



**BOARD OF ZONING APPEALS MINUTES
MONDAY, September 19, 2022, 6:00 P.M.
COMMISSION ROOM, CITY HALL
LEAVENWORTH, KANSAS**

CALL TO ORDER:

Board Members Present

Mike Bogner
Dick Gervasini
Ron Bates
Kathy Kem

Board Member(s) Absent

Jan Horvath

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: June 27, 2022

Chairman Bogner asked for comments, changes or a motion on the minutes presented for approval: June 27, 2022. Mr. Gervasini moved to approve the minutes as presented, seconded by Ms. Kem and approved by a vote of 3-0. Mr. Bates abstained.

OLD BUSINESS:

None

NEW BUSINESS:

1. 2022-20 BZA – 604 POTTAWATOMIE

Staff withdrew the application. Determined a variance request is not required.

2. 2022-23 BZA – 1900 S. 4TH STREET

Hold a public hearing for Case No. 2022-23 BZA – 1900 S. 4th Street, wherein the applicant is requesting a variance from sections 8.15 of the adopted Development Regulations to allow the use of an existing nonconforming sign after a change in tenant and business name.

Chairman Bogner called for the staff report.

Planning Director Julie Hurley stated the applicant, Young Sign Company, is requesting a variance from section 8.15 of the adopted Development Regulations to allow the use of an existing nonconforming sign after a change in tenant and business name for the property located at 1900 S. 4th Street.

Section 8.15.A of the current Development Regulations requires 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 the Pure Vape retail store, which is an allowed use in the GBD zoning district. The current tenant is a new occupant of the space. There is one existing freestanding sign associated with the property, which is currently located within the 4th Street right-of-way (ROW). 4th Street is a State Highway, and at some point KDOT acquired additional ROW on 4th Street that was not originally platted or part of those lots. When the signs on 4th Street were all installed, they were conforming and were on the properties that they were associated with. However, with the additional ROW acquired by KDOT, most of the signs on 4th Street are now in the ROW causing them to be nonconforming.

The applicant has indicated that the existing sign is approximately 19' in height. The new tenant wishes to utilize the existing sign structure in its existing location and install a new sign face representative of their business.

Current regulations require that freestanding signage in the GBD zoning district be located on the parcel and be setback a minimum of 5' from any property line. The regulations also state that the maximum height for a freestanding sign in the GBD zoning district is 15', but may be increased to a maximum of 25' with additional setback from the property line.

After the required notice was published to properties within 200', staff has received no comments from any notified property owners.

Chairman Bogner asked for questions about the staff report.

Ms. Kem asked if the top and bottom portions of the sign are to be replaced.

Ms. Hurley responded the entire structure is located in the ROW. The regulations state that any part of the sign structure must be setback a minimum of 5'. The top portion of the sign hangs out over that front pole so the structure would need to be setback 5' out of the ROW from that part of the sign. Staff checked the original plats for all the parcels along there, and the original ROW was 60' but is quite a bit wider now.

Mr. Bates stated that staff indicated the sign is 5 feet above the allowed height limit but the application states the sign is only 4" over the maximum allowed height.

Ms. Hurley stated she misread the height on the application. The existing sign structure is 15 feet 4 inches in height.

Ann Hoins, Young Sign Company representing the property owner Tom Steger, stated the property owner has a tenant who would like to utilize the existing sign pole. The top part of the sign would be the ID sign for the store that is there now. Ms. Hoins indicated to Mr. Steger the lower part that has the message center does not look good and would need to be fixed up. The landscaping underneath the sign needs to be freshened up and the sign poles need to be painted to make the area look better than its current state.

Chairman Bogner asked if the property owner intends to use the message board.

Ms. Hoins believes the property owner wants to keep it as a message board but not an electronic message board. She indicated to the property owner he should clean it up and either redo it as a message board or could put something else on there like service listings or something similar.

Ms. Kem asked if there is power to the sign, and if so, will the sign be backlit.

Ms. Hoins responded in the affirmative to both.

Ms. Kem asked staff if the north facing wall sign is conforming.

Ms. Hurley responded in the affirmative stating there are signs on the north, east and south side of the building, which were approved through the submission of sign permit applications. The only application denied was for the pole sign.

Chairman Bogner asked if this is a request for one variance or two.

Ms. Hurley responded it is a single variance request to reuse the nonconforming sign.

Mr. Bateman asked if the variance is denied, would the pole sign need to be placed behind the building.

Ms. Hoins stated there is no room for a pole sign or monument sign.

Chairman Bogner asked that the variance is to reuse the existing nonconforming sign but not to modify it or relocate it.

Ms. Hurley responded in the affirmative.

Chairman Bogner opened the public hearing and asked if anyone would like to speak in favor of or against the variance request. With no one wishing to speaking, 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 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 4-0

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 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 variance request to allow the use of an existing nonconforming sign after a change in tenant and business name.

Chairman Bogner stated based on the findings, the board granted the variance to allow the use of an existing nonconforming sign after a change in tenant and business name located at 1900 S. 4th Street with no conditions or restrictions.

With no further business, Chairman Bogner called for a motion to adjourn. Mr. Gervasini moved to adjourn, seconded by Ms. Kem, passed 4-0.

The meeting adjourned at 6:16 p.m.

Minutes taken by Administrative Assistant Michelle Baragary.