

**LEAVENWORTH BOARD OF ZONING APPEALS**  
**COMMISSION CHAMBERS, CITY HALL**  
**100 N 5<sup>th</sup> STREET, LEAVENWORTH, KANSAS 66048**  
**REGULAR SESSION**  
**Monday, April 20, 2026**  
**6:00 PM**

**AGENDA**

CALL TO ORDER:

1. Roll Call/Establish Quorum
2. Approval of Minutes: March 16, 2026 **Action:** Motion

OLD BUSINESS:

**None**

NEW BUSINESS:

**1. 2026-13 BZA – 123 N. BROADWAY STREET**

Hold a public hearing for Case No. 2026-13 BZA, 123 N. Broadway St., wherein the applicant is seeking a variance from Section 8.15 of the adopted Development Regulations to allow continued use of existing nonconforming signs after a change in tenant and business.

**2. 2026-14 BZA – 1216 CHEYENNE STREET**

Hold a public hearing for Case No. 2026-14 BZA, 1216 Cheyenne St., wherein the applicant is seeking a variance from Section 6.08 of the adopted Development Regulations to allow a solid fence to exceed 96 inches (8 feet) in height within the side and rear yard.

ADJOURN



**BOARD OF ZONING APPEALS MINUTES  
MONDAY, MARCH 16, 2026, 6:00 P.M.  
COMMISSION ROOM, CITY HALL  
LEAVENWORTH, KANSAS**

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**CALL TO ORDER:**

**Board Members Present**

Ron Bates  
Jan Horvath  
Ted Davis

**Board Member(s) Absent**

Christopher L`Heureux

**City Staff Present**

Michelle Baragary  
Kim Portillo  
Ben Hyde

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

**APPROVAL OF MINUTES: January 16, 2026**

Chairman Davis asked for comments, changes or a motion on the January 16, 2026 minutes presented for approval. Board Member Bates moved to approve the minutes as presented, seconded by Board Member Horvath and approved by a vote of 3-0.

**OLD BUSINESS:**

None

**NEW BUSINESS:**

- 1. INTRODUCE NEW BOARD MEMBER CHRISTOPHER L'HEUREUX**
- 2. INTRODUCE TO NEW PLANNING ASSISTANT BEN HYDE**
- 3. 2026-09 BZA – 4200 NEW LAWRENCE**

Hold a public hearing for Case No. 2026-09 BZA, 4200 New Lawrence Rd., wherein the applicant is seeking a variance from Section 4.03 of the adopted Development Regulations to allow an accessory structure to be located forward of the main building line.

Chairman Davis called for the staff report.

City Planner Michelle Baragary stated the applicants and property owners, Clifton and Rozenda Downing, are requesting a variance from the adopted Development Regulations to allow the placement of an accessory structure forward of the main building line for their single-family residence located at 4200 New Lawrence Road.

The subject property is zoned R1-25, Low Density Single Family Residential District, and is developed with a single-family home. The parcel is approximately 4.24 acres, and the house is located approximately 380 feet from New Lawrence Road.

The applicants are proposing to construct a 36' x 30' agricultural accessory building to store equipment and tools used to maintain the property. Due to the terrain, the property slopes significantly downward toward an existing pond located behind the residence, which limits the ability to place the structure within the rear yard area. Additionally, the property contains significant wooded areas and varying terrain between the house and New Lawrence Road, obscuring visibility of the proposed structure from the roadway and adjacent properties.

Proposed Site Plan and Accessory Structure:

- 36' x 30' concrete pad
- The proposed accessory structure will be 24' x 30' with a 12' x 30' lean-to on the west side, totaling 1,080 SF and have two windows and a door on the west side.
- The proposed placement is approximately:
  - 55' forward of the main building line
  - 28' from the north property line
  - 300' from the east property line
  - 90' from the south property line

Section 4.03.E of the adopted Development Regulations states that:

1. *No accessory buildings shall be erected in any required front or side yard, or at any other place forward of the main building line.*

Article 12 of the Development Regulations defines "Agriculture Accessory Building" as follows: *A detached accessory structure used for the shelter of livestock, the storage of agricultural products, or the storage and maintenance of equipment or supplies used for agricultural or property maintenance activities.*

In accordance with Kansas State Statute, notice of the public hearing was mailed to property owners within 200 feet of the subject property. As of the date of this report, staff has received no comments from notified property owners.

Chairman Davis opened the public hearing.

Clifton Downing, property owner, came to the podium. He stated he was retired navy and built the home in 2021. The agriculture building is needed to store his tools, mowers, and other equipment to maintain his property. Mr. Downing further stated that due to the topography of his property, he is unable to install the agricultural building in the rear yard. The proposed placement is the best option and also provides screening from the public roadway.

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

Board Member Bates asked if the trees surrounding the proposed structure and located on the subject property were ever to be cut down, the proposed structure be visible to the property owner to the north.

Mr. Downing responded it would not be because of coverage of other trees.

Ms. Baragary added that removal of the trees on the subject property would not negatively impact the property to the north (4000 New Lawrence Road), as that property contains substantial existing trees and vegetation in that area.

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 agrees. The subject property contains unique physical characteristics that limit placement of accessory structures behind the primary residence. The lot slopes significantly downward toward an existing pond located to the rear of the home, which restricts feasible building areas in the rear yard. Additionally, the residence is located approximately 380 feet from New Lawrence Road, resulting in a large front yard area relative to typical residential lots. These conditions are related to the natural terrain and layout of the property and were not created by the actions of the property

owners. Therefore, staff finds that the request arises from conditions unique to the property.

**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 finding:** Staff agrees. The proposed agricultural accessory building will be located a substantial distance from adjacent property lines and public roadways. The structure is proposed to be located approximately 300 feet from the east property line and New Lawrence Road, approximately 28 feet from the north property line, and approximately 90 feet from the south property line. Additionally, the site contains significant tree cover and varying terrain that will help screen the structure from neighboring properties and the roadway. Staff has not received any comments or objections from property owners notified of the request. Based on the proposed location, size, and limited visibility of the structure, staff finds that granting of the variance will not adversely affect the rights of adjacent property owners or residents.

**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 finding:** Staff agrees. Strict application of the Development Regulations would create an unnecessary hardship for the property owner due to the unique physical characteristics of the property and existing underground lines. The terrain slopes significantly downward toward an existing pond located behind the residence, which limits the practical placement of an accessory structure within the rear yard area while maintaining reasonable access and usability. Additionally, lines for water, gas, electric, and fiber optic cable for internet are installed on the south side of the residence. As a result, the area located forward of the main building line represents the most feasible location for the proposed agricultural accessory building. Without the requested variance, the property owner's ability to construct a structure necessary for the storage of equipment and tools used to maintain the property would be significantly limited. Therefore, staff finds that strict enforcement of the regulations would create unnecessary hardship under these circumstances.

**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 finding:** Staff agrees. The requested variance will not adversely affect the public health, safety, morals, order, convenience, prosperity, or the general welfare. The proposed agricultural building will be situated approximately 300 feet from the east

property line and adjacent roadway. The structure will be used for the storage of equipment and tools associated with maintaining the property and will not introduce new land uses or activities that would negatively impact the surrounding area. Based on the evidence presented, there is no indication that the proposed variance would create conditions detrimental to the public interest or otherwise compromise the general welfare of the area.

