



**BOARD OF ZONING APPEALS MINUTES
MONDAY, November 28, 2022, 6:00 P.M.
COMMISSION ROOM, CITY HALL
LEAVENWORTH, KANSAS**

CALL TO ORDER:

Board Members Present

Mike Bogner
Dick Gervasini
Jan Horvath
Kathy Kem
Ron Bates

Board Member(s) Absent

City Staff Present

Julie Hurley
Bethany Falvey
Michelle Baragary

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

APPROVAL OF MINUTES: October 17, 2022

Chairman Bogner asked for comments, changes or a motion on the minutes presented for approval: October 17, 2022. Commissioner Horvath moved to approve the minutes as presented, seconded by Commissioner Gervasini and approved by a vote of 5-0.

Planning Director Julie Hurley introduced new City Planner Bethany Falvey.

OLD BUSINESS:

None

NEW BUSINESS:

1. 2022-30 BZA – 200 S. BROADWAY STREET

Hold a public hearing for Case No. 2022-30 BZA – 200 S. Broadway Street, wherein the applicant is requesting a variance from section 5.02 of the adopted Development Regulations to allow a reduction in required off-street parking.

Commissioner Bogner called for the staff report.

City Planner Bethany Falvey stated the applicant, Flatland Realty, LLC, is requesting a variance from section 5.02 of the adopted Development Regulations to allow a reduction in required off-street parking

for their retail business located at 200 S. Broadway Street. No on-site parking is available. The property is zoned GBD, General Business District, and within the Central Business District – D overlay. It is surrounded by a mix of uses, including Dairy Queen to the north, a vacant lot to the east, and the Wizard of Pho restaurant to the south. The property location is directly west of the Central Business District.

Parking for retail uses is required at a rate of 1 per 200 square feet of space accessible to the public. The applicant has indicated that there will be 1,300 sqft of public space in the building, resulting in a requirement for 7 parking spaces. The Development Regulations allow for the required off-street parking to be reduced by up to 50% for each on-street space within 500 feet. Ample on-street parking exists within 500 feet of the site to accommodate parking needs generated by Flatland Vape Too, including 8 angled parking spaces on Delaware Street to the north.

Notification was sent to property owners within 200' of the subject property, as required by Kansas Statute. Since notifications were mailed, staff has received one inquiry regarding the use for the existing outbuilding located on the property, and addressed as 202 S. Broadway St. Staff does not know the use of the outbuilding, and it is not part of this case.

Chairman Bogner asked the commissioners for questions about the staff report.

Chairman Bogner asked if the outbuilding is located on the same parcel as the subject property.

Ms. Falvey responded in the affirmative.

Chairman Bogner asked what caused the parking issue.

Ms. Falvey responded the change in use caused the parking requirements to change. She further stated staff looked at aerial maps dating back to the early 2000s and angled parking had been there on Delaware.

Chairman Bogner asked if the angled parking was approved by the city engineer or painting by the Street Department.

Ms. Falvey responded she is unsure but staff will speak with Engineering about the angled parking.

Commissioner Horvath asked how many parking spaces are available on the Broadway Street side of the business.

Ms. Falvey responded she does not believe there are any painted parking spaces on Broadway Street on the street side of the business.

Planning Director Julie Hurley stated there are no marked spaces there but there is parking allowed on Broadway Street. If measuring south down to the corner, approximately three vehicles could park between driveway entrances all the way down Broadway Street.

Commissioner Horvath stated if three vehicles can park on Broadway Street, then the applicant needs to account for four more parking spaces.

Ms. Falvey stated there is also the angled parking on Delaware St.

Chairman Bogner stated whether or not the owner of the building occupies that corner of the angled parking then the owner of the building has the right to control who parks there.

Ms. Hurley stated the angled parking along Delaware is in the public right-of-way so that is not controlled by the property owner.

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

Eric McPherson, applicant/owner, stated as far as he knows the angled parking has been there since the 1980s.

Chairman Bogner stated the city has a new Public Works Director who probably would not know the history behind the angled parking plus the regulations have probably changed within the past couple decades. Chairman Bogner further stated he wants to be sure Public Works has the opportunity to comment on it as well.

Ms. Hurley stated Public Works has had a chance to see this and did not have any comments.

Mr. McPherson stated he applied for the variance because it was his understanding the existing gravel lot on the property would need to be paved if using it for parking.

Ms. Falvey stated on-site parking would need to be paved.

Chairman Bogner stated prior to the meeting he asked the question if this business were to grow or if an additional business were able to rent some of that space, you still have an option to satisfy the parking issue without going further down the street for additional parking.

