

HAYS AREA BOARD OF ZONING APPEALS MEETING AGENDA
CITY COMMISSION CHAMBERS 1507 MAIN, HAYS, KS
JANUARY 14, 2015
8:15 A.M.

1. CALL TO ORDER BY CHAIRMAN.

2. CONSENT AGENDA.

A. Minutes of the regular meeting of December 10, 2014

Action: Consider approving the minutes of the December 10, 2014 meeting.

3. PUBLIC HEARING ITEMS – None

4. NON-PUBLIC HEARING ITEMS.

A. Consider setting a public hearing to consider a request from Justin Gottwald and L. Van & Janice K Witthuhn for a 35' setback variance to reduce the setback along Hwy 183 and Reservation Rd. from 35' to 0' to allow a sign to be constructed on an existing sign base. (Case # 01-15)

Action: Set the public hearing to consider a variance request for a sign for the property at 1000 Reservation Road.

5. OFF AGENDA ITEMS/COMMUNICATIONS.

A. Update on the Zoning Regulations Rewrite

B. Distribute I-Pads to BZA Members

6. ADJOURNMENT.

DRAFT
HAYS AREA BOARD OF ZONING APPEALS
COMMISSION CHAMBERS IN CITY HALL
MINUTES
December 10, 2014
8:15 A.M.

1. CALL TO ORDER: The Hays Area Board of Zoning Appeals met on Wednesday, December 10, 2014 at 8:15 a.m. in Commission Chambers at City Hall. Chairman Lou Caplan declared a quorum was present and called the meeting to order.

Roll Call:

Present: Lou Caplan
Gerald Befort
Jerry Sonntag
Thomas Lippert
Shane Pruitt

City Staff Present: Toby Dougherty, City Manager, I.D. Creech, Director of Public Works, Jesse Rohr, Superintendent of Planning, Inspection and Enforcement, Linda Bixenman, Administrative Assistant of Planning, Inspection and Enforcement.

2. CONSENT AGENDA:

A. MINUTES: Jerry Sonntag moved, Gerald Befort seconded the motion to approve the minutes from the November 12, 2014 meeting. There were no corrections or additions to those minutes.

Vote: Ayes: Lou Caplan
Gerald Befort
Jerry Sonntag
Thomas Lippert
Shane Pruitt

3. PUBLIC HEARING ITEMS:

A. CASE # 11-14 – PUBLIC HEARING TO CONSIDER A REQUEST FROM F & F IRON & METAL CO FOR A SPECIAL USE PERMIT FOR THE INSTALLATION OF A FULL SERVICE RECYCLING FACILITY ALLOWED PER SECTION 71-642(1) WITHIN THE “I-2” HEAVY INDUSTRIAL ZONING DISTRICT WITH THE ISSUANCE OF A SPECIAL USE PERMIT FOR 1201 GENERAL CUSTER ROAD: Jesse Rohr gave a brief power point presentation that included an aerial image of the subject property on the overhead visual. The property is on an L shaped lot located at 1201 General Custer along 13th Street within an “I-2” Heavy Industrial Zoning District.

The applicant has requested a special use permit to allow construction of a full service metal recycling facility. A recycling facility is allowed within this zoning district with no special use permit; although the addition of a scrap processing yard does require it; thus

the reason for the request. The proposed full service recycling facility would consist of a 100 foot X 150 foot building that would be constructed on the north corner of the property within a yard with screening wrapped around the perimeter. There would be an eight foot fence around the perimeter except to the north side would be a 20 foot fence. There were a couple of renderings to portray the proposed development.

The operation would be conducted within a noncombustible building or within the screened-in area.

There is visibility to 13th Street and the surrounding property is a retail store (Fastenal) to the west, UPS Delivery Warehouse, and City of Hays Public Works facility to the south.

The applicants have a recycling facility at Norton and Garden City. There are pictures of the inside and outside of each of the facilities. There were pictures of the facility to be shown when requested during the public hearing.

Chairman Lou Caplan explained to the audience that the board would discuss the case and then be opened up for the audience for comments. He asked that the comments be brief and concise and introduce something new and not repeat what was already said.

The applicants Von and Kiel Fahrenbruch were asked to come before the board to answer any questions.

Jerry Sonntag asked the applicants to speak about their operation; what it would look like outside and inside the facility, about the type of materials handled and about the type of equipment, noise and traffic. He was concerned about this type of land use at this location. He believed there is a need for this type of operation, just not at this location within the City.

