



**BOARD OF ZONING APPEALS MINUTES**  
**MONDAY, November 17, 2025, 6:00 P.M.**  
**COMMISSION ROOM, CITY HALL**  
**LEAVENWORTH, KANSAS**

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**CALL TO ORDER:**

**Board Members Present**

Daniel Bolling  
Jan Horvath  
Ron Bates  
Ted Davis

**Board Member(s) Absent**

**City Staff Present**  
Scott Peterson  
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: October 20, 2025**

Chairman Bates asked for comments, changes or a motion on the October 20, 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. BOARD OF ZONING APPEALS TRAINING SESSION**

**Basics of the BZA:**

- Quasi-judicial body created under K.S.A. 12-759 – meaning any decision the board makes could be appealed in court
- Locally adopted procedures for the BZA can be found in Appendix A, Article 2, Section 7, and Article 11 of the Development Regulations.
- Members are appointed through City Commission
- Independent from City Commission and Planning Commission

- Protects property rights while upholding intent and purpose zoning ordinance.

### **Quasi-Judicial**

- Board should act similar to a court, not a policy making body.
- All applicants are entitled to due process, including notice, a hearing, and an impartial decision.
- Decisions must be based on facts and evidence presented in the record.
- Avoid ex parte communication. Any appeal goes to court, and use the facts and your comments for the record.

### **Key Responsibilities - Appeals**

- Appeals of staff's decision when it is alleged there has been an error in the order, requirement, decisions or determination of staff in the enforcement of the development regulations.
- BZA may affirm, reverse, or modify staff's decision.
- Focus on whether or not staff applied the code correctly.

### **Key Responsibilities - Variances**

- A specific allowance of something that goes against the zoning regulations. Requires the applicant show that strict enforcement causes unnecessary hardship due to unique conditions of the property.
- Staff provides a review/recommendation.

### **Key Responsibilities - Exceptions**

- Limited to existing non-conformities. Can be granted in two cases.
  - To allow restoration of a nonconforming structure damaged beyond limitations which would allow it to be rebuilt
  - To allow a change in use of a nonconforming structure

City Manager Scott Peterson asked the board if they knew the difference in 'Legal nonconforming' and 'Illegal nonconforming'

Commissioner Davis asked Mr. Peterson to advise.

Legal nonconforming is similar to the term "grandfathered" – meaning it no longer conforms to the zoning code, but the zoning code was adopted after the existence of the nonconformance.

Illegal nonconforming is the creation of the nonconformance after the zoning code has been written.

Commissioner Davis asked: if there is a variance request, does the staff have authority to rule on it without bringing it to the Board of Zoning Appeals?

Mr. Peterson stated it depends on the case, though it could be staff decision if it is simple enough. Though if there is a request that staff believes could do harm to a neighboring property or would be unsafe, they could request the issue to be taken to the Board.

### **Statutory Criteria for Decision Making:**

- The Board will have to find that all five of the criteria are met to grant a variance
- If you think that even one of the criteria are not met, you should deny it
- The burden of proof is on the applicant to prove that they meet all five of the criteria to be granted a variance
- Will have to determine that the property is unique and has circumstances not commonly found in the same zoning district and is not caused by an action of the property owner
  - Or the previous property owner
  - "I did not do it, the owner before me did it" would not be a valid excuse
  - "I do not have enough money to fix the problem I created" is not considered a valid excuse
  - If you buy a property that is in that state, then you have assumed the responsibility for whatever the state of that property is.
- The variance will not adversely affect the rights of adjacent property owners or residents
- The strict application of the regulations would create unnecessary hardship on the property owner requesting the variance.
  - Example: the City requires lots to be a certain length and width, if you bought a lot of land that was platted 50 years ago, that lot may not meet those requirements.
  - Example: someone wants to build a shed in back yard, but cannot meet the setbacks due to topography of their property, this would cause unnecessary hardship on the property owner.

Commissioner Davis asked why this would not be allowed to be resolved at a staff level.

Planning Director Kim Portillo explained that if they were not able to meet the setbacks, staff would not have the authority to approve it. A Variance from the Board would be required.

Mr. Peterson stated that generally, if staff recommends a variance by code of law due to staff not being able to approve the request that is in violation of the law, and staff sees that it would be an unnecessary hardship to the property owners, then staff will always bring a recommendation for approval.