Mr. McPherson stated his business has been shrinking, which is why he moved to this location. The rest of the building is just his warehouse for storage. He wants to keep the business in Leavenworth but if it is not successful then he will need to move somewhere that the business can succeed.

Wendy Scheidt, Leavenworth Main Street Director, stated she has worked with Mr. McPherson quite a bit. Ms. Scheidt hopes the commissioners have driven by this property as it's significantly been improved with paint and sidewalks. With the on-street parking on Broadway and Delaware, it appears there is plenty of parking available.

With no one else wishing to speak, Chairman Bogner closed the public hearing and opened it up for discussion amongst the commissioners.

Commissioner Kem asked if staff is able to reduce the on-site parking by 50% then is the variance to reduce the parking by four on-site parking spaces.

Ms. Falvey stated the variance is for no required on-site parking.

Commissioner Kem asked if the number of parking spaces requested in the variance is specified or if the variance just states no on-site parking.

Ms. Hurley responded that Commissioner Kem is correct in the number of on-site parking spaces being requested through the variance. The angled parking spaces are on-street parking since they are in the right-of-way so staff can automatically reduce the requirement by 50%, so the variance would just be for four on-site parking spaces.

Commissioner Kem asked if the whole building is addressed as 200 S. Broadway Street.

Ms. Falvey responded in the affirmative.

Commissioner Kem asked if the variance is for zero on-site parking then that applies to the entire building.

Ms. Hurley responded in the affirmative.

Commissioner Kem stated then the commissioners can add a condition if the owner had another business come in that required more than 7 on-site parking spaces.

Ms. Hurley stated that if an additional tenant were to move in, the commissioners could require that it come back to the Board of Zoning Appeals.

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) *The Board shall make a determination on each condition, and the finding shall be entered in the record.*
 - b) *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 4-1

Commissioner Kem voted in the negative stating the applicant does have the gravel parking lot though she understands his hardship with paving that parking lot.

- c) *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.

- d) *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 4-1

Commissioner Kem voted in the negative stating financial considerations are not a hardship as far as the State Statute is concerned.

- e) *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.

- f) *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.

Commissioner Kem moved to have a condition that if there is further development within the building at this address greater than 1,300 sqft then the owner would need to submit another application to the Board of Zoning Appeals for an additional parking variance.

Commissioner Gervasini asked if this refers to subletting the building.

Commissioner Kem responded it would apply to subletting the building or if the existing business were to grow further into that building space. Anything that is larger than what it is now on that corner.

Ms. Hurley stated the applicant indicated there is 1,300 sqft of retail space in that building. What Commissioner Kem is getting at is if there were any publicly accessed retail space beyond 1,300 sqft that it would need to come back before this board.

Commissioner Gervasini asked if the board is going to hold them at 1,300 sqft.

Commissioner Kem stated that is the amount of retail space the applicant indicated on the application.

Commissioner Gervasini suggested giving them up to 1,500 sqft just in case there is a little bit of growth. If the board limits the space to 1,300 sqft then there is not even an opportunity for a little bit of growth for the business.

Ms. Hurley stated the board can make a condition off the square footage or a condition of there is an additional tenant to occupy the space or whatever the board feels is most appropriate.

Chairman Bogner asked if it would be better to maybe word it that if there are any changes other than those conditions that were presented to the board tonight.

Ms. Hurley responded that would go along with what Commissioner Kem stated that if it expanded at all beyond the 1,300 sqft.

Chairman Bogner stated that it would not have to come before the board but rather go before staff to review it.

Ms. Hurley responded you would be making the variance based on the 1,300 sqft that they presented so if there were any change beyond that it would need to come back to this board.

Commissioner Gervasini feels like the board is handcuffing the applicant to the current 1,300 sqft.

Commissioner Bates stated the 1,300 sqft was the applicant's submission.

Commissioner Gervasini stated that was the applicant's submission but the board has the authority to grant them an additional number of square feet, if they so choose.

Commissioner Kem stated going from 1,300 sqft to 1,500 sqft is only one additional parking space, so maybe the board can say any development in excess of 8 off-street parking spaces that are required.

Ms. Hurley stated the board could state that if there is any development that would require off-street parking beyond 8 spaces, which would be up to 1,600 sqft of retail space, that it would need to come back to this board.

Chairman Bogner asked staff if having Public Works look at the striping, etc. needs to also be a condition of the variance.

Ms. Hurley stated that does not need to be a condition but she will have Public Works take a second look.

Chairman Bogner asked if the board is unanimous with the condition that if there is any development that would require off-street parking beyond 8 spaces, which is equivalent to 1,600 sqft of retail space, that a new application for additional parking variance would need to be submitted to this board.

All members voted yay.

ACTION:

Approve or deny the variance request to allow a reduction in required off-street parking.