Mr. Fahrenbruch explained the recycling and scrap metal operation. They would process non-ferrous metal inside the building. There would not be burning, battery breaking, smelting or shredding activity. He said they were interested in getting into non-metallic's, paper, plastics and possibly electronics.

The outside operations would be the baling of scraps of loose sheet metal, appliances, and car bodies that are hydraulically compressed. They do have a drain station for the cars; the fuel tank is completely removed and all contaminant parts must be off of them. The mercury switches on older vehicles must also be removed. Some of the fluids are reclaimed for recycling by other companies.

He provided a list of unacceptable items. If it is not recyclable they do not want it.

The baled scrap is shipped out on flatbed semis to "Shredder" facilities.

The equipment would be a 5,000 lb forklift, Down Stroke Baler that bales aluminum, radiators, etc, wheel loader, material handler with a 20 foot boom and grapple fork.

The Norton and proposed Hays plant would be feeder yards and the Garden City operation is used for further processing and shipping by rail. The Garden City Operation handles the sheer iron and larger sophisticated materials.

The scrap recycling operation is subject to The Clear Air Act, Occupational Safety and Health Administration, Department of Transportation, Clean Water Act, Resource Conservation and Recovery Act, Toxic Substances Control Act, Resource Conservation and Recovery Act, and Comprehensive Environmental Response, Compensation, and Liability Act.

"We utilize the latest technology to aggressively combat metal's theft with all transactions electronically recorded from beginning to end with scanned customer information, jpegs of every scale weight with time and date and customer pictures."

There are no activities that required the operators to have hearing protection as checked out by KDHE and OSHA. The baling sound is muffled inside the baler.

The materials are condensed and continuously baled in 3,000 lb bales and shipped out. They make their money on the margin so the materials are turned quickly. They do not resell the parts; it is brought in as a scrap item.

He explained that they explored different areas to locate a property that was zoned correctly for their operation in Hays and in Ellis. They found this property was zoned correctly for a recycling center.

He explained that there is a tremendous need for this type of operation with the broad spectrum of customers from car body shops and appliance dealers etc.

Jerry Sonntag asked the applicant why he chose this location when he is knowledgeable about the stringent requirements and the perception of a scrap metal yard. He agrees there is the need for this type of operation, but he is concerned that this location is not the correct one.

Tom Lippert concurred with Jerry Sonntag.

He acknowledged that the Fahrenbruch's had gone above and beyond in responding to questions and concerns of the City and the board. They appear to be upstanding and outstanding members of each of the Garden City and Norton communities and with the right location could be a part of our community. He thanked them for addressing the noise level.

He asked about the items that were not acceptable at this location at this time. Mr. Fahrenbruch explained about the items that were not acceptable at this time. They must be environmentally safe for the employees and public.

Jerry Sonntag asked the applicant to address his concerns if there is the possibility of piles of cars on the lot and how tall of a pile. He asked about the turnover rate and what it takes to ship them out.

Mr. Fahrenbruch explained that they accumulate 8 to 15 full car bodies at a time before they are drained, compressed and shipped out.

He pointed out that the city can hold this over them if they do not operate as stated. This is a considerable investment so it would be foolish if they did not do their part. He stated that with the compost site and easy access along that road, it would accommodate the residents to drop off their recycling.

Tom Lippert asked what the potential number of vehicles that would use the facility per day. Mr. Fahrenbruch answered that based on the other facilities there would be 100 to 110 customers per day. Most are pickups, car trailers or passenger vans used to drop off their items. They don't anticipate heavy truck traffic.

Shane Pruitt asked what they plan to do with the 300 feet to the north of the property. Mr. Fahrenbruch answered that he perceives to rezone the property.

Mr. Fahrenbruch stated that without the special use permit, a recycling center would be allowed. They are weighing the economic feasibility of all options.

Lou Caplan read one of the conditions the board has to consider on a use exception for a scrap yard. One of them is "No Junk, salvage, scrap or other materials shall be piled or stacked higher than the top of the required fence or wall."

He asked what equipment could be visible over the 20 foot fence. Mr. Fahrenbruch answered that the boom, cab of wheel loader and top of the drain station would be visible. There would not be any viewable piles of scrap that could be seen from behind the fence.

Shane Pruitt pointed out that anything within the fenced area could be seen going west on 13th Street; he asked if approved, if they would consider a 20 foot fence on the east side.

