



**BOARD OF ZONING APPEALS MINUTES  
MONDAY, October 17, 2022, 6:00 P.M.  
COMMISSION ROOM, CITY HALL  
LEAVENWORTH, KANSAS**

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**CALL TO ORDER:**

**Board Members Present**

Mike Bogner  
Dick Gervasini  
Jan Horvath

**Board Member(s) Absent**

Kathy Kem  
Ron Bates

**City Staff Present**

Julie Hurley  
Michelle Baragary

Chairman Bogner called the meeting to order at 6:20 p.m. and noted a quorum was present.

**APPROVAL OF MINUTES: September 19, 2022**

Chairman Bogner asked for comments, changes or a motion on the minutes presented for approval: September 19, 2022. Commissioner Gervasini moved to approve the minutes as presented, seconded by Commissioner Horvath and approved by a vote of 3-0.

**OLD BUSINESS:**

None

**NEW BUSINESS:**

**1. 2022-24 BZA – 1920 SPRUCE STREET**

Hold a public hearing for Case No. 2022-24 BZA – 1920 Spruce Street, wherein the applicant is requesting a variance from section 4.03 of the adopted Development Regulations to allow accessory structures forward of the main building line for a property zoned GBD, General Business District.

Commissioner Bogner called for the staff report.

Planning Director Julie Hurley stated the applicant is requesting a variance to allow accessory structures forward of the main building line for a property zoned GBD, General Business District.

The property is located at 1920 Spruce Street, and is occupied by the Affordable Family Storage facility. The property was formerly occupied by Country Mart. As part of the ongoing redevelopment of the

property as a storage facility, the applicant has requested to install three separate rows of accessory storage units in the parking lot in front of the main building, within the existing fenced area, for a total of 20,040 square feet in additional storage area.

Section 4.03.E.1 of the Development Regulations restricts placement of accessory structures as follows:

*No accessory buildings shall be erected in any required front or side yard, or at any other place forward of the main building line.*

Ms. Hurley stated a couple years ago, the U-Haul storage facility located on 4<sup>th</sup> Street had a similar request. These types of accessory storage units are common for these types of storage facilities.

Chairman Bogner asked for questions about the staff report.

Chairman Bogner asked for what reason the fence line was initially installed.

Ms. Hurley responded it was her understanding they were going to provide some open storage space inside the fenced area. The applicant may have more insight into what the plan was.

Travis Overhue, applicant/owner, stated the initial fence was installed to provide open storage space in the parking lot area as the business grows. Unlike the movable storage pods like U-Haul has, the proposed accessory structures will be permanent structures, and will look much better than the sheds that are on the corner of Spruce and 19<sup>th</sup> Street. Will focus to make the accessory structures look aesthetically pleasing. They expect the additional storage will create 120 more units.

Mr. Overhue further stated the biggest demand is for larger units, primarily coming from the military base. Their plan is to use larger bays, such as 10'x20' or 10'x30', to accommodate the demand for larger storage units. To further expand their clientele, they will also focus on the small business development by allowing a small business to use a storage unit as an office space for internet access and to store their materials, i.e. a small plumbing company.

Chairman Bogner asked if the fence will be removed.

Mr. Overhue responded the fence will remain for security reasons, and there will be a gate by the office with a security code required for entry. Entry hours would be from 6:00 a.m. to 10 p.m. For security reasons, they do not want to allow 24 hour access. Mr. Overhue reiterated their proposed storage units will not be portable units like U-Haul has. They want to build a good permanent structure, with endcaps and stone to make the units look nicer.

Commissioner Gervasini asked if they have considered a different configuration of the proposed storage units to be installed in the parking lot area. Instead of parallel to Spruce Street, possibly have the units perpendicular to Spruce Street.

Mr. Overhue stated they received an elevation certificate, and according to his math only a tiny section of the unit to the south would be in the floodplain, approximately six inches to a foot. The proposed configuration is more along the aspect of (technical difficulty – no audio from 9:34-10:00).

Chairman Bogner asked if this would restrict access to the other businesses on the east side or if this is all within the fence line.

Mr. Overhue responded it is all within the fence line and would not restrict access.

Ms. Hurley stated the applicant is correct that there are some floodplain issues on this lot, and will have to go through our Building Inspection Division when they apply for their permits and be reviewed by Public Works.

Chairman Bogner asked for clarification that the approval of the variance is to allow them to build three structures, and then the applicant will need to through the city for review and approval.

Ms. Hurley responded in the affirmative stating if there are any floodplain complications, etc. it will be reviewed when the applicant submits for building permits.

Commissioner Horvath asked the applicant if he has spoken with any of the neighboring businesses.

Mr. Overhue responded he has not spoken with neighboring businesses about his proposal.

Ms. Hurley stated the neighboring properties have been notified according to State Statute.

Chairman Bogner asked staff if there are any concerns about additional traffic.

Ms. Hurley responded staff is not concerned about additional traffic. Storage units do not generate a lot of concentrated traffic regardless of how many storage units there are.

Chairman Bogner asked how many storage units the applicant currently has.

