



BOARD OF ZONING APPEALS MINUTES
MONDAY, September 15, 2025, 6:00 P.M.
COMMISSION ROOM, CITY HALL
LEAVENWORTH, KANSAS

CALL TO ORDER:

Board Members Present

Daniel Bolling
Jan Horvath
Ted Davis
Ron Bates

Board Member(s) Absent

City Staff Present

Michelle Baragary
Kim Portillo
Sarah Roll

Chairman Ron Bates called the meeting to order at 6:00 p.m. and noted a quorum was present.

APPROVAL OF MINUTES: August 18, 2025

Chairman Bates asked for comments, changes or a motion on the August 18, 2025 minutes to present for approval. Commissioner Horvath offered a motion to approve the minutes as presented, seconded by Commissioner Bolling and approved by a vote of 4-0.

OLD BUSINESS:

None

NEW BUSINESS:

1. 2025-15 BZA – 771 OTTAWA STREET

Hold a public hearing for Case No. 2025-15 BZA – 771 Ottawa St., wherein the applicants are requesting a variance to allow an Accessory Dwelling Unit to be occupied without the owner occupying the principal dwelling unit in the R1-6 High Density Single Family Residential zoning district.

Chairman Bates called for the staff report.

City Planner Michelle Baragary provided the Board with an overview of the application. She stated that the property located at 771 Ottawa St. is zoned RI-6 (High Density Single Family Residential District), and is currently functioning as a Residential Home-Stay (Airbnb) with an existing detached accessory

building. The owner, Carl Piekarski, intends to use the detached accessory building as an accessory dwelling unit, which will be rented. Accessory dwelling units are allowed with issuance of a Special Use Permit based on the requirements of Section 4.04 of the adopted Development Regulations:

Accessory Dwelling Units (ADUs) may be approved by Special Use Permit in any residential zoning district subject to the following conditions:

- (1) Shall be compatible with the design of the principal dwelling unit.*
- (2) Shall respect the general building scale and placement of structures to allow shoring of common space on the lot, such as driveways and yards.*
- (3) Shall not have a separate driveway entrance from the street(s) to which the property is adjacent.*
- (4) Shall be 900 square feet or smaller in size, not to exceed 33% of the floor area of the principal dwelling unit.*
- (5) Either the principal dwelling unit or the accessory dwelling unit must be occupied by the owner of the premises.*
- (6) Shall meet all building code requirements for a single family dwelling unit.*
- (7) Lots containing accessory dwelling units shall contain a minimum of two off-street parking spaces, exclusive of garage space.*

The owner has indicated that he does not intend to live in either the principal dwelling or accessory dwelling unit, and that he intends to rent both the principal and accessory units separately. In November 2022, a Special Use Permit (SUP) was issued to allow the principal dwelling at 771 Ottawa to function as a Residential Home-Stay (Airbnb) in the RI-6 zoning district. If the variance is granted, the applicant intends to continue operating the Airbnb. One of the conditions of the SUP for the Airbnb states that any guests of the property must park in the driveway or garage of the home. Per section 5.02 of the Development Regulations, the required off-street parking rate for a single-family or two-family dwelling unit is 2 per each dwelling unit, totaling 4 off-street parking spaces. Currently, there are 2 approved parking spaces used for the principal dwelling. The property allows room for a gravel-parking pad off the rear alley. The gravel parking pad shall be contained by a border, and may be a maximum of 37 feet as measured from the rear property line.

According to the submitted application, the detached accessory structure was converted to a single dwelling unit prior to the applicant purchasing the property in August 2021. Sometime after November 2022, the applicant renovated the detached accessory structure. The City has no record of the conversion or renovations of the detached accessory structure. Since building permits were not issued, staff is unaware if the renovations meet residential building codes.

There has been one SUP issued for an ADU, which occurred in 2024. The ADU was existing nonconforming, as ADUs were not specifically addressed in the Development Regulations at the time of construction of the detached structure. In 2021, a variance application was submitted to allow an ADU at a property in which neither the principal dwelling nor the accessory dwelling would be occupied by the property owner, and was denied.

If the Board were to grant the variance, staff would recommend a condition be added to require parking be installed directly off the rear alley to accommodate 2 vehicles. Additionally, a Special Use Permit would need to be approved to allow the accessory dwelling, subject to the variance.

Ms. Baragary read the staff comments to the board.

Chairman Bates asked if there were any questions.

Commissioner Davis asked if he understood correctly and staff disagrees.

Ms. Baragary commented that staff disagreed with condition (e).

Chairman Bates commented that the duplexes across the street have been established before the development regulations were adopted and wanted to verify there were no variances granted for those buildings.

Ms. Baragary confirmed that there are no active variances or Special Use Permits for those duplexes. If they were to be destroyed more than 50%, they would not be permitted to rebuild duplexes without a Special Use Permit.

Chairman Bates asked if the photos submitted were taken recently.

Ms. Baragary confirmed the photos are recent and were taken by both staff and the applicant.

