



**BOARD OF ZONING APPEALS MINUTES
MONDAY, June 17, 2024, 6:00 P.M.
COMMISSION ROOM, CITY HALL
LEAVENWORTH, KANSAS**

CALL TO ORDER:

Board Members Present

Kathy Kem
Jan Horvath
Daniel Bolling

Board Member(s) Absent

David Ramirez

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: March 18, 2024

Chairperson Kem asked for comments, changes or a motion on the March 18, 2024 minutes presented for approval. Commissioner Horvath moved to approve the minutes as presented, seconded by Commissioner Bolling and approved by a vote of 3-0.

OLD BUSINESS:

None

NEW BUSINESS:

1. 2024-11 BZA – 108 WOODMOOR CT

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

Chairperson Kem called for the staff report.

Planning Director Julie Hurley stated the applicant, Kansas City Sign Company, is requesting a variance from section 8.09 of the adopted Development Regulations to allow two freestanding neighborhood identification signs at 108 Woodmoor Court, a manufactured home community zoned MP.

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

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

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

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

Chairperson Kem asked why there is a different set of standards for the mobile home park as opposed to the rest of the residential districts.

Ms. Hurley responded that she is not sure. It was set up like this when the Development Regulations were first put in place. Since this is the only mobile home community, staff has not had to address this, but we do intend to address this with our next update to the regulations.

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

Lee Mendenhall, Kansas City Sign Company, stated this is a standard sign that would look nice and be attractive.

Chairperson Kem asked if the sign is externally lit.

Mr. Mendenhall responded in the negative.

Commissioner Horvath asked if there are streetlights in the area that would allow visibility of the sign at night.

Mr. Mendenhall stated he is not sure.

Ms. Hurley responded that there are streetlights on the street.

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 3-0

All board members voted in the affirmative.

Chairperson Kem stated that there are no other MP districts so it is obviously not found in MP other districts.

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

Vote 3-0

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 3-0

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 3-0

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 3-0

All board members voted in the affirmative.

3. In granting a variance, the Board may impose such conditions, safeguards, and restrictions upon the premises benefited by the variance as may be necessary to reduce or minimize any potentially injurious effect of such variance upon other property in the neighborhood, and to carry out the general purpose and intent of these Development Regulations.

ACTION:

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

Chairperson Kem stated based on the findings, the variances for Case No. 2024-11 BZA is granted to allow two neighborhood identification signs in the MP district located at 108 Woodmoor Ct.

2. 2024-15 BZA – 3900 NEW LAWRENCE RD

Hold a public hearing for Case No. 2024-15 BZA – 3900 New Lawrence Rd., wherein the petitioner is seeking a variance 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 applicant, Scott Peare, is 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 3900 New Lawrence Road, a single family home zoned R1-25, Low Density Single Family Residential district.

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

Section 4.03 of the Development Regulations states:

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

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

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

Commissioner Horvath asked for concurrence that the topography drops off quite a bit, and that there are a lot of trees around so that it could not be seen from the road, nor could the neighbor to the southwest see the proposed structure.

Looking at the contours on GIS, Ms. Hurley responded it does drop off quite a bit. The house is the high point, and then everything drops off in every direction.

Chairperson Kem asked if the area the applicant wants to the accessory structure is a side yard, front yard or backyard.

Ms. Hurley responded that technically it would be the front yard. The way the definition is written for a front yard is basically the area between the house and the road right-of-way. Even though this is an

irregularly-shaped lot, and the house is not facing towards New Lawrence, it would still be considered the front yard.

Chairperson Kem asked if the structure were moved back behind the front of the house, then what side of the house is it on.

Ms. Hurley responded that it is tricky to pick the yards in this instance, but technically the structure would need to be behind the house in order for it to be out of the front yard. Anywhere they would build it adjacent to that existing driveway would be in the front yard. The applicant would need to expand the driveway to get behind the house and out of the defined front yard.

Chairperson Kem asked about the limit to the square footage in relation to the house.

Ms. Hurley replied that once the structure is over 15% of the square foot of the house, then it would need to blend in with the design and style of the house. From what the applicant has submitted, the structure has some detailing and enhancements on it, and it is not just a standard Butler Building.

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

Scott Peare, applicant/owner, stated he wants to thank Michelle Baragary publicly for helping him put this packet together, and appreciates all her effort. Mr. Peare further stated the reason they want to put the building there is because of the topography. Live in a split level, so essentially the north side of the house is where it starts to slope down. In order to build in the back yard, it would require significant fill. There is also an Everage easement to the east of the house, so they cannot build anything between the house and New Lawrence Road very far. The proposed building site goes up to the easement. Everage has come out to inspect the location, and has approved the proposed location for the structure. Has spoken with all the neighbors, and no one has an issue with the proposed building.

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 3-0

All board members voted in the affirmative.

Chairperson Kem stated that she would normally disagree with this one, but since there are exceptional topographic issues, she agreed.

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

Vote 3-0

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 3-0

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 3-0

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 3-0

All board members voted in the affirmative.

3. In granting a variance, the Board may impose such conditions, safeguards, and restrictions upon the premises benefited by the variance as may be necessary to reduce or minimize any potentially injurious effect of such variance upon other property in the neighborhood, and to carry out the general purpose and intent of these Development Regulations.

ACTION:

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

Chairperson Kem asked staff if the rendering that was submitted with the application get approved or does it have to go back through a site plan review.

Ms. Hurley responded that when the applicant applies for his building permit it will come to our department for review.

Chairperson Kem stated based on the findings, the variances for Case No. 2024-15 BZA is granted to allow a 1,600 sqft. detached garage to be erected forward of the main building line, and adjacent to the existing paved driveway.

