

MCCOOK CITY COUNCIL

REGULAR MEETING

**Monday, June 28, 2021
5:30 PM - City Council Chambers**

Call to Order and Roll Call.

Open Meetings Act Announcement.

Items

1. Approve the minutes of the March 22, 2021, regular Board of Zoning Adjustment meeting.
2. Public Hearings and Regular Agenda.
 - A. Public Hearing - request for a variance of the off-street parking requirements for the property located at 109 East C Street, allowing for off-street parking on a space that lies within 400 feet of the entrance of the principal structure.
 1. Close Public Hearing.
 - B. Consider request for a variance of the off-street parking requirements in the Central Business District for the property located at 109 East C Street, allowing for off-street parking on a space that lies within 400 feet of the entrance of the principal structure; applicants: Tri-Star Investments and Kris Flammang.

Adjournment.

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

ITEM: **1**

Approve the minutes of the March 22, 2021 Board of Zoning Adjustment meeting.

BACKGROUND:

Receive and approve the minutes.

**FISCAL
IMPACT:** None.

APPROVALS:



Lea Ann Doak, City Clerk

June 23, 2021

Board of Zoning Adjustment
March 22, 2021
5:30 PM Central

A MEETING OF THE BOARD OF ZONING ADJUSTMENT OF THE CITY OF MCCOOK, NEBRASKA convened in open, regular, and public session at 5:30 o'clock P.M. in the City Council Chambers.

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

Absent: Board member Chipman.

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 March 18, 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.

Chair Reitz 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 January 7, 2021 special Board of Zoning Adjustment meeting.

Motion to approve the minutes of the January 7, 2021 special Board of Zoning Adjustment meeting.

This motion, made by Larson and seconded by Haney, passed.

Reitz: YEA, Hilker: YEA, Haney: YEA, Larson: YEA, Moore: YEA, Chipman: ABSENT
YEA: 5, NAY: 0, ABSENT: 1

2. Public Hearings and Regular Agenda.

- 2.A. Public Hearing - request for a variance of the side yard setback requirement for a corner lot from 10'0" to 3'8" in a Residential Medium Density (RM) District, property located at 612 West 2nd Street, McCook, NE; applicant: Shane and Tracy Burkey.

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 side yard setback requirement for a corner lot from 10'0" to 3'8" in a Residential Medium Density (RM) District, property located at 612 West 2nd Street, McCook, NE; applicants: Shane and Tracy Burkey, with the City Attorney to act as hearing officer. This motion, made by Reitz and seconded by Hilker, passed.

Reitz: YEA, Hilker: YEA, Haney: YEA, Larson: YEA, Moore: YEA, Chipman: ABSENT
YEA: 5, NAY: 0, ABSENT: 1

The City Attorney offered and received into evidence Exhibit #1 - City Manager's Report prepared for the March 22, 2021 Board of Zoning Adjustment meeting (1 page); Exhibit #2 - Notice of Public Hearing (1 page); Exhibit #3 - Variance Application and attachments (6 pages); Exhibit #4 - Findings and Determinations of the Board of Zoning Adjustment (4 pages); and Exhibit #5 - copy of Article 25 - Board of Zoning Adjustment of the McCook Zoning Ordinance (3 pages).

City Manager Schneider reviewed the following information presented in Exhibit #1: "Shane and Tracy Burkey have submitted a variance application for their residential property located at 612 West 2nd Street. The Burkey's have requested the grant of a side yard variance for an attached garage. Section 906 of the McCook Zoning Ordinance states that side yards for corner lots facing the street shall be one-half of the front yard setback minimum requirements (ie. 20 feet), or 10 feet. The applicants have requested a variance of the side yard setback requirement from 10'0" to 3'8"."

"The property at issue currently has an accessory building that sits in the rear yard. The accessory building is non-conforming and sits inside of the 10'0" side yard setback (approximately 4'0" from the property line located to the north). Additionally, the house is non-conforming as it sits 7'5" from the property line. The applicants are proposing to remove the existing accessory building to construct the proposed garage. For reference, the existing accessory structure sits approximately 3 feet off of the alleyway. The proposed garage would sit 10'0" feet off of the alleyway. The proposed garage's entrance would come off of West "G" Street as opposed to the alley. The attached garage would be 40'0" by 50'0" in area. The proposed garage would be located 7'0" from the south property line, which conforms to the City of McCook's zoning code."

"City staff has had an opportunity to review the property. City staff noted that there is a grade variation with the property sloping north to south. The applicants have explained to staff that the sloped grade is a significant reason for the variance request. Additionally, staff has noted that the proposed project would actually improve visibility around the alley due to the fact that the accessory building that currently sits in the rear yard of the property will be removed, with the proposed building situated 7'0" further to the east of the alley."

