

LEAVENWORTH BOARD OF ZONING APPEALS

Monday, June 17, 2024 – 6:00 P.M.
COMMISSION ROOM, CITY HALL
LEAVENWORTH, KANSAS

AGENDA

CALL TO ORDER:

1. Roll Call/Establish Quorum
2. Approval of Minutes: March 18, 2024 **Action:** Motion

OLD BUSINESS:

None

NEW BUSINESS:

1. 2024-11 BZA – 108 WOODMOOR CT

Hold a public hearing for Case No. 2024-11 BZA – 108 Woodmoor Ct., wherein the petitioner is seeking a variance from Section 8.09 of the adopted Development Regulations to allow two neighborhood identification signs in the Mobile/Manufactured Home Park District (MP).

2. 2024-15 BZA – 3900 NEW LAWRENCE RD

Hold a public hearing for Case No. 2024-15 BZA – 3900 New Lawrence Rd., wherein the petitioner is seeking a variance from Section 4.03 of the adopted Development Regulations to allow an accessory structure to be erected forward of the main building line.

3. 2024-16 BZA – 347 N. 20TH TERRACE

Hold a public hearing for Case No. 2024-16 BZA – 347 N. 20th Terrace, wherein the petitioner is seeking a variance from Section 6.08 of the adopted Development Regulations to allow a solid fence in excess of 6' in the rear yard of a residential property.

ADJOURN



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.

Board of Zoning Appeals Agenda Item
Variance Request
2024-11 BZA
108 Woodmor Court

JUNE 17, 2024



Prepared By:

Julie Hurley,
Director of Planning and
Community Development

SUMMARY:

Consider a variance from section 8.09 of the adopted Development Regulations to allow two neighborhood identification signs in the Mobile/Manufactured Home Park District (MP).

DISCUSSION:

The applicant, Kansas City Sign Company, is requesting a variance from the above noted section of the adopted Development Regulations to allow two freestanding neighborhood identification signs at 108 Woodmor Court, a manufactured home community zoned MP.

The subject property is an existing manufactured home community, previously named Woodmore Court, which has recently been sold and renamed to Forest Hills. The new owners of the property wish to install two freestanding neighborhood identification signs at the entrances into the community.

Section 8.09 of the Development Regulations does not allow for freestanding neighborhood identification signs in the MP district. Each of the proposed signs will be 32 sqft in area, with an overall height of 6.7'. The signs as proposed comply with the regulations pertaining to freestanding neighborhood identification signs in all other residential districts.

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

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.

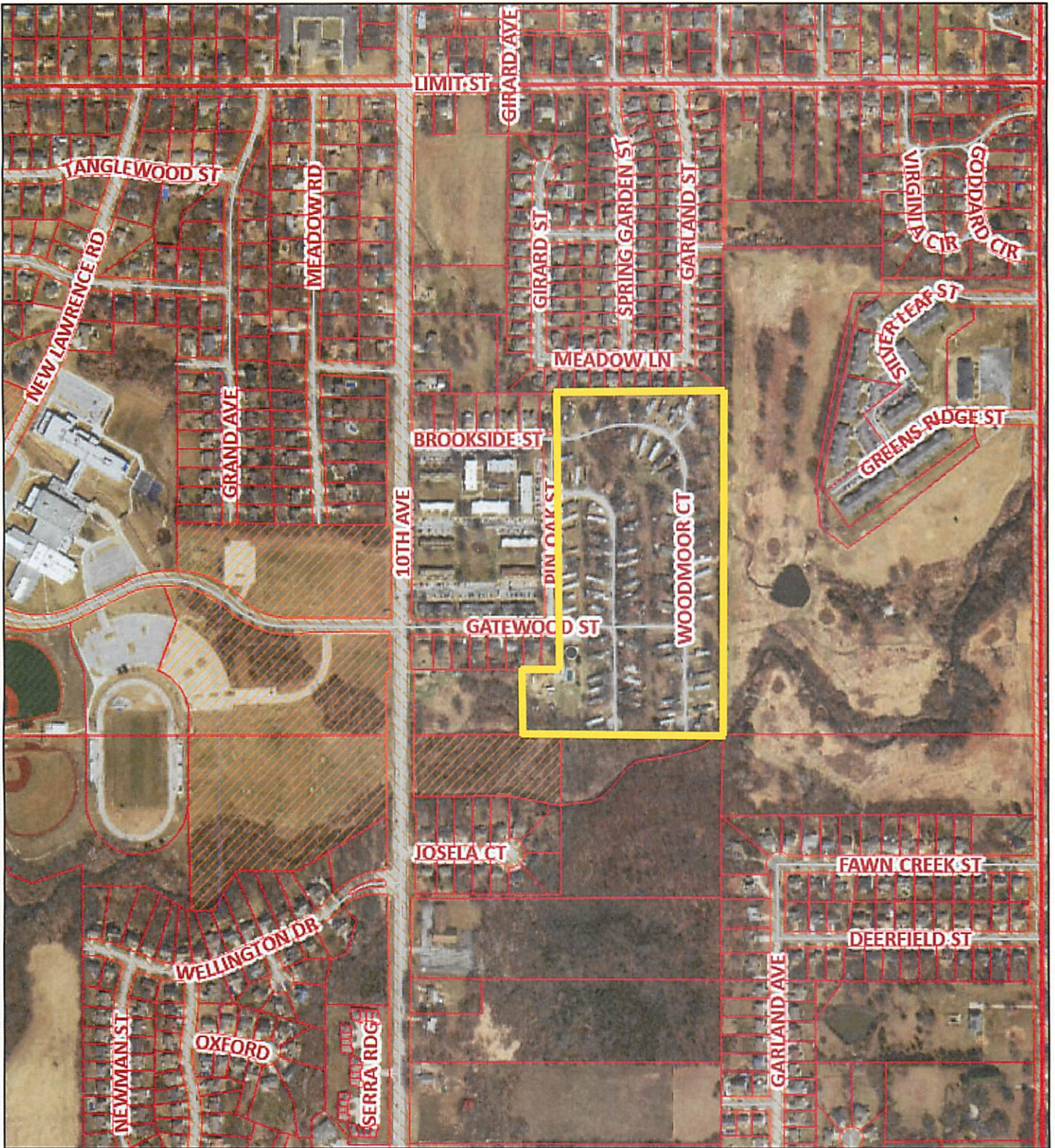
1. The applicant must show that his property was acquired in good faith and where by reason of exceptional narrowness, shallowness or shape of this specific piece of property at the time of the effective date of the Zoning Ordinance, or where by reason of exceptional topographical

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.

