



**CITY OF DERBY
MEETING OF THE BOARD OF ZONING APPEALS
SPECIAL MEETING
September 15, 2016
6:30 PM**

MEETING MINUTES

**NOTE: The below meeting was scheduled to be heard on September 8, 2016. Due to lack of a quorum, the meeting was adjourned to September 15, 2016 at 7:00 pm. The meeting was held in the Council Room at Derby City Hall, 611 N. Mulberry Rd., Derby, Kansas.*

1. MEETING CALLED TO ORDER AT 7:00 P.M.

2. ROLL CALL

Pat Baer (Chairperson)	Present
Jessica Rhein	Present
Justin Smith	Present
Joe Waugh	Present
Van Willis (Vice Chairperson)	Present

3. CONSIDERATION OF MINUTES:

3. A. Minutes of the July 28, 2016 meeting.

MOVED by Van Willis to approve the minutes of July 28, 2016 as presented, Seconded by Joe Waugh.

VOTE: 5-0

4. NEW BUSINESS

4.A. DESCRIPTION: Exception to allow Automobile Sales and Service Business with ancillary Car Wash within B-3 "General Business District"

GENERAL LOCATION: East of Rock Rd. near the intersection of Cambridge St.

APPLICANT: Applicant: ACCN Enterprises, LLC – Craig Nelson
Agent: Baughman Company, P.A. – Phil Meyer

REASON FOR REQUEST: Allow construction and operation of an automobile sales and service business with ancillary car wash located within B-3 "General Business District"

BACKGROUND:

- The owner of property on Rock Rd. at the intersection of Cambridge St. has requested an exception for the purpose of allowing construction and operation of an automobile sales and service business with ancillary car washing/detailing services.
- The application area is legally described as All of Lot 1, Block B, El Paso Crossing Addition, Derby, Sedgwick County, Kansas, TOGETHER with the west 269.92 feet of Lot 2 in said Block B.
- The property was annexed into the city in July 2015, and was concurrently rezoned to B-3 “General Business District.”
 - The B-3 zoning district is intended for more intensive retail and merchandising activities. Permitted uses are intended to accommodate the retail shopping needs and activities of the City and the City’s retail trade area.
 - Within the B-3 zoning district, automobile, truck, boat, trailer and recreational vehicle sales may be allowed if approved as an exception.
- The property was platted in January 2016. Lots, blocks and streets were platted to accommodate commercial uses, all in accordance with the city’s subdivision regulations.
- Surrounding properties are also zoned B-3 “General Business District” and are platted for commercial uses.
 - One adjacent parcel to the south is currently within unincorporated Sedgwick County and is zoned RR “Rural Residential.” It is anticipated that this property will ultimately be annexed, rezoned and platted consistent with adjacent uses.
- The property and the majority of the land surrounding it are currently undeveloped. The land was formerly used for single-family residential purposes, but the homes and accessory structures have since been removed.
- Existing nearby uses west of Rock Rd. have been developed for a hotel and retail, restaurant and office uses. All existing businesses are permitted within the B-3 zoning district.

STAFF COMMENTS:

- The Board is authorized by Section 1004 of the zoning regulations to grant an exception allowing the use of property as authorized in the requested property’s zoning district.
 - The application area is located within the B-3 “General Business District.”
 - Within the B-3 zoning district, automobile sales and service is allowed if first approved as an exception.
- When considering exceptions, the Board reviews the proposed use in accordance with procedures established by state law and standards described in Section 1004.E of the zoning regulations.
- The request for an exception requires a public hearing:
 - The notice of public hearing was published in the *Derby Informer* on August 17, 2016.
 - Notices were mailed to neighboring property owners as prescribed by state law. The certified ownership list is on file at City Hall.
 - A sign advertising the public hearing was placed on the property 20 days in advance of the hearing.

- At the time of this writing, city staff has not received any communications regarding the exception request.
- In granting an exception, the Board may attach conditions as may be necessary to comply with the standards of 1004.E, to address issues raised during the application and hearing process, or to carry out the general purpose and intent of the zoning regulations.
- An exception, if granted, with or without conditions attached, would allow the applicant to proceed with construction and operation of the proposed automobile sales and service business. Ancillary features such as the proposed car wash may also be permitted under the same exception.
- The decision of the BZA is final and does not require any further action.

