



**BOARD OF ZONING APPEALS MINUTES
MONDAY, JUNE 27, 2022, 6:00 P.M.
COMMISSION ROOM, CITY HALL
LEAVENWORTH, KANSAS**

CALL TO ORDER:

Board Members Present

Jan Horvath
Dick Gervasini
Mike Bogner
Kathy Kem

Board Member(s) Absent

Ron Bates

City Staff Present

Julie Hurley
Michelle Baragary

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

APPROVAL OF MINUTES: October 18, 2021

Chairman Bogner asked for comments, changes or a motion on the minutes presented for approval: October 18, 2021. Board member Horvath moved to approve the minutes as presented, seconded by Board member Gervasini and approved by a vote of 3-0. Chairman Bogner abstained.

OLD BUSINESS:

None

NEW BUSINESS:

1. 2022-10 BZA – 700 EISENHOWER RD

Hold a public hearing for Case No. 2022-10 BZA – 700 Eisenhower Rd, wherein the applicant is requesting a variance from section 8.15.A of the adopted Development Regulations to allow the use of two existing nonconforming signs after a change in business name and ownership.

Chairman Bogner called for the staff report.

Planning Director Julie Hurley stated the applicant and owner, Moize Morani, is requesting a variance from section 8.15.A of the adopted Development Regulations to allow the use of two existing nonconforming signs after a change in business name and ownership for the gas station located at 700 Eisenhower Rd. Section 8.15.A of the current Development Regulations require that a nonconforming

sign be modified to conform, replaced with a conforming sign, or removed if there is a change in business name or ownership.

- *8.15.A Nonconforming: 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.*
 - 2) *Any maintenance, repair or alteration of a nonconforming sign shall not cost more than 25% of the current value of the sign as of the date of alteration or repair.*

The subject property is zoned GBD, General Business District, and is occupied by a gas station, which is an allowed use in the GBD zoning district. Business ownership recently changed hands, and at that time the name of the business changed from Woody's Gas Express to Sunoco. There are two existing freestanding signs associated with the business, one at the southeast corner of the property and one at the northeast corner of the property. The sign at the southeast corner is 20' in height with a total sign face of 110.25 sqft. The sign at the northeast corner is 20' in height with a total sign face of 82.82 sqft.

Current regulations for signage in the GBD district allow freestanding signs to be a maximum of 15' in height, with a minimum setback of 5' from the property line. Where a sign is located across the street from a property zoned commercial or industrial uses, the height of the sign may be increased to a height of 25', provided that the nearest edge of the sign is setback from the property line an additional 2' for each additional 1 foot in height. The property across the street to the south is located in the City of Lansing, and is zoned for Agricultural purposes. The property across the street to the east is zoned OBD, Office Business District. The provision for additional height does not apply to the sign on the southeast corner, since it is across the street from property zoned for Agricultural purposes. The sign on the northeast corner is setback approximately 10' from the nearest property line, for an allowable maximum height of 17.5'.

Current regulations for signage in the GBD district allow a maximum sign face area of 100 sqft. The sign on the northeast corner meets this requirement; the sign on the southeast corner does not.

In summary, the existing sign on the northeast corner meets the requirements for sign face area, and exceeds the maximum allowable height by 2.5'. The sign on the southeast corner exceeds the maximum allowable height by 5' and exceeds the maximum allowable sign face area by 10.25 sqft.

After the required notice was published, staff has received no comments from any property owners.

Chairman Bogner asked for questions about the staff report.

Board Member Kem asked if there is an overall increase in the sign square footage between the new and the old signs.

Ms. Hurley responded they are not increasing height or sign area. They are wanting to reface the existing signs, and the existing signs are a bit out of conformance with current regulations.

Board Member Horvath asked if he understands it correctly, the sign on the southeast corner exceeds the square footage by 10.25 sqft.

Ms. Hurley responded that is correct, and that sign also exceeds the maximum height by 5'.

Chairman Bogner asked that when the sign was originally constructed it did meet the regulations but the sign regulations have changed since that time, causing the signs to now be nonconforming.

Ms. Hurley responded staff does not have the original sign permits but would assume that when the signs were reviewed that they would have been in conformance with the regulations, as they existed at that time.

