



# City of Bonner Springs

KANSAS

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**Tuesday, August 15, 2023**

200 East Third Street, Bonner Springs, KS 66012

**The meeting is open to the public. Online or phone observation is available but does not enable participation in the meeting.**

**We will follow safety precautions recommended by the Centers for Disease Control and Prevention, the Kansas Department of Health and Environment, and local health officers. Attendees are required to wear masks and observe proper social distancing. If you are exhibiting symptoms of illness, think you may have been exposed to illness or would prefer to listen online please use the instructions below.**

## BOARD OF ZONING APPEALS MEETING - 6:00 PM

### CALL TO ORDER - ROLL CALL

### CONSENT AGENDA

#### 1. Approval of minutes from the May 16, 2023 BZA meeting

- Action Approve, Amend or Deny the minutes as presented.  
Recommendation Staff recommends approval of the minutes as presented.  
Documents:  
1. BZA Minutes 5.16.23 Draft

### UNFINISHED BUSINESS

### NEW BUSINESS

#### 1. PUBLIC HEARING – VARIANCE REQUEST – BZA-03-23 - Consider a request for variance from the required front yard setback along Elmwood Avenue, addressed as 518 N. Nettleton Avenue.

- Action Approve, Amend or Deny the variance request.  
Recommendation Staff recommends a variance be granted from the required front yard setback along Elmwood Avenue. Staff further recommends that the allowable setback be reduced to mirror the existing side yard setback of seven-and-one-half (7 /12') feet.

- Documents:  
1. STAFF REPORT - BZA-03-23 - 518 N. Nettleton Ave Yard Variance

#### 2. PUBLIC HEARING – VARIANCE REQUESTS – BZA-02-23 – Consider A request for variances from the allowed regulations within the C-1; Central Business Zoning District – The applicant is requesting variances to the allowed maximum height, the required minimum parking and the required first floor use as commercial space for 112-120 Oak Street.

- Action Approve, Amend or Deny the requested variance.  
Recommendation Staff recommends the Board of Zoning Appeals approve the requested variance with staff stipulations.

- Documents:  
1. STAFF REPORT - BZA-02-23 - 120 Oak - Multiple Variances  
2. MIH Memo  
3. 110-120 Oak Street Renderings  
4. Gound level visuals

## Memorandum

Date: August 15, 2023  
To: Mayor and City Council  
From: Mark Lee

**Subject: Approval of minutes from the May 16, 2023 BZA meeting**

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**Recommendation:** Staff recommends approval of the minutes as presented.

**Action:** Approve, Amend or Deny the minutes as presented.

**Background:** Minutes are attached

**Discussion:** NA

**Financial Impact:** NA

**MINUTES – 5.16.23 – DRAFT**  
**BONNER SPRINGS BOARD OF ZONING APPEALS MEETING**  
Tuesday, May 16, 2023 – Regular Meeting – 7:00 p.m.

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1. Meeting **CALLED TO ORDER** by Chair Gebauer at 7:00 p.m.

**ROLL CALL**

Board of Zoning Appeals Members Present: Lloyd Mesmer -Chair; Sherri Neff; Larry Clark - Vice-chair; Nick Perica  
Absent – Paul Zeps  
Quorum Established  
Staff Present: Mark Lee, Community Development Director

2. **CONSENT AGENDA**

**Item #2 – Approval of Minutes of November 15, 2022 Board of Zoning Appeals meeting**

Chair Mesmer introduced the Consent Agenda Item #2. Board members were awarded time to comment or ask questions.

Motion to **APPROVE** the Consent Agenda was made by Board member Neff and seconded by Board member Perica.

Chair Mesmer called for a vote.

AYE – Mesmer, Neff, Clark, Perica  
NAY – None

**MOTION PASSED 4 – 0**

**UNFINISHED BUSINESS**

None

**NEW BUSINESS**

**4. PUBLIC HEARING - BZA-01-23 Variance request – Consider a request for variance** from the allowed sign regulations; the applicant is requesting a variance to the sign regulations as written to allow for the installation of a wall sign at the Jerry Lee Jarrett Life Center (143 W. Insley Avenue).

Chair Mesmer called for a motion to **OPEN** the Public Hearing – Vice-Chair Clark mad a motion to **OPEN**, Board Member Perica **SECONDED**. Public Hearing was opened at 7:03pm.

Chair Mesmer introduced Item #4 and asked for staff’s report.

Staff introduced the item, explained the location of the project, its operation under a Special Use Permit and the request itself. Staff further explained that area in which this request was being made and the requirements of the sign regulations for the specific zoning district.

Chair Mesmer explained to the audience that they would be given time to speak in favor of the request. They would be required to provide their name and address for the record.

**Marti Palmer with View Sign and Light** – sign company for the Jerry Lee Jarrett Life Center – 10935 Kaw Drive – She spoke of the reasoning behind the application for a wall sign and the cost associated with a monument style sign vs. the wall sign and how this cost would place a burden upon the center. They were wanting to place the sign above ground level and on the building in hopes of better wayfinding for the individuals going to the center making it easier to locate. She spoke of the materials used in construction of the sign and provided an example.

Board Member Clark asked if the primary consideration was cost. Ms. Palmer stated that was one of the factors but also being able to place the sign high enough up that individuals could see it.

Board Member Neff asked what the potential cost difference would be; Ms. Palmer stated it could be several thousands of dollars.

**Melva Jarrett** – stated she was here this evening to request a variance for the sign. She further stated she would like to read some earlier email correspondences. She proceeded to read emails between staff and Ms. Jarrett, the emails were in response to the Special Use Permit request they had previously received to operate the Jerry Lee Jarrett Life Center. She further asked if the special use they were given expired or why were they needing to go through this process. She proceeded to list some churches that had monument signs and others that had both wall signs and a monument sign. She went on to state that the first of every month they are providing meals to over 100 families that come to the center.

Chair Mesmer stated to Ms. Jarrett that he believed she had two questions at the beginning of her statement and he wanted to make sure they were answered. Chair Mesmer asked staff about the length of time that their Special Use Permit was approved for. He further stated that from what he understood, as long as the building was used for this purpose and kept in good shape that this use could continue on forever, staff concurred. Chair Mesmer asked staff, if the sign had been shown during the Special Use Permit portion how would it have been addressed. Staff stated it would have been addressed at that time and possibly gone through the variance process then. Staff stated that no matter when it was shown, it would have needed a variance.

Ms. Jarrett stated that when the sign contractor came in to apply, staff stated they hated to be the bearer of bad news but this sign is not allowed. The contractor asked staff is there was a variance procedure, staff stated not for signs.

