



**BOARD OF ZONING APPEALS MINUTES**  
**MONDAY, February 26, 2024, 6:00 P.M.**  
**COMMISSION ROOM, CITY HALL**  
**LEAVENWORTH, KANSAS**

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**CALL TO ORDER:**

**Board Members Present**

Kathy Kem  
David Ramirez  
Daniel Bolling  
Jan Horvath

**Board Member(s) Absent**

Dick Gervasini

**City Staff Present**

Michelle Baragary  
Bethany Falvey

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

**APPROVAL OF MINUTES:** January 22, 2024

Chairperson Kem asked for comments, changes or a motion on the January 22, 2024 minutes presented for approval. Commissioner Horvath moved to approve the minutes as presented, seconded by Commissioner Ramirez and approved by a vote of 4-0.

**OLD BUSINESS:**

None

**NEW BUSINESS:**

**1. 2024-07 BZA – 1107 OTTAWA STREET**

Hold a public hearing for Case No. 2024-07 BZA – 1107 Ottawa Street, wherein the petitioner is seeking a variance to section 4.03 of the adopted Development Regulations to allow interior side yard setbacks of less than 6 feet.

Chairperson Kem called for the staff report.

City Planner Bethany Falvey stated the applicant, Manuel Astorga, is requesting a variance from section 4.03 of the adopted Development Regulations to allow expansion of interior side setbacks of less than 6'. The subject property at 1107 Ottawa Street is zoned R1-6, High Density Single Family Residential District,

and has an existing single family home on the lot. The existing structure is a legal nonconforming structure with a 0' interior side setback on the west side and a 3' interior side setback on the east side. The subject property is surrounded by other single family homes and are a mix of single lots (30' frontage) and double lots (60' frontage).

The applicant began work without a permit back in December 2023. Once the property owner came into the office, he was informed that a variance request must be sought for the proposed work that was already in progress. The Development Regulations, section 1.05.C.2 states,

*“Enlargement, Repair, Alterations. Any nonconforming structure may be enlarged, maintained, repaired or remodeled, provided however, that no such enlargement, maintenance, repair, or remodeling shall either create any additional nonconformity or increase the degree of existing nonconformity of all or any part of such structure.”*

The proposed work enlarges the nonconforming and thus a variance was requested.

Notification was sent to property owners within 200' of the subject property, as required by Kansas statute. Since notifications were mailed, staff received one call asking for clarification on the project and process. Staff also received a voicemail this afternoon by a neighbor asking if the variance would affect his property. Staff returned the call, and left a voicemail with the public hearing information.

Chairperson Kem asked for questions about the policy report.

Chairperson Kem asked for clarification that the additions are flush with the side of the house.

Ms. Falvey responded in the affirmative.

Planning Assistant Michelle Baragary stated the additions are increasing the nonconformity.

Commissioner Ramirez asked if there are any issues as far as bringing the additions back towards the alley.

Ms. Falvey stated the back of the additions meet the rear setback. It is increasing the nonconformity with the side yard setbacks that is the issue.

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

The applicant, Manuel Astorga, 4315 NE 49<sup>th</sup> Street, Kansas City, MO, apologized stating this is his first house, and he did not know that extending the house straight back would cause an issue. His plan was to fix up the house, move in, and sell his house in Missouri. Construction on the project was stopped when City staff discovered renovations were occurring without a permit.

Mr. Astorga further stated he spoke with Mr. Simon his neighbor at 1109 Ottawa, and Mr. Simon does not have an issue with the project. The neighbors on the right are three women, and Mr. Astorga feels uncomfortable approaching three women so he has not asked them about the project. He stated if he has to remove the additions, then he would need to bring the whole house down. When he purchased the house, it was in really bad shape. The roof had seven layers on it, and he had to build the foundation from the ground up and get the house square, which is why the house additions were added.

Commissioner Horvath asked if the applicant has an affidavit from his neighbor stating he does not have an issue with the additions.

Mr. Astorga responded he does not. Mr. Simon Bernal owns the Acapulco Mexican Restaurant, and Mr. Astorga asked if Mr. Simon could come to the meeting but Mr. Simon could not attend the meeting due to work.

Commissioner Horvath stated it is not necessary for people to come to the meeting but it is necessary for the applicant to bring a statement from neighbors stating they do not have an issue with the project.

Mr. Astorga stated he did not know to do that, and asked what he needs to do to make sure everything is correct.

Commissioner Horvath asked if there is a new roof on the house now.

Mr. Astorga stated he was going to put a new roof on but the city told him to stop work, and he does not want to put more money into the house if he will not be able to keep the house additions.

David Anaya, 1108 Ottawa, stated he owns the house across the street but does not think this project will have any effect on his property so he has no issues with the additions on the house.

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 4-0**

**All board members voted in the affirmative.**

**Chairperson Kem stated this criteria is the one she normally has the most issues with because it does talk about how it is not created by the action or actions of the property owner. However, the policy report does talk about the narrowness of the lot, and this is an exceptionally narrow lot, which is none of the owner's creation.**

- 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 these 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 0' on the west side and 3' on the east side at 1107 Ottawa Street.

Chairperson Kem stated based on the findings, the variances for Case No. 2024-07 BZA is granted for an interior side yard setback of 0' on the west side and 3' on the east side, with no conditions.

With no further discussion, Ms. Falvey stated there is one item on the agenda for the March 18, 2024 meeting.

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

The meeting adjourned at 6:17 p.m.

Minutes taken by Planning Assistant Michelle Baragary.

