

# LEAVENWORTH BOARD OF ZONING APPEALS

Monday, March 15, 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](mailto:jhurley@firstcity.org) no later than 12:00 pm on March 15th.

GoToMeeting access instructions:

<https://global.gotomeeting.com/join/144733989>

OR

Phone Number: +1 (786) 535-3211

Access Code: 144-733-989

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: January 25, 2021 **Action:** Motion

OLD BUSINESS:

### 1. ELECTION OF OFFICERS

NEW BUSINESS:

### 1. 2021-05 BZA – 1901 SPRUCE STREET

Hold a public hearing for Case No. 2021-05 BZA – 1901 Spruce Street, wherein the applicant is requesting a variance to allow a sign to exceed the maximum allowed square footage for a property zoned R1-9, Medium Density Single Family Residential District.

### 2. 2021-06 BZA – 312 N. 2<sup>ND</sup> STREET

Hold a public hearing for Case No. 2021-06 BZA – 312 N. 2<sup>nd</sup> Street, wherein the applicant is requesting a variance to allow the display of two wall signs and one projecting sign for a nonconforming commercial use in a district zoned R1-6, High Density Single Family Residential District.

### 3. 2021-07 BZA – 402 S. 20<sup>TH</sup> STREET

Hold a public hearing for Case No. 2021-07 BZA – 402 S. 20<sup>th</sup> Street, wherein the applicant is requesting a variance to allow the display of a wall sign and sandwich board sign for a nonconforming commercial use in a district zoned R1-9, Medium Density Single Family Residential District.

ADJOURN



**BOARD OF ZONING APPEALS MINUTES  
MONDAY, January 25, 2021, 6:00 P.M.  
COMMISSION ROOM, CITY HALL  
LEAVENWORTH, KANSAS**

The Leavenworth Board of Zoning Appeals (BZA) met Monday, January 25, 2021. The following board members present in the Commission Chambers: Mike Bogner, Dick Gervasini and Jan Horvath. Ron Bates and Kathy Kem participated remotely. Staff members Planning Director Julie Hurley and City Planner Jackie Porter were also present in the Commission Chambers.

Chairman Bogner called the meeting to order at 6:00 p.m. and noted a quorum was present.

**APPROVAL OF MINUTES:** December 21, 2020

Chairman Bogner asked for comments, changes or a motion on the minutes presented for approval: December 21, 2020. Mr. Gervasini moved to approve the minutes as presented, seconded by Mr. Horvath and approved by a vote of 4-0. Mr. Bogner abstained.

**OLD BUSINESS:**

None

**NEW BUSINESS:**

**1. ELECTION OF OFFICERS**

Board members have requested a list of their term dates. Postponed for next month's meeting.

**2. CASE NO. 2020-38 BZA – 2500 S. 4<sup>TH</sup> STREET**

Hold a public hearing for Case No. 2020-38 BZA – 2500 S. 4<sup>th</sup> 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.

Chairman Bogner called for the staff report.

City Planner Jackie Porter stated this item was tabled from the December 21, 2020 meeting. 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. 4<sup>th</sup> 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.

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

Chairman Bogner called for questions about the staff report.

Ms. Kem asked if decals installed in windows that can be seen from the street are considered signs.

Ms. Hurley responded that according to the Development Regulations they are defined as signs but do not require a permit; therefore, they do not count against exterior signage requirements. Window signs are also limited on how much of the window they can cover.

With no further questions from the board members, Chairman Bogner opened the public hearing. With no one wishing to speak, Chairman Bogner 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 5-0**

**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 5-0**

**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 5-0**

**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 5-0**

**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 5-0**

**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.

**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 S. 4<sup>th</sup> Street.

Chairman Bogner stated the board approves the variance request to install an additional sign on the east side of the building located at 2500 S. 4<sup>th</sup> Street. No conditions, safeguards or restrictions were imposed.

**3. CASE NO. 2021-03 BZA – 1922 5<sup>TH</sup> AVENUE**

Hold a public hearing for Case No. 2021-03 BZA – 1922 5<sup>th</sup> Avenue, 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.

Before providing the staff report, Planning Director Julie Hurley explained the difference between “exceptions” and “variances”. Ms. Hurley stated a property owner can request a variance for any requirement listed in the Development Regulations except for “use”. A property owner cannot request a variance to allow a “use” that is specifically prohibited in a zoning district. Variances typically deal with new situations (i.e. a variance would be requested before constructing an accessory structure that does not meet the required setbacks for the zoning district). Exceptions typically deal with existing situations. So there may be an existing situation where in order to continue or modify the existing situation, an “exception” to the regulations would be required.

Ms. Hurley further stated the City of Leavenworth is pretty much in-line with other nearby cities in regards to the instances in which an “exception” would be an appropriate action. However, we are a little disharmonious with the conditions/criteria a-g that the board votes on. State statute defines an exception but does not list the criteria the board needs to go through as it does for a variance.

Ms. Hurley suspects that whoever wrote the Development Regulations in 2011, was trying to address some specific instances with putting the criteria in there, which is not the correct way to address an exception. However, since the criteria is already listed in the regulations, staff cannot change it. Every year, staff goes through the Development Regulations and any modifications to be made goes through the Planning Commission and City Commission for approval. Staff is currently undertaking this year’s modifications to the regulations and will address the criteria for an exception.

To help the board work through the current criteria, Ms. Hurley added commentary for each criteria. Criteria a-c are applicable to the current exception request and d-g are not.

Mr. Gervasini asked if a residential structure is conforming and over 50% of the structure was destroyed by fire, would an exception be required.

Ms. Hurley responded if the structure is conforming to our current regulations then an exception is not needed to rebuild the home.

Referring to last month’s exception request that was reviewed by the Board of Zoning Appeals, Mr. Gervasini suggested when making modifications to the “exception”, staff define a little more on what is nonconforming, especially if the original building permit was granted by the City.

Ms. Hurley stated the case last month was a bit more complicated because it was a PUD and had established required side yard setbacks. That particular house was not constructed in conformance with the setbacks that were established at the time it was built. Staff does not have a copy of the building permit from back then so it was either 1) approved at the staff level incorrectly or 2) was constructed incorrectly. These are two complicating factors with that particular case. With a more typical situation, you might think of the homes in the north part of Leavenworth where the required setbacks at the time of construction are different from the required setbacks today. We can assume these houses were constructed conforming at the time they were built although they no longer meet our current standards.

Ms. Kem pointed out the application states the applicant is requesting to reduce the side yard setback by one foot, which sounds like that would be a variance request. Shouldn’t the application more clearly define the request is for an exception and not a variance.

Ms. Hurley responded the applicant actually wrote that on the application. From an administrative standpoint, staff will look at having two separate applications; one for a variance request and one for an exception request.

