate parking needs generated by the bakery.

The applicants are also seeking a Special Use Permit to allow for operation of a bakery in a district zoned OBD. The Special Use Permit request was originally scheduled for the January 9, 2017 Planning Commission meeting which was cancelled due to lack of quorum. The item is scheduled to be considered at the February 6, 2017 Planning Commission meeting. Any approval of this variance request would be subject to approval of the Special Use Permit request.

The chairman called for questions or comments from the board.

Mr. Payne asked the City Planner to explain what is meant by off-street parking and how the 50% comes into play. Ms. Hurley stating off-street parking would be like a parking lot. On-street parking would be parking along the curb on the street. Therefore, if there is on-street parking you can reduce the number of parking spaces required in a parking lot by up to 50% if there are spaces available on the street.

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 voted in the affirmative; all were in agreement

Vote 5-0

- 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 voted in the affirmative; all were in agreement

Vote 5-0

- 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 voted in the affirmative; all were in agreement

Vote 5-0

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

All board members voted in the affirmative; all were in agreement

Vote 5-0

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

All board members voted in the affirmative; all were in agreement

Vote 5-0

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 restrictions, etc. were recommended.

Chairman Bogner advised that based on board findings and the number of affirmative votes, the Variance Request (2016-21 BZA) passed.

The chairman called the next item on the agenda – **Case No. 2016-22-BZA – 1963 Lecompton Road – Variance Request** – and requested the staff report.

City Planner Julie Hurley addressed the board stating the applicants, Dolli Richardson and Russell Hopper, are requesting a variance from section 4.04 of the adopted Development Regulations to allow an Agricultural Building on a parcel less than two acres.

The subject property is an approximately 1.65 acre lot with a single family home located at 1963 Lecompton Road. The applicant is proposing to construct a 1,200 square foot storage building (30'x40') on the property to be used as an Agricultural Building. The property is zoned R1-25, Low-Density Single Family Residential District. The property is bordered by large residential lots over 2 acres in size and undeveloped land, with dense vegetation to the south. The proposed storage building will be situated at the southwest corner of the lot, maximizing the distance from the nearest residential structure.

Section 4.04 of the Development Regulations allows Agricultural Buildings as follows:

In residential districts an agricultural accessory building not to exceed 1,500 square feet may be permitted on parcels two acres or larger.

The size of the parcel is less than the required 2 acres, thereby requiring a variance to be granted by the Board of Zoning Appeals. The proposed structure would meet all other applicable requirements.

The chairman called for questions or comments from the board.

Mr. Payne asked how much of the agricultural building will be screened by woods from 20th Street view. Russell Hopper, one of the applicants, stated it is not woods but rather high brush back to the south of the property. He further stated there is a drop off which will help screen the building.

Ms. Kem asked if the building materials for the building are similar to the materials for the primary structure. Dolli Richardson, the other applicant, stated the building will match the house. Ms. Hurley further stated the Development Regulations require accessory buildings over a specific size must match the primary structure in color and materials.

Mr. Bates asked what the required rear setbacks are. Ms. Hurley stated the setbacks from the rear and side property line is 3 feet for an accessory building.

Mr. Bogner asked if utilities other than electric will go to the building. Mr. Hopper stated there will be a water line for the hose.

Mr. Bogner asked for clarification that the applicants do not intend on having a home business operating out of this building. Both applicants responded no. Further stating the building will only be used for storage of vehicles, tractors, machinery, etc. and the upper level will store holiday decorations.

With no further questions, the chairman opens the public hearing.

Mr. Bates asked if the elevation of the applicant's property is higher or lower than the elevation of the adjacent property to the east. Ms. Richardson stated the elevation will be the same for the house but there is approximately a 25 foot drop to the area where the proposed building will be installed. She further stated there are trees along the east property line which will screen the building from the neighbors.

With no further questions, 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 voted in the affirmative; all were in agreement

Vote 5-0

- 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 voted in the affirmative; all were in agreement

Vote 5-0

- 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 voted in the affirmative; all were in agreement

Vote 5-0

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

All board members voted in the affirmative; all were in agreement

Vote 5-0

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

All board members voted in the affirmative; all were in agreement

Voted 5-0

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.

Mr. Bates suggested approval should be contingent on placement of the agricultural building as shown on the submitted site plan.

The chairman asked if there were any objections. No objectives were given.

Chairman Bogner stated by his calculation of votes, the recommendation would be to grant the variance with the condition the placement of the agricultural building will be in accordance with the site plan as presented and called for a motion.

Mr. Payne motioned to approve the variance request with the condition the building will be placed according to the site plan presented. The motion was seconded by Mr. Gervasini and carried by a unanimous vote of 5-0.

Finding no other business, the meeting was adjourned.

The meeting adjourned at 7:28 pm.

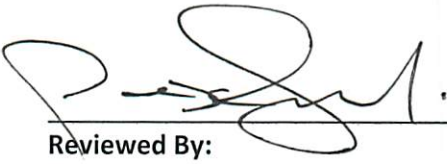
JH:mb

**Board of Zoning Appeals Agenda Item
Variance Request
2017-04-BZA
701 Fawn Creek Street**

MAY 15, 2017



Prepared By:
Julie Hurley
City Planner



Reviewed By:
Paul Kramer
City Manager

SUMMARY:

The applicant is requesting a variance from section 6.08 of the adopted Development Regulations to allow a reduction in the required setback for a fence on a side corner lot.

DISCUSSION:

The subject property is a single family home located at 701 Fawn Creek Street. The applicant is proposing to replace an existing wooden privacy fence on the property. The Development Regulations require a 15' setback for fences on the non-addressed side of a corner lot. The non-addressed side of the subject lot abuts Shrine Park Road, which has a right-of-way width of approximately 86' at this location. Based upon a survey of the property commissioned by the property owner, the existing fence is located just on the inside of the property line, not in observance of the required 15' setback. The fence proposed by the property owner to replace the existing fence would be located 2' inside the property line, requiring a variance of 13'.

The existing fence is considered a nonconforming structure, as it does not meet current standards for setbacks. The Development Regulations allow for the continued existence and maintenance or repair of such structure, but a full removal and replacement necessitates approval of a variance.

Section 6.08 of the Development regulations regarding fences in side yards reads as follows:

On corner lots, both yards adjacent to streets are considered front yards. In this instance, the fence on the addressed side must be erected in accordance with subsection 2.; on the other side a solid fence not exceeding 72 inches in height above the natural contour of the ground may be built with a setback of 15 feet from the property line, or 50 percent of the existing setback if the distance from the house to the property line is less than 15 feet.

