

LEAVENWORTH BOARD OF ZONING APPEALS

Monday, November 28, 2022 – 6:00 P.M.
COMMISSION ROOM, CITY HALL
LEAVENWORTH, KANSAS

AGENDA

CALL TO ORDER:

1. Roll Call/Establish Quorum
2. Approval of Minutes: October 17, 2022 **Action:** Motion

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 St., 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.
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.

ADJOURN



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

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 4th 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 19th 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.

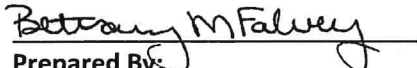
The meeting adjourned at 6:53 p.m.

Minutes taken by Administrative Assistant Michelle Baragary.

DRAFT

**Board of Zoning Appeals Agenda Item
Variance Request
2022-30-BZA
200 S. Broadway Street**

NOVEMBER 28, 2022


Prepared By:
Bethany Falvey
City Planner


Reviewed By:
Paul Kramer
City Manager

SUMMARY:

The applicant is requesting a variance from section 5.02 of the adopted Development Regulations to allow a reduction in required off-street parking.

DISCUSSION:

The applicant, Flatland Realty, 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 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 1300 square feet 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.

BOARD OF ZONING APPEALS AUTHORITY:

The Board's authority in this matter is contained in Article XV (Board of Zoning Appeals), Section 15.05.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:

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.*

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

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.*

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

f) *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:

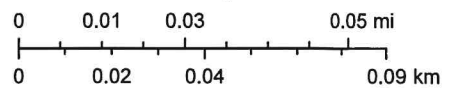
Approve or deny the request for a variance from section 5.02 of the Development Regulations to allow a reduction in required off-street parking for the retail shop to be located at 200 S. Broadway Street.

2022-30-BZA



11/16/2022, 9:58:13 AM

1:2,257



- | | |
|----------------------|-------------------------|
| Zoning_CURRENT | Parcels_Current |
| CBD | Buildings |
| GBD | Address (Points) |
| I-1 | Leavenworth City Limits |
| R1-6 | City Right-of-Way |
| Parcels (City Owned) | RoadCenterline |

Platte County, Missouri Dept. of Conservation, Esri, HERE, Garmin, GeoTechnologies, Inc., USGS, EPA



BOARD OF ZONING APPEALS
CITY OF LEAVENWORTH, KANSAS

OFFICE USE ONLY

Case No.: 2022-30 BZA
 Application No. 12148
 Fee (non-refundable) \$350.00
 Filing Date 9/27/22
 Hearing Date 11-28-22
 Publication Date 11-3-22

PETITION

Property Zoning: GBD
 Location of Subject Property: 200 S. Broadway St Leavenworth, KS 66048
 Legal Description: (Attach full legal description provided by the REGISTER OF DEEDS OFFICE)
 Petitioner: Eric McPherson, FLATLAND Realty
 Petitioner Address: 8525 Timber Trails Dr De Soto, KS 66018
 Email: Lokic@Chetmail.com Telephone: 316-204-6398
 Petitioner's Interest in Property: owner/member
 Purpose of Petition: Parking Requirement variance Section 5.02
Reduction in required parking space for retail use.

- 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): Eric McPherson

Signature: [Signature] Date: 9/27/2022

State of Kansas)

County of Leavenworth)

Signed or attested before me on September 27, 2022 by Eric McPherson

Notary Public: Michelle Baragary

My appointment expires: 8/16/24 (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)

Michelle Baragary

From: Eric McPherson <lokiarf@hotmail.com>
Sent: Tuesday, September 27, 2022 1:43 PM
To: Michelle Baragary
Subject: Parking Variance , 200 S. Broadway St. Flatland Realty

Parking Variance

Memorandum

Relocation of retail store Flatland Vapes Too

200 S. Broadway St. Leavenworth Ks, Perry Black Cadillac, Tom Parrish Oldsmobile, Herkins Automotive lots 16, 17, 18, 19, 20 Block 15 Latta's Addition to the City of Leavenworth, less that part of said lots which lies South of the center line of the creek as established in 1976

Below is a brief summary of the items of the five conditions as set out in Section 11.03.8.2 a-f of the City of Leavenworth Board of Zoning Appeals application as it pertains to the attached variance request and associated exhibits to allow the current nine parking spots to be considered sufficient for the daily business for the proposed use. (Retail) vs. the City of Leavenworth, Kansas Code of Ordinances Appendix A - Development Regulations Sec 5.04, required parking rate of 1 parking stall per 200 square feet for the proposed use (Retail)

Unique Conditions

The property is on the edge of the downtown business district and has been in use since the 1940's. There are currently 9 parking spots on the North side of the building on Delaware St. The cost of paving the gravel area on the South side of the building is not economically feasible for the project .