Ms. Kem asked if the board is voting to allow a reduction in the setback or to allow reconstruction of a structure damaged more than 50% by fire.

Ms. Hurley stated the board is voting on reconstruction of a nonconforming structure that was more than 50% destroyed.

Ms. Kem asked if the applicant could have requested a variance for the one-foot reduction in the side yard setback.

Ms. Hurley responded the applicant could have done that. However, the reason a variance may not be the best option is that the applicant would need to meet all five criteria for a variance, which is different from the criteria for an exception.

Mr. Bogner asked about the “grandfather clause” for structures that are legal and conforming and the time of construction but are now considered legal nonconforming and must go through this process of getting a variance or exception.

Ms. Hurley stated any legal nonconforming structure is allowed to stay and continue in operation until the structure is destroyed, they want to expand the structure, etc.

Mr. Bogner asked where the 50% damage came from.

Ms. Hurley stated that is standard.

As a footnote, Mr. Bogner stated many fences were not built on the property lines. If someone is reviewing an existing fence, they may want to crosscheck that through GIS or with a surveyor to validate the fence is actually on the property line.

Ms. Hurley stated staff checks fence installations as much as they can. However, the City Commission has determined they do not want to require a survey for fence permits. It would be up to the applicant and contractor to install the fence in the correct location. Staff does provide the applicant with a copy of the GIS showing the property lines; but that can be 10+ feet off. Furthermore, any dispute between neighbors would be a civil matter.

Chairman Bogner called for the staff report.

Planning Director Julie Hurley stated the applicant, Savannah Nelson, is requesting an exception as allowed by section 1.05.C of the adopted Development Regulations 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, High Density Single Family Residential District. 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 nonconforming structure.

Section 1.05.C of the Development Regulations states in regards to the destruction of nonconforming 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.

Mr. Bogner asked if they are voting based on this being a residential property not a daycare center.

Ms. Hurley responded the owner did have a valid special use permit for a home daycare operation at this location. One of the requirements for home daycares is that it is the primary residence of the operator, which had been the case prior to the fire. After the fire, in order to keep operating the home daycare, the owner did purchase another home in Leavenworth and obtain a new special use permit to operate her home daycare at the new location. If the owner wants to move back into the property at 1922 5<sup>th</sup> Avenue and continue her home daycare, she will need to obtain a new special use permit.

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

Dan Thorman, applicant and contractor, stated (inaudible) he has met the criteria for building code but not for zoning. The structure will be rebuilt on its existing footprint.

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

With no further discussion among the commissioners, Chairman Bogner 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.**

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.

***Vote 5-0***

***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.**

The proposed exception contributes to and promotes the welfare of the public by allowing the reconstruction of an existing nonconforming single-family residence after the property suffered damage by fire, displacing the former residents.

***Vote 5-0***

***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.**

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.

***Vote 5-0***

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

This item is not applicable to the specific exception proposed.

***Vote 5-0***

***All board members voted in the affirmative this item is not applicable.***

- 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.

***Vote 5-0***

***All board members voted in the affirmative this item is not applicable.***

- 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.

***Vote 5-0***

***All board members voted in the affirmative this item is not applicable.***

- 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.

**Vote 5-0**

***All board members voted in the affirmative this item is not applicable.***

**ACTION:**

Approve or deny the request for an exception as allowed by section 1.05.C of the Development Regulations to allow restoration of a nonconforming structure located at 1922 5<sup>th</sup> Avenue.

Chairman Bogner stated the board approved the exception request to allow restoration of a nonconforming structured located at 1922 5<sup>th</sup> Avenue.

Mr. Gervasini moved to adjourn, seconded by Mr. Horvath and approved by a vote of 5-0.

The meeting adjourned at 6:38 p.m.

JH/JP

DRAFT

**BOARD OF ZONING APPEALS AGENDA ITEM  
VARIANCE REQUEST  
2021-05 BZA  
1901 Spruce Street**

**MARCH 15, 2021**

  
\_\_\_\_\_  
**Prepared By:**

Jacquelyn Porter  
City Planner

  
\_\_\_\_\_  
**Reviewed By:**

Paul Kramer  
City Manager

**SUMMARY:**

The applicant is requesting a variance to allow a sign to exceed the maximum square footage required for an attached sign for a property zoned R1-9, Medium Density Single Family Residential District.

**DISCUSSION:**

Kansas City Kansas Community College (KCKCC) is located at 1901 Spruce Street zoned R1-9, Medium Density Single Family Residential District. Public or semi-public facilities, like a school, are allowed signage as regulated and permitted in the Neighborhood Business District (NBD). The Development Regulations require the maximum size of a wall sign 96 square feet or 10% of wall surface whichever is less. KCKCC is proposing a sign on the North wall with a total size of 224.25 square feet in white lettering, "KANSAS CITY KANSAS COMMUNITY COLLEGE".

The variance request is for a sign on the North side of the building to exceed the maximum size requirement of a sign on a single side.