**Jordan Mackey – 120 Emerson Ave** – Mr. Mackey stated his uncle is the contractor for this project and that he and all of the other contractors involved are doing the project at cost. He stated that there are five different churches within a 1000-yard radius and they followed the regulations in making them appear as homes. He further stated that the majority of open ground around this area are owned by churches. Mr. Mackey stated that he had not heard of any complaints from any surrounding neighbors and in fact members of the surrounding churches are here this evening in support of the request. Mr. Mackey spoke of the achievements of Mr. Jarrett and how this would be an applicable way to honor such a person.

**Mayzell Hickman – 13700 Elmwood Ave** – She spoke of the time she has spent in Bonner Springs and her association with Olivet Church of God and Christ. She spoke of the fact they used to own the parcel that is now the Jerry Lee Jarrett Life Center and how they sold it to Christ First Ministries so they could construct the center. She explained that there was difficulty in hearing the Board. She spoke of how the

center provides for many, many families, both those from within Bonner Springs and outside of Bonner Springs. She spoke of how the church has aided and helped the community through different efforts. She asked if the Mayor had any input and what he might have to say about this matter. She stated she was asking a question and wanted to know if she would receive an answer. Chair Mesmer stated that the Board would vote on the matter sooner than later and that the vote would be based upon the Board Members opinions based on the facts and evidence provided by staff and that the Board was to be neutral to all parties. Chair Mesmer further stated that the Board was not denying them a sign, but that their request went against the Ordinances of the City. Chair Mesmer stated that if by chance the Board denied their request, they would be required to construct a monument if they so choose or go without a sign all together.

**Olea Jarrett – 323 Neconi Ave** – She stated that on the application they submitted for the variance, if the five questions could be answered then the variance would be approved. She further stated the sign was not initially thought of during the construction phase.

**Joshua Terry – 327 Neconi Ave** – Spoke of the kindness that Mr. Jarrett had shown him prior to his passing, and how he felt Mr. Jarrett would be fighting very hard to have his name placed upon that building. He further spoke of some of the other buildings within close proximity with wall signage (they are in a different zoning district).

Chair Mesmer asked if there was any one else that would like to speak in favor of the variance request, being none, he asked if there was any one that would like to speak in opposition. Being none, Chair Mesmer stated that the Board had heard lots of testimony in favor of the request and asked that if any person had new information or would like to add something not already heard they would be allowed.

**LeAnn De Tar Newbert - 818 Lake Forest Dr** – Stated she was an Associate Pastor at First Christian Church and spoke of how the church and the Jerry lee Jarrett Life Center work together in the community. She further stated they had no objection to the request and preferred the wall sign as opposed to a monument sign.

Chair Mesmer spoke to the fact that the Board of Zoning Appeals was not the body that put these regulations into writing and that their job was to determine if they should be allowed or not. Chair Mesmer asked if there were any other individuals that wished to speak in favor or against the requested variance, being none Chair Mesmer closed the Public Hearing at 7:34pm.

Chair Mesmer asked if any of the Board Members had any questions of the applicant or staff.

Vice-Chair Clark asked staff about existing churches having signs on their buildings. Staff stated they did not have exact knowledge of which buildings they were referring to but staff did mention the fact that there are a few different zoning categories, including MX – Mixed Use, in this general area and some of them do allow for wall signs, while other zoning districts do not.

Board Member Neff asked if the Special Use Permit we had issued previously fell under or act as an extension of the church. Staff stated that was the way they presented it initially since it was acting as a community center/hall for the church. Staff stated the only other option the center had was to rezone to a commercial zoning, which would be spot zoning within an established neighborhood.

Staff explained that it was essentially the residential zoning that was holding them back from placing a sign upon the wall. Staff stated that in residential districts, especially buildings that were granted Special Use Permits, the intent is for them to appear residential in nature and present themselves as a commercial business.

Chair Mesmer asked when the Planning Commission allowed the building to be built, it was under the guise that it would appear as though it was a residence, is that correct? Staff stated yes, that was indeed the understanding. Chair Mesmer asked if the building had come forward looking more like a commercial building, would that have been allowed. Staff stated that would have come down to the Site and Landscape Plan Review portion and would have been required to blend into the surrounding area. Chair Mesmer stated, then in reality we are not addressing a sign placed upon a commercial building but instead addressing a sign placed upon a private residence, staff stated to a certain aspect yes that was the case.

Chair Mesmer asked if there were any other questions of staff or the applicant, being none Chair Mesmer called for a motion.

Vice-Chair Clark stated that he had given this topic a lot of thought since they received their packet of information. He stated that as a general statement, it is the responsibility of city staff to uphold the regulations and laws as set forth by the city. It is up to city staff to review proposals against those laws and regulations to ensure they meet certain criteria and abide by those laws and regulations. He stated this is why he thought staff had recommended denial of the variance request. He went on to speak of that a variance, is just that, a deviation from what would be considered normal. He further stated that he was present when the facility opened and he had the privilege of meeting Mr. Jarrett prior to his passing. He further stated that the work the church and the center were doing was an honorable thing and something that the community needed. Vice-Chair Clark spoke of the fact how the regulations should be applied consistently throughout the area but did also understand the need for visibility of this center.

Vice-Chair Clark finished his statement by making a motion to **APPROVE** the variance allowing for a wall sign to be place on the Jerry Lee Jarrett Life Center, Board Member Perica **SECONDED**.

With that, Chair Mesmer called for a roll call vote.

AYE – Perica, Neff, Clark

NAY – Mesmer

**MOTION PASSED 3 - 1**

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## **5. Agenda Item # 5 – Adjournment**

Chair Mesmer adjourned the meeting at 7:34pm

## Memorandum

Date: August 15, 2023  
To: Mayor and City Council  
From: Mark Lee

**Subject: PUBLIC HEARING – VARIANCE REQUEST – BZA-03-23 - Consider a request for variance from the required front yard setback along Elmwood Avenue, addressed as 518 N. Nettleton Avenue.**

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**Recommendation:** Staff recommends a variance be granted from the required front yard setback along Elmwood Avenue. Staff further recommends that the allowable setback be reduced to mirror the existing side yard setback of seven-and-one-half (7 /12') feet.

**Action:** Approve, Amend or Deny the variance request.

**Background:** The applicant is requesting a variance from the required front yard setback along the unconstructed, but platted, Elmwood Avenue.

In May and again in June of 2023, the applicant's request to have the platted right of way vacated and the property subsequently turned over to the adjacent property owners came in front of the Planning Commission. The request was tabled from the May meeting to the June meeting after one property owner refused to sign the applicant's petition. Staff reached out prior to the June meeting in order to gain insight from our City Attorney's office regarding this individual's refusal to sign and how this could affect the applicant's request.

With the assistance of the City Attorney; Staff determined that this one individual could in fact halt the applicant's request. With that decided Staff chose to provide the applicant a different route.

