



BOARD OF ZONING APPEALS MINUTES

MONDAY, April 22, 2019, 6:00 P.M.

COMMISSION ROOM, CITY HALL

LEAVENWORTH, KANSAS

The Leavenworth Board of Zoning Appeals (BZA) met Monday, April 22, 2019. It was determined a quorum was met with the following board members present: Dick Gervasini, Jan Horvath, Ron Bates and Kathy Kem. Mike Bogner was absent. Staff members City Planning Director Julie Hurley and Administrative Assistant Michelle Baragary were present.

Vice Chairman Gervasini called the meeting to order at 5:57 p.m. and called for the first item on the agenda; approval of minutes from February 22, 2019. Mr. Horvath moved to accept the minutes with the necessary typo correction on page 1, seconded by Ms. Kem and approved by a vote of 4-0.

The Vice Chairman called for the next item on the agenda – **Case No. 2019-04 BZA – 1718 Seneca Street – Variance Request** - and requested the staff report.

Planning Director Julie Hurley addressed the board stating the applicant, Virginia Cornelius, is requesting a variance from section 4.03 of the adopted Development Regulations to allow a front setback of less than 25'. The subject property is zoned R1-9, Medium 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 R1-9 zoning district requires a minimum front yard setback of 25'. The existing house has a front setback of 20' and is considered legal non-conforming. The applicant is proposing to construct an 8' by 20' covered front porch on the front of the house, which would result in a front setback of 12'.

Section 4.03 of the Development Regulations states the following:

Front Yards. In areas where parcels were created previous to the adoption of Subdivision Regulations in July 1966, where structures have been built observing a setback other than the setback required by the applicable Zoning District, new structures shall observe the following setback:

- a. Front setbacks may be the average setback of all lots within 150 feet of either side of the lot, but along the same block.*

There are four houses along the same block within 150 feet of either side of the subject property, with an average setback of 17'. The proposed addition would result in a front setback of 12', or 5' less than the average of the surrounding lots.

Ms. Hurley asked for questions regarding the staff report.

Mr. Bates asked if the average setback is calculated to the face of the house or to any structure that comes out, such as a slab of concrete.

Ms. Hurley stated it is to the building or to a covered front porch. If there is an uncovered, unenclosed front porch then that porch would not be considered. But if there was a covered front porch, then it would be measured to the covered front porch. Furthermore, the measurement is from the front property line (the red line on the map) not from the curb.

Ms. Kem asked if any of the houses included in calculating the average setback, asked for or received a variance for the front setback

Ms. Hurley stated they have not requested or received a variance. She believes the front porch at 1722 Seneca may have been an addition some years prior but she could not find any records of that. The subdivision was platted in 1960.

Ms. Kem asked what the setback is for 1722 Seneca.

Ms. Hurley responded the setback for 1722 Seneca is 12'.

Mr. Gervasini stated the porch at 1722 Seneca appears to have been constructed since 1960. Possibly constructed in the past 5-10 years.

The applicant, Virginia Cornelius, stated the covered porch at 1722 Seneca was built in 2018.

Ms. Hurley stated the city does not have record of a building permit for that. So if it was constructed in 2018, it was done so illegally.

Ms. Kem asked if the proposed porch will be covered.

Ms. Hurley responded in the affirmative. Ms. Hurley brought up a street view of the property located at 1722 Seneca. The covered front porch was depicted in the street view with a capture date of July 2013.

Ms. Cornelius stated the porch on the street view is not accurate of what is there today. The owners added on to the covered porch.

With no further questions, Vice Chairman Gervasini opened the public hearing.

The applicant, Virginia Cornelius, approached the board stating she has been saving for 10 years to build the proposed covered porch. She is trying to do this the right way by requesting the variance. Ms. Cornelius referred to the site plan indicating she would like her front porch to align with the neighboring property at 1722 Seneca. The covered porch will have an open railing as to not affect the line of site for vehicles. Furthermore, the porch will not adversely affect the public health, safety, morals or order.