The setback of the proposed fence is less than 15', thereby requiring a variance to be granted by the Board of Zoning Appeals. The proposed fence would meet all other applicable requirements.

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.*
 - c) *That the granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents.*
 - 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.*
 - e) *That the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare;*
 - f) *That granting of the variance desired will not be opposed to the general spirit and intent of the Development Regulations.*
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.

ACTION:

Approve or deny the request for a variance from section 6.08 of the Development Regulations to allow a 2' setback for a fence from the side corner lot line for the property located at 701 Fawn Creek Street.

Leavenworth County Kansas



OFFICIAL REPORT



COUNTY OF LEAVENWORTH
 GIS Department
 300 Walnut, Room 212
 Leavenworth, Kansas 66048-2615
 (913) 884-0143
 Facsimile (913) 880-2547

From the State of Kansas, County of Leavenworth
 (913) 433-2447 | Email: jacob@leavenworthcounty.org

DATE: 03-15-17

FULL_PID	SitusAddre	PartyName	PartyAddre
101-11-0-40-01-040.00-0	3200 SHRINE PARK RD, Leavenworth, KS 66048	OAK GOLF INC	Attn: STUNTZ,RICHARD A2101 GREENBRIER DR LAWRENCE, KS 66047
101-11-0-40-01-039.00-0	3806 SHRINE PARK RD, Leavenworth, KS 66048	LOGAN,JERRY L & RUTH ANN	3806 SHRINE PARK RDLEAVENWORTH, KS 66048
101-11-0-40-01-038.01-0	712 FAWN CREEK ST, Leavenworth, KS 66048	KOBLER,BRIAN F & REBECCA J	712 FAWN CREEK STLEAVENWORTH, KS 66048
101-11-0-40-01-038.02-0	716 FAWN CREEK ST, Leavenworth, KS 66048	PORTER, JEFFERY B	716 FAWN CREEK STLEAVENWORTH, KS 66048
101-11-0-40-02-001.00-0	701 FAWN CREEK ST, Leavenworth, KS 66048	PESTOCK,DUNCAN & HEATHER	701 FAWN CREEK STLEAVENWORTH, KS 66048
101-11-0-40-02-002.00-0	705 FAWN CREEK ST, Leavenworth, KS 66048	LEVINE,LAWRENCE A & NANCY B	705 FAWN CREEK STLEAVENWORTH, KS 66048
101-11-0-40-02-003.00-0	709 FAWN CREEK ST, Leavenworth, KS 66048	WILHELM,GARY B & KATHERINE J	9057 HYLAND CREEK RDMINNEAPOLIS, MN 55437-1956
101-11-0-40-02-004.00-0	713 FAWN CREEK ST, Leavenworth, KS 66048	SWEHLA,MICHAEL W & CYNTHIA R STARR	713 FAWN CREEK STLEAVENWORTH, KS 66048
101-11-0-40-02-005.00-0	717 FAWN CREEK ST, Leavenworth, KS 66048	TARCHALA,STEVEN & BRITTANY	717 FAWN CREEK LEAVENWORTH, KS 66048
101-11-0-40-02-024.00-0	702 DEERFIELD ST, Leavenworth, KS 66048	KAMBEITZ,JOSEPH M & BRENDA CRAVENS	702 DEERFIELD ST LEAVENWORTH, KS 66048
101-11-0-40-02-023.00-0	706 DEERFIELD ST, Leavenworth, KS 66048	THRASHER,DAN C & DEEDIE V	706 DEERFIELD STLEAVENWORTH, KS 66048-5541
101-11-0-40-02-022.00-0	710 DEERFIELD ST, Leavenworth, KS 66048	ZIMMERMAN,RICHARD A & CAROL	2208 S 15TH STLEAVENWORTH, KS 66048
101-11-0-40-02-021.00-0	714 DEERFIELD ST, Leavenworth, KS 66048	MC CABE,JOHN D & CAROLINE	714 DEERFIELD STLEAVENWORTH, KS 66048-5541
101-11-0-40-02-020.00-0	718 DEERFIELD ST, Leavenworth, KS 66048	KREUTZER,BART G & M KELLEY	718 DEERFIELD STLEAVENWORTH, KS 66048
101-11-0-40-01-038.29-0	701 DEERFIELD ST, Leavenworth, KS 66048	KRONDAK,WILLIAM J & ANITA M; TRUST	701 DEERFIELD STLEAVENWORTH, KS 66048
101-11-0-40-01-038.28-0	705 DEERFIELD ST, Leavenworth, KS 66048	JOHNSON, KELVIN JEROME	705 DEERFIELD STLEAVENWORTH, KS 66048
101-11-0-40-01-038.27-0	709 DEERFIELD ST, Leavenworth, KS 66048	REICHERT,RYAN JOSEPH & MARICEL T	709 DEERFIELD ST LEAVENWORTH, KS 66048
101-11-0-40-01-038.26-0	713 DEERFIELD ST, Leavenworth, KS 66048	ATWATER,ROBERT L & CHARLOTTE A	713 DEERFIELDLEAVENWORTH, KS 66048
101-12-0-30-02-005.00-0	3817 VALLEY VIEW RD, Leavenworth, KS 66048	LUDWIG, BETTY J	3817 VALLEY VIEW RDLEAVENWORTH, KS 66048
101-12-0-30-03-024.00-0	3808 VALLEY VIEW RD, Leavenworth, KS 66048	CLARY, MARY E	3808 VALLEY VIEW RDLEAVENWORTH, KS 66048
101-12-0-30-03-001.00-0	3805 SHRINE PARK RD, Leavenworth, KS 66048	BUSCH, JAMIE L	3805 SHRINE PARK RD LEAVENWORTH, KS 66048
101-12-0-30-03-023.00-0	3824 VALLEY VIEW RD, Leavenworth, KS 66048	EGLI,JACQUELINE SULLIVAN & RONALD W	3824 VALLEY VIEW RDLEAVENWORTH, KS 66048
101-12-0-30-03-002.00-0	3821 SHRINE PARK RD, Leavenworth, KS 66048	COOPER,MERLE D JR & FRANCES M	3821 SHRINE PARK RDLEAVENWORTH, KS 66048
101-12-0-30-03-003.00-0	3909 SHRINE PARK RD, Leavenworth, KS 66048	RYAN,EUGENE D JR & CAROLYN	3909 SHRINE PARK RDLEAVENWORTH, KS 66048
101-12-0-30-02-004.00-0	3735 SHRINE PARK RD, Leavenworth, KS 66048	EULER, MERLE R FAMILY TRUST	3019 GRAND AVELEAVENWORTH, KS 66048

