

LEAVENWORTH BOARD OF ZONING APPEALS

Monday, November 27, 2023 – 6:00 P.M.
COMMISSION ROOM, CITY HALL
LEAVENWORTH, KANSAS

AGENDA

CALL TO ORDER:

1. Roll Call/Establish Quorum
2. Approval of Minutes: October 16, 2023 **Action:** Motion

OLD BUSINESS:

None

NEW BUSINESS:

1. **2023-32 BZA – 123 N. BROADWAY STREET**
Hold a public hearing for Case No. 2023-32 BZA – 123 N Broadway St., wherein the petitioner is seeking a variance from Section 8.15 of the adopted Development Regulations to allow the use of an existing nonconforming sign after a change in tenant.

ADJOURN



**BOARD OF ZONING APPEALS MINUTES
MONDAY, October 16, 2023, 6:00 P.M.
COMMISSION ROOM, CITY HALL
LEAVENWORTH, KANSAS**

CALL TO ORDER:

Board Members Present

Dick Gervasini
David Ramirez
Jan Horvath
Daniel Bolling

Board Member(s) Absent

Kathy Kem

City Staff Present

Michelle Baragary
Bethany Falvey

Chairman Gervasini called the meeting to order at 6:00 p.m. and noted a quorum was present.

APPROVAL OF MINUTES: August 21, 2023

Chairman Gervasini asked for comments, changes or a motion on the August 21, 2023 minutes presented for approval. Commissioner Horvath moved to approve the minutes as corrected, seconded by Commissioner Ramirez and approved by a vote of 4-0.

OLD BUSINESS:

None

NEW BUSINESS:

1. 2023-27 BZA – 819 N 6th STREET

Hold a public hearing for Case No. 2023-27 BZA – 819 N 6th Street, wherein the petitioner is seeking a variance to section 4.03 of the adopted Development Regulations to allow an interior side setback of less than 6 feet on a property zoned R1-6, High Density Single Family Residential District.

Chairman Gervasini called for the staff report.

City Planner Bethany Falvey stated the applicant is requesting a variance from Section 4.03 of the adopted Development Regulations to allow an interior side setback of less than 6 feet. The subject property 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 interior side yard setback of 6 feet. The house had an existing rear deck that encroached into the side yard setback. A new porch, with new footings was constructed, therefore requiring a building permit. The deck is 3'6" from the interior side yard.

Chairman Gervasini asked for questions about the staff report.

Commissioner Horvath asked where the porch is that staff mentioned.

Using Google Maps, Ms. Falvey showed pictures of the existing porch, and stated the applicant had to apply for a building permit because it was more than just repairing in kind because they poured new footings. In turn, this requires the deck to meet current setbacks.

Commissioner Ramirez asked that because this is new construction the existing porch is no longer grandfathered in.

Ms. Falvey responded in the affirmative.

Chairman Gervasini asked if the applicants had a building permit for this project.

Ms. Falvey responded the applicants had started work on the project without first getting a permit. The applicants have since applied for a permit, which is pending the outcome of this variance request.

Commissioner Bolling asked if the applicants are doing the work themselves or if they are using a contractor.

Ms. Falvey responded that she believes they are using a contractor. There are certain contractors that are bonded through the City, and they do not have to get permits ahead of time from Building Inspections, even though our department require some reviews.

Commissioner Ramirez asked if the deck has the same footprint and distances.

Ms. Falvey responded that the side yard setback is not met.

Commissioner Ramirez asked if the new section of the side yard is different from what was previously there.

Ms. Falvey responded that the applicant had to pour new footings, and installed an entire new deck. The applicant also installed a new fence, and had a permit to do so.

Chairman Gervasini asked if the fence is on the property line.

Ms. Falvey responded in the affirmative stating a fence is allowed on the property line.

Commissioner Horvath asked what happens to the deck if the variance is not approved.

Ms. Falvey responded the applicants would have to reduce the deck so that it is 6' from the property line. Ms. Falvey reminded the board that financial hardships is not one of the criteria for the board to review.

Commissioner Horvath said for clarification, the applicants would need to cut the deck and move it in 2' 6".

