

LEAVENWORTH BOARD OF ZONING APPEALS

MONDAY, April 16, 2018 - 7:00 P.M.
COMMISSION ROOM, CITY HALL
LEAVENWORTH, KANSAS

AGENDA

CALL TO ORDER:

1. Roll Call/Establish Quorum
2. Approval of Minutes: January 22, 2018 **Action:** Motion

OLD BUSINESS:

None

NEW BUSINESS:

1. 2018-04 BZA – 908 SPRUCE STREET

Hold a public hearing for Case No. 2018-04 BZA, wherein the applicant, Susan Jenaway, seeks a variance from section 6.08 of the adopted Development Regulations to allow a 5-foot high solid fence in the front yard.

2. 2018-05 BZA – 1850 EDGEWOOD DRIVE

Hold a public hearing for Case No. 2018-05 BZA, wherein the applicant, Bruce Wiley, is requesting a variance from Section 4.03 of the adopted Development Regulations to allow construction of a single family house on a lot with less than the required minimum lot width.

ADJOURN



BOARD OF ZONING APPEALS MINUTES
MONDAY, January 22, 2018, 7:00 P.M.
COMMISSION ROOM, CITY HALL
LEAVENWORTH, KANSAS

The Leavenworth Board of Zoning Appeals (BZA) met in regular session on Monday, January 22, 2018. It was determined a quorum was met with the following board members present: Mike Bogner, Dick Gervasini, Ron Bates, Kathy Kem and Jan Horvath. Staff members City Planner Julie Hurley and Administrative Assistant Michelle Baragary were present.

Chairman Bogner called the meeting to order at 7:00 pm and called for the first item on the agenda; approval of minutes from September 18, 2017. As there were no comments or changes, Mr. Gervasini moved to approve the minutes as presented, seconded by Mr. Horvath. The minutes were approved 5-0.

The chairman called for the next item on the agenda – **Case No. 2018-01 BZA – 1050 Wallis Lane – Variance Request** - and requested the staff report.

City Planner Hurley addressed the board stating the applicant, Kyle Whelpley, is requesting a variance from section 4.03 of the adopted Development Regulations to allow a side yard setback on a corner lot of less than 25'. The subject property is located in the Wellington on the Park subdivision and 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 side yard setback on a corner lot of 25'. The applicant is proposing to construct a building addition on the west side of the house for the purpose of creating an additional garage, which would be accessed by a new driveway proposed to be built off of Grand Avenue. The home faces Wallis Lane and has an existing two car garage to the front of the house, access off of an existing driveway on Wallis Lane.

The applicant has proposed two options for the addition. The first option would observe a 12' side yard setback. The second option would observe a 16' side yard setback. No other changes to the property are proposed.

Although not specifically requested on the application for a variance, approval of the requested variance in regard to the side yard setback would necessitate approval of a variance for maximum lot coverage in conjunction. Section 4.03 of the Development regulations allows a maximum lot coverage in the R1-6 zoning district of 50%. Per County records, the subject lot is 10,938 square feet, for a maximum allowed lot coverage of 5,469 sqft (total impervious area). Total existing lot coverage is 5,072 sqft. The proposed addition would add between 600-720 sqft of building area, plus the area of the proposed driveway.

After notice was sent to neighboring properties within 200' of the subject property, as is required by Kansas State Statute, staff received three letters in support of the proposed variance, and four letters in opposition to the proposed variance.

The chairman called for questions or comments from the board about the staff report.

Mr. Bates asked if the two variance requests should be taken up separately when evaluating the five criteria/conditions.

Ms. Hurley stated that would be her suggestion.

Mr. Bates asked if the swimming pool is calculated in the 50% lot coverage.

Ms. Hurley stated it is.

Mr. Gervasini asked what takes precedence, the City's ordinance or the property owner's HOA covenants. And how does the board consider the HOA covenants.

Ms. Hurley stated the board cannot take HOA covenants into consideration. The City has no jurisdiction over HOA covenants. HOA covenants are a civil matter between property owners and the Home Owners Association. If the board were to approve the variance it would then be in the jurisdiction of the HOA to take the matter up in civil court or any other manner they deem appropriate with their attorney.

Mr. Bogner asked if it would have been more prudent for the applicant to have first gone to the HOA to see if they had any objections before coming to the Board of Zoning Appeals; especially since HOA's are typically stricter plus it would have been cheaper or free to take this matter before the HOA.

Ms. Hurley responded that would be a question for the applicant.

Ms. Kem asked if there have been other similar cases in this particular area.

Ms. Hurley stated not that she is aware of.

Mr. Bogner asked the applicant to approach the board to answer questions regarding the property. Mr. Bogner asked if the proposed addition is a one-story or two-story.

Kyle Whelpley, applicant, stated it is a one-story. It would have the same roof pitch and color of the house. The garage addition would have one double door and would be used for storage.

Mr. Bogner stated the proposed driveway width looks to be 30'.

Mr. Whelpley stated the driveway would be the standard 20' – 22' width driveway.

Mr. Bogner asked if the applicant runs a home business out of the property.

Mr. Whelpley stated he does not. He works for JF Denney. His work van is parked in his driveway only when he is on-call. Mr. Whelpley further stated the garage addition would be used for storage of kid's toys, pull-behind trailer, etc. The applicant stated a property similar in nature to his variance request would be 702 Deerfield Street.

Mr. Bogner asked what kind of hardship there would be if the board considered the smaller addition.

Mr. Whelpley stated there would not be a hardship.

Ms. Kem asked where the trailer is currently stored.

Mr. Whelpley explained the trailer is currently stored behind his house under the deck.

Mr. Bogner asked if the applicant had met with his HOA about the addition.

