



**BOARD OF ZONING APPEALS MINUTES
MONDAY, October 16, 2023, 6:00 P.M.
COMMISSION ROOM, CITY HALL
LEAVENWORTH, KANSAS**

CALL TO ORDER:

Board Members Present

Dick Gervasini
David Ramirez
Jan Horvath
Daniel Bolling

Board Member(s) Absent

Kathy Kem

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: August 21, 2023

Chairman Gervasini asked for comments, changes or a motion on the August 21, 2023 minutes presented for approval. Commissioner Horvath moved to approve the minutes as corrected, seconded by Commissioner Ramirez and approved by a vote of 4-0.

OLD BUSINESS:

None

NEW BUSINESS:

1. 2023-27 BZA – 819 N 6th STREET

Hold a public hearing for Case No. 2023-27 BZA – 819 N 6th Street, wherein the petitioner is seeking a variance to section 4.03 of the adopted Development Regulations to allow an interior side setback of less than 6 feet on a property zoned R1-6, High Density Single Family Residential District.

Chairman Gervasini called for the staff report.

City Planner Bethany Falvey stated the applicant is requesting a variance from Section 4.03 of the adopted Development Regulations to allow an interior side setback of less than 6 feet. The subject property is zoned R1-6, High Density Single Family Residential District, with an existing single family home on the lot. The subject property is surrounded by other single-family homes of a similar size and nature.

The R1-6 zoning district requires a minimum interior side yard setback of 6 feet. The house had an existing rear deck that encroached into the side yard setback. A new porch, with new footings was constructed, therefore requiring a building permit. The deck is 3'6" from the interior side yard.

Chairman Gervasini asked for questions about the staff report.

Commissioner Horvath asked where the porch is that staff mentioned.

Using Google Maps, Ms. Falvey showed pictures of the existing porch, and stated the applicant had to apply for a building permit because it was more than just repairing in kind because they poured new footings. In turn, this requires the deck to meet current setbacks.

Commissioner Ramirez asked that because this is new construction the existing porch is no longer grandfathered in.

Ms. Falvey responded in the affirmative.

Chairman Gervasini asked if the applicants had a building permit for this project.

Ms. Falvey responded the applicants had started work on the project without first getting a permit. The applicants have since applied for a permit, which is pending the outcome of this variance request.

Commissioner Bolling asked if the applicants are doing the work themselves or if they are using a contractor.

Ms. Falvey responded that she believes they are using a contractor. There are certain contractors that are bonded through the City, and they do not have to get permits ahead of time from Building Inspections, even though our department require some reviews.

Commissioner Ramirez asked if the deck has the same footprint and distances.

Ms. Falvey responded that the side yard setback is not met.

Commissioner Ramirez asked if the new section of the side yard is different from what was previously there.

Ms. Falvey responded that the applicant had to pour new footings, and installed an entire new deck. The applicant also installed a new fence, and had a permit to do so.

Chairman Gervasini asked if the fence is on the property line.

Ms. Falvey responded in the affirmative stating a fence is allowed on the property line.

Commissioner Horvath asked what happens to the deck if the variance is not approved.

Ms. Falvey responded the applicants would have to reduce the deck so that it is 6' from the property line. Ms. Falvey reminded the board that financial hardships is not one of the criteria for the board to review.

Commissioner Horvath said for clarification, the applicants would need to cut the deck and move it in 2' 6".

Ms. Falvey responded in the affirmative stating this is why getting a building permit prior to commencing work is important.

With no further questions about the staff report, Chairman Gervasini opened the public hearing. With no one wishing to speak, Chairman Gervasini closed the public hearing.

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 4-0

All board members voted in the affirmative.

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

Vote 0-4

All board members voted in the negative.

- 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 4-0

All board members voted in the affirmative.

d) *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.

e) *That the 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 4.03 of the Development Regulations to allow an interior side yard setback of 3'6" at 819 N 6th Street.

Chairman Gervasini stated based on the findings, the variance for Case No. 2023-27 BZA is denied.

Ms. Falvey stated there is one item on the agenda for the next meeting November 27, 2023.

With no further business, Commissioner Gervasini called for a motion to adjourn. Commissioner Horvath moved to adjourn, seconded by Commissioner Bolling, and passed 4-0.

The meeting adjourned at 6:19 p.m.

Minutes taken by Planning Assistant Michelle Baragary.