



**Louisburg Board of Zoning Appeals Meeting  
6:00 P.M. June 26, 2019  
City Council Meeting Room  
215 South Broadway  
AGENDA**

**AGENDA**

- Item 1: ROLL CALL:**
  
- Item 2: ADOPTION OF THE AGENDA:**
  
- Item 3: APPROVAL OF THE MINUTES:**  
Approve of minutes dated July 27, 2018

**PUBLIC HEARING BUSINESS ITEMS:**

- Item 4:** 19001-AAD (Appeal Administrative Decision) - A discussion with Bob Bazin (MBB, LLC.) concerning a gravel parking lot that was installed on the vacant property east of NAPA Auto Parts Store.
  
- Item 5: ADJOURNMENT:**



**LOUISBURG BOARD OF ZONING APPEALS  
MEETING MINUTES  
WEDNESDAY JUNE 27, 2018**

The Board of Zoning Appeals of the City of Louisburg, Kansas met at 6:00 p.m. in the City Hall Council Chambers with Chairperson Andy Sauber presiding.

**ATTENDANCE:**

Commission Members: Rita Cassida, Betty Brown, and Michael Sharp  
Mayor: Marty Southard  
City Council: Kaylee Smith  
City Administrator: Nathan Law  
Staff: Jean Carder  
Recording Secretary: Rusty Whitham  
Media: John Vanpelt  
Visitors: Jeff Laubach, Nate Apple

**ITEM 1: ROLL CALL**

**ITEM 2: ADOPTION OF THE AGENDA:**

A motion was made by Rita Cassida to adopt the agenda. The motion was seconded by Betty Brown. Motion passed 4-0.

**ITEM 3: APPROVAL OF THE MINUTES:**

A motion was made by Michael Sharp to approve the minutes from the July 26, 2017 meeting. The motion was seconded by Rita Cassida. Motion passed 4-0.

**PUBLIC HEARING BUSINESS ITEMS:**

**ITEM 4:** 18001-VAR - 1150 West Amity, Casey's Convenience Store (Parcel ID: 1093003001006040) Waiver of minimum rear set back requirement to construct a Convenience Store.

Chairperson Andy Sauber began the discussion by explaining the Applicant's Variance Request. After a short explanation, Sauber opened the topic up to public comment. No public comment occurred. The public comment portion of this discussion was then closed.

Jeff Laubach from Schmidt, Beck & Boyd Engineering, LLC (Representing the Applicant) mentioned that the proposed lot is irregularly shaped due to a storm water retaining pond causing a lack of available land to build on in the North/South direction. This lack of space is the reason for the rear setback variance request.

Laubach also noted that the adjoining property located to the North is zoned commercial. Laubach stated that most cities require lesser setbacks for commercial properties when not adjacent to residential real estate. Laubach understands that the City of Louisburg does not distinguish between commercial and residential properties in regards to minimum setback requirements. The Louisburg Zoning Regulations requires a twenty-five (25) feet minimum rear setback for both residential and commercial properties.

Rita Cassida mentioned that she has no concerns with this variance request. Cassida added that the rear setbacks requirements were mainly established for aesthetic reasons. In this case the property located to the North is commercial and will have a parking lot as a buffer between both properties. Most people will never notice the rear setback of the proposed Casey's property.

The Board of Zoning Appeals members briefly discussed the six items that should be considered when determining a variance request as outlined in article 15, paragraph 4 of the City Procedures manual. It was the opinion of the board that all six criteria items have been met. No negative comments were made:

Rita Cassida made a motion to approve the variance request. This motion waives the minimum twenty-five (25) feet minimum rear setback outlined in Section 509, paragraph F.3 of the City Zoning Regulations. The applicant (Casey's Retail Company) shall be allowed to reduce the rear setback to thirteen (13) feet as depicted on the submitted site-plan.

The motion was seconded by Betty Brown. The motion passed 4-0.

**ITEM 5: ADJOURNMENT:**

A motion was made by Michael Sharp to adjourn the meeting. Second was made by Betty Brown. The motion passed 4-0. Meeting adjourned at 6:09p.m.

