

MINUTES

Independence Planning Commission/Board of Zoning Appeals

Tuesday, August 1, 2017

Veterans Room Memorial Hall 5:30 p.m.

Call to Order

Planning Commissioners Present

Philipp Umlauf, Jim Hardy, Barbara Emert, Brian Beecham, Brent Littleton and Nick McCollam*.

Planning Commissioners Absent

Steve McBride, Mary Jo (Dancer) Meier and Andy McLenon*

*Outside Appointments are not on the Board of Zoning Appeals

Staff Present

Kelly Passauer, Assistant City Manager/Zoning Administrator

Chase Cushing, City Planning Summer Intern

Visitors Present

Brian Wright

Mike Connors

a. Consider approving minutes of the July 11, 2017 meeting.

Barbara Emert made a motion to approve the minutes of the July 11, 2017 Planning Commission/Board of Zoning Appeals minutes, seconded by Brian Beecham. The motion carried 6-0.

Board of Zoning Appeals

b. Consider a variance request from the requirements of Section 516 of the zoning ordinance relating to non-residential construction in the floodplain district at 501 South 20th Street.

Staff provided the following staff report to the board in written form prior to the meeting:

Overview of Variance Requested

The Board of Zoning Appeals has received an application from CMC Recycling to grant a variance from the floodplain regulations as provided in the zoning ordinance. Their request is to build a metal storage facility on their property, which is in a floodway.

Section 516.12 states:

516.12. Floodway overlay district:

- a. Only uses having a low flood damage potential and not obstructing flood flows shall be permitted within the floodway district to the extent that they are not prohibited by any other ordinance. All encroachments, including fill, new construction, substantial improvements and other developments must be prohibited unless certification by a professional registered engineer or architect is provided demonstrating that encroachments shall not result in any increase in flood levels during occurrence of the base flood discharge. No use shall increase the flood levels of the regulatory flood elevation. These uses are subject to the standards of 516.9, 516.10 and 516.11.

1. Agricultural uses such as general farming, pasture, nurseries, forestry.

2. Residential uses such as lawns, gardens, parking and play areas.
3. Nonresidential areas such as loading areas, parking, airport landing strips, streets and railroads.
4. Public and private recreational uses such as golf courses, archery ranges, picnic grounds, parks, wildlife and nature preserves. Placement of manufactured homes is prohibited in the floodway, except in existing manufactured home parks and existing manufactured home subdivisions.

Section 516.11 states:

516.11. Floodway fringe overlay district:

- a. *Permitted uses:* Any use permitted in the floodway overlay district, section 516.12, shall be permitted in the floodway fringe overlay district. No use shall be permitted in the district unless the standards of section 516.11 are met.
- b. *Standards for the floodway fringe overlay district:*

1. *Specific standards:* In all areas of special flood hazards where base flood elevation data has been provided as set forth in 516.6 (zones A-30 and AE) the following provisions are required:

(a) *Residential construction:* New construction or substantial improvement of any residential structure shall have the lowest floor, including basement, elevated to or above one foot above the base flood elevation.

(b) *Nonresidential construction:* New construction or substantial improvement of any commercial, industrial or other nonresidential structure shall either have the lowest floor, including basement, elevated to one foot above the level of the base flood elevation, or together with attendant utility and sanitary facilities, be floodproofed so that below such a level the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. A registered professional engineer or architect shall certify that the standards of this subsection are satisfied. Such certification shall be provided to the official as set forth in 516.7c.6.

(c) *Required for all new construction and substantial improvements:* That fully enclosed areas below the lowest floor that are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or meet or exceed the following minimum criteria: A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided. The bottom of all openings shall be no higher than one foot above grade. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

516.6. General provisions:

- a. *Lands to which ordinance applies:* This ordinance shall apply to all lands within the jurisdiction of the City of Independence, Kansas, identified on the flood insurance rate map (FIRM) as numbered and unnumbered A zones and within the zoning districts FW and FF established in section 516.8 of this ordinance. In all areas covered by this ordinance no development shall be permitted except upon a

permit to develop granted by the city commission or its duly designated representative under such safeguards and restrictions as the city commission or the designated representative may reasonably impose for the promotion and maintenance of the general welfare, health of the inhabitants of the community and where specifically noted in sections 516.8, 516.9, 516.10 and 516.11.