**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 finding:** Staff agrees. The general intent of the Development Regulations is to promote orderly development and minimize potential impacts of accessory structures on neighboring properties and public rights-of-way. In this case, the proposed structure will remain substantially set back from the roadway and adjacent property lines and will be partially screened by existing vegetation and topography. Given the large size of the parcel and the limited visibility of the structure, staff finds that the request is generally consistent with the spirit and intent of the Development Regulations.

**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.

No conditions or restrictions were imposed.

**ACTION:**

Approve or deny the variance request from Section 4.03 of the adopted Development Regulations to allow placement of an accessory structure forward of the main building line.

Chairman Davis stated that based on the findings, the variance for Case No. 2026-09 BZA is granted without any conditions or restrictions.

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

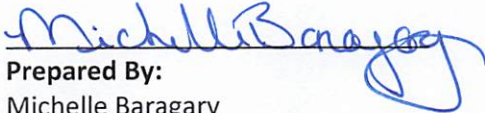
Chairman Davis called for a motion to close the meeting. Board Member Bates made a motion to adjourn the meeting, seconded by Board Member Horvath and passed 3-0.

The meeting adjourned at 6:20 p.m.

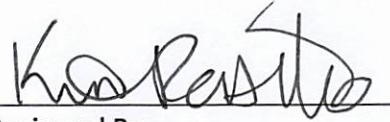
Minutes taken by Planning Assistant Ben Hyde.

**Board of Zoning Appeals Agenda Item  
Variance Request  
2026-13 BZA  
123 N. BROADWAY STREET**

**APRIL 20, 2026**



**Prepared By:**  
Michelle Baragary  
City Planner



**Reviewed By:**  
Kim Portillo,  
Director of Planning and  
Community Development

**SUMMARY:**

Consider a variance from Section 8.15 of the adopted Development Regulations to allow continued use of existing nonconforming signs after a change in tenant and business.

**DISCUSSION:**

The applicant, Mark Bisbee (Mark's Small Engine Repair), is seeking a variance from the above noted section of the Development Regulations to allow continued use of existing nonconforming roof signs after a change in tenant and business name for the property located at 123 N. Broadway Street.

The subject property is approximately 0.10 acres in size and is located at the southwest corner of N. Broadway and Seneca Streets. The property is zoned General Business District (GBD) and is currently occupied by Mark's Small Engine Repair, which is a permitted use within this district. The building is addressed as 121 and 123 N. Broadway Street to accommodate two tenant spaces. The space was previously occupied by The Leavenworth Mission.

Surrounding area:

- North – Zoned R-MF (Residential Multi Family); developed with a single-family residence
- South – Zoned GBD; occupied by gas station
- East – Zoned CBD (Central Business District); occupied by a church
- West – Zoned GBD; occupied by a commercial building

Two existing roof signs, measuring approximately 15 feet 4 inches by 12 feet in total, were installed in 1964 and utilized by the previous tenant following approval of a variance in November 2023. The applicant proposes to reuse both existing sign structures, as the business operates as both a repair shop and parts retailer.

Per current regulations, roof signs are not permitted to extend above the highest point of the roof. The existing signs exceed this height limitation and are therefore considered existing nonconforming signs.

The building is constructed at the front property line and features a glass front façade, limiting opportunities for wall signage. Additionally, projecting signs are not permitted to encroach into the public right-of-way within the GBD zoning district, further restricting compliant signage options for this zero-setback site.

Other existing nonconforming roof signs in the area include Dairy Queen, Goodwill, and Flatland Vapes, indicating that similar sign conditions exist within the surrounding commercial area.

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.*

Because the tenant and business name have changed, the existing signs would typically be required to be brought into compliance or removed. The requested variance would allow continued use of the existing nonconforming signs despite this change.

In accordance with Kansas State Statutes, notice of the public hearing was mailed to property owners within 200 feet of the subject property. As of the date of this report, no comments have been received.

**Staff Recommendation:**

Staff recommends approval of the requested variance to allow the continued use of the existing nonconforming roof signs after a change in tenant and business.

Given the building's design and placement, there are limited viable options for conforming signage. The structure's glass façade and location at the front property line restrict wall signage, and projecting signs are not permitted to encroach into the right-of-way within the GBD zoning district. Additionally, due to the building's one-story height, the existing roof signs do not appear visually intrusive or out of scale with the surrounding area.

Approval is recommended subject to the following condition:

1. If either roof sign remains vacant for more than 6 consecutive months, it shall be removed in its entirety.

**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 agrees. The property exhibits unique physical conditions related to the building's placement and design. The structure is built at the front property line and includes a glass façade, which limits the ability to install conforming wall signage. These constraints are not commonly found on all properties within the district.

Staff finds that the hardship is not self-created. The nonconforming condition results from the age and design of the building and sign structure, which predate current regulations, rather than actions of the current applicant.

- 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. Approval of the variance will not adversely affect adjacent properties. The existing roof signs have remained in this configuration for decades and are consistent with the scale and character of the surrounding commercial area. Additionally, due to the building's one-story height, the signs are not visually intrusive or out of place. Similar nonconforming roof signs exist in the surrounding area, further supporting compatibility.

- 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 agrees. Strict application of the sign regulations would create an unnecessary hardship by limiting reasonable signage options for the tenant. Due to the building's design and placement, there are no practical conforming alternatives that provide adequate visibility for business identification. The request represents the minimum variance necessary to allow reasonable identification of the business under these site constraints.

- 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 will not adversely affect public health, safety, or general welfare. The existing signs are structurally established and have existed at this location without known issues. Continued use of the sign will not create hazards, obstruct visibility, interfere with traffic safety, or negatively impact the public right-of-way or the orderly development of the area.

- e) *That granting of the variance desired will not be opposed to the general spirit and intent of the Development Regulations.*

**Staff finding:** Staff agrees. The requested variance is consistent with the general spirit and intent of the Development Regulations, which promote effective and compatible signage while recognizing practical site limitations. Allowing continued use of the existing signs accommodates the property's constraints without undermining the overall goals of the sign code and is consistent with the character of the surrounding area.

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:**

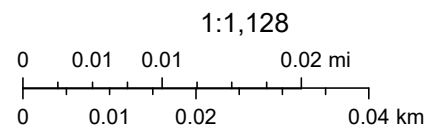
Grant or deny the request for a variance from Section 8.15 of the Development Regulations to allow continued use of the existing nonconforming roof signs following a change in tenant and business name for the property located at 123 N. Broadway Street. If granted, the variance shall be subject to the condition that if either roof sign remains vacant for more than six (6) consecutive months, it shall be removed in its entirety.

