



BOARD OF ZONING APPEALS MINUTES
MONDAY, March 18, 2024, 6:00 P.M.
COMMISSION ROOM, CITY HALL
LEAVENWORTH, KANSAS

CALL TO ORDER:

Board Members Present

Kathy Kem
David Ramirez
Daniel Bolling
Dick Gervasini

Board Member(s) Absent

Jan Horvath

City Staff Present

Michelle Baragary
Julie Hurley

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

APPROVAL OF MINUTES: February 26, 2024

Chairperson Kem asked for comments, changes or a motion on the February 26, 2024 minutes presented for approval. Commissioner Ramirez moved to approve the minutes as presented, seconded by Commissioner Bolling and approved by a vote of 4-0.

OLD BUSINESS:

None

NEW BUSINESS:

1. 2024-08 BZA – 1031 METROPOLITAN AVE

Hold a public hearing for Case No. 2024-08 BZA – 1031 Metropolitan Ave., wherein the petitioner is seeking a variance to section 8.15 of the adopted Development Regulations to allow the use of an existing nonconforming sign after a change in business name or ownership.

Chairperson Kem called for the staff report.

Planning Director Julie Hurley stated the applicant, Infinity Signs, LLC, is requesting a variance from section 8.15 of the adopted Development Regulations to allow the use of an existing nonconforming sign after a change in business name or owner for the property located at 1031 Metropolitan Ave.

The subject property is zoned GBD, General Business District, and is occupied by a Sunoco gas station, which is an allowed use in the GBD zoning district. There is one existing freestanding sign associated with the property, which is currently located on the northwest corner of the property, along the west property line. Current regulations require that freestanding signage in the GBD zoning district be located on the parcel and be setback a minimum of 5' from any property line, making the existing sign nonconforming.

Section 8.15.A of the Development Regulations requires 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.*

As the existing sign is considered "existing nonconforming", it may continue to exist in its current state, but no additional permits may be issued without issuance of a variance. The gas station changed names in the summer of 2023 and changed signs without permits. A permit was sought in September 2023, but denied because of the above-mentioned section.

After the required notice was published to properties within 200', staff has received no comments from any notified property owners.

Chairperson Kem asked for questions about the policy report.

Commissioner Gervasini asked if a different fuel supplier were to go into this same location, would they need to go through this same process.

Ms. Hurley responded if it changes the name of the business/branding, then yes it would need to go through this same process. Ms. Hurley further stated this might be something that staff could look into with potentially changing the regulations because we are getting of these specific types of variance requests, and gas stations can change frequently.

With no further questions about the staff report, Chairperson Kem opened the public hearing.

Sam Morani, owner/applicant, stated he made the same types of changes at the other two Wood Oil gas stations he purchased located at 500 Limit St. and 700 Eisenhower. The existing sign is a hazard as the gas prices must be changed manually. The new sign will be digital. He has spent almost \$200,000 improving the store, adding a pump, fixed everything underground, and brought everything into compliance with KDHE. He signed a 12-year contract with Sunoco so he will not be changing the name anytime soon.

With no one else wishing to speak, Chairperson Kem closed the public hearing and called for discussion among the commissioners. With no further discussion, Chairperson Kem 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.

Chairperson Kem stated she agrees based on the Board’s previous history of granting variances for similar signs.

- b) *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.

- 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 these Development Regulations.

No safeguards or restrictions imposed.

ACTION:

Approve or deny the request for a variance from section 8.15 of the adopted Development Regulations to allow the use of an existing nonconforming sign after a change in business name or owner.

Chairperson Kem stated based on the findings, the variances for Case No. 2024-08 BZA is granted for the continued use of the existing nonconforming freestanding sign located at 1031 Metropolitan Ave.

With no further discussion, Ms. Hurley stated there are no items on the agenda for April.

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

The meeting adjourned at 6:12 p.m.

Minutes taken by Planning Assistant Michelle Baragary.