

MCCOOK CITY COUNCIL

REGULAR MEETING

**Monday, October 23, 2023
5:30 PM - City Council Chambers**

Call to Order and Roll Call.

Open Meetings Act Announcement.

Items

1. Elect new officers - Chairperson, Vice-Chairperson, and Secretary.
2. Approve the minutes of the September 28, 2021 regular Board of Zoning Adjustment meeting.
3. Public Hearings and Regular Agenda.
 - A. Public Hearing - request for a variance of the sign height requirement for a commercial business, from 20 feet to 30 feet; and a request for a variance of the sign size requirement for a commercial business, from 80 square feet to 250 square feet, property located at 202 Coppermill Street.
 1. Close Public Hearing.
 - B. Consider request for a variance of the sign height requirement for a commercial business, from 20 feet to 30 feet; and a request for a variance of the sign size requirement for a commercial business, from 80 square feet to 250 square feet, property located at 202 Coppermill Street.

Adjournment.

**CITY MANAGER'S REPORT
OCTOBER 23, 2023 BOARD OF ZONING ADJUSTMENT MEETING**

ITEM: 1.

RECOMMENDATION:

Elect new officers - Chairperson, Vice-Chairperson, and Secretary.

BACKGROUND:

As outlined in Article 25 - Board of Zoning Adjustment, Section 2501 (attached for reference), the Board annually in October elects one of its members as Chairperson, another as Vice-Chairperson, who shall act as Chairperson in the Chairperson's absence, and appoint a Secretary, who may be an officer or an employee of the city. Each shall serve until his or her successor has been selected. In years past the Board has approved that the City provide a secretary for the meetings.

**FISCAL
IMPACT:** None.

RECOMMENDATION:

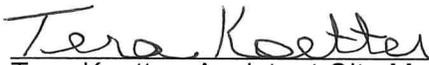
Elect new officers - Chairperson, Vice-Chairperson, and Secretary.

APPROVALS:



Lea Ann Doak, City Clerk-Treasurer

May 15, 2014



Tera Koetter, Assistant City Manager

May 15, 2014

Nathan A. Schneider, City Manager

May 15, 2014

ARTICLE 25

BOARD OF ZONING ADJUSTMENT

Article 25 - Board of Zoning Adjustment

Section 2501. Creation, Members, Meetings, Rules.¹ There is hereby established a Board of Zoning Adjustment. The word BOARD, when used in this Zoning Ordinance, shall be construed to mean the Board of Zoning Adjustment. The Board of Zoning Adjustment is appointed by the City Council and shall consist of five (5) regular members, plus one (1) additional member designated as an alternate who shall attend and serve only when one of the regular members is unable to attend for any reason.

One (1) member only of the City Board of Zoning Adjustment shall be appointed by the City Council from membership of the Planning Commission and the loss of membership on the Planning Commission by such member shall also result in the immediate loss of membership on the Board of Zoning Adjustment and the appointment of another Planning Commissioner to the Board of Zoning Adjustment. One (1) member of the board of adjustment shall reside outside of the corporate boundaries of the City but within its extraterritorial zoning jurisdiction.

The members appointed shall serve for terms of three (3) years and be removable for cause by the City Council upon written charges and after public hearing. Vacancies shall be filled by appointment for the unexpired term.

The Board of Zoning Adjustment shall annually in October elect one of its members as Chairperson, another as Vice-Chairperson, who shall act as Chairperson in the Chairperson's absence, and appoint a Secretary, who may be an officer or an employee of the City. Each shall serve until his or her successor has been selected. The presence of four (4) members of the Board shall be necessary to constitute a quorum.

All meetings of the Board shall be open to the public. Meetings of the Board shall be held at the call of the Chairperson and at such other times as the Board may determine. The Board shall keep minutes of its proceedings, showing the vote of each member upon each question, if absent or failing to vote, indicating the fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the Board and shall be a public record. The Board shall adopt from time to time any rules and regulations as it may deem necessary, to carry the appropriate provisions of this Zoning Ordinance into effect and all of its resolutions and order shall be in accordance therewith.

Section 2502. Appeals to Board, Record of Appeal, Hearing and Stays. Appeals to the Board of Zoning Adjustment may be taken by any person aggrieved or by any officer, department, board or bureau of the City affected by any decision of the administrative officer. Such appeal shall be taken within a reasonable time, as provided by the rules of the Board, by filing with the officer from whom the appeal is taken and with the Board of Zoning Adjustment a notice of appeal specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the Board all the papers constituting the record upon which the action appealed from was taken.

An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the Board of Zoning Adjustment after the notice of appeal shall have been filed with him that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board of Zoning Adjustment or by a court of record on application of notice to the officer from whom the appeal is taken and on due cause shown.

¹Revised September 18, 2017 - Ordinance No. 2017-2951

The Board of Zoning Adjustment shall fix a reasonable time for the hearing of the appeal, give public notice thereof, as well as due notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing, any party may appear in person or by agent or by attorney.