# 2026-13 BZA - 123 N. Broadway St



4/16/2026, 3:34:27 PM

- Override 1
- Buildings
- Parcels\_Current
- Address (Points)
- Leavenworth City Limits
- City Right-of-Way
- RoadCenterline



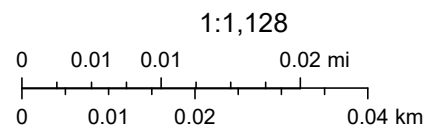
Esri, HERE, Garmin, (c) OpenStreetMap contributors, and the GIS user community

# 2026-13 BZA - Zoning Map



4/16/2026, 3:31:41 PM

- Override 1
- Buildings
- Zoning\_CURRENT CBD
- Parcels\_Current
- GBD
- Address (Points)
- I-1
- Leavenworth City Limits
- City Right-of-Way
- R-MF
- R1-6
- RoadCenterline



Esri, HERE, Garmin, (c) OpenStreetMap contributors, and the GIS user community



**BOARD OF ZONING APPEALS**  
CITY OF LEAVENWORTH, KANSAS

**OFFICE USE ONLY**

Case No.: 2026-13 BZA  
Application No. 18652  
Fee (non-refundable) \$350.00  
Filing Date 3/5/26  
Hearing Date 4/20/26  
Publication Date 3/25/26

**PETITION**

Property Zoning: GBD *Susan's email: SLPierce57@aol.com*  
Location of Subject Property: 123 N. Broadway  
Legal Description: (Attach full legal description provided by the REGISTER OF DEEDS OFFICE)  
Petitioner: Mark's Small Engine Repair  
Petitioner Address: 721 Miami St, Leavenworth, KS 66048  
Email: markssmallenginerepair66048@gmail.com Telephone: (816) 482-1486  
Petitioner's Interest in Property: Tenant  
Purpose of Petition: Use of sign on top of building

- Appeal** of Administration Decision \_\_\_\_\_ Date of Decision \_\_\_\_\_  
Section 11.03.A
- Variance:**  
Section 11.03.B
- Exception:**  
Section 11.03.C

Site Plan or drawing attached (hard & digital copy): Yes  No

I, the undersigned, certify that I am the legal owner of the property described above and that if this request is granted, I will proceed with the actual construction in accordance with the plans submitted within four (4) months from the date of filing or request in writing an extension of time for the Board's consideration

Property Owner Name (print): Arthur S Ruppenthal, Trust

Signature: Susan L Pierce TTEE Date: 3/5/26

State of KANSAS )  
County of Leavenworth )

Signed or attested before me on March 5, 2026 by Susan L Pierce

Notary Public: Michelle Baragary

My appointment expires: 8/16/28 (Seal)



**NOTE: All signatures must be in black or blue ink. Signature of owner(s) must be secured and notarized.**  
**Check list below...**

<input checked="" type="checkbox"/>	Supporting documentation: Site plan, plot plan, a drawing and any other pertinent data
<input checked="" type="checkbox"/>	Full legal description of subject property obtained from the Register of Deeds Office (913-684-0424)
<input checked="" type="checkbox"/>	Certified list of property owners within two hundred (200) feet of the subject property - County GIS Department 913-684-0443
<input checked="" type="checkbox"/>	A filing fee of Three Hundred- fifty dollars (\$350)

## Request for sign usage for 123 N Broadway

This building was built in 1964 for use as a dry cleaning business, and was used as such for thirty plus years. When this was built Broadway and Fourth Street were the main roads through town, until 10th St was made into what it is, now. Apparently, the ordinances back then didn't have much of a set back law. All the businesses along the 3 blocks there are built with just a sidewalk and a little grass between the building and the street. There are signs on top of 3 other businesses south of 123 N Broadway. It is the best way to be able to see what the business is from a block or more away. I've learned from putting "for rent" signs on the front, as would be the same for a banner type sign, you really can't see it until your are right in front of the building. That being a busy street, typically people are paying attention to the traffic from the businesses right around it, and don't easily look at the front of the building.

The neighborhood behind 123 N Broadway, to the west, now has a concrete construction business, and then some kind of metal works business with lots of "stuff" lying around. There are also rows of trailers from semitrucks that are used for storage, from what I can tell. Behind that is a creek. That area is often used as a hangout, or a home for homeless folks and some drug doers. The neighborhood has deteriorated over the years. I feel it is imperative to keep a going concern in our building. It is the gateway to the rest of Seneca, from Broadway west. I also believe it is imperative that in order to get good tenants, we need to be able to offer then adequate signage. These tenants bring security cameras, lights, and people being there, making any possible troublemakers aware that it is not an empty space to squat.

The building is such that putting any other type of sign on it is impossible, as any sign sticking out would be a danger to pedestrians, of which there are many because of the gas station, Goodwill, Family Dollar, and the Dairy Queen.

In order to attract good businesses to the building, I request a variance for this sign. The sign is 5'4" tall, and 12' long. It is proportionate with the building and doesn't appear obtrusive.

I don't believe it bothers any neighbors. It fits in with the couple of blocks south of it in the General Business District. Please, grant our request for a variance.

## Mark's Small Engine Repair

Mark's Small Engine Repair has been in business for 27 years in Missouri and Kansas. This year will be their 8th year in Leavenworth. They do warranty work for Briggs & Stratton and Husqvarna. They work on B & S, as well as Husqvarna, John Deere, etc. Mark hopes to hire up to 4 more mechanics for the shop. He has outgrown his current shop, and needs space. He will have a retail showroom in this building, and sell all types of parts for mowers, and such, for Husqvarna, Briggs & Stratton, Stihl, and eventually Torro, as well as doing repair on all these.

The building has adequate privacy fencing to keep his customers' property secured. He will install an extensive security camera setup.

When he called to inquire about the building, I asked what kind of business he had in mind for it. He said small engine repair. I said "Are you Mark?", as I'd seen his business recommended so many times on queries on Facebook and the Nextdoor app. I knew immediately he has a good business to add to the neighborhood.