Adjacent Properties

Based on traffic analysis of the current location the average customer count for this store is 16 customers per day in the last 3 months. There would be no more than 4 customer cars in the parking spots during peak times. This means an additional requirement for parking is believed to be excessive and an unnecessary expense. The adjacent properties are commercial in nature and currently self-park. As such is it not believed that a decrease in parking stalls would adversely affect their business or properties.

Hardship

The Development Regulations that we are requesting a variance from would cause an excessive hardship on the property owner. My wife and I drove by this property in August of 2021, we immediately fell in the love with the charm of the building. We are not a huge company with unlimited funds. We are two people that want to renovate a poor old building in downtown Leavenworth that was being neglected and falling into disrepair. I wish I could say what caused us to be drawn here, but I don't have an answer, we exhausted our savings on Environmental studies and the down payment to purchase the building. Since then, we have replaced the entire sidewalks around the building, added new ADA ramps and curbs, and painted the building, all before we decided that moving our retail store to the Showroom side of the building would be an amazing

use of the building. Having to develop an additional parking lot on the property would end the plans of being able to make this building something people are happy to drive by and visit in Leavenworth

Public Welfare

If granted this variance will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare of the surrounding public

Developmental Regulations

This variance will not take away from the proposed plan of the Regulations. The current on street parking will be more than adequate for the use of the space.

Please let us know if there are any questions or concerns.