Ms. Cornelius further stated the neighbors at 1722 Seneca moved in in 2017. They recently tore down their covered porch and built a new larger covered porch. She would like her porch to coincide with the dimensions of her neighbor's porch.

Mr. Horvath asked if the applicant has spoken with her neighbors about installing a covered front porch to her property.

Ms. Cornelius stated she has spoken with five different neighbors and no one had any objections.

Mr. Bates asked if the applicant considered a porch that would not go into the required setback.

Ms. Cornelius stated the original plan was to have a 12' by 20' covered porch. When city staff informed her she could not have a 12' by 20' porch she adjusted the size to the size of her neighbor's, which is 8' x 20'.

With no further discussion among the commissioners, Vice 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 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.*

Vote 0-4

All board members voted in the negative.

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

Vote 3-1

Kathy Kem disagreed.

- 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 0-4

All board members disagreed. Kathy Kem stated she appreciates the applicant's willingness to improve her property, however, she is having a hard time getting past these requirements for a variance the way the ordinance is written. Ms. Kem does not feel as though she can agree with these provisions and uphold the requirements of the zoning ordinance.

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

Vote 0-4

All board members disagreed.

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.

Ms. Hurley said that three out of the five criteria were not met, therefore, the variance request is denied. The options for the property owner are 1) to install an open unenclosed porch may come into the front setback up to 10' but no closer than 15' to the front property line, this would allow the property owner to construct a deck that can come 5' out from the house but must be open to the sky, 2) install a 3' covered porch or 3) appeal the board's decision to District Court.

Vice Chairman Gervasini asked the applicant if she understood her options.

Ms. Cornelius stated she does not feel like she is being treated fairly compared to her neighbor since they build their porch last year. Since her neighbor was allowed to build their porch, she wants to build her porch the same way.

Ms. Hurley stated she is not sure what the neighbors did last year since there were no building permits. However, going back to 1998 on the GIS map, the porch on the neighbor's house looks the same size as it does on the current GIS map.

Ms. Cornelius stated the neighbors tore the entire porch off last year and rebuild a brand new covered porch.

Ms. Hurley stated that may be the case but it appears to look the same size now as it did in 1998. Ms. Hurley cannot comment as she did not see the work that was done. But going back to the aerial

views from 1998 it looks to be the same size and that would have been built under different regulations, whenever it was built.

Ms. Cornelius stated she should have taken a picture because it is not the same dimensions as it was before it was rebuilt.

Mr. Gervasini asked how wide the proposed covered porch can be to match the neighbor's line.

Ms. Hurley stated it can come out 3' from the house to meet the average setback and would need to come out 8' to line up with the neighbors porch. However, the way the Development Regulations are written it must meet the average of the lots within 150' on either side of the property. The average is a 17' setback. It is not just based off immediately adjacent neighbor property. The porch can come out 5' if uncovered and open to the sky.

Ms. Kem stated the board sympathizes with the applicant's dilemma but unfortunately, the way the ordinance is written their hands are tied. There are no extenuating circumstances that will allow the board to grant more than what the ordinance will allow you to do.

Ms. Cornelius asked if the porch can be 5' from the house.

Ms. Hurley stated an uncovered porch can extend 5' from the house.

Mr. Gervasini stated essentially that would be a deck with a railing.

Ms. Cornelius stated she would be fine with a 5' x 20' uncovered porch. She further asked what she would need to do to proceed with that.

Ms. Hurley stated she will need to get a building permit.

Vice Chairman Gervasini stated 2019-04 BZA is denied and called for a motion. Mr. Horvath moved to deny the request for the variance from the Development Regulations to all a front setback of less than 25', seconded by Mr. Bates and carried by a unanimous vote 4-0.

With no further business, Vice Chairman Gervasini asked for a motion to adjourn. Mr. Horvath moved to adjourn, seconded by Mr. Bates and passed by a unanimous vote 4-0.

The meeting adjourned at 6:27 p.m.

JH:mb