



AGENDA
BOARD OF ZONING APPEALS
 Tuesday, January 3, 2017 – 5:00 PM
City Council Chambers
 125 East Avenue B, Hutchinson, Kansas

1. ROLL CALL

- | | | |
|-----------------------------------|--|---|
| <input type="checkbox"/> Macklin | <input type="checkbox"/> Woleslagel | <input type="checkbox"/> Bisbee (Chair) |
| <input type="checkbox"/> Hamilton | <input type="checkbox"/> Peirce | <input type="checkbox"/> Obermite |
| <input type="checkbox"/> Carr | <input type="checkbox"/> Hornbeck (Vice Chair) | <input type="checkbox"/> Peterson |

2. APPROVAL OF MINUTES – Meeting of November 1, 2016.

3. CORRESPONDENCE & STAFF REPORTS – Motion to accept documents into the official record.

4. PUBLIC HEARINGS

a. ZV16-000006, Variances for Lee Ann Penick, 2808 N Main St

Request for variances for accessory building side yard setback requirements and commercial parking requirements for the property at 2808 N Main St
(Staff Representative: Aaron Barlow, Associate Planner)

Action 1: Motion to (approve / deny) variance request #ZV16-000006 from the requirements of the Hutchinson Zoning Regulations, Sec. 27-418.I. (accessory structure side yard setback - from 10' to 3') for the property located at 2808 N Main Street based upon a finding that the factors required for approval (are / are not) met.

Action 2: Motion to (approve / deny) variance request #ZV16-000006 from the requirements of the Hutchinson Zoning Regulations, Sec. 27-702 (parking – from 6 spaces to 5 spaces) for the property located at 2808 N Main Street based upon a finding that the factors required for approval (are / are not) met.

b. ZV16-000004, Variances for Kenny’s Bar, 1723 E 4th Ave

Request for variances from parking lot paving, landscaping and trash bin screening requirements for the property at 1723 E 4th Avenue
(Staff Representative: Casey Jones, Senior Planner)

Action 1: Motion to (approve / deny) variance request #ZV16-000004 from the requirements of the Hutchinson Zoning Regulations, Sec. 27-701.D.2 (parking lot paving) for the property located at 1723 East 4th Avenue based upon a finding that the factors required for approval (are / are not) met.

Action 2: Motion to (approve / deny) variance request #ZV16-000004 from the requirements of the Hutchinson Zoning Regulations, Sec. 27-908 (landscaping) for the property located at 1723 East 4th Avenue based upon a finding that the factors required for approval (are / are not) met.

Action 3: Motion to (approve / deny) variance request #ZV16-000004 from the requirements of the Hutchinson Zoning Regulations, Sec. 27-908.E.7 (trash bin screening) for the property located at 1723 East 4th Avenue based upon a finding that the factors required for approval (are / are not) met.

Staff Contacts:	Jana McCarron	620-694-2681	Casey Jones	620-694-2667
	Amy Allison	620-694-2638	Aaron Barlow	620-259-4198
	Charlene Mosier	620-694-2639	Stephanie Stewart	620-694-2635

c. **16-SUP-05, Special Use Permit for Kenny's Bar, 1723 E 4th Ave**

Request for a special use permit to establish a bar at 1723 E 4th Avenue

This item was tabled on October 18, 2016.

(Staff Representative: Casey Jones, Senior Planner)

Action 1: Motion to remove this item from the table.

Action 2: Motion to (approve / deny) special use permit request #16-SUP-05 for a bar at 1723 East 4th Avenue based upon a finding that the factors required for approval (are / are not) met.

5. UPCOMING CASES - None

6. OPEN COMMENTS FROM THE AUDIENCE (Please limit comments to five minutes.)

7. ADJOURNMENT



BOARD OF ZONING APPEALS MINUTES
MEETING OF: TUESDAY, NOVEMBER 1, 2016
MEETING LOCATION: CITY COUNCIL CHAMBERS
125 EAST AVENUE B

1. **ROLL CALL**

The Board of Zoning Appeals meeting was called to order at 5:00 PM with the following members present: Harley Macklin, Darryl Peterson, Terry Bisbee, Tom Hornbeck, Janet Hamilton, Robert Obermite, Todd Carr, Mark Woleslagel and Ken Peirce. Staff present were Jana McCarron, Director of Planning and Development; Casey Jones, Senior Planner; Aaron Barlow, Associate Planner; Amy Allison, Housing Program Coordinator; and Charlene Mosier, Planning Technician.

2. **APPROVAL OF MINUTES**

The minutes of the October 18, 2016, meeting were approved on a motion by Woleslagel, seconded by Peterson, passed unanimously.

3. **CORRESPONDENCE & STAFF REPORTS**

The documents and staff reports were accepted into the official record on a motion by Bisbee, seconded by Macklin, passed unanimously.

4. **PUBLIC HEARINGS**

a. **16-BZA-05: Fence Height Variance**

Request for a variance from the height limit of four feet for a five-foot, wrought iron, semi-transparent fence in the front yard of a residential lot for property located at 3908 N Monroe St.

Peirce opened the hearing and asked if there were any outside contacts or conflicts of interest; Woleslagel said he may have a perceived conflict and would abstain, as the applicant was his former employee.

Barlow presented the staff report. The owners are Dusty and Jonna Moore and the applicant is Frank Suarez, Rylko Fence Company. The request is for a five-foot wrought-iron fence in front of the property rather than the allowed four-foot fence. The pillars and fence posts have been installed. The pillars are considered decorative. Photos of the property without fence posts on October 7, 2017, and with fence posts on October 21, 2016, were shown. Other photos were shown, including surrounding properties and a nearby comparable property with a four-foot fence. Barlow reviewed the five factors required for approval of a variance and indicated that Staff could not support the variance based upon the following analysis:

ANALYSIS OF FINDINGS OF FACT REQUIRED FOR VARIANCE REQUESTS:

Factor	Analysis	Met	Not Met
<p>1. The request for a variance must arise from a condition which is unique to the property in question, is not commonly found on other parcels in the same zone or district, and is not created by an action or actions of the property owner or applicant.</p>	<p>The unique hardship provided in the applicant's proposal was the 6' columns that the City "approved". Columns would not require a permit; however, an electrical permit is required if the columns are to be lighted. No permit has been obtained. The property does have two characteristics that are relatively unique to the neighborhood:</p> <ol style="list-style-type: none"> 1. The lot is large (roughly 2 ½ acres) 2. The lot sits on a (proposed) corner <p>Given these conditions, <i>a 5' fence may provide a visual benefit to the property owner not allowed by the 4-foot standard.</i></p>	✓	✓
<p>2. Granting of the variance must not adversely affect the rights of adjacent property owners or residents.</p>	<p>The fence is proposed to be installed along only the front of the property. Since the proposed fence is not abutting any neighbors, <i>the fence is not blocking views or preventing use of neighboring properties.</i> In addition, the material, height, and size of the proposed fence <i>will not deter from the character of the neighborhood due to its location.</i></p>	✓	
<p>3. Strict application of the zoning regulations must cause an unnecessary hardship for the property owner. The variance must not merely serve as a convenience to the applicant but must alleviate some demonstrable or unusual hardship or difficulty.</p>	<p>The applicant could easily install a 4-foot fence without any issue; A property of similar size to the south did just that. In this situation, the desired fence height serves as a convenience for the property owner. The fence is not being used for security or to hold in anything or anyone, instead it is providing an accent to the front of the property. <i>Allowing a 5' fence would serve as a convenience to the applicant and there is no demonstrable hardship or difficulty other than the fact that the applicant believes attaching a 4-foot fence to 6-foot pillars will look strange.</i></p>		✓
<p>4. Granting of the variance must not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare.</p>	<p>The fence will be set back 20.5' from the property line, allowing enough space for pedestrian movement along the city's unimproved street (which does not have a sidewalk). Also, the design of the proposed fence allows for visibility into the property, facilitating effective police patrol. <i>Installation of the proposed fence will not have an adverse effect on the public health, safety, morals, order, convenience, prosperity, or general welfare due to the size of the lot and the fact that the fence is transparent. However, as of October 21, 2016, the applicant has installed posts for the proposed fence without first obtaining a permit, which adversely affects the public order and convenience.</i></p>		✓

Factor	Analysis	Met	Not Met
5. Granting of the variance must not be contrary to the general spirit and intent of the Zoning Regulations	Sec. 27-907 of the City's zoning regulations do not explicitly provide the intent of the existing regulations. However, front yard fence height is generally established to prevent the proliferation of fortress-like properties, creating uninviting communities. Article IX does establish that the regulations are meant to guide development to protect the public's general health, safety and welfare. As discussed in the section above, the proposed fence <i>will not adversely affect the public and is not contrary to the spirit of the regulations. However, as of October 21, 2016, the applicant has installed posts for the proposed fence without first obtaining a permit, contrary to the general spirit and intent of the Zoning Regulations.</i>		✓

McCarron said if the Board decides to override the Staff recommendation, specific findings for all the factors will need to be stated as part of the record.

Macklin asked if the Board has reviewed similar cases in the past. McCarron said there have not been any in the past few years. If this is something the Board would like in the future, this can be included in the staff report. Jones said there was a variance request for a six-foot privacy fence on Monarch Lane on a corner lot under our old fence regulations and that request was denied. Another case involved an eight-foot privacy fence and due of a change in topography the fence appeared to be only six feet in height from the adjacent property. In that case, a variance was granted.