Section 2503. Powers and Jurisdiction Relating to Administrative Review. The Board of Zoning Adjustment shall have the power to hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official or agency based on or made in the enforcement of any zoning regulation or any regulation relating to the location or soundness of structures or to interpret any map, except that the authority to hear and decide appeals shall not apply to decisions made under Article 24 of this Ordinance.

Section 2504. Powers and Jurisdiction Relating to Variances. The Board of Zoning Adjustment shall have the power, where by reason of exceptional narrowness, shallowness or shape of a specific piece of property at the time of the enactment of this Ordinance, or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of such piece of property, the strict application of any regulation under this Ordinance would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardships upon the owner of such property, to authorize upon an appeal relating to the property, a variance from such strict application so as to relieve such difficulties or hardship, if such relief may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of this Ordinance.

1. No such variance shall be authorized by the Board unless it finds that the strict application of the Ordinance would product undue hardship; such hardship is not shared generally by other properties in the same zoning district and the same vicinity; the authorization of such variance will not be of substantial detriment to adjacent property and the character of the district will not be changed by the granting of the variance; and the granting of such variance is based upon reasons of demonstrable and exceptional hardship as distinguished from variations for purposes of convenience, profit or caprice;
2. No variance shall be authorized unless the Board finds that the condition or situation of the property concerned or the intended use of the property is not of so general or recurring nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to this Ordinance.
3. A variance from the terms of this Ordinance shall not be granted by the Board of Zoning Adjustment unless and until a written application for a variance is submitted demonstrating the following:
 - A. Special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not found in the same zoning district and which were not created by an action of the property owner or the applicant;
 - B. The reduction of the minimum requirements of this Ordinance which would be necessary to permit the proposed use or construction;
 - C. The literal interpretation of the provision of this Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this Ordinance;
 - D. The granting of the variance will not adversely affect the rights of adjacent property owners or residents nor will it confer upon the applicant any special privilege denied by this Ordinance to other land or structures in the same district;
 - E. The variance will not adversely affect the public health, safety, morals, order, convenience or welfare;

- F. The variance requested is the minimum variance that will make possible the reasonable use of the land or structure;
 - G. Granting the variance requested will not be opposed to the general spirit and intent of this Ordinance.
4. No non-conforming use of neighboring lands, structures or buildings in the same district, and no permitted structures or buildings in other districts shall be considered grounds for the issuance of variance;
 5. Notice of public hearing shall be given as in Section 2502 above; the public hearing shall be held; any party may appear in person, or by agent or by attorney; the Board of Zoning Adjustment shall make findings that the requirements of this section have been met by the applicant for a variance; the Board shall further make a finding that the reasons set forth in the application justify the granting of the variance; the Board shall further make a finding that the reasons set forth in the application justify the granting of the variance; and that the variance is the minimum variance that will make possible the reasonable use of the land, building or structure; the Board shall further make a finding that the granting of the variance will be in harmony with the general purpose and intent of this Ordinance, and will not be injurious to the neighborhood, or otherwise detrimental to the public welfare;
 6. In granting any variance, the Board of Zoning Adjustment may prescribe appropriate conditions and safeguards in conformity with this Ordinance. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this Ordinance and punishable under Section 2702 of this Ordinance;
 7. Under no circumstance shall the Board of Zoning Adjustment grant a variance to allow a use not permissible under the terms of this Ordinance in the district involved, or any use expressly or by implication prohibited by the terms of this Ordinance in said district.

Section 2505. Board has Powers of Administrative Officer on Appeals; Reversing Decision of Administrative Officer. In exercising the above-mentioned powers, the Board of Zoning Adjustment may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from, and may make such order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken.

The concurring vote of four (4) members of the Board shall be necessary to reverse any order, requirement, decision or determination of any such officer, or to decide in favor of the applicant on any matter upon which it is required to pass under this Ordinance or to affect any variation in this Ordinance.

Section 2506. Appeals to District Court. Any person or person, jointly or severally, aggrieved by any decision of the Board of Zoning Adjustment, may appeal as provided by Section 19-912 Neb. Rev. Stat., 1943.

**CITY MANAGER'S REPORT
SEPTEMBER 28, 2021 BOARD OF ZONING ADJUSTMENT MEETING**

ITEM: 2.

Approve the minutes of the September 28, 2021 Board of Zoning Adjustment meeting.

BACKGROUND:

Receive and approve the minutes.

**FISCAL
IMPACT:** None.

APPROVALS:



Lea Ann Doak, City Clerk

October 18, 2023

Board of Zoning Adjustment
September 28, 2021
12:00 P.M. Central

A MEETING OF THE BOARD OF ZONING ADJUSTMENT OF THE CITY OF MCCOOK, NEBRASKA convened in open, regular, and public session at 12:00 o'clock P.M. in the City Council Chambers.

Present: Vice Chair Hilker; Board members Larson, Moore, Chipman.

Absent: Chair Reitz; Board member Haney.