The applicant's initial request to vacate right of way was in order to construct a new home upon a lot with minimum road frontage. The lot frontage currently measures sixty (60') feet. With the required setbacks of twenty-five (25') feet for the front yard and seven-and-one-half (7 ½') feet for side yards; the effective buildable area is reduced to twenty-seven- and one-half feet (27 ½'). Through the requirements of the Zoning Ordinances; all lots that front upon two streets (corner lot) shall be required to have front yard setbacks on both street facing sides. Even though Elmwood Avenue is not constructed as a street, it is legally platted as such and therefore 518 N. Nettleton must comply with the setbacks.

By allowing a variance to the required front yard setback along Elmwood Avenue, the effective buildable area is increased to forty-five (45') feet, allowing for the construction of a new single-family dwelling.

**Discussion:** Staff report is included within the packet.

**Financial Impact:** NA

City of Bonner Springs  
Board of Zoning Appeals  
Agenda Item Cover Sheet

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Agenda Item No. 4

BZA-03-23

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**Topic:** Consider a request for variance from the required front yard setback along Elmwood Avenue, addressed as 518 N. Nettleton Avenue.

**Narrative:** The applicant is requesting a variance from the required front yard setback along the unconstructed, but platted, Elmwood Avenue.

In May and again in June of 2023, the applicant's request to have the platted right of way vacated and the property subsequently turned over to the adjacent property owners came in front of the Planning Commission. The request was tabled from the May meeting to the June meeting after one property owner refused to sign the applicant's petition. Staff reached out prior to the June meeting in order to gain insight from our City Attorney's office regarding this individual's refusal to sign and how this could affect the applicant's request.

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By allowing a variance to the required front yard setback along Elmwood Avenue, the effective buildable area is increased to forty-five (45') feet, allowing for the construction of a new single-family dwelling.

**Presented by:** Mark Lee – Community Development Director

**Staff Recommendation:** Staff recommends a variance be granted from the required front yard setback along Elmwood Avenue. Staff further recommends that the allowable setback be reduced to mirror the existing side yard setback of seven-and-one-half (7 /12') feet.

**Attachments:**

Staff Report (4pgs)

Aerial image (included in report)

**STAFF REPORT**

**Meeting Date:** August 18, 2023

**Report Date:** July 18, 2023

**Subject:** Consider a request for variance from the required front yard setback along Elmwood Avenue, addressed as 518 N. Nettleton Avenue.

**File Number:** BZA-03-23

**GENERAL INFORMATION**

**Applicant:** Guy Tiner  
**Address:** 924 S. 132<sup>nd</sup> Street  
Bonner Springs, KS 66012

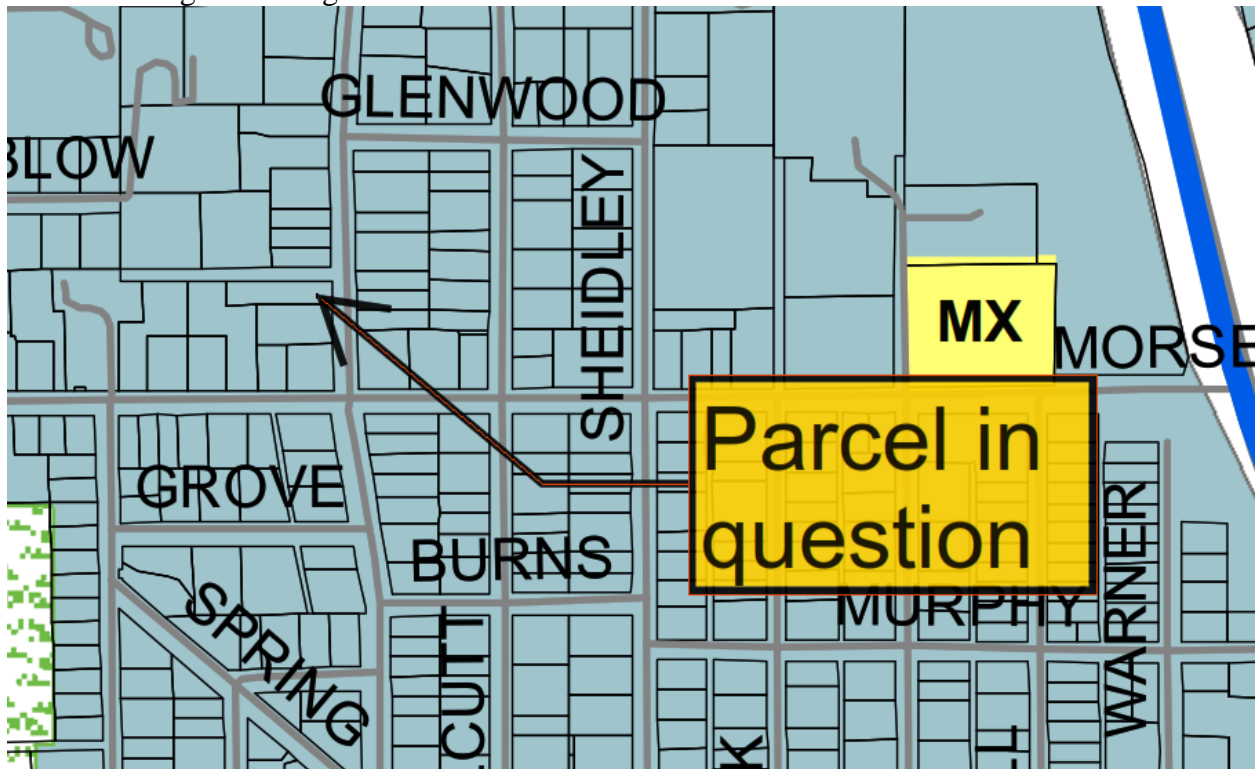
**STAFF ANALYSIS**

**Site Characteristics**

**Location:** 518 N. Nettleton Avenue  
**Area of Property:** 15,739 square feet; 0.361 acres  
**Zoning:** R-1; Single-Family Residential  
**Future Land Use Map:** Low-Density Residential

**Adjacent Property:**

All zoning within the immediate area is R-1; Single-Family Residential District with the majority of surrounding uses being residential in nature.





### **Narrative/Background**

The applicant is requesting a variance from the required front yard setback along the unconstructed, but platted, Elmwood Avenue.

In May and again in June of 2023, the applicant's request to have the platted right of way vacated and the property subsequently turned over to the adjacent property owners came in front of the Planning Commission. The request was tabled from the May meeting to the June meeting after one property owner refused to sign the applicant's petition. Staff reached out prior to the June meeting in order to gain insight from our City Attorney's office regarding this individual's refusal to sign and how this could affect the applicant's request.