Gerald Befort asked Mr. Fahrenbruch if he thought the business would affect the property values in that area. Mr. Fahrenbruch answered that with the new construction of a quality operation; he did not believe it would be a detriment to property values. The business draws many folks to town.

Lou Caplan asked how wide an area they service. Mr. Fahrenbruch answered that they serve a 60 to 80 mile area.

Tom Lippert and Jerry Sonntag asked that the pictures be shown of the Garden City and Norton facilities at this time.

Jesse Rohr showed the pictures of the inside of the buildings and outside yards of each of the facilities.

Lou Caplan asked if there was anyone in the audience for comments. He read a letter submitted by **Bruce Arnhold**, 1600 E 13th St that was not able to attend.

"For safety of the drinking water supply, he recommended to relocate the project because of the concern of water contamination. In the past, a dry cleaning business located in the area was creating a water contamination danger which took years to resolve. He was also concerned about the property valuations."

Errol Wuertz, General Certified Appraiser of the State of Kansas and FHA approved board presented some information to the board that he asked them to consider on their deliberation of the project.

There are three types of depreciation used for an appraisal of a property.

1. Physical Depreciation
2. Functional Obsolescence
3. Economic Obsolescence -

The definition of Economic Obsolescence is the loss of value caused by influences outside of the property line. An example is a busy street, railroad tracks, poorly maintained property in the area, undesirable odors of a plant operation or any other outside influence that causes the loss of the value to a property. In theory, the economic obsolescence is always incurable once it is established because it is out of control of the owner of the subject property.

External Obsolescence is an appraisal term referring to the loss of value attributed to factors outside the property itself such as changed economic conditions, changes in zoning, and construction of nearby nuisances.

Incurable Deprecation is caused by factors not on subject property such as environmental, social, and economic factors.

He explained to the board that the decision they make today will affect a number of people for years to come. He posed the following question to the board: "If your home set across the street in a neighborhood of a facility like this and it deteriorated or devalued the biggest investment in your lifetime, would you approve it?"

Connie Mermis, 1111 E 13th Street, homeowner across the street from the subject property came before the board to urge them to deny the special use request for the scrap metal processing facility and transfer station at 1201 General Custer Rd.

She stated the following: "When you vote, please vote as if it was your home at 1111 E 13th Street or your business in the area. How would you like be a neighbor to the proposed facility? I urge you to deny this special use permit for F & F Iron. Welcome them to Ellis

County, but deny them the right to put this business in the heart of the community. Urge them to place the facility in a place more appropriate outside of city limits in compliance with the Comprehensive Plan, not within the neighborhood they propose to locate. Again please deny the request for the scrap processing facility and transfer station in the heart of Hays, a community that is proud of the way we look."

She thanked the members of the board for their service to the community and their role in protecting the look and feel of the city. She purchased her home 15 years ago and has lived in Ellis County since 1988. She expressed appreciation to the board for letting her express her concerns about the request for a scrap processing and transfer station by F & F Iron.

She stated that the Board of Zoning and the Planning Commission are responsible for conserving the values of property as it relates to the environmental quality, amenities, character, economic opportunity, mobility and utility infrastructure of the city. The facility would be detrimental to the value of her home and other neighboring homes and businesses in the area due to debris, noise and visual discontent.

She stated "I ask myself how this even got past the city staff office. Is it in line with the recent completed comprehensive plan that we paid a lot of money to have experts help us develop. At the application hearing, the applicants made special note of the unsightliness of the scrap area near I-70 and Bunker Hill; however not mentioning the unsightliness of their facility as per the pictures of the Norton facility."

She noted that at the last meeting the applicant side stepped a question about the height of the scrap piles and the turn around time by focusing on their efforts to prevent metal theft and putting much stock in the ATM dispensing of cash and tracking their customers. Even though that is great, technology and a 20 foot fence do not prevent blowing of cardboard, scrap metal etc on to the streets, neighboring businesses and yards of residents. Winds can be in excess of 50 miles per hour. It does not prevent materials from being dropped from trailers and trucks and finding their way into the neighbors yards, tires, creek beds and ditches.

Like the facility in Garden City that is located outside the City Limits, this facility should be located outside the city limits; not in the city. She quoted the expression by City Staff "That it is still a scrap yard no matter how you dress it up." She wanted to know how this fit into the Comprehensive Plan. She asked what would be the cost to the environment, property value, visual appearance for future purchase and development and appeal of the well-groomed thoroughfare that is the gateway to Vine Street and downtown and from the High School, Interstate 70 and Highway 40.

