

LEAVENWORTH BOARD OF ZONING APPEALS

Monday, December 18, 2023 – 6:00 P.M.
COMMISSION ROOM, CITY HALL
LEAVENWORTH, KANSAS

AGENDA

CALL TO ORDER:

1. Roll Call/Establish Quorum
2. Approval of Minutes: November 27, 2023 **Action:** Motion

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 St., wherein the petitioner is seeking a variance from Section 8.15 of the adopted Development Regulations to allow a nonconforming sign to continue existence after a change in business ownership, tenant, name or type of business.

ADJOURN



**BOARD OF ZONING APPEALS MINUTES
MONDAY, November 27, 2023, 6:00 P.M.
COMMISSION ROOM, CITY HALL
LEAVENWORTH, KANSAS**

CALL TO ORDER:

Board Members Present

Kathy Kem
David Ramirez
Daniel Bolling

Board Member(s) Absent

Dick Gervasini
Jan Horvath

City Staff Present

Michelle Baragary
Julie Hurley

Vice Chairperson Kem called the meeting to order at 6:00 p.m. and noted a quorum was present.

APPROVAL OF MINUTES: October 16, 2023

Vice Chairperson Kem asked for comments, changes or a motion on the October 16, 2023 minutes presented for approval. Commissioner Bolling moved to approve the minutes as presented, seconded by Commissioner Ramirez and approved by a vote of 3-0.

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 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.

Vice Chairperson Kem called for the staff report.

Planning Director Julie Hurley stated the applicant, Iris Arnold, Leavenworth Mission, 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 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.

Vice Chairperson Kem asked how this case differs from the previous case for Flatland Vapes located at 200 S Broadway St.

Ms. Hurley responded that the owner of Flatland Vapes elected not to request a variance for his rooftop sign. That business owner had requested a variance for a projecting wall sign and at that time there was some discussion about how he could go about utilizing the existing roof sign structure. In the end, he elected not to request a variance to use the rooftop sign, and instead he installed a mural so that it is not considered signage advertising the business.

Vice Chairperson Kem asked if there have been any previous cases that have involved a rooftop sign where this Board had granted a variance.

Ms. Hurley does not recall any since she has been with the city.

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

Iris Arnold, applicant and tenant, stated the rooftop sign is beneficial as they do serve a vast amount of clients in the Leavenworth community. Leavenworth Mission is a food pantry and community store.

Susan Pierce, property owner, stated the roof sign has been there for 60 plus years. How the building is located on the lot prevents them from installing a projecting sign because the sign would encroach into the right-of-way. Many of their clients do not have internet so having the visible rooftop sign helps people find the location.

David Arnold, spouse, stated his wife is the president of the Leavenworth Mission, which is a nonprofit 501c3, and they have been serving the Leavenworth community since 2010. They relocated from 1140 Spruce to move to the north end of town. Since relocating, their client base has risen with more people

coming in for food assistance. Mr. Arnold further stated he did drive around Leavenworth and was shocked that only a few buildings have rooftop signs. Considering it is not a major issue, he hopes the variance will be granted.

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

Ms. Hurley stated just so everyone is aware, there have been a few issues with signs downtown that have come up in the last few months, and the City Commission has asked that staff take a look at our sign regulations and how we address signage downtown. Staff will take a comprehensive look at our sign regulations in the next 6 to 12 months.

With no further discussion, Vice 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.

- 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.

Vice Chairperson Kem stated the board has granted other variances in the downtown area where the board has allowed existing nonconforming signs to replace the inside of the sign and where nothing else to the sign has changed, and she believes that is the case for this item as well. The board has established a precedent for this in the past but this sign just happens to be a roof sign rather than a pole sign.

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.

Vice Chairperson Kem stated based on the findings, the variance for Case No. 2023-32 BZA is granted with no conditions.

Ms. Hurley stated there is one item on the agenda for the December 18, 2023 meeting.

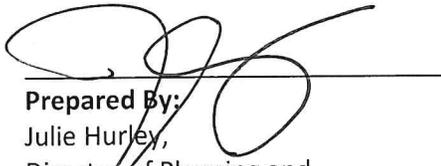
With no further business, Vice Chairperson Kem called for a motion to adjourn. Commissioner Ramirez moved to adjourn, seconded by Commissioner Bolling, and passed 3-0.

