

LEAVENWORTH BOARD OF ZONING APPEALS

MONDAY, September 18, 2017 - 7:00 P.M.
COMMISSION ROOM, CITY HALL
LEAVENWORTH, KANSAS

AGENDA

CALL TO ORDER:

- A. Roll Call/Establish Quorum
- B. Approval of Minutes: July 17, 2017 **Action:** Motion

OLD BUSINESS:

None

NEW BUSINESS:

- A. 2017-18 BZA – 621 S Chestnut & 711 S 7th Street

Hold a public hearing for Case No. 2017-18 BZA, wherein the applicant seeks a variance from section 4.03 of the adopted Development Regulations to allow the creation of two lots which are less than the minimum required lot size and do not met the required setbacks of the zoning district.

ADJOURN



BOARD OF ZONING APPEALS MINUTES
MONDAY, July 17, 2017, 7:00 P.M.
COMMISSION ROOM, CITY HALL
LEAVENWORTH, KANSAS

The Leavenworth Board of Zoning Appeals (BZA) met in regular session on Monday, July 17, 2017. It was determined a quorum was met with the following board members present: Dick Gervasini, Kathy Kem, and Ron Bates. Mike Bogner and Jan Horvath were absent. Staff members City Planner Julie Hurley and Administrative Assistant Michelle Baragary were present.

Vice Chairman Gervasini called the meeting to order at 7:00 pm and called for the first item on the agenda; approval of minutes from June 19, 2017. As there were no comments or changes, Ms. Kem moved to approve the minutes as presented, seconded by Mr. Bates. The minutes were unanimously approved 3-0.

The vice chairman called for the next item on the agenda – **Case No. 2017-14 BZA – 4700 Lakeview Drive – Variance Request** - and requested the staff report.

City Planner Hurley addressed the board stating the applicant, Stephen Flanagan, is requesting a variance from section 4.04 of the adopted Development Regulations to allow an agricultural accessory building larger than 1,500 sqft on a parcel over two acres in size.

The subject property is a single family home located at 4700 Lakeview Drive. The property is 13.66 acres in size and is currently zoned R1-9, Medium Density Single Family Residential District. The applicant is proposing to construct a 2,208 square foot pole barn (46' x 48') on the property to be used for a "hobby shop" and to store small yard and farm implements needed to care for the property.

Section 4.04 of the Development Regulations allows for agricultural accessory buildings not exceeding 1,500 sqft on parcels two acres or larger. This size of the proposed structure exceeds the allowed 1,500 square feet, thereby requiring a variance to be granted by the Board of Zoning Appeals. The proposed structure would meet all other applicable requirements.

The proposed structure would be located on a large parcel, much larger than most residential parcels found in the R1-9 zoning district. The property is surrounded by other large lots, many of which have existing accessory structures of a similar size and nature. The proposed structure will be situated in such a way as to be unobtrusive to adjoining property owners and will not be visible from the road. The structure is designed in a manner to reflect a residential appearance, and will match the existing home on the lot in color. Given these factors, staff concludes that the proposed structure is appropriate for the subject site.

The City Planner stated for the record the notice of hearing was republished due to a typo in the legal description.

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

Ms. Kem asked if there are any circumstances in the ordinance that would allow this kind of structure to be greater than 1,500 sqft.

Ms. Hurley stated there is not. Prior to the last revision of the Development Regulations, there were no allowances for these larger lots to have an accessory structure that was larger than the standard 1,200 sqft that is allowed on the

smaller, more standard size lots. The provision allowing for a 1,500 sqft accessory structure was added to the regulations to accommodate the larger, agricultural type lots. The regulations may need to be tiered to allow for larger accessory buildings on these extremely large lots.

Ms. Kem asked if there will be agricultural use of the lot.

The property owner, Linda Flanagan, stated they were told they could have up to six farm animals but more than likely that will not happen.

Ms. Kem asked if any of the adjacent lots with similar accessory structures went through the variance process or if they were pre-existing.

Ms. Hurley stated the pre-existing accessory structures would have been constructed prior to the current regulations.

Mr. Bates stated the proposed site of the accessory building is close to an existing structure located on the adjacent property. Mr. Bates asked who owned that property.

Ms. Hurley stated that Judith Goodin is listed as the owner. She further stated there are building regulations on how close buildings can be. Should the variance request pass and get approved, when the applicants apply for their building permit the city will make sure the proposed building is within the correct minimum distance of other structures.

