

1. **ROLL CALL**

The Board of Zoning Appeals meeting was called to order at 5:37 p.m. with the following members present: Harley Macklin (1/1), Janet Hamilton (1/1), Todd Carr (1/1), Mark Wolesslagel (1/1), Ken Peirce (1/1), Tom Hornbeck (1/1), Robert Obermite (1/1) and Darryl Peterson (1/1). Terry Bisbee (0/1) was absent. Staff present were Jana McCarron, Director of Planning and Development; Casey Jones, Senior Planner; Aaron Barlow, Associate Planner; and Stephanie Stewart, Planning Technician.

2. **APPROVAL OF MINUTES**

The minutes of the November 1, 2016, meeting were approved on a motion by Peirce, seconded by Peterson, passed unanimously.

3. **CORRESPONDENCE & STAFF REPORTS**

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

4. **PUBLIC HEARINGS**

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

Request for variances from accessory building side yard setback requirements in the C-2 District and parking requirements for a commercial office use for the property at 2808 N Main St

Hornbeck asked if any board members had any outside contacts or conflicts of interest in this case. There were none.

Barlow reviewed the proposed case for 2808 N Main St for a garage to be built within the 10' side yard building setback and reduce the number of parking spaces required. The applicant would like to demolish the existing garage and rebuild a new, smaller garage. The applicant proposes to provide 1 van-accessible parking space and 2 standard parking spaces outdoors, and 2 employee parking spaces inside the garage, for a total of 5 parking spaces. The front property line is located approximately 10 feet from the front of the building, and the Engineering Department will not approve new parking in the front of the building because the drive aisle is located partially in the city right-of-way.

Ward Davis, 2911 N Plum St, is the contracted builder representing the property owner. The owner's original proposal was to rebuild the existing garage in the same place. Employees like the security of parking their vehicles in the garage. However, staff advised the applicant that construction of a new garage requires the City's parking standards for the use to be met. Mr. Davis indicated that, if the garage is not approved, the parking will most likely not be upgraded. The property owner feels that moving the garage farther into the yard would take away green space, and there is an existing shed north of the proposed garage. Discussion ensued.

Barlow reviewed the five factors required for approval of a variance. He indicated that, in Staff's opinion, the findings needed for a setback variance were not met and the findings needed for a parking variance were met based upon the following analysis.

Factor	Analysis	Met	Not Met
<p><b>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.</b></p>	<p><b>Setback:</b> 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><b>Parking:</b> 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><b>2. Granting of the variance must not adversely affect the rights of adjacent property owners or residents.</b></p>	<p><b>Setback:</b> 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><b>Parking:</b> 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>	✓	
<p><b>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.</b></p>	<p><b>Setback:</b> 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><b>Parking:</b> 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>	✓	

Factor	Analysis	Met	Not Met
4. Granting of the variance must not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare.	<b>Setback:</b> 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.	✓	
	<b>Parking:</b> 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.	✓	
5. Granting of the variance must not be contrary to the general spirit and intent of the Zoning Regulations.	<b>Setback:</b> The intent of the City's nonconforming standards (Sec. 27-317 of the Zoning Regulations) 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.	✓	✓
	<b>Parking:</b> 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.	✓	

**SETBACK VARIANCE:**

Motion by Peirce, seconded by Carr, to deny variance request #ZV16-000006 from the requirements of the Hutchinson Zoning Regulations, Sec. 27-418.I. (side yard setback for an accessory structure in the C-2 District) from 10 feet to 3 feet for the property located at 2808 North Main Street based upon a finding that the factors required for approval are not met.

The motion passed with the following vote: Yes - Macklin, Hamilton, Carr, Wolesslagel, Peirce, Hornbeck, Obermite, Peterson.

**PARKING VARIANCE:**

Motion by Hamilton, seconded by Peirce, to approve variance request #ZV16-000006 from the requirements of the Hutchinson Zoning Regulations, Sec. 27-702 (parking standard for a commercial office) from 6 spaces to 5 spaces for the property located at 2808 North Main Street based upon a finding that the factors required for approval are met.

The motion passed with the following vote: Yes - Macklin, Hamilton, Carr, Wolesslagel, Peirce, Hornbeck, Obermite, Peterson.

**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.

Hornbeck asked if any board members had any outside contacts or conflicts of interest in this case. There were none.