Peirce asked the applicant for his presentation.

Frank Suarez, 810 W 20th Ave, said he was not trying to circumvent the process, but wanted to install the fence posts so they would be level with the existing stone pillars and so he would not do damage to the fresh dirt work, newly installed irrigation system and seeded grass by coming in later to dig the fence post holes. He also wanted to get them in while the weather was good. He said the posts are the same cost regardless of the height of the fence and will be cut down to the height of the fence panels once they are installed. He said a four-foot or a five-foot fence could be installed. He showed the Board a photograph showing what the finished fence would look like. The fence will sit completely on the owner's property and not in the right-of-way.

Dusty Moore, owner, stated he did not realize the variance process takes as long as it does and after years of living in the country, he was not aware of all the requirements. He said he is spending a lot of money on the yard with the ground work, irrigation and grass and it will be an attractive addition to this entryway into Hutchinson. He said that he had the six-foot pillars installed with the intent of installing a five-foot fence and was unaware of the four-foot height limit in the zoning regulations. He believes with the height of the pillars, a five-foot fence would look better than a four-foot fence.

Dave Freund, 116 Dakota Drive, addressed the Board and said he owned the subject property before the Moores purchased it. He said their new home is an improvement to Monroe Street. He said the home and the proposed fence are an asset to the neighborhood and no neighbors showed any opposition.

Hamilton asked if there were any comments from the surrounding property owners. Staff said there were no comments.

Peirce asked for Staff's recommendation. Barlow stated that Staff recommends denial of the variance request because the five factors required for granting a variance have not been met.

Obermite, Hamilton and Peterson mentioned they agreed with the analysis and the factors presented by Staff but felt that this case represents a unique project with unusual conditions, such as the size of the lot and the setback and height of the house.

There were no other comments from the audience and Peirce asked for a motion.

Motion by Macklin, seconded by Peterson, to approve variance request number 16-BZA-05 from the requirements of the *Hutchinson Zoning Regulations, Sec. 27-907.A.1., Fences*, for the property located at 3908 North Monroe Street based upon due consideration of the findings of fact required for approval of variance requests and a determination that said findings are met as follows:

Factor	Finding
1. The request for a variance must arise from a condition which is unique to the property in question, is not commonly found on other parcels in the same zone or district, and is not created by an action or actions of the property owner or applicant.	The lot and house are large. The house sits back a considerable distance from the roadway. The property is on a corner lot. These conditions would provide a visual benefit of a 5' fence.
2. Granting of the variance must not adversely affect the rights of adjacent property owners or residents.	The fence would be installed along only the front of the property and not abutting any neighbors. The fence is not blocking views or preventing use of neighboring properties. The material, height, and size of the proposed fence will not deter from the character of the neighborhood due to its location.
3. Strict application of the zoning regulations must cause an unnecessary hardship for the property owner. The variance must not merely serve as a convenience to the applicant but must alleviate some demonstrable or unusual hardship or difficulty.	Given the scale of the property, a 4' fence would not have the same visual appeal as it would on a smaller lot. The regulations are designed for properties with much smaller lot frontage.

4. Granting of the variance must not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare.	The fence will be set back 20.5 feet from the property line. The design of the proposed fence allows for visibility into the property.
5. Granting of the variance must not be contrary to the general spirit and intent of the Zoning Regulations	The fence would not adversely affect the public's general health, safety and welfare and is not contrary to the spirit of the regulations.

The motion passed with the following vote:

**Yes – Macklin, Peterson, Hornbeck, Bisbee, Carr, Hamilton, Obermite, Peirce;
Abstain – Woleslagel.**

5. **TABLED ITEM**

- a. 16-SUP-05: Kenny's Special Use Permit
Request for a Special Use Permit to open a bar/tavern at 1723 E 4th Avenue

Jones said this location has been a bar for many years but did close for more than a year. It is now being reopened; however, there are a number of nonconforming issues. The parking lot is not paved and a certified survey has been requested. The applicant will need to work with Engineering to obtain a recorded access easement on city owned property. A floorplan will be needed to determine the number of parking stalls required. One option could be to lower the occupancy load of the building which would then require fewer parking stalls. A site plan was received today from Duncan Durr and will be reviewed by the Development Review Committee. Mr. Queen, owner and applicant, was in the audience. However, the Board said they would defer comments and questions on this case to the public hearing, as they could not take any action tonight.

6. **UPCOMING CASES** – None.
7. **OPEN COMMENTS FROM THE AUDIENCE** – None.
8. **ADJOURNMENT** – The meeting adjourned 5:50 PM.

Respectfully Submitted,
Charlene Mosier, Planning Technician

Approved this _____ day of _____, 2016

Attest: _____

Staff Report
Board of Zoning Appeals

Case: ZV16-000006

December 20, 2016

Hearing Date: January 3, 2017

REQUEST

Variance from accessory building side yard setback requirements (10' to 3') and commercial parking requirements (6 spaces to 5 spaces) in the C-2 District

Staff

Staff Representative:

Aaron Barlow
Associate Planner *Aaron Barlow*



Subject Property: 2808 N Main Street

Applicant:

Ward Davis
Ward Davis Builders, Inc.
2911 North Plum Street
Hutchinson KS 67502

Engineer:

Brent Engelland
Engineering Consultants, P.A.
1227 North Main Street
Hutchinson KS 67501

Surveyor:

Dan Garber
Garber Surveying Service, P.A.
2908 North Plum Street
Hutchinson KS 67502

Owner:

Lee Ann Penick
3706 Kennedy Grace Lane
Austin, TX 78727-3501

Application Materials:

[Link to Materials](#)

Application Information

STAFF RECOMMENDATION

- 1) Setback Variance: Denial**
- 2) Parking Variance: Approval**

MOTION

1) Setback Variance:

Approve/deny Variance request number ZV16-000006 from the requirements of §27-418.I, side-yard setback for an accessory structure located in the C-2 Neighborhood Commercial District from 10 feet to 3 feet, of the *City of Hutchinson Zoning Regulations* for property located at 2808 North Main Street, based upon due consideration of the findings of fact required for approval of Variance requests and a determination that said findings are **met/not met**.

2) Parking Variance:

Approve/deny Variance request number ZV16-000006 from the requirements of §27-702, parking minimum for financial services with a gross floor area of 1592 square feet from 6 spaces to 5 spaces, of the *City of Hutchinson Zoning Regulations* for property located at 2808 North Main Street, based upon due consideration of the findings of fact required for approval of Variance requests and a determination that said findings are **met/not met**.

PROJECT SUMMARY

Variance to allow:

- 1) An accessory garage to be built within 3' of the established 10' setback
- 2) A reduction in number of required parking spaces from 6 to 5

LOCATION MAP:

Subject Property

Zoning	Zoning: C-2 Neighborhood Commercial District
	Comprehensive Plan Designation: Office
Notice & Review	Subdivision: Northside Addition
	Development Review: 12/13/2016
	Legal Ad Published: 12/12/2016
	Property Owner Notice: 15 owners, 16 properties, 12/12/2016

ANALYSIS OF FINDINGS OF FACT REQUIRED FOR VARIANCE REQUESTS:

Factor	Analysis	Met	Not Met
<p>1. The request for a variance must arise from a condition which is unique to the property in question, is not commonly found on other parcels in the same zone or district, and is not created by an action or actions of the property owner or applicant.</p>	<p>Setback: For residential uses, non-conforming garages may be replaced without a variance. However, because the property is located in a commercial district with a building converted to a commercial use, the new garage must be moved to comply with commercial setback standards. The side yard setback requirement for an accessory structure in the C-2 Zoning District is 10 feet. There is ample space in the rear yard for the new garage to be built at the required setback.</p>		✓
	<p>Parking: Because the building was converted from a residential to a commercial use, the unique hardship of the property (adequate space for parking) is user-created. While not all 6 required spaces can be added, there is sufficient space for 5 spaces (2 standard, 1 ADA, plus 2 more in the garage).</p>	✓	
<p>2. Granting of the variance must not adversely affect the rights of adjacent property owners or residents.</p>	<p>Setback: Because the garage has existed on the property for many years (since at least 1938), and since the proposed garage is smaller than what is existing, there are no anticipated impacts on adjacent property owners.</p>	✓	
	<p>Parking: Reducing off street parking will have minimal impact on adjacent properties, as the proposed parking will add a designated ADA parking space and 2 additional spaces, which is more than presently provided by the existing garage.</p>	✓	