City Officials present: City Manager Schneider, City Attorney Mustion, City Clerk Doak.

Notice of the meeting was given in advance thereof by publication in the McCook Daily Gazette on September 24, 2021, the designated method of giving notice, a copy of the proof of publication being attached to these minutes. Advance notice of the meeting was also given to all members of the Board of Zoning Adjustment. Availability of the agenda was communicated in the advance notice. All proceedings hereafter shown were taken while the meeting was open to the attendance of the public.

Vice Chair Hilker announced that a copy of the Open Meetings Act was posted by the entrance to the Council Chambers and available for public review.

1. Approve the minutes of the June 28, 2021 regular Board of Zoning Adjustment meeting.

Motion to approve the minutes of the June 28, 2021 regular Board of Zoning Adjustment meeting. This motion, made by Moore and seconded by Chipman, passed.

Reitz: ABSENT, Hilker: YEA, Haney: ABSENT, Larson: YEA, Moore: YEA, Chipman: YEA
YEA: 4, NAY: 0, ABSENT: 2

2. Public Hearings and Regular Agenda.

- 2.A. Public Hearing - request for a variance of the front yard requirement of 40'0" to 5'0" in the Highway Commercial (HC) District for the property located at 1210 East "C" Street; applicants: Brian and Jodi Radel.

Motion to recess as a Board of Zoning Adjustment and convene a public hearing for the purpose of receiving public comment on a request for a variance of the front yard requirement of 40'0" to 5'0" in the Highway Commercial (HC) District for the property located at 1210 East "C" Street; applicants: Brian and Jodi Radel, with the City Attorney to act as hearing officer. This motion, made by Moore and seconded by Larson, passed.

Reitz: ABSENT, Hilker: YEA, Haney: ABSENT, Larson: YEA, Moore: YEA, Chipman: YEA
YEA: 4, NAY: 0, ABSENT: 2

The City Attorney offered and received into evidence Exhibit #1 - City Manager's Report prepared for the September 28, 2021 Board of Zoning Adjustment meeting (2 pages); Exhibit #2 - Notice of Public Hearing (1 page); Exhibit #3 - Variance Application and attachments (5 pages); Exhibit #4 - Findings and Determinations of McCook Board of Zoning Adjustment (3 pages); and Exhibit #5 - McCook Zoning Ordinance, Article 25 - Board of Zoning Adjustment (3 pages).

City Manager Schneider reviewed the information presented in Exhibit #1.

Brian and Jodi Radel, applicants, were present to answer questions from the Board.

Discussion was held by the board.

With no one else present to comment, motion to adjourn the public hearing and to reconvene as the Board of Zoning Adjustment. This motion, made by Moore and seconded by Larson, passed.
Reitz: ABSENT, Hilker: YEA, Haney: ABSENT, Larson: YEA, Moore: YEA, Chipman: YEA
YEA: 4, NAY: 0, ABSENT: 2

2.B. Consider request for a variance of the front yard setback requirement from 40'0" to 5'0" in a Highway Commercial (HC) District for the property located at 1210 East "C" Street; applicants: Brian and Jodi Radel.

Following review of the Variance Criteria, motion was made to approve the request for a variance of the front yard setback requirement from 40'0" to 2'0" in a Highway Commercial (HC) District for the property located at 1210 East "C" Street; applicants: Brian and Jodi Radel; and that the applicants have satisfactorily demonstrated that the variance criteria have been met. This motion, made by Moore and seconded by Larson, passed.

Reitz: ABSENT, Hilker: YEA, Haney: ABSENT, Larson: YEA, Moore: YEA, Chipman: YEA
YEA: 4, NAY: 0, ABSENT: 2

City Manager Schneider informed the applicant that there is a fifteen day period in which any decision of the Board of Adjustment may be appealed to the District Court. Building permits will not be issued before the end of the fifteen day period.

Adjournment.

There being no further business to come before the Board, Vice Chair Hilker declared the meeting adjourned at 12:29 P.M.

Lea Ann Doak, City Clerk-Treasurer
Recording Secretary

CITY MANAGER'S REPORT
OCTOBER 23, 2023 BOARD OF ZONING ADJUSTMENT MEETING

ITEM 3.: Consider a request for a variance of the sign height requirement for a commercial business, from 20 feet to 30 feet; and a request for a variance of the sign size requirement for a commercial business, from 80 square feet to 250 square feet, property located at 202 Coppermill Street.

BACKGROUND:

Adam Siegfried, d/b/a Coppermill has submitted a variance application for its commercial property located at 202 Coppermill Street. Specifically, the applicant requests a variance of McCook's sign height requirement for a commercial business, from 20 feet to 30 feet. Also, the applicant requests a variance of McCook's sign size requirement for a commercial business, from 80 square feet to 250 square feet. The requested sign will be smaller than the current sign located at 202 Coppermill Street.

The property at issue has an exceptional condition not shared by many commercial businesses. The Coppermill Restaurant is located behind another commercial business which obscures the visibility of the restaurant. In order to assure visibility, staff agrees a variance is appropriate in this instance.