Section 516.7:

516.7. Administration:

- a. *Establishment of a development permit:* A development permit shall be obtained before construction or development begins within any area of special flood hazard established in section 516.6. No person, firm, or corporation or unit of government shall initiate any development or substantial improvement or cause the same to be done without first obtaining a separate permit for each development as defined in 516.5. Application for a development permit shall be made on forms furnished by the building inspector and may include, but not be limited to, plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of the area in question; existing or proposed structures, fill, storage of materials, drainage facilities; and the location of the foregoing. Specifically, the following information is required:
 1. Elevation in relation to mean sea level, of the lowest floor (including basement) of all structures.
 2. Elevation in relation to mean sea level to which any nonresidential structure is to be floodproofed.
 3. Certification from a registered professional engineer or architect that the nonresidential floodproofed structure will meet the floodproofing criteria in 516.11b.1(b).
 4. Description of the extent to which any watercourse will be altered or relocated as a result of proposed development.
- d. *Variance procedures:*
 1. The board of zoning appeals as established by the City of Independence shall hear and decide appeals and requests for variances from the requirements of this ordinance.
 2. The board of zoning appeals shall hear and decide appeals when it is alleged that there is an error in any requirements, decision, or determination made by the building inspector in the enforcement or administration of this ordinance.
 3. Any person aggrieved by the decision of the board of zoning appeals or any taxpayer may appeal such decision to the district court of Montgomery County, Kansas, as provided in K.S.A. 60-2101.
 4. In passing upon such applications, the board of zoning appeals shall consider all technical evaluations, all relevant factors, standards specified in other sections of this ordinance, and:
 - (a) The danger that materials may be swept onto other lands to the injury of others;
 - (b) The danger to life and property due to flooding or erosion damage;
 - (c) The susceptibility of proposed facility and its contents to flood damage and effect of such damage on the individual owner;

- (d)The importance of the services provided by the proposed facility to the community;
- (e)The necessity to the facility to a waterfront location, where applicable;
- (f)The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
- (g)The compatibility of the proposed use with existing and anticipated development;
- (h)The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
- (i)The safety of access to the property in times of flood for ordinary and emergency vehicles;
- (j)The expected heights, velocity, duration, rate of rise and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and
- (k)The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.

5. Conditions for variances:

- (a)Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing items (b)—(f) below have been fully considered. As the lot size increases beyond the one-half acre, the technical justification required for issuing the variance increases.
- (b)Variances may be issued for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places, without regard to the procedures set forth in the remainder of this section.
- (c)Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
- (d)Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- (e)Variances shall only be issued upon (i) a showing of good and sufficient cause, (ii) a determination that failure to grant the variance would result in exceptional hardship to the applicant, and (iii) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

(f) Any applicant to whom a variance is granted shall be given a written notice that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

Review of the Request

The applicant is planning to build a metal storage building to replace an older building on their property (see an aerial photo of the property). An alley was vacated on the property at the July 27, 2017 City Commission meeting.

Board of Zoning Appeals Consideration

In considering the providing of a variance we wish to provide the following information:

- a. *That the variance requested arises from such condition which is unique to the property in question and which is not ordinarily found in the same zone or district; and is not created by any action or actions of the property owner of the applicant;* The occupant has been operating their business in the floodway for over 100 years. The building would be constructed to resist flooding.
- b. *That the granting of the permit for the variance will not adversely affect the rights of the adjacent property owner represented in the application;* It is not believed that building would create any adverse effects to adjacent property owners.
- c. *That the strict application of the provisions of the zoning regulations of which variance is requested will constitute unnecessary hardship upon the property owner represented in the application;* The hardship would consist of not allowing the property owner to construct a storage building at this location.
- d. *That the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare* It does not appear that the variance will affect public health, safety or general welfare.
- e. *That granting the variance desired will not be opposed to the general spirit and intent of the zoning regulations.* City staff feels it is not opposed to the general spirit and intent of the zoning regulations.

Staff Recommendation

Staff recommends approving the variance as requested and allow construction of a metal storage building as long as the construction stays consistent with what has been presented along with all other city code.

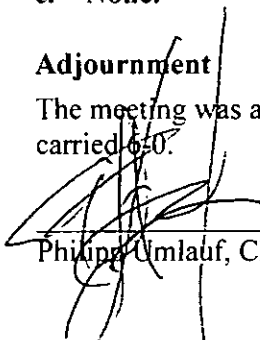
Brian Wright represented the applicant and reviewed CMC's request. Questions were asked about the reasoning for the new construction. A motion was made by Philipp Umlauf and seconded by Brian Beechum to approve the variance from the requirements of Section 516 of the zoning ordinance relating to non-residential construction in the floodplain district at 501 South 20th Street. The motion carried 5-0.

Planning Commission

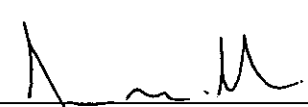
- c. None.

Adjournment

The meeting was adjourned with a motion by Philipp Umlauf and a second by Brian Beechum. The motion carried 5-0.



Philipp Umlauf, Chair



Nick McCollam, Secretary