Ms. Falvey responded in the affirmative stating this is why getting a building permit prior to commencing work is important.

With no further questions about the staff report, Chairman Gervasini opened the public hearing. With no one wishing to speak, Chairman Gervasini closed the public hearing.

With no further discussion, Chairman Gervasini 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 4-0

All board members voted in the affirmative.

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

Vote 0-4

All board members voted in the negative.

- c) *That the strict application of the provisions of the Development Regulations from which the variance is requested will constitute unnecessary hardship upon the property owner represented in the application.*

Vote 4-0

All board members voted in the affirmative.

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

Vote 4-0

All board members voted in the affirmative.

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

Vote 4-0

All board members voted in the affirmative.

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 the Development Regulations.

ACTION:

Approve or deny the request for a variance from section 4.03 of the Development Regulations to allow an interior side yard setback of 3'6" at 819 N 6th Street.

Chairman Gervasini stated based on the findings, the variance for Case No. 2023-27 BZA is denied.

Ms. Falvey stated there is one item on the agenda for the next meeting November 27, 2023.

With no further business, Commissioner Gervasini called for a motion to adjourn. Commissioner Horvath moved to adjourn, seconded by Commissioner Bolling, and passed 4-0.

The meeting adjourned at 6:19 p.m.

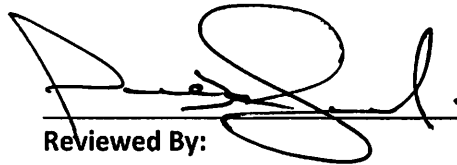
Minutes taken by Planning Assistant Michelle Baragary.

**Board of Zoning Appeals Agenda Item
Variance Request
2023-32 BZA
123 N. Broadway Street**

NOVEMBER 27, 2023



Prepared By:
Julie Harley,
Director of Planning and
Community Development



Reviewed By:
Paul Kramer,
City Manager

SUMMARY:

The applicant is requesting a variance from section 8.15 of the adopted Development Regulations to allow the use of an existing non-conforming sign after a change in tenant.

DISCUSSION:

The applicant, Iris Arnold, Leavenworth Mission, is requesting a variance from the above noted section of the adopted Development Regulations to allow the use of an existing non-conforming sign after a change in tenant and business name for the property located at 123 N. Broadway Street.

Section 8.15.A of the current Development Regulations requires that a nonconforming sign be modified to conform, replaced with a conforming sign, or removed if there is a change in business name or ownership.

8.15.A Nonconforming: A nonconforming sign existing lawfully at the time of the passage of this sign code may be continued under the terms as hereinafter provided that such nonconforming signs shall be modified to conform, replaced with a conforming sign or removed according to the following:

- 1. If there is a change in business ownership, tenant, name or type of business.*
- 2. Any maintenance, repair or alteration of a nonconforming sign shall not cost more than 25% of the current value of the sign as of the date of alteration or repair.*

The subject property is zoned GBD, General Business District and is occupied by The Leavenworth Mission, which is an allowed use in the GBD zoning district. The current tenant is a new occupant of the space. The building was previously occupied by The Fish Shack, and had been vacant for several years prior to occupancy by the Leavenworth Mission. There is an existing roof sign on the building, which was utilized by the previous tenant. The Leavenworth Mission wishes to utilize the existing roof sign structure. Current regulations require that a roof sign shall not exceed the highest point of the roof of the structure, which the existing roof sign does, thus making it nonconforming.

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

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)

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, variations 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 8.15.A of the Development Regulations to allow the use of an existing non-conforming sign after a change in tenant and business name at 123 N. Broadway Street.