The variance request can be granted without presenting a detriment to the public good, nor will the granting of a variance impair the intent and purpose of McCook's zoning ordinance.

The variance request will allow the applicant to avoid an undue hardship not faced by other properties in the same vicinity that are located directly adjacent to Highway 83. The adjacent property owner has been contacted by the applicant and consents to the granting of the variance. The fact that the applicant's business is located behind another commercial business demonstrates exceptional hardship as opposed to a variance request for pure convenience.

The applicant's request should not require the need to amend McCook's zoning regulations as most commercial businesses are adjacent to a main arterial street.

APPROVALS:



Lea Ann Doak, City Clerk

October 16, 2023



Nathan A. Schneider, City Manager

October 16, 2023



Barry Mooney, Building Inspector

October 16, 2023

EXHIBIT #1

PAGE(S) - 1

NOTICE OF HEARING

**REQUEST FOR
VARIANCE**

NOTICE IS HEREBY GIVEN that a public hearing will be held on a request for a variance of the Commercial Complex freestanding sign total sign area requirement from 80 sq. ft. to 250 sq. ft. and the height requirement from 20' to 30'.

LEGAL: Lot Two (2), Heritage Hills Park First Addition to the City of McCook,
Red Willow County, Nebraska.

APPLICANT: Adam Siegfried, dba "Coppermill"

ADDRESS: 202 Coppermill Street, McCook

A Public Hearing will be held on the Date, Time, and at the Place listed below:

October 23, 2023 - 5:30 P.M.
Board of Zoning Adjustment
City Council Chambers
505 West "C" Street

ANY AND ALL PERSONS desiring to comment on the above-described request will be given an opportunity to be heard. Please direct all inquiries to Nate Schneider, McCook City Manager at 308-345-2022 ext. 225.

-s- Lea Ann Doak
City Clerk

Publish: October 19, 2023.

EXHIBIT #2

PAGE(S) - 1

INSTRUCTIONS TO APPLICANT FOR A VARIANCE

1. Apply for building permit.
2. You will be sent a letter of denial for your building permit, stating the reason your building permit cannot be issued by the Building Department.
3. Receive Variance Application from Building Department.
4. Complete Variance Application and submit to the Building Department. Proof of ownership and legal description must be included. A filing fee of \$75.00 is due with application. Checks should be made payable to the City of McCook.
5. Application will be reviewed by the City of McCook Zoning Administrator.

You will be notified by letter of either the recommended approval or recommended denial of your application. Application will be forwarded to the Board of Zoning Adjustment for final determination. The applicant will be notified of the scheduled Board of Zoning Adjustment hearing.

6. The Board of Zoning Adjustment meets on the fourth Monday of each month at 5:30 P.M. at the Municipal Facility, in the City Council Chambers, 505 West "C" Street.
7. If Board determines that they cannot grant a variance, applicant, or effected party, may present a petition to the District Court. Appeal must be filed within 15 days.
8. If the Board grants the variance, you must then supply the Building Department with the information to approve the building permit. No building permit will be issued before the appeals period has ended.
9. If the variance is for a property setback, and is approved by the Board of Zoning Adjustments, the certificate will need to be filed with the Red Willow County Clerk. This filing fee must be paid to the City of McCook before a building permit will be issued.

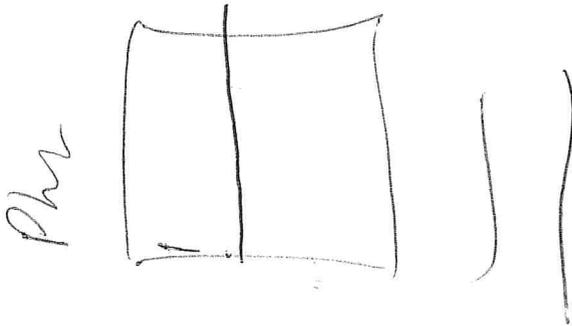


EXHIBIT #3

PAGE(S) - 8

VARIANCE APPLICATION

APPLICATION NO. _____ DATE: 9-26-2023

FEE ATTACHED: _____

APPLICATION COMPLETE: _____ SIGNED: [Signature]
Applicant

1. Applicant's Name: Adam Sigfried DBA Coppermill

2. Applicant's Address: 202 Coppermill Street Phone: 308-340-2400
Email Address: Coppermillrestaurant116@yahoo.com

3. Address of Property Affected: 202 Coppermill Street

4. Legal Description of Property: 0 3 29 Heritage Hills Park
First Add McLoak Lot 2 1.88 Acres

5. Zoning Commercial Corner Lot? Yes Y No _____

6. Applicant's interest in the Property (i.e. owner, tenant), attached proof of ownership:
Owner

7. Description of variance requested: (Example: Variance of side lot set back requirement from 5 feet to 3 feet). _____

8. Sections of Zoning Ordinance No. 2016-2929 which are affected (to be completed by staff)
ARTICLE: 2112 all inclusive
SECTION: 6

The Applicant must provide proof that the following criteria are met regarding the parcel of property for which the variance is being requested:

1. Referring to the specific parcel of property,
 - a) the parcel of property is exceptionally narrow;
 - b) the parcel of property is exceptionally shallow; **or**
 - c) the shape of the parcel of property is exceptional.

