



BOARD OF ZONING APPEALS MINUTES
MONDAY, January 26, 2026, 6:00 P.M.
COMMISSION ROOM, CITY HALL
LEAVENWORTH, KANSAS

CALL TO ORDER:

Board Members Present

Daniel Bolling
Ron Bates
Ted Davis

Board Member(s) Absent

Jan Horvath

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: December 15, 2025

Chairman Bates asked for comments, changes or a motion on the December 15, 2025 minutes to present for approval. Commissioner Davis offered a motion to approve the minutes as presented, seconded by Commissioner Bolling and approved by a vote of 3-0.

OLD BUSINESS:

None

NEW BUSINESS:

1. ELECTION OF OFFICERS

Chairman Bates nominated Commissioner Davis for Chairman, seconded by Commissioner Bolling. Approved by a vote of 3-0.

Commissioner Bolling volunteered for Vice Chairman, seconded by commissioner Bates. Approved by a vote of 3-0.

2. 2026-01 BZA – 1117 OLIVE STREET

Hold a public hearing for Case No. 2026-01 BZA, 1117 Olive St., wherein the applicant is seeking a variance from Section 6.08 of the adopted Development to allow a 6-foot-tall solid fence forward of the front wall of a residential structure.

Chairman Davis called for the staff report.

City Planner Michelle Baragary provided the Board with an overview of the application. She stated that the applicant and property owner, Bradley Jenkins, is requesting a variance from the adopted Development Regulations to allow a 6-foot-tall solid fence to remain forward of the front wall of the single-family residence located at 1117 Olive Street.

The subject property is approximately .16 acres and is developed with a single-family dwelling. In April 2025, the applicant obtained a fence permit for the installation of a 6-foot-tall privacy fence. In November 2025, City staff received a complaint from an adjacent rental property indicating that the fence “obstructs their view of anyone coming down the street”.

During staff’s review of the complaint, it was determined that due to the poor quality of the submitted site plan, Code Enforcement staff were unable to identify that the proposed 6-foot privacy fence extended forward of the front wall of the residence and into the public right-of-way. As a result, the fence permit was inadvertently approved in error. The Planning & Community Development Director subsequently discussed this issue with Code Enforcement staff to help prevent similar occurrences in the future.

As currently constructed, the 6-foot-tall privacy fence extends approximately 18 feet beyond the front wall of the primary dwelling up to the front property line, and approximately an additional 6 feet into the public right-of-way, totaling 24 feet beyond the front wall of the residence. The property owner has agreed to remove the portion of the fence located within the public right-of-way. However, the applicant is requesting approval to retain the remaining 18 feet of the 6-foot-tall solid fence that extends beyond the front wall of the residence.

The applicant has stated that the request is based on ongoing conflicts and allege harassment from the occupants of the neighboring property to the east, located at 1115 Olive Street, which is currently a rental property. The applicant reports that these conflicts have resulted in multiple interactions with the Leavenworth Police Department and the issuance of an order of protection involving two individuals residing at the subject property.

Section 6.08 of the Development Regulations provides the following standards for fences within residential front yards:

- (a) *Open fences and hedges may be installed in all front yards on the property lines but may not exceed 48 inches above the natural contour of the ground.*
- (b) *No solid fences shall be constructed or reconstructed closer to the street line than the front wall of the residential structure. The front wall of the residential structure shall be determined by excluding porches, roof overhangs, dormers, or other extensions.*

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.

Chairman Davis opened the public hearing.

Bradley Jenkins of 1117 Olive Street stated that he lives at the property in question and has had multiple police calls to his home as well as his neighbor's home as a result of issues with the neighbor. He stated the neighbor has been harassing his family and two people living in his home currently have restraining orders against the neighbor. He state that the purpose of the fence is to provide some separation from that neighbor and help his family feel safe. They have five children living in the home and fear for their safety. That is why they wish to keep the fence, as long as the current neighbor, who is a renter, lives next door.

Jessica Lopez of 1117 Olive street spoke and stated that she is one of the people living in the house who has a protection order against the neighbor, as does her daughter. She stated that she fears for her safety and the safety of her children, some of which have special needs, when she has to get everyone in and out of the cars and house. She stated the neighbor has thrown nails at their home and vehicle and vandalized their property by throwing other things in their driveway or at the car. She state that now that the fence is up, the neighbor is still able to sometimes throw things over it from her porch, but that she feels better protected knowing there is a barrier between the two.

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

With no further discussion, Chairman Davis 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 finding: Staff disagrees. The circumstances cited by the applicant are not unique to the subject property and are commonly experienced by other properties within the zoning district. Although serious, the need for a 6-foot solid fence forward of the front wall arises from personal and situational factors, including conflicts with neighbors, which do not constitute a unique physical condition of the land. The property does not exhibit exceptional conditions such as unusual narrowness, shallowness, irregular shape, or topographical constraints that would justify a 6-foot privacy in the front yard. The need for the variance therefore does not arise from an inherent characteristic of the property.

Vote 1 - 2

Bates voted in the affirmative.

Davis and Bolling 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 finding: Staff agrees. Staff finds that the granting of the variance, as conditioned to exclude fencing from the public right-of-way, will not adversely affect the rights of adjacent property owners or residents. The variance is limited to allow an existing 6-foot-tall solid fence segment to extend approximately 18 feet forward of the front wall of the residence, with all fencing removed from the public right-of-way. No evidence was submitted indicating that the fence has resulted in measurable harm to neighboring properties, and no objections were received following public notice.

Vote 2 -1

Davis and Bolling voted in the affirmative.

Bates voted in the negative

- 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 finding: Staff disagrees. Strict application of the Development Regulations does not create unnecessary hardship. The property can be reasonably used and enjoyed as a single-

family residence without the requested variance. The reported concerns regarding neighbor interactions, while serious, are personal or situational and do not qualify as a hardship under state variance standards, which generally require that hardship arise from physical conditions of the land.

Vote 1 - 2

Bates voted in the affirmative.

Davis and Boling 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 finding: Staff agrees. The requested variance, as conditioned to prohibit any fencing within the public right-of-way, will not adversely affect the public health, safety, morals, order, convenience, prosperity, or the general welfare. The fence is located approximately 16 feet from the curb, is entirely on private property, and does not obstruct required sight lines or interfere with pedestrian or vehicular circulation. Based on the evidence presented, there is no indication that the proposed variance would create conditions that are detrimental to the public interest or otherwise compromise the general welfare of the area.

Vote 3- 0

All 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 finding: Staff disagrees. Granting the requested variance would be contrary to the general spirit and intent of the Development Regulations, which seek to maintain open front yards, promote neighborhood compatibility, and preserve a consistent and visually accessible streetscape. Granting the variance would create a precedent for similar requests, weakening the code's objective to regulate front-yard fencing and protect the streetscape.

Vote 2- 1

Bates and Davis voted in the affirmative.

Bolling 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 request for a variance from Section 6.08 of the Development Regulations to allow a 6-foot-tall solid fence forward of the front wall of a residential structure but shall not extend into the public right-of-way.

Chairman Davis stated that based on the findings, the variance for Case No. 2026-01 BZA is denied.

Due to exceptional circumstances and staff findings outlined in the policy report, an administrative decision was made for a twelve (12) month period for removal of the approximately eighteen (18) foot segment of fence extending from the front wall of the residence to the front property line. However, any portion of solid fence located in the public right-of-way must be removed immediately.

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

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

The meeting adjourned at 6:30 p.m.

Minutes taken by Planning Director Kim Portillo.