LEAVENWORTH BOARD OF ZONING APPEALS

MONDAY, March 16, 2020 – 6:00 P.M. COMMISSION ROOM, CITY HALL LEAVENWORTH, KANSAS

AGENDA

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1. Roll Call/Establish Quorum

2. Approval of Minutes: December 16, 2019 Action: Motion

OLD BUSINESS:

None

NEW BUSINESS:

1. 2020-03 BZA – 4824 S. 4TH STREET

Hold a public hearing for Case No. 2020-03 BZA, wherein the applicant, LEV4 LLC, is requesting a variance from Article 8, Section 8.11.D of the adopted Development Regulations to allow a freestanding sign in excess of 15' in height for a property zoned GBD, General Business District.

2. ELECTION OF OFFICERS

ADJOURN



BOARD OF ZONING APPEALS MINUTES MONDAY, December 16, 2019, 6:00 P.M. COMMISSION ROOM, CITY HALL LEAVENWORTH, KANSAS

The Leavenworth Board of Zoning Appeals (BZA) met Monday, December 16, 2019. It was determined a quorum was met with the following board members present: Ron Bates, Jan Horvath and Kathy Kem. Mike Bogner and Dick Gervasini were absent. Staff members City Planning Director Julie Hurley, City Planner Jacquelyn Porter and Administrative Assistant Michelle Baragary were present.

Acting Chair Kathy Kem called the meeting to order at 6:00 p.m. and called for the first item on the agenda – approval of minutes from November 18, 2019. Mr. Bates moved to accept the minutes as presented, seconded by Mr. Horvath and approved by a vote of 3-0.

Acting Chair Kem called for the next item on the agenda — Case No. 2019-14 BZA — 1400 SANDERS — Variance Request - and requested the staff report.

Planning Director Julie Hurley addressed the board stating this item was tabled at the November 18, 2019 BZA meeting due to a tie vote.

The applicants, James and Tammy Pike, are requesting a variance from section 4.04 of the adopted Development Regulations to allow a detached garage larger than 1,200 square feet. The subject property is a 1.01 acre corner lot zoned R1-6, High Density Single Family Residential District, with an existing single-family home on the lot. The subject property is surrounded by other single-family homes of a similar size and nature. The applicants also own three additional lots directly to the north of their home totaling approximately 3.5 acres. The additional lots are separated from the subject property by the right-of-way for Sherman Avenue, which is not currently developed as a street, but is dedicated right-of-way.

Section 4.04 of the Development Regulations states that for single-family residences, detached garages on parcels one acre or larger may not exceed 1,200 square feet. The applicants are proposing to install a 2,400 sqft. Detached garage on their property. Construction of any detached garage will require installation of a paved driveway, regardless of the size of the garage. The Development Regulations allow for a total of two detached structures on a lot, both of which could be a maximum of 1,200 sqft.

During the November 18, 2019 BZA meeting, board members inquired about the number of similar requests that have been heard by the board. Staff identified the following six cases since 2014:

2015-12-BZA, 3532 Lakeview, request to allow a 2,000 sqft storage building on an 8 acre lot. APPROVED.

2016-08 BZA, 2918 Virginia Circle, request a 1,500 sqft storage building on a .4 acre lot. DENIED.

2016-09 BZA, 1530 Kansas, request a 1,500 sqft storage building on a .4 acre lot. DENIED.

2016-22-BZA, 1936 Lecompton, request a 1,200 sqft storage building on a 1.65 acre lot. APPROVED.

2017-10-BZA, 771 Michigan, request to allow a 1,396 sqft garage on a .49 acre lot. DENIED.

2017-14-BZA, 4700 Lakeview, request to allow a 2,208 sqft agricultural building on a 13.66 acre lot. APPROVED.

With no questions about the staff report, Acting Chair Kem opened the public hearing.

The applicant, James Pike, approached the board stating the Development Regulations allows for two separate buildings but he does not feel like that would look better than one larger building. He already has a paved pad for the 2,400 sqft building.

Ms. Hurley stated there is no limit on the size of an impervious pad that he can install. The Development Regulations only limits the paved area to 50% of the lot coverage. Therefore, he could technically pave half of his lot if he chose to.

