



BOARD OF ZONING APPEALS MINUTES
MONDAY, December 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

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

APPROVAL OF MINUTES: November 17, 2025

Chairman Bates asked for comments, changes or a motion on the November 17, 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 4-0.

OLD BUSINESS:

None

NEW BUSINESS:

1. 2025-24 BZA – 1820 S 4th St

Hold a public hearing for Case No. 2025-24 BZA, 1820 S 4th St., wherein the applicant is seeking a variance from Section 8.15 of the adopted Development Regulations to allow a nonconforming sign to continue after change in business name and ownership in the GBD, (General Business District) 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 applicant and owner, Jai Ganesha LLC, Kaushik Patel Managing Partner, seeks a variance from

section 8.15 of the adopted Development Regulations to allow the refacing and continued use of an existing freestanding nonconforming sign after a change in business name and ownership.

The property contains one existing freestanding sign currently located within the 4th Street right-of-way (ROW). Current regulations require that freestanding signs within the GBD (General Business District) be located on the subject parcel and set back a minimum of 5' from all property lines. The existing sign therefore remains nonconforming.

Section 8.15.A of the current Development Regulations states:

- *Nonconforming: A nonconforming sign existing lawfully at the time of the passage of this sign code may be continued under the terms as hereinafter provided that such nonconforming signs shall be modified to conform, replaced with a conforming sign or removed according to the following:*
 1. *If there is a change in business ownership, tenant, name or type of business.*
 2. *Any maintenance, repair or alteration of a nonconforming sign shall not cost more than 25% of the current value of the sign as of the date of alteration or repair.*

The applicant purchased the property in March 2024, at which time it operated as Topsy Liquor. To bring the property into compliance with standards for commercial use and to align with the Future Land Use Map, the owner submitted a rezoning request in June 2024 to convert the property from R1-6 (High Density Single Family Residential) to GBD (General Business District). The rezoning was approved by Ordinance No. 8246 on July 13, 2024.

A previous variance for the same sign was granted to the former property owner on September 20, 2021.

After the required notice was published and distributed to property owners within 200' of the subject property, staff has received no comments from any notified property owner as of the date of this report.

Commissioner Horvath asked if the sign is five feet back from the property line.

Ms. Baragary stated that no, the sign is located within the right-of-way, which is the nonconformity. She stated that this section of right-of-way had been expanded by the Kansas Department of Transportation (K-DOT) several years ago, creating multiple non-conforming signs. Several of the nonconforming signs have since received variances.

Commissioner Bates opened the public hearing.

With no one 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 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 agree. To the best of our knowledge, the sign became nonconforming due to the expansion of the 4th Street (US-73/K-7) ROW during a KDOT improvement project in the early 1980s, which affected multiple freestanding signs along the corridor. This is an exceptional circumstance that was not created by the applicant.

Vote 4-0

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: Staff agree. The applicant proposes only to reface the sign structure to reflect the new business name. No changes to the placement, height or structural components are proposed. The adjacent properties (Benjie's Auto Sales to the north and O'Reilly Auto Parts to the south) are commercial in nature and are not adversely affected.

Vote 4-0

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: Staff agree. The signs nonconforming status results from historic ROW expansion beyond the owner's control. Refacing the existing sign represents the minimum reasonable modification for the continued operation of the commercial business. Additionally, the applicant has acted in good faith by rezoning the property to bring it into compliance with the current commercial zoning standards.

Vote 4-0

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: Staff agree. The sign does not obstruct visibility or create traffic hazards. Updating the sign face does not alter the structure and introduces no new health or safety concerns.

Vote 4-0

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 agree. The sign originally conformed to regulations in place when it was installed. Its nonconforming status resulted from KDOT's ROW expansion. Given these extenuating circumstances, allowing continued use of the sign is consistent with the overall intent of the Development Regulations.

Vote 4-0

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 request for a variance from Section 8.15 of the Development Regulations to allow the refacing and continued use of an existing nonconforming freestanding sign after a change in business name and ownership at 1820 S 4th St.

Chairman Bates stated that based on the findings, the variance for Case No. 2025-24 BZA is granted.