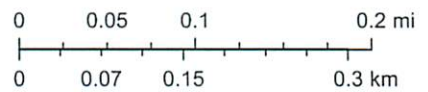
ACTION:

Approve or deny the request for a variance from section 8.09 of the Development Regulations to allow two freestanding neighborhood signs in the MP District.



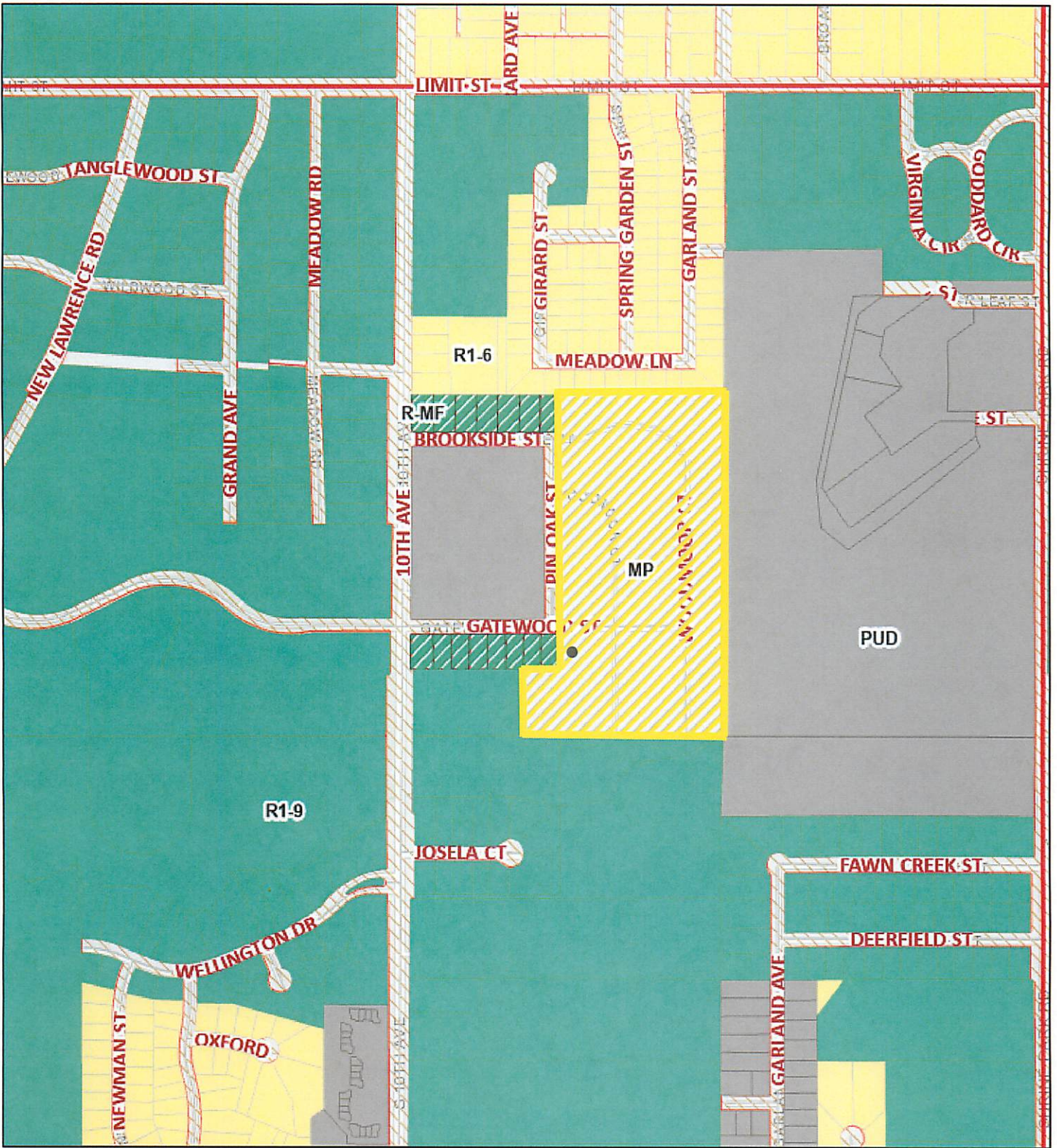
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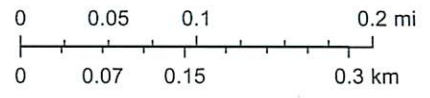
2024-11-BZA (Zoning)



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- Override 1
- R1-9
- Zoning_CURRENT
- Parcels (City Owned)
- MP
- Parcels_Current
- PUD
- Section Lines
- R-MF
- Leavenworth City Limits
- R1-6
- City Right-of-Way
- RoadCenterline



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BOARD OF ZONING APPEALS
CITY OF LEAVENWORTH, KANSAS

OFFICE USE ONLY

Case No.: 2024-11 BZA

Application No. 15264
Fee (non-refundable) \$350.00
Filing Date _____
Hearing Date _____
Publication Date _____

PETITION

Property Zoning: _____

Location of Subject Property: 108 WOODMOOR CT LEAVENWORTH, KS 66048

Legal Description: S11, T09, R22E, ACRES 22.78, PT W1/2NE1/4, BEG 307' E CW COR NE1/4, E833.10', N1394.93', W600 17', S1130.4', W150', S291.36' TO POB Deed Book/Pg: 0635/1057 0567/1725

Petitioner: Lee Mendenhall

Petitioner Address: 8248 NW 101 st. Terrace Ste 4 KCMO 64153

Email: lee@kansascitysigns.com Telephone: 816.216.6109

Petitioner's Interest in Property: Sign installer - Kansas City Sign Company

Purpose of Petition: To allow ground signs at manufactured home park

- Appeal of Administration Decision _____ Date of Decision _____
Section 11.03.A
- Variance: to allow 2 neighborhood identification signs in MP District
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): RFRE II, LLC