Ms. Hurley further stated at the last meeting a neighbor spoke in favor of the application. Included in the agenda packet are several signatures from neighbors supporting the application.

Mr. Horvath asked how large the paved pad is.

Mr. Pike responded the pad is 40' x 60'.

With no further comments, Acting Chair Kem closed the public hearing and asked for discussion among the board members.

Mr. Bates stated the problem he has always had was with the first condition, which is whether or not the condition is unique to the property. His reasoning for voting in the affirmative at the last meeting is not just the 1.1 acre size of the lot but the applicant also owns the property to the north and some to the west, which is over 4.5 acres total. Combine that with the problems in that area with transients and theft make it a unique condition to the property and not something the applicant created. To protect his property, Mr. Pike has requested the variance.

Ms. Kem stated she also struggles with the first condition stating if there were ever a place for a large garage, this property would be it; except, she does not find owning more land a unique circumstance. She further believes the condition is created by the applicant.

Mr. Horvath stated he was influenced by the neighbor who provided comments about how the applicant cares for and improves his property and how the improvements have increased the value of the property. Furthermore, Mr. Horvath believes the theft that has occurred at the applicant's property becomes a condition that the property owner would need to respond to in order to protect his property. Mr. Horvath does not believe the additional property owned by the applicant should be considered.

With no further discussion among the commissioners, Acting Chair Kem 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)

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 the 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.

Vote 2-1 Ms. Kem disagreed.

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

Vote 3-0
All board members voted in the affirmative.

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.

Vote 2-1 Ms. Kem disagreed.

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

Vote 3-0
All board members voted in the affirmative.

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

Vote 2-1

Ms. Kem disagreed.

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 the Development Regulations.

Acting Chair Kem stated the variance is approved to allow a 2,400 sqft detached garage located at 1400 Sanders Street.

Acting Chair Kem called for the next item on the agenda – Case No. 2019-17 BZA – 1205 FRANKLIN STREET – Variance Request – and requested the staff report.

City Planner Jackie Porter stated the applicant, Linda Skeen, 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 1205 Franklin Street. The applicant is proposing to replace an existing chain link fence with slats 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 property abuts Quincy Street, which has a right-of-way width of approximately 62' at this location. The existing fence is located along the north property line. The fence proposed is going to extend the fence along the property line to the West to be flush with the front of the building, and to the East to the back of the accessory building. The fence proposed by the property owner is to replace and expand the existing fenced area on the property line, requiring a variance of 15'.

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, replacement, and expansion 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 zero feet, thereby requiring a variance to be granted by the Board of Zoning Appeals. The proposed fence would meet all other applicant requirements.

Planning Director Julie Hurley stated the applicant was issued a fence permit four or five years ago and at the time that permit was issued in error and a variance should have been required at that time. As stated, the existing fence is allowed to stay as a permit was issued for it at that time.

Ms. Kem asked if the accessory building is legal.

Ms. Hurley stated that is another situation. However, since the shed has been there for quite some time, it is considered legal non-conforming.

Mr. Bates asked if the fence is being proposed to be moved closer to the street.

Ms. Hurley stated the fence will be extended further along Quincy Street toward the west. The chain link fence with the slats would be replaced with a privacy fence.

Ms. Porter stated this is particular regulation will be reviewed for possible changes.

Ms. Hurley stated the intent for the setback for fences is to keep the fence away from the curb line on a corner lot. As the Development Regulations are currently written, it does not take into account the areas where there is an exceptionally wide right-of-way.

Ms. Kem asked if staff has a suggested setback from the lot line in the new Development Regulation proposal.

Ms. Hurley stated the proposal has not been written yet. She believes the intent is to keep the fence 15' from the pavement and out of any sight distance triangles at a corner. In this particular location, the property line is already about 24' from the pavement.

With no questions about the staff report, Acting Chair Kem opened the public hearing.

The applicant, Linda Skeen, approached the board stating through the years she has slowly made improvements to the house and property. There is a creek in the rear part of the property. When it floods, water comes up to the back part of the house. During rainstorms, she is forced to move the lawnmower and bikes to higher ground to avoid the flooding. Furthermore, there has been several times she has found syringes near the back corner. She has a six-year old, who plays outside and an extended privacy fence will help with keeping the child and her property safe.

