



BOARD OF ZONING APPEALS MINUTES
MONDAY, December 18, 2023, 6:00 P.M.
COMMISSION ROOM, CITY HALL
LEAVENWORTH, KANSAS

CALL TO ORDER:

Board Members Present

Dick Gervasini
David Ramirez
Daniel Bolling
Jan Horvath

Board Member(s) Absent

Kathy Kem

City Staff Present

Michelle Baragary
Julie Hurley

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

APPROVAL OF MINUTES: November 27, 2023

Chairman Gervasini asked for comments, changes or a motion on the November 27, 2023 minutes presented for approval. Commissioner Horvath moved to approve the minutes as presented, seconded by Commissioner Bolling and approved by a vote of 4-0.

OLD BUSINESS:

None

NEW BUSINESS:

1. 2023-35 BZA – 2205 S 4TH STREET

Hold a public hearing for Case No. 2023-35 BZA – 2205 S 4th Street, wherein the petitioner is seeking a variance to section 8.15 of the adopted Development Regulations to allow the use of an existing nonconforming sign after a change in tenant and business name.

Chairman Gervasini called for the staff report.

Planning Director Julie Hurley stated the applicant and owner of the property, Kevin Albee, is requesting 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 and business name for the property located at 2205 S 4th Street.

The subject property is zoned GBD, General Business District, and is occupied by A&D Hearing Center, which is an allowed use in the GBD zoning district. There is a second tenant space in the building that is currently vacant. There is one existing freestanding sign associated with the property, which is currently located within the 4th Street right-of-way (ROW). Current regulations require that freestanding signage in the GBD zoning district be located on the parcel and be setback a minimum of 5' from any property line, making the existing sign nonconforming.

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.*

As the existing sign is considered “existing nonconforming”, it may continue to exist in its current state, but no additional permits may be issued for new tenant signage. The owner wishes to obtain a variance in order to assist in marketing the tenant space, so that a new tenant will be able to apply for a permit for signage upon occupancy. The existing sign does not create any vision or sign distance issues for traffic. Since 2016, two variances of a similar nature have been approved for businesses along 4th Street within several blocks of the subject property.

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

Chairman Gervasini asked for questions about the policy report.

Commissioner Horvath asked since when and why the City cares how much a sign costs, referring to section 8.15.A(2) of the Development Regulations, which states “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.

Ms. Hurley stated what that means is if you are doing basic maintenance that would not require a variance to do maintenance on an existing nonconforming sign. However, if you are doing more than basic maintenance, such as changing the structure, that would require a variance for that sign. This is fairly standard in other cities in handling nonconformities. Once you cross a threshold of value, you are no longer just maintaining the sign, you are essentially replacing the sign.

Chairman Gervasini asked when there is a new tenant, does the new tenant need to request a variance to install their sign.

Ms. Hurley responded another variance is not required. The new tenant would only need to apply for a tenant panel permit by submitting a sign permit application. The variance is for the entire sign structure.

With no further questions about the policy report, Chairman Gervasini opened the public hearing.

Kevin Albee, property owner, stated when he found out there was an issue with the sign, he contacted Young Sign Company about how to fix it. Young Sign Company looked at several options, including moving the sign. The current property line is about 3 ft. from the front of the building, so there is no way to bring it into compliance. Mr. Albee further stated he was informed by Young Sign Company that he would not get approved for a sign on top of the building either.

Chairman Gervasini stated that is true, rooftop signs are not permitted.

Mr. Albee stated his options are to not have a sign, leave the sign the way it is, or find a way to get tenants to be able to use the upper half of the sign, which is currently just a blank tenant panel.

Ms. Hurley stated that the location of the sign does not provide any sort of hindrance in terms of vision for traffic coming in and out of the parking lot.

Chairman Gervasini asked when the State took more of the right-of-way, was that also when they widened the turn to the east or was that the City that widened the turn.

Ms. Hurley responded the City widened the turn to the east. The property to the north is a separate lot from Mr. Albee's building, and there used to have a doctor's office on that property. The City purchased that property to make these intersection improvements. KDOT had acquired that additional ROW years before.

Mr. Albee stated the State expanded the ROW about 5 ft on each side.

Chairman Gervasini asked when that was.

Mr. Albee responded that he has had this building since 1991. He believes it was about 15-20 years ago that KDOT expanded the ROW.

Commissioner Bolling asked in situations like this where KDOT expanded the ROW, is it customary for the City to modify their regulations to help grandfather in certain businesses that are affected by these changes.

Ms. Hurley responded that essentially "grandfathered" means it is existing nonconforming. So when KDOT changed that ROW, all the signage and some of the buildings with their setbacks became existing nonconforming. The purpose of a variance is that there may be cases where it is appropriate or reasonable for that nonconformity to stay, or there may be instances where it is not appropriate. The time to review the sign then comes when the owner is ready to make a change to the sign. This gives some oversight to make sure that it is still an appropriate location for that sign.

Chairman Gervasini asked if the variance follows the owner or the property.

Ms. Hurley responded it goes with the property.

Commissioner Ramirez asked to clarify that if the property changes hands later on that the variance is still valid for the property.

Ms. Hurley responded in the affirmative.

With no further questions or discussion, Chairman Gervasini 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)

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 4-0
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 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 8.15 of the Development Regulations to allow the use of an existing nonconforming sign after a change in tenant and business name.

Chairman Gervasini stated based on the findings, the variance for Case No. 2023-35 BZA is granted with no conditions.

Ms. Hurley stated there is no further business for tonight, and there will be a meeting on January 22, 2024.

With no further business, Chairman Gervasini called for a motion to adjourn. Commissioner Ramirez moved to adjourn, seconded by Commissioner Bolling, and passed 3-0.

The meeting adjourned at 6:15 p.m.

Minutes taken by Planning Assistant Michelle Baragary.