She pointed out that vehicles are not allowed to set on a property for more than a 30 day period without being moved; why would piles of metal be allowed on 13th Street?

She pointed out that there was a recent facelift to 13th Street paid for by invested local tax dollars and matching funds. How do the roads stay viable from this type of use?

She identified the existing similar type businesses that are located outside the city limits of Hays.

She stated that even though the applicant believes this would be an attractive thoroughfare that would draw customers to his business, it is not attractive to the neighborhood; due to health concerns and visual appearance. This is their investment and livelihood.

Elinda Mages, homeowner at 1112 E 15th St, asked the board to deny the special use permit. She was concerned about the affect this type of business would have on trying to sell their home they recently placed on the market. The facility would be seen from their backyard.

Laura Sadeghi, Real Estate Agent, came before the board to voice her concerns. She stated that she was born and raised in Hays where the people have prided themselves in the beauty of the community that is also recognized nationally. Other than the obvious, this is a mistake for a scrap metal yard at this location; what about the trailers and trucks hauling scrap materials that will be traveling down Vine and 13th Street, the same streets used by people visiting the community.

If it is approved, she asked if there was a way to control a possible change in the business model such as an expansion that may involve handling larger items. Do we have a way to stop it? With the hard work on updating the zoning regulations, this is a step backward.

Mel Sauer, Attorney, on behalf of Fastenal Company at 1110 E 13th Street, came before the board to state that the special use permit must be denied based on the supporting information in his 15 page letter submitted to the board. He emphasized that this is a very serious matter. The board would have to weigh the consequences of the health, safety and well being of the public at large versus the risk. This is not a need for the public at large.

Even after listening to the applicant's presentation, it did not change anything.

Fastenal would like this applicant to have a successful business; although this is not the right location. He emphasized that this type of business in the respective location would be unlawful and unreasonable.

Mr. Sauer, as a citizen, added that the special use permit must be denied.

Galen Rome, real estate agent, came before the board to voice his concerns:

1. Dirt issue – He has worked with two other similar facilities. Dirt is kicked up by the trucks and equipment. If there would be a south wind, the dirt would blow to the northern properties. With the attempt to control the dirt with a water truck, there is a problem with mud tracked in and out of the facility.

2. Vermin Problem

3. Visibility of the yard from 13th Street and from the property to the east over an 8 foot fence since it sets higher than the subject property.

4. If this is approved, he asked they add a condition on the type of fencing that could be a nice looking fence that could be maintained appropriately. The two other facilities have guardrails, galvanized tin and metal materials used for their fencing.

Tom Dechant, on behalf of his mother at 1019 E 13th Street, asked how much revenue from this business would end up in the city coffers. He asked how many would they employ. There would be skunks and vegetation problems in this type of yard. The water supply would be affected from the wash off from the control substance for vegetation and materials in the yard.

He explained that he works for an oil company and knows that salvage yards are an eyesore. He asked why not locate the business out in the country where they are supposed to be and not in the middle of town. He asked why let someone in that would change everyone else's plans for 13th Street.

Austin Goodrow, nearby property owner, voiced concern about the noise with the crushing of cars and bailing of materials. The other concern was the decrease in property values.

He explained that there is nothing appealing about the Norton facility per his research using Google Maps. There is junk setting outside the fences and there are no gates. He asked what would prevent them doing the same thing here down the road.

Henry Schwaller, came before the board noting that he was joined by three other commissioners for this public hearing. He explained that he was representing the residents of the City not the City Commission.

He explained that he had been on the steering committee with the stakeholders involved with the development of the 2012 Comprehensive Plan. He had worked directly with the consultant. The direction was for infill growth for multi-use within the existing city limits in addition to adding continuous subdivisions for urban sprawl. This area was identified as residential and new commercial uses not industrial. This was not the kind of infill anticipated.

13th Street was changed from 4 lanes to 3 lanes to add bicycle lanes in anticipation of growth of residential development.

He noted the 14 action report standards the board is to consider to grant a special use permit. He pointed out three factors that did not meet the standards for the special use permit request.

1. The stability and integrity of the various zoning districts.

2. Encouragement of improvements and land uses in keeping with overall planning.

3. Traffic Impact

He noted that Public Works and UPS are located south of the subject lot. There have been complaints of odor from the compost site and the stacking of brick etc. This is not the proper location for Public Works and UPS because of these detrimental factors.