Ms. Skeen provided a picture of the front view of the home showing the new fence posts. It shows the fence meeting at the front of the house. In no way is the fence blocking the view of traffic.

Mr. Horvath asked for clarity that the proposed fence will not exceed the property line.

Ms. Skeen responded in the affirmative.

Mr. Horvath asked staff if the proposed fence goes out to the current property line, will there still be a 15' distance between the current property line and proposed fence and the street.

Ms. Hurley stated there is approximately 24' between the street and the proposed fence.

With no further questions, Acting Chair Kem closed the public hearing and called for discussion amongst board members.

With no further discussion among the board members, Acting Chair Kem 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)

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 the 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.

- 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.

Vote 3-0

All board members voted in the affirmative.

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

Vote 3-0

All board members voted in the affirmative.

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.

Vote 3-0

All board members voted in the affirmative.

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

Vote 3-0

All board members voted in the affirmative.

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

Vote 3-0 All board members voted in the affirmative.

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 the Development Regulations.

Acting Chair Kem stated the variance is approved to allow a 15' reduction in the required setback for a fence on a side corner lot located at 1205 Franklin Street.

Acting Chair Kem called for a motion to adjourn. Mr. Bates moved to adjourn, seconded by Mr. Horvath and approved by a vote of 3-0.

The meeting adjourned at 6:30 p.m.

JH:mb

BOARD OF ZONING APPEALS AGENDA ITEM VARIANCE REQUEST 2020-03-BZA 4824 S. 4TH STREET

MARCH 16, 2020

Prepared By:

Julie Hurley

Director of Planning and Community Development

Reviewed By:

Paul Kramer City Manager

SUMMARY:

The applicant is requesting an appeal to allow a freestanding sign in excess of 15' in height for a property zoned GBD, General Business District

DISCUSSION:

The property located at 4824 S. 4th Street, site of the former Payless Shoe Source store, is being redeveloped as a Starbucks. As part of the redevelopment, the existing building will be demolished to allow for construction of a new building, and the existing freestanding sign for the former Payless Shoe Source store will be removed.

Section 8.11 of the Development Regulations restricts freestanding signs in the GBD zoning district to a height of 15', with the potential for an additional 10' in height, up to a maximum of 25', with additional setback requirements as follows:

Free standing signs shall not exceed 15 feet in height. Where a sign is located across the street from a property zoned for commercial or industrial uses, the height of the sign may be increased to a height of 25 feet, provided that the nearest edge of the sign is setback from the property line 2 feet for each additional 1 foot in height.

Based on drawings submitted by the applicant, the proposed sign will be placed approximately 15' from the eastern property line, which would allow for an additional 7.5' in height, up to 22.5'. The existing Payless Shoe Source sign is 22' in height.

Given the location of the property with the proximity to other surrounding signs, utility poles, buildings, vehicles, and adjacent billboard, the applicant is requesting the variance to allow for maximum visibility for the proposed Starbucks signage.

BOARD OF ZONING APPEALS AUTHORITY:

The Board's authority in this matter is contained in Article XV (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.
 - b) That the granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents.
 - 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.
 - That the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare;
 - e) 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 appeal to allow installation of a freestanding "Starbucks" sign at an overall height of 25'.