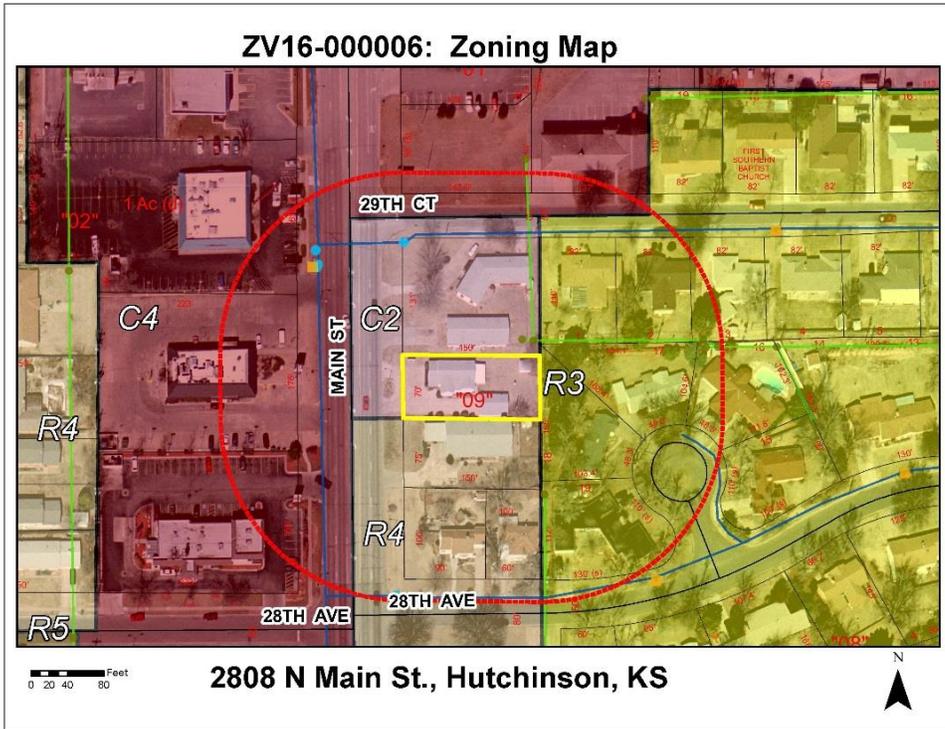
Factor	Analysis	Met	Not Met
<p>3. Strict application of the zoning regulations must cause an unnecessary hardship for the property owner. The variance must not merely serve as a convenience to the applicant but must alleviate some demonstrable or unusual hardship or difficulty.</p>	<p>Setback: Unless the applicant can indicate otherwise, the current commercial use of the property does not require a garage. There is no hardship associated with the proposed location, as the subject property has ample space for a garage in the rear yard.</p>		✓
	<p>Parking: Construction of a new structure on the property requires compliance with minimum parking regulations. While <i>all</i> required parking may not be able to fit on the property, the rear yard is large enough to provide <i>some</i> parking while adhering to parking configuration standards.</p>	✓	
<p>4. Granting of the variance must not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare.</p>	<p>Setback: Submitted plans show fire access to the rear of the property; granting the variance should not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare.</p>	✓	
	<p>Parking: Based on the submitted plans, the granting of the variance should not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare.</p>	✓	
<p>5. Granting of the variance must not be contrary to the general spirit and intent of the Zoning Regulations.</p>	<p>Setback: The intent of the City’s nonconforming standards (sec. 27-317) is to bring nonconforming uses more into conformance with the regulations as new development occurs and not to encourage the perpetuation of nonconformities. However, because the property is situated between two residential properties, keeping the current position of the garage will maintain the feel of the neighborhood.</p>	✓	✓
	<p>Parking: Section 27-418.A states that “...all uses shall be subject to the development and performance standards set forth in these regulations.” Moving the garage allows the property to adhere to the parking standards established in sec. 27-701.O.5, so granting a variance from the number of required parking spaces, as established in section 27-702 should be in line with the general spirit and intent of the Zoning Regulations.</p>	✓	

2808 North Main Street

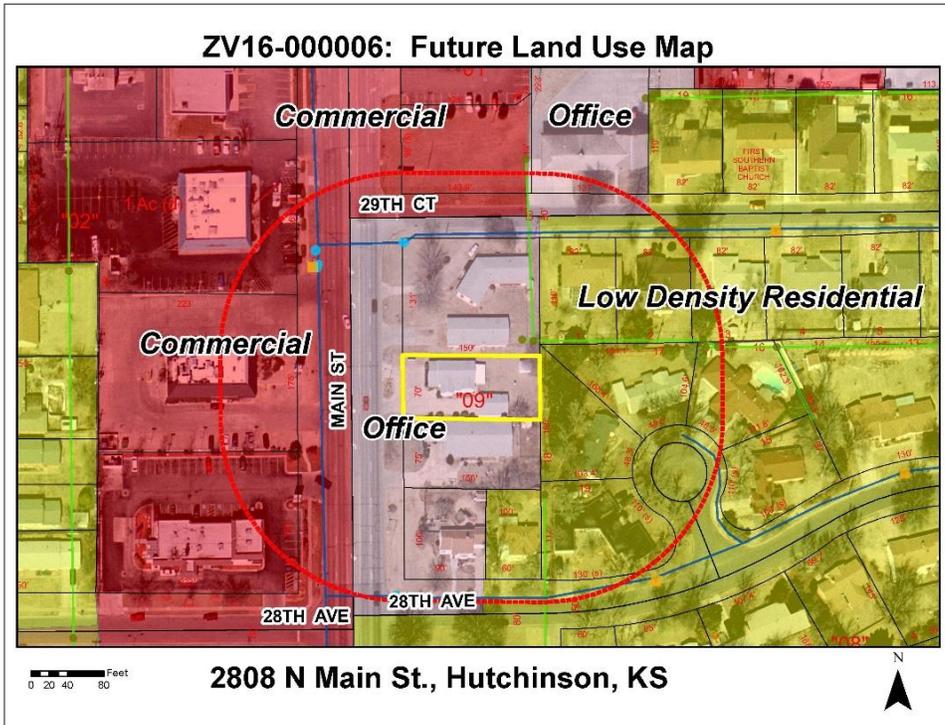
SITE PLAN REVIEW:

Item	Standard	Provided	Met	Not Met
Front yard setback	25 feet	101.5 feet	✓	
Side yard setback for accessory structures	10 feet	3.5 feet requesting variance		✓
rear yard setback for accessory structures	5 feet rear yard	10 feet	✓	
Building height limit	35 feet	8 feet	✓	
Maximum lot coverage	10%	2%	✓	
Driveway approach surfacing	Driveway approaches shall be concrete.	The property has two concrete driveways onto Main Street	✓	
Drive aisle width	24'	24-25'	✓	
Parking	1362 SF of building area For Financial Office: Min: 1 space/250 SF GFA = 6 spaces Max: 1 space/150 SF GFA = 9 spaces	5 spaces (2 standard, 1 ADA, 2 garage) requesting variance		✓
Parking lot and drive aisle pavement	For all commercial uses, parking lots and drive aisles must be paved with concrete or asphalt.	4" Concrete	✓	

ZONING MAP:



COMPREHENSIVE PLAN MAP:



Existing garage



Existing Garage and Property Line



View of Fence and Rear of Current Garage



View of Rear-yard



Driveway Approaches and Sidewalk



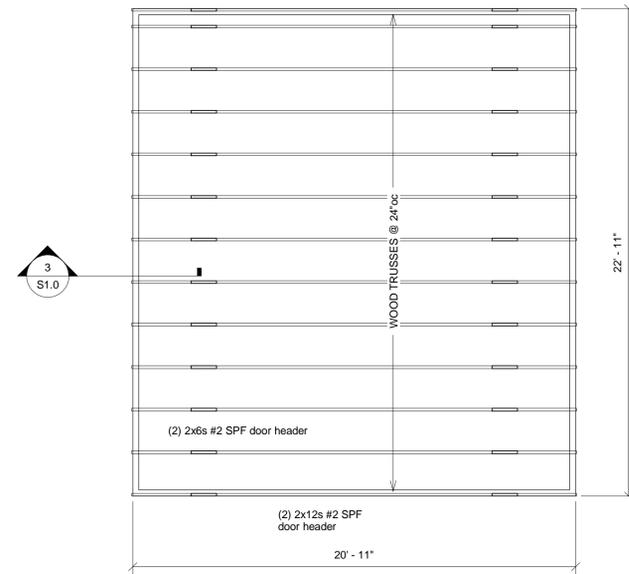
Current Parking Area



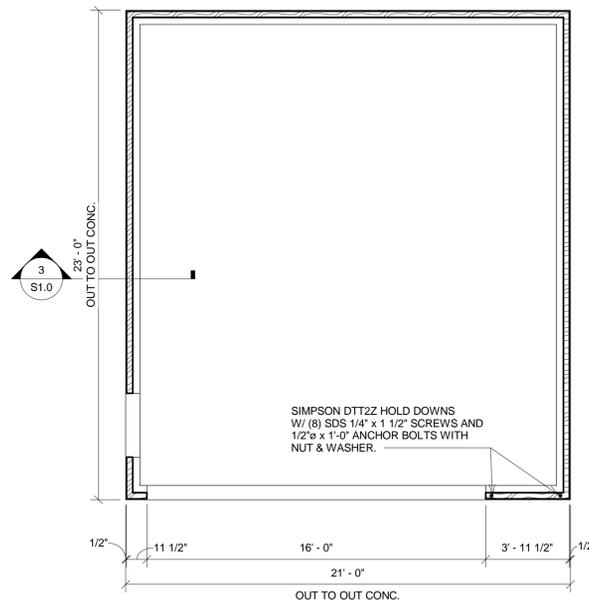
EXHIBITS:

- A. Site Plan**
- B. Engineering Plan**
- C. Survey**

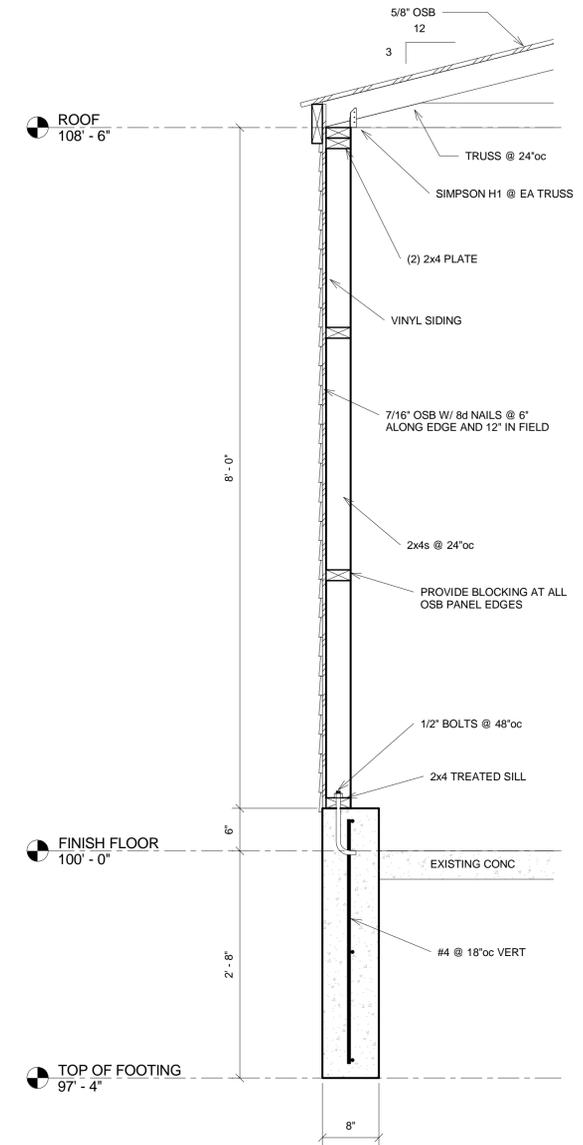
Exhibit B



2 ROOF FRAMING PLAN
1/4" = 1'-0"



1 FOUNDATION PLAN
1/4" = 1'-0"



3 Section 1
1" = 1'-0"



ENGINEERING



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1227 NORTH MAIN STREET
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F 620-665-0218

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GARAGE @ 2808 N MAIN
WARD DAVIS BUILDERS
HUTCHINSON KANSAS

Revision Schedule	
No	Date

DATE: OCT.2016
JOB No: 16-242
DESIGN BY: BLE
DRAWN BY: TW
CHECK BY: BLE

WARD DAVIS BUILDERS
PLAN & SECTION

S1.0
OF

10/18/2016 8:28:31 AM N:\MS2016-242\Ward Davis - 2808 N Main Garage\16-242.rvt



2908 North Plum St.
Hutchinson, Kansas 67502
Phone 620 665-7032 • FAX 620 663-7401

511 North Poplar St.
Newton, Kansas 67114
Phone 316 283-5053 • FAX 316 283-5073

115 East Martin
McPherson, Kansas 67460
Phone 620 241-4441 • FAX 620 241-4458

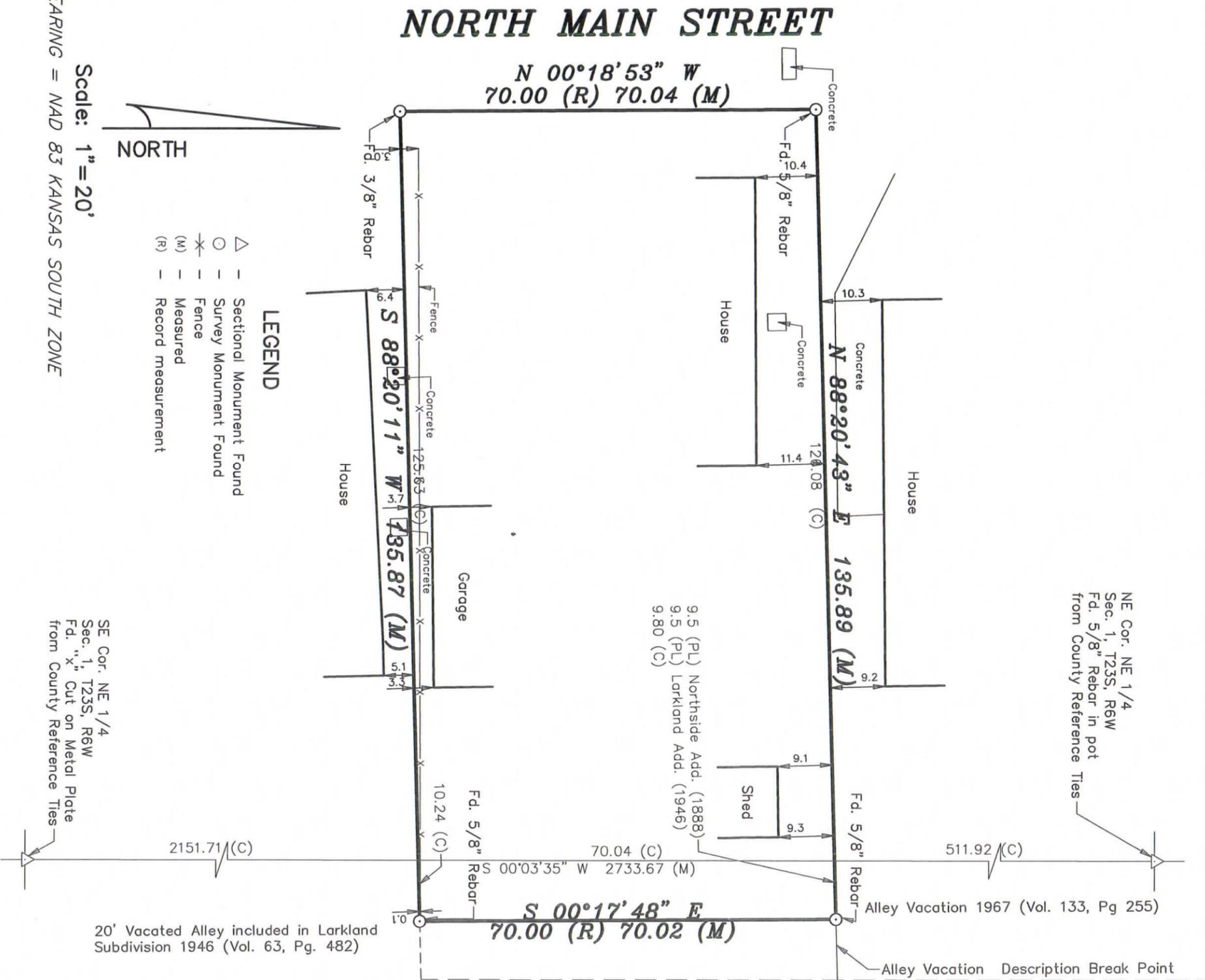
Garber Surveying Service, P.A.

SURVEY FOR: WARD DAVIS BUILDERS

Project No. G2016-732

DESCRIPTION: The North 70 feet of the South 245 feet of Block "F", Northside Addition to the City of Hutchinson, Reno County, Kansas, according to the duly recorded Plat thereof, EXCEPT that portion condemned by Case No. 24158 of the District Court of Reno County, Kansas, for widening and extending of Kansas State Highway K-17 within the City of Hutchinson, Kansas, TOGETHER WITH that portion of the North-South alley located approximately one-half block East of Main Street and extending from 28th Avenue to 29th Street Court, as vacated by Ordinance No. 3579 of the Board of Commissioners of the City of Hutchinson, Kansas, filed August 30, 1955 and recorded in Book 93, Page 313.

Exhibit C



DATE OF FIELD WORK: November 8, 2016

SURVEYOR'S CERTIFICATE:

I hereby certify this plat to be a true, correct and complete representation of the property described above as surveyed, under my supervision.
Dated: November 23, 2016

Copyright © 2016 Garber Surveying Service, P.A.

Daniel E. Garber IS #663



Staff Report

Board of Zoning Appeals

Case: ZV16-000004

December 20, 2016

Hearing Date: January 3, 2017

REQUEST:

Variance from parking lot paving, landscaping and trash bin screening regulations for a bar in the C-4 District

Staff

Staff Representative:

Casey Jones, AICP, CFM
Senior Planner *cg*

Subject Property: 1723 E 4th Ave



Application Information

Applicant/Owner:

R. Queen
PO Box 2321
Hutchinson, KS 67504

Application Materials:

[Link to Application Materials](#)

Surveyor

Duncan Durr
Durr Engineering LLC
525 Howard St.
Hutchinson, KS 67501

Concurrent Applications:

16-SUP-05 (Special use permit for a bar in the C-4 District)

STAFF RECOMMENDATION:

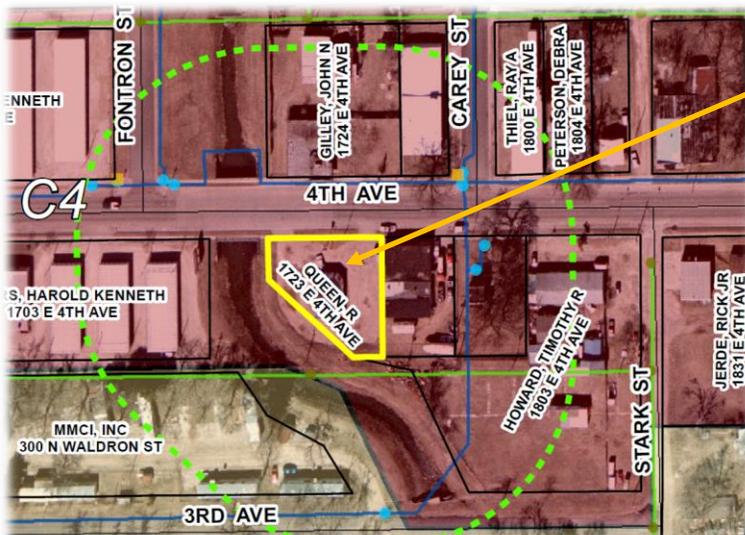
1. Denial of parking lot paving variance
2. Approval of landscaping variance
3. Denial of trash bin screening variance

MOTION:

[Approve/deny] variance request #ZV16-000004 from the requirements of the *Hutchinson Zoning Regulations*, Sec. 27-701.D.2 (parking lot paving), Sec. 27-908 (landscaping), and Sec. 27-908.E.7 (trash bin screening) for the property located at 1723 East 4th Avenue based upon due consideration of the findings of fact required for approval of variance requests and a determination that said findings are [met/not met].

