



**BOARD OF ZONING APPEALS MINUTES
MONDAY, September 16, 2024, 6:00 P.M.
COMMISSION ROOM, CITY HALL
LEAVENWORTH, KANSAS**

CALL TO ORDER:

Board Members Present

Kathy Kem
Jan Horvath
David Ramirez
Ron Bates

Board Member(s) Absent

Daniel Bolling

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: June 17, 2024

Chairperson Kem asked for comments, changes or a motion on the June 17, 2024 minutes presented for approval. Commissioner Horvath 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. 2024-18 BZA – 1903 S. 4TH STREET

Hold a public hearing for Case No. 2024-18 BZA – 1903 S. 4th Street, wherein the petitioner is seeking a variance to section 8.11 of the adopted Development Regulations to allow a freestanding sign in excess of the maximum allowable height in the GBD, General Business District, zoning district.

Chairperson Kem called for the staff report.

Planning Director Julie Hurley stated the applicant, Schurle Signs, Inc., is requesting a variance from the above noted section of the adopted Development Regulations to allow the installation of a 25' high freestanding sign for the Dollar Tree store to be constructed at 1903 S. 4th Street.

Section 8.11 of the Development Regulations states that freestanding signs located in the GBD, General Business District, zoning district be limited to 15' in height. Section 8.11 further states:

Freestanding signs shall not exceed 15 feet in height. Where a sign is located across the street from a property zoned for commercial or industrial uses, the height of the sign may be increased to a height of 25 feet, provided that the nearest edge of the sign is setback from the property line 2 feet for each additional 1 foot in height.

The proposed freestanding sign is 5.07' from the property line, which would allow for a height increase of 2', for a maximum allowed height of 17'. The applicant is requesting an overall height of 25'.

Along 4th Street between Spruce and Limit Streets, there are a number of existing freestanding signs in excess of 15' in height that were installed prior to current regulations. The existing signs in excess of 15' in height are considered "existing nonconforming".

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

Chairperson Kem called for questions from the commissioners on the staff report.

Commissioner Ramirez asked about the height of other freestanding signs in that area.

Ms. Hurley responded that staff does not have a tool to measure the height of the signs along 4th Street, and unfortunately records were not kept well back when these older signs were installed so staff does not know the exact height. However, staff's best guess would be in the 20' to 25' height range.

Chairperson Kem stated that obviously all the older signs along 4th Street were installed before the current sign ordinance. Does staff have any plans to change the current sign ordinance in reference to this zoning district?

Ms. Hurley responded not at this time. However, this is one of those things that when staff starts getting a number of the same type of variance requests, that staff will take a look at maybe revising the sign code. It was about six to eight years ago when staff revised the sign ordinance and reduced that maximum height quite a bit in an effort to change the overall aesthetic. Again, if this is something that we continue to receive the same variance requests and it is of the general consensus that the variance requests are getting granted, then that is something that staff can take a look at again and have the Planning Commission review it.

Chairperson Kem asked if any variances have been granted recently along that general area. Casey's changed their signs but Chairperson Kem does not believe a variance was requested.

Ms. Hurley responded that Casey's did not request a variance, and it was an existing sign that they resurfaced. Casey's did change the design of the sign they were going to use because it would have increased the height of the existing sign, which would require a variance.

Commissioner Bates asked if anyone has requested a height variance since Starbucks.

Ms. Hurley responded not along 4th Street. There was a variance request for the height of two freestanding signs for the Sunoco gas station at Shrine Park and Eisenhower Road.

Chairperson Kem asked for verification that the height variance requested by Sunoco was for existing freestanding signs.

Ms. Hurley responded in the affirmative.

Chairperson Kem stated that she believes the variance request for the sign height for the Starbucks sign was denied.

Ms. Hurley responded in the affirmative.

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

Ryan Schurle, representing the applicant Schurle Signs, stated in the site plan they do not have enough room to set the sign back far enough to be allowed the 25' height. Another reason for the sign height is vehicular safety, and people being able to see the sign. A letter was provided with the application packet that referenced the American Association of State Highway Transportation Officials (AASHTO), who are the experts in how long it takes a driver to recognize a sign and make the necessary adjustments to exit the roadway. Mr. Schurle further stated that the height of a sign is not one-size fits all. Consideration needs to be given to how far from a sign before a driver recognizes the sign and then have enough time to turn into the parking lot.

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 1-3

Commissioner Horvath voted in the affirmative. Commissioners Bates, Kem and Ramirez voted in the negative.

- 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 0-4

All board members 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 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 0-4

All board members voted in the negative. Chairperson Kem stated she does not feel like this is a unique property, has fairly good visibility along 4th Street, the topography is fairly flat, and feels like it is in opposition to the general spirit of the ordinance.

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 8.11 of the Development Regulations to allow a freestanding sign in excess of 17' in height for the property located at 1903 S. 4th Street.

Chairperson Kem stated based on the findings, the variances for Case No. 2024-18 BZA is denied.

2. 2024-20 BZA – 2115 VILAS STREET

Hold a public hearing for Case No. 2024-20 BZA – 2115 Vilas Street, wherein the petitioners are seeking a variance to section 4.03 of the adopted Development Regulations to allow an accessory structure to be erected forward of the main building line.

Chairperson Kem called for the staff report.

Planning Director Julie Hurley stated the applicants, Kristopher and Julie Howell, are requesting 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 at 2115 Vilas Street, a single-family home zoned R1-25, Low Density Single Family Residential District.

The subject property is 4.3 acres in size, and is occupied by an existing single-family home and detached garage. The home and detached garage are situated roughly in the middle of the lot from north to south, and closer to the east property line. The applicant intends to construct a 3,300 square foot agricultural building to the west and north of the existing home, as well as add a covered extension to the existing detached garage.