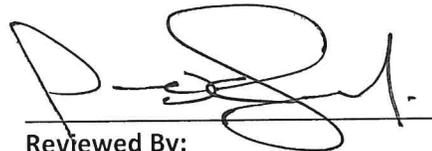
The meeting adjourned at 6:12 p.m.

Minutes taken by Planning Assistant Michelle Baragary.

**Board of Zoning Appeals Agenda Item
Variance Request
2023-35 BZA
2205 S. 4th Street**

DECEMBER 18, 2023


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


Reviewed By:
Paul Kramer,
City Manager

SUMMARY:

Consider 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 and owner of the property, Kevin Albee, 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 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 non-conforming.

Section 8.15.A of the 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 non-conforming", 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.

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)

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. 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 2205 S. 4th Street.



BOARD OF ZONING APPEALS
CITY OF LEAVENWORTH, KANSAS

OFFICE USE ONLY

Case No.: 2023-35 BZA

Application No. 14563
Fee (non-refundable) \$350.00
Filing Date 10/27/23
Hearing Date 12/18/23
Publication Date 11/20/23

PETITION

Property Zoning: GBD

Location of Subject Property: 2205 S. 4th St, Leavenworth KS 66048

Legal Description: (Attach full legal description provided by the REGISTER OF DEEDS OFFICE)

Petitioner: Kevin Albee, Owner of Howard and Marie Trust / APK Rentals LLC

Petitioner Address: 2205 S. 4th St, Leavenworth KS 66048

Email: KevinAlbee@aol.com Telephone: 913-775-1570

Petitioner's Interest in Property: Owner

Purpose of Petition: To get a variance to allow use of Existing Sign

- Appeal of Administration Decision _____ Date of Decision _____
Section 11.03.A
- Variance: Section 8.15.A
Section 11.03.B to allow the use of an existing
- Exception: nonconforming sign after change in tenant.
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): Kevin Albee

Signature: [Signature] Date: 10/27/23

State of Missouri)

County of Leavenworth)

Signed or attested before me on 10/27/23 by Kevin Albee

Notary Public: Elaina Knott

My appointment expires: 9/1/27 (Seal)

ELAINA KNOTT
Notary Public-State of Kansas
My Appt. Expires

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

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

A&K Rentals
2205 S 4th Street
Leavenworth, KS 66048
913-758-1303

10/27/2023

I am requesting a variance to allow the continued business usage of an existing free standing sign. The unit in question is located at the commonly known address of 2205 S 4th Street, Leavenworth KS, 66048

With the legal description of :

Lots 2 and 3, Block 10, in SOUTH SIDE PARK, a subdivision in the City of Leavenworth, Leavenworth County, Kansas.

This sign has been in place for over 40 years with no significant changes.

It has been repainted, light bulbs changed and sign facings change. The structure of the sign has not been modified. I have been informed that at some point the DOT of Kansas expanded the right of way. The sign became nonconforming when this occurred. The space remaining is not sufficient for me to move the sign or install a new sign that is conforming.

I request the variance so the prospective tenants can change the sign facing. For advertising purposes.

As this is an existing sign that has been in place since at least the early 1980's it is clear that it meets conditions required for such a variance

b. This is a situation that was not created by the property owner or applicant. This situation is a result of the DOT changing the right of way along highway 7.