PROJECT SUMMARY: Variance from parking lot paving, trash bin screening and landscaping requirements.

LOCATION MAP:



Subject Property

Zoning

Zoning:

C-4 Special Commercial District

Comprehensive Plan Designation:

Commercial

Subdivision:

Junction Addition

Notice & Review

Development Review Committee Meeting:

11/9/2016

Public Hearing Notice Published:

11/28/2016 (*Hutchinson News*)

Property Owner Notice:

8 owners, 9 properties,
Mailed 11/17/2016

Received comments are attached as "Exhibit A."

ANALYSIS OF FINDINGS OF FACT REQUIRED FOR VARIANCE REQUESTS:

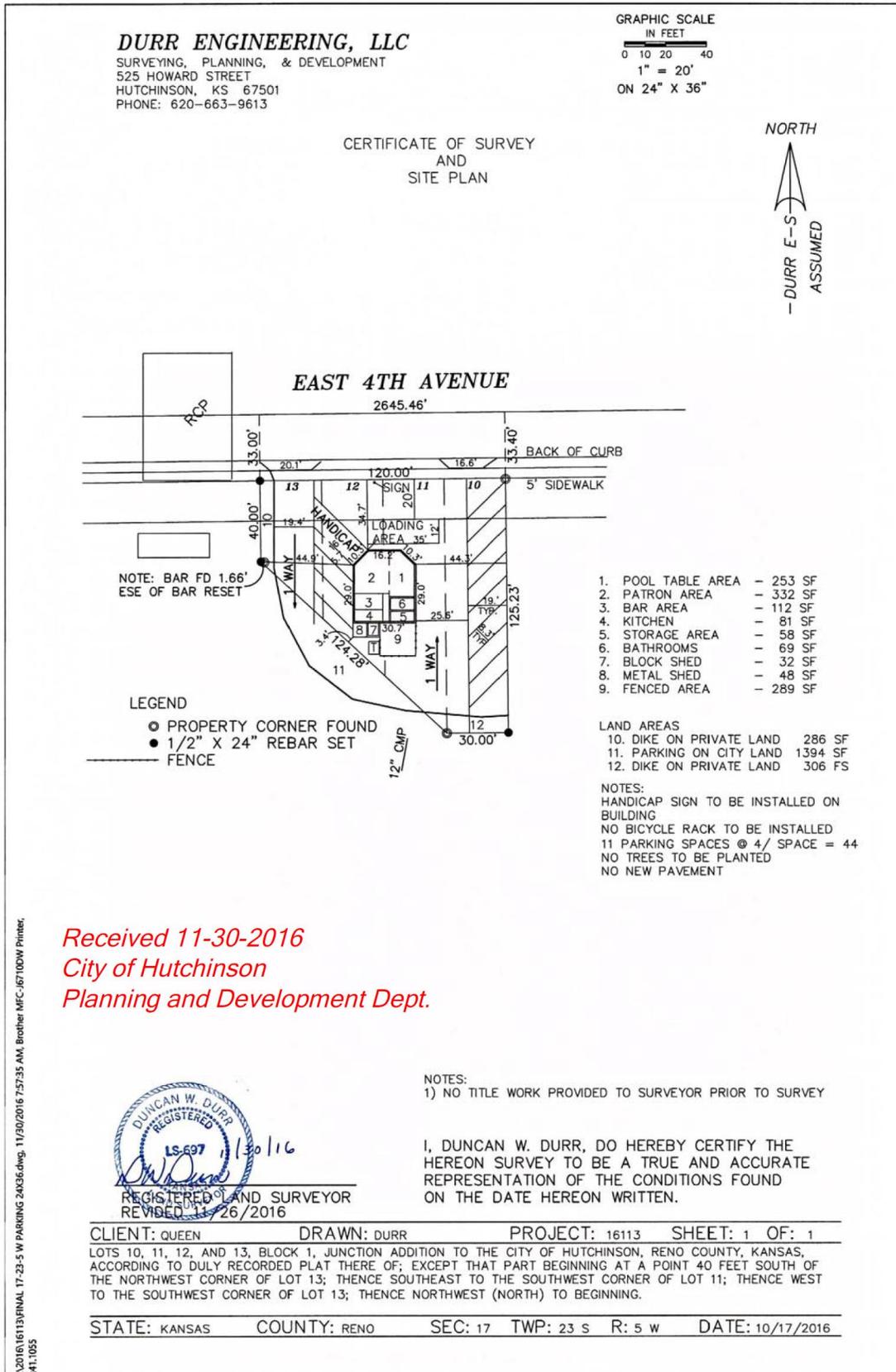
Finding	Analysis	Met Not Met
<p>1. The request for a variance must arise from a condition which is unique to the property in question, is not commonly found on other parcels in the same zone or district, and is not created by an action or actions of the property owner or applicant.</p>	<p>Paving: The subject property was developed prior to the establishment of the current zoning regulations and does not have a paved parking lot. The existing parking lot has lost its legal nonconforming status since the property has been vacant for more than 12 consecutive months and the proposed use, a bar, requires a special use permit. Uses that require a special use permit shall provide paved parking spaces and drive aisles, per Sec. 27-701.D.2. Conditions on this property are not unique. There are two other bars on East 4th Avenue also in the C-4 District that were approved within the past year with the condition that their parking lots be paved.</p>	<p><input checked="" type="checkbox"/> Not Met</p>
	<p>Landscaping: The subject property has inadequate space for landscaping due to its unusual dimensions and the need to provide adequate parking, loading and vehicular access. These conditions are unique to the property and were not created by the owner.</p>	<p><input checked="" type="checkbox"/> Met</p>
	<p>Trash bin screening: The property has a trash bin located near the southwest corner of the building at the rear of the property. The bin is not currently screened. The zoning regulations require trash bins in locations other than alleys to be “effectively screened from public view on all four sides” with a solid fence and gate. The trash bin is not visible from 4th Avenue but can be viewed when driving around the rear of the building. The trash bin can be seen by residents of the manufactured home park to the South-Southwest on the opposite side of the drainage channel. Staff cannot identify any conditions on the property that prompt the need for a variance.</p>	<p><input checked="" type="checkbox"/> Not Met</p>
<p>2. Granting of the variance must not adversely affect the rights of adjacent property owners or residents.</p>	<p>Paving: A variance from paving requirements will not adversely impact adjacent properties.</p>	<p><input checked="" type="checkbox"/> Met</p>
	<p>Landscaping: A variance from landscaping requirements will not adversely impact adjacent properties.</p>	<p><input checked="" type="checkbox"/> Met</p>
	<p>Trash bin screening: A variance from trash bin screening requirements will not adversely impact adjacent properties.</p>	<p><input checked="" type="checkbox"/> Met</p>
<p>3. Strict application of the zoning regulations must cause an unnecessary hardship for the property owner. The variance must not merely serve as a convenience to the applicant but must alleviate some demonstrable or unusual hardship or difficulty.</p>	<p>Paving: If the paving requirements were applied, the owner would bear the cost of installing the pavement but would lose no rights of use or economic benefit.</p>	<p><input checked="" type="checkbox"/> Not Met</p>
	<p>Landscaping: The landscaping requirements simply cannot be met, and there are no alternative options available. If the landscaping requirements were applied, the owner would have to acquire additional property and dedicate it for landscaping purposes.</p>	<p><input checked="" type="checkbox"/> Met</p>