Chairman Bogner stated the variance is granted with the condition that if there is any development that would require off-street parking beyond 8 spaces, which is equivalent to 1,600 sqft of retail space, that a new application for additional parking variance would need to be submitted to this board.

2. 2022-31 BZA – 522 S. 5TH STREET

Hold a public hearing for Case No. 2022-31 BZA – 522 S. 5th Street, wherein the applicant is requesting a variance from section 5.02 of the adopted Development Regulations to allow a reduction in required off-street parking.

Commissioner Bogner called for the staff report.

City Planner Bethany Falvey stated the applicant, Henry Fortenbury, is requesting a variance from section 5.02 of the Development Regulations to allow a reduction in required off-street parking for their retail business located at 522 S. 5th Street (the policy report incorrectly had the subject address as 200 S. Broadway St). No on-site parking is available. The property is zoned OBD (Office Business District) and is surrounded by a mix of uses, but primarily office uses including a tax office to the north, an office building to the east, State Farm to the south, and a vacant lot to the west. The location is one block south of the Central Business District.

Parking for retail uses is required at a rate of 1 per 200 square feet of space accessible to the public. The applicant has indicated that there will be 600 square feet of public space in the building, resulting in a requirement for 3 parking spaces. The Development Regulations allow for the required off-street parking to be reduced by up to 50% for each on-street space within 500 feet. Ample on-street parking exists within 500 feet of the site to accommodate parking needs generated by the retail shop.

Notification was sent to property owners within 200' of the subject property, as required by Kansas Statute. Since notifications were mailed, staff received one inquiry regarding the use of the building and how many off-street parking spaces are required for that use.

Chairman Bogner asked for questions from the commissioners about the staff report.

Commissioner Kem asked if there was a previous variance granted for this property.

Ms. Hurley responded in the negative stating previously there had been office uses in this building, which met the OBD zoning requirement. It was already nonconforming in terms of having no on-site parking, which is still required for office uses. The way the regulations are written, if you have an existing nonconforming use, the actual business can change as long as it is the same type of use, and would not need to come into conformance. However, when the type of use changes, it will need to come into conformance with the Development Regulations. In this case, it went from an office use to a retail use, which is a different type of nonconforming use that requires it to come into conformance.

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

Katie Affeldt stated she is the owner of the business that is interested in occupying the space in question. Little Stories Boutique is a resale boutique for children, offering clothes for newborns to juniors, and maternity clothing as well. Her current location in downtown Leavenworth is not sustainable for her business, which is why she is looking to relocate to the subject property. The biggest complaint from her customers is the downtown parking. She has customers who need to haul bags/boxes into her store, and many times they are forced to park down the street. The new location would offer more accessible parking. The rent at the new location is lower, which would give her the opportunity to grow the business. Lastly, there is a need in the city for resale clothing. Little Stories Boutique is an affordable place for children's clothing.

Wendy Scheidt stated she has worked with Katie and understands her desire to grow her business. Ms. Scheidt stated there is an adjacent parking lot that through Ms. Scheidt the owner has offered parking at his parking lot. We embrace businesses expanding outside of the downtown area, which are bringing property taxes and sales taxes into the city.

With no one else wishing to speak, Chairman Bogner closed the public hearing and opened it up for discussion amongst the commissioners.

Commissioner Gervasini asked where the off-street parking is located that Ms. Scheidt said had been offered.

Ms. Scheidt stated all she can say is that Curt Gilfert, owner of Advantage Printing, owns the old Belden-Larkin Funeral Home building and the lot across Walnut Street.

Commissioner Kem stated the property Curt Gilfert owns is 500 Oak Street and the parking lot at 511 Oak Street, which is a block away from where Ms. Affeldt would like to move her business.

Ms. Hurley stated parking is allowed all along 5th Street and along Walnut, and there is ample parking on both streets.

With no further discussion, Chairman Bogner read the following criteria regarding the Board's authority and reviewed each item. Commissioner Bates will abstain due to a conflict of interest.

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) *The Board shall make a determination on each condition, and the finding shall be entered in the record.*

- b) *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.

- c) *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.

- d) *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.

- e) *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.

- f) *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 a reduction in required off-street parking.

Chairman Bogner stated based on the findings, the board granted the variance to allow a reduction in required off-street parking for property located at 522 S. 5th Street with no conditions or restrictions.

Ms. Hurley stated there is one item on the agenda for the December 19th meeting.

With no further business, Chairman Bogner called for a motion to adjourn. Commissioner Horvath moved to adjourn, seconded by Commissioner Kem and passed 5-0.

The meeting adjourned at 6:37 p.m.

Minutes taken by Administrative Assistant Michelle Baragary.