John Moravek, nearby property owner, came before the board to voice his concerns about increased traffic drawn by the proposed facility. 13th Street is a main thoroughfare and additional traffic is just that. The High School traffic is at 8:00 a.m. and 4:00 p.m. There are cross country runners that run along 13th Street.

Tom Lippert asked Jesse Rohr to speak about the future land uses per the new comprehensive plan for this area. Jesse Rohr answered that the Future Land Use map per the Comprehensive Plan depicts this area as commercial land uses. The comprehensive plan bears a lot of weight on a rezoning request.

Lou Caplan explained that the main problem is the property is not zoned in conformance with the newly adopted 2012 Comprehensive Plan. He referenced the following from the zoning and subdivision regulations:

“Section 71-3 Relationship to the comprehensive plan and other policies”

“It is the intention of the city that this chapter shall implement the planning policies of the adopted comprehensive plan. The city reaffirms that this chapter is in conformance with the comprehensive plan.”

He recommended that the City Commission should relook at the previous zoning of properties that have not been developed to be sure they are properly zoned to avoid problems that have resulted in this case.

Jerry Sonntag thanked those in the audience for their comments. He understands their frustration. He has mixed feelings because the community needs this and it is encouraged to have infill; although this land use is not in conformance with the comprehensive plan. We would not be in this situation if the property was zoned correctly.

He commended the applicants for wanting to bring their business to Hays. The applicant is a good person and runs a good competitive business.

Lou Caplan asked if there were any other comments from the audience. There were none.

Lou Caplan entertained a motion.

Case #11-14 DENIED

Gerald Befort moved, Tom Lippert seconded the motion to deny the special use permit to Von and Kris and Kiel Fahrenbruch of F & F Iron & Metal Co at 1201 General Custer Road due to the potential devaluation in property values and that the land use is not in conformance with the Adopted 2012 Comprehensive Plan.

Vote: Ayes: Lou Caplan
Gerald Befort
Jerry Sonntag
Thomas Lippert
Shane Pruitt

Lou Caplan informed the applicants that they could appeal the decision to District Court within 30 days.

B. CASE # 15-14 – PUBLIC HEARING TO CONSIDER A REQUEST FROM V-J RENTALS LLC (VAUGHN MCMURTRIE AND JOHN ZIEGLER) FOR A SPECIAL USE PERMIT TO CONSTRUCT MULTI-FAMILY HOUSING ALLOWED PER SECTION 71-504(18) WITHIN THE “C-2” GENERAL COMMERCIAL AND SERVICE DISTRICT WITH THE ISSURANCE OF A SPECIAL USE PERMIT FOR THE PROPERTY LOCATED AT 2704 AUGUSTA LN:

Jesse Rohr gave a brief introduction of the case with a power point presentation that included an aerial image of the site layout of the subject property located one lot north of 27th on Augusta Lane. The applicant is requesting a special use permit to allow an existing commercially zoned property to allow multi-family housing to be constructed on the property.

The proposal is for two or more 2 story 12 unit studio apartments to be constructed in various phases. There is a private drive adjacent to the proposed apartments. The surrounding land uses are:

- West - Multi-family and duplexes
- North - Mini Storage Units
- East - Office Facilities and bank and grocery store
- South – vacant - zoned for residential/commercial

Von McMurtrie, owner, came before the board to ask if there would be any problems with some type of barrier on the private street to keep traffic from taking a short cut across the business property to the east. They wanted to be in compliance with the regulations for fire and police projection. He explained that the owner of Eagle Plaza (Ken Braun) requested there not be access through his office facilities and they agreed to this request.

Shane Pruitt asked if there were any fire code regulations that would prevent blocking off the access to the business area.

Lou Caplan asked if there could be a fence to block the traffic or put up a “Do Not Enter Sign”. City Attorney John Bird explained that the city cannot put up the sign, although the owners can. This is a dedicated, unplatted private drive. The owners of the two properties would have to have their own agreement. Jesse Rohr added that there are several access points to the property.

Lou Caplan asked if there were any comments from the audience.

Ken Braun, owner of the office facilities to the east, came before the board to explain that he is not against the project. He had sold the subject property to the applicant. He asked that access be blocked from the private drive to keep traffic from taking a short cut across his business area. There is traffic from the area now that uses the private drive to cut across his property to the point they had to put in speed bumps. He pointed to the area on the aerial map. He suggested a curb. Von McMurtrie stated that they would work to come up with an agreement with Ken Braun.

