



CITY OF
TOPEKA

AGENDA

BOARD OF ZONING APPEALS

Monday, May 9, 2022
5:30 P.M.

Holliday Building
620 SE Madison, 1st Floor Holliday Conference Room

MEMBERS OF THE BOARD

Tim Carkhuff (Chair)
Walter Schoemaker (Vice Chair)
Toni Beck
Helen Crow
Carole Jordan
Camille Nohe
Travis Thomas

-
- The Topeka Board of Zoning Appeals holds a public hearing on the second Monday of each month to consider certain appeals, variances, and exceptions as may be granted by the Comprehensive Zoning Regulations of the City of Topeka, Kansas.
 - The following agenda identifies and describes each proposal to be considered by the Board.
 - Each item to be considered by the Board will be introduced by the Planning Department Staff. The Board will then hear and consider arguments both for and against each proposal.
 - Individuals wishing to address the Board are requested to state their name and address for the official hearing record.
 - Motions on all matters, which require a decision by the Board, are made in the affirmative. On a roll call vote, Board members then vote yes, no, or abstain based on the affirmative motion.
 - Any person, official or government agency dissatisfied with any order or determination of the Board may bring an action in the district court of the county to determine the reasonableness of any such order or determination. Such appeal shall be filed within 30 days of the final decision of the Board.



ADA Notice: For special accommodations for this event, please contact the Planning Department at 785-368-3728 at least three working days in advance.



CITY OF
TOPEKA

BOARD OF ZONING APPEALS

Agenda for Monday, May 9, 2022

- A. Call to Order**
- B. Approval of Minutes from November 8, 2021**
- C. Declaration of Ex Parte Communications**
- D. Public Hearings**
 - 1. BZA22V/01 by Capital Belt & Supply, Inc.** requesting a variance to the minimum elevation required in Flood Hazard Reduction TMC17.30.190 (a)(2) to allow for a proposed addition to an existing structure located at 1718 S Kansas Avenue.
- E. Election of 2022 Chair and Vice Chair**
- F. Adjournment**



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CITY OF TOPEKA
BOARD OF ZONING APPEALS



M I N U T E S

Monday, November 8, 2021

Via Video Conference

Members present: Tim Carkhuff (Chair), Toni Beck, Helen Crow, Carole Jordan, Camille Nohe, Travis Thomas, Walter Schoemaker (7)

Members Absent: (0)

Staff Present: Mike Hall, Current Planning Manager; Mary Feighny, Deputy City Attorney; Kris Wagers, Administrative Officer

Call to Order

The meeting was called to order by Tim Carkhuff, Chair, with 7 members present for a quorum.

Approval of Minutes from September 13, 2021

Motion by Ms. Beck to approve, **second** by Ms. Crow. **APPROVED 6-0-0** with Ms. Jordan abstaining.

Declaration of Ex Parte Communications –

Ms. Beck – None

Mr. Carkhuff – None

Ms. Crow – None

Ms. Jordan – None

Ms. Nohe – None

Mr. Schoemaker – None

Mr. Thomas – None

BZA21V/07 by G. Kurt Koles requesting a variance to the minimum building setbacks required by section 18.60.020 of the Topeka zoning regulations for construction of an addition to a commercial building at 1949 NW Topeka Boulevard.

Mr. Carkhuff called the case and Mr. Hall presented the staff report with findings, concluding with staff's recommendation that the variance not be approved because all five conditions cannot be met.

Mr. Hall stood for questions and responded to inquiries from Ms. Nohe and Ms. Jordan. Regarding a question about Neighborhood Health information included in the staff report, he explained that though it is a standard part of the staff report, it is not particularly relevant to this case.

Mr. Carkhuff pointed out that in *Hacker v Sedgwick County* the applicant was the business owner. In this instance the property owner is the applicant but it is not his business that is operating on the property. This application is based on the need of a tenant and not a condition of the property. Mr. Carkhuff does not believe Finding #1 (Unique Conditions) can be satisfied.