Chairman Bogner asked if the signs are structurally sound.

Ms. Hurley responded in the affirmative.

Chairman Bogner asked the applicant/owner if he would like to speak.

Moize Morani, applicant and owner, stated he moved to Leavenworth two years ago, and has purchased gas stations from Woody's. Has spent almost \$200,000 installing new pumps, lighting, kitchen, etc. The variance is to allow him to use the existing signs for new signage to further increase the appearance of the property.

Chairman Bogner asked when he plans to install the new signage.

Mr. Morani stated in the next couple of weeks.

With no other questions for the applicant, Chairman Bogner opened the public hearing. With no one else wishing to speak, Chairman Bogner closed the public hearing and called for discussion amongst the board members.

Board Member Kem asked staff if this is an area of the sign ordinance that is potentially being looked at for modification.

Ms. Hurley responded there is no discussion of changing the sign regulations for height or area allowance. Ms. Hurley further stated, there have not been many requests for variances on signs. Typically, if we receive a lot of variance requests on the same thing, is when staff will start looking at the regulations for possible revisions.

Board Member Kem asked staff if they have had a case similar to this request since the sign regulations have been revised.

Ms. Hurley stated the most recent request for a variance regarding a sign was at Topsy's Liquor on 4th Street. That particular sign was in the right-of-way that made it nonconforming; but in terms of size of signs, staff has not received a variance request.

Board Member Horvath asked for clarification that the northeast sign is for the distance from the property line.

Ms. Hurley responded the variance is from that section of the regulations regarding reuse of nonconforming signs. The variance is not from the section of the regulations dealing with the specific height and area requirements. The board does not need to focus too much on what's nonconforming but rather the variance granted would or would not allow reuse of the nonconforming signs.

Chairman Bogner asked staff when voting on the variances, it is all inclusive, and they will not be voting on the signs and the nonconformance's individually.

Ms. Hurley responded in the affirmative stating the board is voting yes or no on using the two signs as they are presented overall.

With no further discussion, 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 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 4-0

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 4-0

All board members voted in the affirmative.

- c) *That the strict application of the provisions of the Development Regulations from which the variance is requested will constitute unnecessary hardship upon the property owner represented in the application.*

Vote 3-1

Ms. Kem voted in the negative.

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

Vote 4-0
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 4-0
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 request for a variance from section 8.15.A of the adopted Development Regulations to allow the use of two existing signs after a change in business name and ownership at 700 Eisenhower Road.

Chairman Bogner stated based on the findings, the board is in favor of granting the variance to allow the use of two existing nonconforming signs after a change in business name and ownership at 700 Eisenhower Road with no conditions or restrictions.

2. 2022-11 BZA – 4300 NEW LAWRENCE RD

Hold a public hearing for Case No. 2022-11 BZA – 4300 New Lawrence Road, wherein the applicant is requesting a variance from sections 4.03 and 6.08 of the adopted Development Regulations to allow a fence over 48” in height in the front yard and an accessory structure in the front yard.

Chairman Bogner called for the staff report.

Planning Director Julie Hurley stated the property located at 4300 New Lawrence Road is zoned R1-25, Low Density Single Family Residential District, and is occupied by a newly constructed single family home. The lot is 3.69 acres in size, and the house is situated in the western half of the lot, approximately 500’ from New Lawrence Road.

The owner is requesting to install a chicken coop in front of the house, surrounded by a 6’ wrought iron fence for protection. The terrain of the property is such that the lot slopes significantly down towards an existing pond from the back of the house, which does not allow for placement of the coop and fencing in the rear yard area. The lot is significantly wooded with varying terrain between the house and New Lawrence Road, obscuring visibility of the house and the proposed location of the coop and fence from the road.

Section 4.03.D of the Development Regulations states that:

- 1) *No accessory buildings shall be erected in any required front or side yard, or at any other place forward of the main building line.*
- 2) *No accessory use except for permitted signs, fences, and permitted off-street parking shall be permitted in any required front or side yard.*

Article 12 of the Development Regulations defines “Accessory Building, Accessory Structure, or Accessory Use” as follows:

A building or use which: (1) is subordinate to and serves a principal building or principal use; (2) is subordinate in area, extent or purpose to the principal building or principal use served; (3) contributes to the comfort convenience, or necessity of occupants of the principal building or principal use; (4) is located on the same zoning lot as the principal building or principal use. The same as “appurtenant structure”.