Ms. Kem asked if the city has received any comments from adjacent property owners.

Ms. Hurley stated we have not.

Ms. Flanagan stated the structure located on the street locked property which is located north of the proposed site location is an old kennel that is no longer in use.

With no further questions or comments from the board, the vice chairman opened the public hearing.

Mr. Bates asked if the 46' x 48' sqft includes the lean-to.

Ms. Flanagan stated it does.

Ms. Hurley stated the definition of building in the regulations requires a lean-to to be included as part of the overall size of the building.

With no one wishing to speak, the vice chairman closed the public hearing and 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)

B. **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:

a) *The Board shall make a determination on each condition, and the finding shall be entered in the record.*

b) *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.*

All board members agreed; the need for a variance was not created by an action(s) of the property owner/applicant.

Vote 3-0

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

All board members agreed; the granting of the variance would not adversely affect...

Vote 3-0

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.*

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

Vote 3-0

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

All board members agreed; the variance desired will not adversely affect the public health, safety...

Vote 3-0

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

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

Vote 3-0

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 made a comment for the record on why she voted to approve this variance request but voted against the variance request for a garage expansion last month. She stated she voted for the current variance request because of the exceptionally large lot size, which warrants special consideration under a variance.

Mr. Gervasini stated he was concerned about fire and access to the structure.

Ms. Hurley stated because it is not an occupied structure there are not as many regulations required. However, anything that comes through the city for a building permit is reviewed by building safety staff for those considerations.

Vice Chairman Gervasini called for a motion to approve the variance. Mr. Bates moved to approve the variance, seconded by Ms. Kem. The Variance Request 2017-10 BZA was approved by a unanimous vote (3-0).

Vice Chairman Gervasini advised that based on the Board's findings and the vote tally, the variance request (2017-14 BZA) passed.

Finding no other business, vice chairman Gervasini called for a motion to adjourn. Mr. Bates moved to adjourn, seconded by Ms. Kem and passed by a unanimous vote 3-0.

The meeting adjourned at 7:18 pm.

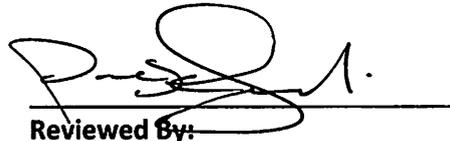
JH:mb

**Board of Zoning Appeals Agenda Item
Variance Request
2017-18-BZA
621 S. Chestnut & 711 S. 7th Street**

SEPTEMBER 18, 2017



Prepared By:
Julie Hurley
City Planner



Reviewed By:
Paul Kramer
City Manager

SUMMARY:

The applicant is requesting a variance from section 4.03 of the adopted Development Regulations to allow the creation of two lots which are less than the minimum required lot size and do not meet the required setbacks of the zoning district.

DISCUSSION:

The applicant, Tony Patton, is requesting a variance from section 4.03 of the adopted Development Regulations to allow the creation of two lots which are less than the minimum required lot size of the zoning district and by which the existing structures will not meet required setbacks. The subject property is located at the southeast corner of Chestnut and S. 7th Streets and is zoned R1-6, High Density Single Family Residential District, with two separate existing homes on the lot. The existing homes are well established and were constructed prior to current regulations which allow only one primary structure on a residential lot.

The R1-6 zoning district requires a minimum lot size of 6,000 sqft, with front, corner side, and rear setbacks of 25' and interior side setbacks of 6'. The existing lot is 9,643 sqft in size. The applicant has commissioned a survey of the property, and is proposing to split the lot between the two existing homes, resulting in two separate lots. The resulting lots would be approximately 5,338 sqft (621 S. Chestnut) and 4,305 sqft (711 S. 7th Street) in size. The resulting rear setback for both 621 Chestnut and 711 S. 7th Street would be less than the required 25'. The No other changes to the property are proposed.

BOARD OF ZONING APPEALS AUTHORITY:

The Board's authority in this matter is contained in Article XV (Board of Zoning Appeals), Section 15.05.B (Powers and Jurisdictions – Variances)

Variations: 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:
 - a) *The Board shall make a determination on each condition, and the finding shall be entered in the record.*
 - b) *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.*
 - c) *That the granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents.*
 - 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.*
 - e) *That the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare;*
 - f) *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 the creation of two lots less than 6,000 sqft in size at 621 S. Chestnut and 711 S. 7th Street.