In regard to Finding #3 (Unnecessary Hardship), Mr. Carkhuff stated that *Hacker v Sedgwick County* makes it clear that granting a variance based on business growth is not acceptable.

Ms. Nohe stated she agrees that the physical characteristics of the property are not unique and she also agrees with Mr. Carkhuff's point regarding Finding #3.

DRAFT

Ms. Beck stated that the issue here is simply that the business owner has outgrown his space and a variance cannot be granted based on that.

Mr. Schoemaker asked questions about the graphics portraying property lines. Mr. Hall explained that the graphics were created from GIS overlays and are not exact. Were the property owners granted a variance for the addition on the building, they would first be required to have the property professionally surveyed.

Mr. Carkhuff asked if the property is considered non-conforming and therefore the owner would, in the case of a catastrophic event, be able to re-build as is. Mr. Hall stated that, rather than a nonconforming use, it more likely has non-conforming characteristics. In the event of a catastrophic event, he is uncertain as to whether or not they would be able to rebuild as is without a variance.

The applicant was invited to speak. Kurt Koles stated that he and his wife have owned the property since approximately 1982 and it has never been vacant under their ownership. He worked closely with the current tenant to start, build and grow his business and the business has grown larger than either of them had anticipated. The tenant has approximately one more year on his lease of the property and the property owner wishes to do everything in his power to allow the business owner to remain on his property. Mr. Koles stated that the setback in question has never been used and adding 14' to the building still allows the property next door plenty of room.

Ms. Crow asked questions regarding the telephone pole in the alley and the possibility of adjoining the applicant's building with the building next door. Discussion followed about these topics.

Mr. Carkhuff declared the **public hearing open**, and with nobody logged in to speak he declared the **public hearing closed**.

Motion by Ms. Nohe to adopt the staff's recommendations, amending them to find that there is insufficient evidence to support Findings A and C, and deny the variance; second by Ms. Beck. **APPROVED 7-0-0**

Communications

Ms. Wagers reported that no applications had come in prior to the deadline so there will not be a December meeting of the BZA.

The meeting was adjourned at 6:04PM

VARIANCE EVALUATION
CITY OF TOPEKA PLANNING DEPARTMENT
FOR
TOPEKA BOARD OF ZONING APPEALS

Date of BZA Meeting: May 9, 2022

Case No.: BZA22V/01

Applicant Name: Gary Hamon (Owner)
Address of Property: 1718 S. Kansas Avenue
Parcel ID No.: 1330604006009000
Zoning of Property: "I-1" Light Industrial District

Regulations from which a Variance is Requested: The applicant is requesting a variance to the requirement to build one foot above the base flood elevation as required by TMC 17.30.190(a)(2) of the Topeka floodplain management regulations for a building addition.

Background

The applicant's property is located in the floodplain. Floodplain regulations restrict development in order to minimize flood losses resulting from periodic inundation. In 2021, the applicant submitted a floodplain development permit in order to construct a 20x60 addition to the existing building on the property. The permit was subsequently denied based on the requirements of TMC 17.30.190(a)(2) which provides, as follows:

"Nonresidential Construction. New construction or substantial improvement of any commercial, industrial or other nonresidential structures . . . shall have the lowest floor, including basement, elevated a minimum of one foot above the base flood elevation or, together with attendant utility and sanitary facilities, be dry floodproofed to a minimum of one foot above the base flood elevation. A registered professional engineer or architect shall certify that the standards of this subsection are satisfied. The elevation of the lowest floor shall be certified by a licensed land surveyor or professional engineer. Such certification shall be provided to the Floodplain Administrator . . . "

The required minimum base flood elevation for this property is 902.2 feet. The applicant's proposed building addition will be 2.2 feet below the required base flood elevation. Further, since the project is a building addition instead of a stand-alone building, the existing building must meet the requirements of 17.30.190(a)(2) as well. Should the variance be granted, it will allow the applicant to construct the building addition 2.2 feet below the base flood elevation.