With the assistance of the City Attorney; Staff determined that this one individual could in fact halt the applicant's request. With that decided Staff chose to provide the applicant a different route.

The applicant's initial request to vacate right of way was in order to construct a new home upon a lot with minimum road frontage. The lot frontage currently measures sixty (60') feet. With the required setbacks of twenty-five (25') feet for the front yard and seven-and-one-half (7 ½') feet for side yards; the effective buildable area is reduced to twenty-seven- and one-half feet (27 ½'). Through the requirements of the Zoning Ordinances; all lots that front upon two streets (corner lot) shall be required to have front yard setbacks on both street facing sides. Even though Elmwood Avenue is not constructed as a street, it is legally platted as such and therefore 518 N. Nettleton must comply with the setbacks.

By allowing a variance to the required front yard setback along Elmwood Avenue, the effective buildable area is increased to forty-five (45') feet, allowing for the construction of a new single-family dwelling.

### **Conformance with the Zoning Ordinance**

Article XXVI states: *When deemed necessary by the Board of Zoning Appeals, the Board may authorize in specific cases a variance from the specific terms of these regulations which will not be contrary to the public interest and where, owing to special conditions, a literal enforcement of the provisions of these regulations will, in an individual case, result in unnecessary hardship, and provided the spirit of these regulations shall be observed, public safety and welfare secured, and substantial justice done. Such variances shall not permit any use not permitted by the zoning regulations in such district. (Revised, Ordinance No. 1630)*

*A variance may be granted in each case, upon finding by the board that all of the following conditions have been met:*

**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 zoning district; and is not created by an action or actions of the property owner or the applicant.**

With the failure if the applicant to successfully have the right of way vacated, the condition is unique to the property. The width of the platted lot does not allow adequate room to construct a new single-family home. These actions are not created by the applicant.

**2. The granting of the variance request will or will not adversely affect the rights of the adjacent property owners or residents.**

The granting of the variance shall not affect the rights of adjacent property owners. The right of way that is in existence will remain. The variance if granted will not be visible without the construction of Elmwood Avenue which will more than likely never occur as it leads to a very large ravine and no homes beyond that.

**3. That the strict application of the provisions of the Zoning Ordinance of which variance is requested will constitute unnecessary hardship upon the property owner represented in the application.**

Staff finds that an unnecessary hardship shall occur if the regulations are upheld as written. With the setback requirements of the Zoning District, the lot width does not allow for construction of a single-family dwelling upon the lot which the applicant owns.

**4. That the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity, the general welfare or the harmonious development of the city.**

Granting the variance will not directly affect the health, safety, morals or general welfare of the public in any adverse way currently.

**5. That granting of the variance desired will not be opposed to the general spirit and intent of the Zoning Ordinance.**

Granting the variance will not be opposed to the general spirit and intent of the Zoning Ordinance.

**Conformance with the Future Land Use Plan:**

The Future Land Use Plan identifies this area as “low density residential”. The Future Land Use Plan does not mention nor pertain to yard setbacks. The majority of immediate area is indicated as developing in a residential manner.

**Traffic Impact:**

The proposed variance request, whether approved or denied, will have no impact on the current street network.

**Drainage Impact:**

The proposed variance request, whether approved or denied, will have no impact on drainage.

**STAFF RECOMMENDATION**

Staff recommends the variance be approved as follows – The front yard setback variance shall only pertain to that yard frontage abutting the platted right of way for Elmwood Avenue and shall not pertain to any other existing yard setbacks as written in the Zoning Ordinance. The allowed setback on Elmwood Avenue shall be seven and one-half feet (7 ½’).

**BOARD OPTIONS**

- 1. Approve the variance request, with or without conditions/changes.**
- 2. Deny the variance request**
- 3. Continue the Public Hearing to another date, date, time, and/or place**

## Memorandum

Date: August 15, 2023  
To: Mayor and City Council  
From: Mark Lee

**Subject: PUBLIC HEARING – VARIANCE REQUESTS – BZA-02-23 – Consider A request for variances from the allowed regulations within the C-1; Central Business Zoning District – The applicant is requesting variances to the allowed maximum height, the required minimum parking and the required first floor use as commercial space for 112-120 Oak Street.**

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**Recommendation:** Staff recommends the Board of Zoning Appeals approve the requested variance with staff stipulations.

**Action:** Approve, Amend or Deny the requested variance.

**Background:** The applicant is requesting multiple variances to the Zoning Ordinance. These variance requests are to coincide with the redevelopment of 112-120 Oak, the site of the old Thriftway grocery store, and previous businesses that were located at the site over the years.

Recently the Governing Body voted to condemn the building, the owners have since had it demolished and have proposed redevelopment of the site. The proposed redevelopment is a 100-unit, four-story apartment building.

In May 2022 the Governing Body passed a Memorandum of Understanding, a resolution in support of the applicants' request for a Moderate-Income Housing Program application through the State of Kansas, and assisted in preparing and applying for a Reinvestment Housing Incentive District (RHID).

The anticipated investment in the development totals \$17,000,000, and will be funded through the MIH program, developer equity, and private lender financing to the developer. The developer also hopes to be granted a Reinvestment Housing Incentive District (RHID, formerly Rural Housing Incentive District). The MIH application lists the RHID as another funding source. However, any RHID would need to be applied for separately from this program and would be required to follow the RHID process of approval. The City would be the project applicant for the MIH program, but no monetary match is required for the City beyond staff time.

Each variance request will be addressed separately within Staff's report to the Board. The variance requests being brought forward for consideration this evening are as follows:

1. **Request #1:** A variance on the height and story requirements within the C-1; Central Business District. The request is to allow for four (4) stories vs. the three (3) stories allowed.
  
1. **Request #2:** A variance from the required parking regulations within the C-1 Zoning District. Required two (2) spaces per dwelling unit; request is for one (1) space per

dwelling unit.

1. **Request #3:** A variance from the requirement of the C-1, Central Business District that allows for second story apartments only; the request is to allow for 10 +/-apartment units to be located along the ground floor fronting Oak Street and Front Street with limited commercial useage.

Each variance request shall be addressed individually.

**Discussion:** Staff report is included within the packet.

**Financial Impact:** NA

City of Bonner Springs  
Board of Zoning Appeals  
Agenda Item Cover Sheet

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**Agenda Item No. 5**

BZA-02-23

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**Topic:** Consider a request for variances from the allowed regulations within the C-1; Central Business Zoning District – The applicant is requesting variances to the allowed maximum height, the required minimum parking and the required first floor use as commercial space at 120 Oak Street.

**Narrative:** The applicant is requesting multiple variances to the Zoning Ordinance, these variance requests are to coincide with the redevelopment of 112-120 Oak, the site of the old Thriftway grocery store, and previous businesses that were located at the site over the years.