OR

- d) the parcel of property has exceptional topographic conditions; **or**
 - e) the parcel of property has other exceptional or extraordinary conditions.
2. Strict application of the zoning ordinance would result in:
 - a. peculiar and exceptional practicable difficulties to the owner; OR
 - b. exceptional and undue hardships on the owner of such property.

Handwritten notes:
IS but less than other
BC less than other
hardship or other hardship

3. Such relief may be granted without:
 - a. substantial detriment to the public good; AND
 - b. without substantially impairing the intent and purpose of the ordinance.
4. No variance shall be authorized unless the Board finds:
 - a. strict application of the zoning ordinance would produce undue hardship;
 - b. such hardship is not shared generally by other properties in the same zoning district and the same vicinity;
 - c. authorization of such variance will not be a substantial detriment to adjacent property and the character of the district will not be changed by granting the variance;
 - d. granting the variance is based upon reason of demonstrable and exceptional hardship as distinguished from variation for purposes of convenience, profit, or caprice.
5. No variance shall be authorized if request is:
 - a. of a general and recurring nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the zoning regulations.

Please provide documentation of the above, such as maps, photographs, or other evidence to substantiate your application.

THE BOARD MUST FIND THAT ALL OF THE ABOVE REQUIREMENTS ARE MET BY THE APPLICANT BY A CONCURRING VOTE OF FOUR MEMBERS OF THE BOARD.

9. Draw the general area of your property and structure (existing and proposed) and adjacent properties and structures. (Not to scale).

N
W E
S

Please look
to Doc 1.

APPLICANT DECLARATIONS

1. The following special conditions or circumstances exist on the land which pose an undue hardship on the applicant: (Describe conditions and circumstances.)

Our current sign is partially blocked by Runza. With the lot to the North being sold to Arby's, our current sign will be ~~totally~~ completely unseen from the Highway.

2. Please state the minimum variance necessary to permit the proposed construction

3. Without the granting of this variance the applicant would suffer a hardship not suffered by other properties located in the same zoning district and same vicinity.

Yes No

4. The granting of the variance will not adversely affect the rights of the adjacent property owners or residents nor will it confer upon the applicant any special privilege denied by the Zoning Ordinance. Yes No

(Attach approval certifications from adjacent property owners.)

5. The variance will not adversely affect the public health, safety, morals, order, convenience or welfare. Yes No

ADJACENT PROPERTY OWNER CERTIFICATION

I, Walter Catlett, own the property adjacent to that for which this variance is requested. I hereby certify that I do not have any objection to or reservations about the granting of the variance requested.

SIGNED: Walter J Catlett

ADDRESS: 802 N Hwy 83
McCook, NE 69001

ADJACENT PROPERTY OWNER CERTIFICATION

I, Walter Catlett, own the property adjacent to that for which this variance is requested. I hereby certify that I do not have any objection to or reservations about the granting of the variance requested.

SIGNED: [Signature]

ADDRESS: 4602 N. Hwy 83
McCook 69001

ADJACENT PROPERTY OWNER CERTIFICATION

I, _____, own the property adjacent to that for which this variance is requested. I hereby certify that I do not have any objection to or reservations about the granting of the variance requested.

