

LEAVENWORTH BOARD OF ZONING APPEALS

**COMMISSION CHAMBERS, CITY HALL
100 N 5th STREET, LEAVENWORTH, KANSAS 66048**

**REGULAR SESSION
Monday, June 15, 2026
6:00 PM**

AGENDA

CALL TO ORDER:

1. Roll Call/Establish Quorum
2. Approval of Minutes: April 20, 2026 **Action:** Motion

OLD BUSINESS:

None

NEW BUSINESS:

1. **INTRODUCE NEW PLANNING ASSISTANT, BETHANY LASHER**

2. **ELECTION OF VICECHAIR**

3. **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.

ADJOURN



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.

The Board asked staff if there were rules on what they could put on their fence or the materials it's made of. Ms. Baragary answered that a screening on top of the fence would not be allowed and a violation.

Chairman Davis summed that we are saying no to the 8 foot fence but allow a variance for a 6 foot. Ms. Baragary agreed and said it would protect the property owner and future property owners.

The Board requested confirmation that the wall on the east side was solid and the ground inside the fence was built up to the wall; staff confirmed it was.

Chairman David 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 2 carwash bays were visible from inside the property. Staff confirmed that the pool would not be seen but the back side of the house and property is 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 he does not know at the carwash will be able to see his family including children.

Mr. McQuitty added that the fence was at 8 feet for at least 10 years without a violation or complaint until he approached Planning and Zoning to replace it. He doesn't understand why it wasn't a problem for 10 years and now it's being debated. 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 explained that the person standing next to the fence from the photo taken inside the pool was him at that's the point of contact where he can no longer make eye contact with the carwash bays. He is 6.2" and was about 6 feet from the edge of the fence in the photo.

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 if an alteration could be made on 8 feet. Ms. Baragary answered that they can make conditions.

There was discussion between staff and Board Members on the dimensions of the fence and if there are any line-of-sight problems. A fence requirement for the carwash was also asked by the Board and Ms. Baragary said she was unsure what the regulations were in 1997 when it was built but current regulations require any commercial property adjacent to residential property requires an 8 foot fence. Regulations also state that if an 8 foot fence was required or not installed, the adjacent residential property owner is permitted to have an 8 foot fence along the side of the commercial property. The Board mentioned the 8 foot fence for businesses is to keep others from looking into people's yards and questioned the 8 foot fence if the height difference is high.

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

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 they will vote on the variance to allow an 8 foot fence on top of the retaining wall on the north side and up to six feet on top of the retaining wall on the east side.

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.

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.

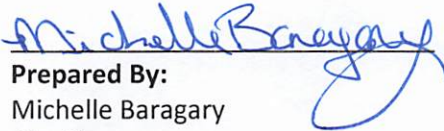
Chairman Davis stated that based on the findings, the variance for Case no. 2026-14 BZA is granted with no conditions.

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

Minutes taken by Planning Assistant, Bethany Lasher.

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

JUNE 15, 2026



Prepared By:
Michelle Baragary
City Planner



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

SUMMARY:

The Board previously approved this variance on April 20, 2026. The application has been rescheduled for a new public hearing following re-notification of surrounding property owners due to an error in the legal description contained in the original public notice.

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.

This application was originally considered by the Board of Zoning Appeals on April 20, 2026, at which time the Board approved the requested variance. Following the public hearing, staff discovered that the legal description submitted with the application was inaccurate. Because the incorrect legal description was used for the statutory notification requirements, the public hearing notices mailed to surrounding property owners did not contain the correct legal description of the subject property.

To ensure compliance with Kansas statutory notification requirements and due process, staff mailed new public hearing notices utilizing the corrected legal description and scheduled a new public hearing for June 15, 2026. The variance request itself has not changed since the Board's original consideration of the application on April 20, 2026.

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 June 15, 2026 public hearing was mailed to property owners within 200 feet of the subject property utilizing the corrected legal description. 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:

Reconsider 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. The Board previously approved this request on April 20, 2026; however, the matter has been reheard following re-notification of surrounding property owners due to an error in the legal description used for the original statutory notice.

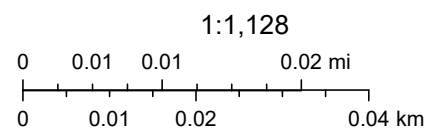
Grant or deny the request. If granted, the variance shall be subject to the condition that if either roof sign remains vacant for more than six (6) consecutive months, it shall be removed in its entirety.

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

Zoning_CURRENT

CBD

GBD

I-1

R-MF

R1-6

Buildings

Parcels_Current

Address (Points)

Leavenworth City Limits

City Right-of-Way

RoadCenterline
- 1:1,128
- Esri, HERE, Garmin, (c) OpenStreetMap contributors, and the GIS user community
- Web AppBuilder for ArcGIS
Platte County, Missouri Dept. of Conservation, Esri, HERE, Garmin, GeoTechnologies, Inc., USGS, EPA |

Michelle Baragary

From: Todd, TerriLois <ttodd@leavenworthcounty.gov>
Sent: Tuesday, April 21, 2026 4:06 PM
To: Michelle Baragary
Subject: Fw: Request: Michelle Baragary - LV City - 123 N Broadway St Lvn - Legal Verification; WD 09381550
Attachments: Michelle Baragary 123 N Broadway St WD 09381550.pdf

Good afternoon,

By itself it is the not the complete legal description since they sold off a piece of the lot in 2005, see attached Warranty Deed. So the correct legal would be:

Lot one (1) in Block One hundred sixteen (116) in Western Addition to the city of Leavenworth, Leavenworth Co., Kansas

Less:

West 40' of Lot 1 of Block 116 western addition, City of Leavenworth

We have waived the normal research fees as a government entity request - there is no charge to the City of Leavenworth.