Mr. Whelpley responded he visited with Rich Keller, HOA Vice President, about the garage addition. He understands he must get approval from the HOA even if the City of Leavenworth approves it.

With no further questions from the board, Chairman Bogner opened the public hearing.

Rich Keller, HOA Vice President, approached the board stating the board always asks property owners to get city approval prior to HOA approval. The HOA does this so they are not approving something that is not allowed by city code. In this case, the HOA covenants for setbacks read the same as city code.

Mr. Bates commented that by having the applicant come before the Board of Zoning Appeals, the HOA is making the members of the Home Owners Association incur a substantial amount of cost, time and effort and taking up the time of the BZA board members for something the HOA might not approve.

Mr. Keller stated most requests are for sheds or painting buildings a particular color. Most requests are not as substantial as the request presented today. Typically, the applicant contacts the city to find out if their request is acceptable by the city. The property owner then submits their request to the HOA for approval.

Mr. Bates stated he was just commenting on the fact the applicant would need to come before the Board of Zoning Appeals before having the HOA consider the issue and that it seems to be an inefficient procedure.

Mr. Bogner stated he understands how the HOA would have property owners contact the City if they were seeking a permit for construction or erection of a fence that already meets city codes; however, this applicant is requesting a variance, which is an exception to the code. In cases like this, the HOA may want to consider conducting an informal review to see if the HOA is in concurrence with the exception with city code.

Allan Boyce, 4107 Grand Ave, stated he submitted a letter in opposition and would like to make a statement to amend a couple paragraphs of the written statement. Mr. Boyce would not like his statement considered about Kyle Whelpley's porch. He has since spoke with Mr. Whelpley and was informed about some information which he was unaware of at the time. This is the first time a major variance has come up in the 13 years Mr. Boyce has lived in the Wellington community. He agrees with Commissioner Bates that the HOA may want to discussion procedures for variances of such a magnitude. Mr. Boyce stated his main concern is safety with possible visibility problems.

Ms. Kem asked that if the board approved the variance, would it then go to the Development Review Committee (DRC) for consideration.

Ms. Hurley stated it would not necessarily need to formally go before the DRC. These are things that are looked at when a building permit is submitted. Part of the reason for the required 25' setback is for visibility issues.

With no one wishing to speak, Chairman Bogner closed the public hearing and asked for discussion among the commissioners. With no further discussion among the commissioners, Chairman Bogner read the following criteria regarding the Board's authority and reviewed each item. The commissioners will have two series of votes. The first series of votes will be on the variance request to allow a side yard setback on a corner lot of less than 25'.

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 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.*

Vote 2-3

Ms. Kem voted in the negative stating it's not unique to the property as there are corner lots everywhere around the City of Leavenworth.

Mr. Gervasini voted in the negative.

Mr. Bogner voted in the negative commenting it was created by the applicant.

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

Vote 0-5

All board members disagreed; the granting of the variance would 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.*

Vote 0-5

All board members disagreed; the strict application of the Regulations would not constitute unnecessary hardship...

d) *That the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare;*

Vote 0-5

All board members disagreed; the variance desired will adversely affect the public health, safety...

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

Vote 0-5

All board members disagreed; granting of the variance will 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.

Mr. Bates moved to close the case and not vote on the variance for the lot coverage since the variance request for the setback was denied. Ms. Kem seconded the motion. Chairman Bogner asked City Planner Julie Hurley if there were any procedural issues with moving to close the case. Ms. Hurley responded there were not. Motion carried 5-0.

The chairman called for the next item on the agenda – **Case No. 2018-02 BZA – 1000 Delaware Street – Variance Request** - and requested the staff report.

City Planner Hurley addressed the board stating the applicant, Sharon Jones, is requesting a variance from Section 4.03 of the adopted Development Regulations to allow a maximum lot coverage of over 50%, and from Section 5.05B to allow a driveway separation of less than 50’.

The subject property is a vacant lot at the northwest corner of 10th and Delaware Streets, with single-family residential structures to the north, west and south, and a City of Leavenworth fire station to the east. The property is zoned R1-6, High Density Single Family Residential District. The applicant intends to develop the property with a structure and associated parking for the Faith Mission Church. Churches are an allowed use within the R1-6 zoning district.

The R1-6 zoning district requires a maximum lot coverage (total impervious area) of 50%. The applicant is proposing a lot coverage of 59.9% in order to accommodate the building, required parking, and associated walkways.

Section 5.05B of the Development Regulations requires that any driveway for a non-residential use be located a minimum of 50’ from any other access driveway. Due to the nature and size of the lot, the only reasonable location for the parking area requires that the driveway be at the northern end of the lot, putting it a distance of 10’ from the existing residential driveway on the property immediately adjacent to the north.

The Development Review Committee reviewed the proposal at their November 30, 2017 meeting. No other significant issues were identified.

Staff has received no contact from property owners within the required 200’ notification area.

The chairman called for questions or comments from the board about the staff report.

Ms. Kem asked what the required minimum number of parking spaces is.

Ms. Hurley stated the applicant is providing the minimum number of parking spaces required by the Development Regulations, which is 1 parking stall per 4 seats or 1 parking stall per 30 sqft if no fixed seating is provided.

Ms. Kem asked if the pond is currently on the property.

Ms. Hurley stated it is not. Public Works staff required detention on site to account for water quality issues, which is why the pond is shown on the site plans.

Ms. Kem stated notes on the plan state the site will be raised. How will this affect neighboring properties.

Mr. Hurley responded that by speaking with the City's engineering staff the detention pond plus the grading would keep any draining issues from affecting the surrounding properties.

Ms. Kem asked if grading would impact the adjacent duplex located to the west of the subject property.