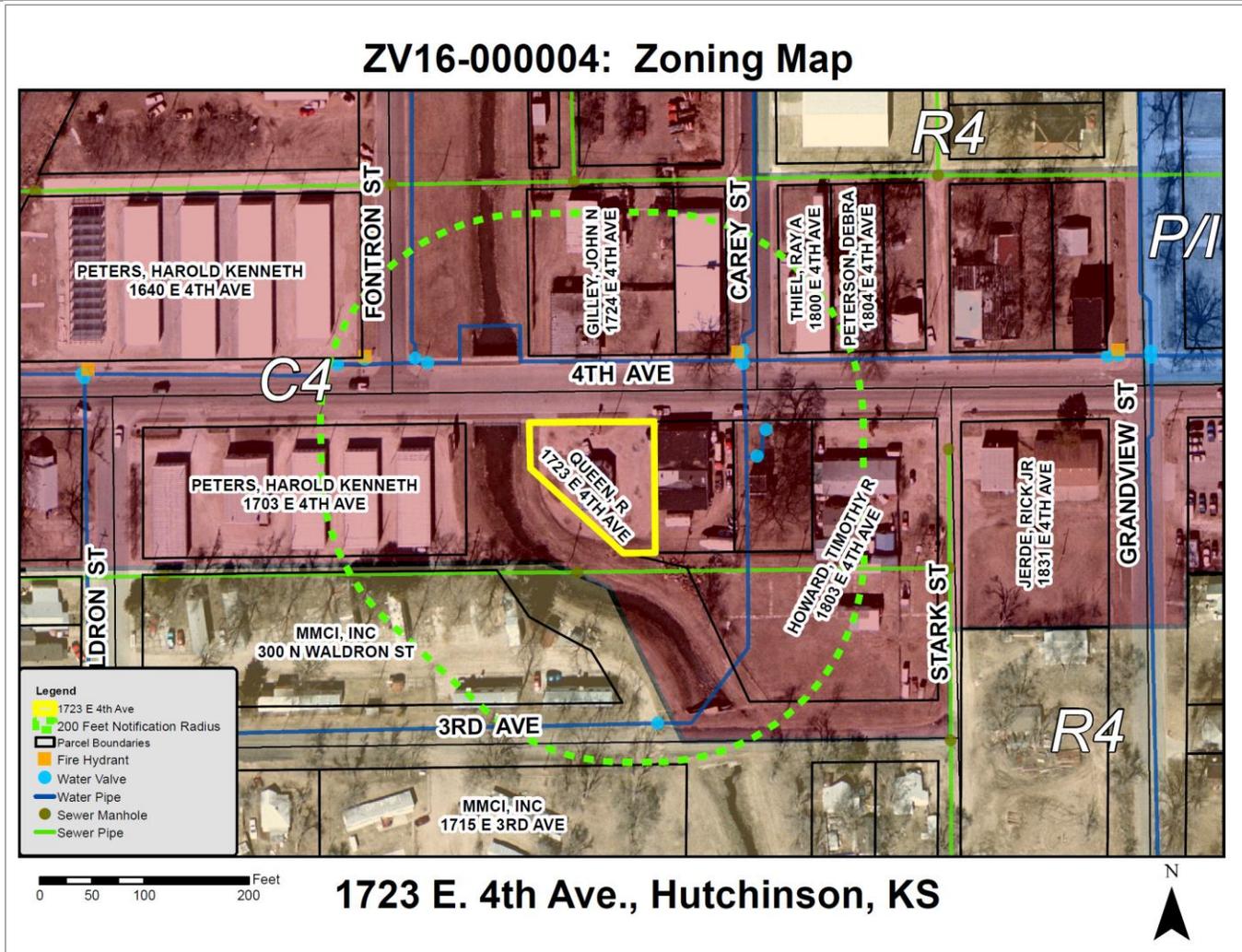
	<p>Trash bin screening: If the screening requirements were applied, the owner would bear the cost of installing a trash enclosure, and it would need to be made accessible to trucks. This is not an unusual hardship.</p>	<p><input checked="" type="checkbox"/> Not Met</p>
<p>4. Granting of the variance must not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare.</p>	<p>Paving: If no paved parking were required, drive aisles and parking spaces would not be clearly defined. Existing drainage issues would not be addressed. Sand and mud could be tracked into the street. Access for persons with disabilities would not be improved. Other similar uses have been required to provide paved parking.</p>	<p><input checked="" type="checkbox"/> Not Met</p>
	<p>Landscaping: Landscaping could be installed if some of the required parking spaces were removed. However, the parking spaces are more important in the interest of public safety and order at this site.</p>	<p><input checked="" type="checkbox"/> Met</p>
	<p>Trash bin screening: Lack of screening would have little to no impact on these considerations.</p>	<p><input checked="" type="checkbox"/> Met</p>
<p>5. Granting of the variance must not be contrary to the general spirit and intent of the Zoning Regulations.</p>	<p>Paving: A paving variance would be contrary to the spirit and intent of the zoning regulations. Uses that require a special use permit shall provide paved parking spaces and drive aisles, per Sec. 27-701.D.2. Primary reasons for the paving requirements are to provide for adequate storm water drainage and alleviate the problem of standing water; to prevent sand and mud from flowing onto City streets and into the City’s storm sewer system; to provide clearly marked parking spaces, including accessible spaces; to improve property values; and to improve aesthetics.</p>	<p><input checked="" type="checkbox"/> Not Met</p>
	<p>Landscaping: Landscaping is required when a parking lot is materially changed, when a building is expanded in floor area by more than 20 percent, and when a use requiring a conditional or special use permit is established. The regulations also allow for variances, and in the applicant’s case, the factors for a variance have been met.</p>	<p><input checked="" type="checkbox"/> Met</p>
	<p>Trash bin screening: The zoning regulations are intended to provide a uniform standard for commercial development. Screening improves the appearance of the City’s commercial districts as properties develop and as land uses change.</p>	<p><input checked="" type="checkbox"/> Not Met</p>

SITE PLAN REVIEW:

Item	Standard	Provided	Met / Not Met
Front yard setback	0 feet	34.7 feet	<input checked="" type="checkbox"/> Met
Side and rear yard setback for principal structure	10 feet	44.3 feet on East; 44.9 feet on West; 3.4 feet on South (legal nonconforming)	<input checked="" type="checkbox"/> Met
Side and rear yard setback for accessory structures	10 feet side yards; 5 feet rear yard	There are no accessory structures on the property.	<input checked="" type="checkbox"/> Met
Building height limit	35 feet	Approximately 13 feet	<input checked="" type="checkbox"/> Met
Maximum lot coverage	60%	The existing building occupies less than 10% of the lot	<input checked="" type="checkbox"/> Met
Driveway surfacing	Driveways shall be concrete.	The property has two concrete driveways onto 4th Avenue.	<input checked="" type="checkbox"/> Met
Drive aisle width	14' drive aisle required for one-way aisle with 45-degree angle parking	19' feet provided. A portion of the drive aisle crosses City-owned property. The owner will be required to enter into a license agreement with the City for use of City property for vehicular circulation.	<input checked="" type="checkbox"/> Met subject to license agreement
Parking	A bar must provide 4 parking spaces per occupant. The existing building has an occupant load of 42 persons; therefore, 11 spaces are required.	11 spaces are provided as shown on the site plan.	<input checked="" type="checkbox"/> Met
Parking lot and drive aisle pavement	For all commercial uses, parking lots and drive aisles must be paved with concrete or asphalt.	The existing parking lot and drive aisles are not paved. The applicant has requested a variance from the paving requirements.	<input checked="" type="checkbox"/> Not Met
Landscaping and Screening	A landscape plan is required, and screening is required between commercial and residential uses	The property has no landscaping. No landscape plan has been provided. The applicant has requested a variance from the landscaping requirements.	<input checked="" type="checkbox"/> Not Met
Mechanical Equipment Screening	New outdoor mechanical equipment must be screened.	There is no outdoor mechanical equipment on the property.	<input checked="" type="checkbox"/> Met
Trash Bin Screening	Trash bins must be screened on all sides with a solid fence.	The property has a trash bin to the rear of the building, and no screening is provided. The applicant has requested a variance from the trash bin screening requirement.	<input checked="" type="checkbox"/> Not Met
Exterior Lighting	Exterior lighting must be shaded from residential uses.	The property does not appear to have any exterior lighting.	<input checked="" type="checkbox"/> Met
Access	Direct access or indirect access secured with private access easements is required	Direct access is provided onto 4th Avenue. A license agreement is needed for access across City property for circulation around the building.	<input checked="" type="checkbox"/> Met subject to license agreement
Fencing and Lighting of Outdoor Drinking Area	Exterior seating areas to be used by patrons for alcoholic beverage consumption must be fenced and accessed only from the interior of the bar. An emergency gate and approved latching device must be provided.	The existing building has a fenced seating area behind it. If this area is to be used by patrons, a proper gate and latching device shall be installed by the owner and inspected by the Fire Department. Adequate lighting shall be provided for this area during business hours. Without these improvements, the fenced area shall be closed to patrons.	<input checked="" type="checkbox"/> Not Met

SITE PLAN/SURVEY:





PHOTOGRAPHS OF THE SUBJECT PROPERTY:



ZV16-000004
KENNY'S BAR – 1723 E 4TH AVE – VARIANCE REQUEST

BZA STAFF REPORT
JANUARY 3, 2017 HEARING DATE

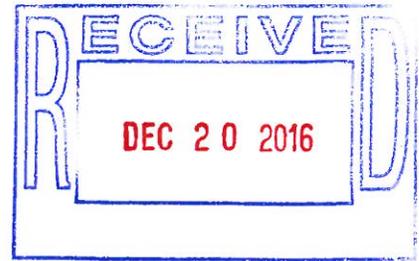


Exhibit A



PAUL W. & GLENDA K. MOORE LIVING TRUST

5110 BLUE STEM DR.
HUTCHINSON, KS. 67502



November 19, 2016
City Planning Department

P.O. Box 1567

Hutchinson, Ks. 67504-1567

Dear Planning Department,

The request for a zoning variance at 1723 East 4th Ave. does not fit well with a good perception of, or appearance for the city of Hutchinson. In several cities the zoning requirements for business located on main thoroughfares into the city are different from other parts of the city due to appearance. I believe that is the reason for some of the requirements in the zoning codes noted in this request.

The property in question was not appealing or a good representation of the city when it was a Bar in the past but to allow another Bar to open under new ownership and not follow the zoning requirements just further takes away from the city. Another new property owner in the area was not allowed to transfer the utilities to their name without meeting the zoning requirements, makes you wonder how this owner was allowed to do so and is currently in business without meeting the requirements.