Required and Proposed Building Elevations:

	Required Base Flood Elevation per Section 17.30.190(a)(2)	Proposed Elevation of Building Addition
1718 S. Kansas Avenue	Base flood elevation = 902.2 feet. The building addition and the existing building must be built one foot above base flood elevation – 903.2 feet.	2.2 feet below Base Flood Elevation.

Project and Property Data:

Proposed Development:	A proposed 20' x 60' (1,200 sf) addition to the south side of the building for the existing Capital Belt & Supply, Inc. business.
Size of Principal Dwelling:	Single-occupancy commercial building with 3,000 square feet
Property Dimensions:	102 feet at west property line along S. Kansas Avenue x 115 feet (east-west property dimension)
Size of Property:	11,800 square feet (.27 acre)
Property Description:	Lots 630 thru 636, less 15 feet Richard's Addition
Existing Property Characteristics:	Square-shaped lot containing a single commercial building for 1 commercial tenant. Original building dates to 1983.
Surrounding Land Uses:	Vacant lots on the north and south; single-family homes to the east; retail (O'Reilly Auto Parts) and office and storage buildings to the west.
Zoning of Property:	I-1 Light Industrial District
Zoning of Surrounding Property:	I-1 Light Industrial to the north, south, east and west.
Neighborhood:	Monroe Neighborhood
Neighborhood Health:	"Intensive Care" per the 2020 Neighborhood Health Map.

Variance Determination

Floodplain variance requirements are different from zoning variations (e.g. unique condition, adverse effect on adjacent property owners, hardship not created by applicant). However, like zoning variance requests, the burden is on the applicant to establish that all of the factors identified in TMC 17.30.260(e) are met.

TMC 17.30.260(e) - Factors for Approving Variances

(e) Variances shall only be issued upon:

- (1) showing of good and sufficient cause,
- (2) determination that failure to grant the variance would result in exceptional hardship to the applicant, and
- (3) determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

TMC 17.30.250 Floodplain management variance criteria

In reviewing applications for variances, the Board shall consider all technical data and evaluations, all relevant factors, standards specified in other sections of this chapter, and the following criteria:

- (a) Danger to life and property due to flood damage;
- (b) Danger that materials may be swept onto other lands to the injury of others;
- (c) Susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
- (d) Importance of the services provided by the proposed facility to the community;
- (e) Necessity to the facility of a waterfront location, where applicable;
- (f) Availability of alternative locations, not subject to flood damage, for the proposed use;
- (g) Compatibility of the proposed use with existing and anticipated development;
- (h) Relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
- (i) Safety of access to the property in times of flood for ordinary and emergency vehicles;
- (j) Expected heights, velocity, duration, rate of rise and sediment transport of the flood waters, if applicable, expected at the site; and
- (k) Costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems; streets; and bridges. (Ord. 19627 § 26, 8-23-11.)

Aside from the information in the variance application, it is anticipated that the applicant will address each of the factors in TMC 17.30.260(e). Richard Faulkner, the Floodplain Administrator, will be available to provide background and answer questions.

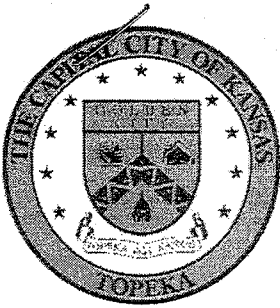
Planning Staff Recommendation

In the absence of evidence to support the factors in TMC 17.30.260(e), staff recommends disapproval of the floodplain permit application. Should a variance be granted, the variance must be the minimum necessary, considering the flood hazard, to afford relief. TMC 17.30.260(d).

