



**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

Michelle Baragary
Bethany Falvey

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

APPROVAL OF MINUTES: June 26, 2023

Chairman Bogner asked for comments, changes or a motion on the June 26, 2023 minutes presented for approval. Commissioner Gervasini moved to approve the minutes as presented, seconded by Commissioner Horvath and approved by a vote of 4-0.

OLD BUSINESS:

None

NEW BUSINESS:

1. 2023-20 BZA – 200 S BROADWAY STREET

Hold a public hearing for Case No. 2023-20 BZA – 200 S Broadway Street, wherein the petitioner is seeking a variance to section 8.11 of the adopted Development Regulations to allow a projecting sign to encroach in the right-of-way by 6 feet.

Chairman Bogner called for the staff report.

City Planner Bethany Falvey stated the applicant, Lori McPherson with Flatland Realty LLC, is requesting a variance from section 8.11 of the adopted Development Regulations to allow a projecting sign to encroach into the right-of-way by 6 feet. The property is zoned GBD, General Business District.

Per section 8.11 of the adopted Development Regulations:

Projecting signs shall not project from the wall greater than a distance of six feet or encroach in a public right-of way in OBD, GBD, I-1 or I-2 and shall maintain eight feet of clearance from grade. Projecting signs in the CBD may encroach in the right-of-way, but shall be constructed of approved nonflammable, safety material, shall maintain eight feet of clearance to grade, and shall not be closer than five feet to a curb line.

Based on the drawings and information provided, the sign will provide 8' of ground clearance and extend from the wall 6 feet. The property line goes right up to the building. The proposed sign is a 4' x 4' double-sided aluminum lighted projecting sign.

Chairman Bogner asked for questions about the staff report.

Chairman Bogner asked if the proposed sign is an exact replica of the previous sign that was there.

Staff responded in the negative.

Chairman Bogner stated the majority of the sign variance requests have been existing nonconforming signs that the applicants want to continue using but the request brought before the Board tonight is for a sign that has been gone for a long time, and is bigger than the original.

Ms. Falvey stated the proposed sign is much larger than the projecting sign that was previously there. Ms. Falvey used Google Maps to show the most recent projecting sign dated April 2019. The image the applicant submitted with the application is from a long time ago.

Commissioner Gervasini stated the image the applicant submitted was when the building was Perry L. Black Oldsmobile back in 1978 or 1979.

Commissioner Kem asked if the property owner is able to use the existing roof sign.

Ms. Falvey responded in the negative stating it is an existing nonconforming sign, and is larger than what is allowed.

Planning Assistant Michelle Baragary further added a roof sign shall not exceed the highest point of the roof.

Commissioner Kem asked if the applicant could request a variance for the roof sign.

Ms. Falvey responded in the affirmative.

Commissioner Kem asked if the applicant will need to remove the roof sign if they do not plan on using it.

Ms. Falvey stated the sign will need to be removed because that business (Herken's Automotive) has been gone more than six months.

Chairman Bogner asked if the proposed sign meets the current sign regulations with just the exception of the projection into the right-of-way.

Ms. Falvey responded in the affirmative.

Chairman Bogner asked if any of the previous projecting signs at this exact location on the building were as large as the proposed sign.

Ms. Falvey responded in the negative.

Referring to the letter from the property owner, Commissioner Kem asked about the statement "City stated the sidewalks were owned by the property owner and not the city".

Ms. Falvey stated that does not pertain to this case, and that the Public Works Department regulates sidewalks. However, property owners are responsible for adjacent sidewalks.

Commissioner Kem asked for clarification that the property owner is responsible for the sidewalks but do not own the sidewalks. Otherwise, the sign would be projecting out over his property. Commissioner Kem asked for clarification that the statement made in the letter is incorrect, and that the property owner does not own the sidewalks.

Ms. Falvey responded in the affirmative stating the sidewalks are in the public right-of-way, and are not owned by the property owner.

Commissioner Horvath asked if the property pays to replace the sidewalks.

Ms. Falvey stated it is just like in residential districts where you have where your property line reaches, and then there is the right-of-way that includes the sidewalk and the grass between the road and the sidewalk.

Commissioner Horvath stated the city is the only agency that may repair the sidewalks but believes the property owner has to pay for it.

Chairman Bogner asked if there is a regulation on maximum height for anything that overhangs sidewalks.

Ms. Falvey responded the ground clearance is 8 feet, which the proposed sign meets.

Commissioner Kem asked what the future land use is for this property.

Ms. Falvey responded public/semi-public.

Chairman Bogner asked if the owner of the building is making this request or will this space be a rental space.

Ms. Falvey responding the owner is requesting it.

Chairman Bogner remembers approving a parking variance request last year for this property.

Commissioner Gervasini asked if there are any plans to widen Broadway Street.

Ms. Falvey responded not that she is aware of.

Commissioner Kem asked that if the variance request were denied, the applicant would still be permitted a wall sign or window sign.

Ms. Falvey responded in the affirmative further stating the applicant could apply for both a wall and window sign.

Chairman Bogner asked if the justification for this request includes the uniqueness of the business.

Commissioner Kem stated it is the uniqueness of the lot not the business.

Commissioner Gervasini asked for clarification that there is a requirement to takedown the sign on the roof.

Ms. Falvey stated it is a violation of the sign code, and can be written up as a violation.

Commissioner Horvath asked what the size was of the previous projecting sign.

Ms. Falvey brought up Google Maps to view the most recent projecting sign that was in that location.

Viewing the sign, Commissioner Kem stated the sign previous projecting sign was tiny.

With no further questions about the staff report, Chairman Bogner asked the applicant if he would like to speak.

Eric McPherson stated his wife owns Flatland Realty, LLC, and he is her partner in this business. Referring to the original Oldsmobile sign, Mr. McPherson stated he has been trying to track one down to purchase, and they are a 42" round sign. The sign he is proposing is a 48" round projecting sign. They purchased this building with the goal to make it look like it used to, and have done extensive remodeling.

Mr. McPherson further stated it has been brought up several times that he cannot use the existing roof sign. Stated it would be a great expense to him. The lowest quote he has received to remove the roof sign is \$12,000.

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 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 2-2

Commissioners Gervasini and Horvath voted in the affirmative.

Commissioners Bogner and Kem voted in the negative. Commissioner Kem stated she has a hard time with the second portion of the above condition that states "and is not created by an action or actions of the property owner or the applicant". Installation of the sign clearly is by the action of the applicant.

- 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 2-2

Commissioners Gervasini and Horvath voted in the affirmative.

Commissioners Bogner and Kem voted in the negative.

- 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 2-2

Commissioners Gervasini and Horvath voted in the affirmative.

Commissioners Bogner and Kem voted in the negative.

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 8.11 of the Development Regulations to allow a projecting sign to encroach into the right-of-way by 6 feet at 200 S Broadway Street.

Chairman Bogner stated based on the findings, the board denied the variance to allow a projecting sign to encroach into the right-of-way by 6 feet at 200 S Broadway Street.

With no further business, Ms. Falvey thanked Chairman Bogner for his years of serving on this board, as he is resigning after tonight's meeting.

Commissioner Kem stated to Mr. McPherson that she wishes the board could every variance that comes through here but it's state statute (inaudible as Mr. McPherson loudly interrupted).

Commissioner Gervasini moved to adjourn, and passed 4-0.

The meeting adjourned at 6:19 p.m.

Minutes taken by Planning Assistant Michelle Baragary.