



BOARD OF ZONING APPEALS MINUTES

MEETING OF: TUESDAY, SEPTEMBER 22, 2020

MEETING LOCATION: ZOOM MEETING

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 (4/4), Jackson Swearer (3/4), Jane Gamber (4/4), Robert Hickman (4/4), Terry Bisbee (4/4), Valerie Roberts-Ropp (4/4), Darryl Peterson (3/4), Logan Leuenberger (4/4) and Rod Calhoun (4/4).

Staff present were: Ryan Hvitl k, Director of Planning & Development; Amy Allison, Senior Planner, and Charlene Mosier, Planning Technician.

2. **APPROVAL OF MINUTES**

The minutes of the September 15, 2020 meeting were approved on a motion by Hickman, 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 Gamber, passed unanimously.

4. **PUBLIC HEARING**

a. **SUP20-000001 – Request to operate a motor vehicle repair (light-medium) business at 309 S Washington St (commonly known as 311 S Washington Street, Unit A), Hutchinson, KS.**

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

Allison provided the staff presentation. The property owner is Jay Schrock and the applicant is Robert Schmidt. This property has an existing building which the applicant proposes to use for a vehicle repair business. The zoning is I-3. The Comprehensive Land Use Map shows this area as industrial. Photos of the property in question and surrounding properties were shown.

Allison reviewed the standard factors of approval for Special Use Permit requests.

ANALYSIS OF STANDARD FACTORS OF APPROVAL FOR SPECIAL USE PERMIT REQUESTS:

Finding	Analysis	Met Not Met
1. Character of the neighborhood	The subject property is located in an industrial- commercial mixed neighborhood. The existing structures reflect the character of the surrounding properties and the applicant does not propose to amend the site. The proposed use is compatible with surrounding uses.	<input checked="" type="checkbox"/> Met

<p>2. Current zoning and uses of nearby property</p>	<table border="1"> <thead> <tr> <th>Location</th> <th>Zoning</th> <th>Use</th> </tr> </thead> <tbody> <tr> <td>Subject Property</td> <td>I-3 Heavy Industrial</td> <td>Storage/Warehouse</td> </tr> <tr> <td>North</td> <td>I-3 Heavy Industrial</td> <td>Vacant Lot</td> </tr> <tr> <td>South</td> <td>I-3 Heavy Industrial</td> <td>Vacant Lot</td> </tr> <tr> <td>East</td> <td>C-5 Downtown</td> <td>Storage/Warehouse</td> </tr> <tr> <td>West</td> <td>I-3 Heavy Industrial</td> <td>Utility Facilities/Vacant Lot</td> </tr> </tbody> </table>	Location	Zoning	Use	Subject Property	I-3 Heavy Industrial	Storage/Warehouse	North	I-3 Heavy Industrial	Vacant Lot	South	I-3 Heavy Industrial	Vacant Lot	East	C-5 Downtown	Storage/Warehouse	West	I-3 Heavy Industrial	Utility Facilities/Vacant Lot	<p><input checked="" type="checkbox"/> Met</p>
Location	Zoning	Use																		
Subject Property	I-3 Heavy Industrial	Storage/Warehouse																		
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East	C-5 Downtown	Storage/Warehouse																		
West	I-3 Heavy Industrial	Utility Facilities/Vacant Lot																		
<p>3. Suitability of the property for the proposed use as presently zoned</p>	<p>The property is currently zoned I-3 Heavy Industrial District. A vehicle repair (light-medium) use is permitted in the I-3 district with a special use permit with required design standards and use restrictions. The design standards and use restrictions are included as the required conditions of approval, Exhibit B, which the application meets.</p> <p>The existing structure has already been inspected for compliance by the Inspections Department and meets all applicable codes.</p>	<p><input checked="" type="checkbox"/> Met</p>																		
<p>4. Extent of detrimental effects to nearby properties if the application were approved</p>	<p>The applicant has indicated that all operations and storage of vehicles and materials will take place indoors. There are no anticipated detrimental impacts on nearby properties.</p>	<p><input checked="" type="checkbox"/> Met</p>																		
<p>5. Length of time the property has remained vacant</p>	<p>The property has been vacant for three months, as noted on the application.</p>	<p><input checked="" type="checkbox"/> Met</p>																		
<p>6. Relative gain to the public health, safety and welfare compared to the hardship imposed upon the landowner if the application were denied</p>	<p><u>Health, safety, and welfare:</u> The residential unit is not expected to have adverse impacts on the public health, safety and welfare.</p> <p><u>Landowner hardship:</u> If the special use permit is not granted, the property owner could face difficulty renting the space due to suitable uses permitted in the I-3 district.</p>	<p><input checked="" type="checkbox"/> Met</p>																		
<p>7. Conformance of this request to the Comprehensive Plan</p>	<p>This request conforms to the Comprehensive Plan, which calls for allowing compatible uses to be permitted in vacant industrial properties.</p>	<p><input checked="" type="checkbox"/> Met</p>																		
<p>8. Impact on public facilities and utilities</p>	<p>This is an existing, developed site. No impacts on public facilities and utilities are anticipated.</p>	<p><input checked="" type="checkbox"/> Met</p>																		