Ms. Hurley stated they are required not to impact adjacent property owners. This would be reviewed when they come in with grading or building plans and would be a stipulation when permits are issued.

Ms. Kem asked if the house to the north of the subject property is currently their house church.

Ms. Hurley stated the applicant could answer that and that the applicant does own the house to the north.

Mr. Gervasini asked if the City plans on doing anything with the first 150' of Delaware St west of 10th Street; the curvature in the road.

Ms. Hurley stated she is not aware of any plans to improve that section of Delaware St.

Mr. Bogner asked if this block is part of a normal plat. All the other houses seem to have uniform lot lines but this block seems very complicated.

Ms. Hurley stated they are all platted lots; part of the Central Subdivision. When dealing with plats that were done 80 to 100 plus years ago lots have sometimes been re-subdivided and combined. But this block was originally part of an actual platted subdivision.

Mr. Bogner asked if the City plans on doing anything with 10th Street.

Ms. Hurley stated she is not aware of any plans to improve this section of 10th Street.

Chairman Bogner asked if there were any more questions for staff or the applicant or representative of the church.

Ms. Kem asked how close the churches driveway will be to the church house.

Patrick Joyce, civil engineer representing the church, stated it's just over 10 feet.

Ms. Kem stated she knows there are a lot of cars at the church house and asked how that would impact the new church. Will the two buildings coexist or will services only be operated out of the new church.

Sharon Jones, applicant, stated services will be operated out of the new location. She further stated she has a very large family that has dinner at her house on Sundays so there will be numerous cars at her residence (church house).

Mr. Joyce stated they are installing as many parking stalls as possible. He further stated the City is allowing them to add a gravel shoulder on the corner of Delaware in front of the church. It will not go beyond the property line.

Mr. Bogner asked which way the drainage will flow.

Mr. Joyce stated some water will continue to drain toward Delaware Street. Some water will drain out through the houses, which feeds to a storm water system.

Mr. Bogner asked how much the site will be altered.

Mr. Joyce stated the site will be raised some to even it out and create the pond.

Mr. Bates asked staff how many variances will be considered.

Ms. Hurley stated the first variance request is 10' separation between the two driveways and the second variance request is over 50% lot coverage.

Mr. Bates asked if the setbacks are good.

Ms. Hurley stated that on a corner lot it has the 25' setback. The regulations do allow for these older platted lots to take into account the existing average setback on the same block; therefore, they are able to take into account the setback created by the existing homes surrounding the subject property. This then becomes their setback.

Mr. Bates asked if the City takes into consideration easement near the street and how that impacts the 50% lot coverage.

Ms. Hurley responded that staff cannot count the right-of-way; can only count what is inside the lot line for the 50% lot coverage calculations.

Mr. Gervasini asked the frequency of services.

Ms. Jones stated services are held Sundays and Wednesdays.

Mr. Gervasini asked if the Wednesday services are in the evening.

Ms. Jones responded in the affirmative.

Ms. Kem asked if the church sidewalk is adjacent to the building; walking from the parking lot to the building.

Mr. Joyce stated the sidewalk is adjacent to the building on the north side by the parking lot. There is some green space between the building and the sidewalk on the 10th Street side, the east side of the building.

Ms. Kem mentioned her concern about kid's safety around 10th Street.

With no further questions or comments from the commissioners, Chairman Bogner opened the public hearing.

With no one wishing to speak, the chairman closed the public hearing and called for discussion among board members.

Mr. Bates stated his only concern on this project is that they have identified that this area is cobbled up and has all sorts of issues and he wonders if we should be improving something that is going to add additional issues to the area.

Mr. Bogner stated is it going to make it worse or just change.

Ms. Kem asked if there have been variances for lot coverage in the area.

Ms. Hurley responded not that we have recorded going through the Board of Zoning Appeals (BZA).

Mr. Gervasini stated his primary concern is safety. 10th Street is heavily travelled. If permitted, parking will occur on 10th Street. If the congregation grows, this can create a problem. He is also concerned about the fire station located across the street.

Ms. Hurley stated the fire department is part of the Development Review Committee and they had no concerns. She further stated parking is allowed on this section of 10th Street.

Mr. Bogner asked the engineer why he decided against installing the church parking lot and driveway on Delaware Street.

Mr. Joyce stated his decision was based on the proximity to the busiest access point. The space requirement from a residential driveway is 12'. By putting the parking lot and driveway on Delaware Street, it would now violate the 50' rule for a driveway at the intersection of 10th Street and Delaware.

Ms. Hurley stated there is a requirement that non-residential access drives be 75' from an intersection which this meets. If it were to be on the Delaware side it could not be 75' from that intersection due to the narrowness of the lot. No matter which way the church and parking lot was designed, they would need to request one variance or another.

Ms. Kem asked if there was a driveway entrance off Delaware Street or is that just from casual use.

Ms. Hurley believes that is just from casual use.

With no further discussion among the commissioners, Chairman Bogner read the following criteria regarding the Board's authority and reviewed each item. The commissioners will have two series of votes. The first series of votes will be on the variance request from Section 4.03 of the adopted Development Regulations to allow a maximum lot coverage of over 50%.

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 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.*

Vote 4-1

Mr. Horvath 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 5-0

All board members agreed; the granting of the variance would 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.*

Vote 5-0

All board members agreed; the strict application of the Regulations would constitute unnecessary hardship upon the property owner...

- d) *That the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare;*

Vote 3-2

Mr. Gervasini and Mr. Horvath voted in the negative.

- e) *That granting of the variance desired will not be opposed to the general spirit and intent of the Development Regulations.*

Vote 5-0

All board members agreed; granting of the variance will not be opposed to the general spirit and intent of the Development Regulations.

Chairman Bogner stated the next series of votes will be on the variance request from Section 5.05B of the adopted Development Regulations to allow a driveway separation of less than 50'.

