

**MINUTES OF THE
SHAWNEE COUNTY BOARD OF ZONING APPEALS**

**Monday, June 11, 2018 – 6:00 PM
Shawnee County Annex**

Roll Call and Announcement of Hearing Procedure: Judy Moler, Chair, called the meeting to order at 6:02 p.m. and asked for roll call to be taken.

Members Present: Judy Moler, Jerry Desch, Brian Aubert, Matt McCurry, Jake Fisher and Chad Depperschmidt. With six members present, a quorum was established.

Members Absent: Christi McKenzie.

Staff Present: Barry T. Beagle, Planning Director; Joelee Charles, Administrative Assistant; and, Joni Thadani, Assistant County Counselor.

Approval of December 11, 2017, Public Hearing Minutes: Mr. Aubert moved to approve the December 11, 2017, public hearing minutes, seconded by Mr. Depperschmidt, and with a unanimous voice vote, the minutes were approved.

Communications: None were indicated.

Ex Parte Communication by Members of the Board: None were indicated.

Declaration of Conflict of Interest by Members of the Board or Staff: None were indicated.

Zoning and Subdivision Items:

1. **E18/01 by Chris Helm** seeking an exception to the accessory building maximum building area allowance on property located at 4531 NE Meriden Road in Soldier Township.

Mr. Beagle stated the applicant proposes to construct a 3,200 square foot accessory building at the rear of his residence where it would not be visible to other residential property on Meriden Road. The applicant indicates the larger building size is necessary to accommodate storage of personal possessions. Per the zoning regulations, the applicant's maximum building area allowance would be 3,986 square feet based on 3.05 acres. The new and two existing buildings would total 4,840 square feet or 854 square feet over the maximum building area allowance.

The Board of Zoning Appeals may approve a larger maximum building area based on the following two criteria: the area of all accessory buildings will be compatible with the neighborhood in design, location and size as well as there is proportionality between the size of the principal building, parcel, street frontage and size of existing accessory structures.

In comparison to area property, the applicant's property is part of an established residential area of 70 single family properties. Data from the Shawnee County Appraiser indicates the 70 parcels vary in size 0.49-acres to 30.88-acres. Thirty (30) of the 70 parcels do not include an accessory buildings. All are compliant with the maximum building area allowance with the exception of one parcel that exceeds the maximum building area allowance by 150 square feet.

In review of the first exception criteria, the extent of accessory building cover would be out of character with neighboring property that are compliant with the maximum size limitation. The 3,200 square foot accessory building would become the largest accessory building within the surrounding neighborhood. In granting the exception, the building would exceed the maximum building area allowance by 854 square feet which is incompatible with the neighborhood with regard to design, location and size.

In review of the second exception criteria, the extent of current building coverage would increase from 1.23% to 3.64% of the parcel size. There are eleven other residential parcels fronting NE Meriden Road and NE 43rd Street which are roughly equivalent in size. The average percentage of lot coverage of accessory buildings on those eleven parcels is 0.51%. At 1.23%, the applicant's property currently exceeds the extent of the accessory building coverage of these eleven parcels.

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Granting the exception would widen the gap between the average percentage of building coverage on these parcels of 0.51% and the subject property that would end up with 3.64%. This would appear to benefit the applicant to the exclusion of their neighbors considering the applicant can take advantage of adding an additional 2,346 square foot of accessory building coverage without having to seek an exception.

Personal circumstances are not a qualifying factor for determining whether an exception should be granted. Circumstances change over time. Buildings are permanent. If personal circumstances are deemed acceptable, any number of reasons could be given for exceeding the maximum size limitation which would defeat the purpose of the proportional standard.

There was nothing found that was particularly unique about the property in comparison to the neighboring property by which to grant the requested exception. Based on these factors, it is the recommendation of the Planning Department that the requested exception be disapproved.

With no questions for Mr. Beagle, Ms. Moler asked the applicant if they had a presentation.

Chris Helm, 4531 NE Meriden Road, Topeka, KS 66617.

- At the beginning of this process, various sizes were considered that would fit.
- Had talked with the Planning staff before scheduling a meeting and was encouraged to proceed based on the comment that an exception had never been disapproved.
- Wanted to know if the proposed size was not acceptable, was it possible to agree on a size over the current set standards.
- Knew the building size was over by 854 square feet but what is allowed now is smaller than what they wanted.
- Was willing to go through the process again and reapply and resubmit all the plans if needed.
- Didn't want to waste their time and his time repeating the process if it was going to stay with what the ordinance reads.