"The applicants have indicated that the property owner to the south of their lot is comfortable with the request. Documentation of the neighbor's consent will be provided."

Discussion was held by the board.

Motion to adjourn the public hearing and to reconvene as the Board of Zoning Adjustment. This motion, made by Reitz and seconded by Hilker, passed.

Reitz: YEA, Hilker: YEA, Haney: YEA, Larson: YEA, Moore: YEA, Chipman: ABSENT
YEA: 5, NAY: 0, ABSENT: 1

2.B. Consider request for a variance of the side yard setback requirement for a corner lot from 10'0" to 3'8" in a Residential Medium Density (RM) District, property located at 612 West 2nd Street, McCook, NE; applicants: Shane and Tracy Burkey; and that the applicants have satisfactorily demonstrated that the variance criteria have been met.

Motion to approve the request for a variance of the side yard setback requirement for a corner lot from 10'0" to 3'8" in a Residential Medium Density (RM) District, property located at 612 West 2nd Street, McCook, NE; applicants: Shane and Tracy Burkey; and that the applicants have satisfactorily demonstrated that the variance criteria have been met. This motion, made by Jerry Reitz and seconded by Rick Haney, passed.

Reitz: YEA, Hilker: YEA, Haney: YEA, Larson: YEA, Moore: YEA, Chipman: ABSENT
YEA: 5, NAY: 0, ABSENT: 1

Chair Reitz informed the applicants 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, Chair Reitz declared the meeting adjourned at 5:46 P.M.

Lea Ann Doak, City Clerk-Treasurer
Recording Secretary

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

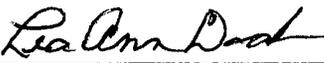
- 2** Item A Consider a request for a variance of the off-street parking requirements for the property located at 109 ~~West~~^{East} C Street, allowing for off-street parking on a space that lies within 400 feet of the entrance of the principal structure.

BACKGROUND:

Tri-Star Investment owns property located at 109 West C Street. Tri-Star has entered into an agreement with Kris Flammang for the purchase of the property. The property is currently home to a multi-use building: the first floor is commercial space while the second floor is residential space. Mr. Flammang would like to convert the entire building into a residential structure. The building is located downtown, within the Central Business (CB) District. There are no off-street parking stalls located on the property.

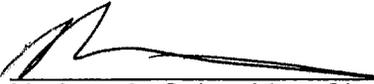
Per Article 21, Section 2111 of the City of McCook's Zoning Ordinance, "if minimum off-street parking and loading space cannot be reasonably provided on the same lot on which the principal structure or use is conducted in the opinion of the Board of Zoning Adjustment, the Board may permit such space to be provided on other off-street property, provided, that such space lies within four hundred (400) feet of the entrance to each principal structure or use." Staff identified the parking lot located on the southwest side of the intersection of East 1st and East D as a parking space that would suit the needs associated with residential parking at 109 East C. There are more than enough spaces available to accommodate the proposed use. Section 2111 also makes it clear that minimum off-street parking requirements do not apply to the Central Business District, meaning that McCook's minimum off-street parking and loading requirements are not material to this request.

APPROVALS:



Lea Ann Doak, City Clerk

June 23, 2021



Nathan A. Schneider, City Manager

June 23, 2021

EXHIBIT #1

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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 minimum off-street parking requirements in the Central Business (CB) District; the Board may permit such space to be provided on other off-street parking property, provided, that such space lies within four hundred (400) feet of the entrance to each principal structure.

LEGAL: The East Forty Feet (E 40') of Lots Seven (7) and Eight (8), Block Fifteen (15), Original Town of the City of McCook, Red Willow County, Nebraska.

APPLICANT: Tri-Star Investments and Kris Flammang

ADDRESS: 109 East "C" Street, McCook

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

June 28, 2021 - 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: June 25, 2021.