Staff Report by: Dan Warner, AICP, Planning Division Director

Exhibits:

1. Variance Application
2. "Proposed Addition Exhibit" (Site Plan)
3. Aerial Map with Floodplain



APPLICATION TO THE BOARD OF ZONING APPEALS VARIANCE / EXCEPTION

EXHIBIT 1

CITY OF TOPEKA PLANNING DIVISION

620 SE MADISON, 3RD FLOOR (UNIT #11) | TOPEKA, KS 66607-1118
PHONE 785.368.3728 | EMAIL: PLANNING@TOPEKA.ORG

Applicant Information

Name: CAPITAL BELT & SUPPLY, INC
Address: 1718 SO KANSAS AVE TOPEKA, KS
Phone: 785 235-3424 Email: gary@Capbelt.com

For Planning &
Development
Use Only

Case #

Property Information

Location of property: 1718 SO KS AVE TOPEKA, KS 66612

Legal description of property: (attach additional sheets if necessary)

LOTS: 630, 632, 634, 636

BLOCK: 1700

SUBDIVISION: RICHARDS

Action Sought:

☒ A variance from a provision of the Zoning Ordinance
(Section to be appealed: TMC 17.30.190)

☐ An exception from a provision of the Zoning Ordinance
(Section to be appealed: _____)

Description of Action Sought:

VARIANCE FROM SECTION OF
TMC 17.30.190 REQUIRING THAT MY
PROPOSED ADDITION AND EXISTING
STRUCTURE MUST BE ELEVATED
1 FOOT ABOVE THE BFE OR APPROX 3 1/2' !!

Hearing Date:

Legal Ad Date:

Zoning District:

Building Height:

Number of Stories:

Parcel Size:

Lot Dimensions:

Applicant offers the following as grounds for this action:

In accordance with Section 2.45.110 of the Topeka Municipal Code, the Board of Zoning Appeals must determine that **ALL** of the following conditions governing unnecessary hardship have been met before a variance may be granted.

All items must be addressed or the application will be deemed incomplete.

1. 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 of the property owner or applicant (*The problem must relate to the land. Community needs or personal hardships do not qualify as legitimate grounds for issuing a variance.*);

The potential flooding conditions at this site was created by the city of Topeka, not by me. It was not in a flood plain when I purchased it in 1993. According to Mr. Flander unregulated storm water run off from west Topeka development created the problem.

2. That the granting of the permit for the variance will not adversely affect the rights of adjacent property

There is a vacant lot on the north side and south side of the property that have been vacant for over 40 years The residential properties to the east is mostly occupied by transient renters, homeless squaters, and drug addicts.

3. That the strict application of the provisions of this chapter of which variance is requested will constitute unnecessary hardship upon the property owner represented in the application;

The requirement that my existing building must be dismantled or demolished in order to add a small 20' x 60' addition to the south side i think would qualify as a "unnecessary hardship" It would be like telling a home owner in the neighborhood who might want to add an extra bedroom to his home that he must first tear down his house.

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

It has yet to be explained to me how a small 20' x 60' addition to my building could possibly create a safety or health issue for the community or neighborhood or impact any of the other things listed here.

5. That granting the variance desired will not be opposed to the general spirit and intent of this chapter.

My reasons for requesting a variance from this section of the city code is because it is obvious that the "intent" or "general spirt" is to restrict or deny any development in the lower Shunga floodplain. Property improvements are only allowed in the affluent West side of town but not in the poorer down stream properties, it would seem

Authorization

Property Owner(s):

I/We the undersigned owner(s) of record hereby authorize the filing of this application and declare that all required materials are submitted along with this application and that the information and material is complete and accurate. I/We hereby acknowledge that all appropriate procedures, policies, and regulations have been reviewed and also understood that this application will be processed in sequence with respect to other submittals.

GARY W. HAMON
Owner Name (print)

Gary W. Hamon
Owner Signature

Harriett A. Hamon
Owner Name (print)

Owner Signature

Harriett A. Hamon
Owner Name (print)

Harriett Hamon
Owner Signature

Authorized Agent:

If the owner(s) of record are to be represented by legal counsel or an authorized agent, please complete the following information so that communications and correspondence pertaining to this application may be forwarded to such individual.

Authorized Agent Name (print)

Signature – Authorized Agent

Mailing Address: _____
STREET ADDRESS CITY STATE ZIP

Phone: _____ Email: _____

Applicant:

GARY W. HAMON
Applicant Name (print)

Gary W. Hamon
Applicant Signature

