

LEAVENWORTH BOARD OF ZONING APPEALS

Monday, March 18, 2024 – 6:00 P.M.
COMMISSION ROOM, CITY HALL
LEAVENWORTH, KANSAS

AGENDA

CALL TO ORDER:

1. Roll Call/Establish Quorum
2. Approval of Minutes: February 26, 2024 **Action:** Motion

OLD BUSINESS:

None

NEW BUSINESS:

1. **2024-08 BZA – 1031 METROPOLITAN**
Hold a public hearing for Case No. 2024-08 BZA – 1031 Metropolitan Ave., 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 business name or owner.

ADJOURN



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

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 49th 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.

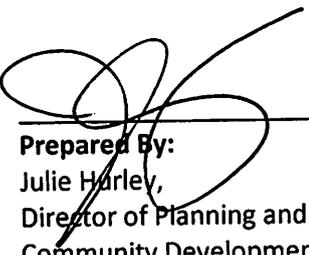
The meeting adjourned at 6:17 p.m.

Minutes taken by Planning Assistant Michelle Baragary.

DRAFT

**Board of Zoning Appeals Agenda Item
Variance Request
2024-08 BZA
1031 Metropolitan Avenue**

MARCH 18, 2024



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

SUMMARY:

Consider a variance from section 8.15 of the adopted Development Regulations to allow the use of an existing nonconforming sign after a change in business name or owner.

DISCUSSION:

The applicant, Infinity Signs, LLC, is requesting a variance from the above noted section of the adopted Development Regulations to allow the use of an existing nonconforming sign after a change in business name or owner for the property located at 1031 Metropolitan Ave.

The subject property is zoned GBD, General Business District and is occupied by a Sunoco gas station, which is an allowed use in the GBD zoning district. There is one existing freestanding sign associated with the property, which is currently located on the northwest corner of the property, along the west property line. 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 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 without issuance of a variance. The gas station changed names in the summer of 2023 and changed signs without permits. A permit was sought in September 2023, but denied because of the above-mentioned section.

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, 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 of the adopted Development Regulations to allow the use of an existing nonconforming sign after a change in business name or owner at 1031 Metropolitan.



BOARD OF ZONING APPEALS
CITY OF LEAVENWORTH, KANSAS

OFFICE USE ONLY

Case No.: 2024-08 BZA

Application No. 14935

Fee (non-refundable) \$350.00

Filing Date 2-2-24

Hearing Date 3-18-24

Publication Date 2-21-24

PETITION

Property Zoning: _____

Location of Subject Property: 1031 Metropolitan Ave, Leavenworth, KS 66048

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

Petitioner: Infinity Signs, LLC

Petitioner Address: 4900 Lister Ave Kansas City, MO 64130

Email: permits@infinitysign.com Telephone: 816-252-3337

Petitioner's Interest in Property: Sign Install

Purpose of Petition: Sign Installation - Variance to allow use of existing nonconforming sign after a change in business name or owner

Appeal of Administration Decision ~~Denied~~ Date of Decision 10-30-23
Section 11.03.A

Variance: 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): Sam Morani sammorani@yahoo.com 913-244-7267

Signature: SEE ATTACHED Date: _____

State of _____)

County of _____)

Signed or attested before me on _____ by _____

Notary Public: _____

My appointment expires: _____ (Seal)

NOTE: All signatures must be in black or blue ink. Signature of owner(s) must be secured and notarized. Check list below...	
<input type="checkbox"/>	Supporting documentation: Site plan, plot plan, a drawing and any other pertinent data
<input type="checkbox"/>	Full legal description of subject property obtained from the Register of Deeds Office (913-684-0424)
<input type="checkbox"/>	Certified list of property owners within two hundred (200) feet of the subject property – County GIS Department 913-684-0443
<input type="checkbox"/>	A filing fee of Three Hundred- fifty dollars (\$350)

BOARD OF ZONING APPEALS
CITY OF LEAVENWORTH, KANSAS

OFFICE USE ONLY **BZA**

Case No.: _____
Application No. _____ \$350.00
Fee (non-refundable) _____
Filing Date _____
Hearing Date _____
Publication Date _____