Recently the Governing Body voted to condemn the building, the owners have since had it demolished and have proposed redevelopment of the site. The proposed redevelopment is a 100-unit, four story apartment building.

In May 2022 the Governing Body passed a Memorandum of Understanding, a resolution in support of the applicants request for a Moderate-Income Housing Program application through the State of Kansas, and assisted in preparing and applying for a Reinvestment Housing Incentive District (RHID).

The anticipated investment in the development totals \$17,000,000, and will be funded through the MIH program, developer equity, and private lender financing to the developer. The developer also hopes to be granted a Reinvestment Housing Incentive District (RHID, formerly Rural Housing Incentive District). The MIH application lists the RHID as another funding source. However, any RHID would need to be applied for separately from this program and would be required to follow the RHID process of approval. The City would be the project applicant for the MIH program, but no monetary match is required for the City beyond staff time.

Each variance request will be addressed separately within Staff's report to the Board. The variance requests being brought forward for consideration this evening are as follows:

1. **Request #1:** A variance on the height and story requirements within the C-1; Central Business District. The request is to allow for four (4) stories vs. the three (3) stories allowed.
2. **Request #2:** A variance from the required parking regulations within the C-1 Zoning District. Required two (2) spaces per dwelling unit; request is for one (1) space per dwelling unit.
3. **Request #3:** A variance from the requirement of the C-1, Central Business District that allows for second story apartments only; the request is to allow for 10 +/-apartment units to be located along the ground floor fronting Oak Street and Front Street with limited commercial useage.

Each variance request shall be addressed individually.

**Presented by:** Mark Lee – Community Development Director

**Staff Recommendation:** Staff recommendations are located at the end of Staff's report

**Attachments:**

Staff Report (8pgs)

Aerial image (included in report)

Council Memorandum regarding Moderate Income Housing Program (2pgs)

Site Renderings (2pgs)

Ground level images from Elm Street (11pgs)

**STAFF REPORT**

**Meeting Date:** August 15, 2023

**Report Date:** July 26, 2023 through August 8, 2023

**Subject:** Consider a request for variances from the allowed regulations within the C-1; Central Business Zoning District – The applicant is requesting variances to the allowed (1) maximum height, (2) the required minimum parking and (3) the required first floor use as commercial space

**File Number:** BZA-02-23

**GENERAL INFORMATION**

**Applicant:** Chad Schimke  
**Address:** PO Box 440  
Bonner Springs, KS 66012

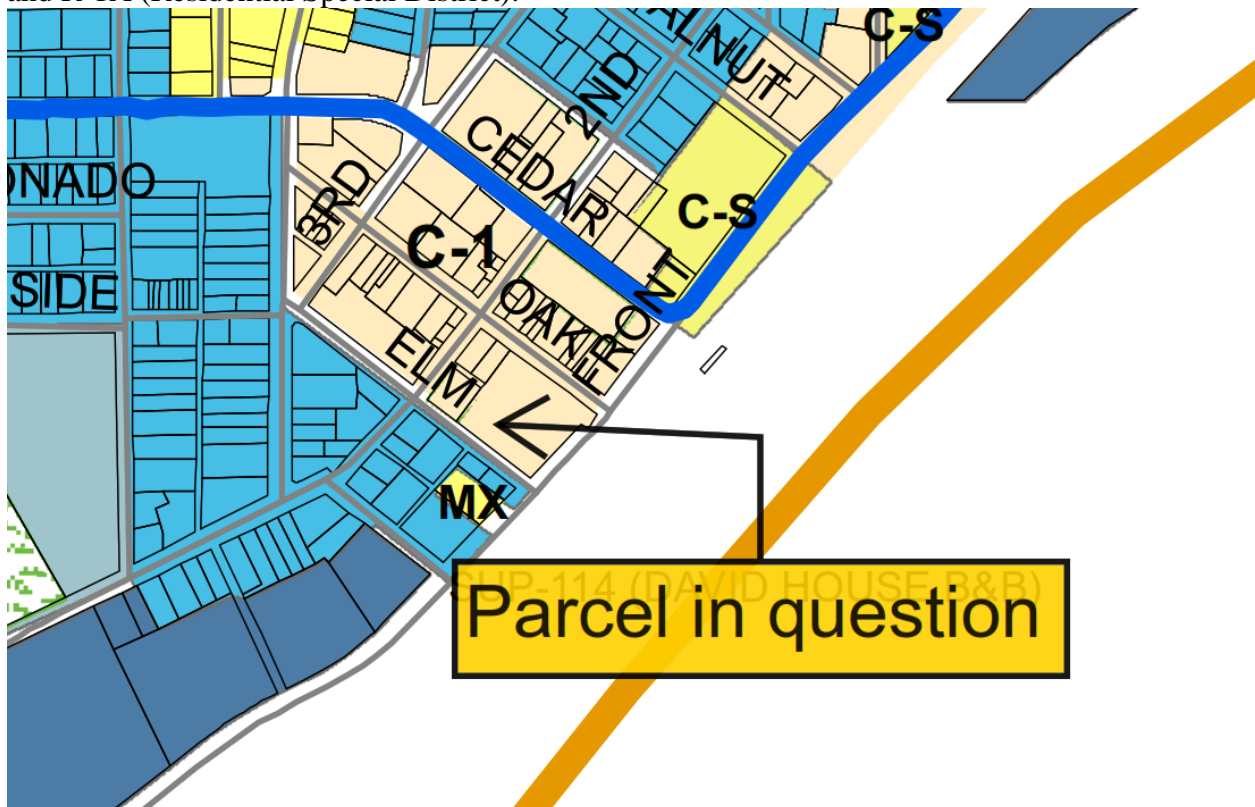
**STAFF ANALYSIS**

**Site Characteristics**

**Location:** 112-120 Oak Street (Corner of Oak and Front Streets)  
**Area of Property:** 83,776 square feet; 1.923 acres  
**Zoning:** C-1; Central Business District  
**Future Land Use Map:** Commercial

**Adjacent Property:**

Two major zoning categories encompass the parcel in question, C-1 (Central Business District) and R-1A (Residential Special District).





### **Narrative/Background**

The applicant is requesting multiple variances to the Zoning Ordinance, these variance requests are to coincide with the redevelopment of 112-120 Oak, the site of the old Thriftway grocery store, and other businesses that were located at the site over the years.

Recently the Governing Body voted to condemn the building, the owners have since had it demolished and have proposed redevelopment of the site. The proposed redevelopment is a 100-unit, four story apartment building with limited commercial space on the ground floor.

In May 2022 the Governing Body passed a Memorandum of Understanding, a resolution in support of the applicants request for a Moderate-Income Housing Program application through the State of Kansas, and assisted in preparing and applying for a Reinvestment Housing Incentive District (RHID).