**Submitted by Rusty Whitham**

## APPEAL PROCEDURE

Where it is alleged that there is error in any order, requirement, decision or determination made by an administrative official in the enforcement of the Zoning Regulation, or of any ordinance adopted pursuant thereto, that interpretation may be appealed to the Board of Zoning Appeals. In its deliberations, the Board of Zoning Appeals must only consider whether or not the interpretation in question conformed to what was actually written in the regulations. The Board of Zoning Appeals may not declare the zoning regulations unfair or attempt to act contrary to their purpose. The Board of Zoning Appeals can clarify ambiguities or resolve conflict between opposing sections. Since the Board of Zoning Appeals's decisions will affect future applications of the regulation in question, the specific hardships of the applicant should not be considered when reaching a determination.

At its scheduled meeting, the Board shall hear all facts and testimony from all parties wishing to be heard concerning the appeal. The appeal must be heard by the Board within a reasonable period of time from the date that the completed application, application fee and deposit are submitted and a written decision must be rendered without unreasonable delay.

The Board of Zoning Appeals may either affirm, reverse or modify the order, requirement or interpretation at issue. The determination, in written form, shall be sent to all affected parties including the Planning Commission and the Office of the City Clerk. A recorder shall keep minutes of the public meeting including evidence presented during the proceedings and the findings of the Board.

Any person, official, or governmental agency dissatisfied with any order or determination of the Board may bring an action in the District Court to determine the reasonableness of any such order or determination. Such appeals must be filed in the District Court within thirty (30) days after the date that the decision of the Board has been filed in the Office of the City Clerk.

## MEMO – Item #4

**To:** Board of Zoning Appeals (BZA)

**From:** Staff

**Date:** June 26, 2019

**Re:** 19001-AAD (Appeal Administrative Decision) - A discussion with Bob Bazin (MBB, LLC.) concerning a gravel parking lot that was installed on the vacant property east of NAPA Auto Parts Store.

The vacant commercial lot east of NAPA Auto Parts Store was recently purchased by MMB, LLC. Shortly after purchase, the new owner installed a gravel parking lot without first consulting the Planning and Zoning Department. On April 8, 2019, Staff was approached by the new owner who said he is maintaining the gravel that was previously on the lot. The owner has said the gravel is an existing non-conforming condition and this allows him to maintain the gravel. He stated this gravel parking lot is “grandfathered” (a condition prior to the City’s 2010 Zoning Regulations) and he should be allowed to maintain the gravel. Staff disagreed with the owner’s assessment and sent him a code violation via certified mail. Staff has determined that this parking lot should not be allowed for the following reasons:

1. This vacant lot has no direct access to K68/West Amity. In order to gain access to this vacant lot, one would have to drive through NAPA’s property. No shared road access or dedicated access has been established. Access points are required to be identified on a survey, site-plan, and/or in deed. KDOT will need to determine if direct access to the highway will be allowed. Currently this property is isolated and no construction or property development should be allowed until this issue is resolved.

NAPA property – 200 West Amity

MBB LLC property without dedicated road access



Allowing the owner to develop this property without proper access is discouraged from a zoning perspective. An example of this situation is the property at 110 North Mulberry Street. This home was built in 1968 with no road or street access to the residence. The homeowner must access the residence using the First Christian Church driveway and property. Reference the picture below. This property is landlocked without a dedicated easement for ingress or egress. This situation has been the source of many civil disputes over many years. Allowing MBB LLC access through NAPA's property may create similar disputes.

Any legally established access should be documented on a survey, site-plan, and/or deed prior to any site development. City Staff would be remiss if property access is not thoroughly addressed on any lot including the MBB LLC commercial lot.

Residential Home without street/road access – 110 North Mulberry

First Christian Church – 602 North 1<sup>st</sup> Street



- Staff considers the placement of gravel on the vacant lot as an extension of NAPA's existing non-conforming gravel parking lot. NAPA's gravel parking lot is considered existing non-conforming because it was installed prior (2010) to the City's requirement to hard surface off street parking areas. The extension of the gravel lot onto the neighboring lot violates Section 904, paragraph C of the City Zoning Regulations:

"Extension. A nonconforming use shall not be extended, expanded, enlarged, or increased either in land area or floor area."