- 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 5-0

All board members agreed; 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.*

Vote 5-0

All board members agreed; the granting of the variance would 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.*

Vote 5-0

All board members agreed; the strict application of the Regulations would constitute unnecessary hardship upon the property owner...

- 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 agreed; the variance desired would not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare.

Ms. Kem agreed with some hesitation because of the safety issue with it being on 10th Street.

- e) *That granting of the variance desired will not be opposed to the general spirit and intent of the Development Regulations.*

Vote 5-0

All board members agreed; granting of the variance would 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.

Ms. Kem asked if there is room for a wrought iron fence or some other low fencing to be installed between the building and the public sidewalk to prevent children from running out into 10th Street.

Ms. Hurley stated the regulations allow for a fence to be placed on the property line.

Mr. Bogner asked if it could be landscaping instead of a fence.

Ms. Hurley stated it can be landscaping, a hedge row or something to the affect.

Mr. Bogner asked if the board can leave it open enough for the applicant to decide how to handle it rather than the Board dictate on what should go there.

Ms. Hurley stated the board can impose a condition that some sort of physical barrier must be placed along the walkway from the parking lot to the front of the building.

Mr. Bates stated he has attended many churches that have been located on busy streets and there were not handrails or fences to keep kids out of the street. His first thoughts are that a handrail may be inviting for kids to hang and spin on.

Ms. Kem stated the uniqueness of the proposed church is that it would be so close to 10th Street. Most churches are set farther back from the street.

Mr. Bates is not opposed to making anything safer. There just may be unintended consequences.

Mr. Gervasini suggested the applicant reimburse the City for posting signs facing north and south about church crossing or other such sign which would be appropriate.

Ms. Hurley stated sign requests must go through the Traffic Safety Committee, which is composed of the City Planner, Police Chief and Public Works Director. Ms. Hurley is not sure of what the criteria are for posting such signs but she can bring it up to the committee that the Board had made that suggestion and see what the consensus is.

Mr. Bogner said the condition would be for the applicant to work with the City on opportunities to improve the safety around the church. This would leave it open for review and considerations.

Ms. Kem stated that would address the traffic down 10th Street but would not necessarily address the kids that may try to run and play around 10th Street.

Mr. Joyce stated the applicant would not have any objections to the recommendation.

Mr. Bates moved to approve both variance requests as presented, seconded by Mr. Gervasini. Variance request 2018-01 BZA and 2018-02 BZA passed by a unanimous vote 5-0.

OTHER BUSINESS

Mr. Gervasini stated in the past they have had decisions from various courts around the country with regard to zoning ordinances in the form of newsletters. Mr. Gervasini asked what happened to those newsletters.

Ms. Hurley asked what body put the newsletters together.

Mr. Gervasini stated he was not sure but that they were judicial court cases.

Ms. Hurley stated The American Planning Association does put out legal reviews. She will look into this and get back with the Board.

Finding no other business, chairman Bogner called for a motion to adjourn. Mr. Gervasini moved to adjourn, seconded by Ms. Kem and passed by a unanimous vote 5-0.

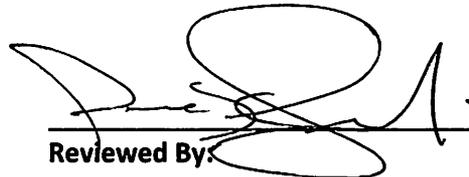
The meeting adjourned at 8:11 pm.

JH:mb

**Board of Zoning Appeals Agenda Item
Variance Request
2018-04-BZA
908 Spruce Street**

APRIL 16, 2018


Prepared By:
Julie Hurley
City Planner


Reviewed By:
Paul Kramer
City Manager

SUMMARY:

The applicant, Susan Jennaway, is requesting a variance from section 6.08 of the adopted Development Regulations to allow a 5-foot high solid fence in the front yard.

DISCUSSION:

The subject property is zoned R1-6, High Density Single Family Residential District, and is located one lot east of the intersection of Spruce and 10th Streets. The applicant has constructed a 5-foot high (60") solid wooden privacy fence on the top of an existing below grade garage in the front yard adjacent to Spruce Street. A fence permit was not obtained prior to construction of the fence.

Section 6.08 of the Development regulations states the following in regards to fences in the front yard of a residential property:

- (a) *Open fences and hedges may be installed in all front yards on the property lines but may not exceed 48 inches above the natural contour of the ground.*
- (b) *No solid fences shall be constructed or reconstructed closer to the street line than the front wall of the residential structure. The front wall of the residential structure shall be determined by excluding porches, roof overhangs, dormers, or other extensions.*

The Development Regulations define "open fences" as those whose surface area is greater than 50% open (ex.: chain link, picket, etc).

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:

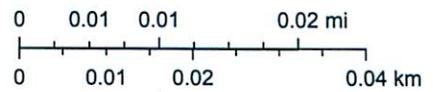
Approve or deny the request for a variance from section 6.08 of the Development Regulations to allow a 5-foot high solid fence in the front yard of the property located at 908 Spruce Street.

908 Spruce



4/12/2018, 9:31:05 AM

1:874



City of LV GIS, 2017, LV GIS Dept 09/23/2016, Esri, HERE, Garmin, © OpenStreetMap contributors, and the GIS user community, City of LV GIS, Dave Griffith, 2013

- b. Screening on three sides by a minimum six-foot masonry wall enclosed by an evergreen living screen. Screening shrubs shall be a minimum of four feet in height at installation and shall provide a minimum six-foot high screen when fully grown. An opening shall be situated so that the container is not visible from adjacent properties or public streets and the opening shall be a metal clad opaque gate. Chain-link gates are not permitted. Gates must have tiebacks to secure them in the open position.
6. *Design of Screening.* All screening shall be complementary to the building served in landscaping approach and with similar colors and material palette.

