



**BOARD OF ZONING APPEALS MINUTES
MONDAY, AUGUST 21, 2023, 6:00 P.M.
COMMISSION ROOM, CITY HALL
LEAVENWORTH, KANSAS**

CALL TO ORDER:

Board Members Present

Dick Gervasini
Kathy Kem
Jan Horvath
Daniel Bolling
David Ramirez

Board Member(s) Absent

City Staff Present

Michelle Baragary
Bethany Falvey

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

APPROVAL OF MINUTES: July 17, 2023

Chairman Gervasini asked for comments, changes or a motion on the July 17, 2023 minutes presented for approval. Commissioner Horvath moved to approve the minutes as presented, seconded by Commissioner Ramirez and approved by a vote of 5-0.

OLD BUSINESS:

None

NEW BUSINESS:

1. WELCOME NEW MEMBERS DANIEL BOLLING AND DAVID RAMIREZ

2. ELECTION OF VICE CHAIRPERSON

Commissioner Kem volunteered for Vice Chairperson. Chairman Gervasini called for a motion. Commissioner Horvath moved to approve Commissioner Kem as Vice Chairperson, seconded by Commissioner Ramirez, and approved by a vote of 5-0.

3. 2023-21 BZA – 4650 NEW LAWRENCE RD

Hold a public hearing for Case No. 2023-21 BZA – 4650 New Lawrence Rd, wherein the petitioner is seeking a variance to section 4.04.B of the adopted Development Regulations to allow more than two accessory structures on a property zoned R1-25, Low Density Single Family Residential District.

Chairman Gervasini called for the staff report.

City Planner Bethany Falvey stated the applicant is requesting a variance to allow more than two accessory structures on a property zoned R1-25, Low Density Single Family Residential District. The property is located at 4650 New Lawrence Road, and is owned by Ronald and Danielle Trautman. The property is 5.6 acres in size, and is occupied by a single family home, with two detached outbuildings. The applicant is proposing to install a 22' x 52" above ground pool on the property in the side yard of the existing home.

Section 4.04.B of the Development Regulations states:

No more than two detached accessory structures shall be allowed per building lot or parcel whichever is larger in area.

Pool are defined as a permitted accessory use/structure.

Chairman Gervasini asked for questions about the staff report.

Commissioner Kem asked if the variance request is for the pool that has already been installed.

Ms. Falvey responded in the affirmative.

Commissioner Kem pointed out that the applicant's letter states that the existing 10' x 10' shed does not count as an accessory structure in the county. Commissioner Kem asked for clarification that the shed does count as an accessory structure within the city limits of Leavenworth regardless of the size.

Ms. Falvey responded in the affirmative further stating there are two existing accessory structures, and the above ground pool would be a third accessory structure.

Commissioner Ramirez asked staff how a swimming pool is considered a structure. He further stated if a shed is installed on a concrete pad that would be considered a structure but if it is not installed on a concrete pad then it would not be a taxable structure.

Ms. Falvey referred to section 12 of the Development Regulations, and read the following definition:

Accessory Building, Accessory Structure, or Accessory Use: A building or use which (1) is subordinate to and serves a principal building or principal use; (2) is subordinate in area, extent or purpose to the principal building or principal use served; (3) contributes to the comfort, convenience or necessity of occupants of the principal building or principal use; (4) is located on the same zoning lot as the principal building or principal use. The same as "appurtenant structure".

Chairman Gervasini stated an above ground pool is only a temporary situation because you would need to take it down in the wintertime.

Ms. Falvey stated above ground pools do not need to be taken down in the wintertime.

Commissioner Ramirez asked for clarification that if it is a comfort to the occupant then that would be a structure.

Ms. Falvey responded that according to our regulations such things as a kids playset, pergolas, etc. are accessory structures.

Commissioner Kem stated that pools are specifically listed in the Development Regulations as accessory structures.

Commissioner Bolling asked if the total number of accessory structures could be looked into if you have a sizable amount of land.

Ms. Falvey responded this is something staff is looking into for the upcoming text amendments to the Development Regulations but as the regulations currently read the maximum allowed accessory structures is limited to two regardless of the lot size.

Commissioner Kem asked how long the existing pool has been there.

Ms. Falvey responded that it was installed this summer.

Commissioner Horvath asked if any neighbors to the subject property have objected to the pool.

Ms. Falvey stated staff has not heard from any neighbors.

With no further questions, Chairman Gervasini opened the public hearing.

Ron Trautman, property owner, stated he did not know he needed a permit for an above ground pool. When he found out a permit was needed, he went to City Hall to get the building permit and that was when he was told that only two accessory structures are allowed per lot. Mr. Trautman stated he has been working with staff, who allowed a temporary fence to be installed around the pool until the request for a variance was determined by this board. If the variance passes, a permit fence will be installed through the fence permit process.

Mr. Trautman further stated the size of the lot should be considered when it comes to how many accessory structures are allowed per lot. He needs outbuildings to store his tractor and other equipment needed to maintain a lot of this size.

With no one wishing to speak, Chairman Gervasini closed the public hearing and called for discussion among the commissioners.

With no further discussion, Chairman Gervasini 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) *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 4-1

Commissioner Kem voted in the negative. Commissioner Kem stated by State Statute one of these requirements is that this is not created by an action or actions of the property owner or the applicant. Commissioner Kem stated the single most difficult thing about being on the BZA is getting past this particular requirement but she will have to disagree on this one.

b) *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.

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.*

Vote 4-1

Commissioner Kem voted in the negative.

d) *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.

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

Vote 4-1

Commissioner 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 4.04.B of the Development Regulations to allow installation of an above ground pool at 4650 New Lawrence Rd.

Chairman Gervasini stated based on the findings, the variance is granted to allow a third accessory structure located at 4650 New Lawrence Rd.

With no further business, Commissioner Gervasini called for a motion to adjourn. Commissioner Horvath moved to adjourn, seconded by Commissioner Bolling, and passed 5-0.

The meeting adjourned at 6:19 p.m.

Minutes taken by Planning Assistant Michelle Baragary.