FINDINGS OF FACT

Section 1004.E of the zoning regulation provides the standards for the development of findings of fact which act to support the Board of Zoning Appeals' actions. The Board may grant an exception when it makes specific written findings of fact based upon the particular evidence presented to it at the hearing which support the standards.

The standards which must be considered are listed below with staff's considerations included in *italics*:

Finding No. 1)

The proposed exception complies with all applicable regulations, including lot size requirements, bulk regulations, use limitations and performance standards, unless a concurrent application is in process for a variance.

Staff Considerations:

- The property on which the exception is sought is sufficient size to comply with the applicable lot size requirements of the B-3 zoning district.
- The applicant has provided a concept site plan illustrating the proposed building location as well as the proposed arrangement for vehicle parking spaces and display.
- The building and parking spaces shown on the concept layout comply with all applicable bulk regulations of the B-3 zoning district.
- All new developments are required to be reviewed and approved by the Planning Commission. The Planning Commission's review of the site plans will include review to ensure compliance with all applicable zoning regulations, including review of a detailed landscaping plan.
- The applicant is not seeking any variance from the zoning regulations.

Finding No. 2)

The proposed exception will not cause substantial injury to the value of other property in the neighborhood.

Staff Considerations:

- The proposed exception is not generally injurious to surrounding property values.
 - Surrounding properties are also zoned B-3, which permits commercial and retail uses that are compatible with the proposed automobile sales and service.

- The concept site plan prepared by the applicant is compliant with all required bulk regulations of the zoning district.
- The building is proposed to be constructed of materials that are consistent with the city's design criteria for commercial structures, and is generally compatible with nearby commercial development.
- The concept landscape plan prepared by the applicant generally meets minimum requirements for landscaping, screening and buffering required within the district.
- The applicant's written statement also identifies that the building has been designed and situated on the lot in a manner that is consistent with other commercial development in the corridor, and limits exposure to Rock Rd.
- The applicant has worked with city staff to identify recommendations of the Comprehensive Plan applicable to the proposed use. The concept site plans incorporate design features to address the Comprehensive Plan recommendations in an effort to offset any potentially injurious effects created by the proposed use.

Finding No. 3)

The location and size of the exception, the nature and intensity of the operation involved in or conducted in connection with it, and the location of the site with respect to streets giving access to it are such that the exception will not dominate the immediate neighborhood so as to prevent development and use of neighboring property in accordance with the applicable zoning district regulations. In determining whether the exception will so dominate the immediate neighborhood, consideration shall be given to: a) The location, nature and height of buildings, structures, walls and fences on the site; the hours of operation; and b) The nature and extent of landscaping and screening on the site.

Staff Considerations:

- The nature and intensity of the proposed use is not anticipated to have detrimental impacts to surrounding properties. Automobile sales and service businesses are commonly located along arterial streets and are frequently adjacent to a mix of other commercial uses.
- The requested exception is proposed to be located well back from the property lines, and provides adequate separation from public streets.
- The size and orientation of the proposed building will not dominate the site or the surrounding area. The structure is proposed to be compliant with all applicable bulk regulations for the district, and will thus be compatible with other future development along the corridor.
- Hours of operation for automobile sales and service businesses are generally not significantly different than other uses allowed within the B-3 zoning district. In fact, many other uses permitted within the B-3 district have operating hours much longer than would be expected of an automobile sales/service business.
- As is discussed in other sections, landscaping proposed for the site meets or exceeds the minimum landscaping, screening and buffering requirements typical of the B-3 zoning district. A detailed landscape plan will also be reviewed by the Planning Commission at site plan review.

Finding No. 4)

Off-street parking and loading areas will be provided in accordance with the standards set forth in Article 5 of the zoning regulations. Such areas may be screened from adjoining residential uses and located so as to protect such residential uses from injurious effects.