PETITION

Property Zoning: _____
Location of Subject Property: 1031 Metropolitan Ave, Leavenworth, KS 66048
Legal Description: (Attach full legal description provided by the REGISTER OF DEEDS OFFICE)
Petitioner: Infinity Signs, LLC
Petitioner Address: 4900 Lister Ave Kansas City, MO 64130
Email: permits@infinitysign.com Telephone: 816-252-3337
Petitioner's Interest in Property: Sign Installation
Purpose of Petition: To install peicer replacement

Appeal of Administration Decision Denied Date of Decision 10-30-23
Section 11.03.A
 Variance: 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): Sam Morani sammorani@yahoo.com 913-244-7267
Signature: _____ Date: 1/23/24
State of Kansas)
County of Leavenworth)
Signed or attested before me on _____ by Sam Morani
Notary Public: _____
My appointment expires: 11/14/25

SUSIE ZANATTA
Notary Public State of Kansas
11/14/25

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 (913-664-0424)
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)

Board of Zoning Appeals 1 Application

Existing Sign



Sign is H= 6' 9" W= 9' 6"
Total= 66.86 sqft
OAH is 16'

2 sided pylon we would be replacing the face

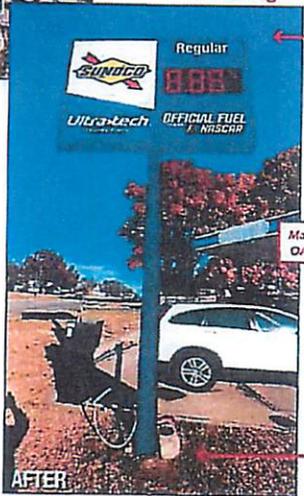
DAY



Rendering
The graphic on this sign is a rendering of the actual sign. It is not a photograph of the actual sign. It is a computer-generated image. It is not a photograph of the actual sign. It is a computer-generated image.

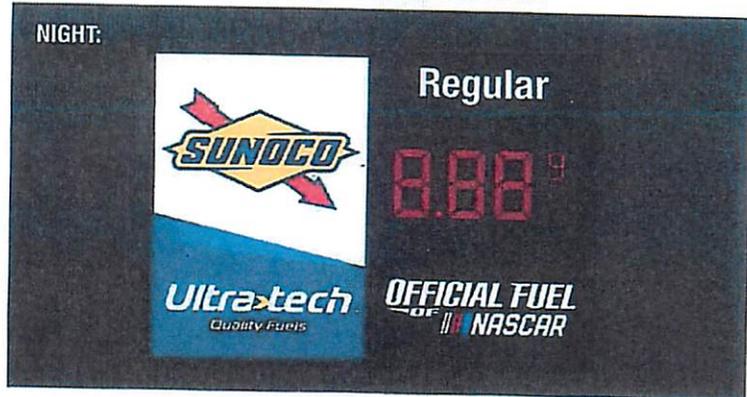
NOTE: Sunoco logo to be street justified on both sides

New Sign



Maintain
OAH 16'

NIGHT:



NOTE:
Final dimensions to be determined by Final Engineering

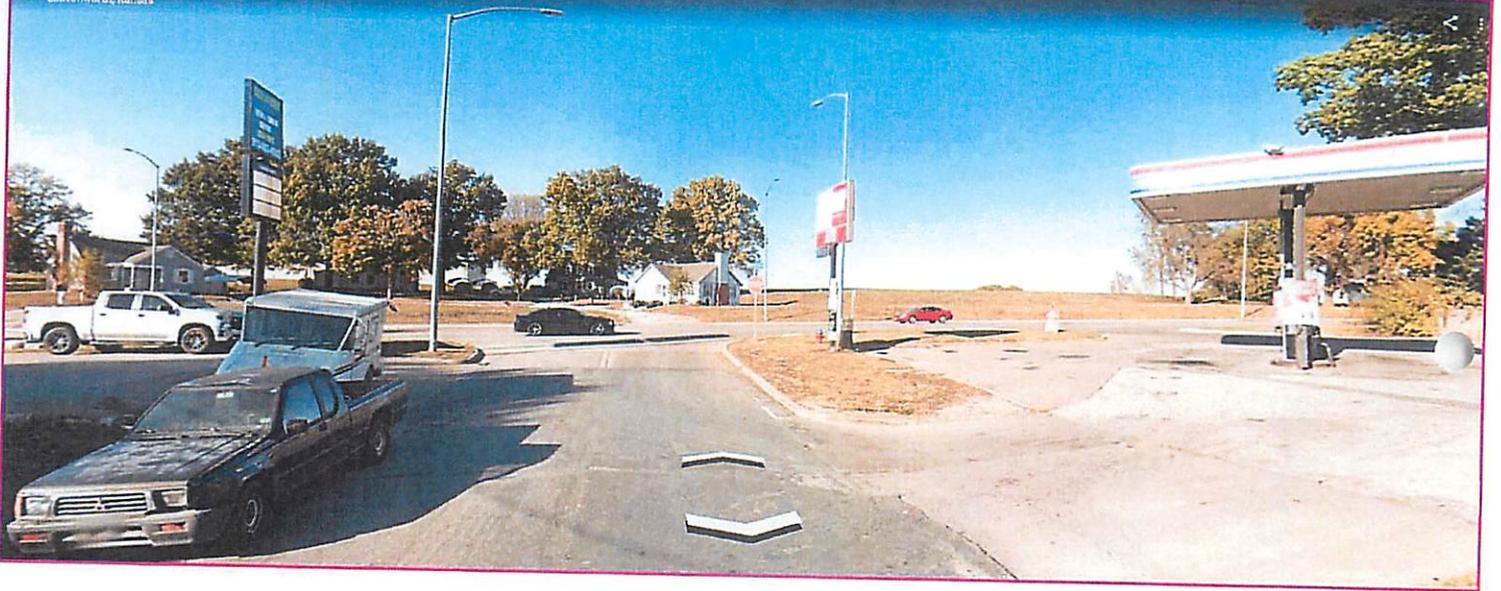
<p>Everbrite</p> <p><small>DISCLAIMER: Rendering is for informational purposes only and not intended for actual construction. All rights reserved. Everbrite LLC. All rights reserved. This document is the property of Everbrite LLC. Any disclosure to a third party is expressly prohibited.</small></p>		<p>Customer Approval: Graphics and colors on file will be used unless otherwise specified by customer. Please review drawing carefully. By signing below, you agree to graphics as shown above, and to location of sign as shown. Please return signed copy back to Everbrite.</p>	
<p>Customer: SUNOCO</p> <p>Project No: 478520-0 A</p> <p>Date: 12/07/22</p> <p>Location & Site No: 1381 Metropolitan Ave, Leavenworth, KS 66048 6465</p>	<p>Scale: 3/8" = 1'</p> <p>Drawn By: T. Heesen</p>	<p>Description: Sunoco New Image — Combo Sunoco w/ UT / 1P18R / OFN</p> <p>Revised: _____</p> <p>Revised: _____</p>	<p>CUSTOMER SIGNATURE _____</p> <p>DATE _____</p> <p>LANDLORD SIGNATURE _____</p> <p>DATE _____</p>

1031

1101 US-73
Leavenworth, Kansas



1114 N 11th St
Leavenworth, Kansas



We would not be moving the existing pole just replacing the face on the pole



BZA 2024-08 - 1031 Metropolitan



3/5/2024, 11:01:45 AM

1:564

 Parcels_Current

 Leavenworth City Limits

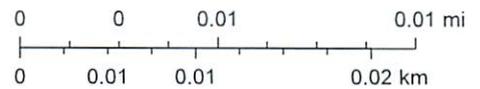
 Buildings

 City Right-of-Way

 Address (Points)

 RoadCenterline

 Ft Leavenworth Military Installation



Esri, HERE, Garmin, (c) OpenStreetMap contributors, and the GIS user community

