



BOARD OF ZONING APPEALS MINUTES
MONDAY, APRIL 20, 2026, 6:00 P.M.
COMMISSION ROOM, CITY HALL
LEAVENWORTH, KANSAS

CALL TO ORDER:

Board Members Present

Ron Bates
Jan Horvath
Ted Davis
Laura Brown

Board Member(s) Absent

Christopher L `Heureux

City Staff Present

Michelle Baragary
Kim Portillo

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

APPROVAL OF MINUTES: March 16, 2026

Chairman Davis asked for comments, changes or a motion on the March 16, 2026 minutes presented for approval. Board Member Horvath moved to approve the minutes as presented, seconded by Board Member Bates and approved by a vote of 4-0.

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.

Chairman Davis called for the staff report.

City Planner Michelle Baragary stated that 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 with the following condition:

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

Chairman Davis asked the Board if there were any questions about the policy report.

Board Member Bates asked for clarification on original problem with the signage on the south property (Flatland Vapes). City Planner Baragary answered that the owner was allowed to keep it but he wanted to change it. Board Member Bates asked if this sign was lit and if the applicant was planning on having it lit. Ms. Baragary answered that it was not lit and the applicant Mark Bisbee didn't plan to. Ms. Baragary explained to the Board that the applicant will need to submit a sign permit application and indicate if it will be illuminated or not. Review of submitted sign applications are reviewed by staff. Board Member Bates stated that he is concerned with blinking lights being in that district which is out of character for that area. Planning Director Kim Portillo clarified that the City's sign code prohibits flashing & moving lights.

Chairman Davis opened the public hearing.

Applicant Mark Bisbee explained that he will not have a lit sign. He will use the top and bottom because he is a Briggs & Stratton warranty dealer providing warranty work and is STIHL certified. Both companies require him to have a sign outside his business in order for people to see it when they send customers to him. Applicant Bisbee further explained that he does not work past 5 pm and it would be lit during daytime hours only. The signs would be in the same space above the building.

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

With no further discussion, Chairman Davis called to 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 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.

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 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.

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 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.

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 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.

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 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.

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:

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.

Board Member Bates moved to accept the condition recommended by staff, seconded by Board Member Horvath and passed 4-0.

Chairman Davis stated that based on the findings, the variance for Case No. 2026-13 BZA is granted subject to the following condition:

- That is either roof sign remains vacant for more than six (6) consecutive months, it shall be removed in its entirety.

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.

Chairman Davis called for the staff report.

Ms. Baragary stated that applicant, 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.

Chairman Davis asked the Board if there were any questions about the policy report.

There was discussion amongst staff and the Board Members regarding the details of the current fence, characteristics of the current retaining wall, and the applicant's variance request to return the fence height to the height it was prior to receiving a violation letter from code enforcement instructing the reduction in the fence height. Staff clarified that the fence height includes both the height of the retaining wall and fence.

Chairman Davis opened the public hearing.

Chairman Davis asked when the pool was installed. Mr. McQuitty said that the fence was like that when he purchased the home last July. Mr. McQuitty explained that the height violation was discovered when he attempted to apply for a fence permit. Mr. McQuitty said he was not aware that a variance was needed when he purchased the home and is now going through the proper process to remedy the situation. Mr. McQuitty was told when purchased the home the pool was around 22-23 years old. He respects the point of view of adding the 8 feet making it 12 feet but he currently does not have privacy and feels uncomfortable in the back yard. He would not have purchased the home had he known he would not have privacy.

The Board asked Mr. McQuitty the current height of the solid white portion of the fence and he said 6 feet. Mr. McQuitty explained the current contour of the location and where he would like the fence to be 8 feet above the retaining wall. This would block the view from the bays at the carwash and would reach 12 feet tall on a portion of it.

The Board asked Mr. McQuitty if there was input from neighbors regarding the fence. Mr. McQuitty answered that the neighbor to the east, where the highest point of the fence would be, is agreeable to the variance request for the fence. The neighbor is an older gentleman and does not have email, but Mr. McQuitty stated that the neighbor does not have issues with the variance request. Ms. Baragary was unsuccessful in her attempts to contact the neighbor.

Chairman Davis asked Mr. McQuitty if there were any neighborhood complaints of the fence height before it was trimmed down and Mr. McQuitty answered no.

The Board asked for the length of the section of fence that would be 12 feet high. Mr. McQuitty did not have an exact measurement but estimated it to be half of 27 feet, which the Board estimated 13.5 feet of fence that would be 12 feet high. Ms. Baragary stated that the lowest portion on the east side would be 10 feet tall. Mr. McQuitty said that currently the highest point is 10 feet which includes the retaining wall and fence on top; the addition would be two feet.

Board Member Horvath asked Mr. McQuitty if he's experienced people gawking at him from the carwash. Mr. McQuitty responded in the affirmative.

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 staff if there were rules on what they could put on their fence or the materials used to build their fence, and if a patio umbrella inside their yard is permitted. Ms. Baragary responded that a patio umbrella inside their yard is permitted, and that screening on top of a fence would be counted toward the overall height of the fence. For example, if mesh fabric is installed on top of their fence to extend their privacy, this would be in violation of the Development Regulations as the mesh fabric is a type of screening and would be included in the total height of the fence.