SIGNED: _____

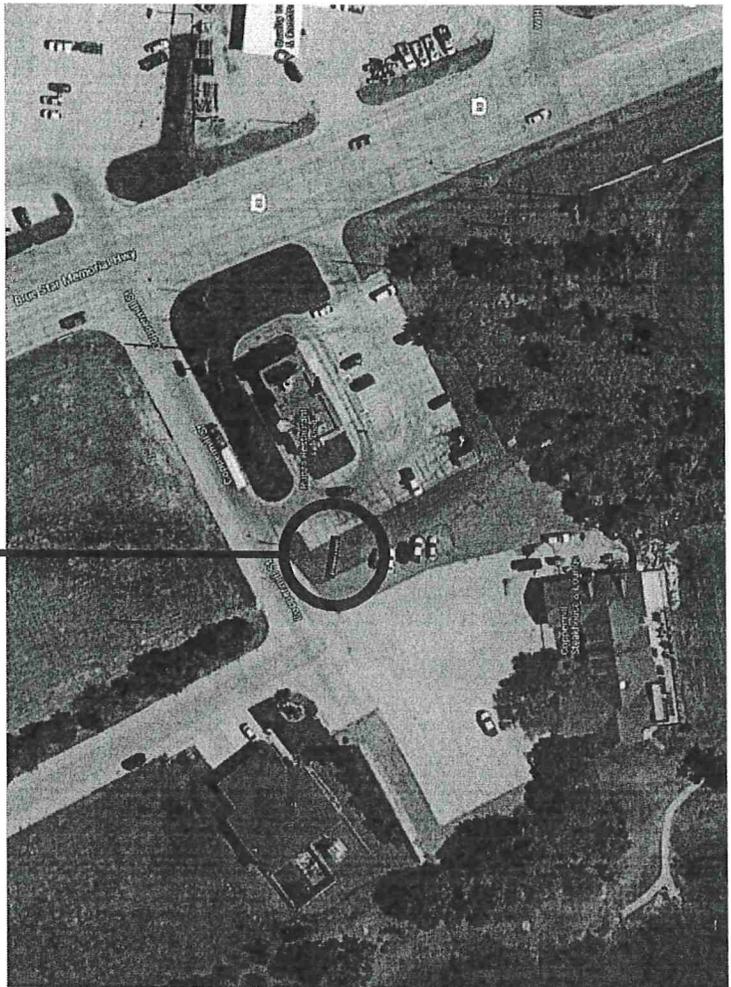
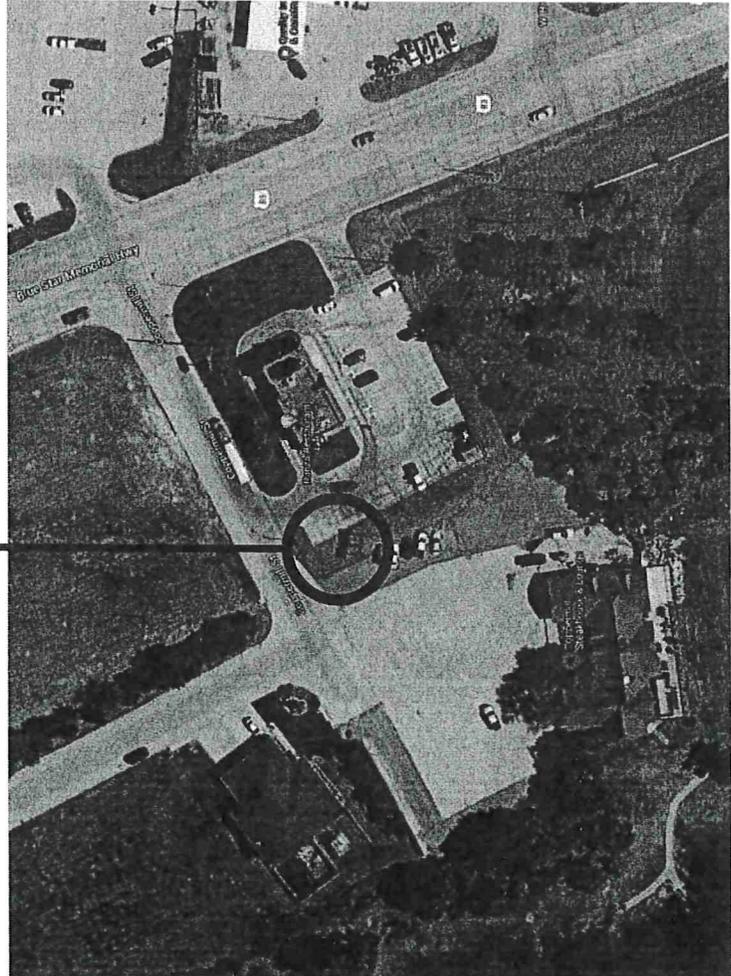
ADDRESS: _____

Doc 1



EXISTING SIGN DISPLAY

NEW PROPOSED SIGN DISPLAY



363 N Elm Street
Grand Island, NE 68801

800.339.4779
tricitysign.com

© 2017 TRI-CITY SIGN COMPANY

CONTRACTS, SPECIFICATIONS, PERMITS, AND CHANGES BEING MADE. THIS DRAWING IS THE PROPERTY OF TRI-CITY SIGN COMPANY AND SHOULD BE KEPT UNREPRODUCED, COPIED OR DISTRIBUTED IN WHOLE OR IN PART WITHOUT OBTAINING WRITTEN CONSENT FROM TRI-CITY SIGN COMPANY.

SALESPERSON: Perry Strombeck
DRAWN BY: Sean Cornett
DRAWING #: Cover / Aerial View
Approved By:



202 North Hwy U.S. 83
McCook, NE 69001

Date: 13 Sep 2023
Revised:

This sign is intended to be installed in accordance with the requirements of NE 686 for other applicable local codes. This includes proper siting and lighting as shown.

UL LISTED

NOTICE:
ALL GRAPHIC REPRODUCTIONS ARE SUBJECT TO APPROVAL BY AUTHORIZED CLIENT AND MUST BE MADE PRIOR TO ANY FABRICATION OF PRODUCT. TRI-CITY SIGN COMPANY HOLDS ALL AGREEMENTS FINAL AND TO CLIENT APPROVAL.