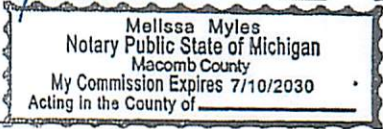
Signature: [Signature] Date: 4/2/24

State of Michigan)
County of Dakland)

Signed or attested before me on 04/02/2024 by Larry Nelson

Notary Public: Melissa Myles

My appointment expires: 07/10/2030 (Seal)



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

<input checked="" type="checkbox"/>	Supporting documentation: Site plan, plot plan, a drawing and any other pertinent data
<input type="checkbox"/>	Full legal description of subject property obtained from the Register of Deeds Office (913-684-0424)
<input type="checkbox"/>	Certified list of property owners within two hundred (200) feet of the subject property – County GIS Department 913-684-0443
<input type="checkbox"/>	A filing fee of Three Hundred- fifty dollars (\$350)



Statement

Kansas City Sign Company wants to apply for a variance for two ground signs located in the Mobile/Manufactured Home Park. These signs would indicate the Name, website and phone number for the location. These would be located at each entrance to the mobile park.

While researching the area it looks like this is one out of two mobile parks located in Leavenworth and with this location the signs were mostly seen by an apartment complex and a few houses within the 200' radius. I have provided a map with additional information on the fourth page of the permit drawing.



POST & PANEL SIGN - SINGLE SIDED

metal frame/post

panel: 3MM Maxmetal with digitally printed vinyl overlay

Overall sign size: 80" x 96" • 53.3 ft²

Panel size: 96" x 48" • 32 ft²

INSTALLATION ADDRESS

108 Woodmoor Court
Leavenworth, KS 66048

8248 NW 101st Terrace #13, Kansas City, MO 64153 • 816.216.6109 • KansasCitySigns.com

INSTALL LOCATION

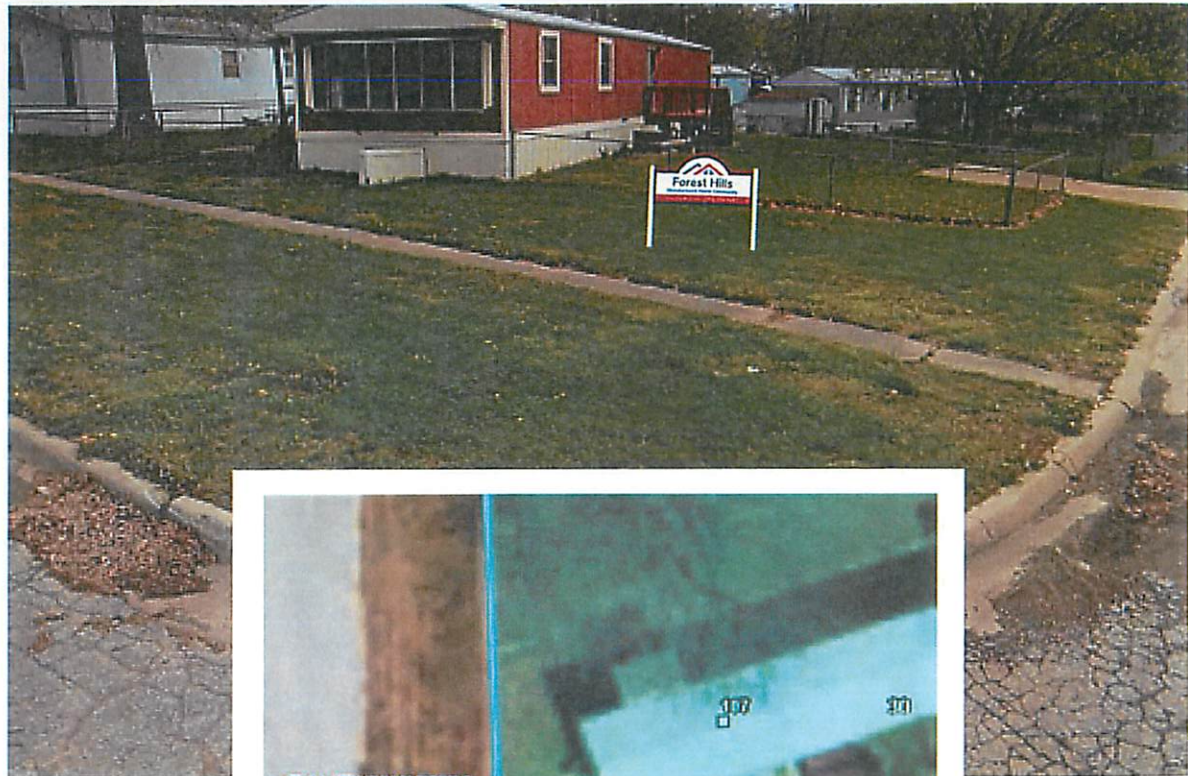


PROPERTY LINE

8248 NW 101st Terrace #13, Kansas City, MO 64153 • 816.216.6109 • KansasCitySigns.com



INSTALL LOCATION



PROPERTY LINE

Board of Zoning Appeals Agenda Item
Variance Request
2024-15 BZA
3900 NEW LAWRENCE ROAD

JUNE 17, 2024



Prepared By:

Julie Hurley,
Director of Planning and
Community Development

SUMMARY:

Consider a variance from section 4.03 of the adopted Development Regulations to allow an accessory structure to be erected forward of the main building line.

DISCUSSION:

The applicant, Scott Peare, is requesting a variance from the above noted section of the adopted Development Regulations to allow an accessory structure to be erected forward of the main building line at 3900 New Lawrence Road, a single family home zoned R1-25, Low Density Single-Family Residential district.