The anticipated investment in the development totals \$17,000,000, and will be funded through the MIH program, developer equity, and private lender financing to the developer. The developer also hopes to be granted a Reinvestment Housing Incentive District (RHID, formerly Rural Housing Incentive District) at the State level. The MIH application lists the RHID as another funding source. However, any RHID would need to be applied for separately from this program and would be required to follow the RHID process of approval. The City would be the project applicant for the MIH program, but no monetary match is required for the City beyond staff time.

Each variance request will be addressed separately within Staff's report to the Board. The variance requests being brought forward for consideration this evening are as follows:

1. **Request #1:** A variance on the height and story requirements within the C-1; Central Business District. The request is to allow for four (4) stories vs. the three (3) stories allowed.
2. **Request #2:** A variance from the required parking regulations within the C-1 Zoning District. Required two (2) spaces per dwelling unit; request is for one (1) space per dwelling unit.
3. **Request #3:** A variance from the requirement of the C-1, Central Business District that allows for second story apartment only; the request is to allow for 10 +/-apartment units to be located along the ground floor fronting Oak Street and Front Street.

### **Conformance with the Zoning Ordinance**

Article XXVI states: *When deemed necessary by the Board of Zoning Appeals, the Board may authorize in specific cases a variance from the specific terms of these regulations which will not be contrary to the public interest and where, owing to special conditions, a literal enforcement of the provisions of these regulations will, in an individual case, result in unnecessary hardship, and provided the spirit of these regulations shall be observed, public safety and welfare secured, and substantial justice done. Such variances shall not permit any use not permitted by the zoning regulations in such district. (Revised, Ordinance No. 1630)*

*The questions listed below are required by K.S.A. 12-759; this Statute goes on to state: A request for a variance may be granted in such case, upon a finding by the board that all of the following conditions have been met.*

The questions below, in bold type, are required by State Statute when hearing variance requests; the applicant's responses are below them in italics, with any Staff comments following.

**Request #1:** A variance on the height and story requirements within the C-1; Central Business District. The request is to allow for four (4) stories vs. the three (3) stories allowed.

**1(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 zoning district; and is not created by an action or actions of the property owner or the applicant.**

*We are requesting a four-story variance for our proposed apartment building at 120 Oak St. We can only make the pro forma work with a minimum number of 100 units. In order to do this, we will need to be four story.*

The C-1 (Central Business District) zoning allows for a maximum height of three (3) stories or forty-five (45) feet. By literal definition the variance does not arise from any unique condition not ordinarily found within the same zoning district. The request is created by actions of the property owner. With that said though staff realizes that most modern multi-family residences are a minimum of three stories, with some well exceeding that. With Oak Street traversing a hill from northwest to southeast and the proposed building being at the bottom of said hill, the addition of a fourth story would not appear to overpower the downtown skyline. For the most part, due to the lay of the land, the building would appear as though it was two-story from the majority of vantage points looking towards the south east. Only from Oak, Front and the intersection at Elm and Front would the building be notic four stories.

**2(1). The granting of the variance request will or will not adversely affect the rights of the adjacent property owners or residents.**

*I can only foresee increased property values and something much more desirable for the surrounding homes to look at. I can't possibly see any way possible this would create any adverse effects.*

While the downtown businesses and surrounding area would see a significant increase in patronage; homes in the 100 block of Elm Street would see the most significant impact. With the increase in height, "views" from these homes would be significantly impacted. With this said though, staff understands that the "views" these homes had in the past was of a dilapidated structure and the roof of said structure. The construction of these units would provide a much more improved scenery than previously allowed. For the majority of the homes on Elm Street the structure would appear as though it was two (2) stories. From the intersection of Elm and 2<sup>nd</sup> Streets there is an elevation change of six (6') feet, before dropping twenty-three (23') down to Front Street. See included Google Street View images.

**3(1). That the strict application of the provisions of the Zoning Ordinance of which variance is requested will constitute unnecessary hardship upon the property owner represented in the application.**

*If the zoning appeal is denied in any of the three areas above, we will not be able to make this project work. The numbers simply won't work and the project will not support itself.*

Staff finds that an unnecessary hardship may occur if the regulations are upheld as written. The applicant has done their due diligence in vetting the site and understanding what they will need in order to make the project feasible from the developers' end. The applicant was required to demolish the dilapidated structure that was on-site and has made a significant investment in the property to perform said demolition and proposed redevelopment of the site.

**4(1). That the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity, the general welfare or the harmonious development of the city.**

*All of the above listed should improve and the quality of life, general welfare, convenience would surely increase with the walkability and increased commerce to the city.*

Granting the variance will not directly affect the health, safety, morals or general welfare of the public in any adverse way currently. The requested increase in height will only partially block any "views" that the neighboring property owners would or did have. Creating a more vibrant downtown with the addition of potentially 150 +/- residents, should in fact increase the general welfare and harmonious development of city. The addition of residents should increase the need for businesses within the area as well as provide a large boost for existing businesses within downtown.

**5(1). That granting of the variance desired will not be opposed to the general spirit and intent of the Zoning Ordinance.**

*The general intent of the ordinance would not be compromised in any way nor the spirit in which it was created. We are simply asking for slight deviation to accommodate the needed number of units (100) and slightly fewer parking spots to accommodate the size lot we have available to work with. The benefits will far outweigh the variances requested.*

Granting the variance would not be opposed to the general spirit and intent of the Zoning Ordinance. The goal of zoning regulations is to structure municipalities efficiently, zoning regulations determine which types of properties can coexist in different areas of the city. Providing a walkable community within downtown would be a means of providing efficient development.

**Request #2:** A variance from the required parking regulations within the C-1 Zoning District. Required two (2) spaces per dwelling unit; request is for one (1) space per dwelling unit.

**1(2). 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 zoning district; and is not created by an action or actions of the property owner or the applicant.**

*The requested increase in height allows for more units, this creates a need of variance for the required number of parking stalls per city mandate. Many other cities, Olathe, Shawnee, Lenexa all have 4 and 5 story apartments. Downtown Olathe just allowed Milhaus to build a five-story apartment building just blocks from their new courthouse. Olathe required NO parking and offered their public parking garage as an option for their residents to use because they saw the benefit of density and commerce. We are not asking for "no" parking we are simply asking to allow us to have the maximum number of stalls that we can fit as an acceptable allowance. We currently have 93 stalls available on the property without needing any street or public parking use. There are two public lots available within a block of our property as well as ample street parking if needed for the residents*

The current parking regulations as set forth in the Zoning Ordinance require two (2) spaces per dwelling unit for a required total of 200 spaces, including accessible spaces. The applicant is requesting 1.03 per dwelling for a total of 103 spaces. Some of these spaces are created by reconstructing/reconfiguring portions of Elm and Oak Street. This would consist of removing the parallel parking and providing angled parking in its place. While there are public parking lots available nearby, these are completely utilized during special events such as Tiblow Days or City band Concert evenings. When these lots are closed to public use, residents would be very limited to parking availability. When cross-referencing other municipalities, the least amount of parking required staff could locate was from Kansas City, Kansas at 1.12 per dwelling unit. The City of Lawrence requires 1 per bedroom plus 1 per every 10 units for visitors. Staff has attempted to determine what a second story parking facility accessed off of Elm Street would gain in additional parking, it appears as though potentially 35 to 45 spaces could be achieved. RHID funding could potentially be utilized in this type of situation.

