

MINUTES
 BOARD OF ZONING APPEALS
 TUESDAY, MARCH 15, 2016
 CITY COUNCIL CHAMBERS
 125 E. AVENUE B

1. The meeting was called to order at 5:30 p.m. with the following members present: Harley Macklin, Terry Bisbee, Mark Woleslagel, Janet Hamilton, Robert Obermite, Tom Hornbeck, Todd Carr, Darryl Peterson, and Ken Peirce. Jana McCarron, Director of Planning and Development; Casey Jones, Senior Planner; and Charlene Mosier, Planning Technician were also present.
2. The minutes from the November 17, 2015, meeting were approved on a motion by Bisbee, seconded by Hamilton, passed unanimously.
3. A motion to accept correspondence and staff reports into the official record was made by Hamilton, seconded by Woleslagel, passed unanimously.
4. PUBLIC HEARINGS

4a. 16-BZA-01: 621 E. 4th Ave. (Sonic)

Request for a building setback variance from the required 15 feet to the provided 3.85 feet from the west property line for construction of a new canopy on property owned by America's Drive-In Restaurants, LLC.

AND

Request for a variance from the required number of drive-through stacking spaces from the required 10 to the provided 7 spaces for construction of a new, drive-through restaurant.

Peirce asked if there were any outside contacts or conflicts of interest; there were none.

McCarron presented the staff report. The existing building was constructed in 1973 as a Sonic and remodeled in 1991. In 2000, a Special Use Permit was granted to demolish the adjacent house to the east and expand to that lot with a canopy. Another remodel was done in 2005. The applicant plans to demolish the existing building and all canopies and construct a new Sonic with a drive-through service located at the rear of the property. Three new canopies are proposed. Two canopies would be freestanding and the third canopy would abut the restaurant structure.

The westernmost freestanding canopy would be located 3.85 feet from the side street lot line and does not meet minimum requirements of 30 feet from the side street front lot line. The ordinance allows for a 50% reduction in the required setback from the side street as long as the structure does not encroach into the sight triangle. This would make the

required setback 15 feet. The canopy could present a visual barrier. The Sonic on 30th Avenue does not have a canopy like this and it is also on a corner lot.

The second request is for the proposed drive-through service which does not meet the minimum stacking requirement of 10 spaces. There should be space for ten vehicles behind the order box. The applicant is providing 7 spaces and a variance is needed to approve the project site plan.

McCarron showed photos of the property and the proposed elevation drawings. A public hearing notice was published in *The Hutchinson News*, and comments from the Development Review Committee were included in the packet.

Peirce asked for the presentation from the applicant.

Wade Harden, Oklahoma City, Oklahoma, reviewed the site plan and the desire to have three canopies and the drive-through. The drive-through is the new business model for Sonic. He said there are 24 canopy vehicle stalls and nothing would impede the sight triangle. The trees will remain on the property. He said any damage done to sidewalks during construction could be repaired.

Harden explained the car hops can take debit/credit cards and deliver food to vehicles stacked in the drive-through. Trays on vehicle windows are no longer used at this particular Sonic location. Harden also said it is easier to tear down the entire structure and rebuild rather than continue to retrofit the existing structure.

Peirce asked for comments from the audience.

Larry Harms, 320 Logan, said he was concerned about vehicles hitting his air conditioner and furnace unit that is very close to the alley. He would like a 6' fence along the back of Sonic to protect his air conditioner and to mitigate noise.

Ken Kirk, 619 E. 4th Avenue, asked if the reconstruction of the proposed Sonic would create any street closings that may impact his business at the Smoke Shop. Mr. Harden said no streets would be closed.

Peirce asked for the staff recommendation.

McCarron said staff recommends denial of the variance request pertaining to setbacks because the five conditions supporting approval have not been met.

1. There is not a condition that is unique to the parcel in question which is not commonly found on other parcels in the same district and which was not created by the actions of the owner or applicant.
2. The proposed canopy setback will adversely affect the rights of adjacent property owners.

3. The literal enforcement of the zoning regulations does not result in a hardship. The variance would merely serve as a convenience to the applicant.
4. The proposed canopy setback would be contrary to the public health, safety, morals, order, convenience, prosperity, or welfare.
5. The proposed canopy setback would be contrary to the general spirit and intent of the Zoning Regulations.

Peirce closed the hearing and asked for a motion.

Motion by Hornbeck, seconded by Carr to deny a variance from the requirements of §27-420.I and §27.309.C. of the *Hutchinson Zoning Regulations* pertaining to side street front lot setbacks to allow for a canopy to be built 3.85 feet from the side street front lot line based upon the above listed findings. The motion passed with the following vote: Yes – Macklin, Bisbee, Hamilton, Obermite, Carr, Hornbeck, Peterson, Peirce; No – Woleslagel.

McCarron said because the variance was denied, a revised site plan is required to obtain final approval of the required Special Use Permit for the project.

