

LEAVENWORTH BOARD OF ZONING APPEALS

Monday, January 25, 2021 – 6:00 P.M.
COMMISSION ROOM, CITY HALL
LEAVENWORTH, KANSAS

AGENDA

Due to the Covid-19 pandemic, the public hearing shall be closed for in-person attendance, excluding staff, commissioners and the applicant(s). All persons wishing to comment shall use the GoToMeeting access instructions listed below for remote participation. If you would like to submit questions to be read during the public hearing, email your comments or questions to jhurley@firstcity.org no later than 12:00 pm on January 25th.

GoToMeeting access instructions:

<https://global.gotomeeting.com/join/327714893>

OR

Phone Number: +1 (872) 240-3212

Access Code: 327-714-893

Your call will be placed into queue for comment. Please mute your phone until instructed otherwise.

CALL TO ORDER:

1. Roll Call/Establish Quorum
2. Approval of Minutes: December 21, 2020 **Action:** Motion

OLD BUSINESS:

None

NEW BUSINESS:

1. ELECTION OF OFFICERS

2. 2020-38 BZA – 2500 S. 4TH STREET

Hold a public hearing for Case No. 2020-38 BZA – 2500 S. 4th Street, wherein the applicant is requesting a variance to allow more than one sign on a storefront for a property zoned GBD, General Business District.

3. 2021-03 BZA – 1922 5TH AVENUE

Hold a public hearing for Case No. 2020-39 BZA – 2614 S. 24th Street, wherein the applicant is requesting an exception from section 1.05.C.4 of the adopted Development Regulations to allow the restoration of a building that is not in conformance with the regulation for the zoning district.

ADJOURN



**BOARD OF ZONING APPEALS MINUTES
MONDAY, December 21, 2020, 6:00 P.M.
COMMISSION ROOM, CITY HALL
LEAVENWORTH, KANSAS**

The Leavenworth Board of Zoning Appeals (BZA) met Monday, December 21, 2020. It was determined a quorum was met with the following board members present: Dick Gervasini and Ron Bates were present in the Commission Chambers and Kathy Kem participated remotely. Mike Bogner and Jan Horvath were absent. Staff members City Planner Jackie Porter and Administrative Assistant Michelle Baragary were present in the Commission Chambers.

Vice Chairman Gervasini called the meeting to order at 6:00 p.m. and called for the first item on the agenda – approval of minutes from November 16, 2020. Mr. Bates moved to accept the minutes as presented, seconded by Ms. Kem and approved by a vote of 3-0.

OLD BUSINESS:

None

NEW BUSINESS:

1. CASE NO. 2020-38 BZA – 3500 S. 4TH STREET

Hold a public hearing for Case No. 2020-38 BZA – 2500 S. 4th Street, wherein the applicant is requesting a variance to allow more than one sign on a storefront for a property zoned GBD, General Business District.

Vice Chairman Gervasini called for the staff report.

City Planner Jackie Porter stated the applicant is requesting a variance to allow more than one sign on a wall for a property zoned GBD, General Business District.

Kung Fu Tea, located at 2500 S. 4th Street, is a business operating inside the main business operation of Kare Pharmacy. The Development Regulations limit the number of wall signs allowed for each side of a structure or part of a structure clearly identified as a storefront to one sign. Kare Pharmacy has one existing wall sign on the East wall, “Kare Pharmacy”.

The variance request is for an additional sign on the east side of the building. The proposed sign is located on the Northeast portion of the building reading “Kung Fu Tea” and a logo, and is roughly 9.5 sqft.

The proposed sign meets the size requirement of the GBD zoning district.

Vice Chairman Gervasini called for questions about the staff report.

Ms. Kem asked if the sign will be lit.

Ms. Porter stated she is not sure if the sign will be a lighted sign.

Mr. Gervasini asked if the Kare Pharmacy sign is illuminated in any way.

Ms. Porter responded she does not believe the Kare Pharmacy is lit but she's not absolutely positive.

Ms. Kem asked if there is a rendering of the Kung Fu Tea sign.

Ms. Porter stated there is not a rendering. The sign application states the sign is an aluminum LED sign.

Ms. Kem asked if it is individual letters or a box.

Ms. Porter stated it will be a raceway.

Mr. Bates asked if there are additional businesses in the building that the board will need to review for a sign variance request.

Ms. Porter responded there are not.

Ms. Kem asked for clarification that staff does not have a rendering or sketch of the sign for the board to view.

Ms. Porter stated she has seen a picture of the sign but unfortunately it is not in the policy report and staff will need to request another rendering of the sign.

Ms. Kem asked what the dimensions of the sign are.

Ms. Porter responded 1.25' H x 8' W.

Mr. Bates stated it would be difficult to approve something without seeing what the sign will look like.

Mr. Bates moves to table the item for additional information/consideration, seconded by Ms. Kem and approved by a vote of 3-0.

The board stated they want all the specifications of the sign and a rendering of what the sign will look like.

2. CASE NO. 2020-39 BZA – 2614 S. 24TH STREET

Hold a public hearing for Case No. 2020-39 BZA – 2614 S. 24th Street, wherein the applicant is requesting an exception from section 1.05.C.4 of the adopted Development Regulations to allow the restoration of a building that is not in conformance with the regulation for the zoning district.

Vice Chairman Gervasini called for the staff report.

City Planner Jackie Porter stated the applicants, Robert H. & Patricia A. Steele, are requesting an exception from section 1.05.C.4 of the adopted Development Regulations to restore a nonconforming structure that was damaged by more than 50% of its fair market value. The dwelling structure located at 2614 S. 24th Street suffered damage by a fire on October 12, 2020, and the reconstruction cost is more than 50% of the market value. The proposed reconstruction project is going to use the existing foundation to rebuild a like construction of the prior structure. In May 2020, the roof was replaced. 2614 S. 24th Street is part of the Whispering Hills Phase 5A with the dwelling structure being built in 2003. The current zoning for this location is Planned Unit Development (PUD). All of Whispering Hills subdivision as a whole was annexed into the City limits. The subdivision phases have been developed meeting the R1-9 (Medium Density Single Family Residential District) zoning restrictions, even though the subdivision is a PUD. R1-9 regulations require for a 6 feet interior side yard setback. There is no variance on file that allows for the subject dwelling structure to encroach the side yard setback requirement. The current structure is roughly five feet from the property line. Leaving the structure to be considered a legal nonconforming structure since the adoption of the current Development Regulations.