Section 6.08.C of the Development Regulations states that:

Open fences and hedges may be installed in all front yards on the property lines but may not exceed 48 inches above the natural contour of the ground.

After required notifications were sent, staff received no comments from notified property owners.

Board Member Kem asked if this is the second accessory structure on the site.

Ms. Hurley responded in the affirmative.

Chairman Bogner asked if the accessory structure is considered temporary because it is movable.

Ms. Hurley responded no, it is considered a permanent structure.

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

Kevin Wiley, owner and applicant, stated the subject property is unique as far as where the house is located on it. Traditionally houses are closer to the road, and there would not be any issues putting the chicken coop behind the house. However, with the pond in the back yard and the house so far away from the street, the available space for the accessory structure is in the front yard.

Chairman Bogner asked how large of an area.

Mr. Wiley responded the garden area is 30' x 40' and the chicken coop is 6' x 12'. The garden area will have raised flowerbed, and the chicken coop will be inside the garden area. The fence will protect the chickens as well as the garden from wildlife.

Board Member Kem asked what the square on the site plan between the house and the shop represents.

Mr. Wiley responded it is a gazebo.

Board Member Kem stated the chicken coop would be a third accessory structure.

Ms. Hurley asked the applicant if the gazebo has already been constructed.

Mr. Wiley responded in the affirmative.

Ms. Hurley stated the chicken coop would be a third accessory structure, therefore, another variance is required.

Mr. Wiley asked if the chicken coop is an accessory structure since it is not a permanent structure.

Ms. Hurley responded it is still considered an accessory structure, and would be included as part of this variance request.

With no one else wishing to speak, Chairman Bogner closed the public hearing and called for discussion amongst the board members. With no further discussion, 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 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 3-1

Chairman Bogner stated in a normal subdivision, the house is at the front of the lot. The size of the lot would allow them to install accessory structures in the back of the lot. Part of the variance under consideration is for something to be in front of the house. The circumstances surrounding this lot, such as the power line, the location of the pond and the topography, is something the owner had to work with and not something he necessarily created.

Board member Kem voted in the negative stating she does not have an issue with the fence or chicken coop being in the front yard because there are exceptional circumstances here, but the third accessory structure is the issue because that is of the owner's own making.

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

Vote 4-0

All board members voted in the affirmative.

- c) *That the strict application of the provisions of the Development Regulations from which the variance is requested will constitute unnecessary hardship upon the property owner represented in the application.*

Vote 3-1

Ms. Kem voted in the negative.

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

Vote 4-0

All board members voted in the affirmative.

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

Vote 3-1

Board member Kem voted in the negative.

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 variance request to allow an accessory structure and a fence in excess of 48" in height forward of the main building line and to allow a third accessory structure.

Board Member Gervasini stated the applicant should be knowledgeable of section 8-332 and 8-333 of the Leavenworth Code of Ordinances regarding domestic fowl.

Chairman Bogner stated based on the findings, the board is in favor of granting the variance to allow a third accessory structure (chicken coop) and an open fence in excess of 48" in height forward of the main building line at 4300 New Lawrence Road with the condition the applicant/owner is knowledgeable of section 8-332 and 8-333 of the Leavenworth Code of Ordinances regarding domestic fowl.

3. ELECTION OF OFFICERS

Elect Chairperson and Vice Chairperson.

Chairman Bogner called for a nomination for Chairperson. Board Member Kem moved to nominate Mr. Bogner as Chairman,; approved by a vote of 3-0 (Mr. Bogner abstained). Chairman Bogner moved to nominate Mr. Gervasini as Vice Chairman; approved by a vote of 3-0 (Mr. Gervasini abstained).

Board Member Gervasini moved to adjourn, passed 4-0.

The meeting adjourned at 6:40 p.m.

Minutes taken by Administrative Assistant Michelle Baragary.