

LEAVENWORTH BOARD OF ZONING APPEALS

Monday, October 16, 2023 – 6:00 P.M.
COMMISSION ROOM, CITY HALL
LEAVENWORTH, KANSAS

AGENDA

CALL TO ORDER:

1. Roll Call/Establish Quorum
2. Approval of Minutes: August 21, 2023 **Action:** Motion

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 from Section 4.03 of the adopted Development Regulations to allow an interior side setback of less than 6' on a property zoned R1-6, High Density Single Family Residential District.

ADJOURN



**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 look 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 on 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.

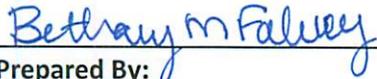
The meeting adjourned at 6:19 p.m.

Minutes taken by Planning Assistant Michelle Baragary.

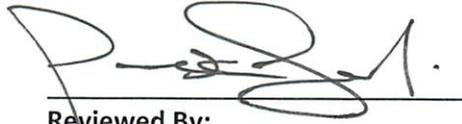
DRAFT

Board of Zoning Appeals Agenda Item
Variance Request
2023-27-BZA
819 N. 6th Street

OCTOBER 16, 2023



Prepared By:
Bethany Falvey
City Planner



Reviewed By:
Paul Kramer
City Manager

SUMMARY:

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’.

DISCUSSION:

The applicant, Michael Garner, is requesting a variance from section 4.03 of the adopted Development Regulations to allow an interior side setback of less than 6’. 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’. The house had an existing rear deck that encroached into the side yard set back. A new porch, with new footings was constructed, therefore requiring a building permit. The deck is 3’6” from the interior side yard.

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



BOARD OF ZONING APPEALS
CITY OF LEAVENWORTH, KANSAS

OFFICE USE ONLY

Case No.: 2023-27 BZA

Application No. 14161
Fee (non-refundable) \$350.00
Filing Date 8/30/23
Hearing Date 10/16/23
Publication Date 9/21/23

PETITION

Property Zoning: R1-6

Location of Subject Property: 819 N 6th St. LEAVENWORTH KS 66048

Legal Description: (Attach full legal description provided by the REGISTER OF DEEDS OFFICE)

Petitioner: MICHAEL GARNER

Petitioner Address: 819 N 6th St. LEAVENWORTH KS 66048

Email: LCMF3MICHAEL@ATT.NET Telephone: 913-683-1840

Petitioner's Interest in Property: OWNER

Purpose of Petition: VARIANCE FROM 6' SET BACK REQUIREMENT FOR SIDEYARD

- Appeal of Administration Decision _____ Date of Decision _____
Section 11.03.A
- Variance:
Section 11.03.B
- Exception:
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): MICHAEL GARNER

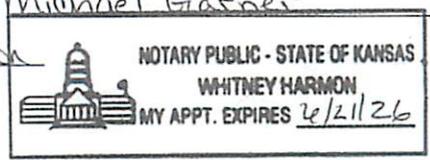
Signature: [Signature] Date: 8/30/2023

State of Kansas)
County of Leavenworth)

Signed or attested before me on August 30, 2023 by Michael Garner

Notary Public: Whitney Harmon

My appointment expires: 10/21/26 (Seal)



NOTE: All signatures must be in black or blue ink. Signature of owner(s) must be secured and notarized.
Check list below...

- Supporting documentation: Site plan, plot plan, a drawing and any other pertinent data
- Full legal description of subject property obtained from the Register of Deeds Office (913-684-0424)
- 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)

Michael and Susan Garner
819 N 6th Street
Leavenworth, KS 66048
913-683-1840 (cell)

August 30, 2023

Board of Zoning Appeals,

Attached you will find an application for an appeal on our deck. We are asking for a variance from the set back requirement. Unfortunately, we are not able to be present at this meeting (October 16th) as we will be out of town from October 15th thru October 19th (anniversary get away and plan tickets have been purchased...). You will find attached a drawing that is to scale (by self) that will show most of the deck is more than 6 feet from the property line. There is a section, roughly 17', that runs north and south that is 3 feet 6 inches from the property line. I have also attached all the required documents (legal description of the property and certified list of property owners, provided by the City of Leavenworth). Lastly, I have provided 7 pictures (below) showing the deck area with the first 2 were taking from the north side our house facing south showing the area that is in question. The next 2 pictures are from the south side facing north showing that same area. Finally, the last 3 pictures show where the deck begins to angle and at 2 feet 6 inches the deck is at a minimum 6 feet from the property line and as you can see continues to increase in distance between the property line and the deck.

Thank you for your time and consideration.