There has been one inquiry by Erin Sullivan who has requested to be on record in support of the exception.

Vice Chairman Gervasini called for questions from the board members.

Ms. Kem asked if the outbuilding in the rear yard is also nonconforming.

Ms. Porter stated the outbuilding is conforming; the regulations require a 3 feet rear setback and 3 feet side setback for accessory structures.

Mr. Gervasini asked if the property is zoned PUD and if the property was in the county when the building was constructed.

Ms. Porter stated the property is zoned PUD and was within the city limits when constructed.

Mr. Gervasini stated PUDs go through the Planning Commission for recommendation and then the City Commission for final approval. Mr. Gervasini stated he has a problem if the City Commission approved the PUD with the foundation of the subject property located where it is today.

Ms. Porter stated the land making up Whispering Hills Subdivision was originally located in the county. In 1986, the preliminary plat had the setbacks. However, when the property was annexed in 1987, the PUD focused on streets and sewer and did not mention setbacks until Phase 3 was proposed in 1997. The meeting minutes in 1997 based the setback requirements on the R1-9 district (Medium Density Single Family Residential District).

Ms. Porter further commented the covenants for the PUD stated no building shall be closer than five feet to the interior lot line, or as required by city ordinance. However, the city cannot enforce covenants.

Mr. Gervasini still has an issue with this as the structure was built in 2003 with a building permit issued by the city. Mr. Gervasini further stated since the board is now being asked to clean up what transpired in

2003 when the city allowed this structure to be built without meeting the required side yard setbacks, he does not believe the property owner should pay the application fees for the exception request.

Ms. Porter stated the city must use the current Development Regulations, which states an exception is required to rebuild the subject dwelling since it is not in conformance with the regulations for the zoning district.

Mr. Gervasini stated the City allowed the construction of the foundation within the six feet side yard setback requirement; therefore, the property owner should not be required to pay a fee to clean up the City's mistakes.

Ms. Kem stated it sounds like the PUD is not binding. She understands the PUD is an overlay on top of the zoning but why would the PUD not be binding.

Ms. Porter responded that not until Phase 3 of the Whispering Hills subdivision did it state it was outlined through the R1-9 zoning district. The PUD is over the entirety of the land and the plats were submitted in phases. Furthermore, the various plats did not identify the setbacks. Ms. Porter further stated there is no clear documentation explaining how or why this subdivision was approved to be developed this way.

Mr. Gervasini is not asking staff to explain what happened because it is apparent somebody approved something that was not in conformance with the Development Regulations. The property owner of the subject property along with future property owners within this subdivision should be exempt from application fees for any variance/exception requests related to nonconforming setbacks because the City has caused this problem.

Ms. Porter stated the structures in the Whispering Hills subdivision that do not meet the current Development Regulations are legal nonconforming. When a particular incident happens, such as the subject property suffered over 50% damage by fire, this incident triggers the exception requirement.

Mr. Gervasini stated he does not have a problem granting the exception. His issue lies with the fact the board is cleaning up a mess that was created by the municipality and the municipality charges a fee to the property owner to process the exception request.

Ms. Kem stated it is possible staff and board members do not have the full history of this subdivision and therefore do not understand what the zoning was prior and what the Development Regulations stated at that time. Obviously the structure was built five feet from the lot line. It's possible the structure wasn't legal and the City did not notice it or the builder built it in the wrong place or it could have been legal at that time. Ms. Kem further stated she is not sure if the board has the authority to waive the fee but maybe they could include that as a condition.

With no further questions about the staff report, Vice Chairman Gervasini opened the public hearing.

Erin Sullivan, 2615 S. 24th Street, stated the property owner is not at fault for the structure not being built six feet from the property line. Ms. Sullivan is in favor of the exception request.

David Gunning, 2619 S. 24th Street, stated he too is in favor of the applicant's request to rebuild his home where it is. He further stated many homes in this subdivision probably do not meet the six feet side yard setback requirement.

The applicant, Robert Steele, stated he agrees with Mr. Gervasini's stance that the fee should be waived for property owner's in his situation as he did not know his home was not in conformance when he purchased it in 2003. Mr. Steele further stated it has been 10 weeks since the fire and he is anxious to get moving with reconstruction of his home.

With no one else wishing to speak, Vice Chairman Gervasini closed the public hearing and called for discussion among the board members.

In regards to voting on conditions "a-g", Mr. Bates asked how the board is supposed to make findings of facts directly based on the evidence presented to them. Mr. Bates would like to grant the exception; however, it needs to be done correctly.

Ms. Porter responded the exception is strictly for the side yard setback. The Development Regulations state an exception is required from the Board of Zoning Appeals to restore a nonconforming structure that has been damaged by more than 50% of its fair market value.

In reading condition "a" below, Mr. Bates asked if the staff report is saying that the "proposed exception complies with all applicable provisions of these Development Regulations, including intensity of use regulations, yard regulations, and use limitation".

Ms. Porter responded in the affirmative. Ms. Porter further stated she will be suggesting a text amendment change to the Development Regulations changing this from an exception to a variance.

Ms. Kem asked if the board is giving an exception because the structure does not meet the side yard setback or because the structure was destroyed by more than 50% of its value.

Staff responded the exception is for the side yard setback but what triggered the exception is the structure was damaged by more than 50% of its fair market value.

Ms. Porter stated the exception is to allow the structure to continue as a nonconforming structure.