6.08 Fences

A. *Fence Types.*

1. Open fences means those fences constructed of wood, masonry, metal, woven wire, or other material whose surface area is greater than 50 percent open.
2. Solid fences means those fences constructed of wood, masonry, metal, planting, hedge or other material whose surface area is or may become less than 50 percent open.
3. The smooth or most finished side shall be facing outward on all fences.

B. *Permit Required.*

1. It shall be unlawful for any person, property owner or fence construction company to erect or install fencing without first paying the permit fee as set out in Appendix F, Schedule of Fees and Charges, Code of Ordinances, City of Leavenworth, Kansas and obtaining a fence or building permit pursuant to the provisions of these Development Regulations.
2. Masonry fences, or fences which contain a portion of masonry, four feet or more in height, or more than 4 feet above the nearby grade, shall be designed by an Engineer licensed in the State of Kansas and shall require construction documents and a building permit.
3. A survey by a surveyor licensed in the State of Kansas may be required by the Building Official before issuing a permit.

C. *Residential Areas.*

1. *Prohibited Types.*
 - (a) Barbed wire fence prohibited. No person shall construct, keep or maintain any barbed wire fence, or fence any part of which is composed of barbed wire, within a residential area of the city except when permitted as a farm use or as a condition to a special use permit for those uses listed as a special use connected with farming or agricultural activities in the R1-25 single-family residential district.
 - (b) Electric fence prohibited. No person shall construct, keep or maintain an electrically charged fence within a residential area of the city except when permitted as a farm use or as a condition to a special use permit for those uses listed as a special use connected with farming or agricultural activities in the R1-25 single-family residential district of the Development Regulations of the City of

DEVELOPMENT REGULATIONS
ARTICLE 6. LANDSCAPE & SITE DESIGN

6.08 Fences

Leavenworth, Kansas. These installations will then only be permitted when the electric fence is installed behind an open fence separated by three feet.

2. *Residential Front Yard.*
 - (a) Open fences and hedges may be installed in all front yards on the property lines but may not exceed 48 inches above the natural contour of the ground.
 - (b) No solid fences shall be constructed or reconstructed closer to the street line than the front wall of the residential structure. The front wall of the residential structure shall be determined by excluding porches, roof overhangs, dormers, or other extensions.
 - (c) Where a residential property abuts a commercial or industrial property or use and where screening has not been installed or is not required, the residential property owner may install a solid or open screening fence on the property line not to exceed 72 inches in height above the natural contour of the ground along the property line that abuts the commercial or industrial property or use.

3. *Residential Side or Rear Yards.*
 - (a) 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.
 - (b) Solid fences may be installed on the rear property line and on the side property line to a point aligning with the front wall of the residential structure as defined in subsection 2. of this section not exceeding 72 inches in height above the natural contour of the ground; provided that no solid fence greater than 48 inches above the natural contour of the ground shall be built within six feet of a residential structure on adjoining property; provided further, that if any portion of the adjoining structure is closer than six feet, then such solid fence shall not exceed four feet in height for the entire length of the side or rear yard property line.
 - (1) On corner lots, both yards adjacent to streets are considered front yards. In this instance, the fence on the addressed side must be erected in accordance with subsection 2.; on the other side a solid fence not exceeding 72 inches in height above the natural contour of the ground may be built with a setback of 15 feet from the property line, or 50 percent of the existing setback if the distance from the house to the property line is less than 15 feet.
 - (2) For the purpose of determining yard requirements on corner lots, the street the property is addressed from shall be considered the frontage and yards shall be provided, as set forth in this section.
 - (c) Where a residential property abuts a commercial or industrial property or use, and where screening has not been installed or is not required, the residential property owner may install a solid-type screening fence on the property line no less than six feet nor more than eight feet above the contour of the natural ground along the property line that abuts the commercial or industrial property or use.
 - (d) A solid fence may be installed around a private swimming pool or patio not to exceed 96 inches above the natural contour of the ground and not more than ten feet from the edge of the pool or patio, provided all other requirements of this section are met.



Case No. 2018-04 BZA

BOARD OF ZONING APPEALS
CITY OF LEAVENWORTH, KANSAS

Application No. 3594
Fee (non-refundable) \$350.00
Filing Date 3-1-18
Fee Paid 3-1-2018

Property Zoning R1-L2

PETITION

Petitioner: SUSAN J JENNAWAY Tall girl
(name typed or printed)

Petitioner Address: 1024 S. BROADWAY ST LEAVENWORTH KS 66048

Email: TALLGIRLSUSAN1958@gmail.com Telephone: 913-683-9568

Location of Property Involved: 908 SPRUCE ST LEAVENWORTH KS 66048

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

Petitioner's Interest in Property: OWNER

Purpose of Petition: Request variance to article 6.08 ~~18~~ Fences C.2.(a)(b)
See attached Request

- 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: 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: Susan J Jennaway
(print name)

Signature: Susan Jennaway Date: 1 Mar 18

State of KANSAS)

County of Leavenworth)

Signed or attested before me on 3-1-18 by Michelle Baragary

(Signature of Notary Public)

My commission expires: 8-16-20

(Seal)



FOR OFFICE USE ONLY:	
Date of Publication	<u>3-22-18</u> Date of Hearing: <u>3-22-18 4-16-18</u>
<input checked="" type="checkbox"/>	Supporting documentation: Site plan, plot plan, a drawing and any other pertinent data
<input checked="" type="checkbox"/>	Current list of names and addresses of the owners and the tax identification number of all properties within 200'
<input checked="" type="checkbox"/>	A filing fee of Three Hundred- fifty dollars (\$350)

Board of Zoning Appeals Request for 908 Spruce St, Leavenworth KS 66048

In December 2017 I built a bench with a solid back on the top of a single car detached garage structure located in the front of my rental property at 908 Spruce Street. I did not know that I needed a permit as it is not a fence.