SITE PLAN REVIEW:

Item	Standard	Provided	Met Not Met
Front yard setback	25 feet	0 feet	<input checked="" type="checkbox"/> Met (existing structure)
Side and rear yard setback	10 feet (North), 10 feet (West)	0 feet (North), Approximately 13 feet (West)	<input checked="" type="checkbox"/> Met (due to existing structure)
Building Height	35 feet	Approximately 18 feet	<input checked="" type="checkbox"/> Met
Maximum Lot Coverage	60%	58%	<input checked="" type="checkbox"/> Met
Driveway Surfacing	Asphalt or Concrete	Concrete	<input checked="" type="checkbox"/> Met
Drive Aisle Width	N/A	N/A	<input checked="" type="checkbox"/> Met (Existing)
Parking	2 spaces per service bay	2 spaces existing	<input checked="" type="checkbox"/> Met (existing)
Landscaping & Screening	N/A	N/A	<input checked="" type="checkbox"/> Met (existing)
Loading Space	1 loading space on site	Existing property has enough room for one loading space	<input checked="" type="checkbox"/> Met (existing)
Disabled Parking	1 space	None (1 required per Conditions)	<input checked="" type="checkbox"/> Met
Trash Enclosure Screening	N/A	N/A	<input checked="" type="checkbox"/> Met
Design Standards and Use Restrictions			
All vehicle repair shall be conducted entirely within an enclosed building		Applicant has stated that is his proposal	<input checked="" type="checkbox"/> Met
Outdoor storage of parts and tires shall be prohibited		Applicant has stated that no outdoor storage of parts will occur	<input checked="" type="checkbox"/> Met
Outdoor storage of inoperable vehicles shall comply with Sec. 27-406.B.31.		Applicant has stated that no vehicles will be stored outdoors, but condition has been placed that any future outdoor vehicle storage must comply with Sec. 27-406.B.31.	<input checked="" type="checkbox"/> Met

DRC MEETING:

The Development Review Committee considered this item on 9/8/2020. No comments were received. The Building Inspection Department has inspected the building and requirements were met for use of the structure for this business.

PUBLIC COMMENTS:

On August 31, 2020, notification was made to the 6 owners of property within 200 feet of the property. No comments were received.

Richardson asked the applicant to address the Board.

Robert Schmidt, 209 W 12th Ave, owner of High Flying Auto, said he has always been interested in restoring vehicles and it is his goal to open his own business to repair and restore vehicles.

Bisbee asked if both structures on this property will be used. Mr. Schmidt said he is only using one building at this time.

There were no comments from the audience.