**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)

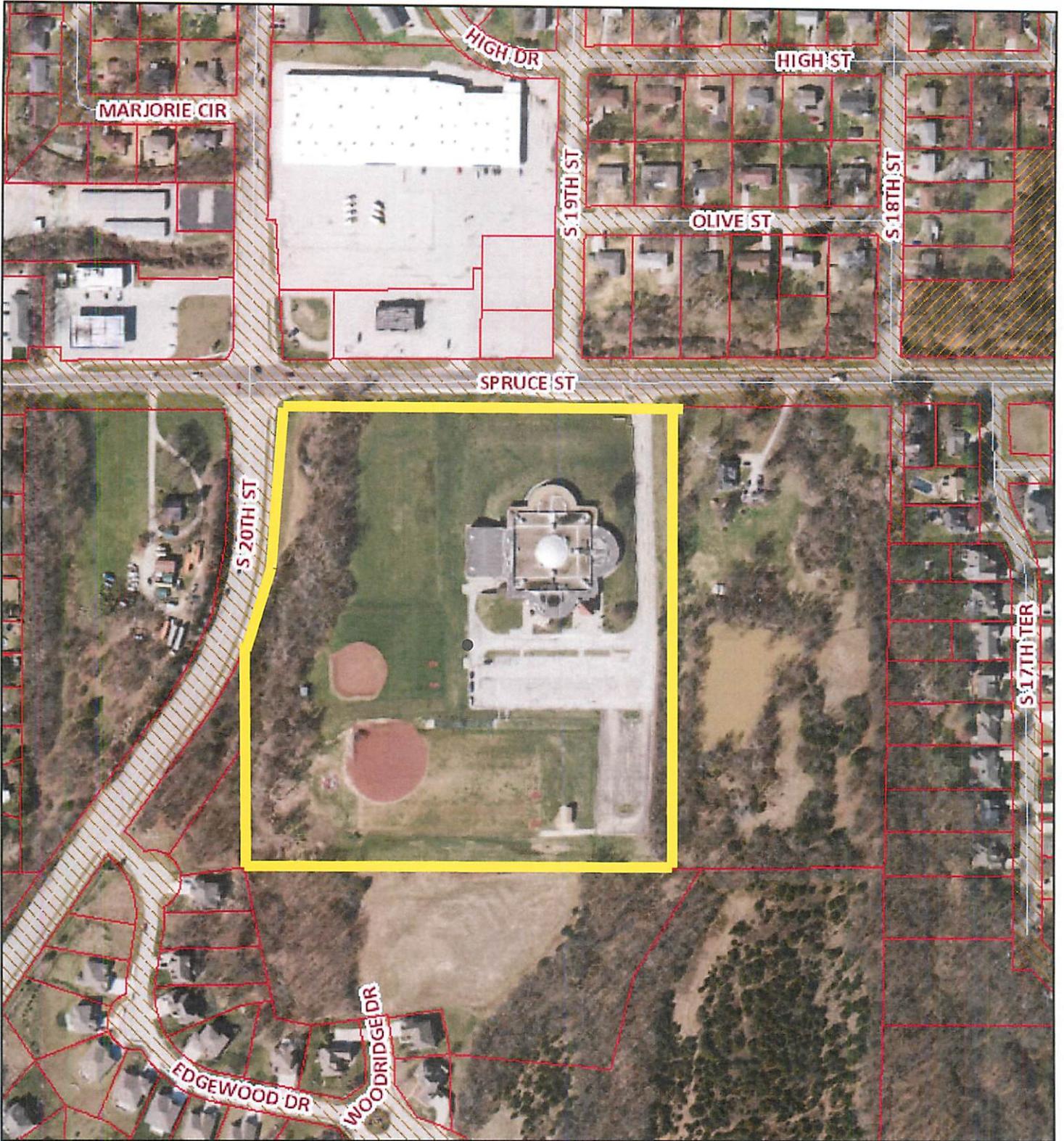
**Variances:** To authorize in specific cases a variance from the specific terms of these Development Regulations which will not be contrary to the public interest and where, owing to special conditions, a literal enforcement of the provisions of these Development Regulations will, in an individual case, 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:**

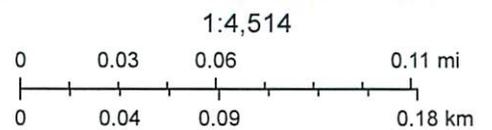
- Approve or deny the appeal to allow the installation of a sign that exceed the maximum size requirement to be 224.25 square feet on the North side of the Kansas City Kansas Community College building located at 1901 Spruce Street.

# 1901 Spruce Aerial Map



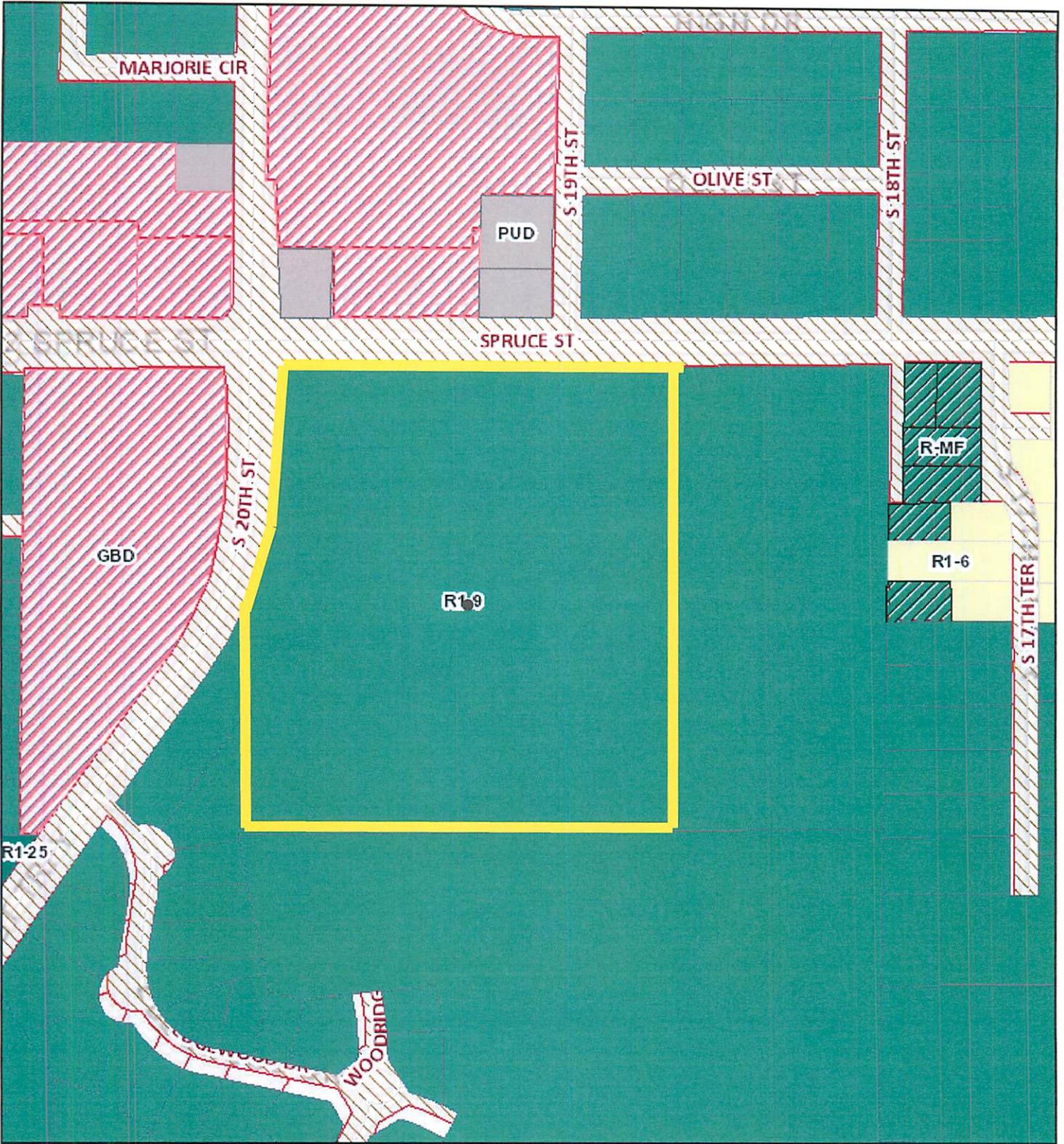
3/1/2021, 3:22:14 PM

- Override 1
- Lansing City Limits
- Parcels (City Owned)
- Ft Leavenworth Military Installation
- Parcels\_Current
- Leavenworth City Limits
- Missouri River
- City Right-of-Way
- RoadCenterline