North side of building



South side of building



facing south



facing north



facing west on Seneca St

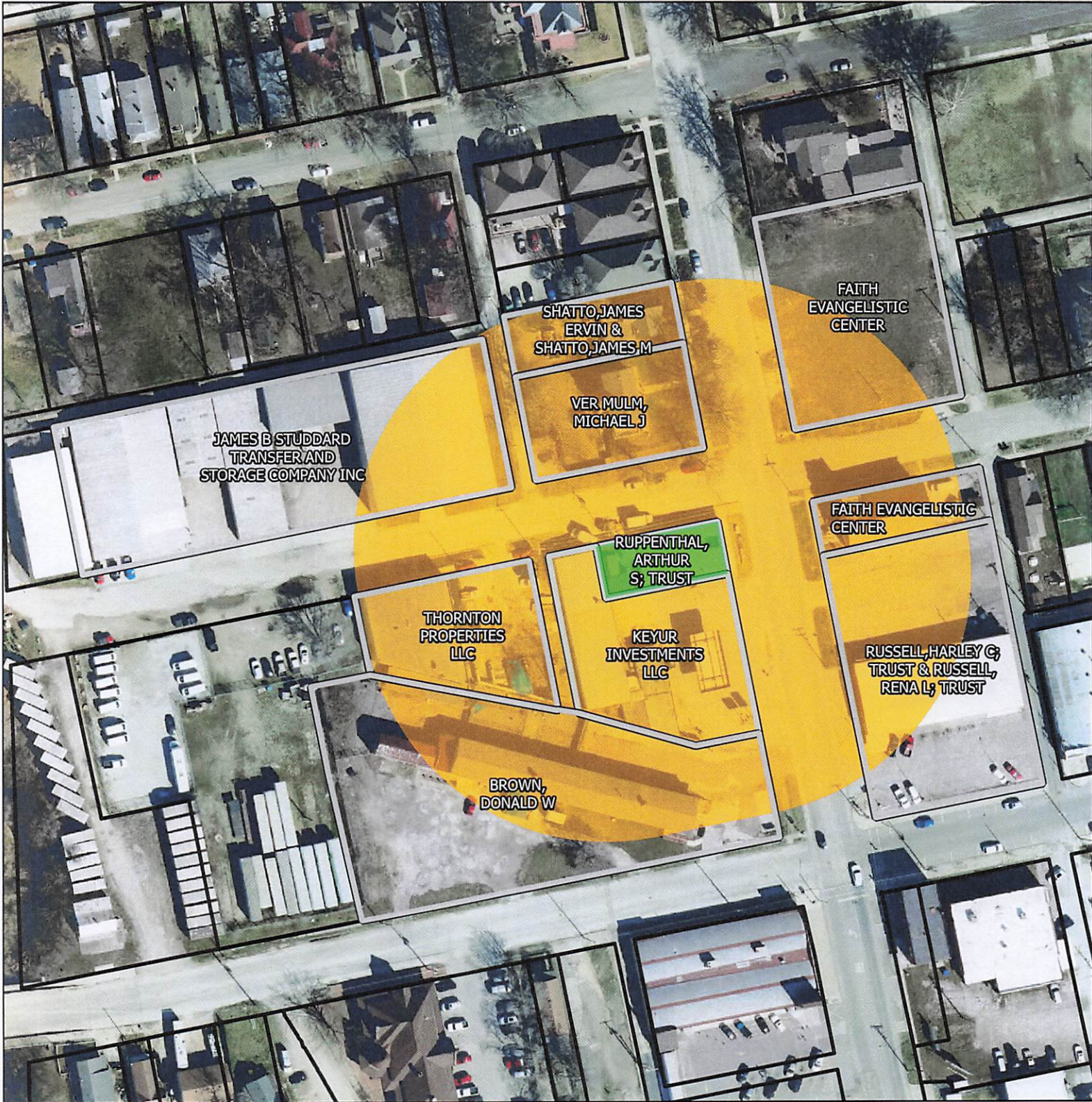


Facing east on Seneca

Neighbor buildings  
w/ roof signs



# City of Leavenworth Property Radius Search



052-077-26-0-44-09-001.00-0

123 N BROADWAY ST, Leavenworth, KS 66048

2024 Aerial Photo  
2/2/2025

### Legend

- Parcels\_Searched
- Parcels\_in\_Buffer
- Buffer\_200ft
- Parcel Boundaries

1 inch = 1,319 ft

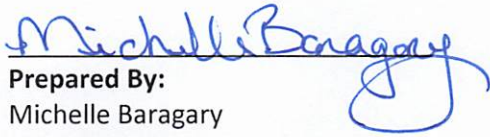


Leavenworth County  
GIS Services  
300 Walnut Suite 030  
Leavenworth, KS 66048  
Ph: 913-758-6780  
Ph: 913-684-0443



**Board of Zoning Appeals Agenda Item  
Variance Request  
2026-14 BZA  
1216 CHEYENNE STREET**

**APRIL 20, 2026**



**Prepared By:**  
Michelle Baragary  
City Planner



**Reviewed By:**  
Kim Portillo,  
Director of Planning and  
Community Development

**SUMMARY:**

Consider a variance from Section 6.08 of the adopted Development Regulations to allow a solid fence to exceed 96 inches (8 feet) in height, as measured from the natural contour of the ground, within the side and rear yard.

**DISCUSSION:**

The applicant and property owner, Keven McQuitty, is seeking a variance to increase the height of portions of an existing solid fence from 6 feet to 8 feet within the side and rear yard of his residential property located at 1216 Cheyenne Street. The applicant is further requesting to allow continuance of a 6-foot privacy fence in his side yard. All proposed and existing fencing is installed on top of an existing retaining wall.

The subject property is zoned R1-6, High Density Single Family Residential District, consists of approximately 0.14 acres, and is developed with a single-family home. Adjacent properties to the south, east, and west are also zoned R1-6 and contain single-family homes. The property to the north is zoned GBD, General Business District, and occupied by Classic Carwash.

The Classic Carwash does not have a fence adjacent to the subject property. The proposed height increase is to further screen views from the carwash.

A 22-foot-wide alley separates the subject property from the commercial property to the north. The rear yard of the commercial property does not contain a solid fence and has a significant change in elevation. The grade drops approximately 10 feet over a distance of 20 feet (858 to 848) toward the alley and the adjacent subject property.

There is also significant change in elevation on the east side of the subject property. A retaining wall has been constructed along portions of the property line to accommodate this slope.

**Existing Fence**

The property contains an in-ground pool enclosed by fencing. Existing fencing includes:

- A 6-foot chain link fence along the west side of the pool, with a small portion on the north property line.
- A 6-foot solid fence along the remainder of the north and east property lines.

The solid fence is installed on top of a retaining wall. Depending on natural grade, the height of the retaining wall varies from a few inches on the north property line (rear yard) to just under 4 feet on the east property

line. Due to this condition, the combined height of the retaining wall and fence reaches a maximum of 9 feet 11 inches when measured from the lowest adjacent natural grade.

### **Proposed Fence**

The applicant proposes to increase a portion of the solid fence height from 6 feet to 8 feet. The proposed fence will be installed on top of the retaining wall, resulting in a maximum combined height of just under 12 feet (11 feet 11 inches) when measured from the natural contour of the ground.

The applicant is also proposing to replace a portion of the remaining 6-foot solid fence with a new 6-foot solid fence on top of the retaining wall, with a combined height of just under 10 feet.

Proposed fence modifications include:

1. Rear Property Line: Replace approximately 26 feet of the existing 6-foot solid fence (including a small portion of the chain link fence) with an 8-foot solid fence installed on top of the retaining wall.
2. East Property Line (North Segment): Replace approximately 27 feet of existing 6-foot solid fence with an 8-foot solid fence installed on top of the retaining wall.
3. East Property Line (South Segment): Replace approximately 41 feet of fencing with a new 6-foot solid fence installed on top of the retaining wall. The fence will extend approximately 31 feet on the property line and then extend 10 feet west toward the house.

The proposed fence would result in a maximum combined height of nearly 12 feet (11 feet 11 inches) when measured from the natural contour of the ground.

Section 6.08.C.3(c) and (d) of the adopted Development Regulations states that:

- *(c) Where a residential use abuts a commercial or industrial property or use, and where screening has not been installed or is not required, the residential property owner may install a solid-type screening fence on the property line up to eight feet above the contour of the natural ground along the property line that abuts the commercial or industrial property or use.*
- *(d) A solid fence may be installed around a private swimming pool or patio not to exceed 96 inches above the natural contour of the ground, provided it complies with all applicable building codes contained in the adopted building code.*

Both provisions measure fence height from the natural contour of the ground.

### **Interpretation of Fence Height**

For purposes of enforcing Section 6.08, the natural contour of the ground refers to the original, unaltered grade prior to any site modification. A retaining wall is a man-made alteration to grade and does not establish a new baseline for measuring fence height. Therefore, fence height must be measured from the lowest adjacent natural grade, and the total height includes both the retaining wall and the fence.

Although the regulations allow for an 8-foot fence adjacent to commercial property, the combined height of the retaining wall and proposed fence would substantially exceed this limit, presenting a vertical structure reaching nearly 12 feet when viewed from lower adjacent properties and the alley.

### **Existing Nonconforming Condition**

The existing 6-foot solid fence installed on top of the retaining wall exceeds the maximum permitted height when measured from natural grade.

However, because this condition has existed for many years, it is considered existing nonconforming. Staff does not recommend requiring its removal but does not support increasing or intensifying the degree of nonconformity.

In accordance with Kansas State Statutes, notice of the public hearing was mailed to property owners within 200 feet of the subject property. As of the date of this report, no comments have been received.

**Staff Recommendation:**

Staff recommends denial of the request to increase the height of the solid fence from 6 feet to 8 feet where installed on top of the retaining wall. The proposed increase would result in a structure significantly exceeding the maximum permitted height when measured from natural grade and would be inconsistent with the intent of the Development Regulations.