Richardson asked for Staff to provide the recommendation. Allison said staff recommends approval of the special use permit request with the following conditions:

1. This special use permit shall only be used for a Motor Vehicle Repair (Light-Medium) use at the above-listed location.
2. All required permits shall be obtained prior to any construction.
3. All vehicle repair shall be conducted entirely within an enclosed building.
4. Outdoor storage of parts and tires shall be prohibited.
5. Outdoor storage of inoperable vehicles shall comply with Sec. 27-406.B.31.
6. If new signage is to be installed, a permit is required from the Planning & Development Department.
7. If fencing is to be installed, a permit is required from the Planning & Development Department.
8. An occupancy permit shall be required prior to occupancy of the living unit.

If the business were to expand into more of the building, this special use permit would be sufficient as it is the same address.

Calhoun asked what is considered light-medium vehicle use. Staff said it is smaller vehicles and not large commercial trucks or buses.

Richardson closed the public hearing and asked for a motion.

Motion by Bisbee, seconded by Calhoun, to approve Special Use Permit request SUP20-000001 to operate a motor vehicle repair (light-medium) at 309 S Washington St (commonly know as 311 S Washington St, Unit A), Hutchinson, KS based upon a finding that the factors required are met, passed with the following vote: Yes – Gamber, Calhoun, Leuenberger, Hickman, Peterson, Bisbee, Roberts-Ropp, Swearer, Richardson.

- b. ZV20-000003 – Request for a variance from §27-413.B. Minimum Lot Area and Minimum Lot Size and §27-314.B. Accessory Building and Uses. The applicant is requesting a variance from the minimum lot size and minimum lot frontage in the R-6 Residential Infill District and the requirement that an accessory building must be on a lot that has a primary structure or use on the property located at 1407 N Baker Street, Hutchinson, KS**

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

Allison provided the staff presentation. The applicant has requested a variance from Section 27-413.B. Minimum Lot Area and Minimum Lot Size and Section 27-314.B Accessory Building and Uses. The applicant is requesting a variance from the minimum lot size and minimum lot frontage in the R-6 Residential Infill District and the requirement that an accessory building must be on a lot that has a primary structure or use. This property belonged to the applicant's father. The house faces Baker Street and the detached garage in question faces Dixie Street. The applicants would like to split the property and create two lots. They plan to sell the house and keep the detached garage to store a vehicle. A survey of the property was completed showing how the lot split would be created. The parcel with the garage would be 25 feet wide which does not meet the minimum lot frontage or minimum lot size. If the lot is split, the garage would be an accessory use on a separate lot without a primary structure (house) in a residential zoning district. Photos of the property were shown. Allison reviewed the standard factors of approval for a Zoning Variance:

ANALYSIS OF FINDINGS OF FACT REQUIRED FOR VARIANCE REQUESTS: SEC. 27-413.B. Minimum Lot Size and Lot Frontage

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 College View Addition was originally platted with lots that were 25 foot wide and approximately 3,200 square feet. However, the subdivision, Severance St to Lorraine St and 14th Avenue to 17th Avenue, was developed by combining multiple lots into one. Currently within those boundaries, there are no existing lots that are still the remaining 25 feet width and 3,200 square feet in area. The average lot area for this block (Dixie Street) is 8,567 square feet and the average lot frontage is approximately 66 feet. The property as it currently stands is conforming so the request does not meet this factor, due to the property owner's actions creating a need for the variance.</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>In regard to the minimum lot size and lot frontage, staff does not anticipate any adverse affects to adjacent property owners and 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>The applicant stated that the hardship if the variance was not granted was a financial hardship. State statute does not permit financial hardship as a sufficient ruling to grant a variance. Staff cannot find another hardship aside from a convenience to the applicant, which is not sufficient for a variance.</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>Staff believes that granting the variance would affect the order of the neighborhood, if granted. As stated above, no other properties within this neighborhood are of this size or frontage.</p>	<p><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 minimum lot size and area were established in each zoning district so that lots would be uniform in size and frontage to ensure cohesive development. The R-6 Residential Infill District was specifically created with a 30 foot minimum lot frontage and 3,500 sf lot area so that older, developed lots would be brought into conformance with City Code, while maintaining enough buildable area to be able to develop the site for future use. Granting this variance would not only conflict with the intent of the zoning district but also create a lot with limited potential development in the future, possibly necessitating further variances due to man-made decisions.</p>	<p><input type="checkbox"/> Not Met</p>