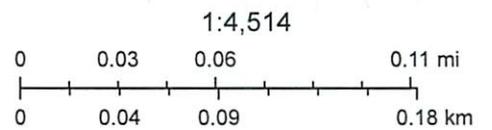
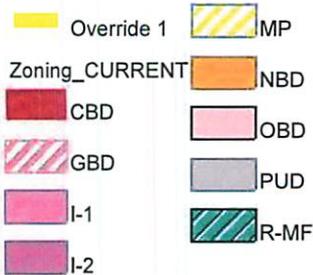


Esri, HERE, Garmin, (c) OpenStreetMap contributors, and the GIS user community

# 1901 Spruce Zoning Map



3/1/2021, 3:20:38 PM



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



**BOARD OF ZONING APPEALS  
CITY OF LEAVENWORTH, KANSAS**

**OFFICE USE ONLY**

Case No.: 2021-05 **BZA**  
Application No. 0016  
Fee (non-refundable) \$350.00  
Filing Date 1/28/21  
Hearing Date 3/15/21  
Publication Date 2/18/21

**PETITION**

Property Zoning: R1-9  
Location of Subject Property: 1901 Spruce Street, The Pioneer Center, Leavenworth, KS  
Legal Description: (Attach full legal description provided by the REGISTER OF DEEDS OFFICE)  
Petitioner: Young Sign Co. Inc.  
Petitioner Address: 326 Choctaw St., Leavenworth, KS 66048  
Email: ann@youngsigncompany.com Telephone: 913-651-5432  
Petitioner's Interest in Property: Assisting KCKCC in securing sign for their school at the Pioneer Center  
Purpose of Petition: KCKCC wants sign on the building that is readable from Spruce Street. The building sits back very far from the road so a variance is required. The letters are non illuminated.

- 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): LEAVENWORTH BOARD OF EDUCATION MATT DEDEKE

Signature: [Signature] Date: 1-25-21

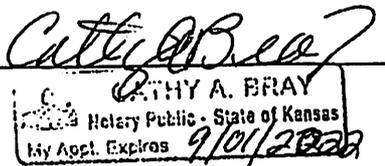
State of Kansas )

County of Leavenworth )

Signed or attested before me on Jan. 25, 2021 by [Signature]

Notary Public: [Signature]

My appointment expires: 9/01/2022 (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)

SA



**YOUNG  
SIGN  
COMPANY**

326 CHOCTAW ST., LEAVENWORTH, KS. 66048 - 913-651-5432  
see what we can do at [YoungSignCompany.com](http://YoungSignCompany.com)

January 22,2021

Board of Zoning Appeals,

We respectfully request inclusion on the agenda to appear before your board at the next available meeting.

The purpose of our appearance will be to request a sign variance for Kansas City Kansas Community College at The Pioneer Center at 1901 Spruce Street.

As you are aware, the building is "curved" and sits back a very long distance from Spruce Street. The zoning is residential, but due to the size of the property, the distance from the road, and the fact that the letters will be non-illuminated, there should be no impact to neighboring property owners.

The Kansas City Kansas Community College provides a great service to our community and offers training and education so valuable to our residents. They need a way to be more easily recognizable and this sign will help promote their location.

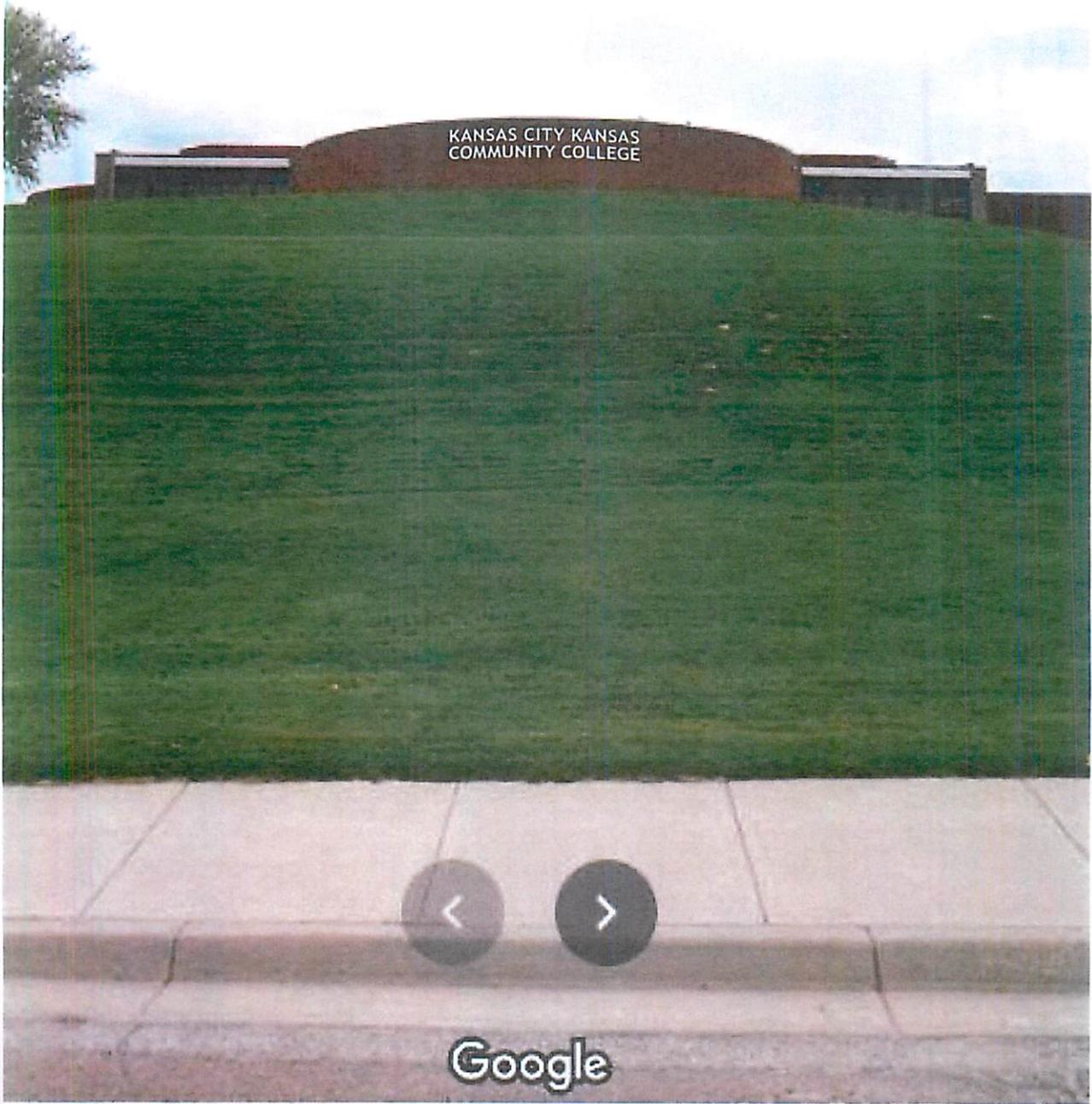
The code only allows for a very small sign that would be inefficient for visibility.