Lou Caplan asked if another access point would resolve the problem. Von McMurtrie noted that there was access through the concrete alley.

Lou Caplan asked Ken Braun if there is a way he could block that access from this property. Ken Braun answered that there was not.

Lou Caplan entertained a motion.

Case #15-14 APPROVED

Shane Pruitt moved, Thomas Lippert seconded the motion to grant a special use permit to V-J Rentals (John Ziegler and Vaughn McMurtrie) per Section 71-504 (18) to allow construction of multi-family dwellings on the property commercially zoned property zoned "C-2" General and Commercial Service District at 2704 Augusta Lane based on that considerations have been met to issue a special use permit.

Vote: Ayes: Lou Caplan
Gerald Befort
Jerry Sonntag
Thomas Lippert
Shane Pruitt

C. CASE # 16-14 – PUBLIC HEARING TO CONSIDER A REQUEST FROM LANNY JONES AND BRIAN DEIBERT FOR A SPECIAL USE PERMIT TO CONSTRUCT MULTI-FAMILY HOUSING ALLOWED PER SECTION 71-532(1) WITHIN THE "C-3" CENTRAL BUSINESS DISTRICT WITH THE ISSUANCE OF A SPECIAL USE PERMIT FOR THE PROPERTY LOCATED AT 212 W 11TH STREET:

Jesse Rohr gave a brief introduction of the case with a power point presentation that included an aerial image of the vacant lot on the overhead visual. The applicant is requesting a special use permit on an existing commercially zoned property to allow for construction of multi-family housing to be constructed on the property.

The proposal is for a two story four-plex to be constructed on the property with a fence adjacent to the alley. Off Street parking was recommended by City Staff. This would need to be included in the motion if the special use permit is approved.

The surrounding land uses are:

East- Juvenile Corrections Center
West – fenced in communication tower
North – Multi-family and Condos
South – commercial businesses adjacent to concrete alley

Lanny Jones, owner, came before the board to explain the project would offer affordable housing and be aesthetically pleasing to the area. The requirements by City staff on parking would be met. Some of the concerns are noise and trash in that area.

Shane Pruitt asked what type of fence. Lanny Jones answered that it would be a 6 foot privacy fence; wood or vinyl fence.

Tom Lippert stated that it was answered about the parking requirements. He asked about the type of fencing. He would suggest maintenance free fencing so its appearance would not need to be maintained since there is a change of ownership over time. Lanny Jones answered that they may construct a cedar or vinyl fence.

Tom Lippert asked if the design of the building would fit the appearance of the neighborhood. Jesse Rohr added that per the rewrite process of the zoning regulations, it has been recommended that new construction should be compatible with the existing neighborhood. It makes it more difficult in this case since this property is among various commercial and residential properties.

Larry Jones answered that they would comply with what was requested by the board.

Lou Caplan asked if there anyone in the audience. There were no comments.

Jerry Sonntag moved, Gerald Befort seconded the motion to grant a special use permit to Western Investments and Lanny Jones and Brian Deibert per Section 71-532(1) to allow construction of a multi-family dwelling on an existing commercially zoned property zoned "C-3" Central Business District at 212 W 11th based on the considerations that have been met to issue a special use permit subject to the following conditions:

At this time there were several comments:

John Bird asked if they wanted to add anything to the façade as was discussed. Jerry Sonntag did not want that as a condition because there was a too great a variety of different designs to try to match to the neighborhood.

Shane Pruitt asked that the motion include the condition that it be a solid fence.

Case #16-14 APPROVED

Amended motion Jerry Sonntag moved, Gerald Befort seconded the motion to grant a special use permit to Western Investments and Lanny Jones and Brian Deibert per Section 71-532(1) to allow construction of a multi-family dwelling on an existing commercially zoned property zoned "C-3" Central Business District at 212 W 11th based on the

considerations that have been met to issue a special use permit subject to the following conditions:

1. Private parking – no off street parking counted to meet the parking regulations
2. Private solid fence maintenance free on the back adjacent to the alley of the property; although no chain link fence

Vote: Ayes: Lou Caplan
Gerald Befort
Jerry Sonntag
Thomas Lippert
Shane Pruitt

4. NON-PUBLIC HEARING ITEMS: None.

5. OFF-AGENDA ITEMS/COMMUNICATIONS:

A. Zoning Regulation Rewrite: Jesse Rohr updated the commission on the zoning regulations rewrite and schedule. Module Two was submitted by the consultant. After review by City Staff, they are waiting on the revised module that will be available to the committees maybe before Christmas. The schedule has been revised accordingly.