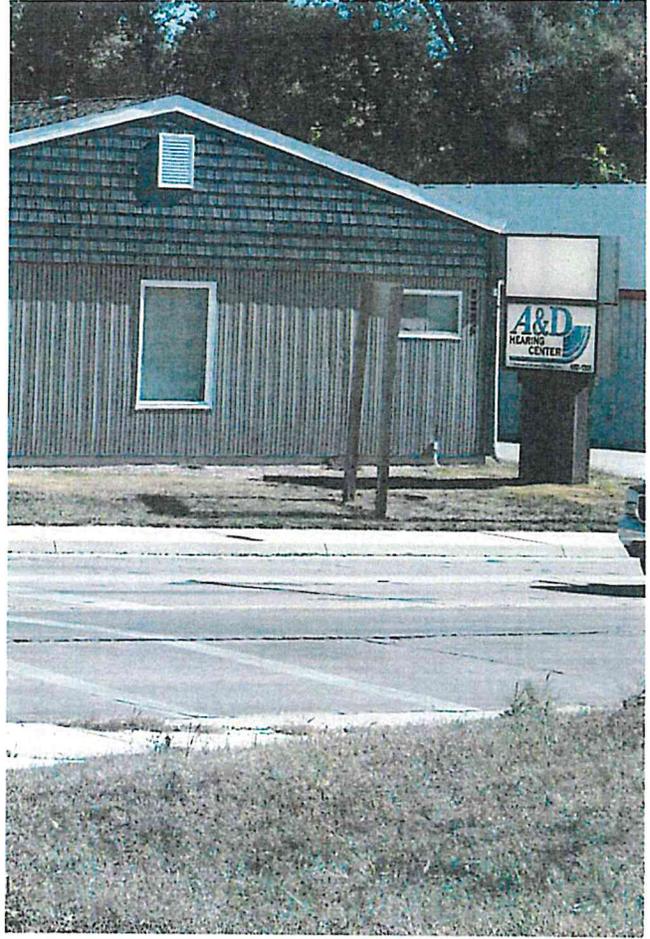
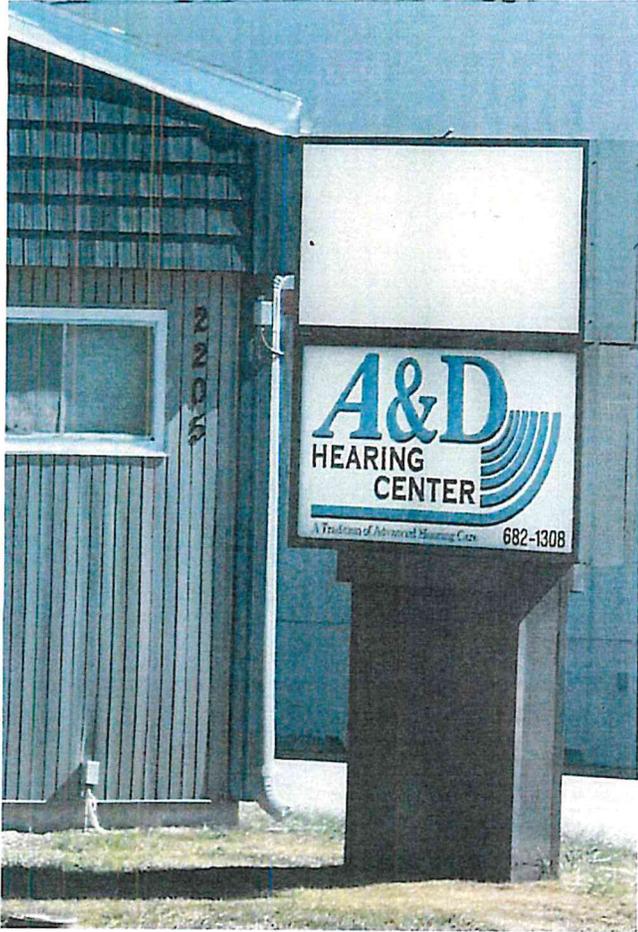
c., e., and f. This requested variance is to allow the continued use of an existing free standing sign unit, with periodic replacement of the sign facing which is subject to its own permit process.

As such it will not adversely affect the rights of adjacent property owners.

It will not affect public health, safety morals, order convenience, prosperity or the general welfare.

