



**BOARD OF ZONING APPEALS MINUTES
MONDAY, JUNE 26, 2023, 6:00 P.M.
COMMISSION ROOM, CITY HALL
LEAVENWORTH, KANSAS**

CALL TO ORDER:

Board Members Present

Mike Bogner
Kathy Kem
Jan Horvath
Dick Gervasini

Board Member(s) Absent

City Staff Present

Julie Hurley
Michelle Baragary

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

APPROVAL OF MINUTES: March 27, 2023

Chairman Bogner asked for comments, changes or a motion on the March 27, 2023 minutes presented for approval. Commissioner Horvath moved to approve the minutes as presented, seconded by Commissioner Gervasini and approved by a vote of 4-0.

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 to 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.

Chairman Bogner called for the staff report.

Planning Director Julie Hurley stated 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 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.

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

Chairman Bogner asked staff when the sign ordinances changed that made this sign nonconforming.

Ms. Hurley stated she does not know the exact date but stated the 15' maximum height requirement has not changed since she began employment with the city nine years ago. Ms. Hurley further stated the subject sign was the June's Northland sign, which had been existing for a very long time prior to Stripes Global purchasing the property. Ms. Hurley also noted that the smaller sign plates will be removed from the existing sign.

Commissioner Kem asked if June's Northland got a variance for the sign.

Ms. Hurley responded in the negative.

Commissioner Gervasini stated that Waymire's also used that same sign prior to June's Northland.

Applicant, Ann Hoins with Young Sign Company, stated this is very similar to other signs they have requested variances for when the sign is nonconforming. Ms. Hoins further stated moving this sign would be a hardship to the property owner, and she hopes the existing sign will be acceptable for continued use.

Chairman Bogner asked for verification that there will be no changes to the structure of the sign, other than the reface.

Ms. Hoins responded that the property owners may want to pain the sign pole but nothing structural will change.

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

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 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) *The Board shall make a determination on each condition, and the finding shall be entered in the record.*
 - b) *That the variance requested arises from such condition which is unique to the property in question and is not ordinarily found in the same zone or district; and is not created by an action or actions of the property owner or the applicant.*

Vote 4-0
All board members voted in the affirmative.

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

Vote 4-0
All board members voted in the affirmative.

- d) *That the strict application of the provisions of the Development Regulations from which the variance is requested will constitute unnecessary hardship upon the property owner represented in the application.*

Vote 4-0
All board members voted in the affirmative.

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

Vote 4-0
All board members voted in the affirmative.

- f) *That granting of the variance desired will not be opposed to the general spirit and intent of the Development Regulations.*

Vote 4-0
All board members voted in the affirmative.

3. In granting a variance, the Board may impose such conditions, safeguards, and restrictions upon the premises benefited by the variance as may be necessary to reduce or minimize any potentially injurious effect of such variance upon other property in the neighborhood, and to carry out the general purpose and intent of the Development Regulations.

ACTION:

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

Chairman Bogner stated based on the findings, the board granted the variance to allow the use of an existing nonconforming sign after a change in business name and ownership at 604 Pottawatomie with no conditions or restrictions.

With no further business, Ms. Hurley stated there is one item for the July 17th meeting.

Chairman Bogner stated there are two vacancies on this board to be filled, and urges Leavenworth residents to apply.

Chairman Bogner called for a motion to adjourn. Commissioner Gervasini moved to adjourn, seconded by Commissioner Kem and passed 4-0.

The meeting adjourned at 6:11 p.m.
Minutes taken by Planning Assistant Michelle Baragary.