Request:

2026 04 21 p 01:21	S	n/c	LV City	Michelle Baragary	913-680-2633	michelle.baragary@leavenworth
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Thank you.

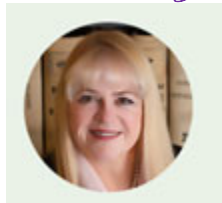
Contact my office any time in the future that we may assist you with your land record needs.

Stay paranoid because they really are trying to steal your property!

Call 913-684-0424 to report new scams.

In service to Leavenworth County,

TerriLois G. Todd



TerriLois G. Todd
Leavenworth County Register of Deeds

FRAUD ALERT: Leavenworth County has been notified of multiple fraudulent emails requesting payment of fees to a non-agency account. All application fees are paid at the time of application and any additional required fees will be requested on official letterhead. Furthermore, the County does not have an online payment option. If you receive an email or letter requesting payment of fees that appears to come from the Leavenworth County Planning & Zoning Department or Planning Commission, please contact the office at 913.684.0465 before making any payments online or by phone.



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 TEE 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...

☒	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)

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



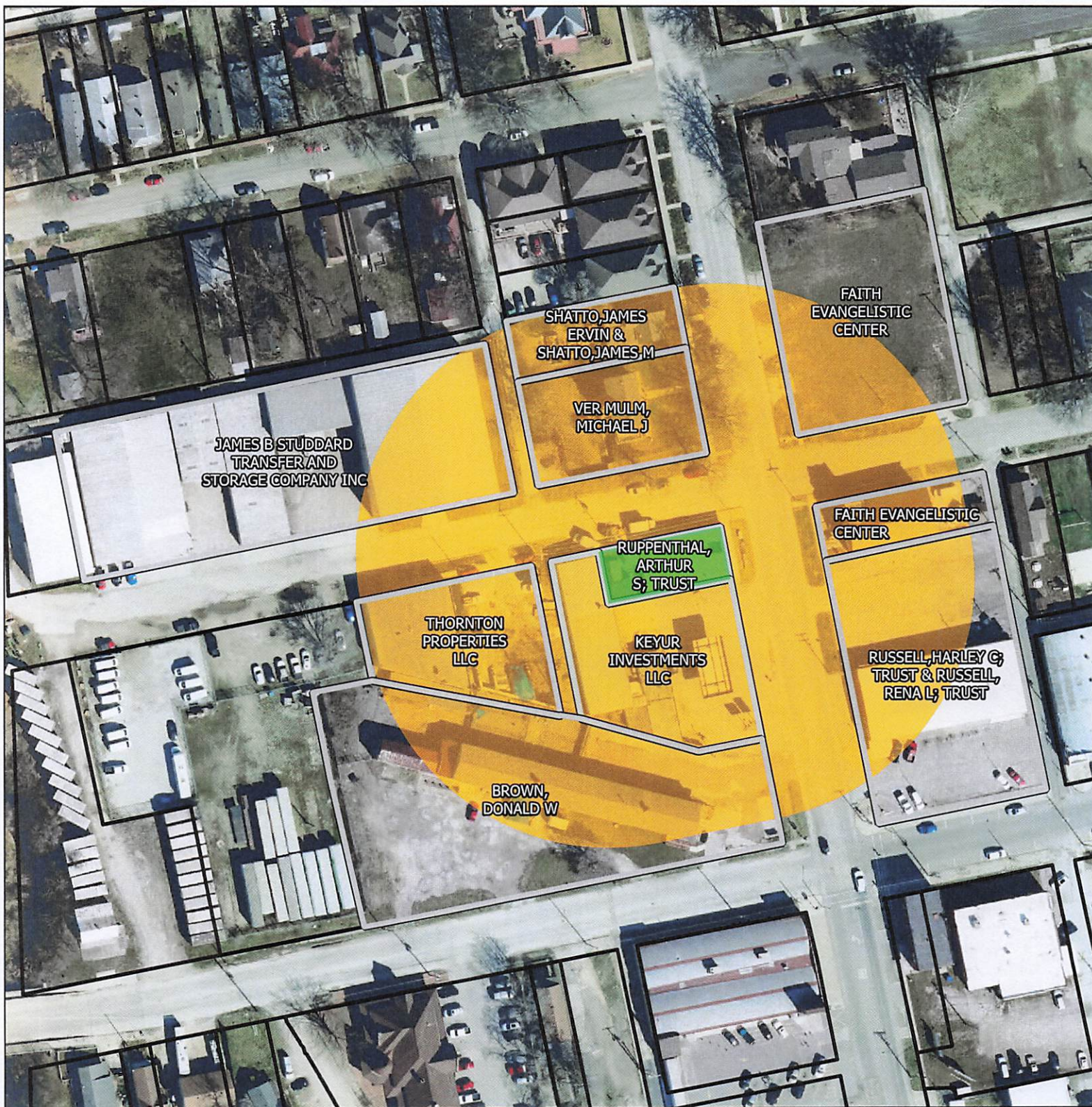
Facing east on Seneca

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