The subject property is 11.46 acres in size and is occupied by an existing single-family home. The applicant intends to construct a 1,600 square foot detached garage adjacent to the existing paved driveway. There are no other accessory structures on the property. The existing home is situated approximately 200' from New Lawrence Road and there is a line of dense vegetation and tree cover between the home and right-of-way, obscuring view of the home from New Lawrence Road. The property is irregularly shaped, with the home situated at an angle to New Lawrence Road. The proposed detached garage would be situated forward of the main building line of the house, and between the house and New Lawrence Road.

Section 4.03 of the Development Regulations states:

No accessory buildings shall be erected in any required front or side yard, or at any other place forward of the main building line.

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

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.

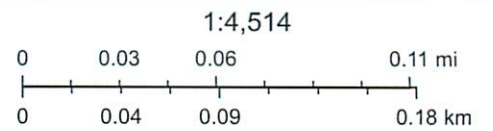
ACTION:

Approve or deny the request for a variance from section 4.03 of the Development Regulations to allow an accessory structure forward of the main building line.

2024-15-BZA 3900 New Lawrence

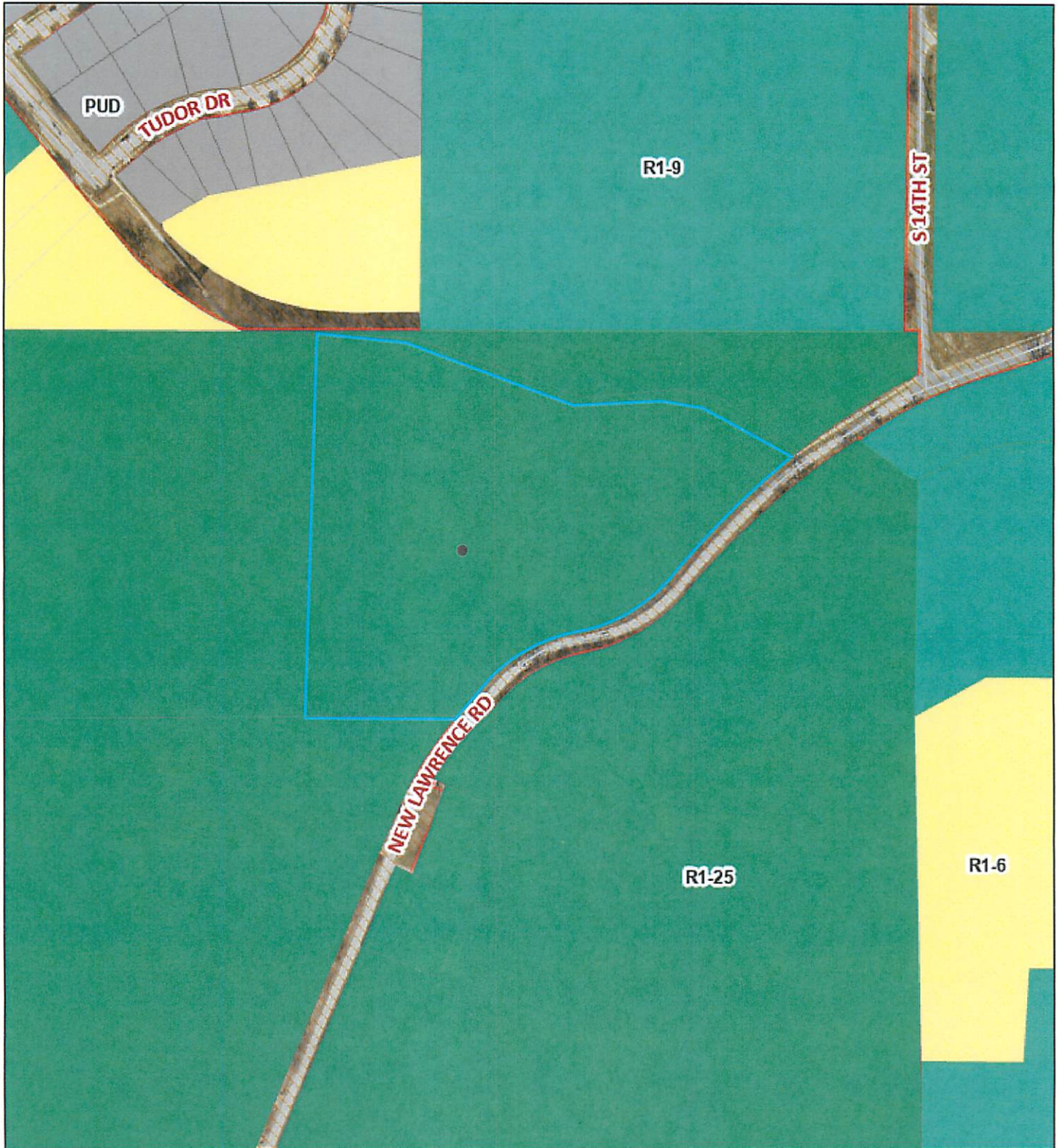


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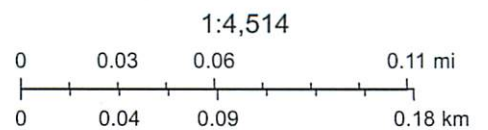
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2024-15-BZA 3900 New Lawrence (Zoning)



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- | | | |
|----------------|--|-------------------------|
| Zoning_CURRENT | | Parcels (City Owned) |
| | | Parcels_Current |
| | | Leavenworth City Limits |
| | | City Right-of-Way |
| | | RoadCenterline |



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BOARD OF ZONING APPEALS
CITY OF LEAVENWORTH, KANSAS

OFFICE USE ONLY

Case No.: 2024-15 BZA
Application No. 15399
Fee (non-refundable) \$350.00
Filing Date 4/25/24
Hearing Date 4/17/24
Publication Date 5/22/24

PETITION

Property Zoning: R1-25
Location of Subject Property: 3900 New Lawrence Rd Leavenworth
Legal Description: (Attach full legal description provided by the REGISTER OF DEEDS OFFICE)
Petitioner: Scott R. Pearce
Petitioner Address: 3900 New Lawrence Rd Leavenworth
Email: Scott.Pearce@Icloud.com Telephone: 913 683-2400
Petitioner's Interest in Property: owner
Purpose of Petition: Building a garage slightly in front of Residence