Ms. Kem stated there are two issues: 1) more than 50% destroyed and 2) the setback, which is a variance issue. The board can approve the exception to rebuild the structure the way it was but the structure will still be legal nonconforming because of the setback issue.

Mr. Gervasini asked if the subject structure was ever damaged by more than 50% of its value in the future, would the owner need to request another exception.

Ms. Porter responded that is her understanding the property owner would need to apply for another exception.

Ms. Kem asked if it wouldn't be easier for the applicant to request a variance for a five feet side yard setback.

Staff stated they will need to research the variance request option further.

Ms. Kem stated condition "a" states the exception must meet yard regulations but it doesn't meet the yard regulations so how is the board to approve the exception request.

Mr. Gervasini stated he would rather give a variance so the applicant can proceed with restoring his home.

Mr. Bates stated half of the conditions the board is to vote on has nothing to do with this subject property.

There is a consensus the board cannot approve the exception request with the information provided to them.

Mr. Gervasini asked if the board can grant a variance instead.

Staff responded a variance request may not be granted on as a variance application was not submitted.

Mr. Gervasini responded this puts the property owner in a bind for another month.

Ms. Kem asked if the board could have a special meeting for the variance.

Staff responded in the negative because Kansas Statute requires notification be sent to all property owners within 200' of the subject property at a minimum of 20 days prior to a scheduled meeting.

Staff called Planning Director Julie Hurley for direction.

Ms. Hurley stated when reviewing the conditions, if a condition is not applicable for the current exception request, then the Chairman will state as such during the voting process. Ms. Hurley believes conditions a-d are applicable and conditions e-g would not be applicable to the current property.

Mr. Bates asked how the 5' side yard setback would comply with yard regulations.

Ms. Hurley stated the exception is to rebuild the nonconforming structure as a nonconforming structure. The exception allows the home to be rebuilt to its original state of legal nonconforming.

Ms. Kem asked if the property owner can receive his building permit if the board approves this exception.

Ms. Hurley responded in the affirmative.

With no further discussion among the commissioners, Vice Chairman Gervasini 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 XV (Board of Zoning Appeals), Section 11.03.C (Powers and Jurisdictions – Exceptions)

Exceptions: To grant exceptions which are specifically listed as permitted in these Development Regulations. In no event shall exceptions to the provisions of the Development Regulations be granted where the exception contemplated is not specifically listed as in the Development Regulations of the City of Leavenworth, Kansas. An exception is not a variance. Further, under no conditions shall the Board have the power to grant an exception when the conditions of this exception, as established by these Development Regulations, are not found to be present.

1. The Board shall not grant an exception unless it shall, in each specific case, make specific written findings of facts directly based upon the particular evidence presented to it, that support conclusions that:

a. *The proposed exception complies with all applicable provisions of these Development Regulations, including intensity of use regulations, yard regulations, and use limitation.*

Vote 3-0

All board members voted in the affirmative.

b. *The proposed exception at the specified location will contribute to and promote the welfare or convenience of the public.*

Vote 3-0

All board members voted in the affirmative.

c. *The proposed exception will not cause substantial injury to the value of other property in the neighborhood in which it is to be located.*

Vote 3-0

All board members voted in the affirmative.

d. *The location and size of the exception, the nature and intensity of the operation involved or conducted in connection with it, and the location of the site with respect to streets giving access to it are such that the exception will not dominate the immediate neighborhood so as to prevent development and use of neighboring property in accordance with the applicable zoning district regulations. In determining whether the exception will so dominate the immediate neighborhood, consideration shall be given to:*

(1) *The location, nature and height of buildings, structures, walls, and fences on the site, and*

Vote 3-0

All board members voted in the affirmative.

(2) *The nature and extent of landscaping and screening on the site.*

Vote 3-0

All board members voted in the affirmative.

e. *Off-street parking and loading areas will be provided in accordance with the standards set forth in these Development Regulations, and such areas will be screened from adjoining residential uses and located to protect such residential uses from any injurious effect.*

There is consensus this is not applicable to the current exception request.

f. *Adequate utility, drainage, and other such necessary facilities have been or will be provided.*

There is consensus this is not applicable to the current exception request.

- g. Adequate access roads or entrance and exit drives will be provided and shall be so designated to prevent traffic hazards and to minimize traffic congestion on public streets and alleys.*

There is consensus this is not applicable to the current exception request.

ACTION:

Approve or deny the request for an exception of section 1.05.C.4 of the Development Regulations to allow 2614 S. 24th Street to restore a nonconforming structure that was damaged by more than 50% of its fair market value in the Whispering Hills PUD zoning district.

Mr. Bates moved to adjourn, seconded by Mr. Gervasini and approved by a vote of 3-0.


The meeting adjourned at 7:13 p.m.


JP:mb

DRAFT

**BOARD OF ZONING APPEALS AGENDA ITEM
VARIANCE REQUEST
2020-38-BZA
2500 South 4th Street**

JANUARY 25, 2021


Prepared By:
Jacquelyn Porter
City Planner


Reviewed By:
Paul Kramer
City Manager

SUMMARY:

The applicant is requesting a variance to allow more than one sign on a wall for a property zoned GBD, General Business District.

DISCUSSION:

Kung Fu Tea is located at 2500 South 4th Street zoned GBD, General Business District. Kung Fu Tea is a business operating inside the main business operation of Kare Pharmacy. The Development Regulations limit the number of wall signs allowed for each side of a structure or part of a structure clearly identified as a storefront to one sign. Kare Pharmacy has one existing wall sign on the East wall, "Kare Pharmacy".

The variance request is for an additional sign on the east side of the building. The proposed sign is located on the Northeast portion of the building reading "Kung Fu Tea" and a logo, and is roughly 9.5 square feet.

The proposed sign meets the size requirement of the GBD zoning district.

As requested in the previous meeting by the Board of Zoning Appeals, a conceptual image and material make-up description of the sign has been provided.

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.