**2(2). The granting of the variance request will or will not adversely affect the rights of the adjacent property owners or residents.**

*I can only foresee increased property values and something much more desirable for the surrounding homes to look at. I can't possibly see any way possible this would create any adverse effects.*

The increase in traffic and limited parking would adversely affect all existing residents within the general area and potentially businesses within downtown if not adequately provided. It would though on the other hand provide a huge economic boost to downtown businesses with foot traffic alone.

**3(2). That the strict application of the provisions of the Zoning Ordinance of which variance is requested will constitute unnecessary hardship upon the property owner represented in the application.**

*If the zoning appeal is denied in any of the three areas above, we will not be able to make this project work. The numbers simply won't work and the project will not support itself.*

Staff finds that an unnecessary hardship may occur if the regulations are upheld as written. The applicant has done their due diligence in vetting the site and knowing what they will need in order to make the project feasible from the developer end. The applicant was made to demolish the dilapidated structure that was on-site and has made a significant investment in the property

to perform said demolition. Requiring the two (2) spaces per dwelling unit as written within the Zoning Ordinance would render the project futile as parking could not be met.

**4(2). That the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity, the general welfare or the harmonious development of the city.**

*All of the above listed should improve and the quality of life, general welfare, convenience would surely increase with the walkability and increased commerce to the city.*

The requested variance for parking could potentially impact the convenience and safety of the surrounding public, with Elm Street allowing parking on either side of the street, the residents within the 100 block of Elm may be forced to park away from the homes, or have individuals blocking driveways, etc. While this can still happen today, the chances are less likely to happen with the amount of current traffic.

**5(2). That granting of the variance desired will not be opposed to the general spirit and intent of the Zoning Ordinance.**

*The general intent of the ordinance would not be compromised in any way nor the spirit in which it was created. We are simply asking for slight deviation to accommodate the needed number of units (100) and slightly fewer parking spots to accommodate the size lot we have available to work with. The benefits will far outweigh the variances requested.*

Granting the variance for a reduction in parking would be opposed to the intent of the Zoning Ordinance. While our parking regulations may be out of date with current trends, the requested reduction in parking would create an issue that more than likely would only increase over time and conflict with current businesses and events. Staff has looked at surrounding communities and came to the conclusion that allowing 1 space per unit for studio and one-bedroom units and 1.5 spaces per two-bedroom plus spaces for visitor's is fairly common throughout the metro. This would mean the proposed reduction would allow for 118 to 120 spaces versus the required 200.

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**Request #3:** A variance from the requirement of the C-1, Central Business District that allows for second story apartment only; the request is to allow for 10 +/-apartment units to be located along the ground floor fronting Oak Street and Front Street.

**1(3). 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 zoning district; and is not created by an action or actions of the property owner or the applicant.**

*We can only make the pro forma work with a minimum number of 100 units. In order to do this, we will need to be four story with limited commercial on the ground floor.* Staff added the underlined portion, it was not included in the application but in discussions, this is what was expressed by the developer.

The C-1 (Central Business District) zoning regulations state permitted uses shall be for the retailing of goods and services, public and semipublic uses, and second story apartments are permitted. The majority of buildings located within the C-1 district have apartments located on the upper stories above commercial spaces; those that do not contain retail or are vacant. The request does not arise from a condition unique to the property other than from a cost-effective development stand-point. Staff does though realize that a large influx of moderate-income residents will only provide a much welcome boost to the existing downtown businesses, it will more than likely create the need for more businesses as well, potentially spurring more development along Front Street and possibly Oak.

**2(3). The granting of the variance request will or will not adversely affect the rights of the adjacent property owners or residents.**

*I can only foresee increased property values and something much more desirable for the surrounding homes to look at. I can't possibly see any way possible this would create any adverse effects.*

Granting the variance for limited commercial space would not affect the rights of adjacent property owners. It would limit the potential for commercial growth within the proposed site though. On the opposite end, it would be a beneficial boost to our existing downtown commercial district.

**3(3). That the strict application of the provisions of the Zoning Ordinance of which variance is requested will constitute unnecessary hardship upon the property owner represented in the application.**

*If the zoning appeal is denied in any of the three areas above, we will not be able to make this project work. The numbers simply won't work and the project will not support itself.*

Staff finds that an unnecessary hardship may occur if the regulations are upheld as written. The applicant has done their due diligence in vetting the site and knowing what they will need in order to make the project feasible from the developer end. The applicant was made to demolish the dilapidated structure that was on-site and has made a significant investment in the property to perform said demolition. Staff understands that the commercial business industry fluctuates more drastically than the residential market and in order to make their project work they must include more residential than commercial.

**4(3). That the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity, the general welfare or the harmonious development of the city.**

*All of the above listed should improve and the quality of life, general welfare, convenience would surely increase with the walkability and increased commerce to the city.*

The requested variance for limited commercial space will not adversely affect the public in any of the manners listed. The building, as shown, would be a gateway to downtown and present itself in a tasteful manner that would compliment the older buildings currently located within downtown. It would, more than likely increase the prosperity of most businesses currently located within downtown as well as provide conveniences to those residents living within the units.

**5(3). That granting of the variance desired will not be opposed to the general spirit and intent of the Zoning Ordinance.**

*The general intent of the ordinance would not be compromised in any way nor the spirit in which it was created. We are simply asking for slight deviation to accommodate the needed number of units (100) and slightly fewer parking spots to accommodate the size lot we have available to work with. The benefits will far outweigh the variances requested.*

Granting the variance for a reduction in commercial space would be opposed to the intent of the Zoning Ordinance; this zoning district is meant to provide a zone which is suitable for retail shopping and offices typically located within a central business district. In order to create and maintain a thriving downtown area, density is required along with uses to support those residents within close proximity of it. Injecting a large residential population within downtown will only further the existing vibrancy of downtown as well as increase its potential, a reduction in commercial space should be allowed along Front Street, staff feels as though small incubator spaces or other small commercial fronts should be utilized along Oak Street.