It will not oppose the general spirit and intent of the Development Regulations

d. Strict application of the provision will constitute unnecessary hardship on the property owner. Several prospective tenants have refused the property solely on the issue of not having necessary signage. This costs the owner about \$1200.00 a month

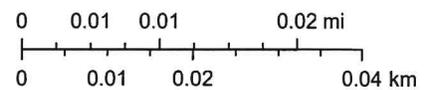


2023-35-BZA



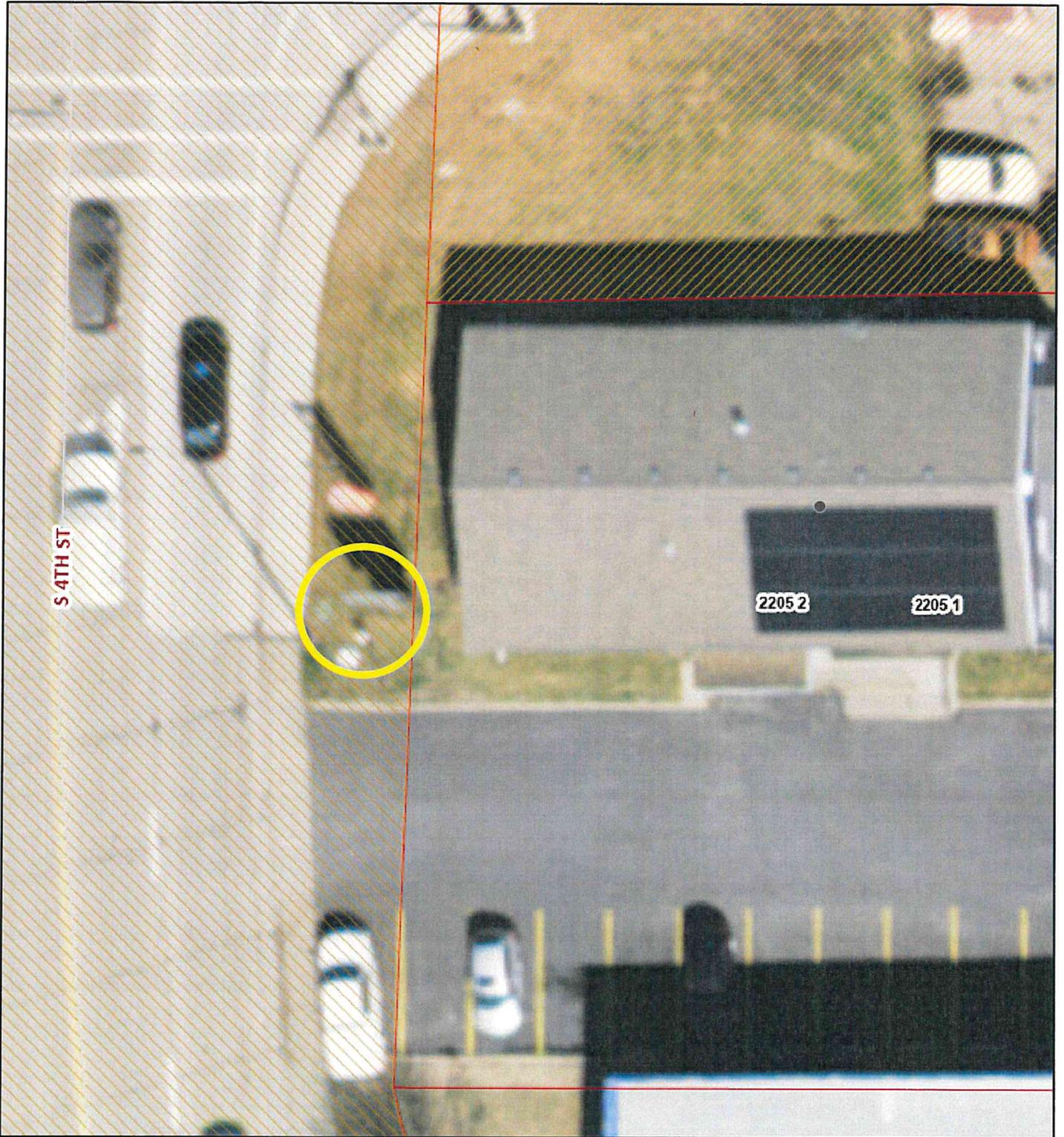
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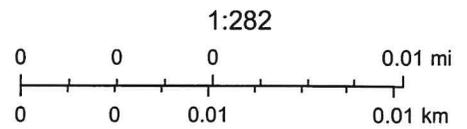


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2023-35-BZA



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