- Appeal of Administration Decision _____ Date of Decision _____
Section 11.03.A
- Variance: Section 4.03.E 30' x 48' Bldg with 8' x 20' lean to.
Section 11.03.B to Allow an Accessory bldg. to be erected
- Exception: forward of the main building line / primary dwelling
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): Scott R. Pearce

Signature: [Signature] Date: 25 APR 24

State of Kansas)

County of Leavenworth)

Signed or attested before me on April 25, 2024 by Scott Pearce

Notary Public: Lee Burlison

My appointment expires: 7-25-2027 (Seal)



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

<input checked="" type="checkbox"/>	Supporting documentation: Site plan, plot plan, a drawing and any other pertinent data
<input checked="" type="checkbox"/>	Full legal description of subject property obtained from the Register of Deeds Office (913-684-0424)
<input checked="" type="checkbox"/>	Certified list of property owners within two hundred (200) feet of the subject property – County GIS Department 913-684-0443
<input checked="" type="checkbox"/>	A filing fee of Three Hundred- fifty dollars (\$350)

3900 New Lawrence Rd.
Leavenworth, KS 66048

April 23, 2024

Kathy Kem
Daniel Bolling
Richard Gervasini
Jan Horvath
David Ramirez
100 North 5th St.
Leavenworth, KS 66048

Dear Board Members:

My wife and I are contracting Gingerich Structures (formally Farm and Home Structures) to build a 30'x48' post-frame building (enclosure 1) on our residential property within the city limits of Leavenworth. The building will be used for our personal use to store a truck, tractor, various tractor implements, and a hobby wood shop. The proposed building site is slightly in front of the existing home. (enclosure 2)

One would think that on 12 acres, there would be plenty of space to build a garage behind or beside the home. Unfortunately, several unique conditions prevent the more typical location. (enclosure 3)

1. East: Every has an easement between our house and New Lawrence Rd that limits available space.
2. North: From our split-level house to the city walking trail below a 20-90% downward slope (yes, a rock cliff in places) severely limits building anything behind the house.
3. Building south and west of the house makes it more conspicuous to New Lawrence traffic and our neighbors.

The proposed building site does not affect any of our neighbors, in fact, when the foliage is full we can barely see the neighbors' houses. The garage and hobby wood shop will not create any additional noise or safety considerations for the neighbors. (enclosures 4 and 5)

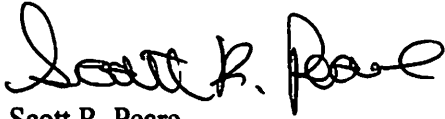
If the proposed building site is disapproved requiring building elsewhere on the property creates a couple of hardships for me. One is the financial cost of creating a level building site. The other is my service-connected disability; while it doesn't limit very much mobility at present, it will in 10-20 years. Building further from the house will prove more difficult. We plan to reside in this home for the remainder of our lives.

The Variance will not affect the public at all. At the closest point, the building will be well over 200' from any property line, including New Lawrence Rd. We rely on our own septic system and use our own propane, so I cannot see any issues with public health or safety concerns.

I completely understand and respect the intent and spirit of development regulations. If we lived on a property more conducive to putting in a garage/shop in a typical location behind the house we certainly would.

Thank you for your time and consideration; we look forward to a favorable approval of our request for a variance.

Respectfully,

A handwritten signature in black ink that reads "Scott R. Peare". The signature is written in a cursive, flowing style.

Scott R. Peare
CSM, USA (ret)
(913) 683-2400

Enclosures:

1. Building stock photo
2. Purposed site plan
3. Property boundary
4. Neighbors within 200'
5. List of boundary neighbors
6. Legal description

30 ft. x 48 ft. detached garage with an 8 ft x 20 ft lean-to.

Total sqft. 1,600



Enclosure 1

Leavenworth County, KS



Enclosure 2

Legend

- Address Point
- Parcel Number
- Lot Line
- Parcel
- City Limit Line
- Major Road
- <all other values>
- 70
- Road
- <all other values>
- PRIVATE
- Railroad
- Section
- Section Boundaries
- County Boundary

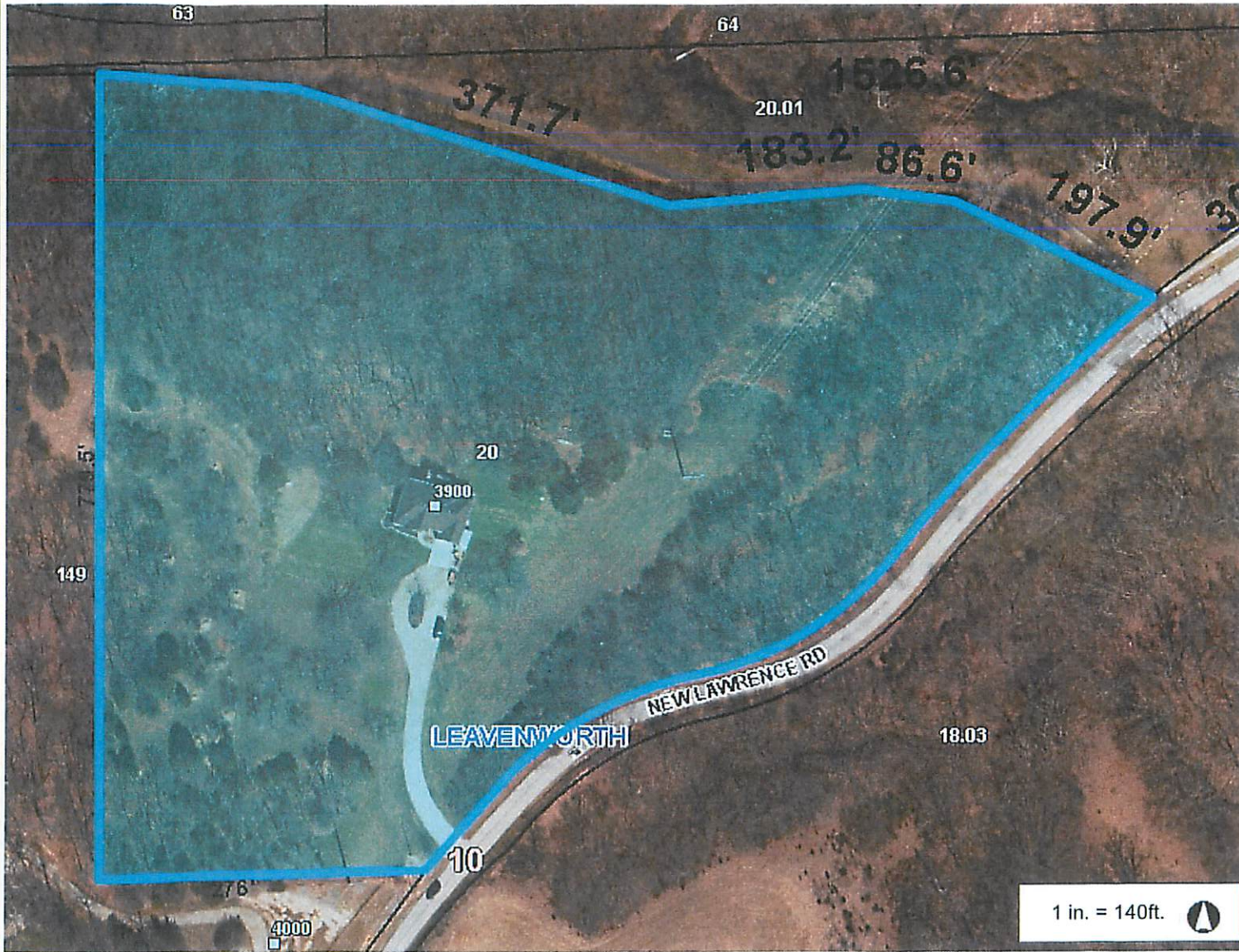
1 in. = 35ft.