The variance request is desired to promote services that are vital to our area. We hope you agree that it does not interfere with the spirit and intent of the Development Regulations and will approve our request.

We appreciate your thoughtful consideration..

Sincerely,

Ann Hoins  
Young Sign Co. Inc.



 **YOUNG SIGN COMPANY**  
326 Choctaw St. • Leavenworth, KS.  
913-651-5432

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These plans and/or design are the exclusive property of Young Sign Co., Inc. and are the result of the original work of its employees. They are submitted to your company for the sole purpose of your consideration whether to purchase these plans/design or to purchase from Young Sign Co., Inc. a sign manufactured according to these plans or design. Distribution or exhibition of these plans to anyone other than employees of your company, or use of these plans to construct a sign similar to the one embodied herein, is expressly forbidden. In the event that such exhibition occurs, Young Sign Co., Inc. expects to be reimbursed not less than \$700.00 in compensation for time and effort entailed in creating these plans.

DATE 12/08/2020

SALES: Ann Hoins

ann@youngsigncompany.com

KCKCC at Pioneer Center  
1901 Spruce St.  
Leavenworth, KS

39'

30" KANSAS CITY KANSAS  
30" COMMUNITY COLLEGE

12'4" tall brick wall



**©Copyright 2021 by Young Sign Co., Inc.**  
These plans and/or design are the exclusive property of Young Sign Co., Inc. and are the result of the original work of its employees. They are submitted to your company for the sole purpose of your consideration whether to purchase these plans/design or to purchase from Young Sign Co., Inc. a sign manufactured according to these plans or design. Distribution or exhibition of these plans to anyone other than employees of your company or use of these plans to construct a sign similar to the one embodied herein, is expressly forbidden. In the event that such exhibition occurs, Young Sign Co., Inc. expects to be reimbursed not less than \$700.00 in compensation for time and effort entailed in creating these plans.

DATE 01/21/2021 SALES: Ann Hoins ann@youngsigncompany.com

KCKCC, at The Pioneer Center  
1901 Spruce  
north elevation of building  
curved wall 100' diameter

BOARD OF ZONING APPEALS AGENDA ITEM  
VARIANCE REQUEST  
2021-06-BZA  
312 N. 2<sup>nd</sup> STREET

MARCH 15, 2021



Prepared By:  
Julie Hurley  
Director of Planning and  
Community Development



Reviewed By:  
Paul Kramer  
City Manager

**SUMMARY:**

The applicant is requesting a variance to allow two wall signs and one projecting sign for a nonconforming commercial use in a district zoned R1-6, High Density Single Family Residential District.

**DISCUSSION:**

The property located at 312 N. 2<sup>nd</sup> Street is the site of Bailey's Irish Pub, formerly occupied by Marfield's Pub. The property is zoned R1-6, High Density Single Family Residential District. Restaurant uses are not permitted in the R1-6 zoning district, however, the property had operated as a restaurant for several decades, and was considered a "nonconforming use" as defined in section 1.05.A of the Development Regulations:

*Nonconforming Use: An existing use which does not comply with the use regulations applicable to new uses in the zoning district in which it is located.*

In regards to the abandonment or discontinuance of a nonconforming use, section 1.05.D of the Development Regulations states:

*When a nonconforming use is abandoned for a period of 24 consecutive months any subsequent use or occupancy of such land after this period shall comply with the regulations of the zoning district in which such land is located.*

Marfield's Pub restaurant closed in January, 2019. Bailey's Irish Pub opened in May, 2019. As the nonconforming use of a restaurant operation had not lapsed for a period of more than 24 months, and there was no change in the type of nonconforming use, the use of the property as a restaurant was allowed to continue.

Marfield's Pub displayed one projecting sign as well as three painted wall signs for "Esplanade Tavern" during its operation. Section 8.15 of the Development Regulations states in regards to nonconforming signs:

*A nonconforming sign existing lawfully at the time of the passage of this sign code may be continued under the terms as hereinafter provided that such nonconforming signs shall be modified to conform, replaced with a conforming sign or removed according to the following:*

1. *If there is a change in business ownership, tenant, name or type of business.*

Thus with the change in business ownership, tenant, and name of business, any signage displayed must conform with sign regulations for the R1-6 zoning district. No commercial signage is permitted in the R1-6 zoning district under the adopted Development Regulations without approval of a variance request.

Bailey's Irish Pub is currently displaying one projecting sign sized 4'x4', and two wall signs sized 4'x4' each. The painted wall signs reading "Esplanade Tavern" have been painted over. Permits for the projecting and wall signs were approved in April, 2019 and August, 2020 respectively. The permits were inadvertently approved by staff without informing the owner of the need for a variance at that time. The issue has recently come to staff's attention, and the owner was requested to submit a request for the necessary variance in order to bring the signs into compliance.

**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.

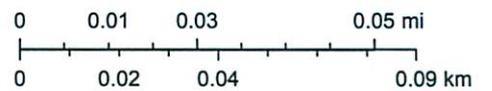
**ACTION:**

Approve or deny the variance request to allow display of one projecting sign and two wall signs for Bailey's Irish Pub, located at 312 N. 2<sup>nd</sup> Street, as described herein.