### **Conformance with the Future Land Use Plan:**

The Future Land Use Plan identifies this area as “Commercial”. The Future Land Use Plan does not mention nor pertain to variance requests. The majority of immediate area is indicated as developing in both, a residential and commercial manner.

### **Traffic Impact:**

The proposed variance requests, will have an impact on traffic, these concerns have been expressed by our Public Works Director as well as our City Engineer. The majority of vehicular traffic is shown as accessing parking from Oak Street – 80 stalls are proposed to be constructed behind the building all accessing Oak Street.

### **Drainage Impact:**

The proposed variance request, whether approved or denied, will have no impact on drainage. The site has been developed for years and includes an asphalt parking lot currently, the impervious surface will not be increased.

## **STAFF RECOMMENDATIONS**

- Staff recommends the variance **Request #1**, be approved; with the surrounding residents being at a higher grade than the lower floors of the proposed building it would appear as though it was a two-story structure from most vantage points; until you were directly in front of the structure on Oak or Front Streets.
- Staff recommends the variance **Request #2**, be denied. The requested reduction in parking is too drastic, staff sees this leading to parking issues throughout downtown. Staff would further state that a second level parking structure with access off Elm Street may be potentially funded through the MIH or RHID programs and should be considered.
- Staff recommends the variance **Request #3**, be approved with the stipulation that the Oak Street frontage be retained as commercial space for residents along with the proposed uses; while allowing the area along Front Street to remain residential. Staff would further state that if residential can be placed behind commercial store fronts along Oak, this should be allowed. The applicant is proposing limited commercial space, the majority of which is for the residents of the proposed building, staff feels that the influx of a large number of residents in the area will greatly improve the vibrancy of our existing downtown and provide a huge injection of financial prosperity for the existing businesses but potentially creates the need for more businesses – staff would suggest a small grocer or incubator spaces for start-up businesses potentially.

## **BOARD OPTIONS**

- 1. Approve the variance request(s), with or without conditions/changes.**
- 2. Deny the variance request(s)**
- 3. Continue the Public Hearing to another date, date, time, and/or place**

## Memorandum

Date: May 22, 2023  
To: Mayor and City Council  
From: Amber Vogan

**Subject: Memorandum of Understanding and Resolution for Moderate Income Housing Program Application**

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**Recommendation:** The Assistant City Manager recommends approval.

**Action:** Make a motion to authorize the City to enter into a memorandum of understanding with Katfish Inc. and approve a resolution to submit an application for the Kansas Housing Resources Corporation Moderate Income Housing Program

**Background:** The property at 112 and 120 Oak Street (former Thriftway and Dollar General) is currently under demolition. In the past, the City has partnered with several owners of this property to apply for various Commercial Development Block Grant (CDBG) programs for renovations, and a previous Moderate Income Housing Grant application.

The previous Moderate-Income Housing (MIH) Program Grant application was not approved by the Kansas Housing Resources Corporation due to lack of funding. The current application round has much more funding available and only 4 of the 76 units being designated for the program. This application will have at least half of the 90-100 units designated for the program, and this round has much more funding available.

**Discussion:** The City was recently approached by the current owners with a development proposal for a project following the demolition of the building. The project proposal includes 90-100 apartments with co-working space, leasing offices, and similar uses on the street-level along with some of the apartments.

The MIH program serves the needs of moderate-income households that don't qualify for federal housing assistance. The MIH program grants and/or loans are awarded to cities and counties to develop multi-family rental units in communities with populations fewer than 60,000 people. At this time, the developer would like to apply for the MIH program to request funding of \$1-2 million.

The income ranges for the MIH program are included in the agenda packet. According to the 2020 Census and the City's 2022 Housing Needs Analysis, factoring a household size of one to three, over 50 percent of households in the City of Bonner Springs would qualify under this program. By 2030, we can expect this number to grow closer to 60 percent. Common careers with salaries in ranges qualifying for the MIH program can include teachers, police officers, firefighters, nurses and other healthcare workers, trades, manufacturing, and many, many more.

An approved resolution is required from the governing body approving participation in and application for the program. Staff also recommends approval of a memorandum of understanding (MOU) between the City and the developer. This MOU outlines the responsibilities of the developer should the City apply for MIH funding on their behalf.

**Financial Impact:** The anticipated investment in the development totals \$17,000,000, and will be funded through the MIH program, developer equity, and private lender financing to the developer. The developer also hopes to be granted a Reinvestment Housing Incentive District (RHID, formerly Rural Housing Incentive District). The MIH application lists the RHID as another funding source. However, any RHID would need to be applied for separately from this program and would be required to follow the RHID process of approval. The City would be the project applicant for the MIH program, but no monetary match is required for the City beyond staff time.



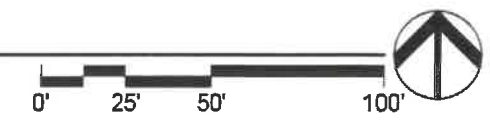
**SITE DATA:**  
 CURRENT ZONING: C-1  
 SITE AREA: +/- 1.92 Ac.

**MULTI-FAMILY:**  
 100 DU's = 52.1 DU/Ac.  
 - 22 STUD (22%)  
 - 62 ONE BED (62%)  
 - 16 TWO BED (16%)

**PARKING:**  
 REQUIRED: 130 (2.0 STALLS / DU)  
 PROVIDED:  
 ON-SITE: 80 STALLS  
 ON-STREET: 23 STALLS  
 TOTAL: 103 STALLS (1.03 STALLS / DU)

**PRELIMINARY  
 SITE PLAN TEST FIT**

1" = 50'-0"







The Google image above and the following two indicate the elevation changes within the 100 block of Elm Street. At 2<sup>nd</sup> Street and Elm the elevation is 824' above sea level.



This image indicates the elevation within close proximity of 126 Elm, it is shown as 830' (6' higher than 2<sup>nd</sup> and Elm)



This last image indicates the elevation at Front Street and Elm, it indicates the elevation is 807' (24' lower than at 126 Elm)

With the following images staff has attempted to indicate the elevation change at each home located facing Elm along with previous vantage point of the property these homes had prior to the demolition of the old Thriftway.



Intersection of 2<sup>nd</sup> St. and Elm St.



132 Elm Street



132 Elm Street view



126 Elm Street



126 Elm previous view, this would look at the upper two floors of the complex



118 Elm Street



Previous view from 118 Elm Street, this address may see the majority of the second through fourth floors, there is a proposed retaining wall indicated on the renderings, staff is unsure of the height of said wall.



This is the view at Front St and Elm, this would be the point where all four floors become completely visible. The home located at 201 W. Front St. faces Front St and would be the least impacted from a visual perspective.