On 23 Dec 17 I received a certified letter from the city notifying me that I had erected a fence without a permit. Violation #12449

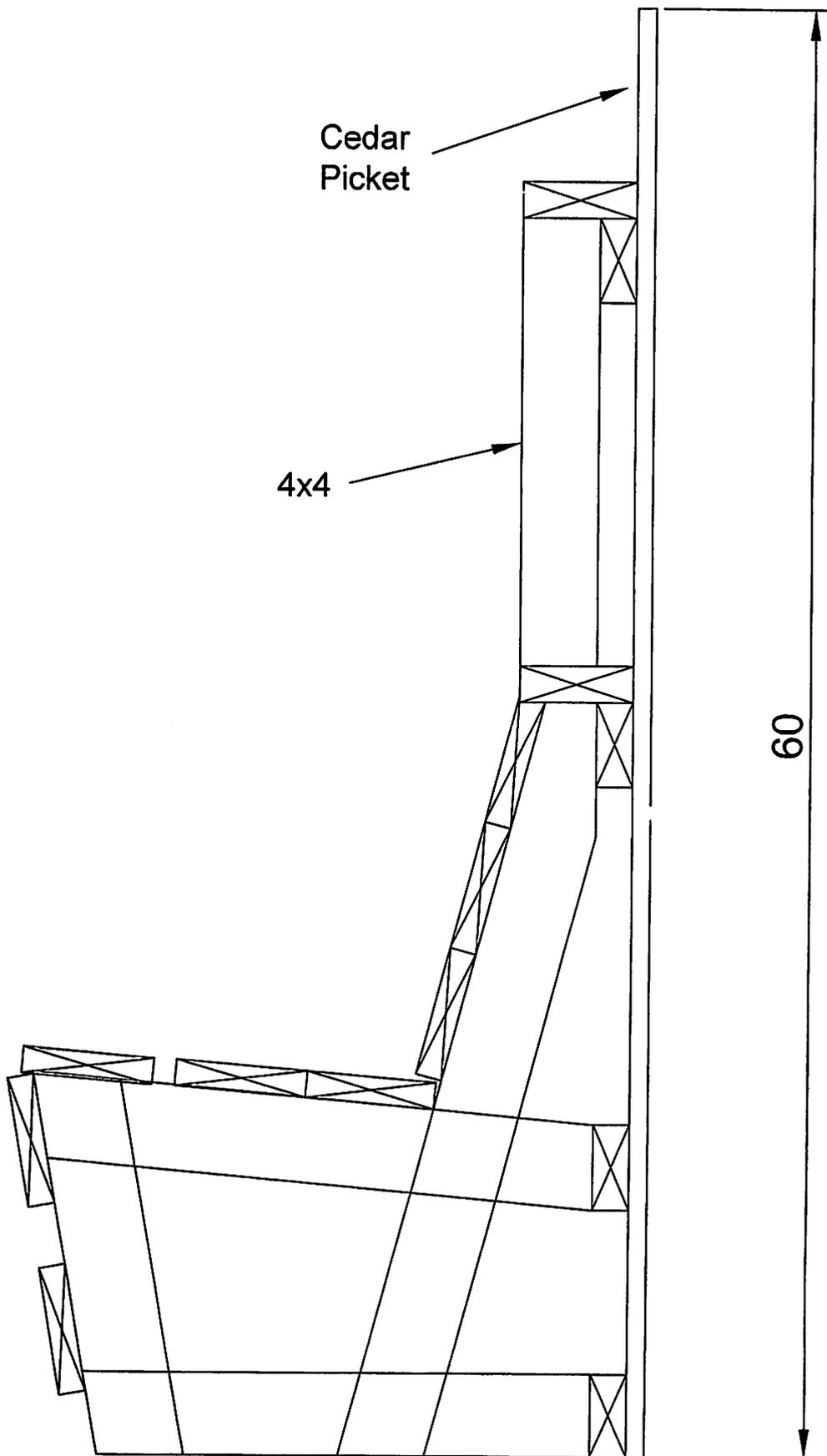
The bench with the back was constructed to provide safety at the request of my current renters who have toddlers. I was concerned with the potential liability if someone walked off the edge of the structure. The bench and the surrounding back were constructed with dimensions and material (cedar) that should minimize the risk to both concerns.

Respectfully request a variance be granted to:

Article 6.08 A Fences requirement that 50% of the surface area be open

Article 6.08 C.2 (a) and (b) allowing height to be greater than 48 inches above the ground and allow for solid structure on the front detached garage structure.

