



BOARD OF ZONING APPEALS MINUTES
MONDAY, June 16, 2025, 6:00 P.M.
COMMISSION ROOM, CITY HALL
LEAVENWORTH, KANSAS

CALL TO ORDER:

Board Members Present

Daniel Bolling
Jan Horvath
Ted Davis

Board Member(s) Absent

Ron Bates
David Ramirez

City Staff Present

Michelle Baragary
Kim Portillo
Katherine Criscione

Vice Chairmanman Daniel Bolling called the meeting to order at 6:00 p.m. and noted a quorum was present.

APPROVAL OF MINUTES: May 19, 2025

Vice Chairmanman Bolling asked for comments, changes or a motion on the May 19, 2025 minutes to present for approval. Commissioner Horvath offered a motion to approve the minutes as presented, seconded by Commissioner Davis and approved by a vote of 3-0.

OLD BUSINESS:

None

NEW BUSINESS:

1. INTRODUCTION OF NEW MEMBER

Commission Board welcomed new member Ted Davis. Commissioner Davis expressed his gratitude toward the staff.

2. **2025-11 BZA – 1354 Ohio Street**

Hold a public hearing for Case No. 2025-11 BZA – 1354 Ohio Street, wherein the applicants are requesting a variance to allow a reduction in the 75' minimum lot width for a property zoned R1-9, and to allow a gravel driveway in the required front yard that will lead to a paved parking area in the rear yard or a paved driveway in the front yard that will not lead to a garage, carport, alley, or rear yard parking area for the property located in the R1-9 Medium Density Single Family Residential zoning district.

Vice Chairman Bolling called for the staff report.

City Planner Michelle Baragary provided the Board with an overview of the application. She stated that 1354 Ohio Street is zoned R1-9, Medium Density Single Family Residential District, and is a vacant lot that is .34 acres in size. The property is surrounded by single-family homes, with the exception of Stoneleigh Court Apartments and the Medicalodge to the south.

The applicant, Jack Shumaker, is in the process of purchasing the vacant lot at 1354 Ohio Street, with the intention of building a single-family home on the property. The proposed home will be approximately 1,000 sqft one-story with a recessed front porch that is compatible and reinforces the overall character of the block and neighborhood.

There are two variances being voted on.

The first variance request is for a 15' reduction in the 75' lot width requirement for the R1-9 zoning district. Of the 10 properties located on the same side of the block facing Ohio Street, only 1 lot meets the 75' lot width, with the average lot width being 61'. The building line will be setback 25', which meets the front yard requirement for the R1-9 zoning district.

Commissioner Davis asked if the homes were built before the regulation was in place requiring a 75' lot width requirement.

Ms. Baragary answered yes, the homes have been there for quite some time. She added the average lot is 61'.

The second variance request is to meet the 2 off-street parking requirement for single-family homes, the applicant is requesting a variance from the driveway requirement to allow either a paved driveway that is adjacent to the front wall of the home but does not lead to a garage/carport, or to extend the existing gravel driveway to a paved parking area in the rear yard. The property directly west of the subject property has an existing nonconforming gravel driveway that leads to a detached garage in the rear yard. All of the other homes along this block have paved driveways leading to an attached garage or carport, or a detached garage in the rear yard.

The applicant has provided two options for the driveway variance. The first option is to allow a paved driveway that is adjacent to the front wall of the home but does not lead to a garage or carport. The second option is to extend the existing gravel driveway to a paved parking area in the rear yard.

The property directly to the west currently has an existing non-conforming gravel driveway that leads to a rear detached garage.

After notices were sent to property owners within 200' as required by State Statute, staff received no inquiries of concerns. Staff also provided comments to the five criteria the Commission will be voting on. If there are any questions or concerns about staff comments, they will be addressed. The applicant and the property owner are present to speak and answer questions as well.

Vice Chairman Bolling opened the public hearing, and invited the applicant and owner to approach the podium.

Mr. Jack Shumaker (applicant) approached the podium and stated his name and address of 404 Logan. He states they are proposing to build on the 60' lot, with the home being 26' wide and 40' deep. The dimensions of the home would leave a 14' setback on one side of the property and 20' setback on the other side of the property.

Mr. Shumaker stated he would like pour a concrete drive way, with the intention of building a garage on the property at a later date. He stated he intended to build a driveway similar to the property to the West.

Commissioner Davis clarified that the driveway to the West of the property had no impact on the new construction.

Ms. Baragary confirmed it was just being used as an example.

Commissioner Horvath asked if there was previously an existing home on the property that was tore down in 2012 and if utilities exist on the property.

Mr. Jim Chmidling, owner of the subject property, confirms there was a house that was taken down from the property, which is why the driveway is still visible. He does not recall sewer being put on the property, though he assumes a septic tank is there.

Commissioner Horvath stated the property would need to obtain plumbing that ties in to the City.

Ms. Baragary states that too will go through the permitting process.

Vice Chairman Bolling asked if there were any more questions or statements from the public.

Mr. Jim Chmidling approaches the podium and states his name and address of 806 N. 20th Street. He states he purchased this property in either 2020 or 2021. He states the power pole is still in place from the previous structure. He states he also had communication with previous Planners who stated it would be a legal non-conforming lot. Mr. Chmidling states he was told it is legal to build on but it is non-conforming because since then we have gone to 75' instead of 60'. He believes what Mr. Shumaker is asking for is more in line with what is in that neighborhood.