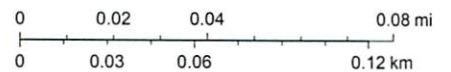
2023-32-BZA



11/16/2023, 4:13:06 PM

- Override 1
- Leavenworth City Limits
- Parcels (City Owned)
- City Right-of-Way
- Parcels_Current
- RoadCenterline
- Address (Points)

1:2,257



Platte County, Missouri Dept. of Conservation, Esri, HERE, Garmin, GeoTechnologies, Inc., USGS, EPA



BOARD OF ZONING APPEALS
CITY OF LEAVENWORTH, KANSAS

OFFICE USE ONLY

Case No.: 2023-32 BZA
Application No. 14318
Fee (non-refundable) \$350.00
Filing Date 9/22/23
Hearing Date 11/27/23
Publication Date 11/2/23

PETITION

Property Zoning: CBD
Location of Subject Property: 123 North Broadway
Legal Description: (Attach full legal description provided by the REGISTER OF DEEDS OFFICE)
Petitioner: IRIS ARNOLD (Leavenworth Mission)
Petitioner Address: 1613 South 5th St
Email: lmission@hotmail.com Telephone: 683-2452
Petitioner's Interest in Property: RENTER
Purpose of Petition: USE OF SIGN ON TOP OF BLDG.

- Appeal of Administration Decision _____ Date of Decision _____
- Section 11.03.A
- Variance: request variance to allow the use of an existing nonconforming roof sign. section 8.15
- Section 11.03.B
- Exception: _____
- Section 11.03.C

Site Plan or drawing attached (hard & digital copy): 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 (print): Arthur S. Ruppenthal; Trust
Signature: Susan L Pierce TTEE Date: 9/15/23

State of KANSAS)
County of Leavenworth)

Signed or attested before me on September 15, 2023 by Susan L. Pierce Trustee

Notary Public: Michelle Baragary
My appointment expires: 8/16/24 (Seal)



NOTE: All signatures must be in black or blue ink. Signature of owner(s) must be secured and notarized. Check list below...

<input checked="" type="checkbox"/>	Supporting documentation: Site plan, plot plan, a drawing and any other pertinent data
<input checked="" type="checkbox"/>	Full legal description of subject property obtained from the Register of Deeds Office (913-684-0424)
<input checked="" type="checkbox"/>	Certified list of property owners within two hundred (200) feet of the subject property – County GIS Department 913-684-0443
<input checked="" type="checkbox"/>	A filing fee of Three Hundred- fifty dollars (\$350)

The Leavenworth Mission, Inc. is requesting a variance from Section 11.03.B.2 due to the following:

- 1) The Leavenworth Mission is a 501c3 Non-For-Profit Organization that was incorporated in 2010. The Mission's goal is to serve Leavenworth County Residents by operating a weekly Food Pantry.**
- 2) The Leavenworth Mission serves over 500 families monthly providing foods from The Emergency Food Assistance Program and Feeding America Program sponsored by the Federal Government.**
- 3) The Leavenworth Mission, located on 121-123 North Broadway, is the largest Food Distribution Site in Leavenworth County and operates a Thrift Store to help subsidize the Food Pantry Program.**
- 4) The Leavenworth Mission is located in North Leavenworth, which is considered a Food Desert due to the lack of a Grocery Store in the area. Residents in the community can come into the Leavenworth Mission on the days of operation and receive free bread, fresh produce, and non-perishables items.**
- 5) The Original Building Sign Fixture on top of the roof of 121-123 North Broadway has been on top of the building since it was erected in 1964. The Leavenworth Mission had signs made in 2023 to go in the existing sign structure on top of the building to ensure the public was aware of the new location for the Food Pantry and Thrift Store.**
- 6) The new signs were professionally designed and printed to meet the specifications of the existing sign dimensions.**

Michelle Baragary

From: Leavenworth Mission <lvmission@hotmail.com>
Sent: Monday, September 25, 2023 2:32 PM
To: Michelle Baragary
Subject: Signs Leavenworth Mission
Attachments: IMG_6835.jpeg

Good afternoon. Thank you for your patience as we navigate through this process. Here are the dimensions and a picture of the completed sign. Let me know if you need anything else.
Thanks.

Sign height 5'4
Width 12' 2

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*** THIS EMAIL CAME FROM AN EXTERNAL SOURCE. PLEASE BE CAUTIOUS WHEN CLICKING ON LINKS OR ATTACHMENTS.

Google image captured October 2022



THRIFT STORE

**LEAVENWORTH MISSION
FOOD PANTRY**
GIVING BACK TO OUR COMMUNITY



THRIFT STORE

**FOOD
KITCHEN**



**& MORE
CLOTHING**



FOOD



PANTRY

09/06/2023 09:22