Signed: _____ Date: _____
Sales Rep. _____

**FINDINGS AND DETERMINATIONS OF
MCCOOK BOARD OF ZONING ADJUSTMENT**

DATE: _____

SIGNED: _____
Chairman

VARIANCE CRITERIA

JUSTIFIES VARIANCE

	<u>YES</u>	<u>NO</u>
1. Referring to the specific parcel of property,		
a) the parcel of property is exceptionally narrow;	_____	_____
b) the parcel of property is exceptionally shallow; or	_____	_____
c) the shape of the parcel of property is exceptional.	_____	_____
OR		
d) the parcel of property has exceptional topographic conditions; or	_____	_____
3) the parcel of property has other exceptional or extraordinary conditions.	_____	_____
2. Strict application of the zoning ordinance would result in:		
a) peculiar and exceptional practicable difficulties to the owner; OR	_____	_____
b) exceptional and undue hardships on the owner of such property.	_____	_____
3. Such relief may be granted without:		
a) substantial detriment to the public good; AND	_____	_____
b) without substantially impairing the intent and purpose of the ordinance.	_____	_____
4. No variance shall be authorized unless the Board finds:		
a) The strict application of the provisions of the Zoning Ordinance would produce an undue hardship on the applicant.	_____	_____

- b) Such hardship is not generally shared by other properties in the same zoning district and in the same vicinity. _____
 - c) The granting of such variance will not be of substantial detriment to adjacent property and the character of the district will not be changed. _____
 - d) The variance request is based upon reasons of demonstrable and exceptional hardship as distinguished from convenience, profit or caprice. _____
5. The variance requested is not so general or of re-occurring nature that it might more reasonably be addressed through a change in the Zoning Regulations. _____
6. The applicant has filed a proper and complete application. _____
7. Application for a variance submitted must demonstrate the following:
- A. Special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not found in the same zoning district and which were not created by an action of the property owner or the applicant; _____
 - B. The reduction of the minimum requirements of this Ordinance which would be necessary to permit the proposed use or construction; _____
 - C. The literal interpretation of the provision of this Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this Ordinance; _____
 - D. The granting of the variance will not adversely affect the rights of adjacent property owners or residents nor will it confer upon the applicant any special privilege denied by this Ordinance to other land or structures in the same district; _____
 - E. The variance will not adversely affect the public health, safety, morals, order, convenience or welfare; _____
 - F. The variance requested is the minimum variance that will make possible the reasonable use of the land or structure; _____
 - G. Granting the variance requested will not be opposed to the general spirit and intent of this Ordinance. _____
8. The notice of meeting appeared in the paper and applicants and other parties of interest have been sent written notice of the meeting at which a hearing on the variance request is being considered. _____

9. The variance requested does not allow a use not permissible under the Zoning Ordinance in the district in which it is presently located.

BOARD OF ZONING ADJUSTMENT DECISION

The McCook Board of Zoning Adjustment hereby determines that the variance should _____ be granted, _____ not be granted, _____ be granted with conditions. Conditions, modifications or safeguards prescribed as a part of the variance approval are as follows: _____

Variance criteria not met are as follows: _____

Dated this _____ day of, _____, 20 _____.

ARTICLE 25

BOARD OF ZONING ADJUSTMENT

Article 25 - Board of Zoning Adjustment

Section 2501. Creation, Members, Meetings, Rules.¹ There is hereby established a Board of Zoning Adjustment. The word BOARD, when used in this Zoning Ordinance, shall be construed to mean the Board of Zoning Adjustment. The Board of Zoning Adjustment is appointed by the City Council and shall consist of five (5) regular members, plus one (1) additional member designated as an alternate who shall attend and serve only when one of the regular members is unable to attend for any reason.

One (1) member only of the City Board of Zoning Adjustment shall be appointed by the City Council from membership of the Planning Commission and the loss of membership on the Planning Commission by such member shall also result in the immediate loss of membership on the Board of Zoning Adjustment and the appointment of another Planning Commissioner to the Board of Zoning Adjustment. One (1) member of the board of adjustment shall reside outside of the corporate boundaries of the City but within its extraterritorial zoning jurisdiction.

The members appointed shall serve for terms of three (3) years and be removable for cause by the City Council upon written charges and after public hearing. Vacancies shall be filled by appointment for the unexpired term.

The Board of Zoning Adjustment shall annually in October elect one of its members as Chairperson, another as Vice-Chairperson, who shall act as Chairperson in the Chairperson's absence, and appoint a Secretary, who may be an officer or an employee of the City. Each shall serve until his or her successor has been selected. The presence of four (4) members of the Board shall be necessary to constitute a quorum.

All meetings of the Board shall be open to the public. Meetings of the Board shall be held at the call of the Chairperson and at such other times as the Board may determine. The Board shall keep minutes of its proceedings, showing the vote of each member upon each question, if absent or failing to vote, indicating the fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the Board and shall be a public record. The Board shall adopt from time to time any rules and regulations as it may deem necessary, to carry the appropriate provisions of this Zoning Ordinance into effect and all of its resolutions and order shall be in accordance therewith.