Staff further recommends granting a formal variance to recognize the existing 6-foot fence located atop the retaining wall as an existing nonconforming condition, allowing for its continued use and maintenance, but not its expansion or intensification.

**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 comments:** The subject property exhibits unique topographic conditions, including a significant change in elevation and a retaining wall. Additionally, the commercial property to the north has a steep slope that drops significantly toward the adjacent alley and subject property. However, staff finds that the request to increase fence height is not necessitated by these conditions, as the existing fence already provides substantial screening.

**Staff finding (> 8-foot fence):** Not met

**Staff finding (existing 6-foot fence): Met**

- b) *That the granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents.*

**Staff comments:** The proposed fence would create a structure approaching nearly 12 feet in height, which may appear excessive and visually intrusive, particularly to adjacent residential properties at a lower elevation. Furthermore, this will produce a visual mass inconsistent with typical residential fencing and significantly exceeds the scale anticipated by the Development Regulations.

**Staff finding (> 8-foot fence): Not met**

**Staff finding (existing 6-foot fence): Met**

- 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 comments:** While there are topographic challenges, the existing fence already provides effective screening and privacy reaching nearly 10 feet at the highest point. The requested 2-foot increase appears to be an enhancement rather than a necessity to alleviate a true hardship. Staff visited the site and viewed the subject property from the rear of the carwash property. Refer to Exhibits 1-3 for photos taken from the view of the carwash.

**Staff finding (> 8-foot fence): Not met**

**Staff finding (existing 6-foot fence): Met**

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

**Staff comments:** The existing 6-foot fence on top of the retaining wall already exceeds the maximum permitted height of 8-foot for pool enclosures and residential properties adjacent to commercial uses. The proposed fence height exceeds what is necessary to achieve the intent of the regulations and may negatively affect neighborhood character.

**Staff finding (> 8-foot fence): Not met**

**Staff finding (existing 6-foot fence): Met**

- e) *That granting of the variance desired will not be opposed to the general spirit and intent of the Development Regulations.*

**Staff comments:** The intent of the Development Regulations is to limit fence height while allowing reasonable screening. Approval of the requested increase would result in a structure that significantly exceeds the intended height limits when measured from natural grade due to the presence of the retaining wall, thereby undermining the intent of the code.

However, given the substantial elevation change and the existing retaining wall, staff finds that the 6-foot solid fence, as installed, does not conflict with the general spirit and intent of the Development Regulations, even though the combined height approaches 10 feet as its highest point.

**Staff finding (> 8-foot fence): Not met**

**Staff finding (existing 6-foot fence): Met**

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 adopted Development Regulations to allow a solid fence to exceed 96 inches (8 feet) in height, as measured from the natural contour of the ground, within the side and rear yard.

**Exhibit 1**

Photo taken from the guardrail forward of the first bay (automatic carwash).



**Exhibit 2**

Photo taken from the guardrail forward of the second bay (automatic carwash).



**Exhibit 3**

Photo taken from the guardrail forward of the third bay (manual carwash).



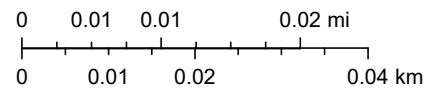
# 2026-14 BZA - 1216 Cheyenne St



4/16/2026, 3:42:49 PM

1:1,128

- Override 1
- Buildings
- Parcels (City Owned)
- Parcels\_Current
- Address (Points)
- Ft Leavenworth Military Installation
- Leavenworth City Limits
- City Right-of-Way
- RoadCenterline



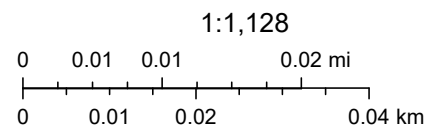
Esri, HERE, Garmin, (c) OpenStreetMap contributors, and the GIS user community

# 2026-14 BZA - Zoning Map



4/16/2026, 3:45:11 PM

- Override 1
- Zoning\_CURRENT
- GBD
- R1-6
- Buildings
- Parcels (City Owned)
- Parcels\_Current
- Address (Points)
- Ft Leavenworth Military Installation
- Leavenworth City Limits
- City Right-of-Way
- RoadCenterline



Esri, HERE, Garmin, (c) OpenStreetMap contributors, and the GIS user community

# Contour Map



8-foot solid fence on rear property line, reduced to 6 feet.





2025/11/10

Current 6-foot solid fence on the east property line



Facing north from the front yard (current 6-foot fence)



Facing south from the edge of the house (current 6-foot fence on rear and side property lines)



Facing south from the edge of the garage (current 6-foot fence on rear and side property lines)





**BOARD OF ZONING APPEALS**  
CITY OF LEAVENWORTH, KANSAS

**OFFICE USE ONLY**

Case No.: 2026-14 BZA

Application No.	<u>18656</u>
Fee (non-refundable)	\$350.00
Filing Date	<u>3/5/26</u>
Hearing Date	<u>4/20/26</u>
Publication Date	<u>3/25/26</u>

**PETITION**

Property Zoning: Residential  
 Location of Subject Property: 1216 Cheyenne St. Leavenworth, KS 66048  
 Legal Description: (Attach full legal description provided by the REGISTER OF DEEDS OFFICE)  
 Petitioner: Kevin McQuitty  
 Petitioner Address: 1216 Cheyenne St. Leavenworth, KS 66048  
 Email: kmcquitt4@gmail.com Telephone: 913-689-9799  
 Petitioner's Interest in Property: Owner

Purpose of Petition: To obtain a variance for 8ft Privacy Fence for privacy and security reasons at 1216 cheyenne st. LV KS.

- Appeal of Administration Decision \_\_\_\_\_ Date of Decision \_\_\_\_\_  
Section 11.03.A
- Variance:  
Section 11.03.B
- Exception:  
Section 11.03.C

Site Plan or drawing attached (hard & digital copy): Yes  No

I, the undersigned, certify that I am the legal owner of the property described above and that if this request is granted, I will proceed with the actual construction in accordance with the plans submitted within four (4) months from the date of filing or request in writing an extension of time for the Board's consideration

Property Owner Name (print): Kevin McQuitty

Signature: [Signature] Date: 3/5/2026

State of KANSAS )

County of LEAVENWORTH )

Signed or attested before me on 3/5/2026 by Kevin McQuitty

Notary Public: [Signature]

My appointment expires: 5/17/29 (Seal)



**NOTE:** All signatures must be in black or blue ink. Signature of owner(s) must be secured and notarized. Check list below...

Supporting documentation: Site plan, plot plan, a drawing and any other pertinent data
Full legal description of subject property obtained from the Register of Deeds Office (913-684-0424)
Certified list of property owners within two hundred (200) feet of the subject property – County GIS Department 913-684-0443
A filing fee of Three Hundred- fifty dollars (\$350)

# Variance Request

**To:** Board of Zoning Appeals

**Re:** Variance Request – 8-Foot Privacy Fence (Retaining Wall Condition)

**Property:** 1216 Cheyenne St., Leavenworth, KS 66048

Dear Members of the Board of Zoning Appeals,

I am requesting a variance to allow construction of an **8-foot privacy fence** along a limited portion of the side/rear property line at **1216 Cheyenne St., Leavenworth, KS 66048**. Due to **unique topographical conditions** at this boundary, the standard fence height does not provide reasonable privacy for the backyard and pool area.