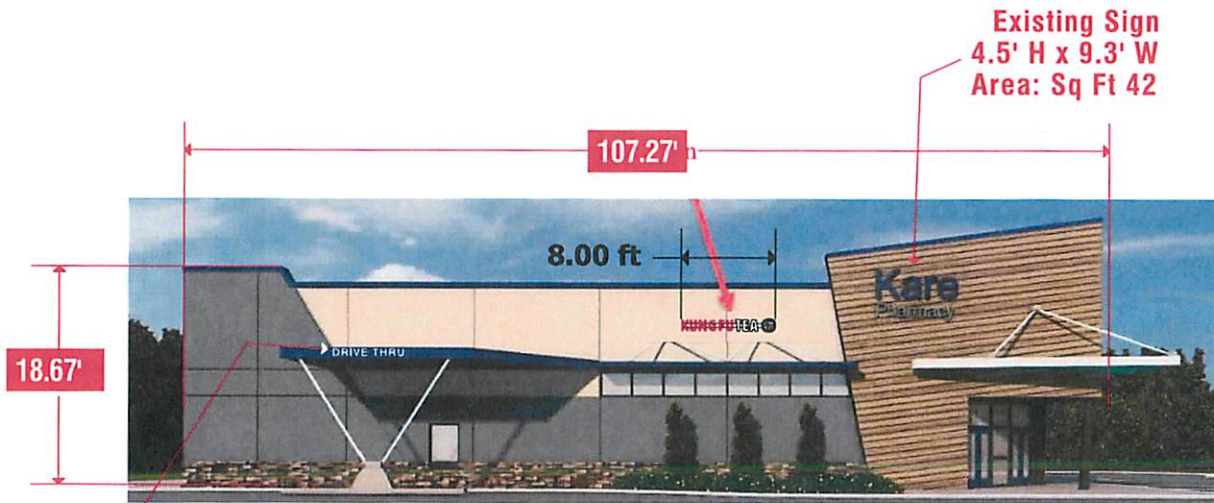
1. The applicant must show that his property was acquired in good faith and where by reason of exceptional narrowness, shallowness or shape of this specific piece of property at the time of the effective date of the Zoning Ordinance, or where by reason of exceptional topographical conditions or other 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.*
 - d) *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 an additional sign to the east side of the Kare Pharmacy building located at 2500 South 4th Street.

Internally-illuminated wall sign

channel letters, raceway mount



Sign
1.15' H x 8' W
Area: 9.2 Sq Ft

Facade
18.67' H x 107.27' W
Area: 2002 Sq Ft

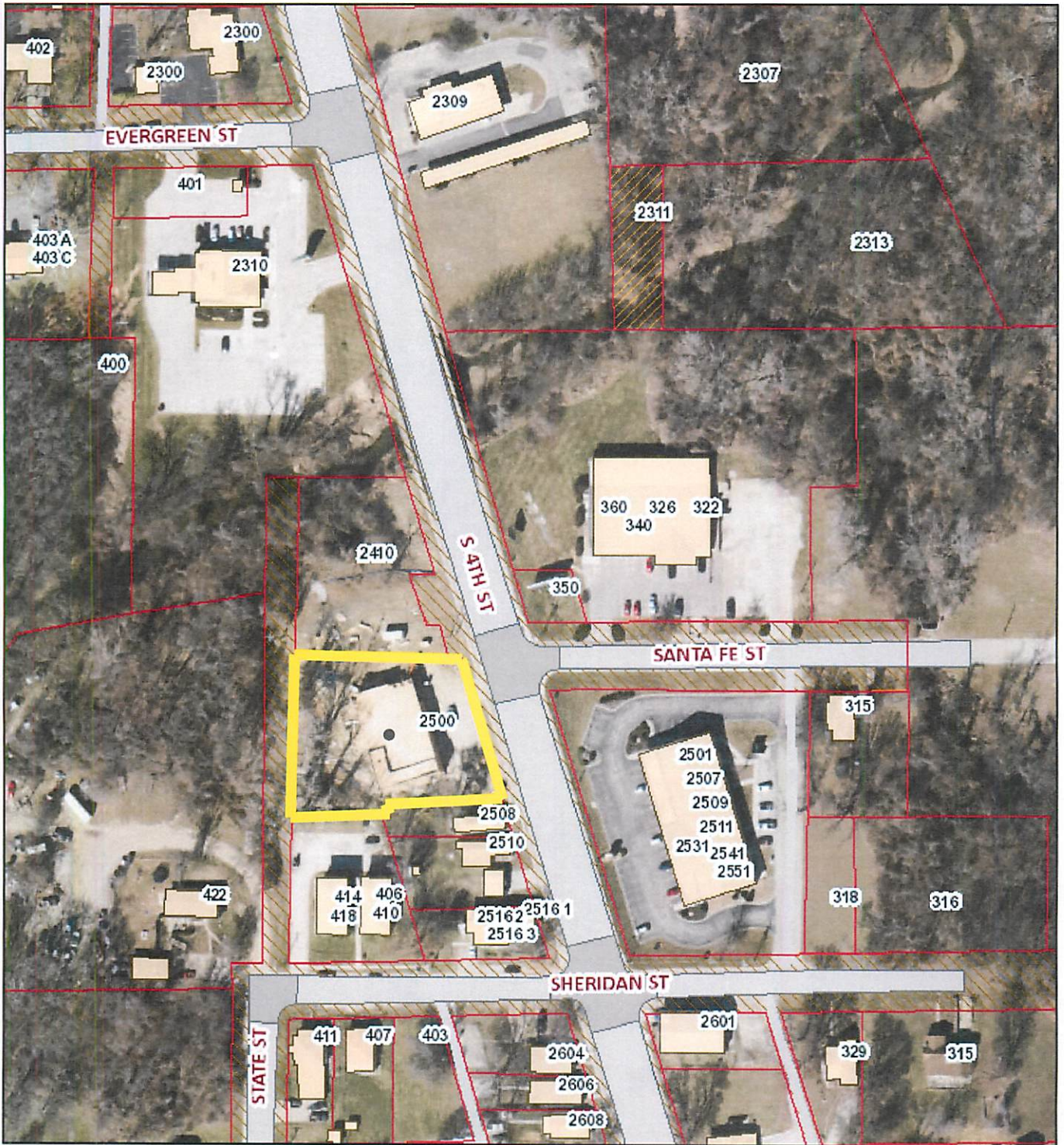
8" tall vinyl lettering adhered to awning