Staff Considerations:

- The concept site plan demonstrates that a sufficient number of parking spaces will be provided to meet the requirements of Article 5 of the zoning regulations.
 - Automobile sales lots are required to provide a minimum number of parking spaces complying with the following:
 - 1 space per 500 sq. ft of building floor area, plus
 - 2 spaces for the first 10,000 sq. ft. of sales and display area, plus
 - 1 space for each additional 10,000 sq. ft. of sales and display area.
 - 35 customer and employee parking spaces are proposed, as well as 69 service/prep stalls, exceeding the minimum requirement.
- Parking calculations included on the concept site plan sheet also demonstrate that the number of vehicle display parking spaces is in compliance with the supplemental regulations specified in 1004.C.3.
 - Based on the proposed building size, number of employee parking spaces, and proposed perimeter landscaping, the lot would be allowed up to a maximum of 414 display spaces – 123 display spaces are proposed.
- Landscaping is proposed along the south property line, which is the only side abutting a residential zoned property. The trees identified on the concept landscape plan will provide a buffer between the proposed exception and adjacent property.
 - It is also anticipated that the adjacent property currently zoned RR “Rural Residential” will be annexed into the city and rezoned at some point in the future. If the property is rezoned to commercial, the screening would no longer be required.

Finding No. 5)

Adequate utility, drainage, sidewalks and other such necessary facilities have been installed or will be provided by platting, dedications and/or guarantees.

Staff Considerations:

- Public streets, sidewalks, waterlines, sanitary sewer and stormwater detention necessary to serve the site were contemplated during the platting process.
 - The owner submitted petitions at the time of platting, and the City Council adopted resolutions for public improvements to be built and the cost assessed to the benefitting properties. The petitions and corresponding resolutions are sufficient to satisfy the requirement for guaranteeing installation of the required improvements.
- All necessary utilities shall be installed and accepted by the city prior to issuance of a certificate of occupancy.

Finding No. 6)

Adequate access roads, entrance and exit drives and/or access control is available or will be provided by platting, dedications and/or guarantees and shall be so designed to prevent traffic hazards and to minimize traffic congestion in public streets and alleys.

Staff Considerations:

- The property is located at the intersection of Rock Rd. and Cambridge St. (not yet constructed). Once Cambridge St. is constructed, the site will have adequate and appropriate access to public streets.
- Complete access control is platted along Rock Rd., as well as the first 100 feet of Cambridge St. The complete access controls were dedicated at the time of platting to minimize turning movements on Rock Rd. and near intersections.
- Entrance drives to the proposed development are consistent with platted access controls, and are appropriate to serve the site.
 - Access control along Cambridge St. limits Lot 1, Block B, El Paso Crossing Addition to one opening. A portion of Lot 2, Block B is also proposed to be used as part of this development.
 - Lot 2, Block B is permitted to have three openings, two of which are proposed to be used for the requested exception.
 - Only one opening is left for the remainder of Lot 2, Block B, and is noted on the site plan.
 - The middle opening leading to the service bay is appropriately aligned with the opening on the opposite side of Cambridge St., as required by the subdivision regulations.
- No additional dedications or guarantees for roads or access control are necessary as a result of this exception request.

Finding No. 7)

Adequate fire and police protection will be provided which promotes the safety of individuals and property.

Staff Considerations:

- The proposed site is already within the area served by City police and fire protection services. Business uses consistent with B-3 zoning were already anticipated to be located on this property, and will not increase the demand for police and fire protection beyond what can be accommodated with existing resources. Waterlines needed to provide fire protection will be required as part of the site development procedures. There is adequate police protection at this location to promote the safety of individuals and property.

Finding No. 8)

Orderly land use planning will be achieved in keeping with the goals and proposals of the Comprehensive Plan.

Staff Considerations:

- The property was zoned and platted in accordance with the goals and policies of the Comprehensive Plan and applicable subdivision and zoning regulations of the City.

