

RESOLUTION NO. 22-15

**A RESOLUTION OF THE CITY OF MCPHERSON, KANSAS, CONCERNING A
BOARD OF ZONING APPEALS VOTE ON A VARIANCE**

WHEREAS, Robert and Michele Cullen, of 1600 Justin Drive, City of McPherson, pursuant to Section 10-107 of the City's Zoning Regulations, has a pending request for a variance for the purpose of reducing the required 30-foot front yard, as required by the Block-B Suncrest Acres Third Addition Replat, along Northview Road for a total reduction of 15 feet for the purpose of constructing a garage addition on property zoned as the R-2, Two-Family Residential District and legally described as: Block-B Suncrest Acres Third Addition Replat, Section 28, Township 19, Range 03, Block B, Lot 19

General location: 1600 Justin Drive, City of McPherson; and

WHEREAS, this case was filed under Case Number V-22-10; and

WHEREAS, proper notice was given according to the Zoning Regulations and the rules of the Board of Zoning Appeals; and

WHEREAS, the Board considered the request at their meeting of July 28, 2022; and

WHEREAS, the Board has proper jurisdiction and the authority to permit such a variance in the district; and

WHEREAS, the Board had previously denied a similar request, filed under case number V-22-06, from the applicants at their meeting of April 28, 2022; and

WHEREAS, the findings of fact in the April 28, 2022 case (First Case) were:

a. The existing setbacks in the neighborhood were established during the development process. A required 30' setback is unique to the properties in this neighborhood and were not created by action or actions of the property owners.

b. The proposed reduction in setback will adversely affect the rights of adjacent property owners or residents. The granting of this request would make it likely that others would make the same request, setting a bad precedent because of the presence of an arterial road.

c. The strict application of the provisions of these regulations from which a Variance is requested will constitute an unnecessary hardship upon the property owner represented in the application because it will prevent the applicants from building as planned.

d. The Variance will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare.

e. The granting of the Variance will be opposed to the general spirit and intent of the City of McPherson Zoning Regulations. The granting of this request would make it likely

that others would make the same request, setting a bad precedent because of the presence of an arterial road; and

WHEREAS, the applicants re-applied in order to present new evidence to the BZA; and

WHEREAS, the new evidence provided included the presence of transmission lines on the North side of Northview Road, a proposed, new route to industries at Mohawk Road, the City's application for a Federal Transportation Alternative (TA) Grant for a 10-foot wide sidewalk along the North Side of Northview Road, and the fact that the existing Right-of-Way, as dedicated, is 80-feet wide and already able to be widened to 4 lanes without requiring additional right of easement.

WHEREAS, the BZA made the following, specific findings of fact in the pending case (VC -22-10):

- a. The existing setbacks in the neighborhood were established during the development process. A required 30' setback is unique to the properties in this neighborhood and were not created by action or actions of the property owners.
- b. The proposed reduction in setback will not adversely affect the rights of adjacent property owners or residents.
- c. The strict application of the provisions of these regulations from which a variance is requested will constitute an unnecessary hardship upon the property owner represented in the application because it will prevent the applicants from building as planned.
- d. The Variance will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare.
- e. The granting of the variance will not be opposed to the general spirit and intent of the City of McPherson Zoning Regulations; and

WHEREAS, the members then made a motion to approve the application and seconded the motion; and

WHEREAS, the vote resulted in 3 members voting to approve the motion and 3 members voting to deny the motion; and

WHEREAS, not knowing whether the motion carried or failed, the members opted to continue the case until August 25th, 2022, at 7PM in order to seek a legal opinion regarding how the BZA members should proceed; and

WHEREAS, the new evidence has substantially changed the responses to the 5 conditions that must be met, as required by K.S.A. 12-759(e); and

WHEREAS, the 5 conditions are all answered with affirming responses; and

WHEREAS, the City of McPherson supports the affirming responses to the 5 required conditions;

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF MCPHERSON, KANSAS: the City Commission of McPherson, Kansas, supports the granting of the requested variance, filed under Case Number V-22-10 for the following reasons:

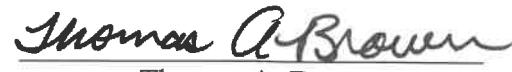
- A. The BZA's findings of fact in the Pending Case appear to support the approval of the request;
- B. The current vacant seat on the BZA complicated the vote on this request;
- C. The governing body of the City Commission concurs with the findings of fact in the Pending Case;
- D. While Northview is an arterial road, the subsequent significant infrastructure on the north side of the street including utility and pedestrian ways and the sufficient right of way on the south side of the street give the City sufficient right of way for future improvements; and
- E. The governing body requests relevant staff study any necessary change to the City's designation on Northview, but does not believe that this request should be denied or stayed pending such study.

ADOPTED this 23rd day of August 2022, and **SIGNED** by the Mayor.

Attested:



Britta Erkelenz
City Clerk



Thomas A. Brown

Mayor



REVIEWED AND APPROVED AS TO FORM:



Jeffrey A. Houston
City Attorney