***** THIS EMAIL CAME FROM AN EXTERNAL SOURCE. PLEASE BE CAUTIOUS WHEN CLICKING ON LINKS OR ATTACHMENTS.**

SITE PLAN

200 S Broadway St

Leavenworth, KS 66048

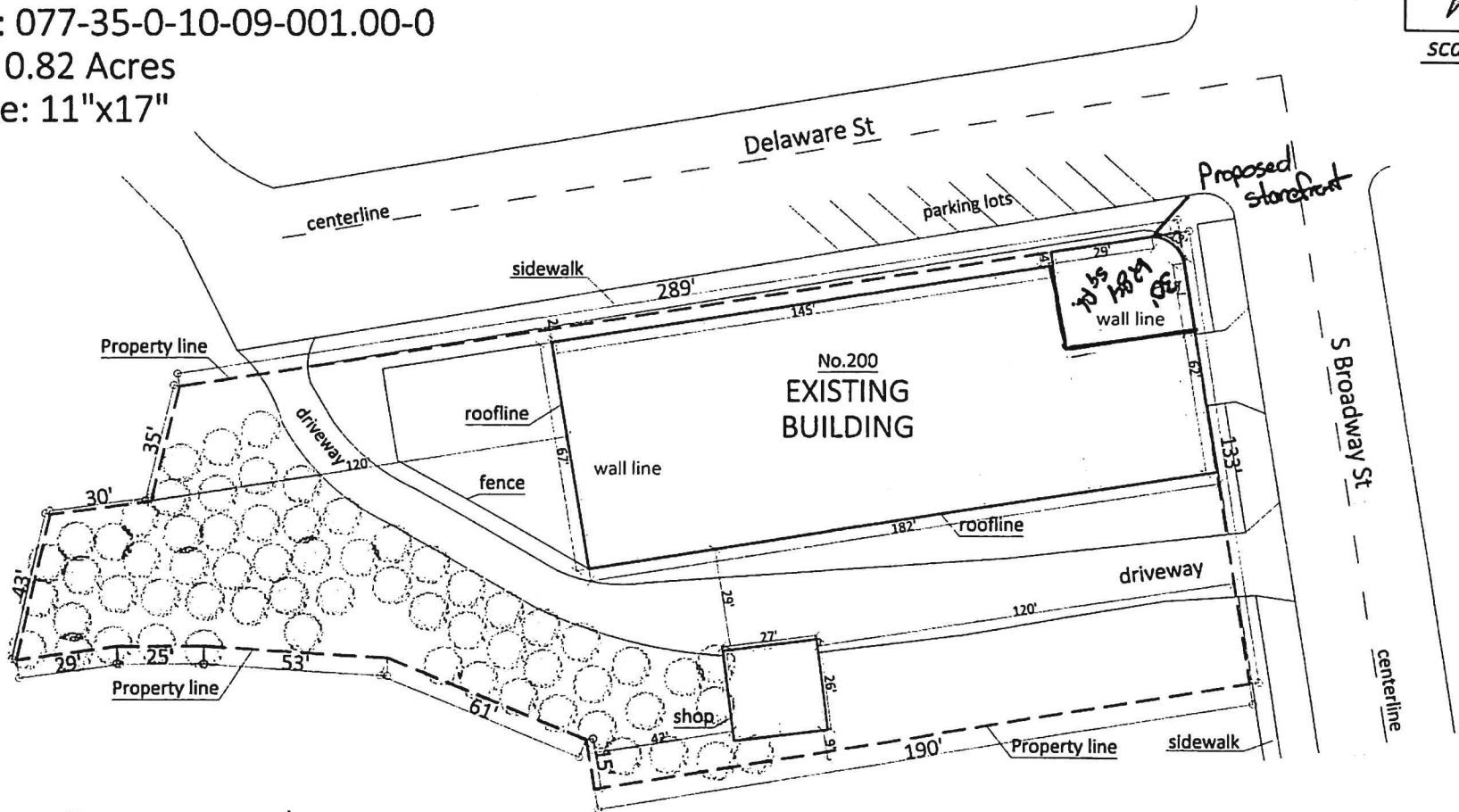
Parcel ID: 077-35-0-10-09-001.00-0

Lot area: 0.82 Acres

Paper Size: 11"x17"



scale 1"=30'



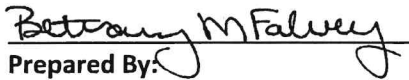
Approx. 1300 sq ft vape shop to be in old showroom.
Currently 8 parking spots on Delaware St. w/ Room to add 5 additional.

Created by:



**Board of Zoning Appeals Agenda Item
Variance Request
2022-31-BZA
522 S. 5th Street**

NOVEMBER 28, 2022



Prepared By:
Bethany Falvey
City Planner



Reviewed By:
Paul Kramer
City Manager

SUMMARY:

The applicant is requesting a variance from section 5.02 of the adopted Development Regulations to allow a reduction in required off-street parking.

DISCUSSION:

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 200 S. Broadway Street. 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.

BOARD OF ZONING APPEALS AUTHORITY:

The Board's authority in this matter is contained in Article XV (Board of Zoning Appeals), Section 15.05.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:
 - 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.*
 - c) *That the granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents.*
 - 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.*
 - e) *That the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare;*
 - f) *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 request for a variance from section 5.02 of the Development Regulations to allow a reduction in required off-street parking for the retail shop to be located at 522 S. 5th Street.

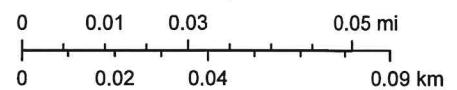
2022-31-BZA



11/16/2022, 9:36:00 AM

1:2,257

- | | |
|----------------|-------------------------|
| Zoning_CURRENT | Parcels (City Owned) |
| CBD | Parcels_Current |
| GBD | Buildings |
| I-1 | Address (Points) |
| OBD | Leavenworth City Limits |
| R1-6 | City Right-of-Way |
| | RoadCenterline |



Platte County, Missouri Dept. of Conservation, Esri, HERE, Garmin, GeoTechnologies, Inc., USGS, EPA



BOARD OF ZONING APPEALS
CITY OF LEAVENWORTH, KANSAS

OFFICE USE ONLY

Case No.: 2022-31 BZA
Application No. 12173
Fee (non-refundable) \$350.00
Filing Date _____
Hearing Date 11/28/22
Publication Date 11/3/22