**LETTER OF INTENT
VARIANCE APPLICATION
CITY OF LEAVENWORTH, KANSAS**

Applicants and property owners, Duncan and Heather Pestock (the “Owners”), hereby request variance to the front yard setback requirement for solid fences as set forth by the City of Leavenworth Development Regulations, in order to construct a wooden privacy fence located at 701 Fawn Creek Street, Leavenworth, Kansas, Deerfield Subdivision plat, with Parcel ID 1011104002001000 (the “Property”). Because the Property is located at the corner of Fawn Creek Street and Shrine Park Road, it is classified as a corner lot. Per city Development Regulations, corner lot yards adjacent to each street are considered front yards, and solid fences in the non-addressed front yard must be erected with a 15-foot setback from the lot property line, or 50 percent of the existing setback if the distance from the house to the property line is less than 15 feet¹. It is in the non-addressed front yard that the Property Owners seek a property line setback variance of 13 feet, so that an existing wooden privacy fence can be demolished and a replacement fence be erected in close proximity to its current location.

Background

The Property, which was acquired in good faith by the Owners in April of 2008, includes the existing wooden privacy fence that spans from the north-east corner of the Property house to the north-east corner of the Property lot. From there, the fence then extends towards the south-east corner of the Property lot, and is both situated inside of and generally following the lot’s east property line. It is furthermore noted that the north-east to south-east portion of the privacy fence was at one time “shared” and maintained as a single continuous span between the Property and the property lot directly to the south, which currently also maintains a now-separated portion of the fence within its own lot boundaries. While the existing privacy fence does not follow current setback

¹ Leavenworth, Kansas, 2016 Development Regulations art. 6, § 6.08(C)(3)(b)(1). (2016).

regulations entailed by the City of Leavenworth Development Regulations, it is believed that its initial construction at the time (completed sometime prior to November of 2005²) may have not been restricted by a 15-foot property line setback requirement, and should herein be considered an existing Nonconforming Structure.

Over the years, much of the existing privacy fence has fallen into disrepair (to include warped and splitting fence posts and rails), and it is the desire of the Property Owners to demolish the existing fence and construct a new fence in close proximity to its current location. On April 20, 2016, the Property Owners initially approached the City of Leavenworth for procurement of a building permit for construction of a new privacy fence that would follow the exact placement and footprint of the existing fence. Upon initial site plan review by City of Leavenworth staff, it was determined that a.) the existing fence may in fact reside outside of the lot's east property line and b.) the erection of a new privacy fence in this yard would require placement at least 15 feet setback from the lot's property line, per current city development regulations. As a first step and acting upon recommendation of the City of Leavenworth's City Planner, a full boundary survey of the Property was commissioned by the Property Owners so that the exact Property lot boundaries could be determined. Since completion of the boundary survey (during which, it was determined that the existing fence does in fact reside inside of the lot's east property line³), planning for erection of a replacement privacy fence has recommenced.

For reasons to be detailed in the findings that follow, it is the explicit need of the Property Owners that a replacement privacy fence be allowed construction closer to the lot's east property line than is currently permitted by City of Leavenworth Development Regulations. It is realized by the Property Owners, as such, that a variance is required for doing so.

² "701 Fawn Creek Street, Leavenworth, Kansas." 39°16'46.92" N, 94°55'07.01" W, Eye Altitude 1120 ft. Google Earth Pro V7.1.5.1557. 11/2/2005. March 5, 2017.

³ "Certificate of Survey, Lot 30, DEERFIELD SUBDIVISION, City of Leavenworth, Leavenworth County, Kansas." Herring Surveying Company. May 27, 2016.

Request for Variance

A variance of 13 feet from the 15-foot property line setback requirement for solid fences in corner lot non-addressed front yards, as detailed by Article 6, Section 6.08(C)(3)(b)(1) of the City of Leavenworth Development Regulations, is formally requested by the Property Owners to allow for erection of a solid fence 2 feet from the lot's east property line.

Justification of Variance and Favorable Findings

The 13-foot setback variance requested should be considered minor, and arises from conditions that are unique to the Property and that are not ordinarily found in the same zone/district; these conditions furthermore were not created by actions of the current Property Owners. As previously remarked, unique to the Property is an existing wooden privacy fence that was erected sometime prior to the Property's acquisition in 2008, and is believed to have been completed by its previous owners acting in good faith and following City of Leavenworth Development Regulations mandated for the time. It should furthermore be noted that the Property's east property line (inside of which the existing privacy fence is located) abuts a 10-foot area denoted as City Right of Way, a characteristic believed to be somewhat unique among other lots typical to the Deerfield Subdivision. While not particularly unique to the zone/district unto itself, a wooden playset (Semi-Permanent Structure) and two ornamental trees that are part of the originally-procured Property reside in close proximity to the existing fence. In constructing a replacement privacy fence that is setback 15 feet from the east property line, the ornamental trees would then reside outside of the fence-confined yard space, and the wooden playset and its cement foundation blocks would need to be either completely moved or demolished (as the 15-foot property line setback intersects its current location). Because the existing ornamental trees and playset continue to be maintained, utilized, and enjoyed within the fence confines by the current Property Owners and their family, it is realized that a variance to existing fence setback regulations is required, should their placement and proximity in relation to a replacement privacy fence and the Property house be maintained.

The granting of the 13-foot setback variance will not adversely affect the rights of adjacent property owners or residents. In fact, the Owners have met with several other residents whose lots are adjacent to the Property, in order to express intent and share plans to demolish the existing fence and erect a new one in close proximity. Statements of support, in both the construction of a replacement privacy fence and the granting of a variance to the existing property line setback requirement, were obtained from residents.