- The Comprehensive Plan also includes recommended design guidelines for the Rock Rd. corridor due to its prominence and importance within the city.
 - Automotive repair businesses and outdoor display of automobiles for sale or lease (among other uses) are only recommended when significant design features are used to minimize the visual impact of such uses.
- The applicant is proposing design features to address the following recommendations of the Rock Rd. corridor design guidelines:
 - The concept site plan shows that the building is oriented to Cambridge St. in order to minimize exposure along Rock Rd.
 - The proposed carwash is located at the rear of the building, and set back from Rock Rd. to minimize the visual impact of the use.
 - The concept site plan illustrates that minimum requirements for landscaping, screening and buffering will be met. The applicant is also proposing to provide additional landscaping along Rock Rd. to further meet the intent of the recommendation.
 - The building design utilizes canopies and columns and a mix of building materials to create visual interest. The proposed materials are consistent with the city's design criteria for commercial structures.
- The applicant has provided significant design considerations in an effort to meet the intent of Rock Rd. corridor design guidelines and the recommendations of the Comprehensive Plan. The proposed features are generally sufficient to offset the additional use that is requested.

RECOMMENDATION OF PROFESSIONAL STAFF:

Based on the preceding findings, City staff is supportive of, and recommends approval of an exception to allow construction and operation of the desired automobile sales and service business along with ancillary car wash facilities on the property.

City staff's recommendation for approval is subject to the following conditions:

1. *The automobile sales and service and ancillary car wash shall be constructed substantially in compliance with the approved concept site plan.*
2. *The site shall be developed in accordance with the final site plans as reviewed and approved by the Planning Commission.*
3. *The exception shall comply with all other applicable zoning, building and code requirements of the City.*

RECOMMEND A MOTION TO:

- Issue an exception by permit, based on the findings described in the written staff report, and subject to conditions 1-3 recommended by city staff.

PUBLIC HEARING OPENED

Pat Baer, Chairman opened the public hearing and determined that a quorum was present.

Cody Bird, City Planner announced that proper notice had been given in accordance with state law.

Baer asked board members to report any *ex parte* communications. He mentioned that he had conversations with a City Council member and City Staff.

Jessica Rhein stated that she had conversations with City Staff.

Baer asked if any written communications were received.

Bird replied none had been received.

Bird presented the staff report.

Phil Meyer, Baughman Company (agent for applicant) stated that the only thing he would like to add is a request to install a 6 ft. cedar privacy fence along the south property line instead of the masonry wall depicted on the plan drawings. Baughman has communicated with the adjacent property owner and they are ok with the cedar fence.

Baer asked for any public comments. No public testimony was provided at the public hearing.

PUBLIC HEARING CLOSED

The Board deliberated the findings of fact and adopted the written findings as presented in the staff report, including the recommended conditions of approval.

MOVED by Justin Smith, seconded by Van Willis, to issue an exception by permit to allow automobile sales and service uses on Lot 1, and the west 296.92 feet of Lot 2, Block B, El Paso Crossing Addition based on the findings of fact.

VOTE: 5-0

4.B. DESCRIPTION: Variance of maximum allowed fence height in R-1 "Single-Family Residential District"

GENERAL LOCATION: East of Buckner St., near intersection of Sandhill Rd. and Buckner St.
Common Address: 2433 N. Sandhill Ct.

APPLICANT: Thomas and Jill Ann Stables, owner(s)

REASON FOR REQUEST: Allow 8 foot fence along rear lot line

BACKGROUND:

- The owner of the residence at 2433 N. Sandhill Ct. has requested a variance from the zoning regulations restricting fences to six (6) feet in height.
- The property is currently used for a single-family residence and accessory uses permitted within the R-1 "Single-family Residential" zoning district.
- The applicant applied for a fence permit on July 20, 2016 to replace a fence in the rear yard.

The applicant proposed to replace the existing fence with a six (6) foot high fence along the south property line and an eight (8) foot high fence on the west property line.

- The application was appropriately denied because the eight (8) foot fence conflicts with Article 303.F.2.c of the Zoning Regulations which prohibits fences exceeding six (6) feet in height in all yards in a residential district.

- The applicant was advised they could resubmit a permit for a six (6) foot fence. A new application was not submitted.
- The new eight (8) foot fence was installed despite the application being denied.
- The property owner has subsequently submitted the request for a variance.
- The written statement provided by the property owner states that the contractor installed the eight (8) foot fence with the knowledge that it exceeded height restrictions.
- Fences along the north and south side property lines comply with the six (6) foot height restriction.
- The property owner desires the increased fence height to screen the property from a proposed future fire station on Buckner. The applicant has expressed concern that the proposed fire station and B-3 zoning approved in 2012 will generate excessive noise.
- The applicant requests relief from Section 303.F.2.c of the Zoning Regulations which restricts fences in the R-1 Zoning District to a maximum height of six (6) feet.

