

1. **ROLL CALL**

The Board of Zoning Appeals meeting was called to order at 5:30 p.m. with the following members present: Jon Richardson (1/1), Jackson Swearer (1/1), Jane Gamber (1/1), Robert Hickman (1/1), Terry Bisbee (1/1), Valerie Roberts-Ropp (1/1), Darryl Peterson (1/1), Logan Leuenberger (1/1) and Rod Calhoun (1/1)

Staff present were: Ryan Hvitløk, Director of Planning & Development; and Amy Allison, Senior Planner.

2. **APPROVAL OF MINUTES**

The minutes of the December 17, 2019 meeting were approved on a motion by Gamber, seconded by Bisbee, passed unanimously.

3. **CORRESPONDENCE & STAFF REPORTS**

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

4. **PUBLIC HEARING**

a. **ZV20-000001 – Request for a variance from §27-314.G.7. Accessory Structure Sidewall Height Maximum, which the applicant is requesting a sidewall height of 16 feet for a detached garage at 3705 N Lakeview Rd, Hutchinson, KS**

Richardson asked if there were any outside contacts or conflicts of interest; Richardson stated that he had been contacted about this case and will abstain from voting.

Allison provided the staff presentation. The applicant requested a variance from Section 27-314.G.7. which requires a maximum sidewall height for all detached accessory structures not to exceed 12 feet. The applicant has obtained an existing detached garage to move on to his property, however the sidewall height of the structure is 16 feet. The applicant did provide a site plan and pictures of the structure for review. Aside from the sidewall height, the proposal meets all applicable zoning regulations. The property is zoned R-3 Moderate Density Residential District and has a Comprehensive Plan Land Use designation of Low Density Residential.

The Development Review Committee reviewed the proposal and had two comments pertaining to the site plan. All comments were addressed, and a revised site plan was submitted. In addition, notification of the public hearing was sent to the surrounding property owners within 200 feet of the property. Two comments in support of the request were received.

Allison reviewed the standard factors of approval for a Zoning Variance with staff's analysis:

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>The applicant has explained that the neighborhood was developed with rural designs and while staff agrees that it was originally platted in the county, the feel of the neighborhood is decidedly suburban. If the property were used for agricultural purposes, i.e. rural, staff would understand the necessity of taller accessory structures. However, because this is still a residential area, accessory structures that are subordinate to the principal structure is not a unique requirement for this neighborhood. As mentioned below, larger lots within the city have been able to accommodate the maximum sidewall requirement.</p>	<p><input 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>Placement of the garage, as proposed by the applicant would minimize the impact of a taller garage on neighboring properties. Staff does not feel that the request, if approved, would adversely affect the rights of adjacent property owners or residents.</p>	<p><input checked="" type="checkbox"/> Met</p>
<p>3. Strict application of the 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>Staff does not feel that the regulations are creating an unnecessary hardship for the applicant. Property owners throughout the community, even on lots larger than the applicant's, have been able to construct detached garages within the required maximum or by receiving an administrative adjustment to accommodate multiple needs, including the storage of Class A recreational vehicles, boats and similar items. The applicant could obtain an administrative adjustment up to 15 feet six inches per the requirements established the Zoning Regulations. Beyond that height, staff begins to be concerned about the scale of accessory structures regarding the surrounding built environment.</p>	<p><input 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>The proposed request would not adversely affect the public health, safety, morals, convenience, prosperity or general welfare. Finding 5 addresses order.</p>	<p><input checked="" type="checkbox"/> Met <input type="checkbox"/> Not Met</p>
<p>5. Granting of the variance must not be contrary to the general spirit and intent of the Zoning Regulations.</p>	<p>The regulations for accessory structures were designed to keep accessory structures as subordinate in size and function, as defined by Accessory Building or Structure within the Definitions. As shown in the applicant's application, a garage with a 15-foot, four-inch sidewall height begins to create accessory structures that are out of scale with their principal structure. The allowance of accessory structures to the proposed height would not be in keeping with the intent of the Zoning Ordinance.</p>	<p><input type="checkbox"/> Not Met</p>

Richardson asked if there were any questions for staff. Calhoun asked if the neighbors had been notified. Allison responded that yes, property owners within 200 feet are notified of the request and public hearing. Bisbee asked if the neighbor to the north had contacted Planning Staff.

