

# LEAVENWORTH BOARD OF ZONING APPEALS

Monday, June 26, 2023 – 6:00 P.M.  
COMMISSION ROOM, CITY HALL  
LEAVENWORTH, KANSAS

## AGENDA

### CALL TO ORDER:

1. Roll Call/Establish Quorum
2. Approval of Minutes: March 27, 2023 **Action:** Motion

### OLD BUSINESS:

**None**

### NEW BUSINESS:

1. **2023-14 BZA – 604 POTTAWATOMIE**  
Hold a public hearing for Case No. 2023-14 BZA – 604 Pottawatomie, wherein the petitioner is seeking a variance from Section 8.15.A of the adopted Development Regulations to allow the use of an existing non-conforming sign after a change in business name and ownership.

ADJOURN



**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.

Board of Zoning Appeals Agenda Item  
Variance Request  
2023-14 BZA  
604 POTTAWATOMIE

JUNE 26, 2023



Prepared By:  
Julie Hurley,  
Director of Planning and  
Community Development



Reviewed By:  
Paul Kramer,  
City Manager

**SUMMARY:**

The applicant is requesting a variance from section 8.15.A of the adopted Development Regulations to allow the use of an existing non-conforming sign after a change in business name and ownership.

**DISCUSSION:**

The applicant, Young Sign Company, is requesting a variance from the above noted section of the adopted Development Regulations to allow the use of an existing non-conforming sign after a change in business name and ownership for the property located at 604 Pottawatomie Street. The property was previously occupied by June's Northland restaurant and event space, and is currently occupied by Stripes Global. A rezoning was approved in 2022 from Neighborhood Business District (NBD) to Light Industrial District (I-1) to allow the current use.

Section 8.15.A of the current Development Regulations require that a nonconforming sign be modified to conform, replaced with a conforming sign, or removed if there is a change in business name or ownership.

- *8.15.A Nonconforming: A nonconforming sign existing lawfully at the time of the passage of this sign code may be continued under the terms as hereinafter provided that such nonconforming signs shall be modified to conform, replaced with a conforming sign or removed according to the following:*

- 1. If there is a change in business ownership, tenant, name or type of business.*
- 2. Any maintenance, repair or alteration of a nonconforming sign shall not cost more than 25% of the current value of the sign as of the date of alteration or repair.*

There is an existing freestanding sign associated with the property along the western edge of the parking lot, abutting the right-of-way. The sign 17' 10" in height, with approximately 0' setback from the face of the sign to the property line. The current business owner proposes to use the existing sign structure, and install a new sign face to represent the present use of the property. No other changes are proposed to the sign structure.

Current regulations for signage in the I-1 district allow freestanding signs to be a maximum of 15' in height, with no part of the sign face or sign structure closer than 5' to any property line.

After the required notice was published, staff has received no comments from any notified property owners.



**BOARD OF ZONING APPEALS AUTHORITY:**

The Board's authority in this matter is contained in Article XV (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 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. 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.*
  - b) *That the granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents.*
  - 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.*
  - d) *That the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare;*
  - e) *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:**

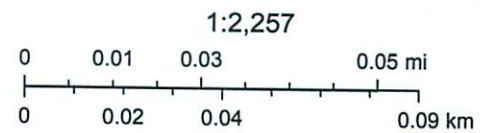
Approve or deny the request for a variance from section 8.15.A of the Development Regulations to allow the use of an existing non-conforming sign after a change in business name and ownership at 604 Pottawatomie.



# 2023-14-BZA 604 Pottawatomie (Zoning)



6/22/2023, 10:15:13 AM

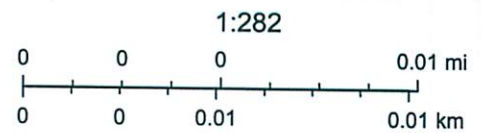


Platte County, Missouri Dept. of Conservation, Esri, HERE, Garmin, GeoTechnologies, Inc., USGS, EPA

# 2023-14-BZA 604 Pottawatomie



6/22/2023, 10:16:34 AM



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.: 2023-14 BZA  
 Application No. 13082  
 Fee (non-refundable) \$350.00  
 Filing Date 4/19/23  
 Hearing Date 6/26/23  
 Publication Date 6/1/23

**PETITION**

Property Zoning: \_\_\_\_\_  
 Location of Subject Property: 604 Pottawatomie St. Leavenworth, KS 66048  
 Legal Description: (Attach full legal description provided by the REGISTER OF DEEDS OFFICE)  
 Petitioner: Young Sign Company  
 Petitioner Address: 326 Choctaw St. Leavenworth, KS 66048  
 Email: kschintgen@youngsigncompany.com Telephone: 913-651-5432  
 Petitioner's Interest in Property: Representative of property owner.  
 Purpose of Petition: New business owner and requests to reface existing pole sign.

- Appeal of Administration Decision \_\_\_\_\_ Date of Decision \_\_\_\_\_  
 Section 11.03.A (Sign ht. 17' 10" + abuts property line).
- Variance: Variance to section 8.15.A to allow  
 Section 11.03.B the use of an existing non-conforming
- Exception: sign after a change in ownership.  
 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): Tyson Schultz

Signature: \_\_\_\_\_ Date: 9/18/23

State of Kansas )  
 County of Leavenworth )

Signed or attested before me on 18th by April 2023

Notary Public Mildred A. Winston

**MILDRED A. WINSTON**  
 Notary Public-State of Kansas  
 My Appl. Expires 9/2/2026

My appointment expires 9/2/2026 (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
	A filing fee of Three Hundred- fifty dollars (\$350)



326 Choctaw St. • Leavenworth, KS. • 913-651-5432 • [youngsigncompany.com](http://youngsigncompany.com)

April 7, 2023

Board of Zoning Appeals,

We respectfully request inclusion on the agenda to appear before your board at the meeting scheduled for April 17, 2023.