The strict application of the provisions set forth by the City of Leavenworth Development Regulations, from which the 13-foot setback variance is requested, would substantiate unnecessary hardships upon the Property Owners. Because the existing privacy fence is required and utilized as both a physical safety barrier and for sound/vision screening between vehicle and foot traffic along Shrine Park Road and the Property, a significant decrease in practical, useable space that has been maintained, utilized, and enjoyed by the Property Owners and their family would result; subsequently of concern is that the decrease in usable, fence-confined yard space may warrant unnecessary property value decreases during future property value assessments. The hardship in either moving or demolishing the existing wooden playset, whose position is intersected by the 15-foot property line setback, as well as no longer being able to maintain or enjoy the Property's two ornamental trees within the fence-confined yard, are also noted. A property line setback variance of 13 feet for a new fence would ensure that the ornamental trees still remain inside of the Property fence line for ease of care and maintenance, and that the wooden playset and its cement foundation blocks do not require being moved or demolished (all the while maintaining an area just large enough between the fence and wooden playset for both safety and grounds maintenance by the Property Owner's rideable lawn tractor).

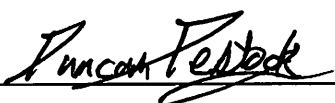
The 13-foot setback variance requested will not adversely affect the health, safety, morals, order, convenience, prosperity or general welfare of the public. A fence that spans the property line at a setback of two feet ensures that an adequate Clear Sight Triangle continues to be observed and maintained for vehicles stopped at the intersection of Fawn Creek Street and Shrine Park Road. Furthermore, the 10-foot City

Right of Way area to the east of the lot property line, which includes a publicly-accessible and used sidewalk, is not encroached upon and continues to be maintained between the Property and Shrine Park Road.

The 13-foot setback variance requested is not opposed to the general spirit and intent of the City of Leavenworth Development Regulations. It is believed that the requested setback variance would actually ensure that visual harmony with the south property lot's privacy fence (which spans north-south and is placed within the same west-east footprint of the Property's existing privacy fence) continues to be closely maintained. On the contrary, it is believed that a replacement privacy fence constructed with a property line setback greater than two feet would result in a fence profile that does not conform/align with neighboring structures to the south of the lot, and which subsequently could be viewed as being out of place and/or is in opposition to accepted and tasteful development practices typical to other properties in the area.

As such, the Property Owners request that the Zoning Board of Appeals of the City of Leavenworth grant the variance as requested. A site plan, copy of the official boundary survey drawing of the Property, supporting photographs, and statements from adjacent property owners in support of the requested variance are attached hereto.

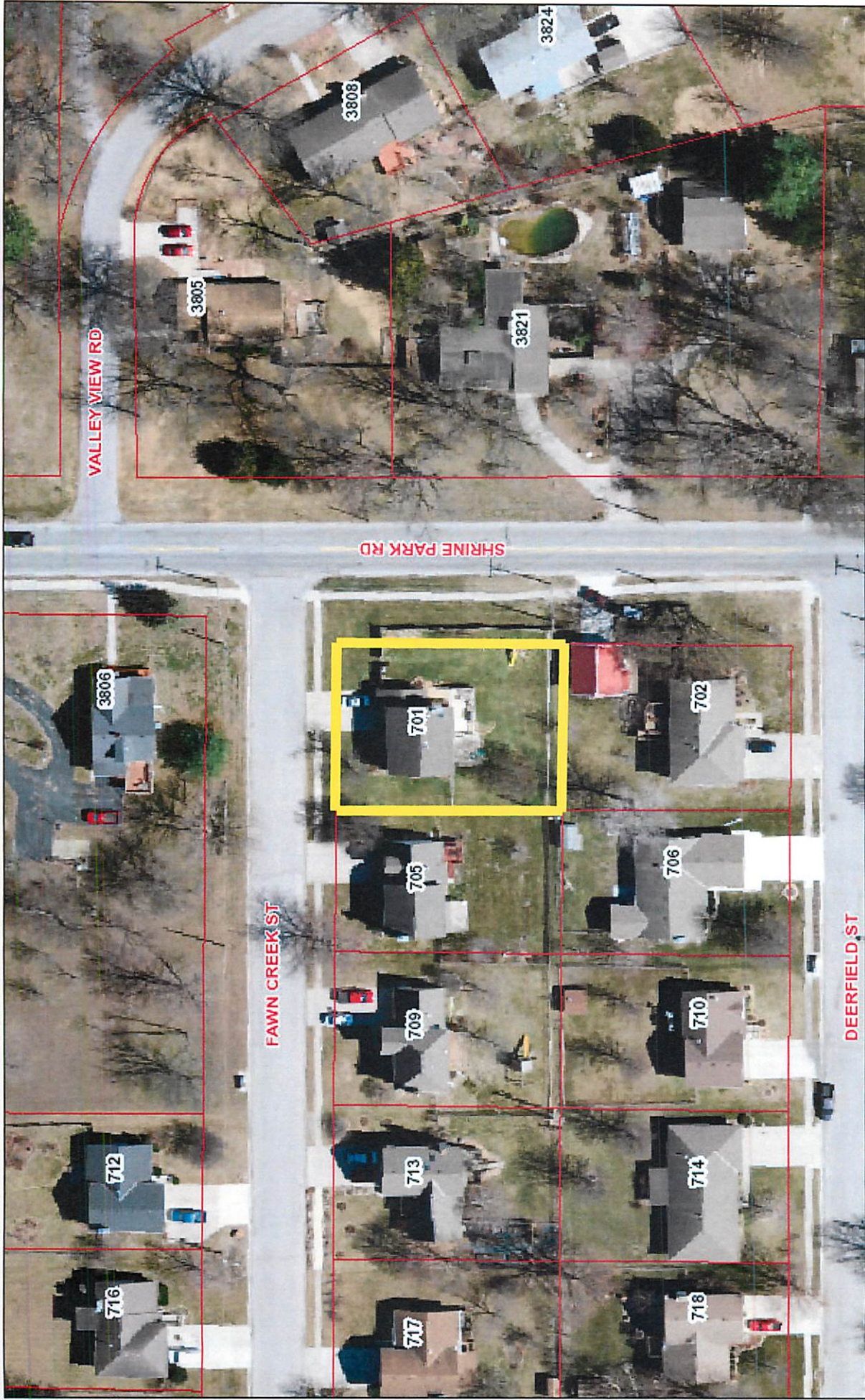
Respectfully submitted,

By: 
Duncan M. Pestock, Property Owner

By: 
Heather R. Pestock, Property Owner

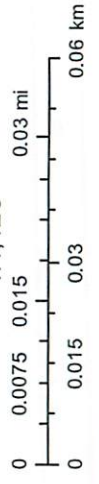
701 Fawn Creek Street
Leavenworth, Kansas 66048
(913) 680-1243