Job	Channel letters	Date	28 Nov 2020	Client	Kare Pharmacy
File	Kare Pharmacy_Channel Letters.cdl	Acct. Rep.	Kevin Walstrom	Designer	Brad Ferguson

Copyright
This artwork and design have been copyrighted and may not be reproduced or copied in any form whatsoever without written permission from:
See More Signs
7331 Wornall Rd., Kansas City, MO 64114

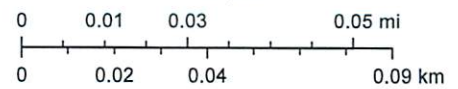


2500 S. 4th St Aerial Map



12/4/2020, 10:55:59 AM

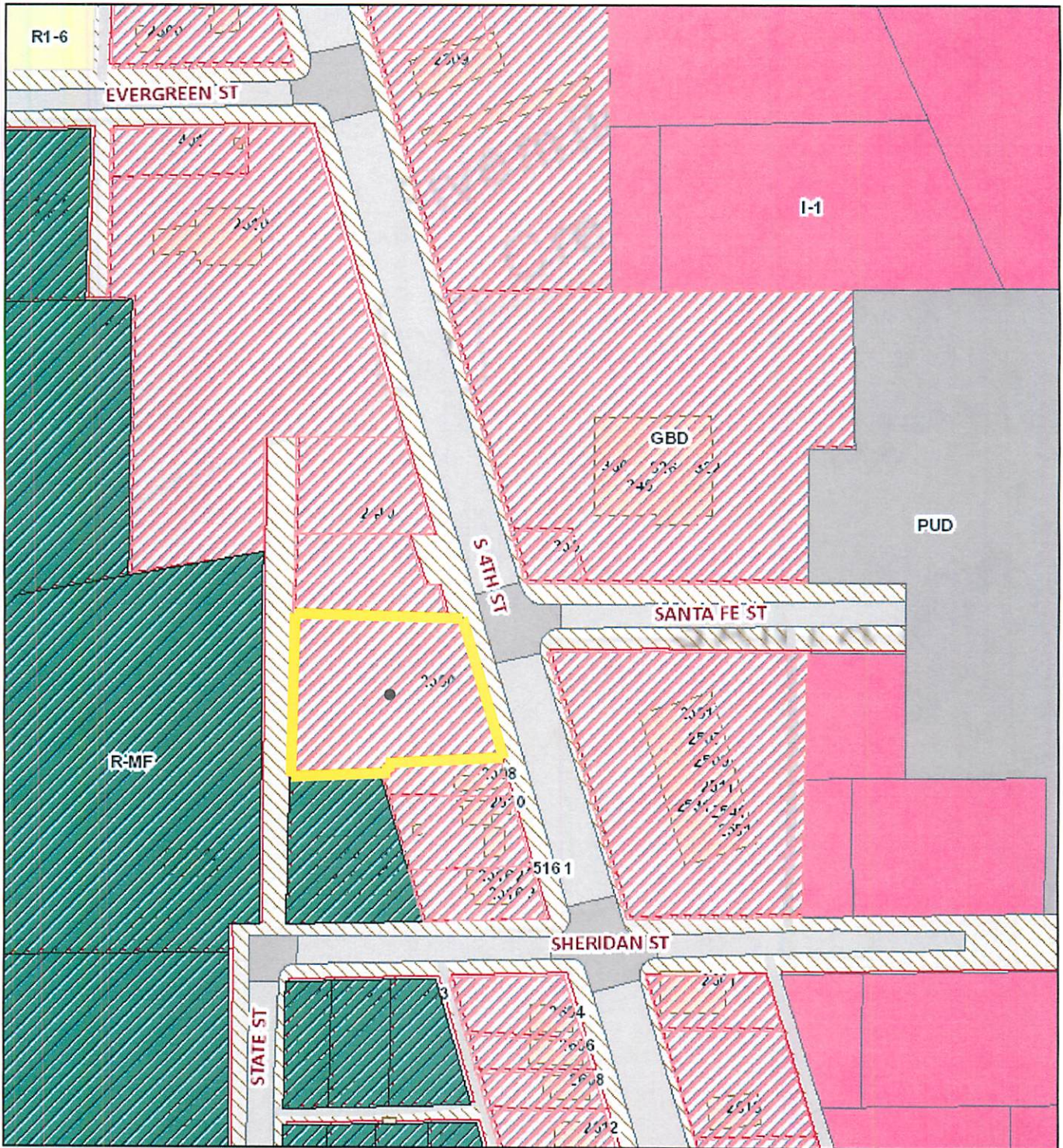
1:2,257



- Override 1
- Missouri River
- Parcels (City Owned)
- Lansing City Limits
- Parcels_Current
- Ft Leavenworth Military Installation
- Buildings
- Leavenworth City Limits
- Address (Points)
- City Right-of-Way

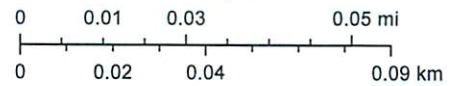
Esri, HERE, Garmin, (c) OpenStreetMap contributors, and the GIS user community

2500 S. 4th St Zoning Map



12/4/2020, 10:54:03 AM

1:2,257



- | | |
|--------------------|------|
| Override 1 | MP |
| Zoning_CURRENT CBD | NBD |
| GBD | OBD |
| I-1 | PUD |
| I-2 | R-MF |