B. Citizen Comments: None.

6. ADJOURNMENT: Lou Caplan adjourned the meeting at 10:03 a.m.

Submitted by: Linda K. Bixenman, Administrative Assistant,
Planning, Inspection and Enforcement

Board of Zoning Appeals Action Report

AGENDA ITEM: Setback Variance Application #01-15
 ADDRESS: 1000 Reservation Rd
 OWNER: Van Witthuhn
 TYPE OF REVIEW: Variance
 PRESENTED BY: Jesse Rohr, P.I.E. Superintendent
 DATE PREPARED: January 7, 2015
 AGENDA DATE: January 14, 2015

SUMMARY AND RECOMMENDED ACTION:

The applicant is requesting a variance to reduce the front yard setback from 35 feet to 0 feet, a variance of 35 feet to allow the placement of a business sign on the property located at 1000 Reservation Rd. (see further details below and attached site drawing). Staff recommends setting a public hearing for the February 11, 2015 Board of Zoning meeting for the request as submitted.

BACKGROUND:

- The applicant is requesting a variance to reduce the required front yard setback from 35 feet to 0 feet, a variance of 35 feet to allow erection of a sign on the property located at 1000 Reservation Rd.
- There is an existing sign base in this location from a previous sign – owner wished to utilize the existing base
- An on-premise sign could be located in this location with no variance, however the off-premise advertising proposed does require the variance

| | Setback Required | Applicant Proposed |
|------------|--------------------------------------|--------------------|
| Front Yard | Min. 35 ft (for off-premise signage) | 0 |
| | Min. 0 ft (for on-premise signage) | 0 |
| Side Yard | 0 | N/A |
| Rear Yard | 0 | N/A |

STANDARDS OF EVALUATION:

Per State Statute 12-759 and City Ordinance Sec. 71-1250

- The BZA has the authority to grant a variance if a literal enforcement of the provisions of the adopted regulations, will, in an individual case, result in unnecessary hardship, provided:
 - The spirit of the regulations shall be observed
 - Public safety and welfare secured
 - Substantial justice shall be done
- The applicant must show that the property was acquired in good faith and that the variance is needed due to extraordinary or exceptional circumstances of the property such as exceptional narrowness, shallowness, or shape of the lot
- Before granting a variance on the basis of unusual difficulty or unreasonable hardship, there must be finding by the Board that all of the following conditions exist:
 - a. Uniqueness of the property not ordinarily found in the same zone or district and not created by willful action of the owner

Staff Analysis: *While there appears to be nothing unique about the property, the situation itself is unique in that there is an existing sign base at the proposed sign location. An on-premise sign could be located at the location, but regulation requires additional setbacks for off-premise signage. Cutting Edge Collision, a business located at 1013 Reservation Rd. to the east of this location plans on advertising their business on the proposed sign, therefore requiring setbacks per off-premise sign regulations, hence the need for the variance.*

- b. The granting of the variance will not adversely affect the rights of adjacent property owners

Staff Analysis: *This proposed addition would not appear to have any adverse affects on the rights of nearby property owners. There was a sign in this location in the past, and the only thing changing is the businesses that will be advertising on the sign (see sign diagram).*

- c. The strict application of the code will constitute unnecessary hardship upon the property owner

Staff Analysis: *Due to the location of Cutting Edge Collision being “off the beaten path”, and the need for directional signage to their location, a hardship*

could be constituted if the sign could not be erected in the proposed location which gives a clear indication of the location of Cutting Edge Collision.

- d. The variance will not adversely affect the public health, safety, morals, order, convenience, propriety, or general welfare

Staff Analysis: *This proposed addition would not appear to adversely affect the public health, safety, morals, order, convenience, propriety, or general welfare.*

- e. The granting of the variance desired will not be opposed to the general spirit and intent of the regulations

Staff Analysis: *The proposed sign location and variance request would not seem to go against the spirit and intent of the regulations.*

RECOMMENDED ACTION:

Staff recommends setting a public hearing for the February 11, 2015 Board of Zoning meeting for the request as submitted.