2. **2025-25 BZA – 3031 Shrine Park Rd**

Hold a public hearing for Case No. 2025-25 BZA, 3031 Shrine Park Rd., wherein the applicant is seeking a variance from Section 4.04 of the adopted Development Regulations to allow an 864 square foot greenhouse in the R1-9 (Medium Density Single Family Residential District) 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 applicant, Shikara Wiley, is requesting a variance from the above noted section of the adopted Development Regulations to construct an 864 square foot storage structure at 3031 Shrine Park Rd.

Section 4.04 of the Development Regulations defines a residential storage building as:

Storage Buildings: A structure for storage incidental to a permitted use provided no such structure that is accessory to a residential building shall exceed 250 square feet in gross floor area.

The applicant proposes to construct a 16' x 54' traditional hooped greenhouse structure in the rear yard, approximately 30' from the primary dwelling and 15' from the north interior property line. The structure will have a peak height of 9' and will consist of a metal frame covered with 6-mil poly film, which is the standard plastic covering for greenhouses. The flooring will be composed of plastic landscape fabric topped with gravel. Electricity and natural gas will be extended to the structure operate a thermostat, exhaust fans, and a heater.

The subject property is 1.14 acres and is located in the R1-9 (Medium Density Single Family Residential District) zoning district, which requires a minimum lot size of 9,000 square feet. The property currently has an existing single-family home and one other storage building measuring approximately 11' x 11'. The surrounding properties (north, south, east, and west) are zoned R1-9 and contain existing single-family homes.

The applicant indicates that the purpose of the proposed structure is to be used as a greenhouse solely for the purpose of growing and maintaining their collection of plants for personal use and not for retail. Staff has informed the applicant that if they wish to sell plants commercially, a Special Use Permit (SUP) would be required in addition to any approved variance.

The following comments were received from relevant City departments:

- Building Inspections: The proposed structure will be required to go through the permitting process, which includes inspections for any gas and/or electrical work performed.
- Public Works: The eastern portion of the property lies within the floodplain. The proposed structure must be located outside of this designated area.

After the required notice was published and distributed to all property owners within 200' of the subject property, staff has received no comments from any notified property owner as of the date of this report.

Commissioner Horvath asked if the structure will extend from the home all the way into the trees in the rear yard.

Ms. Baragary showed the site plan. She stated the structure will be well away from the floodplain and showed a measurement on GIS demonstrating that the structure will not extend into the treed area of the yard.

Chairman Bates opened the public hearing.

Loran Wiley of 3031 Shrine Park Road stated that he is the applicant and is here to answer any questions the board may have. Mr. Wiley states that he has a background and degree in horticulture and enjoys growing plants.

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 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.

4. 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.
5. 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 agree. The subject property is unique in its size. At 1.14 acres (49,658.40 square feet), the parcel is significantly larger than the minimum 9,000 square foot lot size in the R1-9 zoning district. Its size is uncommon for the district and not a result of actions by the property owner.

Vote 4-0

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: Staff agree. Adjacent lots to the north (1.81 acres) and south (10.45 acres) provide a natural buffer that minimizes impact. The proposed greenhouse is set back 15' from the north property line and 72' from the south property line. The use is personal, low-impact, and not expected to generate noise, odors, or other disturbances.

Vote 4-0

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: Staff agree. Restricting accessory structures on a 1.14 acre parcel to the same 250 square foot limit applied to a 9,000 square foot lot imposes a disproportionate limitation. The property has ample capacity to accommodate the proposed structure without adverse effect.

Vote 4-0

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: Staff agree. The greenhouse will be permitted and inspected through the standard process and is solely intended for personal plant cultivation. No impacts to public health, safety, or welfare are anticipated.

Vote 4-0

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 agree. The intent of this section of the Development Regulations is to ensure compatibility with residential character. The proposed structure is proportionate to the size of the lot, smaller than the existing home, and leaves substantial open space. Staff finds the request consistent with the intent of the Development Regulations.

Vote 4-0

All board members voted in the affirmative.

6. 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 from Section 4.04 of the adopted Development Regulations to all a storage building that exceeds the maximum allowable gross floor area of 250 square feet in the R1-9 zoning district.

Chairman Bates stated that based on the findings, the variance for Case No. 2025-25 BZA is granted.

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 6:19 p.m.

Minutes taken by Planning Director Kim Portillo.