STAFF COMMENTS:

General

- The Board is authorized to grant variances in accordance with the standards established by state law and described in Section 1003.C.
- The application area is legally described as Lot 35, Block 2, Ridge Point 3rd Addition, Derby, Sedgwick County, Kansas.
- A request for a variance of the zoning regulations requires a public hearing:
 - The notice of public hearing was published in the *Derby Informer* on August 17, 2016.
 - Notices were mailed to neighboring property owners as prescribed by state law. The certified ownership list is on file at City Hall.
 - A notice sign was posted on the subject property 20 days prior to the hearing.
- At the time of this writing, staff has received one phone call from a neighbor inquiring about the notice she received. Staff informed the neighbor about the purpose of the notice and the variance.
- If the Board recommends approval of the requested variance, a draft resolution will be prepared by staff based upon the Board's findings.
- The decision of the BZA on a variance request is final and does not require any further action.

Zoning

- Lot 35, Block 2, Ridge Point 3rd Addition is located within the R-1 "Single-Family Residential" zoning district and is surrounded by R-1 zoning to the north, east, and south and B-3 to the west across Buckner St.
- Section 303.F.2.c of the Zoning Regulations limits fences in the R-1 zoning district to a maximum height of six (6) feet.
- The area to the west of the subject property was rezoned from R-1 "Single-Family Residential", B-2 "Neighborhood Business," and B-3 "General Business" to B-3 "General Business" and B-5 "Restricted Commercial, Warehousing, and Limited Manufacturing" in 2012.

- A variance, if approved, would allow the recently constructed eight (8) foot fence to remain.
- The north and south portions of the fence are compliant with City regulations.

FINDINGS OF FACT

- The Board is authorized to grant variances from the zoning regulations in specific cases which will not be contrary to the public interest and where, due to special conditions, a literal enforcement of the provision of the regulations, in an individual case, results in unnecessary hardship, and provided that the spirit of the regulations shall be observed, public safety and welfare secured, and substantial justice done.
- State law establishes, and Section 1003.C of the zoning regulations includes standards for the development of findings of fact which act to support the Board's actions. The Board may grant a variance upon making specific written findings of fact based upon the particular evidence presented to it at the hearing that all the standards required by state law have been met.
- The standards which must be considered for a variance are listed below with City staff's considerations included in *italics*:

Finding a)

That the variance requested arises from such condition which is unique to the property in question and which is not ordinarily found in the same zone or district, and is not created by an action or actions of the property owner or the applicant;

Staff Considerations:

It is staff's opinion that the circumstances involved in this request are not unique and do not warrant approval of a variance. The variance is being requested as a result of actions by the owner/fence contractor. The eight (8) foot fence was constructed on the rear lot line despite the application being denied.

Fences eight (8) feet in height are not ordinarily found in any R-1 zoning district. All residential properties within the City are held to the same regulation limiting fences to six (6) foot in height. The applicant states that the eight (8) foot high fence is desired to screen their property from the proposed future fire station. The fire station has not be constructed, and therefore, any potentially negative impacts, if any, cannot be reviewed to determine if the circumstances are unique and warrant a variance. It is not uncommon for fire stations to be located in or adjacent to residential districts.

Finding b)

That the granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents;

Staff Considerations:

All other properties along Buckner St. and in the R-1 zoning district comply with the appropriate fence height. The eight (8) foot fence constructed on the property does not comply with the regulations, and therefore creates a visual inconsistency with the adjacent properties' rear fences. This inconsistency negatively affects the order and character of the neighborhood and adjacent properties. The maximum six (6) foot fence height is consistently enforced in all R-1 zoned neighborhoods. Granting a variance at this location would confer an

additional right to the applicant that is inconsistent with the rights of similarly situated properties.