EXHIBIT #2

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VARIANCE APPLICATION

APPLICATION NO. _____ DATE: _____

FEE ATTACHED: _____

APPLICATION COMPLETE: _____

SIGNED: [Signature]
Applicant MARK WACKER

1. Applicant's Name: Tristar Investments of Mark Wacker & Kris Jammang

2. Applicant's Address: MARK: #16 Wedgewood Drive McCook
KRIS: 1454 17th Ave E Bradenton FL Phone: 941 266-1842

Email Address: MARK: mwacker@gwmccook.com
KRIS: kjammangje@gmail.com

3. Address of Property Affected: 109 East C McCook

4. Legal Description of Property: East 40' of lot 7 & 8, block 15, original McCook

5. Zoning Central business Corner Lot? Yes No _____

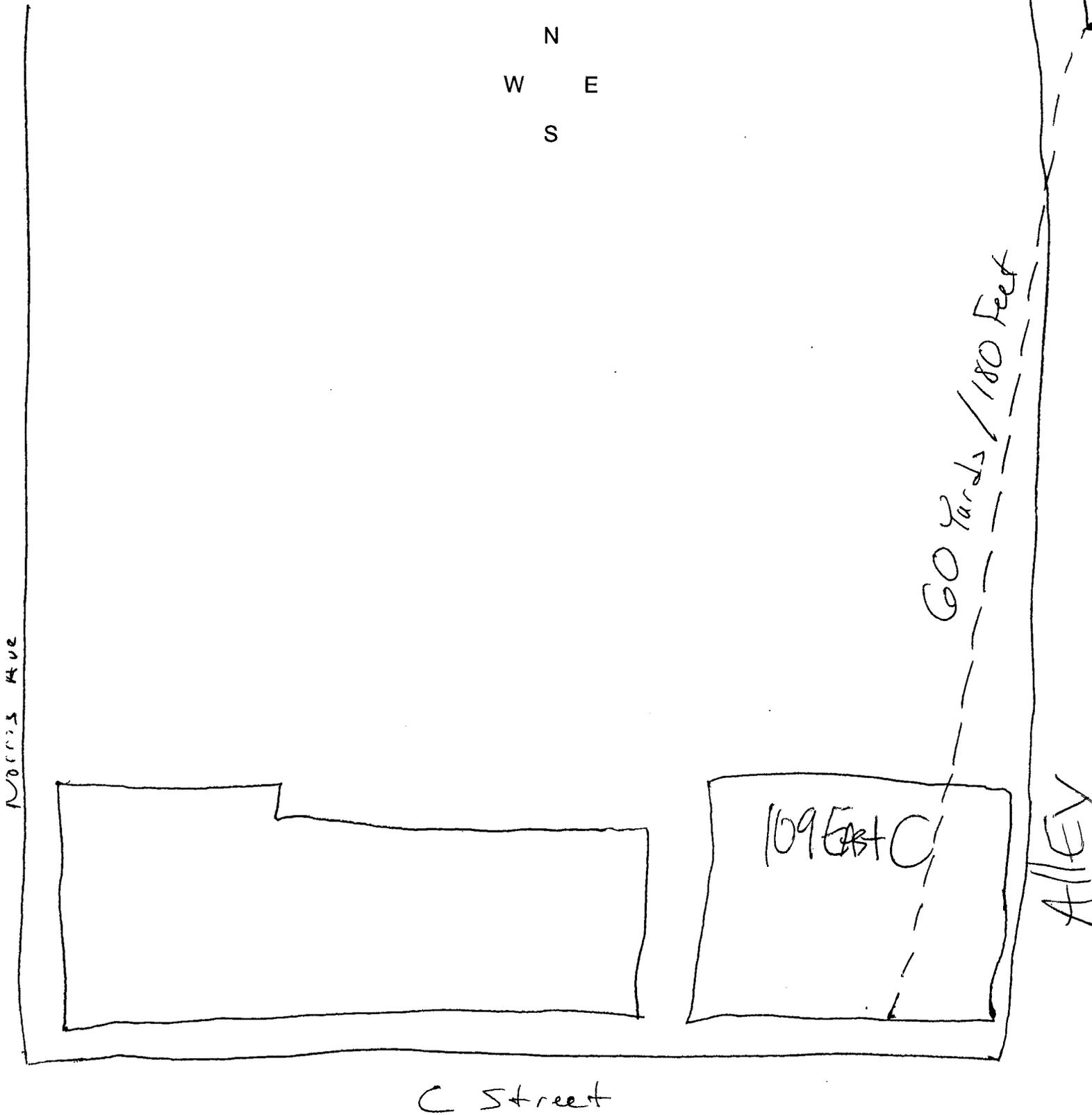
6. Applicant's interest in the Property (i.e. owner, tenant), attached proof of ownership: purchase agreement
developer/owner

7. Description of variance requested: (Example: Variance of side lot set back requirement from 5 feet to 3 feet). section 2011 - off street parking VARIANCE

8. Sections of Zoning Ordinance No. 2016-2929 which are affected (to be completed by staff)
ARTICLE: 21
SECTION: 2111

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



*This request is an A-typical variance request. The variance is specifically allowed in Article 21-section 2111 of McCook ordinances 2016-2929.
RES PARKING*

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.
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.

APPLICANT DECLARATIONS

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

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

*N/A.
central business district*

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: _____

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: _____

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: _____