2017-18-BZA



September 13, 2017

1:564
0 0.00475 0.0095 0.019 mi
0 0.0075 0.015 0.03 km

City of LV GIS, 2017
LV GIS Dept 109/23/2016

DEVELOPMENT REGULATIONS
ARTICLE 4. ZONING DISTRICTS & STANDARDS

4.04 Property Development Standards

4.03. Property Development Standards

A. **Dimension Table.** Lot and building dimension standards for zoning districts shall be according to Table 4-01.

| Table 4-01: Zoning District Dimension Standards | | | | | | | | |
|---|------------------|---|---------------|------------------|--|-------------|--------|------------------|
| | Lot Standards | | | Minimum Setbacks | | | | Building Height |
| | Min. Size | Min. Width | Max. Coverage | Front | Interior Side | Corner Side | Rear | |
| R1-25 | 25,000 s.f.[1] | 160' | 50% | 25' | 10' | 25' | 25' | 35' |
| R1-9 | 9,000 s.f. | 75' | 50% | 25' | 6' | 25' | 25' | 35' |
| R1-7.5 | 7,500 s.f. | 75' | 50% | 25' | 6' | 15' | 10' | 35' |
| R1-6 | 6,000 s.f. | 48' | 50% | 25' | 6' | 25' | 25' | 35' |
| R-MF | 6,000 s.f. [2] | 48' (1 to 2 units) 72' (3 units) 96' (4+ units) | 50% | 25' | 6' (1-story) 10' (2-story) 15' (3-story) | 25' | 25' | 40' |
| R4-16 | 6,000 s.f. [3] | 48' (1 to 2 units) 96' (3 -4+ units) | 50% | 25' | 6' (1-story) 10' (2-story) 15' (3-story) | 25' | 25' | 40' |
| RMX | See table 4-2 | | | | | | | |
| MP | 10 acres | 300' | 50% | 25' | 6' | 25' | 25' | 35' |
| NBD | 6,000 s.f. | 48' | 50% | 25' | 6' (1-story) 10' (2-story) 15' (3-story) | 25' | 25' | 45' |
| OBD | 6,000 s.f. | 48' | 50% | 25' | 6' (1-story) 10' (2-story) 15' (3-story) | 25' | 25' | 45' |
| CBD | 2,000 s.f. | 48' | 100% | 0' [4] | 0' [4] | 0' [4] | 0' [4] | none |
| GBD | 6,000 s.f. | 48' | 50% | 25' | 0' [5] | 25' | 25' | 45' |
| ROD | See Section 4.05 | | | | | | | |
| I-1 | 15,000 s.f. | 160' | 50% | 30' | 10' [6] | 20' [6] | 25' | 50' or 4 stories |
| I-2 | 15,000 s.f. | 160' | 50% | 30' | 10' [7] | 20' [7] | 25' | none |

- [1] only with public water and sewer. See KDHE 4-2 and Leavenworth County Sanitary Code: minimum lot size is 2 acre without public water or sewer.
- [2] lots in the R-MF district shall have 3,000 square feet per dwelling unit.
- [3] lots in the R-4-16 district shall have 4,000 square feet per dwelling unit.
- [4] There are no yard requirements in the CBD except that a 25' setback shall be provided on any side of a lot which abuts a residential district
- [5] There are no interior side yard requirements in the GBD except that a 25' setback shall be provided on any side of a lot which abuts a residential district
- [6] In the I-1 district a 25' setback shall be provided abutting any dedicated street or residential district.
- [7] In the I-2 district a 100' setback shall be provided abutting residential district, unless the use was located and platted prior to adoption of these regulations in which case a 25' setback shall be provided. Setbacks abutting any dedicated street shall be 25'.