PETITION

Property Zoning: OBD
Location of Subject Property: 522 S. 5th St
Legal Description: (Attach full legal description provided by the REGISTER OF DEEDS OFFICE)
Petitioner: Fortenberry Family Trust by C Fortenberry Trustee
Petitioner Address: 1415 Nottingham Dr Leavenworth KS 66048
Email: CForten1010@aol.com Telephone: 783-201-3855
Petitioner's Interest in Property: Own Building
Purpose of Petition: Parking plans VARIANCE

- Appeal of Administration Decision _____ Date of Decision _____
Section 11.03.A
- Variance: Section 5.02
Section 11.03.B VARIANCE for reduction in required off-street
- Exception: PARKING for retail use.
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): HENRY C. Fortenberry

Signature: [Signature] Date: 30 Sept 2022

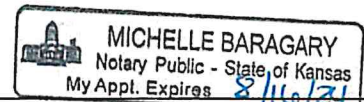
State of Kansas)

County of Leavenworth)

Signed or attested before me on September 30, 2022 by Henry Fortenberry

Notary Public: Michelle Bragary

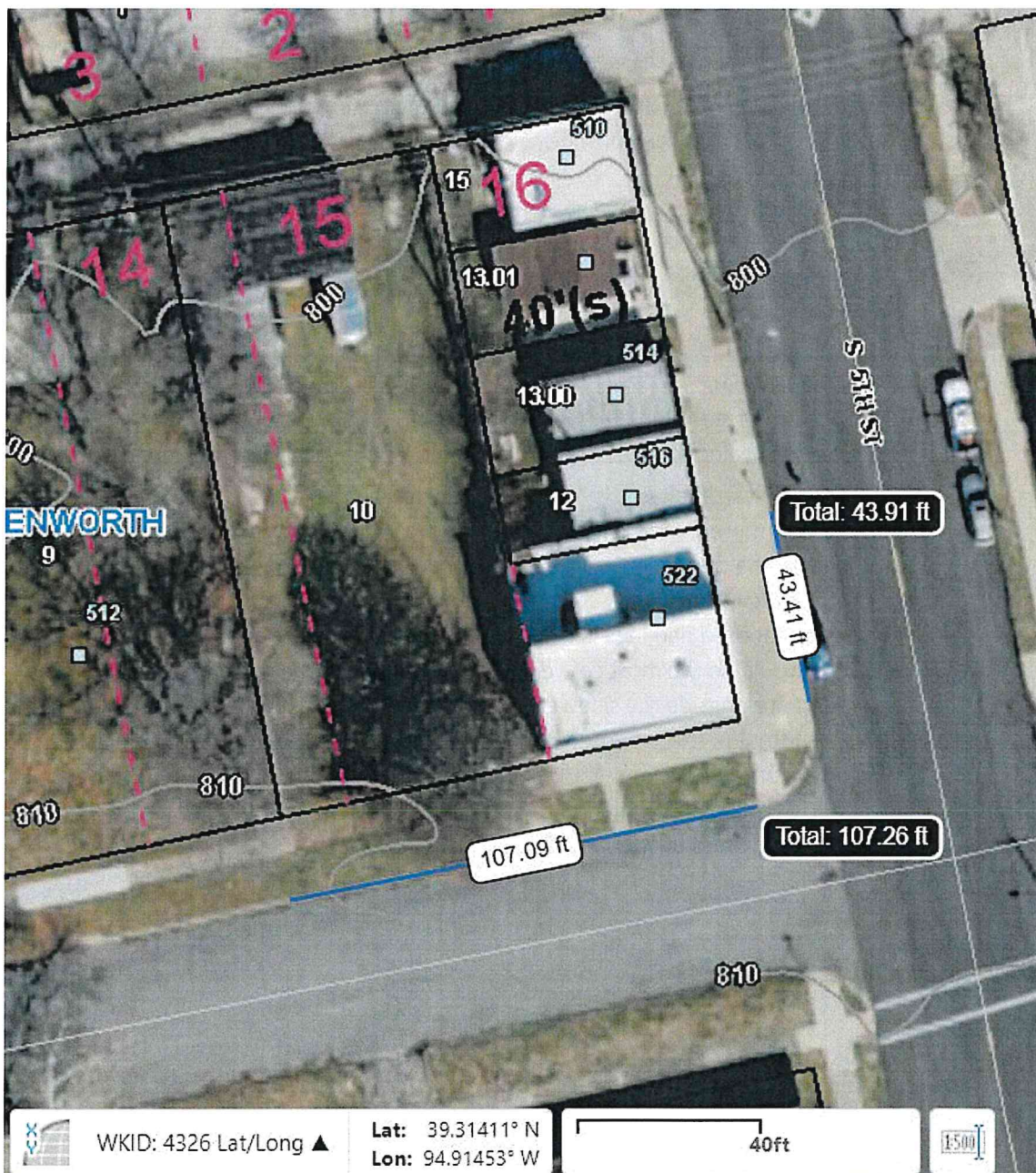
My appointment expires: 8/16/24 (Seal)