701 Fawn Creek Street



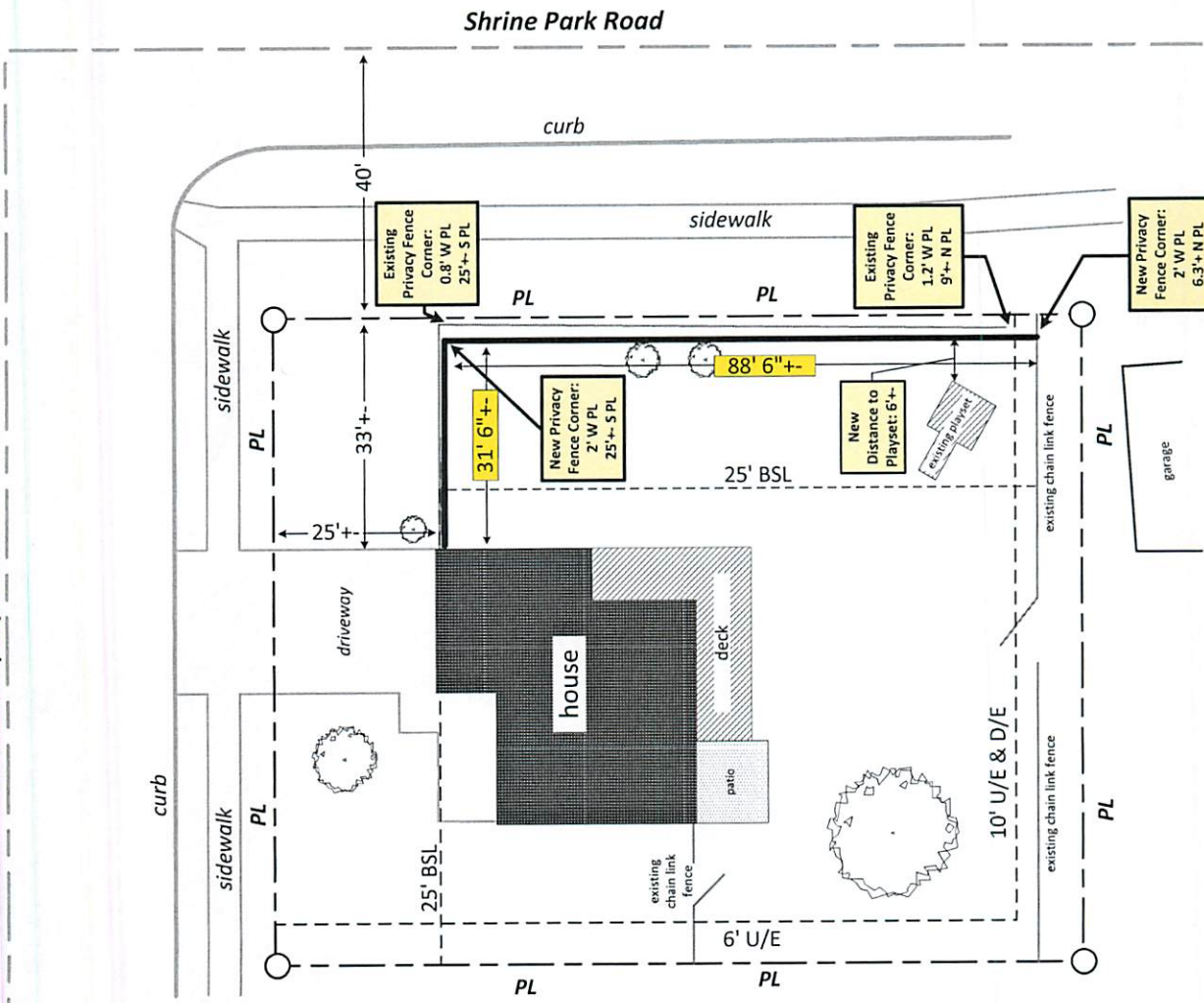
May 11, 2017

1:1,128



City of LV GIS, 2017
LV GIS Dept 09/23/2016

Fawn Creek (60') Street



Notes:

Materials List:

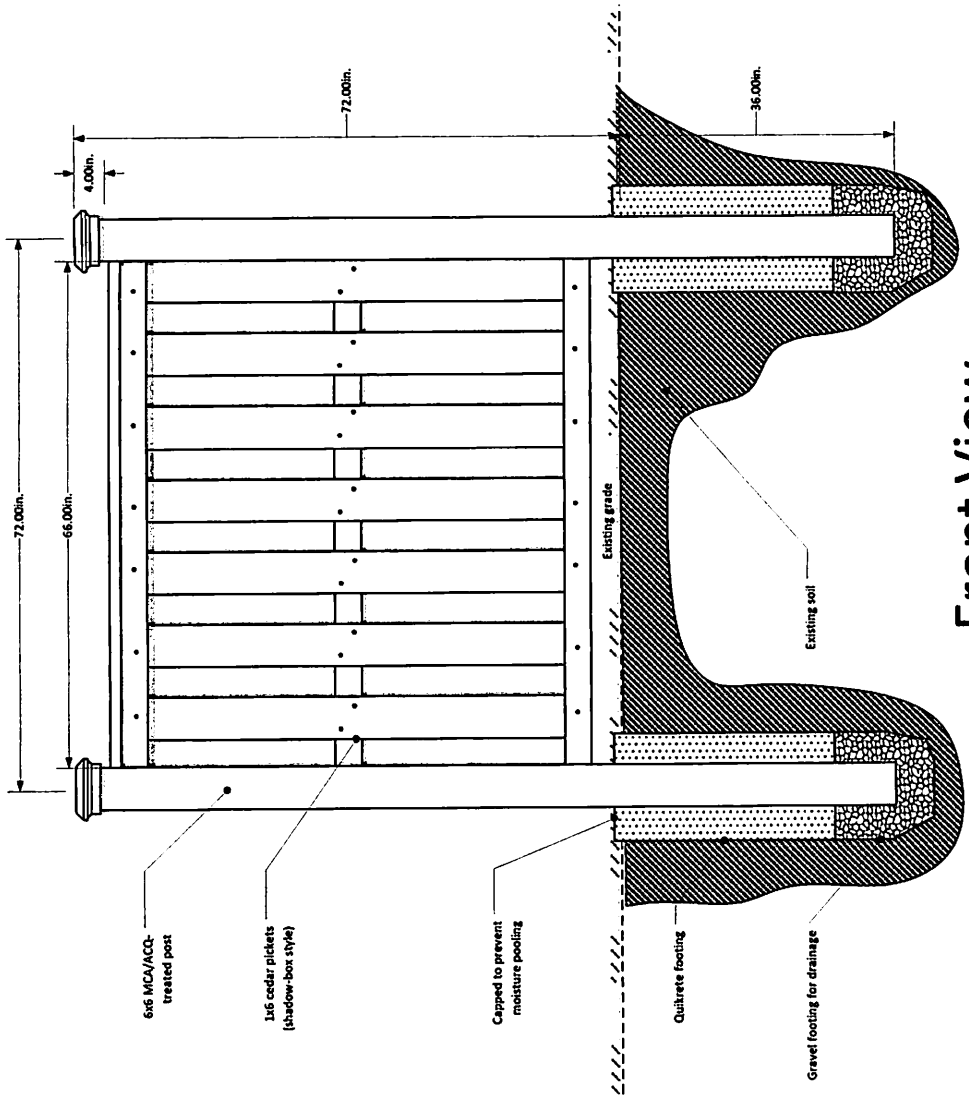
- 6x6" MCA/ACQ-treated posts (fence posts)
- Quikrete concrete mix (fence post holes/footings)
- 2x4" fence/joist hangers (fence panel rails)
- Coated Deck Screws (fence panel construction)
- 2x6" MCA/ACQ-treated lumber (fence panel rails)
- 2x6" MCA/ACQ-treated lumber (fence panel caps)
- 5/8x6" cedar fence pickets (fence panel pickets)
- 1x4" MCA/ACQ-treated lumber (fence panel trim)