70.0 0 35.00 70.0 Feet

This Cadastral Map is for informational purposes only. It does not purport to represent a property boundary survey of the parcels shown and shall not be used for conveyances or the establishment of property boundaries.
THIS MAP IS NOT TO BE USED FOR NAVIGATION

Notes

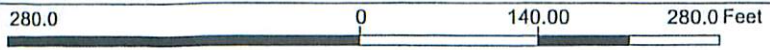
Leavenworth County, KS



Legend

- Address Point
- Parcel Number
- Lot Line
- Parcel
- City Limit Line
- Major Road
- <all other values>
- 70
- Road
- PRIVATE
- + Railroad
- Section
- Section Boundaries
- County Boundary

1 in. = 140ft.



This Cadastral Map is for informational purposes only. It does not purport to represent a property boundary survey of the parcels shown and shall not be used for conveyances or the establishment of property boundaries.
THIS MAP IS NOT TO BE USED FOR NAVIGATION

Notes

Enclosure 3

Board of Zoning Appeals Agenda Item
Variance Request
2024-16 BZA
347 N. 20TH TERRACE

JUNE 17, 2024



Prepared By:

Julie Hurley,
Director of Planning and
Community Development

SUMMARY:

Consider a variance from section 6.08 of the adopted Development Regulations to allow a solid fence in excess of 6' in the rear yard of a residential property.

DISCUSSION:

The applicants, Christopher and Melanie Redding, are requesting a variance from the above noted section of the adopted Development Regulations to allow a solid fence in the rear yard in excess of 6'. The applicants are proposing to construct a solid fence of up to 10' in height to increase privacy and noise reduction in their rear yard.

The subject property is .6 acres in size and is occupied by an existing single-family home. The applicant intends to add height to a portion of existing 6' solid fence in the rear yard to increase privacy from the property to the west. There is a significant difference in grade between the subject property and the property to the west, with an approximately 4'-6' difference in elevation. The area of fence which is proposed to be constructed in excess of 6' is approximately 42' in length, extending from the existing driveway to the side property line as shown on the attached exhibit.

Section 6.08 of the Development Regulations states:

Open fences and hedges may be installed in all side and rear yards on the property line but may not exceed 72 inches above the natural contour of the ground.

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

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.

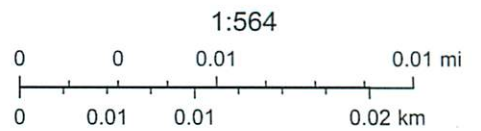
ACTION:

Approve or deny the request for a variance from section 6.08 of the Development Regulations to allow a solid fence in excess of 6' in height in the rear yard.

2024-16-BZA 347 N. 20th Ter.