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.

The Development Regulations define “front yard” as follows:

A yard extending the full width of the lot and situated between the street right-of-way and the required building setback line. The front yard of a residential corner lot is the yard adjacent to the shorter street frontage.

The existing home is oriented to the east, facing an internal property line, and not Vilas Street. However, since the property is addressed from Vilas Street and the shorter street frontage is that along Vilas, the front yard is considered to be north of the existing home, meaning that any structure erected north of the home would be considered “forward of the main building line”.

The proposed agricultural building and extension of the existing detached garage would otherwise meet all applicable regulations.

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

Chairperson Kem called for questions from the commissioners on the staff report.

For clarification, Chairperson Kem asked that the covered portion area is not part of the variance.

Ms. Hurley responded that it is because the existing detached garage is still technically forward of the main building line. Even though the way the house is situated, it is on the side of the house; however, according to our definitions, it is forward of the main building line since it is closer to the street.

Chairperson Kem asked if one variance covers both requests.

Ms. Hurley responded in the affirmative that it is one variance to allow both of the proposed additions to the property. However, the Board could break them out and vote on them separately, if they so choose.

Chairperson Kem stated for the record that she does know Kris and Julie Howell personally, as they go to the same church. They have talked in generalities about how the board works but not specifically about her case.

Commissioner Ramirez also stated that Mr. Howell did speak at the previous meeting.

Ms. Hurley stated it was for Mr. Howell to explain what the proposal was since he could not be here for the meeting tonight. There was no discussion back and forth, but rather Mr. Howell clarifying what they are looking to build.

Commissioner Horvath stated that this is an unusual property because the house is facing to the side yard, and the garage is closer to Vilas Street.

Ms. Hurley stated the house is well over 100 years-old. When this house was built, there was nothing else out there, and the house was just built on farmland. There were no property lines or lot lines whatsoever when this house was built.

Julie Howell, applicant and property owner, stated when the house was initially built, the man who built the house owned all the surrounding property, which was all part of his orchard.

Commissioner Horvath asked that when they are looking at this variance, they are looking at both the proposed agricultural building and the carport that appears to be attached to the garage.

Mrs. Howell replied that is correct. It would be directly in front of the garage, on the left side of the house because the front of the house faces east. The carport would not be forward of the actual front of the house. It is only in the front yard because the house faces east and was there before the street was built.

Ms. Hurley stated that for instance, say there was a street to the east of where their existing driveway that runs north and south, and the house faced that street, there would not be a need for the variance because neither of the structures would be forward of the main building line.

Commissioner Horvath asked if the variance requested is asking the board to essentially set aside the main building line or the impact of the main building line.

Ms. Hurley responded that the applicants are asking to build these two structures forward of the main building line.

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

Mrs. Howell stated she wants to address the conditions listed in the variance application.

1. That the variance requested arises from such condition which is unique to the property in question and is not ordinarily found in the same area. Mrs. Howell stated that the home is a non-standard orientation on the property as it is 153 years-old. The side of the home where the current garage exists is the logical place to install the ag building with the least impact and the most utility to the property. As the house sits, the ag building will be in the rear and the side of the property, and not the front yard as defined by the street address and driveway.
2. The granting of the permit for the variance will not adversely affect the rights or adjacent property owners or residents. Mrs. Howell stated the ag building will have no impact on the rights of any neighbors as it is still deep within our property, and with no effect on the neighboring properties. There is a picture included in the packet that shows the exact distance where the ag building will be installed, and how deep it is inside of our property line.
3. 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. Mrs. Howell stated that putting the ag building anywhere else on the property

would incur significant costs for access, and would be a severe degradation to the property aesthetic if it were placed on the south or west of the home in accordance with what is defined as backyard or side yard by orientation. Both aesthetic and access would be hindered. On the west and southwest side there are drainage areas that were put in to help keep the drainage from north to south. Installing a building in that area would drastically affect the drainage that was put into the land. The only driveway is the one off Vilas Street. If we tried to put it behind the house as it sits or to the south of the house as it sits, we would have to route a driveway the entire way around the property and it would have a significant negative aesthetic impact and cost.

4. That the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare. Mrs. Howell stated the variance does not do any of that.
5. That granting of the variance desired will not be opposed to the general spirit and intent of the Development Regulations. Mrs. Howell stated that the buildings provided in the pictures complement the nature of the property and the current zonings, and would not negatively impact the area.

Kristopher Howell, applicant and property owner, stated what they are trying to do is complement the aesthetics of the building and the layout of the land as it has been developed over 153 years ago, and logically complementing it with the placement of the right type of building in the right place. Because of the layout of the street orientation, this is the variance requirement due to the definition of yard location. We appreciate your time to consider this variance.

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.

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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 that obviously the applicants did not create this as it is over 150 years-old, and is quite unique with streets on all three sides.

- 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.

Chairperson Kem stated that it is a large property, and that needs to be taken into consideration.

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 agricultural building and extension of the existing detached garage forward of the main building line at 2115 Vilas Street.

Chairperson Kem stated based on the findings, the variances for Case No. 2024-20 BZA is granted to allow an agricultural building and extension of the existing detached garage forward of the main building line at 2115 Vilas Street, with no conditions or restrictions.

With no further business, Chairperson Kem called for a motion to adjourn. Commissioner Ramirez moved to adjourn, seconded by Commissioner Horvath, and passed by a vote of 4-0.

The meeting adjourned at 6:32 p.m.

Minutes taken by Planning Assistant Michelle Baragary.