## Unique site condition and hardship

The rear/side boundary of my property is defined by an **existing retaining wall that sits on the property line**. This retaining wall represents the **natural contour of the ground at the property line** for my property. Because the wall is on the property line, **fencing cannot be placed on the opposite side of the wall**, as that area is **the neighboring property**.

In addition, adjacent properties—most notably a **commercial car wash directly behind the home** and nearby residences—are **substantially elevated** relative to my backyard. This elevation difference creates a direct line of sight into my yard and pool area. As a result, the backyard is visible from the car wash exit and surrounding elevated areas, and a standard-height fence is insufficient to address this privacy intrusion.

## Proposed solution (limited and targeted)

I am requesting approval to install **8 feet of fencing material on top of the retaining wall** only in the specific section where the elevation difference is most pronounced (as shown on the aerial map previously provided). This is a **targeted** request intended solely to restore privacy and security for the backyard.

The portion of retaining wall where the 8-foot fence will be installed has a **maximum wall height of 3 feet 11 inches**. Therefore, the **maximum overall height measured from the natural contour of the ground at the property line (the retaining wall)** will **not exceed 12 feet**. **No portion of the proposed fence will exceed 12 feet in height**.

## Why the variance is appropriate

This request is based on a **site-specific hardship** created by the property's unusual grade and the retaining-wall boundary condition, not a preference for additional height. The proposed fence height increase is limited to the minimum necessary area to block the elevated sightlines into the yard. The improvement is intended to enhance **privacy and security** and is not expected to create adverse impacts to neighboring properties related to light, air, or views.

Thank you for your consideration. I respectfully request the Board's approval of this variance.

Sincerely,  
Kevin McQuitty  
913-689-9799  
Kcmcqui14@gmail.com

To the Esteemed Board of Zoning Appeals,

**Subject:** Variance Request for 8-Foot Fence to Address Unique Topographical Privacy Issues at 1216 Cheyenne St., Leavenworth, KS 66048

This document requests a variance to permit the construction of an 8-foot privacy fence along a specific section of the rear property line at 1216 Cheyenne St., Leavenworth, KS 66048. The unique contour of the land in this location creates a significant and exceptional privacy challenge that cannot be adequately addressed by standard fence height regulations.

**Problem Statement: Unacceptable Lack of Privacy Due to Land Contour**

The property at 1216 Cheyenne St., Leavenworth, KS 66048 is situated on a unique topographical grade where adjacent commercial properties, specifically a car wash, and residential homes are substantially elevated. This elevation difference results in a critical lack of privacy for the backyard area. As demonstrated by direct views from the car wash exit directly behind the home, the backyard, including the pool area, is clearly visible to patrons and employees of the commercial establishment. The existing fence, at standard height, is entirely insufficient to obscure this direct line of sight, creating an ongoing and substantial privacy concern for the residents.

**Proposed Solution: Targeted 8-Foot Privacy Fence**

To mitigate this demonstrable privacy intrusion, a variance is requested to construct an 8-foot fence in the specific area along the property line where the elevation difference is most pronounced. This targeted increase in fence height is crucial because the unique land contour renders a standard 6-foot fence ineffective at providing any meaningful privacy from the elevated neighboring properties! The proposed 8-foot fence will only be taller than 6 feet in this specific, marked section, and its sole purpose is to create privacy, enabling the residents to enjoy their backyard without constant public observation.

**Justification for Variance**

The need for this variance is directly attributable to the exceptional and unique topographical conditions of the property, which are not typical and therefore not adequately addressed by general zoning ordinances. Granting this variance will resolve a genuine hardship for the property owners by restoring a reasonable expectation of privacy in their private outdoor living space. This solution is specifically tailored to the unique site conditions and will not adversely affect light, air, or views of adjacent properties, as its intent is solely to block intrusive views into the applicant's yard from an elevated commercial establishment. The proposed fence is a necessary and reasonable measure to allow the residents to utilize their backyard for its intended purpose in a private manner.

We respectfully request the Board's approval for this variance, recognizing the unique circumstances and the significant privacy enhancement this adjustment will provide.

## Property Fence Variance Narrative – Aerial Map Explanation

The attached image is an aerial map of my residential property, provided to illustrate the location, extent, and purpose of proposed fence improvements. The map includes color-coded markings and measured distances to clearly identify which portions of fencing are new, replaced, or modified, and how they relate to existing structures and property boundaries.

The section marked in red represents the portion of fence for which an 8-foot height variance is being requested. This fence runs along the side and rear portion of the property and measures approximately 53 feet total, including a 26-foot horizontal section and a 27-foot vertical section, as shown on the map. At the point where the markings transition from yellow to red, the fence height will increase from the existing 6 feet to 8 feet. This increase is necessary to improve privacy and security for the residence due to proximity to neighboring properties and visibility into the yard and home.

The section marked in yellow indicates an existing fence that will be replaced. This portion sits on top of an existing retaining wall and maintains the same general alignment as the current fence. While the location remains unchanged, the replacement will provide improved durability and consistency with the new fencing materials.

The area marked in green shows an addition to the current fence line. This new fencing will begin at the house on the left side of the property, extend to the corner of the property line, and then return back to the retaining wall. This addition closes an existing open area and completes the enclosure of the yard while staying within the property boundaries shown.

The section marked in blue represents another area where existing fencing will be replaced. This replacement follows the same footprint as the current fence and does not extend beyond the established fence line.

A chain-link fence located between the driveway and the pool will remain unchanged. This fence is intentionally retained to ensure the pool area continues to meet enclosure and safety requirements.

Overall, the requested 8-foot fence height is limited to the red-marked section only and is intended solely to enhance privacy, safety, and security for the home while maintaining compatibility with surrounding conditions.

## Fence variance narrative (with retaining wall/property line details) – Aerial Map Explanation

The attached aerial map depicts my residential property and is provided to illustrate the location, extent, and purpose of the proposed fence improvements. The map includes color-coded markings and measured distances to identify which portions of fencing are new, replaced, or modified, and how they relate to existing structures and property boundaries.

**Property line / retaining wall condition:** Along the side and rear of the property, the **property line is defined by an existing retaining wall**. This retaining wall sits on the property line and represents the **natural contour of the ground for my property at that boundary**. Because the retaining wall is on the property line, **fencing cannot be placed on the opposite side of the wall**, as that area is **the neighboring property**.

**Red (variance request – 8-foot fence on retaining wall):** The section marked in red is the only portion for which an **8-foot height variance** is requested. This fence runs along the side and rear of the property and measures approximately **53 feet total**, consisting of a **26-foot horizontal segment** and a **27-foot vertical segment**, as shown on the map. At the point where the markings transition from **yellow to red**, the fence height will increase from the existing **6 feet to 8 feet**.

The variance request is specifically to allow **8 feet of fencing material to be installed on top of the retaining wall** along this red-marked section. The portion of retaining wall where the 8-foot fence will be placed has a **maximum wall height of 3 feet 11 inches**. As a result, the **maximum overall height measured from the natural contour of the ground (the retaining wall at the property line) will not exceed 12 feet**. **No portion of the proposed fencing will exceed 12 feet in height.**

This additional fence height is requested to improve **privacy and security** due to the close proximity of neighboring properties and the visibility into the yard and home.