Finding c)

That the strict application of the provisions of the zoning regulations of which variance is requested will constitute unnecessary hardship upon the property owner represented in the application;

Staff Considerations:

Strict application of the provisions of the zoning regulations would result in the applicant, or their contractor, being required to modify the fence to comply with the regulations. The fence was constructed illegally without a permit after the contractor was notified that a permit was required and that an eight (8) foot fence is not allowed. Actions by the contractor are not a hardship resulting from application of the zoning regulations. It is staff's recommendation that the fence be modified to comply with the six (6) foot maximum height restriction.

Finding d)

That the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare;

Staff Considerations:

The rear property line of the subject lot abuts Buckner St., and the eight (8) foot fence constructed on the property line is visible along Buckner. The additional height of the fence creates a visual inconsistency and disorder that is highly visible to the general public. Denial of a variance will require the fence to be brought into compliance with the zoning regulations and will be consistent with adjoining properties to restore conformity and the aesthetic appearance of the zoning district.

Finding e)

That granting the variance desired will not be opposed to the general spirit and intent of the zoning regulations;

Staff Considerations:

Granting the variance would be opposed to the general spirit and intent of the zoning regulations. The regulations are intended to ensure conformity and order between properties and also to protect the character of a district.

RECOMMENDATION OF PROFESSIONAL STAFF:

- In order for a variance to be approved, all five (5) findings identified in state law and Section 1003.C of the City's zoning regulations must be satisfied.
- Based upon the preceding findings, City staff recommends that the Board deny the requested variance to exceed the maximum fence height for R-1 zoning on Lot 35, Block 2, Ridge Point 3rd Addition.

RECOMMENDED MOTION:

Deny the variance request to exceed the maximum height for fences in the R-1 zoning district on Lot 35, Block 2, Ridge Point 3rd Addition based on the findings of fact.

PUBLIC HEARING OPENED

Pat Baer, Chairman opened the public hearing and determined that a quorum was present.

Cody Bird, City Planner announced that proper notice had been given in accordance with state law.

Baer asked board members to report any *ex parte* communications. He mentioned that he had conversations with City Staff.

Van Willis stated that he had a conversation with a firefighter.

Jessica Rhein stated that she had conversations with City Staff.

Baer asked if any written communications were received.

Bird replied none had been received.

Bird presented the staff report.

Tom Stables, Applicant, addressed the board stating that the 8 ft. fence has been a benefit in screening the fire department activity across the street and that the neighbors are ok with 8 ft. height.

Rhein asked for about the timeline regarding when the fence was built and when the permit application was submitted.

Willis added that the timeline indicated by the dates of the documents was not clear.

Mr. Stables replied that the fence company was told by City Code Enforcement that a permit was required. He was not aware of when the fence company submitted the application.

Baer asked to hear any public comments.

Jill Stables, Applicant stated the intent of the fence was to protect their investment in their home rather than to create harm. She said that she was not aware of any regulations restricting fence heights. She also asked the Board to consider who the fence was harming, and to consider allowing the fence to remain.

Baer asked for any additional public comments. No additional public testimony was provided.

PUBLIC HEARING CLOSED

Joe Waugh asked if a timeline had been established to build the fire station.

Bird replied no date has been established for a fire station at this location. The City is pursuing construction of a new fire station at the Madison Ave. and Woodlawn Blvd. intersection to replace Station 81.

Bill Pater, Deputy Fire Chief stated no timeline or funding has been established for this property. He pointed out that when the site on Buckner St. was acquired for a future fire station, a station was needed in the northwest portion of the city. Since then, Derby has entered into an automatic aid agreement with Sedgwick County to provide additional service, which has shifted the needs of the department.

Baer asked if there is any intent to sell the land.

Bird replied he is not aware of any intent to sell the land, but that would be a decision made by the City Council.

Justin Smith asked if all five findings of fact must be satisfied in order for the variance to be approved.

Bird replied that the variance process is intended for unique situations that are not found elsewhere in the City. The findings are intended to address the uniqueness of the property, that the need for the variance is not created by an

action or actions of the applicant or an agent of the applicant, and to protect the public health, safety and welfare. Those findings are an all or nothing deal in terms of the Board's overall decision. Each Board member has the ability to make you own specific findings that we will make part of the record. If you disagree with the recommendations that staff has provided or if you want to modify the findings, we will document the findings which are the basis for the Board's decision. The decision that is made is collective, but each individual member has their option to vote on what they feel is the correct action.