McCarron said staff recommends approval of the variance request for the drive-through stacking to allow for 7 stacking spaces rather than the 10 spaces required based upon findings that:

1. There exists some condition that is unique to the parcel in question and is not commonly found on other parcels in the same district and was not created by the actions of the owner or applicant.
2. The proposed number of drive-through stacking spaces would not adversely affect the rights of adjacent property owners.
3. The literal enforcement of the zoning regulations would result in an unnecessary hardship. The variance would not merely serve as a convenience to the applicant but would alleviate a demonstrable or unusual hardship or difficulty.
4. The proposed number of drive-through stacking spaces would not be contrary to the public health, safety, morals, order, convenience, prosperity, or welfare.
5. The proposed number of drive-through stacking spaces would not be contrary to the general spirit and intent of the Zoning Regulations.

Peirce asked for a motion.

Motion by Carr, seconded by Bisbee to approve a variance from the requirements of §27-701.J of the *Hutchinson Zoning Regulations* pertaining to restaurant drive-through stacking requirements to allow for 7 stacking spaces rather than the 10 spaces required based upon the above listed findings. The motion passed with the following vote: Yes – Macklin, Woleslagel, Bisbee, Hamilton, Obermite, Carr, Hornbeck, Peterson, Peirce.

- 4b. 16-SUP-01: 621 E. 4th Ave. (Sonic)
Request for a Special Use Permit to construct a new restaurant with drive-through service on property owned by America's Drive-In Restaurants, LLC.

Peirce opened the public hearing.

McCarron said the applicant, Wade Harden, representing Sonic, is requesting a Special Use Permit to allow a drive-in and drive-through restaurant to be located at 621 E. 4th Ave. Elevation, landscaping, and site plans were shown. The applicant plans to demolish the existing building and all canopies on the property and construct a new Sonic drive-in restaurant with a drive-through service located at the rear of the property. A patio area will be located in the front of the property. In accordance with Section 27-406 Table of Land use categories, *Hutchinson Zoning Regulations*, restaurants with drive in service or drive-through windows are permitted in the C-4 Special Commercial District with a Special Use Permit.

A public hearing notice was published in the Hutchinson News and 35 owners of 38 properties located within 200 feet of the subject property were notified. Comments were included in the packet. The Development Review Committee met on February 23 and their comments were included in the packet.

Based on comments from the property owner at 320 Logan, screening the south side of the property with a fence would be recommended. New utility wires would be placed underground.

There were no additional comments from the audience.

The applicant said the fence could be tapered toward Logan Street from six feet to four feet about ten feet back. The applicant also asked about extending order stalls on the east side rather than the west side.

Peirce asked for the staff recommendation.

McCarron said Staff recommends approval of this request with the following conditions:

1. This Special Use Permit shall only be used for a drive-in and drive-through restaurant located at 621 E 4th Ave.
2. The drive-in stalls and drive-through window shall be developed in accordance with the approved site plan. Any significant changes to the plans shall require approval by special use permit.
3. The applicant shall submit a revised site plan removing the westernmost canopy.
4. The fence located at the south of the property shall be tapered down to a height of 4 feet, beginning 10 feet east of the west property line.
5. Damaged sidewalk on the west side of the lot shall be replaced prior to issuance of an Occupancy Permit for the building.
6. Any new utility services shall be located underground.

7. The canopy on the east side of the lot may be extended to cover up to 4 additional spaces as long as all setbacks are met.

Peirce closed the hearing and asked for a motion.

Motion by Carr, seconded by Macklin to approve this request for a Special Use Permit for a drive-through and drive-in restaurant at 621 E. 4th Ave., pursuant to the above listed staff-recommended conditions, and based upon due consideration of the following factors:

Factors

1. **Character of the neighborhood;**
2. **Zoning and uses of nearby property;**
3. **Suitability of the property for the proposed zoning classification and use;**
4. **Impacts on nearby properties;**
5. **Length of time the property has remained vacant;**
6. **Relative gain to the public health, safety, and welfare, as compared with the hardship to the land owner if the application were denied;**
7. **Availability of public utilities to serve the development;**
8. **Conformance to the Comprehensive Plan; and**
9. **Recommendations of the professional staff.**

The motion passed with the following vote: Yes – Woleslagel, Bisbee, Hamilton, Obermite, Hornbeck, Peterson, Carr, Macklin, Peirce.

5. UPCOMING CASES

5a. Special Use Permit – Chil-fil-A Drive-Through Restaurant (1801 E. 17th Ave.) on April 5, 2016.

6. OTHER BUSINESS – Open comments from the audience – None.

7. ADJOURNMENT – The meeting adjourned at 6:30 p.m.

Respectfully Submitted,

Charlene Mosier, Planning Technician

Approved this 5th day of April, 2016.

Attest:



Casey A. Jones, AICP, CFM, Senior Planner