



BOARD OF ZONING APPEALS MINUTES
MONDAY, May 19, 2025, 6:00 P.M.
COMMISSION ROOM, CITY HALL
LEAVENWORTH, KANSAS

CALL TO ORDER:

Board Members Present

Ron Bates
Jan Horvath
David Ramirez

Board Member(s) Absent

Daniel Bolling

City Staff Present

Michelle Baragary
Kim Portillo
Katherine Criscione

Chairman Ron Bates called the meeting to order at 6:08 p.m. and noted a quorum was present.

APPROVAL OF MINUTES: February 24, 2025

Chairman Bates asked for comments, changes or a motion on the February 24, 2025 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 3-0.

OLD BUSINESS:

None

NEW BUSINESS:

1. 2025-05 BZA – 3004 SOMERSET DR.

Hold a public hearing for Case No. 2025-05 BZA – 3004 Somerset Dr., wherein the applicants are seeking a variance from Section 4.03 of the adopted Development Regulations to allow a deck that is projecting into a required rear yard to be more than 36 inches above grade, in the R1-6, High Density Single-Family Residential zoning district.

Chairman Bates called for the staff report.

Associate Planner Michelle Baragary stated the applicants, Charles and Betty Hanson, are requesting a variance from the above noted section of the adopted Development Regulations to allow a deck to project into the required rear yard 8 feet, and be more than 36 inches above grade at 3004 Somerset Drive, a single-family home zoned R1-6, High Density Single-Family Residential District.

She also stated that 3004 Somerset Dr. is a property approximately .18 acres in size and is occupied by an existing single-family home. The existing deck is 8'x18' (8' in depth, 18' wide). It insets into the home and no part of the existing deck projects past the back wall of the home. The proposed deck is 16'x18' and 10' above grade. The 8' addition will be open to the sky with no roof or wall. The deck will project into the required rear yard 8'. The distance from the outer edge of the deck to the rear yard property line is 16'.

Section 4.03 of the Development Regulations states:

An open unenclosed deck or paved terrace may project into a required rear yard for a distance not exceeding 10 feet, but no closer to the property line than 15 feet in any case. A deck or paved terrace under this exception may not be more than 36 inches above grade surrounding the structure and shall be opened to the sky with no roof or wall structure (except reasonable railing).

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

Chairman Bates opened the public hearing for comment and asked if there was anyone present to speak for or against the application.

Mr. Ashley Brinkman (contractor) approached the podium and stated his name and the property address of 3004 Somerset. Mr. Brinkman stated that he believes this case is outside of the norm and they are still staying outside of the 15' setback, even with the proposed addition of 16' to the rear yard. Mr. Brinkman offered to field questions.

Commissioner Horvath stated the description mentions nothing with regard to the deck being extended 8' from the structure. He wanted to know if there would be a railing or some other type of structure too.

Mr. Brinkman said yes, a 36" high railing is included in the plans.

Commissioner Horvath wanted clarification that the railing would be on both sides and across the front of the deck.

Mr. Brinkman said yes, it would block the entire perimeter.

Chairman Bates asked if the material being used is wood or if it was vinyl.

Mr. Brinkman said he wasn't sure but they intend to have a handrail to block all sides.

Commissioner Ramirez asked if a stairway would be included.

Mr. Brinkman answered no, there are no plans to include stairs.

Commissioner Ramirez clarified that it's being extended to the end of the concrete.

Mr. Brinkman responded yes.

Chairman Bates asked if anyone else wished to speak.

The applicant, Betty Hanson, said she didn't understand what the problem is, that it's just a balcony.

Ms. Baragary clarified the reasoning for the need for the variance. She also pointed out that one of the factors is that the applicant's entire rear yard is required rear yard. She called attention to the neighbor's deck that is also in the rear yard but it's located more on the side. The applicant's proposed deck is more centered in the rear yard.

Chairman Bates asked if the neighbor's decks are elevated and if they are 8' to 10'.

The applicant, Ms. Hanson replied yes, but the neighbor's houses are two story and the decks are coming off the first floor. The applicant's will be a balcony.

Chairman Bates asked if the neighbor's decks were more than 36" of the ground. The applicant responded yes.

Commissioner Ramirez asked Mr. Brinkman what type of posts he'd be using and the size. Mr. Brinkman responded 6x6 pressure treated posts.

Commissioner Horvath asked about the distance between the deck and the property line being 16'. He wanted to know if a variance is required to construct it at the distance that would be between the deck to the property line.

Ms. Baragary responded it would be 16'.

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 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 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. 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;

This property is set on a particularly small lot, and is not normal for the district. In addition, the existing deck is inset into the house rather than protruding past the edge of the house, so the existing 8ft does not actually enter into the rear yard.

Vote 3-0

All board members voted in the affirmative.

2. That the granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents;

Granting this variance will not create any adverse effects on adjacent property owners. There will still be more than 15ft of space to the rear setback, and it will increase the value of the neighborhood.

Vote 3-0

All board members voted in the affirmative.

3. 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;

Strict application of the provisions of the development regulations would result in the neighborhoods value being kept lower unnecessarily, and would prevent these home owners from having a deck that extends out behind the house just like a normal house would.

Vote 2-1

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

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

The deck will not have any adverse effect on anyone in the area, it will have ample distance to the other property lines and will be a visual upgrade.

Vote 3-0

All board members voted in the affirmative.

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

The variance will not be opposed to the general spirit and intent of the development regulations as it does not cause any danger or disturbance to anyone, while also being a positive addition to the neighborhood. The regulations seek to ensure that developments are done safely and that they do not cause hardship to others. None of what we are wanting to do will have any negative effects.

Vote 3-0

All board members voted in the affirmative.

ACTION:

Approve or deny the request for a variance from section 4.03 of the Development Regulations to allow a deck to project 8' into the required rear yard, and to be more than 36 inches above grade at 3004 Somerset Drive.

Chairman Bates stated based on the findings, the variances for Case No. 2025-05 BZA is granted with no restrictions, conditions or safeguards.

Chairman Bates asked if there was any other business to be taken up. There was no other business. Ms. Baragary said there will be one item on the agenda for next month and that there would be a meeting next month.

Chairman Bates called for a motion to adjourn. Commissioner Horvath moved to adjourn, seconded by Commissioner Ramirez, and passed by a vote of 3-0.

The meeting adjourned at 6:25 p.m.

Minutes taken by Administrative Assistant Katherine Criscione.