Job Summary

- Demo of existing privacy fence panels
- Demo of existing 4x4" fence posts
- Install new MCA/ACQ-treated 6x6" fence posts at new locations (using denoted corner references)
- **NOTE: Assumes 2' setback (13' variance) for east front yard**
- Install new 6" privacy fence sections ("shadowbox", stepped) using cedar and MCA/ACQ-treated pine

Project: 6' Wooden Privacy Fence Replacement	Date: 3/13/2017
701 Fawn Creek St. Leavenworth, KS 66048	
Presentation: Site Plan	Sheet: 1
Prepared By: Duncan M. Pestock	





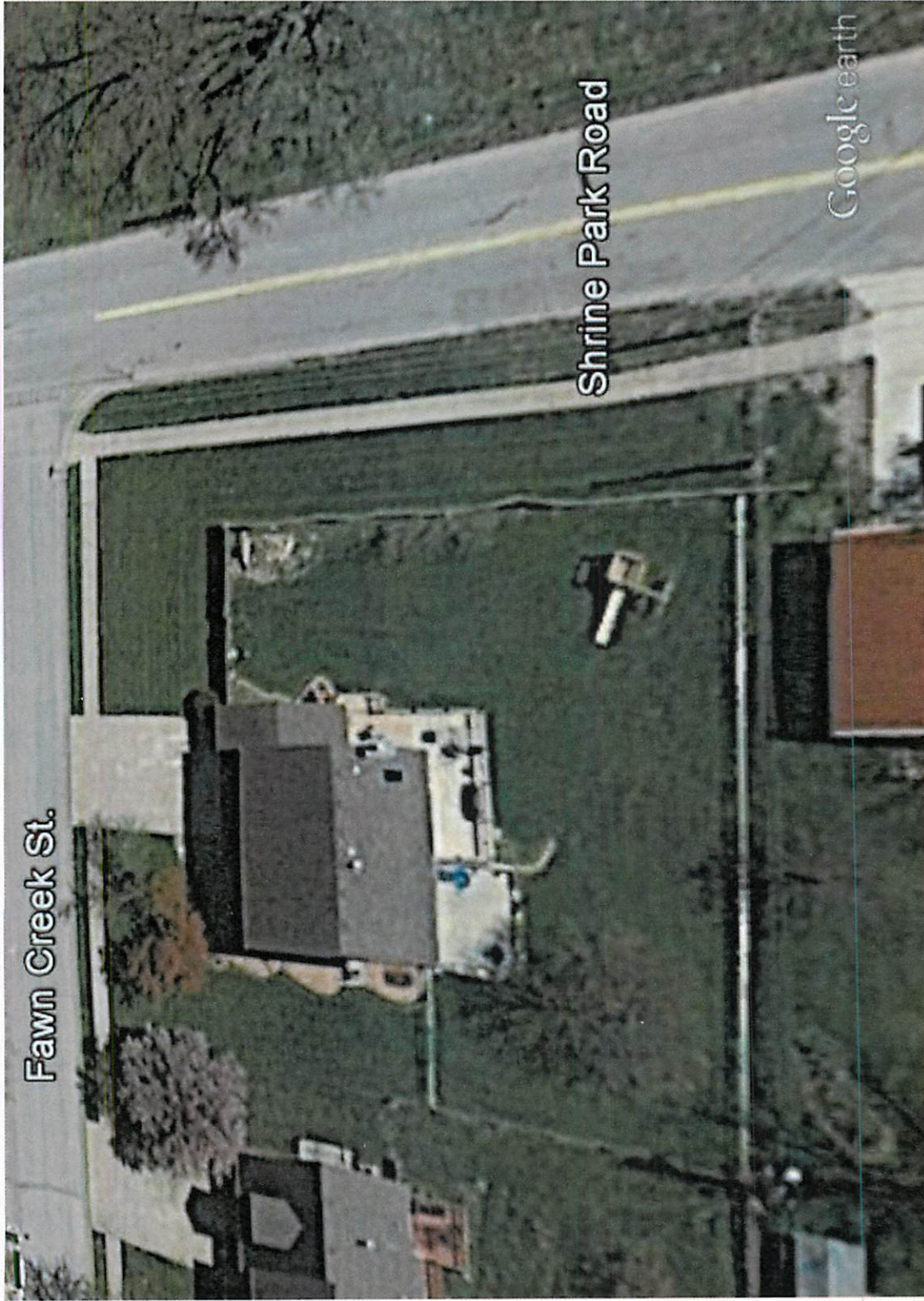
Front View

0 9.6 16 32



Scale in inches

Project: 6' Wooden Privacy Fence Replacement	
701 Fawn Creek St. Leavenworth, KS 66048	
Presentation: Proposed Fence Section (Typical) Detail	Date: 3/13/2017
Prepared By: Duncan M. Pestock	Sheet: 2