3/9/2021, 9:51:46 AM

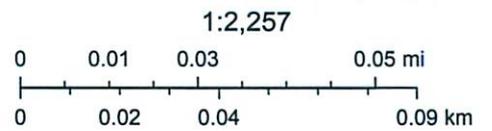
1:2,257



# 2021-06-BZA (Zoning)



3/9/2021, 9:52:46 AM



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



BOARD OF ZONING APPEALS  
CITY OF LEAVENWORTH, KANSAS

OFFICE USE ONLY

Case No.: 2021-06 **BZA**  
Application No. 8817  
Fee (non-refundable) \$350.00 - NO FEE  
Filing Date 1/28/21  
Hearing Date 3/15/21  
Publication Date 2/18/21

PETITION

Property Zoning: R1-6  
Location of Subject Property: 312 N 2nd Street, Leavenworth, KS 66048  
Legal Description: (Attach full legal description provided by the REGISTER OF DEEDS OFFICE)  
Petitioner: Jack T Judy  
Petitioner Address: 1200 Tanglewood Street, Leavenworth, KS 66048  
Email: jjudy2@kc.rr.com Telephone: (913) 680-9809  
Petitioner's Interest in Property: Owner/Registered Agent  
Purpose of Petition: Signage that was originally approve by the city was erroneously done. Now have to apply for the variance (already hung signs)

- 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): Jack T. Judy  
Signature: [Signature] Date: 25 Jan 2021  
State of Kansas  
County of Leavenworth

Signed or attested before me on January 25, 2021 by Lee Burleson  
Notary Public: [Signature]

My appointment expires: 7-25-2023 (Seal) **LEE BURLESON**  
Notary Public - State of Kansas  
My Appt. Expires 7-25-2023

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  
Community Development Department  
City Hall  
Leavenworth, Kansas 66048**

**Bailey's Property Management LLC  
Bailey's Irish Pub LLC  
312 N 2<sup>nd</sup> Street  
Leavenworth, Kansas 66048**

**RE Sign Variance**

**Board Members,**

**We request approval for the variance for the placement of the signs on Bailey's Irish Pub located at 312 N 2<sup>nd</sup> Street in Leavenworth Kansas. Prior to the placement of the signs, we paid the fees and received city approval to put up the signs, and have already incurred costs in doing so. Now we are informed the approvals were errant. We acted in good faith and would hope to receive a favorable resolution.**

**This variance request arises from a condition unique to the property in question and is not created by an action of the property owner. The business acted in good faith, paying required fees and attaining permits before the placement of the signs.**

**Granting the permit for the variance will not adversely affect the right of adjacent property owners or residents. The signage is not ostentatious and does not change any of the character of the area, doesn't block any views, are not large, loud, or create any eye sore. Effectively, them being there creates no more affects that not being there.**

**The strict application of the provision of the Development Regulations will constitute unnecessary hardship on the property owner. We have incurred associated costs to include fees to the city, signs, and having someone put up the signs because we abided by the rules. In the process there was an error in the approval process.**

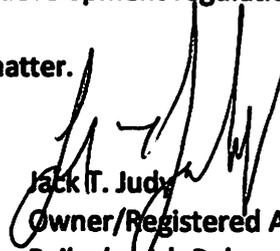
**The variance will not adversely affect public health, safety, morals, order, convenience, prosperity or general welfare. In fact, the signs have absolutely no impact in any of these areas. In actuality, the signs support a business that provides a service to the community and jobs to local residents. From that vantage point, this improves the general prosperity and welfare for the community.**

**Granting the variance does not oppose the general spirit or intent of the regulations. This property has been a business for forty plus years supporting the community. The crux of**

**the issue is the way the property is zoned. Zoned differently, this would not be an issue and would be in accordance to the regulations.**

**The signage changes nothing environmentally in the area and is most likely goes unnoticed by the vast majority of the surrounding residents. They are of neutral color and blend in with the local area. The business supports the local community and provides a service to the community. We followed the requirements and acquired permission and all the proper permits. In the end an error was made in the approval. Considering there was no maleficence by either party, just an error, we believe an approval of the variance is a fair and sound decision, and still remains within the spirit of the development regulations.**

**Thank You for your consideration in this matter.**

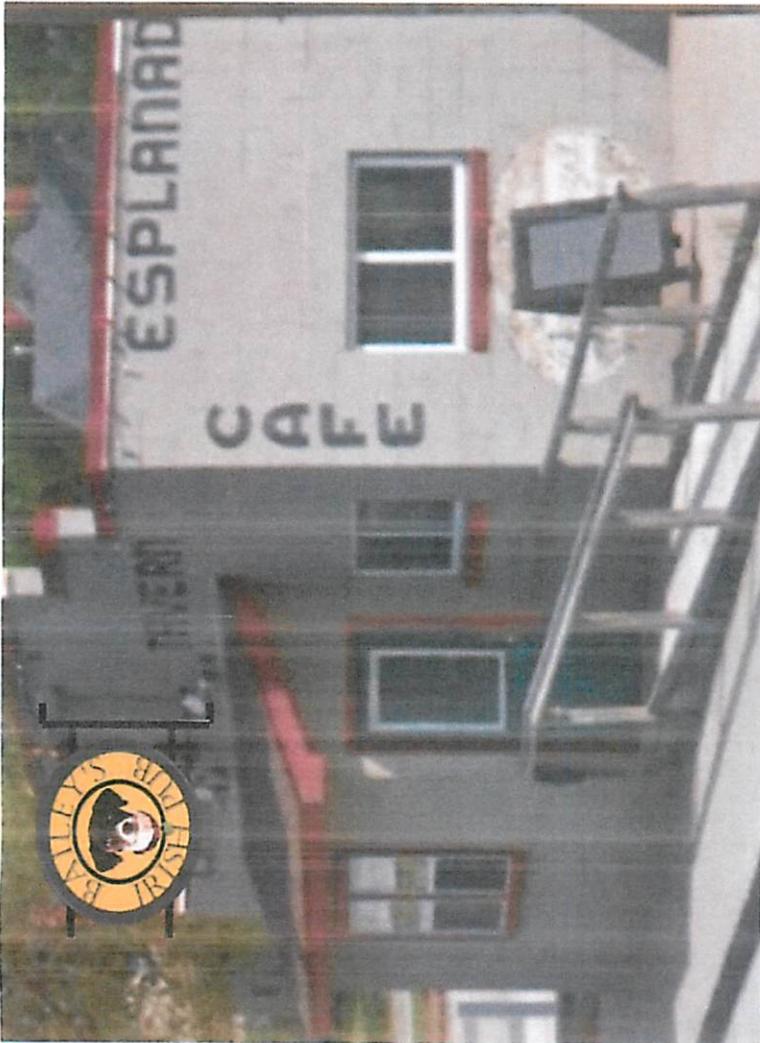
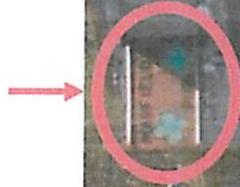


