



**BOARD OF ZONING APPEALS MINUTES  
MONDAY, MARCH 27, 2023, 6:00 P.M.  
COMMISSION ROOM, CITY HALL  
LEAVENWORTH, KANSAS**

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**CALL TO ORDER:**

**Board Members Present**

Mike Bogner  
Ron Bates  
Jan Horvath  
Dick Gervasini  
Kathy Kem

**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:** January 23, 2023

Chairman Bogner asked for comments, changes or a motion on the January 23, 2023 minutes presented for approval. Commissioner Horvath moved to approve the minutes as presented, seconded by Commissioner Kem and approved by a vote of 5-0.

**OLD BUSINESS:**

None

**NEW BUSINESS:**

**1. 2023-02 BZA – 722 S. 5<sup>TH</sup> STREET**

Hold a public hearing for Case No. 2023-02 BZA – 722 S. 5<sup>th</sup> Street, wherein the petitioner is seeking a variance to section 5.02 of the adopted Development Regulations to allow a reduction in required off-street parking spaces for a restaurant use.

Chairman Bogner called for the staff report.

Planning Director Julie Hurley stated the applicants, Sung and Bill Moxley, are requesting a variance from section 5.02 of the adopted Development Regulations to allow a reduction in required off-street parking for a proposed restaurant located at 722 S. 5<sup>th</sup> Street. The proposed restaurant will be operated by a tenant of the building owners. No on-site parking is available. The property is zoned OBD, Office Business

District, and is surrounded by a mix of uses. The location is approximately three blocks south of the Central Business District and one block north of Spruce Street.

Parking for restaurant uses is required at a rate of 1 per 3 seats. The tenant has indicated that there will be 18 seats, resulting in a requirement for 6 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 restaurant, including 6 parking spaces directly to the south of the building off of Olive Street.

Restaurant uses in the OBD zoning district require approval of a Special Use Permit, through the Planning Commission and City Commission. Any approval of this variance request would be subject to approval of a Special Use Permit, or rezoning of the property to a district that allows restaurant uses by right.

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

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

William Moxley, owner, stated he owns the house to the north of the subject property, and stated he gave the tenant permission to use the parking in front of his house. Even though it is not off-street parking, it opens up more parking spaces.

With no one else wishing to speak, Chairman Bogner closed the public hearing and called for comments from the board.

Commissioner Horvath asked what parking is considered allowable from the distance of the subject building.

Ms. Hurley responded per the Development Regulations, staff can allow for a reduction in off-street parking to be reduced by up to 50% for each on-street parking space within 500 feet. Measuring from the subject heading south, 500 feet is past the Spruce Street intersection.

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 5-0**  
**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 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 5-0**  
**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 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.

**ACTION:**

Approve or deny the variance request to allow a reduction in required off-street parking for a restaurant use at 722 S. 5<sup>th</sup> Street.

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 722 S. 5<sup>th</sup> Street with no conditions or restrictions.

Commissioner Kem asked when this will go to the Planning Commission for the Special Use Permit.

Ms. Hurley responded the application for the Special Use Permit has not been submitted at this time.

**2. 2023-06 BZA – 5000 10<sup>TH</sup> AVENUE**

Hold a public hearing for Case No. 2023-06 BZA – 5000 10<sup>th</sup> Avenue, wherein the petitioner is seeking a variance to section 8.11 of the adopted Development Regulations to allow an increase in the allowable wall signage for a property zoned GBD, General Business District.

Chairman Bogner called for the staff report.

City Planner Bethany Falvey stated the existing Walmart store is located at 5000 10<sup>th</sup> Avenue in an area zoned GBD, General Business District. The applicant has submitted a sign application to revise seven existing signs on the front elevation and add/relocate 12 new or existing signs on the front and side elevation. A sign variance was previously approved by the City Commission on May 23, 2017 to allow installation of “Vision Center” and “Pickup” signs, both on the east side of the building and by the Board of Zoning Appeals on September 16, 2019 to allow installation of a “FedEx” sign on the front elevation. The requested variance is to allow 2 additional signs on the front (East) side and 7 additional signs on the south wall for a property zoned GBD, General Business District.

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

Chairman Bogner asked if there are any restrictions on the size of the signs or does the submission meet all the design standards for the size of the signs.

Ms. Falvey responded the size of the signs meet the sign code requirements, and that the variance is just for the number of signs on the building.

Commissioner Kem stated it is important to point out that the overall square footage of the signage has been dramatically reduced.

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

Scott Pfeifer, on behalf of BRR Architecture for the Walmart store, stated the idea behind the signs is for directionality and wayfinding for customers. The front of the building is trying to get more access and better signage for the pharmacy drive-thru, and the side of the building is for the auto center to help guide customers to which stall they need to go to.

Commissioner Kem asked if the pylon sign will be changing.

Mr. Pfeifer responded the existing pylon sign is to remain as is.

With no one else wishing to speak, Chairman Bogner closed the public hearing and called for discussion amongst the board members.

With no further discussion, Chairman Bogner read the following criteria regarding the Board’s authority and reviewed each item.

**BOARD OF ZONING APPEALS AUTHORITY:**

The Board's authority in this matter is contained in Article 11 (Board of Zoning Appeals), Section 11.03.B (Powers and Jurisdictions – Variances)

**Variances:** To authorize in specific cases a variance from the specific terms of these Development Regulations which will not be contrary to the public interest and where, owing the special conditions, a literal enforcement of the provisions of these Development Regulations will, in an individual case, result in unnecessary hardship, provided the spirit of these Development Regulations shall be observed, public safety and welfare secured, and substantial justice done. Such variance shall not permit any use not permitted by the Development Regulations of the City of Leavenworth, Kansas in such district. Rather, variances shall only be granted for the detailed requirements of the district such as area, bulk, yard, parking or screening requirements.

1. The applicant must show that his property was acquired in good faith and where by reason of exceptional narrowness, shallowness or shape of this specific piece of property at the time of the effective date of the Zoning Ordinance, or where by reason of exceptional topographical conditions or other extra-ordinary or exceptional circumstances that the strict application of the terms of the Development Regulations of the City of Leavenworth, Kansas actually prohibits the use of his property in the manner similar to that of other property in the zoning district where it is located.
2. A request for a variance may be granted, upon a finding of the Board that all of the following conditions have been met. The Board shall make a determination on each condition, and the finding shall be entered in the record.
  - a) *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 5-0**  
**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 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 5-0**  
**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 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.

**ACTION:**

Approve or deny the variance request to allow 2 additional signs on the front elevation and 7 additional signs on the south elevation of the Walmart store located at 5000 10<sup>th</sup> Avenue.

Chairman Bogner stated based on the findings, the board granted the variance to allow 2 additional signs on the front elevation and 7 additional signs on the south elevation of the Walmart store located at 5000 10<sup>th</sup> Avenue with no conditions or restrictions.

With no further business, Ms. Hurley stated there are not items for the April or May meetings.

Ms. Hurley further stated this is Commissioner Bates last meeting as his term expires May 1, 2023. Staff thanked him for all the years he has served on this Board.

Chairman Bogner called for a motion to adjourn. Commissioner Gervasini moved to adjourn, seconded by Commissioner Horvath and passed 5-0.

The meeting adjourned at 6:18 p.m.

Minutes taken by Planning Assistant Michelle Baragary.