Commissioner Horvath asked if staff had received any feedback or comments from neighboring properties.

Ms. Baragary stated that staff received one general inquiry. No comments were made.

Commissioner Horvath asked if the owner completed these upgrades with approved permits.

Ms. Baragary stated no permits were obtained.

Commissioner Horvath noted that electricity will need to be separated, should this variance be approved.

Ms. Baragary stated if this variance is granted, owner will be required to obtain all applicable permits and inspections.

Commissioner Davis asked for clarity on the conditions needing to be met. If the owner tried to obtain building permits for a structure such as this, would this issue be addressed that if he did not contact the Planning & Zoning Department.

Ms. Baragary confirmed that Planning & Zoning work closely together with Permits and the Planning department would intervene and still require a Board of Zoning Appeals review.

Commissioner Davis asked if staff believes that this would not bring any hardship to the owner and clarified that the Special Use Permit for the Residential Home Stay is for the primary building only.

Ms. Baragary confirmed.

Chairman Bates asks if there are any more questions, and then opened the public hearing.

Mr. Carl Piekarski approached the stand and stated he was the owner of the property. He has been working with the V.A. to help veterans with housing.

He states that he and his son in law have been renovating the shed for a veteran who needs a single place to live. Being a former compliance officer, after he discovered this is not in conformance with the

Development Regulations, he has been working with the Planning department in hopes of bringing this unit into compliance.

Commissioner Bolling asked if the main structure is the Residential Home Stay and the Accessory Dwelling Unit will be the shed for the veteran needing a home.

Mr. Piekarski confirmed the renovated shed will be the Accessory Dwelling Unit.

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

Commissioner Davis asked why the Development Regulations require the owner of the property to occupy one of the structures of an Accessory Dwelling Unit.

Director Kim Portillo explained the regulations and requirements of an Accessory Dwelling Unit.

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 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: Staff disagrees. The property is located in the RI-6 (High Density Single Family Residential District) zoning district, and is occupied by a single-family dwelling unit with an existing detached accessory structure. The lot width is 48', and lot size is 6,000 SF, which meets the development standards. The property is surrounded by single-family homes with the exception of four existing nonconforming duplexes to the north. In November 2022, the applicant applied for and was issued a Special Use Permit to allow a Residential Home-Stay (Airbnb) in the principal dwelling. When operating an Airbnb in a residential neighborhood, the Development Regulations do not allow an accessory structure located on the same lot to be rented as well. The need for the variance arises from the property owner's desire to increase revenue.

Vote 0-4

All 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.*

Staff comment: Staff agrees. Four existing nonconforming duplexes are located on the north side of Ottawa, across the street from the subject property. The ADU would be an additional housing option for a single-person.

Vote 4-0

All 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: Staff disagrees. The Development Regulations offers several rental uses in residentially zoned neighborhoods, such as Bed & Breakfast Inns, Residential Home-Stay, and Boarding & Rooming Houses, all of which require the issuance of a SUP. Each of the stated uses have specific regulations and requirements to meet the intent of that use. Furthermore, the Development Regulations allows two-family dwelling units in the RI-6 zoning district with the issuance of a SUP as well. A primary difference between ADUs and two-family dwelling units is that ADUs are accessory and subordinate to the principal dwelling unit. Of the many rental options offered in the Development Regulations, the applicant chose the Residential Home-Stay

Vote 1-3

Commission Horvath voted in the affirmative. 3 members voted in the negative

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

Staff comment: Staff agrees. Four existing nonconforming duplexes are located on the north side of Ottawa Street, across the street from the subject property. Staff does not believe the variance desired will adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare. However, since permits were not issued for the conversion and renovations of the detached building, should the variance be

granted, the applicant shall acquire all necessary permits and inspections to ensure code compliance before renting the space as a living unit.

Vote 4-0

All 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: The Development Regulations offers several rental uses in residentially zoned neighborhoods, such as Bed & Breakfast Inns, Residential Home-Stay, and Boarding & Rooming Houses, all of which require the issuance of a SUP. Each of the stated uses have specific regulations and requirements in order to meet the intent of that use. ADUs are specifically intended to allow, for example, an elderly parent or independent living that is accessory and subordinate to the principal dwelling occupied by the property owner. The ADU cannot be accessory or subordinate to a principal dwelling that is operating as an Airbnb.

Vote 0-4

All members voted in the negative.

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 an accessory dwelling unit on a property in which neither the principal nor accessory dwelling are occupied by the owner of the property, as described herein and subject to subsequent approval of a Special Use Permit.

Chairman Bates stated that based on the findings, the variance for Case No. 2025-15 BZA is denied.

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

Chairman Bates called for a motion to close the meeting. Commissioner Horvath made a motion to adjourn the meeting, seconded by Commissioner Bolling and passed 4-0.

The meeting adjourned at 6:34 p.m.

Minutes taken by Planning Assistant Sarah Roll.