#2658

BOARD OF ZONING APPEALS
CITY OF LEAVENWORTH, KANSAS

2017-18 BZA
Fee (non-refundable) \$350.00
Filing Date 8-2-17
Fee Paid

Property Zoning R1-6

PETITION

Petitioner TONY PATTON Telephone 913-651-3858
Address 621 (name typed or printed) 1st CHESTNUT & 715 7th ST. AGENT - JOE HERRING

Location of Property Involved: ENTIRE PROPERTY LOCATED AT 7th & CHESTNUT
Email Address: survey@framcash.com - agent
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: DIVIDE PROPERTY SO EACH STRUCTURES EXISTS ON IT'S OWN PARCEL

- Appeal of Administration Decision _____ Date of Decision _____
Section 11.03.A
- Variance:
Section 11.03.B
- Exception:
Section 11.03.C

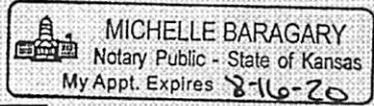
Description of Action to be decided upon: create two lots less than the 6,000 sqft requirement Section 4.03

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

Signature: [Signature] Date: 8-2-17

State of KANSAS
County of Leavenworth



This instrument was acknowledged before me on 8-2-17
by Michelle Baragary

My commission expires: 8-16-20

Michelle Baragary
Notary Public

| FOR OFFICE USE ONLY: | |
|-------------------------------------|---|
| Date of Publication | <u>8-24-17</u> Date of Hearing: <u>9-18-17</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) |

J.Herring, Inc. (DBA)

Herring Surveying Company

315 North 5th Street

Leavenworth, Kansas 66048

Phone (913) 651-3858 Fax No. (913) 674-5381

Email - survey@teamcash.com

August 1, 2017

City of Leavenworth

RE: Variance for 621 Chestnut and 711 S 7th Street – Tony Patton Property

Per variance requirements:

2a) Okay

2b) These structures have been in place prior to 1966 and was not created by the action of the current property owner.

2c) Will not adversely affect the rights of adjacent property owners. 3 parcels directly west of this property have a similar situation.

2d) Does constitute unnecessary hardship - does not allow property owner to sale structures individually.

2e) It will not adversely affect

2f) It does not

Thank you –

Joe Herring
Authorized Agent for Tony Patton

STATUTORY WARRANTY DEED

File No. 17062

2004 AUG -6 P 2:13 PM

STATE OF KANSAS
REGISTER OF DEEDS

Alice J. Hanson, a single person

of Leavenworth County, Kansas, convey and warrant to:

Anthony Patton, a single person

of Leavenworth County, Kansas; her heirs, successors and assigns.

The West 1/2 of Lot 7, and all of Lot 8, Block 31, CLARK & REES' ADDITION to the City of Leavenworth, according to the recorded plat thereof, in Leavenworth County, Kansas.

C/COE
11/2

Subject to restrictions, reservations, assessments, and easements, if any, now affecting said property.

Said property situated in Leavenworth County, Kansas, and for the sum of one dollar and other good and valuable considerations.

TO HAVE AND TO HOLD THE SAME, together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, forever. And Grantors, for themselves, their heirs, successors and assigns, do hereby covenant, promise and agree, to and with Grantee, that at the delivery of these presents they are lawfully seized in their own right of an absolute and indefeasible estate of inheritance, in fee simple, of and in all and singular the above-granted and described premises, with the appurtenances: that the same are free, clear, discharged and unencumbered of and from all former and other grants, titles, charges, estates, judgments taxes, assessments and encumbrances, of what nature and kind whatsoever, subject to Grantors' reservation set forth herein, and that they will WARRANT AND FOREVER DEFEND the same unto Grantee, her heirs, successors and assigns, against Grantors, their heirs, successors and assigns, and all and every person or persons whomsoever lawfully claiming or to claim the same.

Dated this 5 day of August, 2004.

Entered in the transfer record in my office this

05th day of August, 2004
Linda A. Scheidt, County Clerk

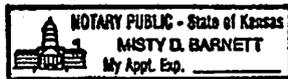
Alice J. Hanson
Alice J. Hanson

State of Kansas)
County of Leavenworth) SS:

BE IT REMEMBERED, that on this 5th day of August, 2004, before me, a Notary Public in and for said county and state, came Alice J. Hanson, a single person, to me personally known to be the same person who executed the foregoing instrument, and duly acknowledged the execution of the same.

IN WITNESS THEREOF, I have hereunto subscribed my name and affixed my official seal, on the day and year last above written.

(SEAL.)