Another business not far from the location in question had to relocate because the property owner did not meet the zoning requirements, why have zoning requirements for business when they are not applied equally?

I have no problem with a Bar in the area, but I believe it should be required to meet the city zoning requirements and represent the city as it was intended by the city planners.

Based on what happened in the past I don't agree with a variance request even being considered.

Sincerely yours,

Staff Report

Board of Zoning Appeals

Case: 16-SUP-05

December 22, 2016

Hearing Date: January 3, 2017

REQUEST:
Special use permit for a bar in the C-4 Special Commercial District

Staff Representative:
Casey Jones, AICP, CFM
Senior Planner *cg*

Subject Property: 1723 E 4th Ave



Owner:
R. Queen
PO Box 2321
Hutchinson, KS 67504

Tenant/Applicant:
Kenneth Bolin
1310 E Avenue B
Hutchinson, KS 67501

Application Materials:
[Link to Application Materials](#)

Surveyor
Duncan Durr
Durr Engineering LLC
525 Howard St.
Hutchinson, KS 67501

Concurrent Applications:
ZV16-000004 (Variance from parking lot paving, landscaping and trash bin screening requirements)

Previous BZA Action:
Tabled on 10/18/2016

STAFF RECOMMENDATION: Approval with conditions.

Staff-Recommended Conditions (**Exhibit B**)

MOTION:

[Approve/deny] special use permit number 16-SUP-05 for a bar to be located at 1723 East 4th Avenue based upon due consideration of the standard factors required for approval of a special use permit and a finding that said factors are [met/not met] and subject to the staff-recommended conditions.

PROJECT SUMMARY: The applicant proposes to establish a bar in the existing building at 1723 E 4th Ave. A special use permit is required for bars in the C-4 District. The existing building was previously used as a bar, which was a legal nonconforming use. No special use permit is on file for this property. According to the current zoning regulations, since the bar was closed for more than 12 consecutive months, its legal nonconforming status has been lost, and a special use permit must be obtained prior to reestablishing the bar.

LOCATION MAP:



Zoning:
C-4 Special Commercial District
Comprehensive Plan Designation:
Commercial
Subdivision:
Junction Addition

Development Review Committee Meeting: 12/13/2016
Public Hearing Notice Published: 11/28/2016 (*Hutchinson News*)
Property Owner Notice: 8 owners, 9 properties, Mailed 11/17/2016

Staff

Application Information

Zoning

Notice & Review

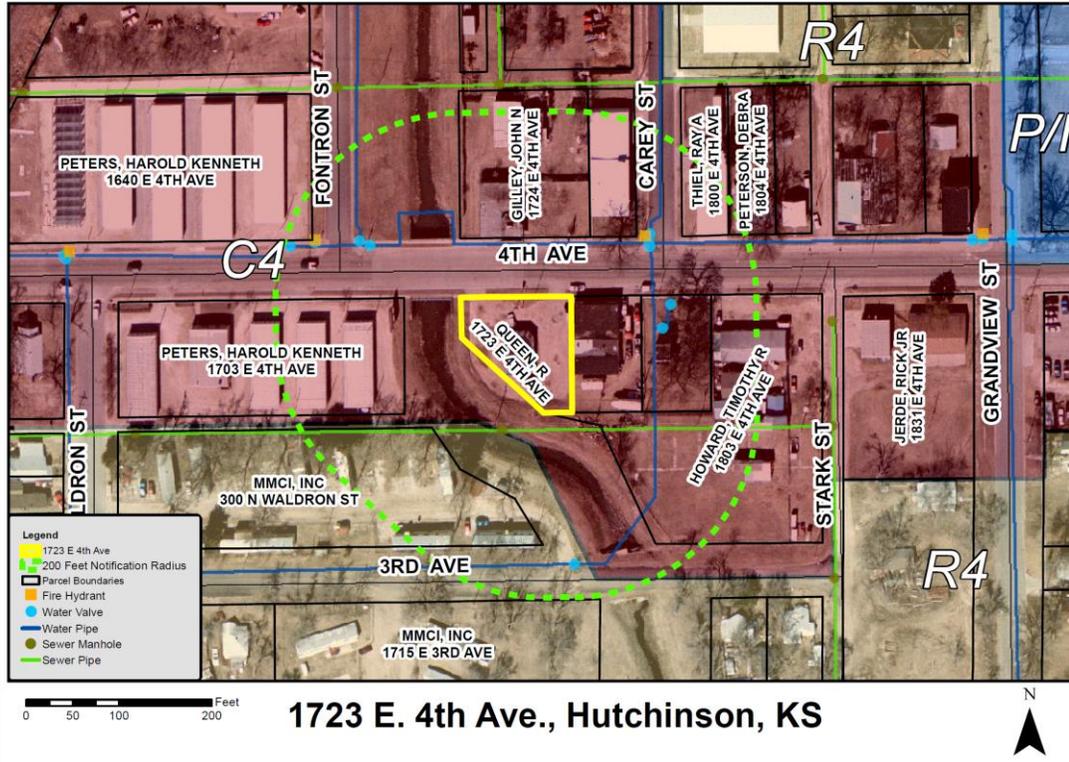
ANALYSIS OF STANDARD FACTORS OF APPROVAL FOR SPECIAL USE PERMITS:

Factor	Discussion	Met Not Met																		
1. Character of the neighborhood	The subject property has been used as a bar in the past. The surrounding neighborhood is mostly industrial in nature. This use is compatible.	<input checked="" type="checkbox"/> Met																		
2. Current zoning and uses of nearby property	<table border="1"> <thead> <tr> <th>Location</th> <th>Zoning</th> <th>Use</th> </tr> </thead> <tbody> <tr> <td>Subject Property</td> <td>C-4</td> <td>Bar (operating under a temporary occupancy permit)</td> </tr> <tr> <td>North</td> <td>C-4</td> <td>Unknown use (office and warehouse)</td> </tr> <tr> <td>South</td> <td>R-4</td> <td>Drainage channel; Manufactured homes</td> </tr> <tr> <td>East</td> <td>C-4</td> <td>Auto detail and sewer and drain cleaning business</td> </tr> <tr> <td>West</td> <td>C-4</td> <td>Drainage channel; mini storage facility</td> </tr> </tbody> </table>	Location	Zoning	Use	Subject Property	C-4	Bar (operating under a temporary occupancy permit)	North	C-4	Unknown use (office and warehouse)	South	R-4	Drainage channel; Manufactured homes	East	C-4	Auto detail and sewer and drain cleaning business	West	C-4	Drainage channel; mini storage facility	<input checked="" type="checkbox"/> Met
	Location	Zoning	Use																	
	Subject Property	C-4	Bar (operating under a temporary occupancy permit)																	
	North	C-4	Unknown use (office and warehouse)																	
	South	R-4	Drainage channel; Manufactured homes																	
East	C-4	Auto detail and sewer and drain cleaning business																		
West	C-4	Drainage channel; mini storage facility																		
3. Suitability of the property for the proposed use as presently zoned	Bars are permitted in the C-4 District by special use permit. The property was previously used as a bar but has lost its legal nonconforming status after having been closed for more than 12 consecutive months. The property is suited to the proposed use but requires paving, landscaping and screening improvements to be compliant with current zoning regulations.	<input checked="" type="checkbox"/> Met																		
4. Extent of detrimental effects to nearby properties if the application were approved	The subject property is located next to a drainage channel on one side and an auto detail and sewer and drain cleaning business on the other side. The property has adequate access to 4th Avenue. Use of the property for a bar is not expected to have any detrimental impacts on surrounding properties.	<input checked="" type="checkbox"/> Met																		
5. Length of time the property has remained vacant	The property was vacant with no active water service from March 2015 through August 2016. A cereal malt beverage license was granted by the Finance Department on December 19, 2015. The license was transferred from a bar at 732 West 2nd Avenue operated by the applicant, Mr. Bolin. The cereal malt beverage license does not constitute zoning approval or occupancy approval. On August 23, 2016, water service was reinstated and a temporary occupancy permit was granted with the condition that a special use permit be obtained and the property be brought into conformance with the City’s building and zoning codes.	<input checked="" type="checkbox"/> Met																		
6. Relative gain to the public health, safety and welfare compared to the hardship imposed upon the landowner if the application were denied	<p><u>Health, safety, and welfare:</u> The proposed bar will have no known additional negative impacts on the public health, safety and welfare, as it was previously used as a bar.</p> <p><u>Landowner hardship:</u> If the special use permit were not granted, the landowner would be unable to reuse the property as a bar and would have to seek an alternative use for the property. Paving may be required depending upon the proposed use, its parking requirement compared to the previous bar use, and whether a conditional or special use permit were required.</p>	<input checked="" type="checkbox"/> Met																		
7. Conformance of this request to the Comprehensive Plan	This request conforms to the Comprehensive Plan, which calls for commercial uses on the property.	<input checked="" type="checkbox"/> Met																		
8. Impact on public facilities and utilities	This is an existing, developed site. Water, sewer, storm drainage, electrical, gas, streets and other utilities are already in place. The applicant has requested a variance from the paving requirement. Staff has concerns about the impact of the proposed use on the city street and storm sewer if the parking lot is not paved. Staff is recommending approval of the special use permit with the condition that the parking lot be paved within one year of the date of approval of the final occupancy permit.	<input checked="" type="checkbox"/> Met																		