The Board deliberated the findings of fact and adopted the written findings as presented in the staff report, including the recommended conditions of approval with the following comments by the board.

Finding a) That the variance requested arises from such condition which is unique to the property in question and which is not ordinarily found in the same zone or district, and is not created by an action or actions of the property owner or the applicant.

Smith disagreed with the staff report, stating that he felt this property has a unique situation since it is located across the street from the fire station's training area and the Buckner St. traffic. He said that fire stations make good neighbors.

Waugh also disagreed with staff, stating that increased traffic on Buckner St. in recent years has created a unique situation.

Rhein agreed with the findings of the staff report. She said this is not a unique situation since all the other homes along Buckner St. have the same situation. She added that approving this variance could create a situation where contractors or home owners construct fences and other structures that are not compliant with city regulations and ask for forgiveness later.

Willis and Baer both agreed with the finding of the written staff report and stated this is not a unique situation.

Finding b) That the granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents.

Board members adopted the findings presented in the written staff report.

Finding c) That the strict application of the provisions of the zoning regulations of which variance is requested will constitute unnecessary hardship upon the property owner represented in the application.

Waugh asked if another permit would be required to bring the fence into compliance.

Bird no permit was ever issued for this fence since the application was denied based on the proposed height exceeding the maximum limitation. City staff will work with the property owner on the permitting requirements.

Smith disagreed with the staff report. He considers the cost of bringing the fence into compliance a hardship.

Rhein, Willis and Baer – agreed with the findings of the written staff report.

Finding d) That the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare.

Willis disagreed with the finding of the staff report. He said that someone has to be the first one in the neighborhood to be different.

Smith disagreed with the finding of the staff report. He said the additional height of the fence does not affect the public health, safety or welfare.

Waugh agreed with Willis and Smith.

Rhein and Baer – agreed with the findings of the staff report. The 8 ft. fence creates a sense of disorder among the other fences in the area that are all 6 ft. in height. The regulations establish a standard that is applied to the whole city.

Finding e) That granting the variance desired will not be opposed to the general spirit and intent of the zoning regulations;

Board members adopted the findings presented in the written staff report.

Rhein commented that the regulations are in place to protect the good of the whole as compared to the good of a few. Derby's codes are good for keeping properties looking nice and providing consistency.

Willis asked if the city is missing an opportunity. Should the fence height regulations be re-evaluated?

Rhein added that the Board should not base its decisions on a future possibility. The applicant has other opportunities to provide the desired screening, such as planting trees.

Baer said that the two additional feet of fence that is requested would not likely have a significant affect to screen activities across the street.

Tom Stables, applicant requested and was granted an opportunity to speak in order to clarify an earlier comment. He said that when the fire station was approved across the street, it was presented as a certainty, not as an "if needed." He also commented that the fence was consistent in materials with adjacent fences, so he asked for the variance to be considered based on this case and not the city as a whole.

Jill Stables, applicant was also granted an opportunity to speak. She said the situation does constitute a hardship since the fence would need to be deconstructed to come into compliance. It is not as simple as just cutting off the top.

Willis commented that hardship expressed by the applicant was not a result of the regulations, but rather was something the applicant and the contractor would need to work out.

Rhein commented that the Board does not have a responsibility to determine or assign who should cover the cost of bringing the fence into compliance. She also commented that seeking a variance after the work was already completed does not meet the consideration that the need cannot be created by an action or actions by the applicant or an agent.

Smith stated that he felt there is enough support within the findings to allow the requested variance.

Waugh referred to the changes to the Buckner St. corridor over time and felt that the changes were significant and could warrant the variance.

Willis disagreed with Smith and Waugh.

MOVED by Rhein, seconded by Willis to deny the variance request to exceed the maximum height for fences in the R-1 zoning district on Lot 35, Block 2, Ridge Point 3rd Addition based on the findings of fact.

VOTE: 3-2 (Waugh and Smith opposed)

5. ADJOURNMENT

MOVED by Smith, seconded by Rhein to adjourn the meeting at 9:08 p.m.

VOTE: 5-0

Stephanie Cox
Recording Secretary

Patrick S. Baer
Chairperson