

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 (2/2), Jackson Swearer (1/2), Jane Gamber (2/2), Robert Hickman (2/2), Terry Bisbee (2/2), Valerie Roberts-Ropp (2/2), Darryl Peterson (1/2), Logan Leuenberger (2/2) and Rod Calhoun (2/2)

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

2. **APPROVAL OF MINUTES**

The minutes of the August 11, 2020 meeting were approved on a motion by Bisbee, seconded by Gamber, passed unanimously.

3. **CORRESPONDENCE & STAFF REPORTS**

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

4. **PUBLIC HEARING**

a. **ZV20-000002 – Request for a variance from §27-908.E.6.a. Industrial Screening and Security Fences. The applicant is requesting a variance from the Residential Screening Requirement to instead install a 6-foot chain-link fence at 110 N Pershing Street, Hutchinson, KS**

Richardson asked if there were any outside contacts or conflicts of interest; Richardson stated that he had a conflict of interest and will abstain from voting.

Allison provided the staff presentation. The applicant requested a variance from Section 27-908.E.6.a. which requires a 6 foot screening fence to be installed when an industrial use adjoins a residential zoning district that is separated by a residential street. The applicant has requested to install a 6-foot chain-link fence that does not meet the definition of a screening fence, as defined by the Zoning Regulations. The applicant did provide a site plan for review. The property is zoned I-2 Industrial Zoning District and has a Comprehensive Plan Land Use designation of Industrial.

The Development Review Committee reviewed the proposal and had no comments. In addition, notification of the public hearing was sent to the surrounding property owners within 200 feet of the property. No comments 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><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>The request is not unique. There are multiple properties within the City that are industrial uses which are adjacent to residential. The intent of the code is to mitigate negative impacts that could arise from having industrial located next to residential, while still allowing for these uses to be adjacent. Other properties, in similar circumstances, have had to comply with the screening requirements.</p>	<p><input 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>While the use is existing, the intent of the Zoning Regulations is to bring properties into conformance with the current regulations once a major modification has been made to a property. In this case, the property owner constructed a major addition which triggered the landscaping and screening requirements, thereby establishing the requirement to screen. The granting of this variance would eliminate the adjacent owners, current and future, rights to have a screen fencing mitigating the impacts of an adjacent industrial property.</p>	<p><input type="checkbox"/> Not Met</p>
<p><b>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.</b></p>	<p>Staff does not feel that the regulations are creating an unnecessary hardship for the applicant. Screening fences are a common requirement for industrial properties throughout the United States and Kansas. Other methods can be used by the property owner to safeguard their property from vandalism and theft, which affects all properties within the City.</p>	<p><input 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>The proposed request would adversely affect the public health, safety, order, morals, convenience, prosperity or general welfare. As stated above, the screening fence mitigates negative impacts, such as reducing dust, noise and unsightly operations, that are common in industrial properties but not common in residential neighborhoods.</p>	<p><input type="checkbox"/> Not Met</p>
<p><b>5. Granting of the variance must not be contrary to the general spirit and intent of the Zoning Regulations.</b></p>	<p>The request would be contrary to the general spirit and intent of the Zoning Regulations because the ordinance is clear that a screening fence separating an industrial use from residential properties will be required when separated by a residential street. The intent of the ordinance also is to allow for property owners to use said properties to the fullest extent allowed by the ordinance with the responsibility to mitigate any negative impacts on surrounding properties, which the screening fence does.</p>	<p><input type="checkbox"/> Not Met</p>

Calhoun asked if the requirement to screen would extend to the other properties owned by J&J Drainage. Allison responded that the only portion of the property that would need to be brought into conformance with the regulations would be the area to the north of the addition.

Richardson asked for the presentation from the applicant.

Curtis Mitchell, Mark Borecky Construction, 319 W 5<sup>th</sup> Avenue, responded on behalf of the owner. Mr. Mitchell reviewed the applicants request, requesting the variance based on vandalism that occurs on or near the property, the potential for people to deface the required screening fence with graffiti, that the building screens most of the property from the neighbors already, and that the fence would provide screening from the street for vandals.

Bisbee left the meeting.

No questions were asked of the applicant. No public comments were submitted.

Allison provided Staff’s recommendation of denial due to staff’s finding that factors #1, 2, 3, 4 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 five factors that determine they have been met.

A motion by Gamber, seconded by Calhoun to approve ZV20-000002, a request for a variance from §27-908.E.6.a. Industrial Screening and Security Fences. The applicant is requesting a variance from the Residential Screening Requirement to instead install a 6 foot chain-link fence at 110 N Pershing Street, Hutchinson, KS, passed on a vote of 5-0, with Richardson abstaining, with the following determination of facts:

Finding	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>The request is unique because the building is large and close to the street so the fence will not screen the building and the building screens most of the property.</p>	<p><input checked="" type="checkbox"/> Met</p>
<p><b>2. Granting of the variance must not adversely affect the rights of adjacent property owners or residents.</b></p>	<p>The rights of the neighbors will not be affected because the building serves as the screen.</p>	<p><input checked="" type="checkbox"/> Met</p>
<p><b>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</b></p>	<p>The property owner could face potential hardship due to the screening fence creating potential safety concerns by screening criminal activity from the street.</p>	<p><input checked="" type="checkbox"/> Met</p>

Finding	Analysis	Met   Not Met
must alleviate some demonstrable or unusual hardship or difficulty.		
4. Granting of the variance must not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare.	The property owner could face potential hardship due to the screening fence creating potential safety concerns by screening criminal activity from the street.	☑ 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 because the building screens most of the property from the adjacent properties.	☑ Met

5. **UPCOMING CASES**

a. September 22, 2020 –

- SUP20-000001 – Vehicle Repair Use
- ZV20-000003 – Minimum Lot Area, Minimum Lot Frontage, Accessory Structure without a Principal Structure

6. **CITY COUNCIL UPDATE** – None.

7. **OPEN COMMENTS FROM THE AUDIENCE**

a. Hviløk spoke with the Board about a request to review the Subdivision regulations in regard to allowing flag lots. General consensus was that there was not an express need at this time to review the current language and there are alternative means to request that type of lot, such as a variance.

8. **ADJOURNMENT** – The meeting adjourned at 6:20 p.m.

Respectfully Submitted,

Amy Allison  
Senior Planner

Approved this 15th day of Sept. 2020

Attest:   
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Ryan Hvitlök, AICP, CFM  
Director of Planning & Development