The property owner of the lot in question said he placed the gravel on his vacant commercial lot in effort to be a good neighbor. It is Staff's opinion that extending the NAPA's parking area does violate the above-mentioned guidelines outlined in the Zoning Regulations.

3. Allowing parking lots to extend past property lines is not sound zoning policy. Shared parking lots without proper surveys and access agreements on file with the City and County can create confusion and potential disputes between neighbors. An example is the parking area at 415 South Metcalf Road. The Louisburg Athletic Center and the Wildcat Vet Clinic both share the same parking lot. See the picture below. The Wildcat Vet Clinic owns the majority of the parking lot and both primary access points to the commercial properties. The Louisburg Athletic Center only owns a limited number of parking stalls closest to their building. Their patrons are required to drive through Wildcat Vet Clinic property to access the gym. This issue should not have been allowed to occur. This situation has been the source of many discussions between property owners in recent years. Conversations include: who pays to maintain the parking lot; who is responsible for the shared dumpster; and who owns the monument sign. Staff has spent countless hours in search of documents outlining shared access agreements. No documents have not been found, which leads staff to believe there is no access agreement. A Planning and Zoning Department ensures that all property access and agreements in the form of a survey, site-plan, and/or in deed are on file prior to any site development. City Staff is doing its job by ensuring that this problem is not replicated between NAPA and MBB, LLC. NAPA's parking lot ends at their property line and as such should not be allowed to extend into the adjacent vacant lot.

Louisburg Athletic Center – 401 South Metcalf Road

Wildcat Vet Clinic – 415 South Metcalf Road



4. There is little evidence that a gravel parking lot has been maintained on this vacant lot for many years. If gravel was previously placed on this vacant lot, it was to facilitate truck deliveries to NAPA Auto Parts Store located on the adjacent lot or perhaps when the back portion was used as a fire station. Both lots are two distinctive and separate legal properties. MBB, LLC states that gravel has been on that lot for decades. The owner referenced structures and businesses that were on the property during the 1960s, '70s and '80s with gravel parking areas. Staff notes that all buildings were removed many years

ago and the property has been left vacant. It is Staff's opinion that any gravel left on this lot has been left abandoned and as such should not be allowed to be reestablished. Staff referenced Section 904, paragraph H in the Zoning Regulations:

*"Abandonment or Discontinuance. When a nonconforming use is discontinued or abandoned, for a period of ninety consecutive days, such use shall not thereafter be re-established or resumed, and any subsequent use or occupancy of such land or buildings shall comply with the regulations of the zoning district in which such land or buildings are located."*

Staff maintains the property and gravel parking lot have been abandoned for a period greater than 90 days and should not be allowed to be added to or enlarged in accordance with the above-mentioned Zoning Regulations. The property owner said there are several gravel parking lots owned by the city that are not being maintained and if he is required to pave or remove his gravel lot the city should do so as well.

It is Staff's opinion the property owner is misinterpreting the Zoning Regulations. Any City-owned gravel parking lots have not been abandoned and have been used continually without interruption.

5. The intent of the Zoning Regulations is not met with the additional of new gravel on this lot? Reference Section 703, paragraph E of the Zoning Regulations.

*"Surfacing. All off-street parking and loading areas, including driveways and aisles, shall be graded and paved with asphalt, concrete or asphaltic concrete. If a use of business expands which has an off-street parking area that is not surfaced with asphalt, concrete, or asphaltic concrete, the entire off-street parking area must be brought into compliance with the surfacing requirements of this sub-section. If an existing legally nonconforming off street parking surface is expanded without the use or building which it serves expanding, the entire legally non-conforming off-street parking area shall be paved with asphalt, concrete or asphaltic concrete."*

6. In the past, Staff has required other property with non-conforming gravel parking areas to remove the gravel and/or hard surface the area or have declined such a request. By allowing this gravel parking lot to exist, other property owners will question current standards and make it difficult for Staff to enforce standards established by the Planning Commission and City Council.