Jones reviewed the applicant's requests for variances from parking lot paving, landscaping and trash bin screening requirements. The applicant has also requested a special use permit, which will be considered by the Board following its decisions on the variances. The property is zoned C-4 Special Commercial District. The zoning regulations require a special use permit for bar and tavern uses. Even though this particular property was a bar for several years, the building was vacant for more than 12 consecutive months and lost its legal nonconforming status. To reestablish the bar or tavern use, the property must conform to the current zoning regulations and development standards. The property does not conform to current standards as the parking lot is not paved, there is no landscaping and the trash bin is not enclosed. Jones stated that an adequate number of parking spaces are provided as shown on the applicant's site plan. The circular drive for the property encroaches onto City property next to the drainage channel, and the City requires a license agreement to allow its property to be used for vehicular access.

Robert Queen, owner of the subject property at 1723 E 4th Ave, stated that his survey indicates that part of the drainage channel is encroaching his property. He stated that his tenant's business does not provide enough income to cover the cost of paving the parking lot, and he noted that several other commercial properties around the city do not have enclosed trash bins.

Timothy Howard, 1803 E 4th Ave, a neighboring business owner, spoke of the hardships faced by local businesses in keeping their properties in compliance with city code. He stated that many businesses, his included, have dirt parking lots, and they have to close because of not being able to afford paving. He said that someday before he sells his property he plans to pave his parking lot. Lastly, he said that if one business has to pave then all should have to do so.

Robert Williams, 2404 E 4th Ave, a neighboring business owner agreed with Howard on the hardships. He agrees with the City to deny the paving variance because he had to shut down and move his business due to not paving the parking lot.

Jones reviewed the five factors required for approval of a variance, and indicated that in Staff's opinion, the paving variance factors were not met, landscaping variance factors were met, and the trash bin screening factors were not met based upon the following analysis:

**Analysis of Findings of Fact Required for Variance Requests:**

Factor	Analysis	Met or Not Met
<p><b>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.</b></p>	<p><b>Paving:</b> 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><b>Landscaping:</b> 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><b>Trash bin screening:</b> 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><b>2. Granting of the variance must not adversely affect the rights of adjacent property owners or residents.</b></p>	<p><b>Paving:</b> A variance from paving requirements will not adversely impact adjacent properties.</p>	<p><input checked="" type="checkbox"/> Met</p>
	<p><b>Landscaping:</b> A variance from landscaping requirements will not adversely impact adjacent properties.</p>	<p><input checked="" type="checkbox"/> Met</p>
	<p><b>Trash bin screening:</b> A variance from trash bin screening requirements will not adversely impact adjacent properties.</p>	<p><input checked="" type="checkbox"/> Met</p>
<p><b>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.</b></p>	<p><b>Paving:</b> 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><b>Landscaping:</b> 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><b>Trash bin screening:</b> 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><b>4. Granting of the variance must not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare.</b></p>	<p><b>Paving:</b> 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><b>Landscaping:</b> 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>

	<b>Trash bin screening:</b> Lack of screening would have little to no impact on these considerations.	<input checked="" type="checkbox"/> Met
5. Granting of the variance must not be contrary to the general spirit and intent of the Zoning Regulations.	<b>Paving:</b> 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.	<input checked="" type="checkbox"/> Not Met
	<b>Landscaping:</b> 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.	<input checked="" type="checkbox"/> Met
	<b>Trash bin screening:</b> 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.	<input checked="" type="checkbox"/> Not Met

**PARKING LOT PAVING VARIANCE:** Motion Peirce, seconded by Carr, to 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 not met.

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

**LANDSCAPING VARIANCE:** Motion by Carr, seconded by Macklin, to approve 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 met.

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

**TRASH BIN SCREENING VARIANCE:** Motion by Carr, seconded by Macklin, to 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 not met.

The motion passed with the following vote: Yes - Macklin, Hamilton, Carr, Woleslagel, Hornbeck, Obermite, Peterson; No - Peirce.

**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 Ave.

**Motion by Carr, seconded by Macklin, and passed unanimously to remove request #16-SUP-05 from the table.**

Jones discussed the request and the history of the property and stated that the proposed use conforms to the comprehensive plan. As a condition of approval, Staff requests paving be completed and trash bin screening be put in place within one year of the special use permit approval. If the bar has an outside seating area for patrons, then it needs to be fenced in with a secured gate, per city code.

