



BOARD OF ZONING APPEALS MINUTES
MONDAY, February 24, 2025, 6:00 P.M.
COMMISSION ROOM, CITY HALL
LEAVENWORTH, KANSAS

CALL TO ORDER:

Board Members Present

Ron Bates
Kathy Kem
Daniel Bolling
Jan Horvath
David Ramirez

Board Member(s) Absent

City Staff Present

Michelle Baragary
Kim Portillo

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

Chairperson Kem asked if there were any changes to the Agenda. Planning and CD Director Kim Portillo responded yes, election of officers and a Special Recognition.

APPROVAL OF MINUTES: November 18, 2024

Chairperson Kem asked for comments, changes or a motion on the November 18, 2024 minutes to present for approval. Commissioner Horvath offered a motion to approve the minutes as presented, seconded by Commissioner Ramirez and approved by a vote of 5-0.

OLD BUSINESS:

None

NEW BUSINESS:

1. ELECTION OF OFFICERS

Commissioner Horvath nominated Commissioner Bates for Chairman, seconded by Commissioner Bolling. Chairperson Kem called for a vote. All in favor 5-0.

Commissioner Horvath nominated Commissioner Bolling for Vice Chairman, seconded by Commissioner Ramirez. New Chairman Ron Bates called for a vote. All in favor 5-0.

2. **RECOGNITION OF KATHY KEM (RESIGNING)**

Ms. Portillo gave Special Recognition to Commissioner Kem for her service with the Planning Commission and Board of Zoning Appeals. Commissioner Kem announced to all present that this will be her last meeting as a member of the Board.

3. **2025-01 BZA – 601 TOPEKA AVE**

Hold a public hearing for Case No. 2025-01 BZA – 601 Topeka Ave., wherein the applicants are seeking a variance from Section 6.08 of the adopted Development Regulations to allow a solid wood fence exceeding 6 feet above the natural contour of the ground in the R1-9, Medium Density Single Family Residential District.

Commissioner Kem called for the staff report.

Planning Director Kim Portillo provided the Board with an overview of the application. She stated that 601 Topeka is a property approximately 1.8 acres in size and residentially developed with a single family home and one accessory structure. The applicant was approved to build a wood picket fence up to 6' in height in the summer of 2024. Upon completion of the fence, staff noticed that portions of the fence exceeded the approved and permitted 6' height. The applicant is seeking a variance to allow the existing fence to remain at a maximum height of 7'3".

Ms. Portillo stated that public notice was provided and no comments were received. She noted that the applicant has provided responses to criteria for approving a variance, which is included in the agenda packet.

Ms. Portillo showed an aerial image and photos of the property and fence in question.

Commissioner Horvath asked what the measurements of the fence are. He commented that he sees the applicant's hand at a certain height but the measurement is above the hand and that when the applicant was at the other end of the fence, he thought the applicant measured to the top of the post. Looking closer at the photo, Commissioner Horvath indicated it looked like the applicant was measuring something different.

Ms. Portillo answered that the maximum height of the current fence is 7'3".

Commissioner Ramirez said in the applicant's letter that development regulations allow up to 96". He asked for clarity.

Ms. Portillo responded that the 96" height regulation is for placement around a pool. The applicant included a pool on his site plan but there isn't a pool in place at this time. If there is a pool, the fence can be up to 96" and comply with that specific section of the Development Regulations regarding fences around pools. Commissioner Ramirez asked how far out this potential pool would be in place.

Commissioner Kem asked if there was an intent to extend the same fence along the side property line or just the front.

Ms. Portillo deferred to the applicant but it is her understanding this would not be the case because of the creek that runs along the side of the yard.

Chairman Bates opened the public hearing.

Mr. Jason Murphy (applicant/property owner) approached the podium and stated his name. Mr. Murphy offered to field questions and clarify the design. Mr. Murphy stated that they chose a horizontal plank because of the wind, and also chose 6x6 timbers to withstand the wind. He stated they're in a lower area but get constant wind in that part of the property. He continued by saying they were trying to keep the fence level all the way across for aesthetics. Two gates cover a 16' area and needed reinforcement. The purpose of the fence is to contain two large dogs.

Mr. Murphy stated that the Board had voted on the shed late last year and it was filled with his in-law's possessions. He stated his father-in-law has dementia and feels like they will have to live with them.

Commissioner Kem had a further question about the fence. Commissioner Kem asked staff if the applicant intended to take the fence down the side if it would require a future variance.

Mr. Murphy said they would not be seeking above the 6' height for that. He stated that they are thinking of building a farm fence with posts and 2x2 square metal fence (cattle fencing) to keep the dogs in until they are able to go back to their owner in 6 or 7 months.

Commissioner Ramirez asked Mr. Murphy if he is planning for the above ground pool and if he planned to have safety fencing as well. Mr. Murphy said they would put fencing along the creek so no one can walk up and enter the pool. He said yes, the whole area would be fenced in.

Commissioner Horvath asked if the fence would be 75" all the way across, that it looks like Mr. Murphy's property has some degradation where the ground drops away and that the photo gives the impression it's taller at the end.

Mr. Murphy stated the part next to the house is just under 6' and it depends if you're measuring the finial or the decorative part on top of the post, that the City is considering the decorative part as a factor in the overall height of the fence. The finial is under 6' at the house and the top of the finial at the creek is the additional 15" (7'3").

Commissioner Ramirez asked if the gates were for access to the yard. Mr. Murphy stated they were for lawn equipment.

With no one else wishing to speak, Chairman Bates closed the public hearing and called for discussion among the commissioners.

With no further discussion, Chairman Bates 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 5-0

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 5-0

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 2-3

Vice Chairman Bolling and Commissioner Horvath voted in the affirmative. Chairman Bates, Commissioner Kem and Commissioner Ramirez voted in the negative.

d) That the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare.

Vote 5-0

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 4-1

Vice Chairman Bolling and Commissioners Kem, Horvath and Ramirez voted in the affirmative. Chairman Bates voted in the negative.

3. In granting variance, the Board may impose 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 4.03 of the Development Regulations to allow a solid wood fence exceeding 6' in height at 601 Topeka Avenue.

Chairman Bates stated that based on the findings, the variance for Case No. 2025-01 BZA is denied and there is no need to talk about special conditions.

Chairman Bates asked if there was any other business to be taken up. There was no other business. Ms. Portillo stated there are no applications for the next meeting, so there won't be a meeting next month.

Chairman Bates called for a motion to adjourn. Commissioner Horvath moved to adjourn, seconded by Commissioner Kem and passed 5-0.

The meeting adjourned at 6:25 p.m.

Minutes taken by Administrative Assistant Katherine Criscione.