Case No 2020 - 03	BZA
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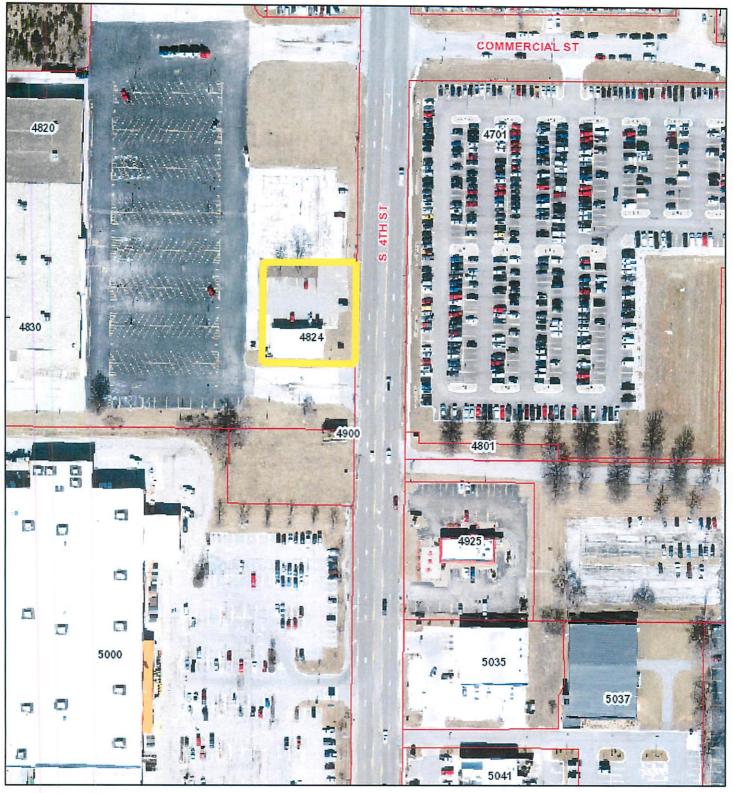
BOARD OF ZONING APPEALS CITY OF LEAVENWORTH, KANSAS

Application No. Fee (non-refundable) 7042 \$350.00

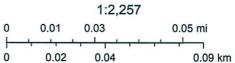
Bronnety Zenine (10.0)	Filing Date	1-30-20			
Property Zoning (481)	Fee Paid	*350.00 2-4.20			
PETITION					
Petitioner: LEVY, LLC					
(name typed or printed)					
Petitioner Address: 5925 Beverly Avenue mission KS Col	00302				
Email: bhaverty@recorproperties.com	Telephone:	913.948.9960			
Location of Property Involved: 4822 South 4th Street					
Legal Description: (Attach full legal description p	rovided by the REGI	STER OF DEEDS OFFICE)			
Petitioner's Interest in Property: Construction of new Starbucks facility					
Purpose of Petition: Requesting variance from Section 8.11 of the Leavenworth Development Regulations in regard the 15-0 maximum height for a freestanding sign. A 25-0 high sign is requested					
Appeal of Administration Decision		Decision			
Section 11.03.A					
✓ Variance:					
Section 11.03.B					
Exception:					
Section 11.03.C					
Sito Plan or drawing attached (band & divide)					
Site Plan or drawing attached (hard & digital copy): Yes	✓	No			
I, the undersigned, certify that I am the legal owner of the pro	perty described above a	nd that if this request is granted, I will			
proceed with the actual construction in accordance with the plans sub- in writing an extension of time for the Board's consideration	mitted within four (4) mo	nths from the date of filing or request			
Property Owner Name: Brandon Haverty					
Signature: (print name)	Dat	e: 1/29/2020			
State of Kansas)					
County of Irhnson					
Signed or attested before me on January 21, 2020 by Prandon travert.					
Carriellemberley					
(Signature of Notary Public) My commission expires: 1 4 2 5 My Appointment Expires					
FOR OFFICE USE ONLY:					
		-16-20			
Supporting documentation. Site plan, plot plan, a drawing and any other pertinent data					

FOR OFFIC	CE USE C	NLY:				
Date of Pub	olication	2-21-20	Date of Hearing:	3-16-20		
Supporting documentation. Site plan, plot plan, a drawing and any other pertinent data						
C	Current list of names and addresses of the owners and the tax identification number of all properties within 200'					
A	filing fee of T	hree Hundred- fifty dolla	ars (\$350)			

2020-03-BZA



3/11/2020, 1:57:20 PM



Esri, HERE, Garmin, (c) OpenStreetMap contributors, and the GIS user community



29 January 2020

Sign Variance

Memorandum

project
Building Shell
Starbucks
4828 South 4th Street
Leavenworth . Kansas

project number 19.103.12

Following please find a brief summary of the items of the five conditions as set out in Section 11.03.B.2 (a)-(f) of the City of Leavenworth Board of Zoning Appeals application as it pertains to the attached variance request and associated exhibits to allow a 25-0 high freestanding sign:

Unique Conditions

The property Owner to the north of our subject lot has large moving trucks parked adjacent 4th Street at all times. As such, any southbound traffic along 4th Street would not have proper visibility of a sign located behind the required setback and in conformance with the 15-0 high sign height limit.