Robert Queen had a few questions for the Commissioners and discussion ensued.

Jones reviewed the factors required for approval of a special use permit and indicated that Staff recommended approval with the conditions as presented based upon the following analysis.

**ANALYSIS OF STANDARD FACTORS OF APPROVAL FOR SPECIAL USE PERMITS:**

Factor	Discussion	Met?																		
<b>1. Character of the neighborhood</b>	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																		
<b>2. Current zoning and uses of nearby property</b>	<table border="1"> <thead> <tr> <th>Location</th> <th>Zoning</th> <th>Use</th> </tr> </thead> <tbody> <tr> <td><b>Subject Property</b></td> <td>C-4</td> <td>Bar (operating under a temporary occupancy permit)</td> </tr> <tr> <td><b>North</b></td> <td>C-4</td> <td>Unknown use (office and warehouse)</td> </tr> <tr> <td><b>South</b></td> <td>R-4</td> <td>Drainage channel; Manufactured homes</td> </tr> <tr> <td><b>East</b></td> <td>C-4</td> <td>Auto detail and sewer and drain cleaning business</td> </tr> <tr> <td><b>West</b></td> <td>C-4</td> <td>Drainage channel; mini storage facility</td> </tr> </tbody> </table>	Location	Zoning	Use	<b>Subject Property</b>	C-4	Bar (operating under a temporary occupancy permit)	<b>North</b>	C-4	Unknown use (office and warehouse)	<b>South</b>	R-4	Drainage channel; Manufactured homes	<b>East</b>	C-4	Auto detail and sewer and drain cleaning business	<b>West</b>	C-4	Drainage channel; mini storage facility	<input checked="" type="checkbox"/> Met
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<b>West</b>	C-4	Drainage channel; mini storage facility																		
<b>3. Suitability of the property for the proposed use as presently zoned</b>	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. The submitted site plan does not show paving, a trash enclosure or landscaping. If the variance requests for these items are not approved, revised plans meeting the requirements of the zoning ordinance will be required prior to the issuance of a final special use permit approval letter.	<input checked="" type="checkbox"/> Met/Not Met																		
<b>4. Extent of detrimental effects to nearby properties if the application were approved</b>	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 owner will be required to enter into a license agreement with the City for access across the City’s drainage right-of-way. 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																		

<p><b>5. Length of time the property has remained vacant</b></p>	<p>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.</p>	<p><input checked="" type="checkbox"/> Met</p>
<p><b>6. Relative gain to the public health, safety and welfare compared to the hardship imposed upon the landowner if the application were denied</b></p>	<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.</p>	<p><input checked="" type="checkbox"/> Met</p>
<p><b>7. Conformance of this request to the Comprehensive Plan</b></p>	<p>This request conforms to the Comprehensive Plan, which calls for commercial uses on the property.</p>	<p><input checked="" type="checkbox"/> Met</p>
<p><b>8. Impact on public facilities and utilities</b></p>	<p>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. In addition, paving is the City standard for commercial properties and other properties located in the general vicinity of this property have been required to provide paved parking lots in association with the granting of a special use permit. 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.</p>	<p><input checked="" type="checkbox"/> Met</p>

Special Use Permit Conditions

1. This special use permit shall only be used for a bar or 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 for Paving:

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 approval of the special use permit by the Board of Zoning Appeals. 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 for Trash Bin Screening:

1. A screened trash enclosure meeting the City's requirements shall be approved and installed within one year of approval of the special use permit by the Board of Zoning Appeals.

**Motion by Hamilton, seconded by Peterson, to approve special use permit request #16-SUP-05 for a bar or tavern at 1723 East 4th Avenue based upon a finding that the factors required for approval are met and with the conditions presented by Staff with paving and screening to be completed within one year of today's approval, by January 3, 2018.**

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

5. **UPCOMING CASES** – None.
6. **OPEN COMMENTS FROM THE AUDIENCE** – None.

7. **ADJOURNMENT** – The meeting adjourned 6:58 p.m.

Respectfully Submitted,  
Stephanie Stewart, Planning Technician

Approved this 18th day of April, 2017.

Attest:   
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Casey A. Jones, AICP, CFM, Senior Planner