Mr. Peterson also stated to pay attention when staff recommends denial because that usually means that staff does not believe the application meets the unnecessary hardship threshold. Meeting this threshold is very difficult to meet.

- The variance will not adversely affect the public health, safety, morals, order, convenience or prosperity or general welfare.
- The granting of the variance is not opposed to the general spirit and intent of the zoning regulations.
  - These are broad and could be very easy to meet than the others

### **Deeper Look on the Criteria:**

- Uniqueness:
  - Not something created by the owner or applicant
    - You cannot claim hardship that you created
  - Examples: topography or unusual lot shape or dimensions
- Rights of Adjacent Property Owners
  - Consider long-term impacts and that ownership changes
- Hardship

- Financial strain is not an unnecessary hardship
  - Cannot be self created
- Meeting all five criteria is difficult. Findings of the Board should be consistent from case to case with reasoning clearly stated on the record
  - Meeting them is difficult and should be difficult
  - If any decision is appealed, it goes to district court to rule on the five factors. If the judge finds they do not meet the five criteria, they will be turned down by the judge and it could look bad on the City
- Precedence
  - If this goes to court, the court is going to look back on how the City has ruled in the past
  - If we have allowed things in the past, that we decided to stop allowing and the zoning code has not changed, then that creates a good argument for an applicant against the City

### **Additional Considerations**

- Avoid Pre-Judging
  - Do not make up your mind before the meeting process.
  - Do not share how you will vote or what you think prior to the meeting
  - Disclose any contact from the applicant or applicant's representatives directly to you (ex parte contact)
- Recusing
  - Do not vote if you cannot vote impartially. Conflicts of interest = recuse yourself
  - Should be used only when necessary
  - Leave the meeting until the next agenda item
  - Can affect quorum

### **Appeals to District Court**

- Any person, official or governmental agency dissatisfied with a determination of the BZA may bring action in the district court to appeal the BZA's decision
  - City of Leavenworth can appeal your decision, applicant can also
- Appeals must be filed within 30 days of the decision of the board

Ms. Portillo stated staff has also additional information to review in the agenda packet, including copies of the different codes sections as they relate to the Board of Zoning Appeals, along with a summary and overview of the last five or so years of variance applications and appeals that the boards has seen.

Staff has created an analysis of the date to provide insight as to how BZA has been functioning. Ms. Portillo stated about 75% of applications are approved and about 25% are denied and that is has been pretty consistent.

Commissioner Davis asked if there is a case study of a decision made that somebody reviewed who wants to critique it as to why it was right, why it was wrong.

Mr. Peterson stated that staff does not wish to relitigate any past cases, though it is not a coincidence that he is here before the board today. He believes a previous decision was made last month was a little concerning from a staff perspective.

He also states that was a pretty egregious decision. The use of that gravel went too far in terms of how much was placed down, and that gravel will negatively impact our storm sewer, it will wash into the neighbors property. From staff perspective that did not meet any of the five requirements for the zoning appeal and more.

Mr. Peterson wanted to come here to reemphasize the importance of having that high standard for approval.

Commissioner Davis stated that he was not here last month, though that if that was the case, is it only the should somebody else from the City have come to the meeting, such as the City Manager or Assistant City Manager to express their concerns.

Mr. Peterson responded that when Kim is here speaking, she is speaking on his behalf. Anything that is a staff recommendation is with his seal of approval, or else it wouldn't be there. Mr. Peterson hopes that Ms. Portillo's word carries as much weight as his own. If staff feels strongly against it, then all staff feels strongly against it.

Ms. Portillo stated that we also get opinions from Public Works Engineering as well as other City Departments, so it is not just planning looking at the applications, staff is considering other departments within the City as well.

Mr. Peterson wants the Board to know that he is not trying to condemn the board, he is trying to make sure everyone is on the same page and offer guidance and protect the Board as well. He also wants to reemphasize that it doesn't matter if you think the law is silly, or does not matter, or think well this application is not going to hurt anybody, or why does it matter. It is interpreting the code, that is what we are here to do.

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 Davis made a motion to adjourn the meeting, seconded by Commissioner Bolling and passed 4-0.

The meeting adjourned at 6:24 p.m.

Minutes taken by Planning Assistant Sarah Roll.