Adjacent Properties

Existing adjacent property Owners are commercial in nature. As such, it is not believed the increase in sign height would adversely affect their properties or businesses.

Hardship

Should the 15-0 height limitation be strictly enforced, it would hinder proper visibility from 4th Street to any signage or indication of the business located on this lot until the driver was nearly adjacent the property. Please note, the existing sign that is required to be removed per Section 8.15 Part A of the Leavenworth Municipal Code is nominally 22-0 high.

Public Welfare

It is not believed the increase of the sign height would have any impact on the public health, safety, morals, order, convenience, prosperity, or general welfare.

Development Regulations

It is not believed the increase of the sign height is in opposition of the spirit and intent of the City of Leavenworth Development Regulations.

Please let us know should there be any further questions in regard any of the above listed information.

Thank you

JOE STEWART ARCHITECT

CC

File

Summary

Site Area 21,000 sf . 0.48 ac

Property Zoning , General Business District (GBD)

Gross Building Area 2,106 square feet

Parking

Provided: 18 stells [2 disabled]

Ratio: 8.54 spaces / 1,000 sf

Access

Full access from S 4th Street

Signage Freestanding Signs

Maximum Number Allowed

Maximum Size

100 sf Maximum Height

Setbacks

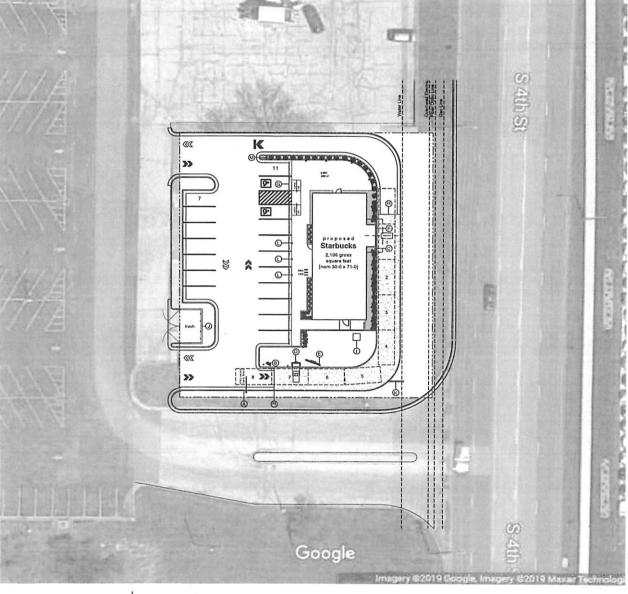
min 5' to property line

Attached Signs

Maximum Number Allowed 1 per side Maximum Size 500 sf

Scope of Work

- (SB) Clearance bar footing & conduit w/ bollard (LL) sign (SB)
- (B) Pre-menu board footing & conduit w/bollard (LL) sign (SB)
- © Bollard (LL)
- Order point canopy w/digital order screen & bollard 7 car stack - indicates 120' from center point of drive thru window to order point footing & conduit with bollard (LL) &
- ⑤ 5 panel menu board located at 7 car stack, footing & conduit (LL) sign (SB)
- Proposed drive-thru window, dt shelf, timer loop & air curtain (LL)
- (G) Concrete wheel stops (LL)
- Concrete surface applied to dt lane (LL) starts 12' before order canopy and ends 12' after cl of drive-thru bumpout
- Transformer LL to confirm location (LL)
- 20' wide x 12' deep dedicated trash enclosure with 20' concrete pad and 1 hose bib (LL)
- Pylon sign LL to verify location (LL)
- (LL) *mobile order parking only* sign (LL)
- M Thank you / exit only sign (LL)









ADA Cos. Certification To best of my professional knowledge, the facety as indicated is in compliance wit the Americans with Disabilities Act. Inchaling the current ADI Title III Design Guidelines.

Jeseph Ray Stewart Kansas Architect 6130 Revisions

S)

new single tenant shell building Stall Dil TS

sheet A1 Preliminary Site Plan 10 October 2019