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



BOARD OF ZONING APPEALS
CITY OF LEAVENWORTH, KANSAS

OFFICE USE ONLY

Case No.: 2020-38 BZA

Application No. 8452
Fee (non-refundable) \$350.00
Filing Date 10-22-20
Hearing Date 12-21-20
Publication Date 11-24-20

PETITION

Property Zoning: GBD

Location of Subject Property: 2500 S. 4th Street, Leavenworth KS 66048

Legal Description: (Attach full legal description provided by the REGISTER OF DEEDS OFFICE)

Petitioner: Sandeep Khandelwal

Petitioner Address: 15601 LINDEN ST OVERLAND PARK KS 66224

Email: info@karepharmacy.com Telephone: 816-588-3501

Petitioner's Interest in Property: Owner Section 8.11.c.1

Purpose of Petition: Sign for additional Juice bar/Kung Fu Tea on ^{EAST} north side of the building
Drive Thru sign on the roof of east side of the building above the drive through awning

- Appeal** of Administration Decision _____ Date of Decision _____
Section 11.03.A
- Variance:**
Section 11.03.B
- Exception:**
Section 11.03.C

Site Plan or drawing attached (*hard & digital copy*): Yes No

I, the undersigned, certify that I am the legal owner of the property described above and that if this request is granted, I will proceed with the actual construction in accordance with the plans submitted within four (4) months from the date of filing or request in writing an extension of time for the Board's consideration

Property Owner Name (print): Sandeep Khandelwal (TANWA LLC)