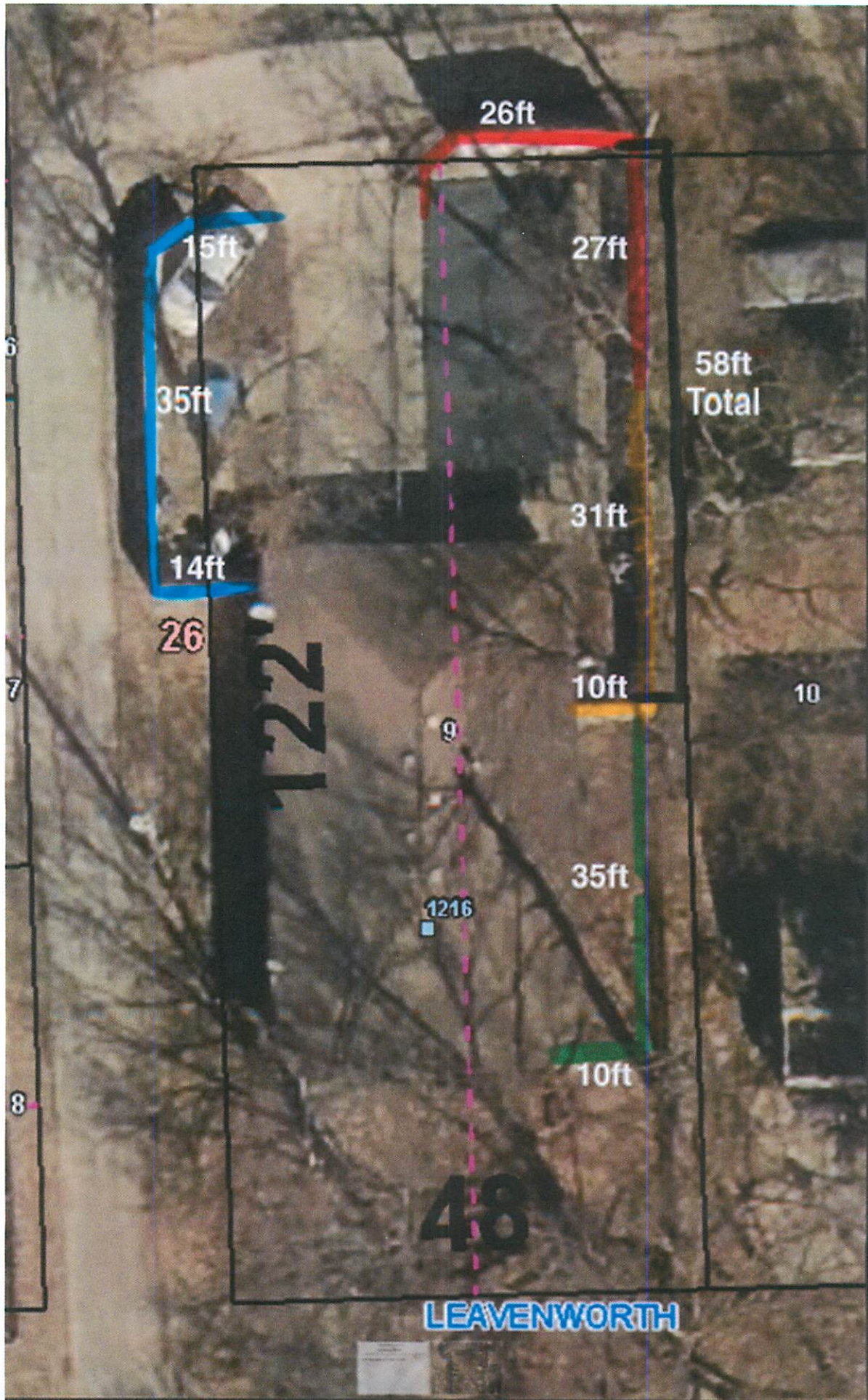
**Yellow (replace existing fence on retaining wall):** The section marked in yellow indicates an **existing fence to be replaced**. This portion sits on top of the existing retaining wall and will remain in the same general alignment and location as the current fence. The replacement is intended to improve durability and provide consistency with the new fencing materials.

**Green (new fence addition to close open area):** The area marked in green shows a **new addition** to the current fence line. This fencing will begin at the house on the left side of the property, extend to the corner of the property line, and then return back to the retaining wall. This addition closes an existing open area and completes the enclosure of the yard while remaining within the property boundaries shown.

**Blue (replace existing fence in same footprint):** The section marked in blue represents another area where **existing fencing will be replaced**. This replacement will follow the same footprint as the current fence and will not extend beyond the established fence line.

**Unchanged fencing:** The **chain-link fence** located between the driveway and the pool will remain unchanged. It is intentionally retained to ensure the pool area continues to meet enclosure and safety requirements.

**Summary:** The requested **8-foot fence height** is limited to the **red-marked section only** and is intended solely to enhance **privacy, safety, and security** for the residence. Due to the retaining wall being the property line and the natural contour at that boundary, the proposed installation will remain compliant with an overall maximum height of **12 feet**, and **no portion of fencing will exceed 12 feet**.



26ft

15ft

27ft

35ft

58ft  
Total

14ft

31ft

26

10ft

10

9

35ft

1216

10ft

48

LEAVENWORTH

6

7

8

## Wooten's Outdoor Services (Hayden Wooten)

9405 Greenway Lane | Lenexa, Kansas 66215  
+16202889342

RECIPIENT:

**Kevin McQuitty**

1216 Cheyenne Street  
Leavenworth, Kansas 66048

**Quote #311**

Sent on Mar 03, 2026

**Total \$0.00**

Product/Service	Description	Qty.	Unit Price	Total
Cedar picket privacy	Install roughly 200ft of 6ft cedar picket privacy. Will flow the fence up to 8ft tall cedar picket privacy from the northeast tree all the way north to the Corner of the fence then back towards the driveway and stop. The rest of the project will be 6ft tall. We will be using black schedule 40 post with black wood adapter brackets, 6ft and 8ft tall cedar boards, and 2x4s	1	\$0.00	\$0.00