Ms. Moler asked Mr. Beagle if there was another acceptable size. Mr. Beagle stated he had discussed with the applicant that only an additional 2,346 square feet would be allowed. The applicant said a larger building was needed. They discussed what the chances and odds were for approval. Since 2008, only one other exception request was granted by the Board of Zoning Appeals. In this case, he didn't have any relevant information at the time of their meeting regarding the neighborhood to determine whether the request was advisable or not.

Mr. Aubert asked for the height and roof pitch of the proposed building. Mr. Helm stated the building would have a 14 foot sidewall with a pitched roof but wasn't sure how steep the pitch would be. It would not be visible from the front of their property on Meriden Road but could be seen from 46th Street.

Mr. Desch asked for the building's dimensions and what would be stored inside. Mr. Helm stated the 40 x 80 building would be used to store his cars, boat and camper. They have been paying for storage space to keep everything in. They wanted everything out of the weather and protected. He has an older car that he tries to keep inside.

Ms. Moler asked if anyone wanted to speak in favor.

Todd Bunting, 4335 NE Meriden Road, Topeka, KS 66617.

- Lives south of the property.
- Thought the building would be fine. It would sit off the road and not be a distraction and would look nice.
- Even off of 46th Street which was very heavily traveled, it sits far enough to the south that no one would see it and would not be visible at all from Meriden Road.

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- Mr. Helm keeps his property nice.
- It is a suburban area and didn't think a barn would be out of the ordinary for the area.
- In favor of the request.
- Didn't think the people driving by would see a staggering difference between a 40 x 60 and 40 x 80 building.
- Believes Mr. Helm has done the right thing and didn't think it would detract from the neighborhood and would sit far enough away.

With no one else to speak in favor or opposition, Ms. Moler asked for any comments from the board.

Mr. Depperschmidt asked Mr. Helm if he had spoken with his neighbor at the back of the property. Mr. Helm stated he had not talked to his neighbor. He spoke with his next door neighbor to the south who said he didn't have a problem with it.

Ms. Moler closed the public hearing and asked for discussion from the Board.

Mr. Aubert asked if the neighbors within 1,000' were notified. Mr. Beagle indicated they were.

Mr. Desch expressed concern about approving this request and having other property owners making the same requests. He indicated he would not be in favor of the request based on the size. He didn't know if he wanted to decide during the meeting what could be built.

Mr. Aubert stated the size of the carport was nearly half of the proposed building. He didn't know how permanent the structure was but typically that type of structure was fairly non permanent. It was only 400 square feet. He knew statistically there was still an issue but it was only 400 square feet over and not visible to detract from the neighborhood.

Mr. Beagle stated they had talked about all of the potential options in order to keep within the required maximum area allowance.

Mr. Fisher agreed with Mr. Desch's comments. He was concerned about making an exception that was so far outside of the current guidelines, the exception essentially voided the rule. The applicant said he would be willing to consider another size that might be approved. Mr. Fischer said it wouldn't be proper for him to prejudge the evidence and state what his vote would be if the applicant came back with a size that might still be over the allowed amount. It is so far over. It would be very difficult for him to not grant the same exemption for someone else down the road in the same circumstance.

With no additional comments, Ms. Moler asked for a motion.

Mr. Aubert moved for approval of the exception, seconded by Mr. McCurry. With a vote of **2-4-0 (Mr. Fisher, Ms. Moler, Mr. Desch and Mr. Depperschmidt dissenting)**, the item was **Disapproved**.

Mr. Depperschmidt commented after casting his vote that he would be in favor if the applicant came back with 2,400 square feet.

Discussion was held on whether there was a one year refile limitation period and if Mr. Helm could reapply. It was determined that Mr. Helm could reapply at any time in order to request another size option. He would not be required to submit a new application but submit a letter at any time indicating his request for consideration of a 40 x 60 building. A filing fee would not be required. Once the request was submitted, the public hearing date could be determined in order to advertise it and notify the neighboring property owners.

Adjournment:

Mr. Fisher moved to adjourn, seconded by Mr. Depperschmidt, a unanimous voice vote declared the public hearing be adjourned, which was at 6:47 p.m.