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

Commissioner Horvath asked what the staff's preference was on the driveway as far as the parking place shown on the pictures. Is it easier or does it conform and what is the staff's position on the concrete pad.

Ms. Portillo states that it is feasible to meet the code related to having a hard surface driveway that leads to a rear yard parking area, carport, or driveway; and that staff is not finding that either one of the proposed options meets all of the required criteria for a variance.

Ms. Portillo states she believes there will need to be three (3) separate votes. One for the lot width, then specify which driveway option is being reviewed, and then vote on the build.

Vice Chairman Bolling asks if there are any more questions.

Commissioner Davis requested clarification on what they just discussed, which is that staff is saying that both driveway options are not in compliance and that it is feasible for a driveway to be built that is compliant.

Ms. Portillo confirmed stating that staff's evaluation did not find unique conditions of the property, such as topographic challenges, that would make it difficult to extend the driveway to the rear yard. Furthermore, financial hardship is not a factor that can be used to justify a variance request. With that said, staff believes it is feasible to install a driveway that leads to the rear yard.

Commissioner Davis asked if the issue is with the timing of when the driveway might be installed.

Ms. Baragary responded that the Development Regulations states that when a home is constructed that is when the driveway shall be installed to meet the off-street parking requirements. You cannot build a home and then wait years to construct a driveway to meet the off-street parking requirements unless a variance is granted.

Commissioner Horvath stated that this Board could establish within the variance the sequence of that driveway being built to the standard regulation and when the pad would have to be placed as well per the regulation.

Ms. Portillo stated that would be extremely difficult for staff to track and enforce.

Commissioner Davis stated that when the home is built, a driveway must be constructed to stay compliant. It is up to Mr. Shumaker if he wants to take it all the way back to where the pad would be.

Ms. Baragary stated in order to be compliant, it has to be a paved driveway that leads to a garage, carport or rear parking area. She specified where the driveway would need to be and lead to in order to be compliant.

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

With no further discussion, Vice Chairman Bolling 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 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.*

Staff comment: The lot sits in its original configuration, with a 60' lot width that is consistent with the existing lots on the same block. The lot size is 14,856 sqft, which exceeds the minimum lot size of 9,000 sqft. All setbacks shall be met for the construction of the proposed single-family home. Staff believes the variance for the reduction in the lot width is unique to the subject property and is not created by an action of the property owner.

The property allows room for a paved driveway to lead to a garage, carport, or paved parking area in the rear yard. Staff does not believe the variance for the driveway requirement is unique to the property in question and is created by an action of the property owner or the applicant.

Lot Width: Vote 3-0

All board members voted in the affirmative.

Driveway: Vote 3-0

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.*

Staff comment: The proposed home will be compatible with the overall character of the block and neighborhood, and will not adversely affect the rights of adjacent property owners or residents.

Both of the proposed driveway options will provide a minimum of 2 off-street parking areas, and would not negatively impact neighbors with on-street parking.

Lot Width: Vote 3-0

All board members voted in the affirmative.

Driveway: Vote 3-0

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.*

Staff comment: The lot width of the subject property is in alignment with existing properties on the same block; therefore, staff believes that the strict application of the provisions of the Development Regulations related to lot width prohibit the property owner from using his property in the manner similar to that of other property in the neighborhood, and will constitute unnecessary hardship upon the property owner.

The topography of the property would not require excessive grading or other variances that would prohibit a paved driveway leading to a garage, carport, or paved parking area in the rear yard. Staff believes the strict application of the Development Regulations related to the driveway would not constitute unnecessary hardship upon the property owner.

Lot Width: Vote 3-0

All board members voted in the affirmative.

Driveway: Vote 3-0

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;*

Staff comment: The average lot width on the block is 61', and the proposed single-family one-story home will be compatible in mass and form to the existing residential homes on the block. Staff does not believe the variance for the lot width and the variance for the driveway requirement will adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare.

Lot Width: Vote 3-0

All board members voted in the affirmative.

Driveway: Vote 3-0

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.*

Staff comment: Staff does not believe that granting of the variance for the lot width reduction will be opposed to the general spirit and intent of the Development Regulations.

The intent of the driveway requirement is to improve the overall aesthetics of the neighborhood and to protect and enhance property values; therefore, staff does believe that granting of the variance for the driveway requirement will be opposed to the general spirit and intent of the Development Regulations.

Lot Width: Vote 3-0

All board members voted in the affirmative.

Driveway: Vote 3-0

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 variance request to allow a 15' reduction in the 75' lot width requirement.

Approve or deny the variance request from the driveway requirement.

Vice Chairman Bolling stated that based on the findings, the variance for Case No. 2025-11 BZA is granted with no restrictions, conditions or safeguards.

Vice Chairman Bolling asked if there was any other business to be taken up. There was no other business.

Vice Chairman Bolling called for a motion to close the meeting. Commissioner Davis made a motion to adjourn the meeting, seconded by Commissioner Horvath and passed 3-0.

The meeting adjourned at 6:43 p.m.

Minutes taken by Administrative Assistant Katherine Criscione.