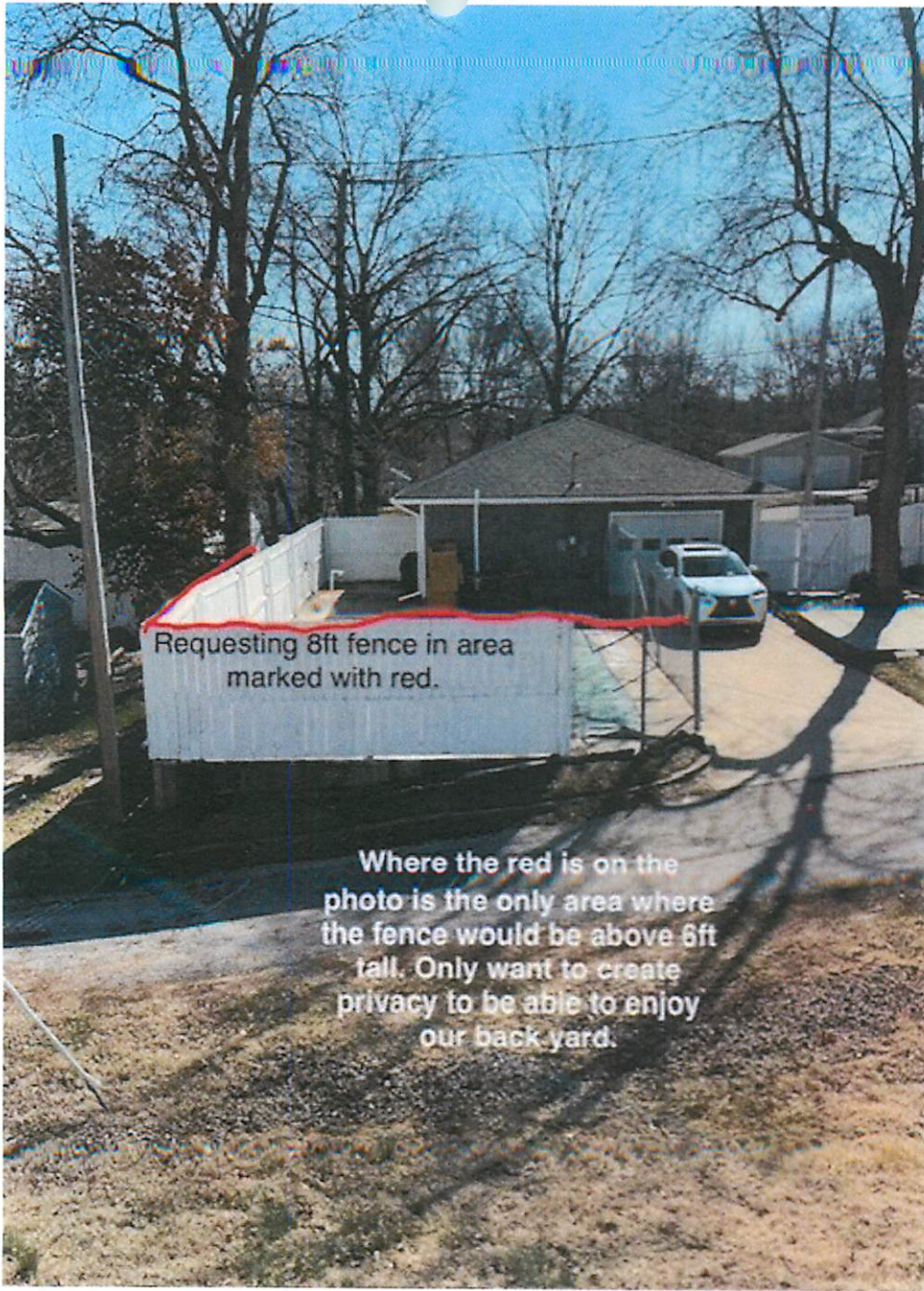
**Total \$0.00**

This quote is valid for the next 30 days, after which values may be subject to change.



**The unique contour of the land photographed shows the lack of privacy and, I believe, the need for a variance.**





Requesting 8ft fence in area marked with red.

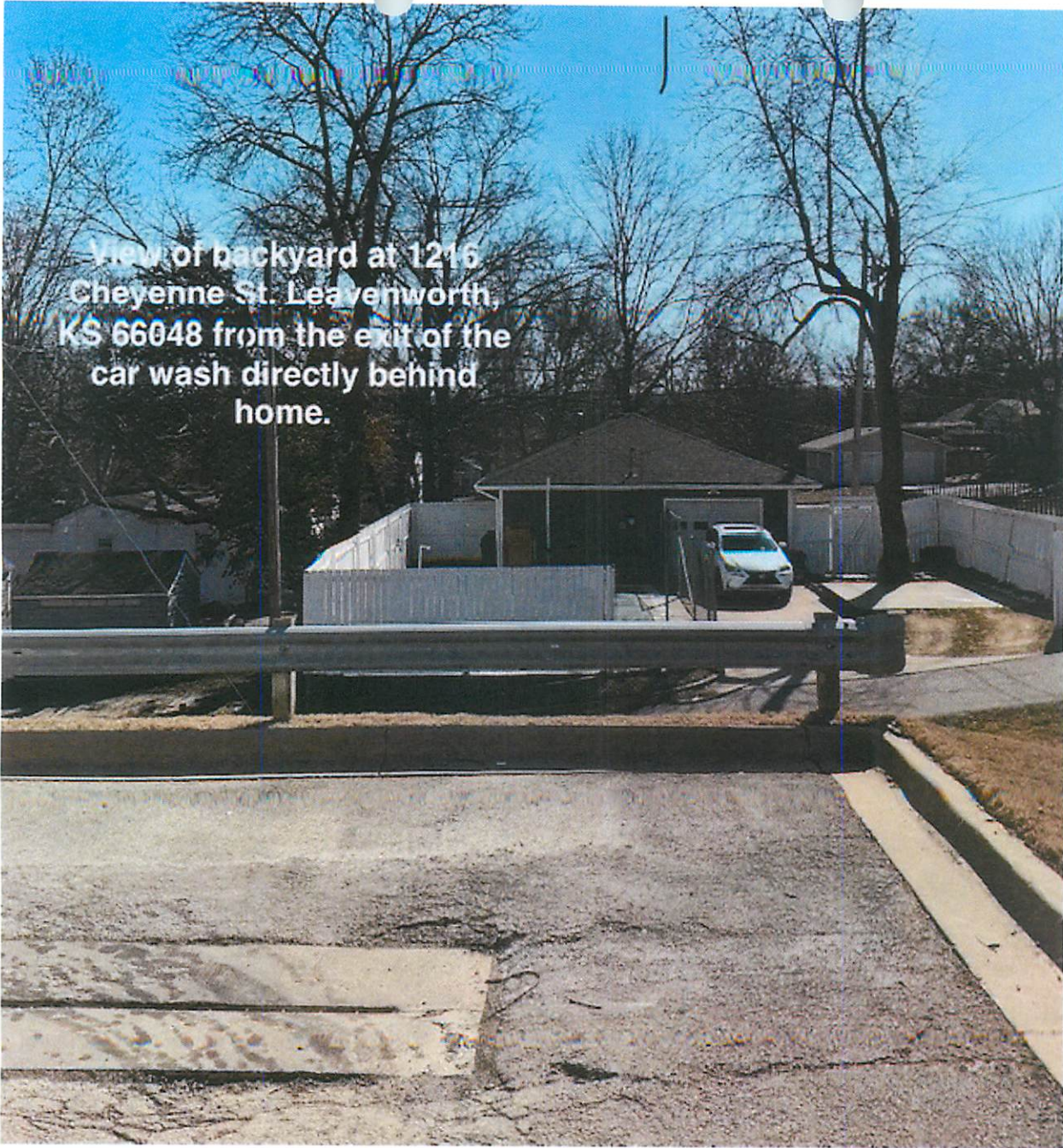
Where the red is on the photo is the only area where the fence would be above 6ft tall. Only want to create privacy to be able to enjoy our back yard.





The unique contour of the  
land shows the commercial  
carwash and residential  
homes are substantially  
elevated above 1216  
Cheyenne St. Leavenworth,  
KS 66048.

View of backyard at 1216  
Cheyenne St. Leavenworth,  
KS 66048 from the exit of the  
car wash directly behind  
home.





**This retaining wall is the property line at 1216 Cheyenne St. Leavenworth, KS 66048. Because of this unique aspect of the property and the contour of the land around the property, it would be impossible to change the layout of the fencing.**





This is the elevation difference from directly behind the home at 1216 Cheyenne St. Leavenworth, KS and the commercial carwash that creates a unique issue with privacy at the home.



# City of Leavenworth Property Radius Search



**Legend**

- Parcels in Buffer
- Parcel Searched
- Buffer
- City Limits

Kevin McQuitty  
03-04-2026  
052-077-26-0-20-05-009.00-0