ANALYSIS OF FINDINGS OF FACT REQUIRED FOR VARIANCE REQUESTS: SEC. 27-314.B. Accessory Structures with Principal Structure

Finding	Analysis	Met Not Met
<p>6. 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>Sec. 27-314.B. requires that an accessory structure must be constructed on a lot with a principal structure. It is common for property owners to acquire adjacent land to construct an accessory structure. All projects that fall under this category are required to combine their lots so the accessory structure conforms to the code, like which occurred in 2007 when the detached garage was constructed. There is nothing unique about the lot or garage that would meet the standard for granting a variance.</p>	<p><input type="checkbox"/> Not Met</p>
<p>7. Granting of the variance must not adversely affect the rights of adjacent property owners or residents.</p>	<p>If the variance were granted, the use of the property would be for storage, which could have negative impacts on surrounding property owners who purchased homes in a residential neighborhood with the expectation not to live next to a standalone garage.</p>	<p><input type="checkbox"/> Not Met</p>

<p>8. 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>The applicant stated that the hardship if the variance was not granted was a financial hardship. State statute does not permit financial hardship as a sufficient ruling to grant a variance. Staff cannot find another hardship aside from a convenience to the applicant, which is also not sufficient for a variance.</p>	<p><input type="checkbox"/> Not Met</p>
<p>9. Granting of the variance must not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare.</p>	<p>Without a principal structure (house) onsite, staff has concerns about the safety of the property and the ability to ensure security of the premises. Without the owner on-site to secure the building, the onus may be put upon the neighbors to secure the structure or notify the property owner of a break-in. Additionally, squatting may occur in an unsecure site which has multiple consequences for the surrounding neighborhoods like increase in crime, potential fires, etc.</p>	<p><input type="checkbox"/> Not Met</p>
<p>10. Granting of the variance must not be contrary to the general spirit and intent of the Zoning Regulations.</p>	<p>The code is very specific on not allowing for accessory structures on properties without principal structures. To grant this variance would be in direct conflict with the Zoning Regulations.</p>	<p><input type="checkbox"/> Not Met</p>

The Development Review Committee reviewed the proposal and there were no comments. In addition, notification of the public hearing was sent to the 37 surrounding property owners within 200 feet of the property. There were multiple questions, but no written comments were received.

Richardson asked for the presentation from the applicant.

Celeste Nicewander, 3502 Garden Grove Pkwy, said her father passed away in March and she and her brother now own the 1407 N Baker St property. The proposed use of the garage would be to store a 1964 Ford Fairlane that belonged to her father and tools to maintain it. They currently have no other location to store the vehicle and work on it. The plan is to sell the house but keep ownership of the garage that faces Dixie St. The garage was constructed thirteen years ago.

The commission discussed possible options and the best use of this property for the neighborhood.

There were no comments from the public.

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 Calhoun seconded by Bisbee to deny case ZV20-000003, a request for a variance from §27-413.B and 27-314.B to create a lot with a 25 foot lot frontage, 3,199.0 lot area and allow for an accessory structure without a principal structure at 1407 N baker St, Hutchinson, KS based upon a finding that the factors required are not met, passed with the following vote: Yes – Gamber, Calhoun, Leuenberger, Hickman, Peterson, Bisbee, Roberts-Ropp, Swearer, Richardson.

5. **UPCOMING CASES** – A Planning Commission meeting will be held October 13, 2020 to consider a rezoning request.
6. **CITY COUNCIL UPDATE** – None.
7. **OPEN COMMENTS FROM THE AUDIENCE**
 - a. None.
8. **ADJOURNMENT** – The meeting adjourned at 6:25 p.m.

Respectfully Submitted,

Charlene Mosier
Planning Technician

Approved this 15th day of Dec. 2020

Attest: 

Ryan Hvitlök, AICP, CFM
Director of Planning & Development