"701 Fawn Creek Street, Leavenworth, Kansas." 39°16'46.54" N 94°55'07.24" W, Eye Altitude 999 ft. Google Earth Pro V7.1.5.1557. 3/27/2016. March 7, 2017

NOTE: Shows existing privacy fence as of 3/27/2016

Project: 6' Wooden Privacy Fence Replacement 701 Fawn Creek St. Leavenworth, KS 66048	Date: 3/13/2017
Presentation: Property Birds-Eye View (3/27/2016)	Sheet: 3
Prepared By: Duncan M. Pestock	

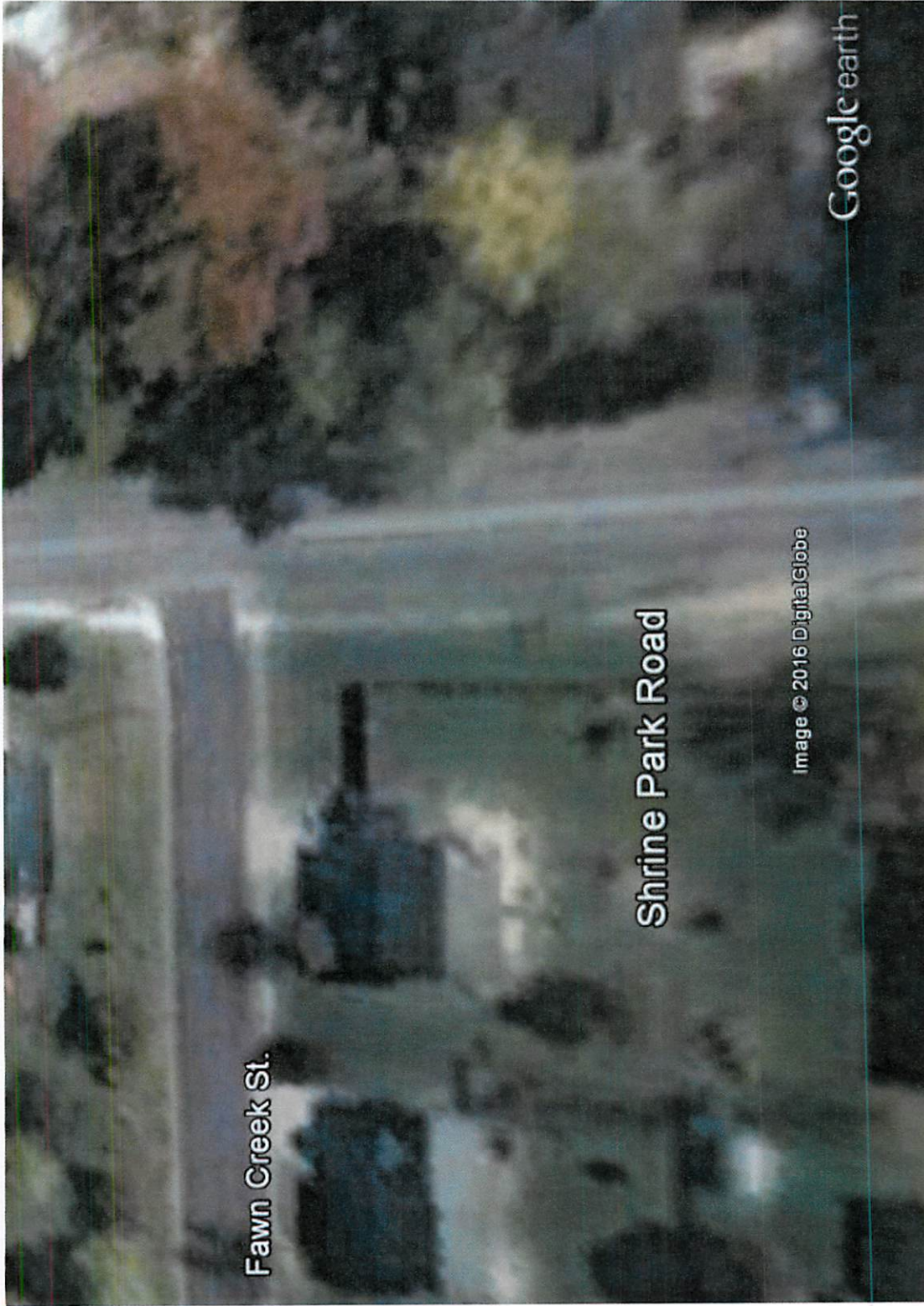


Image © 2016 DigitalGlobe

"701 Fawn Creek Street, Leavenworth, Kansas." 39°16'46.81" N 94°55'06.14" W, Eye Altitude 1096 ft. Google Earth Pro V7.1.5.1557. 11/02/2005. March 7, 2017

NOTE: Shows existing privacy fence as of 11/02/2005

Project: 6' Wooden Privacy Fence Replacement	
701 Fawn Creek St. Leavenworth, KS 66048	
Preparation: Property Birds-Eye View (11/02/2005)	Date: 3/13/2017
Prepared By: Duncan M. Pestock	Sheet: 4



Project: 6' Wooden Privacy Fence Replacement

701 Fawn Creek St. Leavenworth, KS 66048

Presentation: Existing Privacy Fence Condition

Date: 3/13/2017

Prepared By: Duncan M. Pestock

Sheet: 5



Project: 6' Wooden Privacy Fence Replacement 701 Fawn Creek St. Leavenworth, KS 66048	
Presentation: Existing Privacy Fence Condition	Date: 3/13/2017
Prepared By: Duncan M. Pestock	Sheet: 6



Project: 6' Wooden Privacy Fence Replacement 701 Fawn Creek St. Leavenworth, KS 66048	Date: 3/13/2017
Presentation: Existing Privacy Fence Condition	
Prepared By: Duncan M. Pestock	Sheet: 7



Project: 6' Wooden Privacy Fence Replacement
701 Fawn Creek St. Leavenworth, KS 66048

Presentation: FOV South, Fawn Creek/Shrine Park

Date: 3/13/2017

Prepared By: Duncan M. Pestock

Sheet: 8



Project: 6' Wooden Privacy Fence Replacement 701 Fawn Creek St. Leavenworth, KS 66048	
Presentation: FOV South, Fawn Creek/Shrine Park	Date: 3/13/2017
Prepared By: Duncan M. Pestock	Sheet: 9



Existing Property Line
(per 2016 Boundary Survey)