Misty D. Barnett
Notary Public

My Commission Expires: May 24, 2005

SITE PLAN

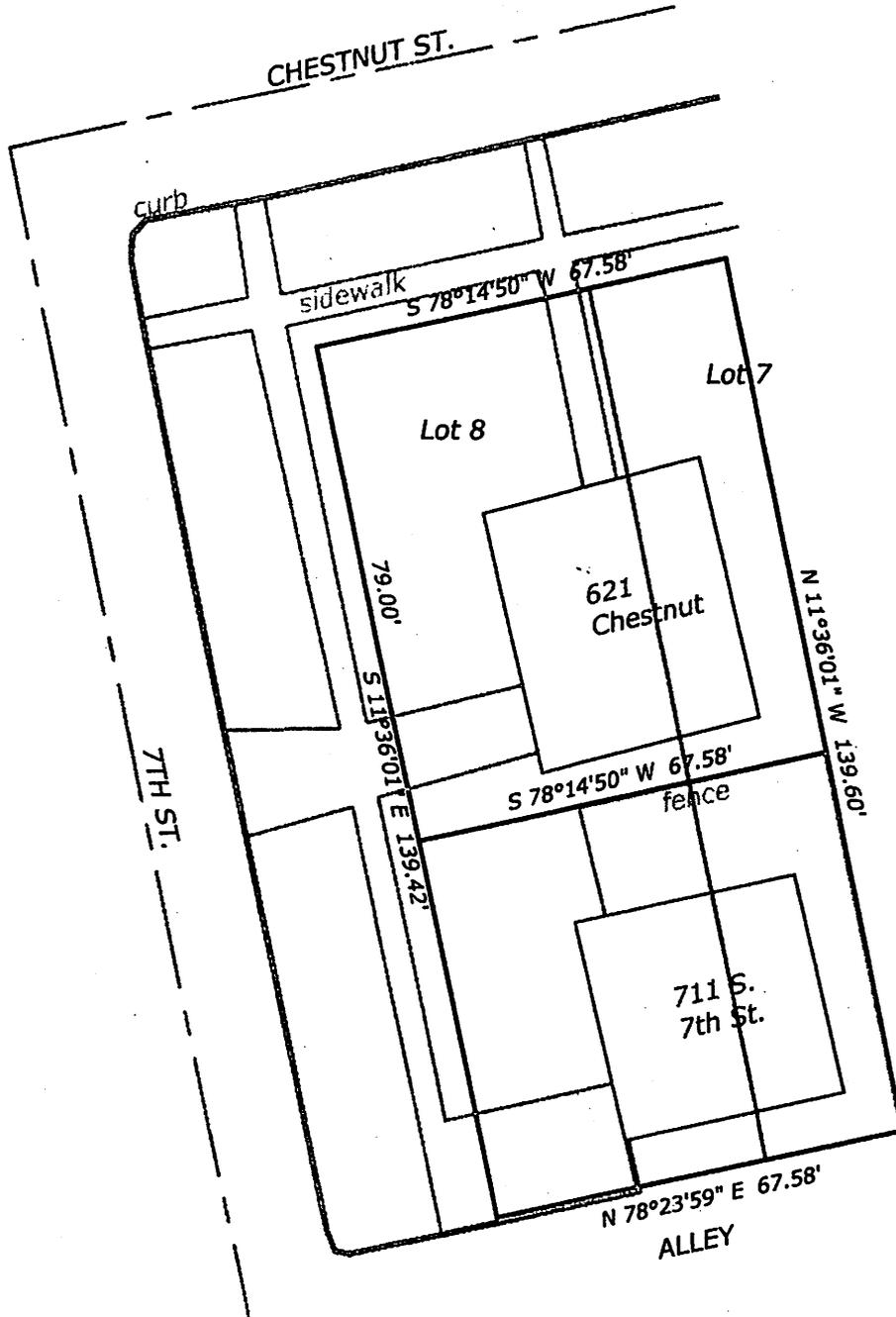
PROPOSED SPLIT:

North 79 feet of the West Half of Lot 7 and all of Lot 8, Block
31, CLARK & REES ADDITION, City of Leavenworth,
Leavenworth County, Kansas.

PREPARED FOR:

Tony Patton
711 S 7th Street
Leavenworth, KS 66048

THIS DOES NOT CONSTITUTE A BOUNDARY SURVEY



K-17-1112
August 1, 2017

**HERRING**
SURVEYING
COMPANY
315 North 6th Street, Leav., KS 66048
Ph. 913.651.3868 Fax 913.674.5381
Email - survey@teamcaah.com



Scale 1" = 30'