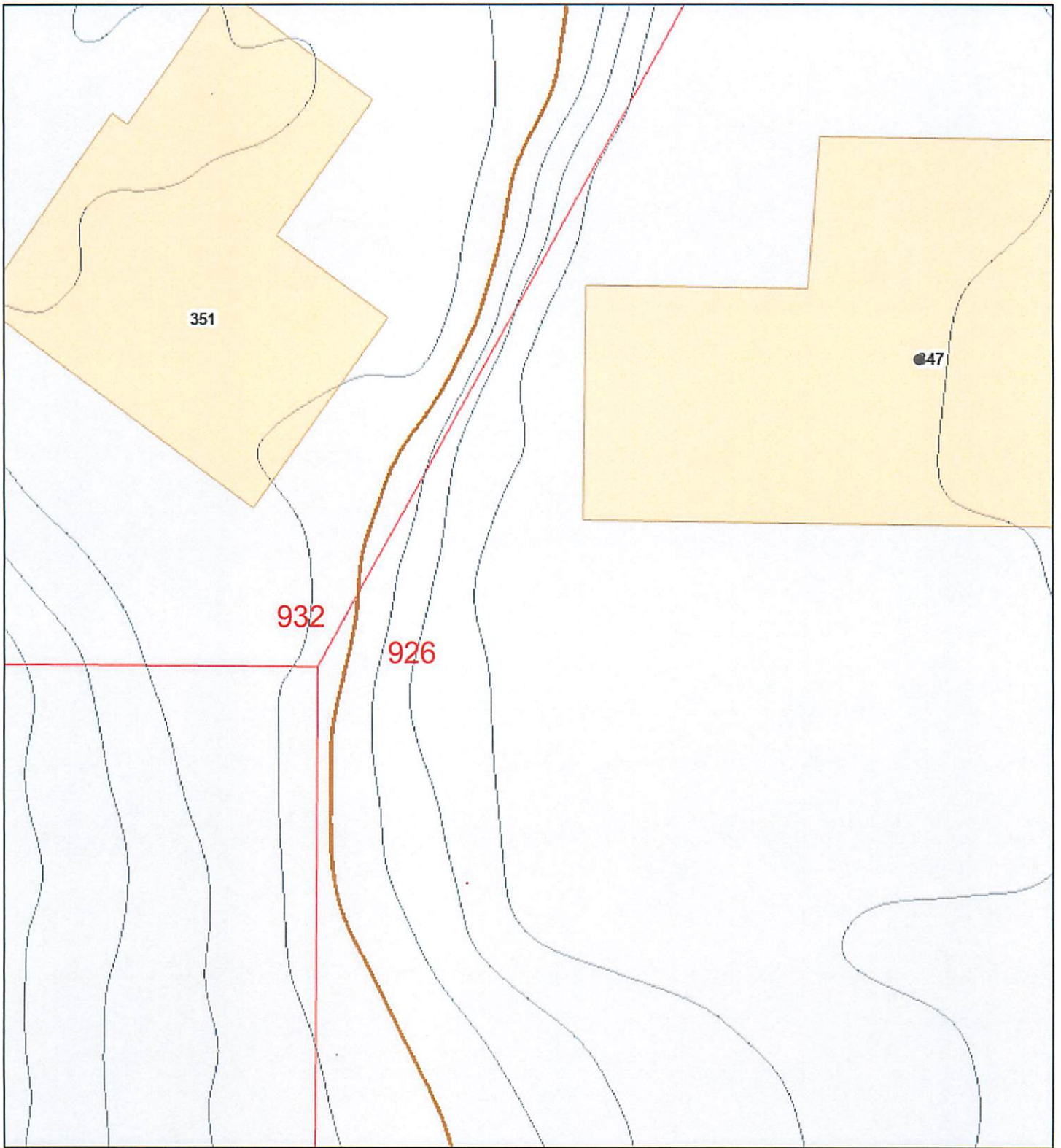


6/13/2024, 1:30:14 PM

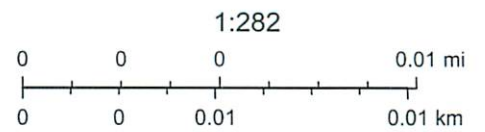


Esri, HERE, Garmin, (c) OpenStreetMap contributors, and the GIS user community

2024-16-BZA 347 N. 20th Ter. (Contours)



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BOARD OF ZONING APPEALS
CITY OF LEAVENWORTH, KANSAS

OFFICE USE ONLY

Case No.: 2024-16 BZA
Application No. 15457
Fee (non-refundable) \$350.00
Filing Date 5/3/24
Hearing Date 6/17/24
Publication Date 5/22/24

PETITION

Property Zoning: R1-9
Location of Subject Property: 347. N. 20th Ter, Leavenworth KS, 66048; Busmans 2nd, S27, Lot 1, Block 3
Legal Description: (Attach full legal description provided by the REGISTER OF DEEDS OFFICE)
Petitioner: Christopher A. Redding and Melanie L. Redding
Petitioner Address: 347 N. 20th Ter. Leavenworth KS, 66048
Email: chris.a.redding@gmail.com; melredding@gmail.com Telephone: 949-291-0813/0386
Petitioner's Interest in Property: Owner, Privacy, noise, aesthetic value
Purpose of Petition: Privacy, noise reduction efforts

- Appeal of Administration Decision _____ Date of Decision _____
Section 11.03.A
- Variance: Variance to allow a 9 ft. to 10 ft. privacy fence in the side & rear yard on a property zoned R1-9. Section 6.08
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): Christopher A. Redding, Melanie L. Redding

Signature: Melanie Redding Date: 12/3 May 2024

State of Kansas)

County of Leavenworth)

Signed or attested before me on May 3, 2024 by Melanie Redding & Christopher Redding

Notary Public: Michelle Baragary

My appointment expires: 8/16/24 (Seal)



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

<input checked="" type="checkbox"/>	Supporting documentation: Site plan, plot plan, a drawing and any other pertinent data
<input checked="" type="checkbox"/>	Full legal description of subject property obtained from the Register of Deeds Office (913-684-0424)
<input checked="" type="checkbox"/>	Certified list of property owners within two hundred (200) feet of the subject property – County GIS Department 913-684-0448
<input checked="" type="checkbox"/>	A filing fee of Three Hundred- fifty dollars (\$350)

Variance Summary: We, the residents of 347 N. 20th Terrace, Leavenworth KS, 66048 (of Bushmans 2nd, Lot 1, Block 3), are requesting approval to add additional privacy materials to the currently approved, six foot privacy fence along our western property line. The additive material would increase the height, above the currently approved six-foot municipal allowance by one to three feet along the current fence gradient. The purpose and intended effect is to create privacy and create noise reduction.

SITE PLAN, DRAWING
Bushmans 2nd, Lot 1, Block 3





RESPONSE TO CODE REQUIREMENTS

(11.03.B.2 (a) – (f))

A. Board determination:

No justification required for this subsection.

B. 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.

This request is unique, based on the physical topography between our residence and our adjacent neighbor in lot 2. Our residences have significant elevation rise running north to south, ranging between one to fifteen feet, spanning the full length of our western property line. The variance request is where the elevation rise is near its greatest difference in height. In our zone, most property boundary lines occur at natural “breaks” in terrain; however, our property line runs between the rise in our shared hill, which prevents a “clean” placement of a privacy fence that would normally be adequate for the standard 72 inch fence.

In this location, there is also no natural or man-made tree or bush coverage to create or provide the intended privacy we have in other parts along the perimeter of our backyard. The elevation

rise is neither the result or fault of either property owner's actions, or as a result of any intentional modifications to either property. The current six-foot privacy fence erected (with a previously approved permit) provides insufficient coverage between lots for both personal privacy and noise concerns. The requested variance for additional privacy material footage, limited in nature, will help secure the rights concerned.