NOTE: All signatures must be in black or blue ink. Signature of owner(s) must be secured and notarized.

Check list below...

<input 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 type="checkbox"/>	Certified list of property owners within two hundred (200) feet of the subject property – County GIS Department 913-684-0448
<input type="checkbox"/>	A filing fee of Three Hundred- fifty dollars (\$350)



up to 6 street side parallel parking spaces feasible along the property line

From: [Kyle Affeldt](#)
To: [Michelle Baragary](#)
Cc: [Paul Kramer](#); "[Little Story's Boutique](#)"; "[cforten190@aol.com](#)"
Subject: FW: Parking Variance
Date: Monday, November 14, 2022 1:35:41 PM
Attachments: [street side parking map.pdf](#)
Importance: High

Michelle,

Good afternoon. I am helping Chuck and Katherine with their property's parking variance and other necessary coordination with Leavenworth City.

1. See attached pdf identifying the available street side parking along the property lines of the building.
2. The square footage accessible to the public is 600sf.
3. Conditions:
 - a. Parking proposal is to use the street side for parking just as the previous building occupant did.
 - b. The street side along the property lines would allow for up to six parallel parking stalls, all being between 22 and 26 feet in length per industry standards.
 - c. South 5th street has existing street parking signage.
 - d. Adjacent property owners and residents use street parking along their property lines in the same manor, therefore the proposed parking stalls would not adversely affect their rights.
 - e. The proposed parking stalls would not adversely affect the public in any way, rather this would be the most convenient option for customers to access the storefront by parking alongside the sidewalk.
 - f. The intent of the proposed parking stalls is not opposed to the general spirit and intent of the Development Regulations.

Please advise if this is sufficient information to be considered for the parking variance.

I am available by cell to discuss further anytime.

Thank you.

Kyle Affeldt
Construction Project Manager

Olathe Health
20333 W. 151st Street | Olathe, KS | 66061
P: 913-355-4015 | C: 913-702-5964
www.olathehealth.org



From: Little Story's Boutique <littlestorysboutique@gmail.com>

Sent: Wednesday, November 9, 2022 6:35 PM

To: Kyle Affeldt <Kyle.Affeldt@olathehealth.org>; Kyle Affeldt <kaffeldt47@gmail.com>

Subject: Fwd: Parking Variance

WARNING: This e-mail is from an external source. **DO NOT CLICK** links or attachments unless you recognize the sender and know the content is safe. **REPORT** any suspicious emails to David.Raydo@olathehealth.org.

----- Forwarded message -----

From: Henry Fortenberry <cforten190@aol.com>
Date: Wed, Nov 9, 2022, 5:22 PM
Subject: Fwd: Parking Variance
To: <littlestorysboutique@gmail.com>

Sent from my iPhone

Begin forwarded message:

From: Michelle Baragary <mbaragary@firstcity.org>
Date: November 9, 2022 at 3:39:53 PM CST
To: cforten190@aol.com
Subject: Parking Variance

Chuck,

The City Planner has requested the following be submitted as soon as possible regarding your variance request:

1. A site plan of your proposed off-street parking
2. Total square footage that is accessible to the public
3. A written statement justifying the variance request and how it is believed your application will meet each of the 5 conditions as outlined in the application

Let me know if you have any questions.

Thanks,

Michelle Baragary
Administrative Assistant
City of Leavenworth
100 N. 5th Street
Leavenworth, KS 66048
(913) 680-2626
www.leavenworthks.org

***The message and documents transmitted with this e-mail contain confidential or privileged information belonging to the sender and it is