Mr. Overhue stated 450 – 500 smaller bays approximately 5'x5'.

Chairman Bogner asked how many additional units the proposed three accessory buildings would provide.

Mr. Overhue responded with the larger bays they would have 80-100 individual units. If the bays are only 10'x10' that would give them an additional 130 individual units.

Commissioner Horvath asked how tall the units are.

Mr. Overhue stated the building height is 20' and the height of the storage units will be between 12 feet to 15 feet.

Chairman Bogner asked about security lighting.

Mr. Overhue stated they will have numerous LED lights on time clocks.

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 speak, Chairman Bogner closed the public hearing and called for discussion amongst the board members.

Commissioner Gervasini asked if the northern curb cut will be blocked.

Ms. Hurley responded that when the fence was installed, the owners were told the curb cuts could not be blocked. There is still access from the northern curb cut to pull in and get around the fence, and that will not be changing.

Chairman Bogner asked if staff received any comments from other businesses in the area.

Ms. Hurley responded staff has not received any comments.

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

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

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

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

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

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

**Vote 3-0**

**All board members voted in the affirmative.**

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

**Vote 3-0**

**All board members voted in the affirmative.**

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

**ACTION:**

Approve or deny the variance request to allow accessory structures forward of the main building line for a property zoned GBD, General Business District.

Chairman Bogner stated based on the findings, the board granted the variance to allow accessory structures forward of the main building line for property located at 1920 Spruce Street with no conditions or restrictions.

**2. 2022-25 BZA – 3532 LAKEVIEW DRIVE**

Hold a public hearing for Case No. 2022-25 BZA – 3532 Lakeview Drive, wherein the applicant is requesting a variance from section 4.04 of the adopted Development Regulations to allow more than two accessory structure on a property zoned R1-9, Medium Density Single Family Residential District.

Chairman Bogner called for the staff report.

Planning Director Julie Hurley stated the applicant is requesting a variance to allow more than two accessory structures on a property zoned R1-9, Medium Density Single Family Residential District.

The property located at 3532 Lakeview Drive, and is owned by Veronica Griffith. The property is 8.7 acres in size, and is occupied by a single family home, with an existing barn and a shed, as well as pasture area for horses. The barn and shed are utilized for the care and keeping of horses on the property, as well as equipment needed for maintenance. The applicant is proposing to install an 18'x36' in-ground pool on the property to the rear of the existing home.

Section 4.04.B of the Development Regulations states:

*No more than two detached accessory structures shall be allowed per building lot or parcel whichever is larger in area.*

Pools are defined as a permitted accessory use/structure.

Notification was sent to property owners within 200' of the subject property, as required by Kansas Statue. Staff received no comments from neighbors that were notified.

Chairman Bogner asked for questions about the staff report.

Chairman Bogner verified with staff that if the variance is granted, city staff will comment on the construction methods, safety measures, etc.

Ms. Hurley responded in the affirmative stating a building permit is required for a pool, and all of that will be handled at the time of building permit.

Chairman Bogner asked the applicant if she would like to speak.

Veronica Griffith chose not to speak.

Chairman Bogner opened the public hearing and asked if anyone would like to speak in favor of or against the variance request.

Rob Auxier, 550 McDonald Rd, stated he is in favor of the proposed pool.

Commissioner Gervasini asked the applicant if the pool pump/equipment pad shown on the drawing will be enclosed.

Ms. Griffith responded it will be within the fenced area but the pad itself will not be enclosed.

Ms. Hurley responded the pool pump and equipment are not typically enclosed but rather installed on an open concrete slab.

Commissioner Gervasini asked if the pool will be covered.

Ms. Griffith stated in the winter it will be covered with a vinyl covering.

Chairman Bogner asked the size of the slab.

Ms. Griffith stated approximately 4' x 6'.

With no one else 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.

4. 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.
5. A request for a variance may be granted, upon a finding of the Board that all of the following conditions have been met. The Board shall make a determination on each condition, and the finding shall be entered in the record.

a) *That the variance requested arises from such condition which is unique to the property in question and is not ordinarily found in the same zone or district; and is not created by an action or actions of the property owner or the applicant.*

**Vote 3-0**

**All board members voted in the affirmative.**

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

**Vote 3-0**

**All board members voted in the affirmative.**

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

**Vote 3-0**

**All board members voted in the affirmative.**

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

**Vote 3-0**

**All board members voted in the affirmative.**

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

**Vote 3-0**

**All board members voted in the affirmative.**

6. 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 more than two accessory structures on a property zoned R1-9, Medium Density Single Family Residential District.

Chairman Bogner stated based on the findings, the board granted the variance to allow more than two accessory structures on a property zoned R1-9, Medium Density Single Family Residential District, located at 3532 Lakeview Drive, with no conditions or restrictions.

With no further business, Chairman Bogner called for a motion to adjourn. Commissioner Gervasini moved to adjourn, seconded by Commissioner Horvath and passed 3-0.

The meeting adjourned at 6:53 p.m.

Minutes taken by Administrative Assistant Michelle Baragary.