Section 2502. Appeals to Board, Record of Appeal, Hearing and Stays. Appeals to the Board of Zoning Adjustment may be taken by any person aggrieved or by any officer, department, board or bureau of the City affected by any decision of the administrative officer. Such appeal shall be taken within a reasonable time, as provided by the rules of the Board, by filing with the officer from whom the appeal is taken and with the Board of Zoning Adjustment a notice of appeal specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the Board all the papers constituting the record upon which the action appealed from was taken.

An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the Board of Zoning Adjustment after the notice of appeal shall have been filed with him that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board of Zoning Adjustment or by a court of record on application of notice to the officer from whom the appeal is taken and on due cause shown.

¹Revised September 18, 2017 - Ordinance No. 2017-2951

The Board of Zoning Adjustment shall fix a reasonable time for the hearing of the appeal, give public notice thereof, as well as due notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing, any party may appear in person or by agent or by attorney.

Section 2503. Powers and Jurisdiction Relating to Administrative Review. The Board of Zoning Adjustment shall have the power to hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official or agency based on or made in the enforcement of any zoning regulation or any regulation relating to the location or soundness of structures or to interpret any map, except that the authority to hear and decide appeals shall not apply to decisions made under Article 24 of this Ordinance.

Section 2504. Powers and Jurisdiction Relating to Variances. The Board of Zoning Adjustment shall have the power, where by reason of exceptional narrowness, shallowness or shape of a specific piece of property at the time of the enactment of this Ordinance, or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of such piece of property, the strict application of any regulation under this Ordinance would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardships upon the owner of such property, to authorize upon an appeal relating to the property, a variance from such strict application so as to relieve such difficulties or hardship, if such relief may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of this Ordinance.

1. No such variance shall be authorized by the Board unless it finds that the strict application of the Ordinance would product undue hardship; such hardship is not shared generally by other properties in the same zoning district and the same vicinity; the authorization of such variance will not be of substantial detriment to adjacent property and the character of the district will not be changed by the granting of the variance; and the granting of such variance is based upon reasons of demonstrable and exceptional hardship as distinguished from variations for purposes of convenience, profit or caprice;
2. No variance shall be authorized unless the Board finds that the condition or situation of the property concerned or the intended use of the property is not of so general or recurring nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to this Ordinance.
3. A variance from the terms of this Ordinance shall not be granted by the Board of Zoning Adjustment unless and until a written application for a variance is submitted demonstrating the following:
 - A. Special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not found in the same zoning district and which were not created by an action of the property owner or the applicant;
 - B. The reduction of the minimum requirements of this Ordinance which would be necessary to permit the proposed use or construction;
 - C. The literal interpretation of the provision of this Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this Ordinance;
 - D. The granting of the variance will not adversely affect the rights of adjacent property owners or residents nor will it confer upon the applicant any special privilege denied by this Ordinance to other land or structures in the same district;
 - E. The variance will not adversely affect the public health, safety, morals, order, convenience or welfare;

- F. The variance requested is the minimum variance that will make possible the reasonable use of the land or structure;
 - G. Granting the variance requested will not be opposed to the general spirit and intent of this Ordinance.
4. No non-conforming use of neighboring lands, structures or buildings in the same district, and no permitted structures or buildings in other districts shall be considered grounds for the issuance of variance;
 5. Notice of public hearing shall be given as in Section 2502 above; the public hearing shall be held; any party may appear in person, or by agent or by attorney; the Board of Zoning Adjustment shall make findings that the requirements of this section have been met by the applicant for a variance; the Board shall further make a finding that the reasons set forth in the application justify the granting of the variance; the Board shall further make a finding that the reasons set forth in the application justify the granting of the variance; and that the variance is the minimum variance that will make possible the reasonable use of the land, building or structure; the Board shall further make a finding that the granting of the variance will be in harmony with the general purpose and intent of this Ordinance, and will not be injurious to the neighborhood, or otherwise detrimental to the public welfare;
 6. In granting any variance, the Board of Zoning Adjustment may prescribe appropriate conditions and safeguards in conformity with this Ordinance. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this Ordinance and punishable under Section 2702 of this Ordinance;
 7. Under no circumstance shall the Board of Zoning Adjustment grant a variance to allow a use not permissible under the terms of this Ordinance in the district involved, or any use expressly or by implication prohibited by the terms of this Ordinance in said district.

Section 2505. Board has Powers of Administrative Officer on Appeals; Reversing Decision of Administrative Officer. In exercising the above-mentioned powers, the Board of Zoning Adjustment may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from, and may make such order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken.

The concurring vote of four (4) members of the Board shall be necessary to reverse any order, requirement, decision or determination of any such officer, or to decide in favor of the applicant on any matter upon which it is required to pass under this Ordinance or to affect any variation in this Ordinance.

Section 2506. Appeals to District Court. Any person or person, jointly or severally, aggrieved by any decision of the Board of Zoning Adjustment, may appeal as provided by Section 19-912 Neb. Rev. Stat., 1943.