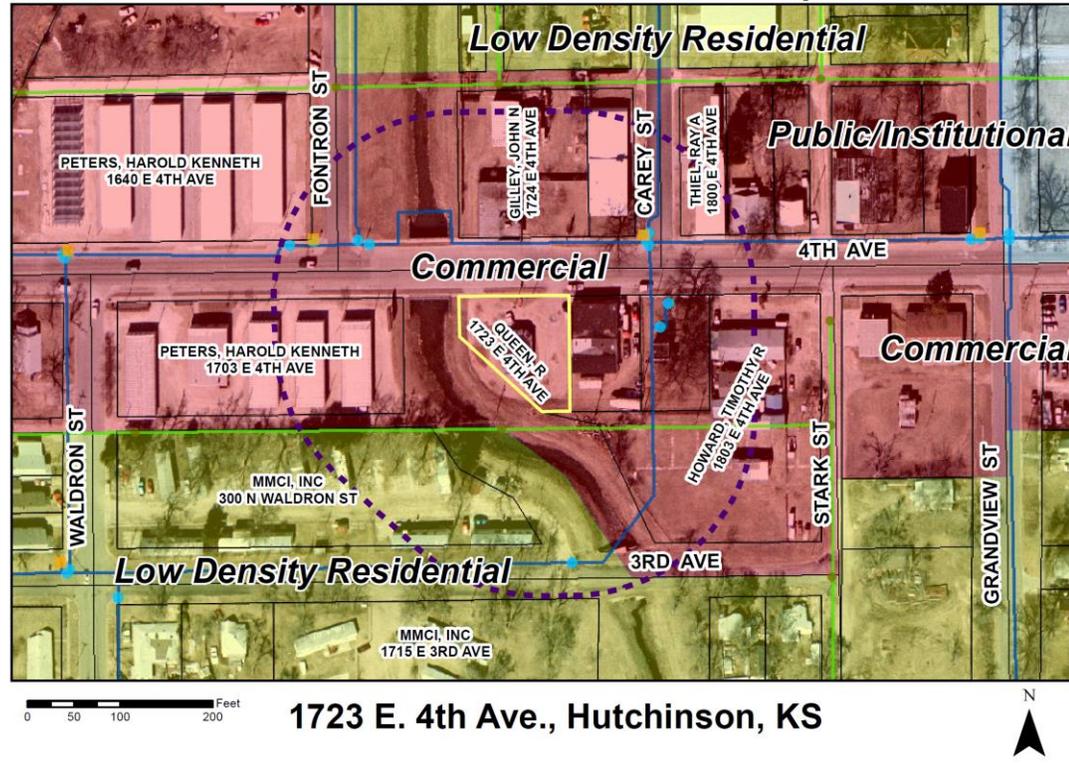
SITE PLAN REVIEW:

Item	Standard	Provided	Met / Not Met
Front yard setback	0 feet	34.7 feet	<input checked="" type="checkbox"/> Met
Side and rear yard setback for principal structure	10 feet	44.3 feet on East; 44.9 feet on West; 3.4 feet on South (legal nonconforming)	<input checked="" type="checkbox"/> Met
Side and rear yard setback for accessory structures	10 feet side yards; 5 feet rear yard	There are no accessory structures on the property.	<input checked="" type="checkbox"/> Met
Building height limit	35 feet	Approximately 13 feet	<input checked="" type="checkbox"/> Met
Maximum lot coverage	60%	The existing building occupies less than 10% of the lot	<input checked="" type="checkbox"/> Met
Driveway surfacing	Driveway approaches shall be concrete.	The property has two concrete driveways onto 4th Avenue.	<input checked="" type="checkbox"/> Met
Drive aisle width	14' drive aisle required for one-way aisle with 45-degree angle parking	19' feet provided. A portion of the drive aisle crosses City-owned property. The owner will be required to enter into a license agreement with the City for use of City property for vehicular circulation.	<input checked="" type="checkbox"/> Met (subject to license agreement)
Parking	A bar must provide 4 parking spaces per occupant. The existing building has an occupant load of 42 persons; therefore, 11 spaces are required.	11 spaces are provided as shown on the site plan.	<input checked="" type="checkbox"/> Met
Parking lot and drive aisle pavement	For all commercial uses, parking lots and drive aisles must be paved with concrete or asphalt.	The existing parking lot and drive aisles are not paved. The applicant has requested a variance from the paving requirements.	<input checked="" type="checkbox"/> Not Met
Landscaping and screening	A landscape plan is required, and screening is required between commercial and residential uses	No landscape plan has been provided. Landscape points required for this property shall be determined by dividing the square footage of all paved areas by 200 (see "Exhibit A"). The applicant has requested a variance from the landscaping requirements.	<input checked="" type="checkbox"/> Not Met but can be a condition of approval
Mechanical equipment screening	New outdoor mechanical equipment must be screened.	There is no outdoor mechanical equipment on the property.	<input checked="" type="checkbox"/> Met
Trash bin screening	Trash bins must be screened on all sides with a solid fence.	The property has a trash bin to the rear of the building, and no screening is provided. The applicant has requested a variance from the trash bin screening requirement.	<input checked="" type="checkbox"/> Not Met but can be a condition of approval
Exterior lighting	Exterior lighting must be shaded from residential uses.	The property does not appear to have any exterior lighting.	<input checked="" type="checkbox"/> Met
Access	Direct access or indirect access secured with private access easements is required	Direct access is provided onto 4th Avenue. A license agreement is needed for access across City drainage channel property for circulation around the building.	<input checked="" type="checkbox"/> Met subject to license agreement
Fencing and lighting of outdoor drinking area	Exterior seating areas to be used by patrons for alcoholic beverage consumption must be fenced and accessed only from the interior of the bar. An emergency gate and approved latching device must be provided.	The building has a fenced seating area behind it. If this area will be used by patrons, a gate and latching device shall be installed and shall be inspected by the Fire Department. Lighting shall be provided for this area during business hours. Without these improvements, the fenced area shall be closed to patrons.	<input checked="" type="checkbox"/> Not Met but can be a condition of approval

16-SUP-05: Zoning Map



16-SUP-05: Future Land Use Map



PHOTOGRAPHS OF THE SUBJECT PROPERTY:





EXHIBITS:

- A. Staff-Recommended Conditions of Approval**

Exhibit A

16-SUP-05 | 1723 E 4TH AVE | R. QUEEN & KENNETH BOLIN (BAR IN C-4 DISTRICT)

BOARD OF ZONING APPEALS REQUIRED CONDITIONS OF APPROVAL

Special Use Permit Conditions

1. This special use permit shall only be used for a bar/tavern in the existing structure located at 1723 East 4th Avenue.
2. To provide for adequate vehicular circulation around the building, the property owner shall enter into a license agreement with the City to provide ingress and egress across the City's drainage channel right-of-way.
3. If the fenced seating area behind the building will be open to the public, a gate and emergency latching device shall be installed and shall be inspected by the Fire Department, and lighting shall be provided for this area during business hours. Prior to the issuance of a final occupancy permit, these improvements shall be installed or the fenced area shall be clearly designated as "closed to the public."
4. Failure to comply with the special use permit conditions and standard conditions of approval may result in revocation of the special use permit.

Standard Conditions of Approval

1. A building permit shall be obtained prior to any construction.
2. Each standard parking space shall be 9 feet by 18 feet in size.
3. Each van-accessible parking space shall be 8 feet by 18 feet in size with an access aisle 8 feet in width.
4. Each standard accessible parking space shall be 8 feet by 18 feet in size with an access aisle 5 feet in width.
5. Each accessible parking space shall be marked with a sign at the end of the space. The bottom of the sign must be a minimum of 5 feet above the ground. A paved, wheelchair-accessible route shall be provided from each accessible space to an accessible building entrance.
6. Each loading space shall be 12 feet by 35 feet in size.
7. All outdoor mechanical equipment, whether attached to the building, the rooftop or the ground shall be screened from public view with a compatible architectural treatment, such as metal panels, stucco panels, a parapet wall, or similar treatment, or with landscaping as required by Section 27-908.E.8. of the Hutchinson City Code.
8. Exterior lighting must be shaded from adjacent residential properties as required by Section 27-909 of the Hutchinson City Code.
9. A sign permit shall be obtained prior to installation of any signs. No sign approval is hereby intended or conferred.
10. A fence permit shall be obtained prior to installation of any fences.
11. A certificate of occupancy shall be obtained prior to use.

Conditions Required If the Paving Variance Is Not Approved:

1. Ten (10) standard parking stalls, one (1) van-accessible parking stall, and the required drive aisles shall be installed and paved with asphalt or concrete in accordance with the approved site plan within one year of the date of approval of the final occupancy permit. A parking lot permit shall be obtained before installing the pavement.
2. All parking spaces shall be striped.
3. All paved areas shall be constructed so that storm water runoff will drain according to the approved drainage plan.

Conditions Required If the Landscaping Variance Is Not Approved:

1. Prior to the issuance of a final occupancy permit, a landscape plan providing a minimum of one landscape point per each 200 square feet of pavement on the site shall be submitted and approved.
2. Landscaping shall be installed in accordance with the approved landscape plan within one year of the date of approval of the final occupancy permit.

Conditions Required If the Trash Bin Screening Variance Is Not Approved:

1. A screened trash enclosure meeting the City's requirements shall be approved and installed.