



BOARD OF ZONING APPEALS MINUTES
MONDAY, May 15, 2017, 7:00 P.M.
COMMISSION ROOM, CITY HALL
LEAVENWORTH, KANSAS

The Leavenworth Board of Zoning Appeals (BZA) met in regular session on Monday, May 15, 2017. It was determined a quorum was met with all board members present: Mike Bogner, Ron Bates, Dick Gervasini, Kathy Kem, and Jan Horvath. Staff members City Planner Julie Hurley and Administrative Assistant Michelle Baragary were present.

Chairman Bogner welcomed new board member Jan Horvath.

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 23, 2017. As there were no comments or changes, Mr. Gervasini 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 – **Case No. 2017-04 BZA – 701 Fawn Creek Street – Variance Request** - and requested the staff report.

City Planner Hurley addressed the board stating the applicant, Duncan M. Pestock, 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.

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.

The chairman called for questions or comments from the board.

Mr. Gervasini asked if the City has any master plan to widen Shrine Park Road. Ms. Hurley responded the City currently does not have any plans to widen Shrine Park Road.

With no further questions or comments from the board, the chairman opened the public hearing.

Jim Cope (722 Deerfield St) approached the board to speak in favor of the variance request. Furthermore, staff received four letters from neighboring property owners who also had no concerns with the variance request.

Mr. Gervasini asked if the property owner intends on replacing the gate in the front of the property and if the gate is compliant with the current setback. Mr. Pestock stated he does plan on replacing the gate in the front. Ms. Hurley stated the gate is compliant with the current Development Regulations front setback.

Ms. Kem asked if one of the letters submitted by neighboring property owners were from adjacent properties to the subject property. Ms. Hurley stated the property owners at 702 Deerfield St and 705 Deerfield St both submitted letters in favor of the variance request.

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 conditions or restrictions were recommended.

Chairman Bogner called for a motion to approve the variance. Mr. Bates moved to approve the variance, seconded by Mr. Gervasini and approved by a unanimous vote. The Variance Request 2017-04 BZA passed by a unanimous vote (5-0).

Finding no other business, the meeting was adjourned.

The meeting adjourned at 7:15 pm.

JH:mb