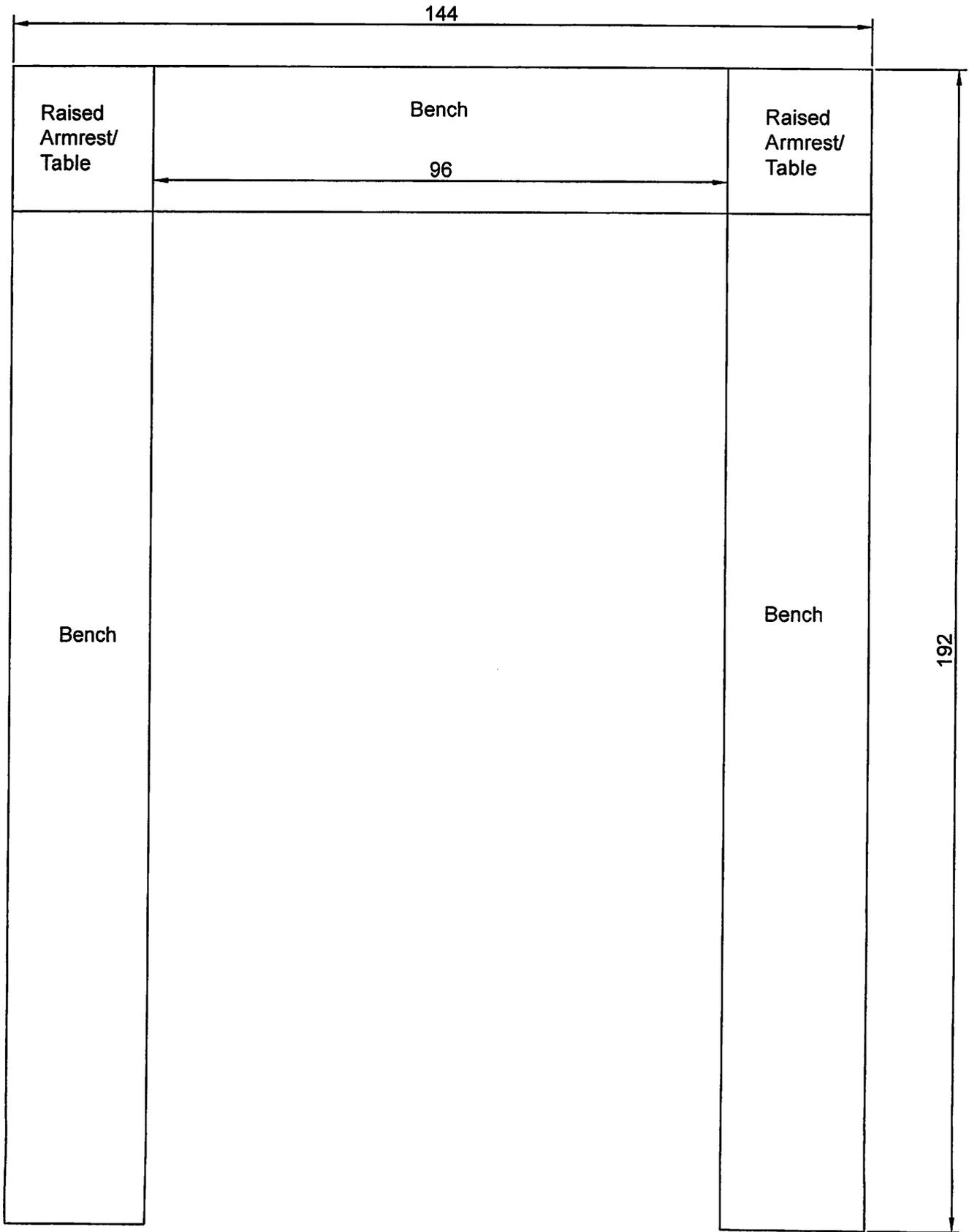
The house property was constructed in 1900 and the garage structure estimate construction 1935.



Cedar
Picket

4x4

60













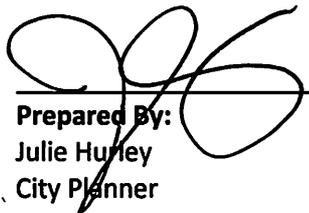


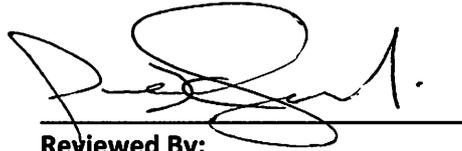
Please keep
me safe!
I don't want to
fall over the
edge



**Board of Zoning Appeals Agenda Item
Variance Request
2018-05-BZA
1850 Edgewood Drive**

APRIL 16, 2018


Prepared By:
Julie Hurley
City Planner


Reviewed By:
Paul Kramer
City Manager

SUMMARY:

The applicant, Bruce Wiley, is requesting a variance from section 4.03 of the adopted Development Regulations to allow construction of a single family house on a lot with less than the required minimum lot width.

DISCUSSION:

The subject property is a 14.41 acre lot zoned R1-9, Medium Density Single Family Residential District, and is located in the Shannon Woods subdivision. The property was included in the original Preliminary Plat for the Shannon Woods subdivision and was intended to include approximately 38 additional residential lots. The Preliminary Plat was approved in 2002. A Final Plat was never recorded for the subject property, and the Preliminary Plat became invalid one year after approval. The owner has indicated that there are no plans to develop more lots as were shown on the Preliminary Plat.

Section 4.03 of the Development Regulations requires a minimum lot width of 75 feet for properties zoned R1-9. "Lot width" is defined as:

The distance between the side lot lines, measured along the front setback line as established by this ordinance. Where the front setback line is curvilinear, lot width shall be measured along the tangent to this curve.

"Front setback" is defined as:

A line fixed parallel to the lot line beyond which a building cannot extend under the terms of the Development Regulations. It is equivalent to the yard requirement.

Generally, staff has interpreted the required "lot width" to mean "frontage", or, the width of the side of a lot nearest the street. Staff has not interpreted "frontage" to include the width of a dead-end street. Based on these interpretations, and the irregular configuration of the subject lot, the property has approximately 34 feet of lot width or "frontage" as measured along Edgewood Drive.

The Development Review Committee reviewed this application on March 22, 2018. Several other issues were identified, including access to sewer and the property being identified as a Geological Hazard Area. These items would be addressed at the time of building permit.

Notice was sent to property owners within 200' of the subject property as required by State Statute. Staff has received inquiries from 4 property owners regarding the use of the request, no specific objection or support was expressed. Staff has received a call from one property owner indicating opposition.