C. That the granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents.

We have no assessed reason to believe the right to our privacy would impede or constrain an adjacent neighbor's rights based on our request. The current fence is already *inside* our current property boundary by several feet and does not encroach within six feet of our adjacent neighbor's property (based on GIS and google imagery distance analysis, I assess our current fence-line to be between 20-30 feet from our neighbors property structure (the actual home), and between 6-20 feet from the property boundary line. Lastly, although our neighbors lot in lot 2 is higher in elevation, it is not a lot with a "view." Any view is obstructed by natural trees or is, in actuality, a "view" directly into our backyard.

Additionally, the materials conform to the guidelines found in the Development Regulations handbook and would not detract from the current aesthetics of the current fencing or housing materials. The material sought to secure additional privacy is intended to be of the same or similar material to either the current wooden privacy fencing material or of "lattice" type design. As residents/owners, we assess the desired material to be of similar type to achieve coherence with the current aesthetics of the neighborhood. Moreover, our neighborhood is not part of any home owner's association (HOA), so no known internal rules or policies will be jeopardized or breached.

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.

The additive measure is based on a reasonable right to privacy and noise disturbance mitigation. This right is equivalent to the same privacy measures already secured by the rights of other adjacent residents in block 2, lots 22 and 25, respectively. Without the additive measure of additional privacy material, the personal privacy rights are not secured. Moreover, these actions are a direct effort to reduce noise between our two residences.

Many neighbors in our community have dogs. Privacy fencing material contributes toward significant noise reduction. Animals make significantly less noise when they do not have the ability to directly observe other neighbors' animals.

A large appeal to our property address is provided by the physical location in a desirable cul-de-sac, and the privacy provided by our existing wood-line in our backyard. However, the elevation difference between our adjacent neighbor creates a significant hardship to our quality of life, which creates the potential for property reduction value, if not corrected, as allowed in the Developmental Regulations. As a military family there is always a likelihood of moving, which in many instances requires the re-sale of a home. Privacy and quietness were a large reason for purchasing our home; and, it is reasonable to make a similar assumption for a future home buyer. Given current market phenomenon, it is in the best interests (of us as current residents/owners) to secure the best marketability in an uncertain environment.

E. That the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare.

Given the variance request, there is no assessed risk to the above factors. The additional materials do not create additional considerations to the already existing fence. This is not a corner lot or shared lot with mixed-commercial use that would require such considerations.

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

The spirit and intent of the Development Regulations is to provide, consider, and grant remedies that contribute to the individual and community general welfare, aesthetics, and property value. Granting this request will do just that – add to the desired aesthetics and desired privacy and noise concerns which are intrinsically linked to socially intangible factors as quality of life and home resale value.

347 N 20th Ter.



additional partial view
of our backyard from
351. Their elevation gain
is greater so the view is
greater (if our yard)



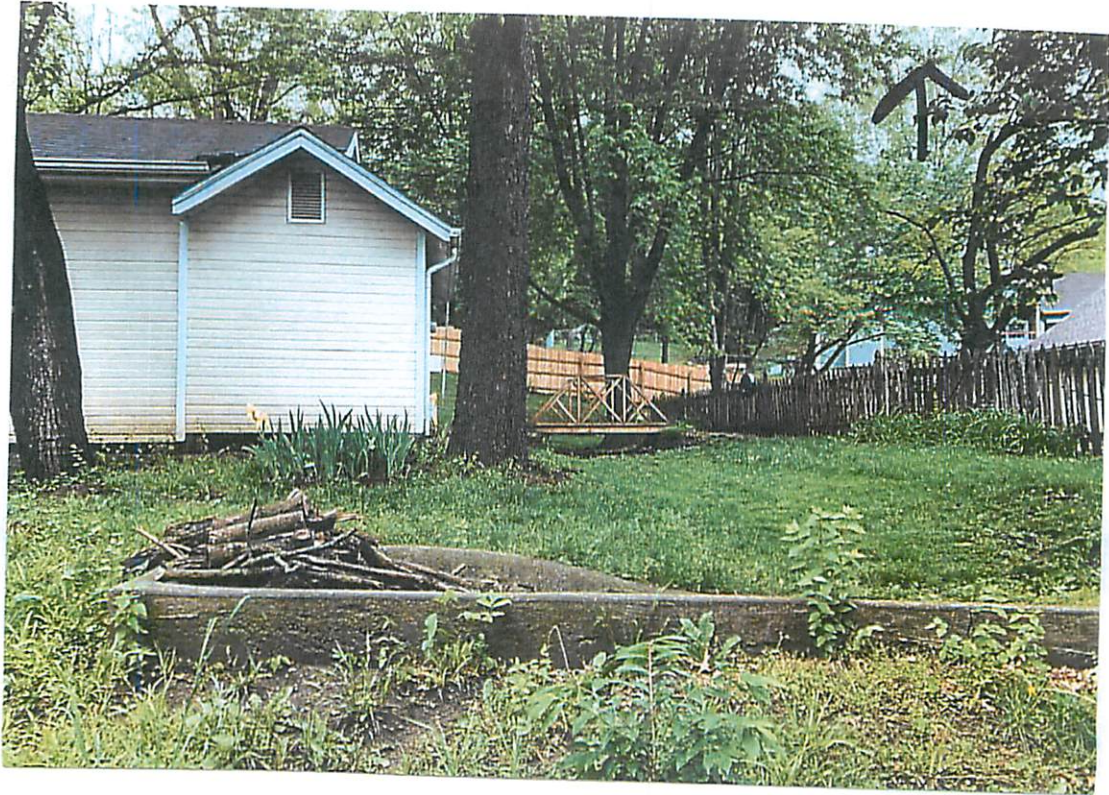
partial view from 351 of
our backyard after privacy
fence was installed. 351
has more elevation gain so
their view of our yard is
greater than image



View of 351 20^m Ter
from rear of home after
privacy fence was
installed. (west side of yard)



View from backyard of
313. ~~319~~ has a privacy
fence and cannot see our
fence. 307 cannot see the
fence due to vegetation



View of proposed
fence height
from street.