Allison said that she had received a phone call from the neighbor with questions but did not receive a comment of support or dissent from the neighbor.

Richardson asked for the presentation from the applicant.

Frank Stuckey, 3406 Dartmouth Rd, responded on behalf of the owner. Mr. Stuckey felt that the application should be approved due to the nature of the subdivision being developed in the county under rural standards and later being annexed in by the City. The lots within this neighborhood are large lots, larger than other similarly zoned properties. The applicant is proposing to locate the structure towards the rear of the property, reducing the impact on surrounding neighbors and that no negative comments were received by adjacent property owners. Mr. Stuckey also noted other garages within the area that had taller sidewall heights, like the request.

Swearer asked what it would take to make the structure comply with the regulation. Stuckey responded that to reduce the size of the structure, the walls would have to be cut down and could potentially affect the structural stability of the walls. He included that before a building permit would be issued, the applicant will have to have engineered drawings completed for the structure. Leuenberger asked the applicant if it would be more costly to have to construct a garage that would meet the standards than installing the current garage. Stuckey deferred to Richardson, who said that most likely to construct a garage that meets the regulation would cost more, depending on what the applicant had already invested in the project.

Allison provided Staff's recommendation of denial due to staff's finding that factors #1, 3 and 5 were not met. She advised the Board of Zoning Appeals that to approve the request the Board would need to provide language for the three factors that determine they have been met.

A motion by Gamber, seconded by Peterson to approve ZV20-000001, a variance request from §27-314. G.7. Accessory Structure Sidewall Height Maximum, which the applicant is requesting a sidewall height of 16 feet for a detached garage at 3705 N Lakeview Rd, Hutchinson, KS meeting, passed on a vote of 8-0, with Richardson abstaining, with the following determination of facts:

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>The request is unique to the property because it was originally developed in the County with rural standards and was later brought into the City which makes this neighborhood different from other neighborhoods in the R-3 zoning district.</p>	<p><input checked="" type="checkbox"/> Met</p>

Finding	Analysis	Met Not Met
2. Granting of the variance must not adversely affect the rights of adjacent property owners or residents.	Placement of the garage, as proposed by the applicant would minimize the impact of a taller garage on neighboring properties. Staff does not feel that the request, if approved, would adversely affect the rights of adjacent property owners or residents.	☑ Met
3. Strict application of the 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.	The denial of the request would create an unnecessary hardship due to property owner investing time and finances in the acquisition and development of their plans, as well as the owner seeing the need to construct a 16 foot sidewall height to meet the needs of the use of their property.	☑ Met
4. Granting of the variance must not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare.	The proposed request would not adversely affect the public health, safety, morals, convenience, prosperity, order, or general welfare. Finding 5 addresses order.	☑ Met
5. Granting of the variance must not be contrary to the general spirit and intent of the Zoning Regulations.	The request is not contrary to the general spirit and intent of the Zoning Regulations due to the goal of allowing properties the maximum use of their property, in this case, more rural standards in a neighborhood that was originally designed in the County. In addition, no neighbors are opposed to the request.	☑ Met

5. **UPCOMING CASES**

a. August 25, 2020 –

- ZV20-000002 – Screening Fence Requirement

6. **CITY COUNCIL UPDATE** – None.

7. **OPEN COMMENTS FROM THE AUDIENCE**

a. There were no comments from the audience.

8. **ADJOURNMENT** – The meeting adjourned at 6:31 p.m.

Respectfully Submitted,

Amy Allison
Senior Planner

Approved this 25th day of August 2020

Attest: 

Ryan Hvitlök, AICP, CFM
Director of Planning & Development