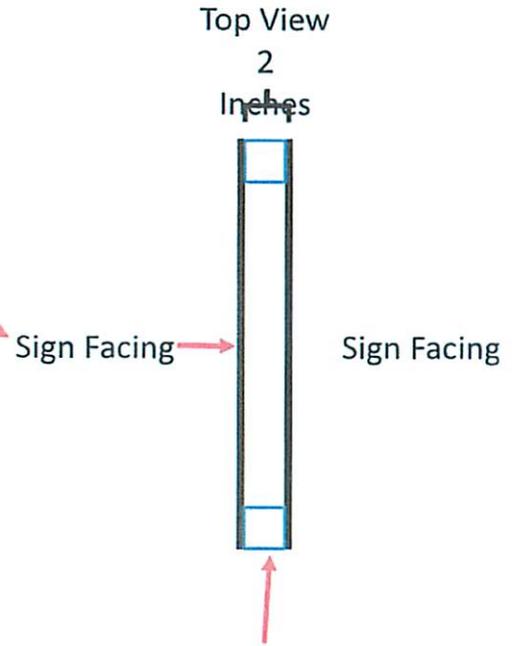
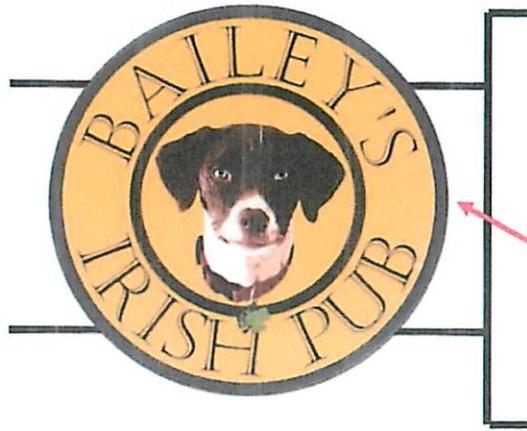
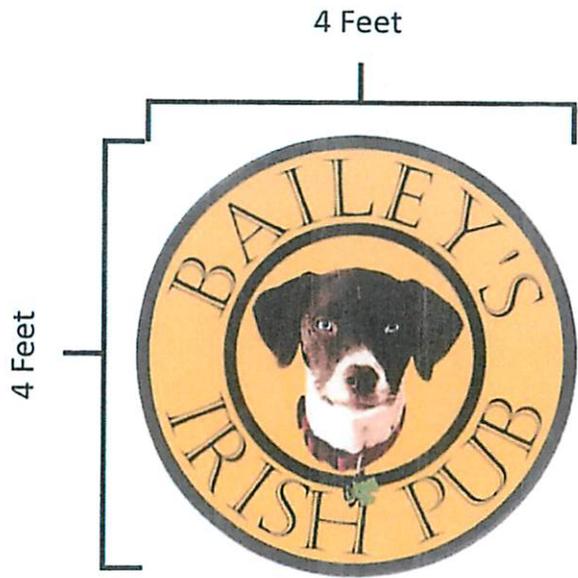
**Jack T. Judy  
Owner/Registered Agent  
Bailey's Irish Pub  
Bailey's Property Management LLC**

1000

Baibys Inlet Pub  
Arm Sign

Existing Signage





Wood Blocks with holes to bolt to side of the sign too, and mount on poles.

Bailey's Irish Pub  
South Side Wall

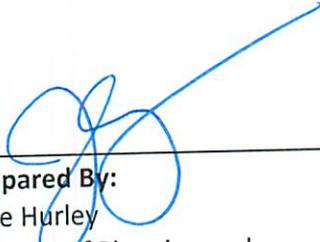


Bailey's Irish Pub  
North Side Wall



BOARD OF ZONING APPEALS AGENDA ITEM  
VARIANCE REQUEST  
2021-07-BZA  
402 S. 20<sup>th</sup> STREET

MARCH 15, 2021



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Prepared By:

Julie Hurley  
Director of Planning and  
Community Development



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Reviewed By:

Paul Kramer  
City Manager

**SUMMARY:**

The applicant is requesting a variance to allow a wall sign and a sandwich board sign for a nonconforming commercial use in a district zoned R1-9, Medium Density Single Family Residential District.

**DISCUSSION:**

The property located at 402 S. 20<sup>th</sup> Street is the site of The Suburban restaurant, formerly occupied by Mama Mia's restaurant. The property is zoned R1-9, Medium Density Single Family Residential District. Restaurant uses are not permitted in the R1-9 zoning district, however, the property had operated as a restaurant for several decades, and was considered a "nonconforming use" as defined in section 1.05.A of the Development Regulations:

*Nonconforming Use: An existing use which does not comply with the use regulations applicable to new uses in the zoning district in which it is located.*

In regards to the abandonment or discontinuance of a nonconforming use, section 1.05.D of the Development Regulations states:

*When a nonconforming use is abandoned for a period of 24 consecutive months any subsequent use or occupancy of such land after this period shall comply with the regulations of the zoning district in which such land is located.*

Mama Mia's restaurant closed in September, 2019. The Suburban restaurant opened in July, 2020. As the nonconforming use of a restaurant operation had not lapsed for a period of more than 24 months, and there was no change in the type of nonconforming use, the use of the property as a restaurant was allowed to continue.

Mama Mia's restaurant displayed an attached wall sign during its operation. Section 8.15 of the Development Regulations states in regards to nonconforming signs:

*A nonconforming sign existing lawfully at the time of the passage of this sign code may be continued under the terms as hereinafter provided that such nonconforming signs shall be modified to conform, replaced with a conforming sign or removed according to the following:*

- 1. If there is a change in business ownership, tenant, name or type of business.*

Thus with the change in business ownership, tenant, and name of business, any signage displayed must conform with sign regulations for the R1-9 zoning district. No commercial signage is permitted in the R1-9 zoning district under the adopted Development Regulations without approval of a variance request.

The Suburban restaurant is intending to display one wall sign sized 4'x2' (8 square feet), and one sandwich board sign sized 2'x3.75' (7.5 square feet).