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:

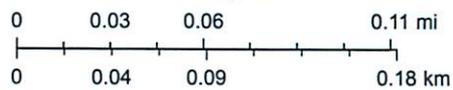
Approve or deny the request for a variance from section 4.03 of the Development Regulations to allow construction of a single family house on a lot with less than the required minimum lot width at 1850 Edgewood Drive.

1850 Edgewood Drive



4/12/2018, 9:27:28 AM

1:3,497



City of LV GIS, 2017, LV GIS Dept 09/23/2016, Esri, HERE, Garmin, © OpenStreetMap contributors, and the GIS user community, City of LV GIS, Dave Griffith, 2013



Case No. 2018-05 BZA

BOARD OF ZONING APPEALS
CITY OF LEAVENWORTH, KANSAS

Application No. 3597
Fee (non-refundable) \$350.00
Filing Date 3-1-2018
Fee Paid 3-1-2018

Property Zoning R1-9

PETITION

Petitioner: Bruce Wiley
(name typed or printed)
Petitioner Address: 800 South 2nd Street Leavenworth, Kansas
Email: beingpragmatic@yahoo.com Telephone: 913-772-4299
Location of Property Involved: 1850 Edgewood Dr. LEAV. KS
Legal Description: (Attach full legal description provided by the REGISTER OF DEEDS OFFICE or a TITLE COMPANY)

Petitioner's Interest in Property: OWNER

Purpose of Petition: meet criteria to be able to build one single family home on property

- Appeal** of Administration Decision _____ Date of Decision _____
Section 11.03.A
- Variance:** Section 4.03 minimum frontage of 75'
Section 11.03.B
- Exception:** _____
Section 11.03.C

Site Plan or drawing attached: 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: Bruce Wiley

Signature: Bruce Wiley (print name) Date: 3/1/2018

State of KANSAS)

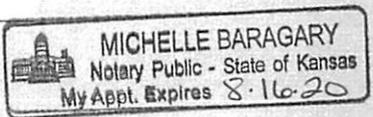
County of Leavenworth)

Signed or attested before me on 3-1-2018 by Michelle Baragary

(Signature of Notary Public)

My commission expires: 8-16-20

(Seal)



FOR OFFICE USE ONLY:	
Date of Publication	<u>3-22-18</u> Date of Hearing: <u>4-16-18</u>
<input checked="" type="checkbox"/>	Supporting documentation: Site plan, plot plan, a drawing and any other pertinent data
<input checked="" type="checkbox"/>	Current list of names and addresses of the owners and the tax identification number of all properties within 200'
<input checked="" type="checkbox"/>	A filing fee of Three Hundred- fifty dollars (\$350)

Dear members of the Leavenworth City Planning Commission,

I would like to request a variance on the requirement for a 75 ft. street frontage on my property located on Edgewood, adjacent to Shannon Woods subdivision in Leavenworth Kansas. Originally this property was a part of my father's estate where my brother and sister and myself inherited our family farm. In 2005 my brother took part of the 60 acre partial and developed it into Shannon Woods leaving a portion of the property undeveloped. The plan was that once the lots were sold out in Shannon Woods my brother would acquire the remaining acreage from my sister and myself in order to continue development of the remaining property. Circumstances didn't allow for this plan to reach fruition. Since I have no experience in subdivision development I would like to sell the property. I have found a possible buyer that would like to develop the full 14.4 acres into one large estate lot where they could build their dream home. In order for this to occur we have discovered an unforeseen problem that could jeopardize this plan. As you can see from the drawing my property starts where the street ends. Thus we are short on street frontage to allow for building one single family residence. The only option is to ask for a variance to be granted in order to allow my buyer to enhance this property to its full potential. I am sure that the adjoining property owners would welcome this project. The buyers would certainly fit in well into constructing a home consistent with the standards exhibited in the current neighborhood.

I would like to close my letter by thanking this commission for your consideration. I will be attending the Planning Commission Meeting on April 16th in order to answer any questions that you may have.

Sincerely,

A handwritten signature in cursive script that reads "Bruce Wiley". The signature is written in dark ink and is positioned above the typed name.

Bruce Wiley



Development Review Committee Meeting

Thursday, March 22, 2018

Committee members present: Assistant City Manager Tylour Tedder, City Planner Julie Hurley, Public Works Director Mike McDonald, Deputy Director Public Works Mike Hooper, Chief Building Inspector Hal Burdette, Chief of Police Pat Kitchens, Health/Safety Officer Mark Demaranville and Administrative Assistant Michelle Baragary

AGENDA ITEM(S):

1. 1850 Edgewood Dr – issues related to development of one home on property

- Attendees: Owner Bruce Wiley (913.772.4299) and Don Plowman (potential buyer)
- Scheduled for BZA April 16, 2018 to request a variance for a lot width less than the 75' required width in the R1-9 zoning district (Medium Density Single Family Residential)
- Sewer – see attached Sewer Agreement
 - If public sanitary sewer exists must connect to it
 - Minimum 10,000 sqft at \$0.30 per sqft
 - Must have survey description of the property to be excluded from future benefit district assessments
 - Must provide a site plan to scale showing the home and all out buildings
 - This is managed by the City Manager
- The hillside is a geological hazard area. Must have a geologist test the area where the house will be located. The document with the geological determination will be filed.

OTHER:

1. 1441 Pawnee – donation of lot to City of Leavenworth

- City has a project in this area and would like this property. Can split the property after the project is complete and sell the west side for single family dwelling.
- City is also interested in the property located at
- City Planner to check for any mowing assessments

2. Gravel parking in rear yard

- The intent is to pull directly off the alley to park your vehicle on a boarded gravel parking pad

Meeting adjourned at 2:08 p.m.