Proposed Fence Line
(assumes 2' setback from PL)

Project: 6' Wooden Privacy Fence Replacement 701 Fawn Creek St. Leavenworth, KS 66048	Date: 3/13/2017
Presentation: NE Property Line/Proposed Fence Line	Sheet: 10
Prepared By: Duncan M. Pestock	



Existing Property Line
(per 2016 Boundary Survey)

Proposed NE Corner
Post Placement

Proposed Fence Line
(assumes 2' setback from PL)

Project: 6' Wooden Privacy Fence Replacement 701 Fawn Creek St. Leavenworth, KS 66048	Date: 3/13/2017
Presentation: NE Property Line/Proposed Fence Line	Sheet: 11
Prepared By: Duncan M. Pestock	



Property Marker

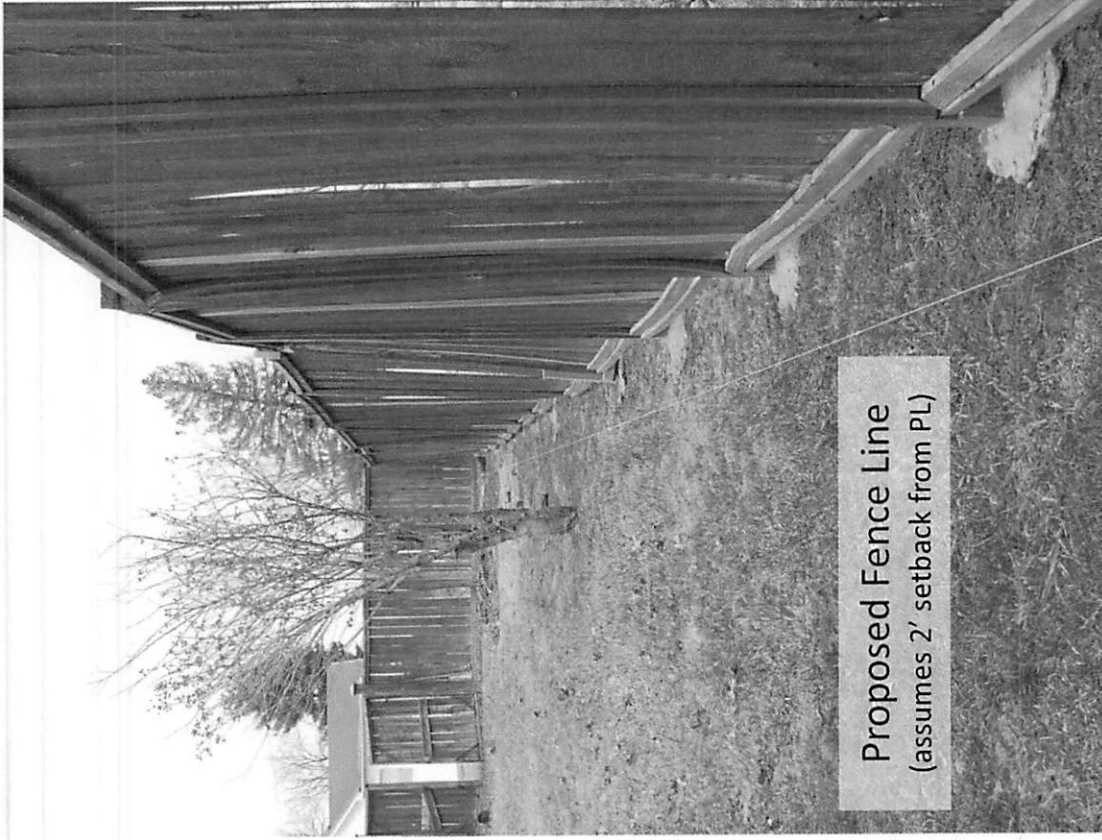
Project: 6' Wooden Privacy Fence Replacement 701 Fawn Creek St. Leavenworth, KS 66048	
Presentation: Existing NE Property Line Marker	Date: 3/13/2017
Prepared By: Duncan M. Pestock	Sheet: 12



Project: 6' Wooden Privacy Fence Replacement 701 Fawn Creek St. Leavenworth, KS 66048	Date: 3/13/2017
Presentation: Proposed Fence Line (NE Corner Inside)	
Prepared By: Duncan M. Pestock	Sheet: 13



Project: 6' Wooden Privacy Fence Replacement 701 Fawn Creek St. Leavenworth, KS 66048	
Presentation: Proposed Fence Line (SE Corner)	Date: 3/13/2017
Prepared By: Duncan M. Pestock	Sheet: 14



Proposed Fence Line
(assumes 2' setback from PL)

Project: 6' Wooden Privacy Fence Replacement 701 Fawn Creek St. Leavenworth, KS 66048	Date: 3/13/2017
Presentation: Proposed Fence Line (inside)	
Prepared By: Duncan M. Pestock	Sheet: 15



Project: 6' Wooden Privacy Fence Replacement 701 Fawn Creek St. Leavenworth, KS 66048	Date: 3/13/2017
Presentation: Proposed Fence Line & Existing Playset	Sheet: 16
Prepared By: Duncan M. Pestock	



Project: 6' Wooden Privacy Fence Replacement 701 Fawn Creek St. Leavenworth, KS 66048	Date: 3/13/2017
Presentation: Proposed Fence Line & Existing Playset	
Prepared By: Duncan M. Pestock	Sheet: 17

3/4/17

To Whom It May Concern:

We are fine with the Pestock's at 701 Faun Creek placing their fence within 2 feet of where it currently is or moving it as needed.

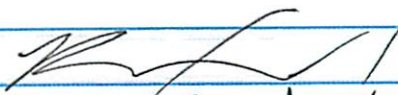
Kelsey Busch

Kelsey Busch
3805 Shrine Park Rd
Leavenworth, KS 66048
913-775-1812

3-24-17

To whom it may concern,

We have no no concerns with
the new placement of the Pestock's new
Fence.

 Kambeitz
702 Deerfield St
Leavenworth KS 66048
785-410-3178

2-19-17

I Jerry Logan Living at 3806
Shrine Park Rd Leav KS would like
to state that I Don't mind a
fence Being put in at The Residence
of Mr + Mrs Duncan Pestook 701
Fawn Creek Leav, KS.

Jerry Logan

March 15, 2017

We approve of the fence the
Pestock's have planned to build,

Nancy and Chip Levine
705 Fawn Creek St
Lawen worth KS 66048