



**BOARD OF ZONING APPEALS MINUTES
MONDAY, JANUARY 23, 2023, 6:00 P.M.
COMMISSION ROOM, CITY HALL
LEAVENWORTH, KANSAS**

CALL TO ORDER:

Board Members Present

Mike Bogner
Ron Bates
Jan Horvath

Board Member(s) Absent

Dick Gervasini
Kathy Kem

City Staff Present

Julie Hurley
Bethany Falvey

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

APPROVAL OF MINUTES: December 19, 2022

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

OLD BUSINESS:

None

NEW BUSINESS:

1. 2023-02 BZA – 722 S. 5TH STREET

Item has been continued to the February 27, 2023 BZA meeting at the request of staff to give the applicant time to submit additional information.

2. 2023-03 BZA – 4800 S. 20TH STREET

Hold a public hearing for Case No. 2023-03 BZA – 4800 S. 20th Street, wherein the petitioner is seeking a variance to Section 5.02 of the adopted Development Regulations to allow an accessory structure closer than five feet to the primary building in a residential zoning district.

Commissioner Bogner called for the staff report.

City Planner Bethany Falvey stated the applicant is requesting a variance from section 4.03.E of the adopted Development Regulations to allow a reduction in the required setback from the primary building.

The property located at 4800 S. 20th Street is occupied by the Church of the Open Door. The property is approximately 10 acres and is zoned R1-25, Low Density Single Family Residential District. Section 4.03.E.6 of the Development Regulations restricts placement of accessory structures as follows:

All accessory buildings in residential districts shall be five feet from any primary building on the site.

The variance is being requested for the construction of a 12' x 20' shed between the two back portions of the building towards the north portion of the property.

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

Chairman Bogner asked if the building is one large building.

Ms. Falvey responded in the negative.

Chairman Bogner asked for clarification that the proposed structure will be independent from the main building but will be closer than five feet to the main building.

Ms. Falvey responded in the affirmative.

Chairman Bogner asked if the only issue being reviewed for this item is the requirement that the shed shall be five feet from the primary building.

Ms. Falvey responded in the affirmative.

Chairman Bogner asked the applicant to speak.

Damian Efta, Pastor at The Church of the Open Door, stated the proposed placement of the shed is for needed storage space, and will more or less not be visible to the public.

Chairman Bogner asked if the shed will have doors on both ends.

Pt. Efta responded in the affirmative.

Chairman Bogner asked if utilities will be hooked up to the shed.

Pt. Efta responded in the negative.

Commissioner Bates stated one of the conditions the Board is to find is that the variance would not violate or adversely affect public health or safety. One of the reasons for the required distance between structures may have to do with fire safety. Commissioner Bates asked the applicant if this has been considered.

Pt. Efta stated there are a number of ways out of the primary buildings.

Commissioner Bates clarified his concern stating he is more concerned if the shed catches fire then the Fire Department will need access to the shed. Furthermore, the likelihood of the primary building catching fire if the shed is on fire increases the closer the accessory structure is to the primary building.

Commissioner Bates asked if the distance between the shed and the primary buildings are only four and a half feet on each side, totaling nine feet.

Pt. Efta stated the eaves are to be included in the required distance from the primary buildings so the shed is not meeting the required distance by a couple feet on each side. Pt. Efta further stated, the Fire Department could easily get one of their trucks to the proposed location of the shed.

Commissioner Bates asked if this is a prebuilt shed.

Pt. Efta responded in the negative stating the shed is constructed onsite.

Commissioner Bates asked staff since the shed will be built onsite, would a 10'x20' shed satisfy the regulations as far as distance from the primary building.

Ms. Falvey stated the space between the two connected buildings measures 20 feet.

Pt. Efta stated there are one foot eaves on the shed, which now brings the total distance to 18 ft. Then you need five feet distance on both sides of the shed from the primary buildings, which leaves you with only 8 ft.

Chairman Bogner asked if the approval of the variance is for the distance from the eaves to the primary building to be less than five feet or does the Board need to specify the exact distance allowed.

Planning Director Julie Hurley responded according to the regulations staff is to measure from the furthest point of the accessory structure, which in this case would be the eaves. Ms. Hurley further stated if the variance were to be approved, the Board may want to say something such as the variance is approved as presented instead of specifying four feet on each side of the shed. The board should also include in their discussion on the placement of the shed (i.e. is it to be centered between the buildings, etc.).

Chairman Bogner verified with staff that a building permit will be required.

Ms. Falvey responded in the affirmative.

With no further questions about the staff report, Chairman Bogner opened the public hearing. With no one wishing to speak, Chairman Bogner closed the public hearing and opened discussion among the commissioners.

Commissioner Bates asked what if the board could not get past the five feet requirement between the two buildings, would the proper way to move forward be to approve the variance and then put a restriction on it, or since they already have the four feet on either side would the board need to say no and the applicant would need to resubmit.

Ms. Falvey responded in the affirmative.

Commissioner Horvath asked if the variance is addressing one side or both depending on the restrictions the board establishes for the five foot clearance.

Ms. Falvey stated if the board states *as presented* then it would be as the applicant presented it.

Commissioner Bates stating meaning it is a 12 ft. wide building and the board could restrict that they have to center the shed leaving a 4 ft. clearance on each side but the board cannot say the distance must be 5 ft. on each side, which would mean the applicant would need a smaller shed.

Ms. Hurley stated the language in part reads, "In granting the variance the board may impose such conditions, safeguards and restrictions upon the premise benefited by the variance as may be necessary to reduce or minimize any potentially injurious effect...". At this point is when the board may say they have gone through each of the criteria voted on, and now the board is imposing the condition that it would be centered in that area between the two connected buildings.

Chairman Bogner stated he noticed the courtyard in the next building over appears to be wider, and asked staff if they have those measurements.

Ms. Hurley stated she believes they are about the same.

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 3-0

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 3-0

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 3-0

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 3-0

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 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.

Chairman Bogner moved to add the condition that approval be subject to the location as presented, and the shed shall be centered between the two buildings.

Commissioner Bates moved to add an additional condition that the structure be tucked in between the two buildings and not stick out passed the existing walls of the primary buildings.

There was consensus by the Board to accept the two conditions. The variance is granted with the conditions that placement of the structure is to be centered between the primary buildings and shall not extend beyond the existing walls of the primary structure.

Ms. Hurley stated there will be a meeting February 27th.

Commissioner Horvath moves to adjourn the meeting, seconded by Commissioner Bates and passed 3-0.

The meeting adjourned at 7:15 p.m.

Minutes taken by Administrative Assistant Michelle Baragary.