3. 2024-16 BZA – 347 N. 20TH TERRACE

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

Chairperson Kem called for the staff report.

Planning Director Julie Hurley stated the applicants, Christopher and Melanie Redding, are requesting a variance from section 6.08 of the adopted Development Regulations to allow a solid fence in the rear yard in excess of 6' in height. The applicants are proposing to construct a solid fence of up to 10' in height to increase privacy and noise reduction in their rear yard.

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

Section 6.08 of the Development Regulations states:

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

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

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

Chairperson Kem asked if there have been other requests of this nature.

Ms. Hurley responded that there has not been any like this in the 10-years she has been with the city.

Commissioner Bolling requested to see the topography lines on GIS.

Ms. Hurley stated it slopes from the west to the east. Each line on GIS represents a 2' slope, and the more the lines are bunched up, the sharper the slope.

Commissioner Horvath asked if any property owners in the past have asked to increase the height of their fence.

Ms. Hurley responded that we do not have anything documented, but is sure that someone has asked if a fence greater than 6' in height could be installed, but no one has gone as far as requesting a variance.

Commissioner Horvath asked if an increase in height is allowed are there any additions that would have to be made to ensure the integrity of the fence so it does not fall over.

Ms. Hurley responded that they would still need to get a fence permit but staff does not inspect them for structural issues. It would be on the property owner to ensure structural integrity of the fence.

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

Christopher Redding, owner/applicant, stated the fence is for privacy and noise reduction. The neighbor to the west have dogs that are quite loud. Some of the existing fence has helped but there is that portion to the right that the neighbors can essentially see over the fence. This really is just about the basic right to privacy. Mr. Redding further stated he can see the pessimism in the commissioner's eyes as they try to sort through the adherence to rules, the spirit of the law. He poses the question to the board that if they are going to vote no that they tell him why he does not have the right to privacy.

Chairperson Kem stated she appreciates the comments but nowhere does the ordinance say you have the right to privacy, and a fence does not necessarily ensure privacy.

Mr. Redding stated he does have a third stringer to reinforce the sides of the fence, and would probably do some additional cabling.

Commissioner Horvath asked if noise abatement is also a legitimate issue.

Mr. Redding responded that from their perspective, yes. To answer an additional question the board had before the public hearing, Mr. Redding stated they did talk with neighbors. The two neighbors to the west do not have an issue. The neighbor at the corner was confused because they thought the fence was in relation to property that is not on the applicant's lot but Mr. Redding explained the situation to them.

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

Chairperson Kem stated this is kind of a slippery slope because there has not been an application like this for as long as she has been on the board. Must be careful about what we approve or not approve because it can certainly open a can of worms.

Commissioner Bolling stated he agrees but refers back to the topography of the lot.

Chairperson Kem stated there are significant topographical issues there.

Commissioner Bolling is curious about how much of the city is on a slope like this that could potentially open up the floodgates for a bunch of variances for this type of issue.

Chairperson Kem asked staff if they have any leeway in terms of staff administratively approving an increase up to a certain percent.

Ms. Hurley responded that staff can approve up to 10% administratively. With a 6' privacy fence, that would only be about an additional 7", which would not get the applicants close to the height they want.

Commissioner Horvath asked for clarification that the applicants are requesting an additional four feet.

Ms. Hurley responded they are requesting to build up to a 10' high privacy fence. Ms. Hurley further stated that when staff reviews a fence application, it has to be measured from the average grade of their property line, not into a neighbor's property.

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 3-0

All board members voted in the affirmative.

Chairperson Kem stated she is struggling with this one. Since it is in the backyard, she wants to say yes but at the same time struggles with that. There are exceptional topographical circumstances. It may be unique to the property depending on how you interpret that. It certainly is not unique to the subject property in that particular neighborhood, but it could perhaps be unique to other property in Leavenworth. Commissioner Horvath stated that if this variance is granted, the board can add conditions regarding the height of the fence.

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

Vote 3-0

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 3-0

All board members voted in the affirmative.

Commissioner Horvath stated there are noisy dogs next door.

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

Vote 3-0

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 3-0

All board members voted in the affirmative.

3. In granting a variance, the Board may impose such conditions, safeguards, and restrictions upon the premises benefited by the variance as may be necessary to reduce or minimize any potentially injurious effect of such variance upon other property in the neighborhood, and to carry out the general purpose and intent of these Development Regulations.

ACTION:

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

Chairperson Kem called for discussion about imposing any conditions, safeguards, or restrictions.

Commissioner Horvath believes that four feet is excessive. He further stated that his house is also on a ridgeline, and that his neighbors have noisy dogs but could not imagine adding an additional four feet to his fence. We need to keep in mind that the fence has to be structurally sound no matter what height it is.

Chairperson Kem also agrees that four feet is excessive.

Ms. Hurley stated that the Development Regulations the tallest fence height allowed in the city is 8 ft., and that is in industrial districts.

Commissioner Bolling stated he would be in agreeance to a height of 8 feet.

Chairperson Kem called for a motion to put a condition to limit the height to 8'. Commissioner Horvath moved that a limitation on the height addition of 2' for a maximum height of 8', Commissioner Bolling second. The motion passes 3-0.

Chairperson Kem stated based on the findings, the variance for Case No. 2024-16 BZA is granted to allow a solid fence in excess of 6' in height in the rear yard, with the condition that the maximum height is limited to 8'.

With no further discussion, Ms. Hurley stated there are no items on the agenda for July, but we will potentially have a meeting in August.

With no further business, Chairperson Kem adjourned the meeting.

The meeting adjourned at 6:12 p.m.

Minutes taken by Planning Assistant Michelle Baragary.