The purpose of our appearance will be to request that the existing sign pole, located on the west side of the property at 604 Pottawatomie Street, Leavenworth, be allowed to be updated with new tenant sign faces. The pole sign has been on that property for many years and is a viable marketing tool for the new business tenant, Stripes Global. New sign ordinance is causing issues with sign permitting and updates. The entire length of the pole, including the sign cabinet attached is around 2' taller than the maximum 15', however there are many other signs in the area which are much taller than the sign needing to be updated.

There has already been a request by the new tenant to update the sign face in the cabinet, but was denied permission to update the sign face. Other businesses have experienced the same issue when a new owner, or tenant has moved into the location. The property owner is planning on cleaning up some small landscaping around the sign to make it look fresh and more professional.

The property is on Pottawatomie Street and is adjacent to 7<sup>th</sup> Street. Neither Pottawatomie Street nor 7<sup>th</sup> Street are high traffic areas. The property owner would incur a great deal of difficulty and expense by having to remove, dispose, and rebuild a new pole sign in the same location as it is currently in now. This would affect the lease rate without the marketing value of the sign.

Stripes Global is looking to become a long-standing business here in Leavenworth, and the pole sign would be one of its first steps in marketing itself to the public. Many businesses in the area rely on their signs to operate their business and use that visibility to maintain business. There have been multiple other businesses in the area that have obtained a variance of the same concerns.

We appreciate your thoughtful consideration of this variance request.

Sincerely,

Karl Schintgen

Young Sign Co. Inc.

Tyson Schultz

Owner, Stripes Global



Application # 12977

**PERMANENT SIGN PERMIT APPLICATION**  
City of Leavenworth, Kansas Planning & Zoning Department  
100 N 5th Street • Leavenworth Kansas 66048 • 913-680-2626

*This application cannot be processed unless fully completed and all required documents are provided. All incomplete applications are void after 90 days. If you have any questions about completing the form, please call the Department of Planning and Zoning.*

Business/Entity Displaying Sign Stripes Global  
Site Address 604 Pottawatomie St. Leavenworth KS. 66048 Zoning I-1  
Phone (913)651-5432 Cell ( ) Fax ( )

Owner of Property Tyson Schultz Phone (206) 910-2804  
Address 604 Pottawatomie St. Leavenworth KS. 66048 Property Owner's Signature \_\_\_\_\_  
Street # and Name City State (Required)

Contact for Application Karl Schintgen Telephone (913)651-5432 Email Tyson F. Schultz  
Sign Contractor: Company Name Young Sign Company Email kschintgen@youngsigncomapny.com

Address 326 Choctaw St. Leavenworth, KS, 66048 Business License # 2922  
Street # and Name City State  
Phone (913)651-5432 Cell ( ) Fax ( )  
Sign Contractor's Signature Karl Schintgen Date 03/28/2023  
(Required)

**Sign Information:**  Wall  Free Standing  Other face replacement on pole sign  
Sign Height 8' 17" 10" Sign Length 12 ft Total Sign Area 60 sq ft Sign materials polycarbonate pan faced  
Logo Height 5 ft Logo Area 12 sq ft

Attached Sign, also needs: Building Height \_\_\_\_\_ ft Building Width \_\_\_\_\_ ft Total Area \_\_\_\_\_ ft Sign % of Area \_\_\_\_\_ %  
\* The wall the sign will be located on (circle one) North South East West

Monument Sign, also need: Height of Monument \_\_\_\_\_ ft  
 Attached to this Sign Permit Application is a plan, sketch, drawing, blueprint or similar presentation drawn to scale, showing pertinent structural details per the Sign Code in the City's Developments Regulations

**SIGN FEES: 50 SQ FT OR LESS - \$50 GREATER THAN 50 BUT LESS THAN 100 SQ FT - \$75 100 SQ FT OR GREATER - \$100**  
**REFACE - HALF THE PRICE OF ORIGINAL SIGN FEE (\$25, \$37.50 OR \$50)**

*As business owner or agent, I hereby certify this sign application and attached plans to be correct and agree to abide by the sign code in the City's adopted Development Regulations and stipulations, if any, as described in this permit. I understand that an incomplete application can result in a delay of processing this application.*

Signature of Business Owner/Agent: Karl Schintgen Date: 03/28/2023  
(Required)

Payment  By Check - make check payable to City of Leavenworth  By Cash - Payable at City Hall  
 By Credit Card - on-line or in person at City Hall

FOR OFFICE USE ONLY Fee: 37.50 Check # \_\_\_\_\_ Date Remitted: 3/30/23  
Cash: \_\_\_\_\_ Credit Card

Minor Certificate of Appropriateness for Historic District:  Approved  Denied

Sign:  Approved  Denied

Staff Reviewer Botany M Falvey Date 4/4/2023

Face Replacement Only  
60"h x 144"w





Street view heading north.