Sincerely,



Michael Garner

819 N 6th Street – variance from setback requirement for a deck

3' 6" from side property line







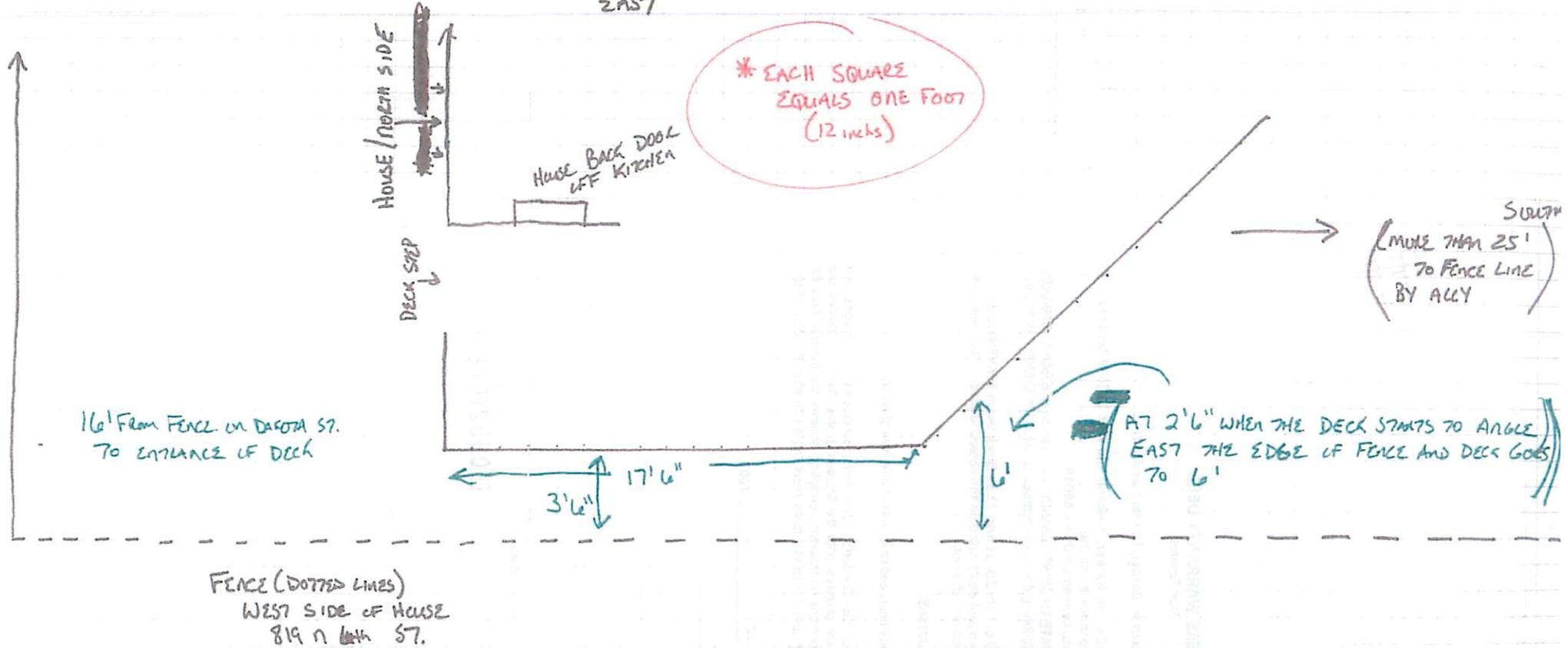












Wichita, Kansas 800.777.9767
Lenexa, Kansas 800.925.0023
Denver, Colorado 800.456.6056

Omaha, Nebraska 800.444.5345
Lincoln, Nebraska 800.761.5676
Grimes, Iowa 888.696.0686

Wichita, Kansas 800.777.9767
Lenexa, Kansas 800.925.0023
Denver, Colorado 800.456.6056

Omaha, Nebraska 800.444.5345
Lincoln, Nebraska 800.761.5676
Grimes, Iowa 888.696.0686

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Lenexa, Kansas 800.925.0023
Denver, Colorado 800.456.6056

Omaha, Nebraska 800.444.5345
Lincoln, Nebraska 800.761.5676
Grimes, Iowa 888.696.0686

c/on
11
12

KANSAS WARRANTY DEED
Joint Tenants

Grantor(s): **Michael D. Garner and Susan M. Garner, husband and wife**

Grantee(s): **Michael D. Garner and Susan M. Garner, husband and wife as joint tenants with the right of survivorship and not as tenants in common**
Grantee(s) mailing address: **819 N 6th St., Leavenworth, KS 66048**

NO CONSIDERATION. CREATING AN ESTATE OF JOINT TENANCY, the Grantor(s) **GRANT, BARGAIN, SELL AND CONVEY** to Grantee(s), the following described premises, to wit: **SEE EXEMPTION NO. 9**

The East 1/2 of Lot 29, and all of Lots 30, 31 and 32, in Block 94, in LEAVENWORTH CITY PROPER, originally known and designated on the recorded plat as "Leavenworth K.T.", according to the recorded plat thereof,

in LEAVENWORTH COUNTY, KANSAS

Subject to all easements, restrictions, reservations and covenants, if any, now of record

The Grantor(s) hereby covenanting that the Grantor(s), their heirs, successors and assigns, will **WARRANT AND DEFEND** the title to the premises unto the Grantee(s), their heirs, successors and assigns, against the lawful claims of all persons whomsoever, excepting however the general taxes for the current calendar year and thereafter, and the special taxes becoming a lien after the date of this deed.

Dated: December 5, 2003



Michael D. Garner



Susan M. Garner

File No.: 286835

BK0902 PG 1299

2003 DEC 11 P 3:20 B

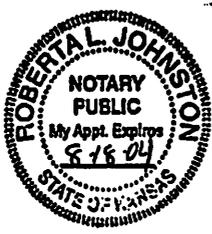
STATE OF Kansas)
) ss.
COUNTY OF Leavenworth)

REGISTER OF DEEDS

On December 5, 2003 this deed was acknowledged before me by Michael D. Garner and Susan M. Garner, Husband and Wife, Grantor(s).

Robert A. Johnston
Notary Public

My appointment expires:



Entered in the transfer record in my office on
11th day of December, 03
Junda A. Johnson, P.C.

File No.: 288316

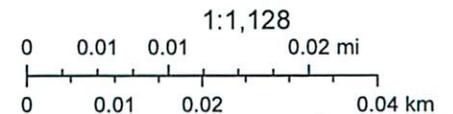
BK0902 PG 1300

BZA 2023-27 -- 819 N. 6th Street



10/9/2023, 12:58:34 PM

- Override 1
- Parcels_Current
- Leavenworth City Limits
- Buildings
- City Right-of-Way
- Address (Points)
- RoadCenterline



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