ATTACHMENTS:

- Variance application
- Variance justification and site map from owner
- Picture(s)
- Map(s)

APPLICATION FOR VARIANCE

I. Name of Applicant ⁺ Justin Gottwald ~~Justin Gottwald~~ Phone 785-628-6220

Mailing Address 1013 Reservation Rd Hays, KS 67601

Name of Owner ⁺ (if different from applicant) L. VAN E. JANICE K. WITTHUHN Phone 785-628-6758

Mailing Address 2756 Thunderbird Dr Hays, KS 67601

Name of Authorized Agent _____ Phone _____

Mailing Address _____

Relationship of applicant to property is that of tenant

(Owner, tenant, lessee, other)

II. The variance is requested for a reduced set back from 35ft off
the premise boundary, To where the current base is in the ground

on property located at 1000 Reservation Rd and legally described as: see Attached
sheet

in the City of Hays and which is presently zoned C-2

Give metes and bounds description below or on attached sheet: (required only if property is not part of a legally recorded plat)

III. The applicant and owner herein, or authorized agent and owner:

- A. Acknowledges receipt of an instruction sheet concerning the filing and hearing of this variance request.
- B. Acknowledges the fee requirements established; and that the appropriate fee is herewith tendered.
- C. Agrees to conform to all requirements of the appropriate section of the Zoning Regulations if this application is approved.
- D. Acknowledges right to appeal the decision of the board to the District Court.

[Signature]
APPLICANT

AUTHORIZED AGENT (IF ANY)

L. Van E. Janice K. Witthuhn
OWNER

OFFICE USE ONLY:

RECEIVED IN THE PLANNING, INSPECTION, ENFORCEMENT DIVISION ON December 11, 2014

TOGETHER WITH THE APPROPRIATE FEE OF \$ 50.00 Receipt # 610651

Sinda Bjornman, Administrative Assistant

NAME AND TITLE

Date: Thursday, December 11, 2014

To: Hays Area Board of Zoning

From: Justin Gottwald Co- owner and Representative for Cutting Edge Collision

We here by request an off premise sign to be located at 1000 Reservation Rd, closer to the premises boundary than 35ft.

A. Uniqueness

Due to the fact that Cutting Edge Collision is not on a major road, we would like to place a sign at 183 and Reservation Rd to direct traffic to our location. The sign will be a shared sign between Country Side Homes (The property owner) and Cutting Edge Collision. Placing a sign at 1000 Reservation Rd 35ft back of the premises boundary would be wasteful to not use the existing sign base that is already established. Also it would not benefit us fully because we are looking for a sign to direct traffic not just advertise.

B. Adjacent Property

The sign will not affect the adjacent property because where we want to place the sign it is over 50 ft. to adjacent property other than the roads.

C. Hardship

Placing the sign on the lot as required by zoning regulations would place the sign at least 35ft off the boundaries of the property. The sign located 35ft off the boundaries of the property would make it confusing for potential customers to decipher which business is located at which property. With being a fairly new company and not being in the best location it is crucial to the success of our business to get a sign at this location.

D. Public Interest

It is our goal in requesting the variance to help our customers find our businesses (Cutting Edge Collision and Country Side Homes) more easily. The sign will be new and professional. It will help dress up the south end of Hays to make it more inviting to people coming to and leaving Hays.

E. Spirit and Intent of the Zoning Regulations

Granting of the variance desired will not be opposed to the general spirit and Intent of the zoning regulation. The sign will be placed where signs have already been placed in the past. It will not be in the way of utilities or view from any adjacent properties.

1000 Reservation Rd



1000 Reservation Rd



1000 Reservation Rd





Sign Location
(existing base)





© 2014 Google



Previous Sign -
Same Location





Total Height 30.14 ft
 wide 16.5 ft

Design Approved By: _____

Date: _____

Parcel Details for 026-182-03-0-30-03-002.01-0

Owner Information



Owner's Name (Primary): WITTHUHN, L VAN & JANICE K

Mailing Address: 2756 Thunderbird Dr
Hays, KS 67601-1403

Property Address



Address: 1000 Reservation Rd
Hays, KS 67601

Neighborhood: 512 - Hays

Tract: Section: 03 Township: 14 Range: 18

Legal Description: S03, T14, R18, ACRES 2.9, TR BEG 510(S) N & 135(S) E SW COR SW4 TH
NLY 583.68 TH E 112 TH SELY 145 TH CURVING TO THE RIGHT 235.22 TH
SWLY 327.9 TH W 97.74 TO POB

Acres: 2.90

Market Acres: 2.90