Signature: _____ Date: 09/17/2020

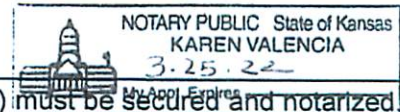
State of Kansas

County of Leavenworth

Signed or attested before me on 9-17-2020 by Sandeep Khandelwal

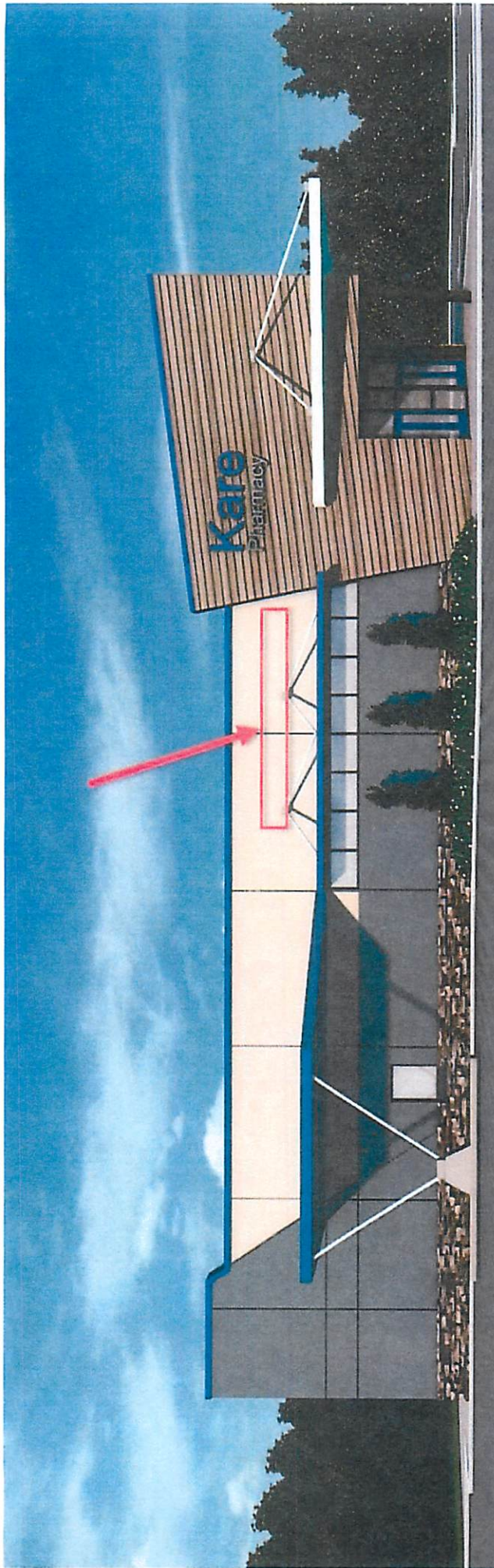
Notary Public: Karen Valencia

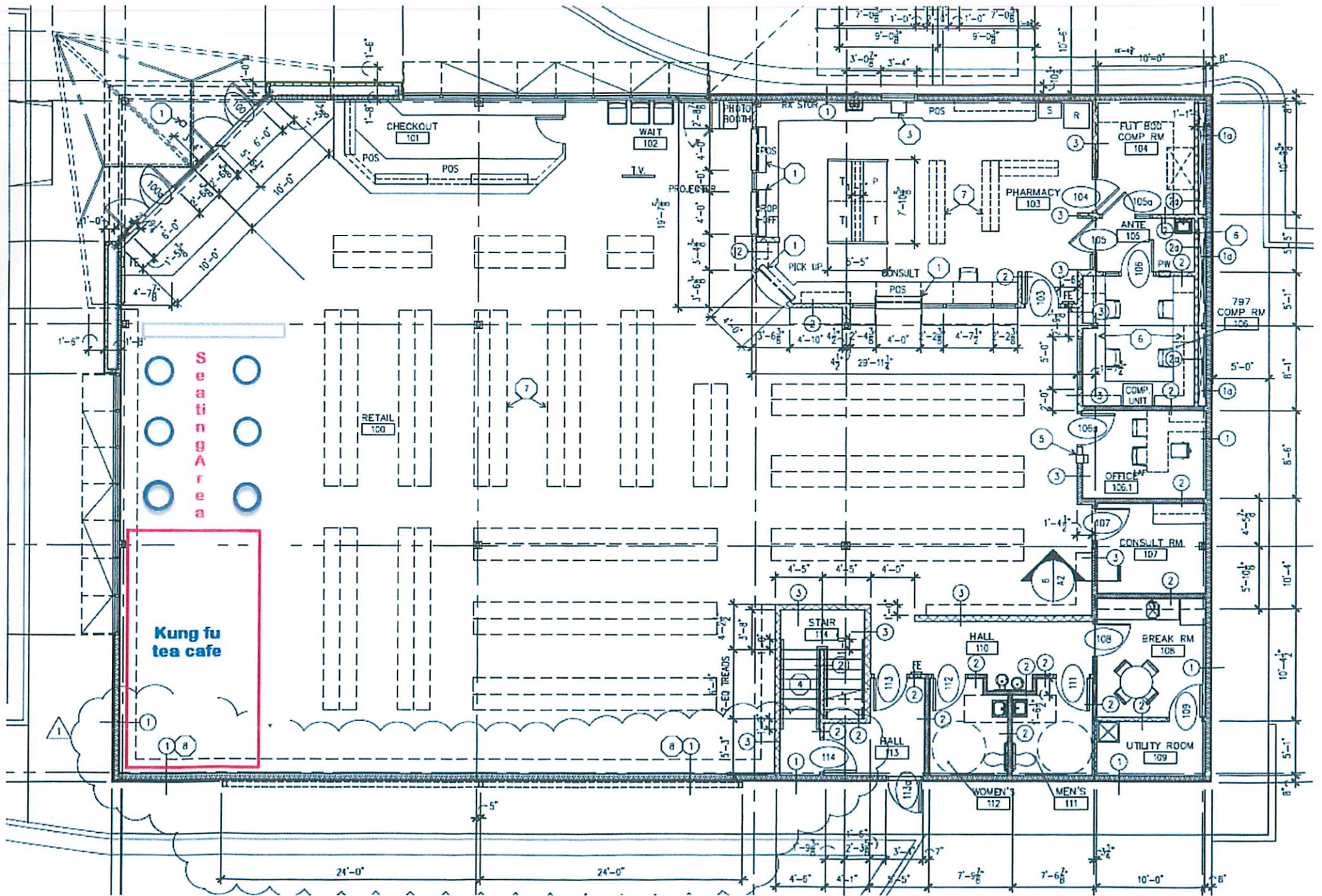
My appointment expires: 3-25-22 (Seal)



NOTE: All signatures must be in black or blue ink. Signature of owner(s) must be secured and notarized.
Check list below...


<input checked="" type="checkbox"/>	Supporting documentation: Site plan, plot plan, a drawing and any other pertinent data
<input checked="" type="checkbox"/>	Full legal description of subject property obtained from the Register of Deeds Office (913-684-0424)
<input checked="" type="checkbox"/>	Certified list of property owners within two hundred (200) feet of the subject property – County GIS Department 913-684-0448
<input checked="" type="checkbox"/>	A filing fee of Three Hundred- fifty dollars (\$350)



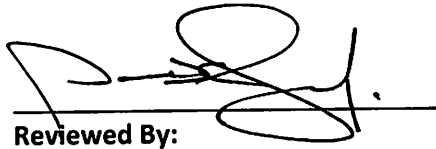


Board of Zoning Appeals Agenda Item
Exception Request
2021-03-BZA
1922 5th Avenue

JANUARY 25, 2021



Prepared By:
Julie Hurley
Director of Planning and
Community Development



Reviewed By:
Paul Kramer
City Manager

SUMMARY:

The applicant is requesting an exception as allowed by section 1.05.C to allow the restoration of a nonconforming structure.

DISCUSSION:

The applicant, Savannah Nelson, is requesting an exception as allowed by section 1.05.C to allow the restoration of a nonconforming structure. The subject property is developed with an existing single family home, which suffered a fire in 2020, requiring repairs totaling more than 50% of the fair market value of the home. The property is zoned R1-6. Section 4.03 of the Development Regulations requires side yard setbacks of 6' for properties zoned R1-6. The existing home has side yard setbacks of approximately 4', making the home a legal non-conforming structure.

Section 1.05C of the Development Regulations states in regards to the destruction of non-conforming structures:

- 4. **Destruction.** If a nonconforming structure is damaged by more than fifty percent (50%) of its fair market value, such building shall not be restored if such building is not in conformance with the regulations for the zoning district in which it is located, or an exception is granted by the Board of Zoning Appeals.*

The home is intended to be restored in its original state, with the existing original setbacks.

BOARD OF ZONING APPEALS AUTHORITY:

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

Exceptions: To grant exceptions which are specifically listed as permitted in these Development Regulations. In no event shall exceptions to the provisions of the Development Regulations be granted where the exception contemplated is not specifically listed as in the Development Regulations of the City of Leavenworth, Kansas. An exception is not a variance. Further, under no conditions shall the Board have the power to grant an exception when the conditions of this exception, as established by these Development Regulations, are not found to be present.

The Board shall not grant an exception unless it shall, in each specific case, make specific written findings of facts directly based upon the particular evidence presented to it, that support conclusions that:

- a. **The proposed exception complies with all applicable provisions of these Development Regulations, including intensity of use regulations, yard regulations, and use limitations.**
The requested exception relates to a reduced side yard setback, as specifically allowed in Section 1.05 of the Development Regulations, and complies with all other applicable provisions.
- b. **The proposed exception at the specified location will contribute to and promote the welfare or convenience of the public.**
The proposed exception contributes to and promotes the welfare of the public by allowing the reconstruction of an existing non-conforming single-family residence after the property suffered damage by fire, displacing the former residents.
- c. **The proposed exception will not cause substantial injury to the value of other property in the neighborhood in which it is to be located.**
The proposed exception will not cause substantial injury to the value of the other property in the neighborhood, as the home will be restored to its original state, no other modifications are proposed.
- d. **The location and size of the exception, the nature and intensity of the operation involved or conducted in connection with it, and the location of the site with respect to streets giving access to it are such that the exception will not dominate the immediate neighborhood so as to prevent development and use of neighboring property in accordance with the applicable zoning district regulations. In determining whether the exception will so dominate the immediate neighborhood, consideration shall be given to:**
 - (1) **The location, nature and height of buildings, structures, walls, and fences on the site, and**
 - (2) **The nature and extent of landscaping and screening on the site.**
This item is not applicable to the specific exception proposed.
- e. **Off-street parking and loading areas will be provided in accordance with the standards set forth in these Development Regulations, and such areas will be screened from adjoining residential uses and located to protect such residential uses from any injurious effect.**
This item is not applicable to the specific exception proposed.
- f. **Adequate utility, drainage, and other such necessary facilities have been or will be provided.**
This item is not applicable to the specific exception proposed.
- g. **Adequate access roads or entrance and exit drives will be provided and shall be so designated to prevent traffic hazards and to minimize traffic congestion on public streets and alleys.**
This item is not applicable to the specific exception proposed.

ACTION:

Approve or deny the request for an exception as allowed by section 1.05.C to allow the restoration of a nonconforming structure.



BOARD OF ZONING APPEALS
CITY OF LEAVENWORTH, KANSAS

OFFICE USE ONLY

Case No.: 2021-03 **BZA**
Application No. 8642
Fee (non-refundable) \$350.00
Filing Date 12-8-20
Hearing Date JAN. 25, 2021
Publication Date 12-30-20

PETITION

Property Zoning: R1-6
Location of Subject Property: 1922 5th Ave Leavenworth, Kansas 66048
Legal Description: (Attach full legal description provided by the REGISTER OF DEEDS OFFICE)
Petitioner: Dan Thorman
Petitioner Address: 629 Delaware St Leavenworth, Kansas 66048
Email: Dan@servpro-lv.com Telephone: 913-772-1818
cell 816-808-6305
Petitioner's Interest in Property: Repair Property of Client
Purpose of Petition: Variance Request to reduce side yard setback by 1 foot

- Appeal of Administration Decision _____ Date of Decision _____
Section 11.03.A
- Variance:**
Section 11.03.B
- Exception:**
Section 11.03.C

Site Plan or drawing attached (*hard & digital copy*): Yes No

I, the undersigned, certify that I am the legal owner of the property described above and that if this request is granted, I will proceed with the actual construction in accordance with the plans submitted within four (4) months from the date of filing or request in writing an extension of time for the Board's consideration

Property Owner Name (print): Savannah E. Nelson

Signature: Savannah E Nelson Date: 12-4-20

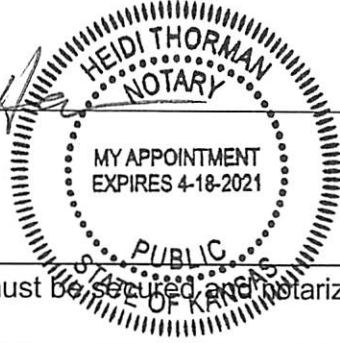
State of Kansas)

County of Johnson)

Signed or attested before me on 12-4-20 by [Signature]

Notary Public: _____

My appointment expires: 4-18-2021 (Seal)



NOTE: All signatures must be in black or blue ink. Signature of owner(s) must be secured and notarized.
Check list below...

<input checked="" type="checkbox"/>	Supporting documentation: Site plan, plot plan, a drawing and any other pertinent data
<input checked="" type="checkbox"/>	Full legal description of subject property obtained from the Register of Deeds Office (913-684-0424)
<input checked="" type="checkbox"/>	Certified list of property owners within two hundred (200) feet of the subject property – County GIS Department 913-684-0448
<input checked="" type="checkbox"/>	A filing fee of Three Hundred- fifty dollars (\$350)

Statement of Intent

In Support of Request for Variance

1922 5th Ave, Leavenworth, Kansas 66048

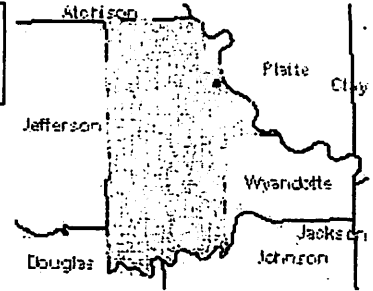
-- This Statement of Intent is in support of the Request for Variance for the property located at 1922 5th Ave, Leavenworth, Kansas 66048. The residential structure suffered a fire, requiring some of the building to be repaired. Prior to the fire, the building was a legal non-conforming structure that encroached on the required side yard setback. The repair plans utilize the existing foundation from before the fire, and do not encroach any further into the side yard than the previous legal non-conforming structure. This existing foundation is the original foundation from the structure, and the repair construction on the existing foundation will be of the same exterior dimensions as the previously accepted legal non-conforming structure.

Structures that encroach on the required side yard setback are required to meet a certain standard of Fire Code. The Engineering Plans for this structure include a Fire Resistant Assembly that meets this Code for the South Wall of the building, which is the portion of the repair that falls within the 5 foot side yard setback.

The requirements to meet all development regulations due to the repairs of the structure exceeding 50% of the structure's market value are recognized and understood, but this Request for Variance is being submitted in the interest of utilizing the existing original foundation and recognizing that the Variance requested is minor (1 foot) and was approved in the past.

Thank you for your consideration,

Leavenworth County, KS



61

1000

4

34'

7

LEAVENWORTH

1022

5

36'

8

11'

22'

5TH AVE

1020

1 in. = 21ft.

41.7 0 20.83 41.7 Feet

This Cadastral Map is for informational purposes only. It does not purport to represent a property boundary survey of the parcels shown and shall not be used for conveyances or the establishment of property boundaries.

THIS MAP IS NOT TO BE USED FOR NAVIGATION

Legend

- Address Point
- Parcel Number
- Lot Line
- City Limit Line
- Road
- +
- Railroad

Notes