**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)

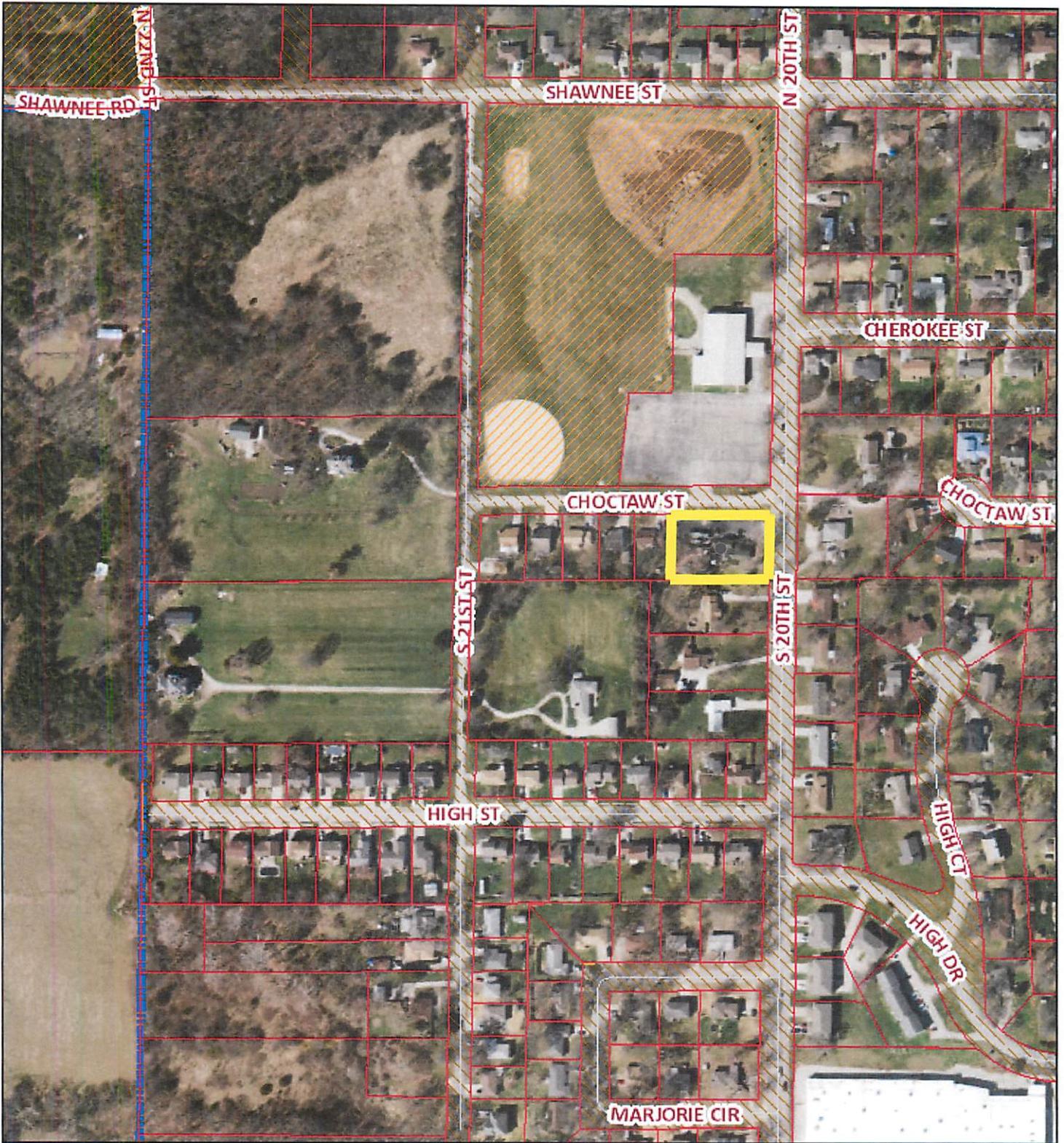
**Variances:** To authorize in specific cases a variance from the specific terms of these Development Regulations which will not be contrary to the public interest and where, owing to special conditions, a literal enforcement of the provisions of these Development Regulations will, in an individual case, 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.*

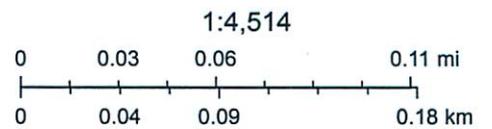
3. In granting a variance, the Board may impose such conditions, safeguards, and restrictions upon the premises benefited by the variance as may be necessary to reduce or minimize any potentially injurious effect of such variance upon other property in the neighborhood, and to carry out the general purpose and intent of these Development Regulations.

**ACTION:**

Approve or deny the variance request to allow display of a wall sign and sandwich board sign for The Suburban restaurant located at 402 S. 20<sup>th</sup> Street, as described herein.



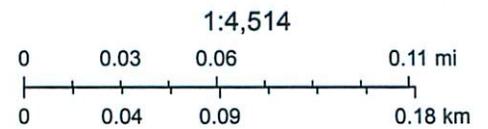
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# 2021-07-BZA (Zoning)



3/9/2021, 10:10:35 AM



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**BOARD OF ZONING APPEALS**  
CITY OF LEAVENWORTH, KANSAS

**OFFICE USE ONLY**

Case No.: 2021-07 **BZA**

Application No. 8843  
Fee (non-refundable) \$350.00  
Filing Date 2/2/21  
Hearing Date 3/15/21  
Publication Date 2/18/21

**PETITION**

Property Zoning: R1-9  
Location of Subject Property: 402 So. 20th Street Leavenworth Ks 66048  
Legal Description: (Attach full legal description provided by the REGISTER OF DEEDS OFFICE)  
Petitioner: Theresa A. WIGGIN AKA Dinnercraft LLC  
Petitioner Address: 3933 DIXIE DR. LEAVENWORTH KS 66048  
Email: theresawiggin@me.com Telephone: 913306-1583  
Petitioner's Interest in Property: Sole owner of The Suburban  
Purpose of Petition: requesting a sign/variance

- 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): Theresa A. WIGGIN

Signature: Theresa A. Wiggin Date: 2-1-2021

State of Kansas )  
County of Leavenworth )

Signed or attested before me on 17 Feb 21 by Theresa Wiggin

Notary Public: [Signature]

My appointment expires: Mar 25, 2024 (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)

To Whom It May Concern

I went to the city to obtain a sign permit and was denied.

I am requesting a variance to have sign rights.

There has been a sign on this property dating back to 1948. There are multiple instances of sign permits on file for the same exact location. We intend to do the exact same thing that has been done for the past half a century. Please see picture attached.

Thank you for your assistance in this matter.

Theresa Wiggins  
Dinnercrafter LLC  
The Suburban





DATE March 15, 2021  
TO The Leavenworth Board of Zoning Appeals  
FROM Dewey Gillett

REF: Request for Sign Variance on Non-Conforming business located at 402 S. 20<sup>th</sup> St.,  
Leavenworth, KS.

We built our home in 1975 (46 years ago) at 517 S. 21<sup>st</sup> Street because it was zoned Single  
Family.

There was a non-conforming structure in the area that became a restaurant. There are many  
limitations on non-conforming structures.

One of those limitations is about signs in a Single-Family zoned area.

Dinnercraft, LLC is the current entity coming to the Board of Zoning Appeals for a second sign  
on their property.

They already have a sign on the Restaurant. With the zoning in the neighborhood we do not see  
any reason for another sign. This is especially a problem with the lack of car parking spaces for  
the number of people they seat.

The Board should say no on another sign.

Another problem about signs in non-conforming uses is signs in the windows. The Board should  
say no neon or any type of signs are to be in the windows in Single-Family zoned neighborhood.

Sincerely,

*Dewey Gillett DVM*