Chairman Davis asked for clarification regarding staff's recommendation. Staff explained that while none of the five statutory criteria are met to support the requested variance for an 8-foot fence, the criteria are met for a 6-foot fence. Therefore, if the Board denies the request for the 8-foot fence, staff recommends that the Board also consider approving a variance to allow a 6-foot fence.

Ms. Baragary agreed and explained that if the Board grants the variance, the decision will be recorded with the Register of Deeds. Recording the variance ensures that it runs with the property and provides protection for both the current owner and future property owners.

Staff suggested that the Board clearly state what portion of the fence they are voting on before they start voting.

Board Member Bates requested confirmation that the wall on the east side is solid because it is unclear in some of the pictures. Staff confirmed the retaining wall is solid.

Chairman Davis asked for clarification of the picture taken inside the property looking towards the carwash and making sure that standing from the carwash, the pool could not be seen. The picture showed that the two carwash bays were visible from inside the property. Staff responded that the picture referenced was taken while standing next to the rear wall of the home, and although from that angle you can see the carwash bays, someone standing at the carwash bays cannot see into the pool. Staff referenced another picture that was taken while standing by the guardrail up by the bays and confirmed that the pool is not seen but the back portion of the house is visible and anyone standing near the house would be clearly visible.

Chairman Davis reopened the public hearing.

Mr. McQuitty respectfully explained that he is taller than Ms. Baragary and he can see people at the carwash from the middle of his pool and feels that they can see him too. He voiced his concern that people at the carwash will be able to see his family, including his nieces and nephews. Mr. McQuitty added that the fence has been 8 feet tall for at least 10 years without a violation or complaint that he is aware of but then becomes an issue he wants to replace it. He doesn't understand why if it hasn't been a problem for 10 years, it's being debated now. He's trying to advocate for his privacy because when he purchased the house his privacy was better than now and currently doesn't feel like he can enjoy his yard.

Adam Flannigan, who resides at 1216 Cheyenne Street, explained that he is the individual standing next to the fence in the photograph taken from inside the property. He stated that he was positioned approximately 6 feet from the fence, which is the point at which he can no longer make eye contact with individuals using the car wash bays. Mr. Flannigan noted that he is 6 feet 2 inches tall and was standing approximately 6 feet from the fence when the photograph was taken.

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

Chairman Davis asked staff with the way this is structured, is it all or none on the 8-foot or can alterations be made. Ms. Baragary answered that the Board has the authority to impose conditions as they deem appropriate.

Ms. Portillo suggested that the Board clearly state what they are taking a vote on. For example, if the Board wants to consider approving an 8-foot fence along the rear property line but not along the side property line, that should be clearly stated in the motion before the Board votes on the five criteria for that specific variance.

Board Member Bates asked the request for a variance is how many feet of additional fence above the retaining wall on the east side from north headed south. Ms. Baragary responded 27 feet on the east property line measured from the northeast corner.

Board Member Horvath asked if that section represents the highest point of the fence, which is 12 feet in height. Ms. Baragary explained that the highest point of the existing fence is located approximately midway along that fence line and currently measures 10 feet in height. If the Board grants the requested variance for an 8-foot fence, that section would increase by an additional 2 feet, resulting in a maximum height of approximately 12 feet.

Chairman Davis asked to see the photos taken from the carwash bays to see if there are any line-of-sight issues or potential issues with increasing the fence to 8 feet, especially on the east property line.

Board Member Bates asked if the carwash is required to have any type of fence in their rear yard. Ms. Baragary said she was unsure what the regulations were in 1997 when the carwash was built but current regulations require any commercial property adjacent to residential property to install an 8-foot fence on the side adjacent to the residential property. Regulations also state that if an 8-foot fence was not installed, the adjacent residential property owner is permitted to have an 8-foot fence along the side of the commercial property.

Board Member Bates asked how many additional feet the request for the variance is for on the east side from the north heading south. Ms. Baragary responded that starting at the northeast corner of the fence then moving south is approximately 27 feet.

Board Member Horvath asked if this would be the highest point of the fence. Ms. Baragary stated that this section would be the highest point reaching approximately 12 feet if a variance is granted to allow an 8-foot tall fence on top of the retaining wall.

Chairman Davis stated that the Board would vote on a variance to allow an 8-foot-tall fence on top of the retaining wall along the north property line and a fence up to 6 feet in height on top of the retaining wall along the east property line, thereby restoring the property owner to the fence configuration that previously existed.

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.

The Board stated this will be an all-in-one vote to allow an 8-foot tall solid fence on top of the retaining wall on the north side of the property and to allow the existing 6-foot tall solid fence on top of the retaining wall on the east side of the property to remain.

- 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

Vote 4-0

All board members voted in the affirmative.

Chairman Davis asked City Staff to define substantial. Ms. Baragary said 8 feet according to regulations. Ms. Portillo clarified by referring to a picture they took of the current fence and said that the pool was not visible from their view from where they stood at the carwash. Chairman Davis asked where they stood when the photo was taken and Ms. Baragary pointed on the picture near the guard rail which was the closest point. Ms. Portillo said that substantial is a subjective term and they found it to be substantial but the Board may not.

- 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

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 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

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 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

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 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

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 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.

Chairman Davis stated that based on the findings, the variance for Case no. 2026-14 BZA is granted with no conditions.

Chairman Davis adjourned the meeting at 7:07 p.m.

Minutes taken by Planning Assistant, Bethany Lasher.