



**BOARD OF ZONING APPEALS MINUTES
MONDAY, NOVEMBER 18, 2024, 6:00 P.M.
COMMISSION ROOM, CITY HALL
LEAVENWORTH, KANSAS**

CALL TO ORDER:

Board Members Present

Ron Bates
Jan Horvath
David Ramirez

Board Member(s) Absent

Daniel Bolling
Kathy Kem

City Staff Present

Michelle Baragary
Julie Hurley

With the Chair and Vice-Chair unavailable, Commissioner Ramirez called the meeting to order at 6:00 p.m. and noted a quorum was present.

APPROVAL OF MINUTES: September 16, 2024

Commissioner Ramirez asked for comments, changes or a motion on the September 16, 2024 minutes presented for approval. Commissioner Horvath moved to approve the minutes as presented, seconded by Commissioner Bates and approved by a vote of 3-0.

OLD BUSINESS:

None

NEW BUSINESS:

1. 2024-25 BZA – 604 TOPEKA AVE

Hold a public hearing for Case No. 2024-25 BZA – 601 Topeka Ave., wherein the petitioner is seeking a variance to section 4.04.B of the adopted Development Regulations to allow a storage building in excess of 250 sqft, in the R1-9, Medium Density Single Family Residential District, zoning district.

Commissioner Ramirez called for the staff report.

Planning Director Julie Hurley stated the applicant, Jason Murphy, is requesting a variance from section 4.04 of the adopted Development Regulations to allow a storage building totaling 640 square feet at 601 Topeka Ave., a single family home zoned R1-9, Medium Density Single Family Residential District.

The subject property is 1.8 acres in size, and is occupied by an existing single-family home. The proposed structure is 16' x 20' and two-stories, totaling 640 square feet. The applicant indicates that the purposes of the proposed structure is to be used as a "she shed" for his wife to have space to craft, paint, sew, and work on other artistic projects. There are no other existing detached structures on the property.

Section 4.04 of the Development Regulations states:

Storage Buildings: A structure for storage incidental to a permitted use provided no such structure that is accessory to a residential building shall exceed 250 square feet in gross floor area.

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

Commissioner Ramirez called for questions from the commissioners on the staff report.

Commissioner Bates asked about the square footage for a detached structure if the structure is two-stories.

Ms. Hurley responded that if there are two usable stories, staff counts all of that square footage. If there is kind of a loft in the rafters where you can stick stuff, staff does not count that. However, if there are actual steps and a floor, then staff counts that floor area in the total square footage. Staff spoke with the property owner when he first came into the office, and explained that if he would make it a garage the size would be allowed. However, a garage requires construction of a driveway leading to it, and the owners did not want to have to construct a driveway to this building that his wife will just be using for her art, which is why the owners decided to request a variance.

Commissioner Bates asked what happened if someone gets a permit for something like this, and then they construct living quarters in it with electricity, plumbing, etc.

Ms. Hurley stated that a second detached living quarters on a single-family property is considered an accessory dwelling unit (ADU), which our regulations do allow with the issuance of a special use permit. There are certain items in the building code that would push the structure into a dwelling category, and at that time they would need to apply for a special use permit for an ADU.

Commissioner Bates asked that once the structure is build that the city is done with it.

Ms. Hurley stated that if the owners constructed this building truly as a place for arts and crafts but then later went back and added plumbing for a kitchen and bathroom, those would require permits, and staff would catch it at that time.

Commissioner Horvath asked for verification that a detached garage up to 900 sqft is allowable, but if they wish to have plumbing for a small bathroom then that would require an additional permit.

Ms. Hurley stated you can have a bathroom in a detached structure without the regulations requiring a special use permit. However, there are things in the building code that do qualify something as a dwelling unit, and that would include something like a kitchen, full bathroom facilities, etc. Having just a utility sink or bathroom would not push it into the dwelling category.

Commissioner Horvath asked if the applicant could have a bathroom in the she-shed but nothing else because that is when it then takes on a different character.

Ms. Hurley responded in the affirmative that they could install a bathroom, but if they want to install a kitchen then staff would need to have that conversation about it being an ADU.

With no further questions about the staff report, Commissioner Ramirez opened the public hearing.

With no one else wishing to speak, Commissioner Ramirez closed the public hearing and called for discussion among the commissioners. With no further discussion, Commissioner Ramirez 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 2-1

Commissioners Horvath and Ramirez voted in the affirmative. Commissioners Bates 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 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 2-1

Commissioners Horvath and Ramirez voted in the affirmative. Commissioners Bates voted in the negative.

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

Vote 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 2-1

Commissioners Horvath and Ramirez voted in the affirmative. Commissioners Bates voted in the negative.

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 4.04 of the Development Regulations to allow a storage building in excess of 250 square feet at 601 Topeka Ave.

Commissioner Ramirez stated based on the findings, the variances for Case No. 2024-35 BZA is granted with no restrictions, conditions or safeguards.

OTHER BUSINESS:

Ms. Hurley stated there is no other business, and there will not be a December meeting.

With no further business, Commissioner Ramirez called for a motion to adjourn. Commissioner Horvath moved to adjourn, seconded by Commissioner Bates, and passed by a vote of 3-0.

The meeting adjourned at 6:13 p.m.

Minutes taken by Planning Assistant Michelle Baragary.