

**BOARD OF ZONING APPEALS**  
**APRIL 10, 2023**  
**DECISIONS**

The Board of Zoning Appeals met in regular session on Monday, April 10, 2023, at 6:00 p.m., (via Zoom Webinar and Commission Chamber of the Municipal Office Building) with the following members present: Mr. Jeff Carson, Chairman Presiding (Commission Chamber), Ms. Karen Jones, Vice Chairman (Zoom), Ms. Brandie Armstrong (Commission Chamber), Mr. Duane Beth (Commission Chamber), Mr. James Connelly (Zoom), Ms. Rose Eilts (Commission Chamber), Mr. Jim Ernst (Zoom), Mr. Mark Mohler (Zoom), and Mr. Joseph Straws (Zoom), (Absent: Miller and Ward). Mr. Gunnar Hand, AICP, Director of Planning + Urban Design, Ms. Janet L. Parker, CSC/APC, Executive Assistant to the Director of Planning + Urban Design (Zoom); Mr. Byron Toy, AICP, Lead Planner (Zoom), and Mr. Jeff Conway, Assistant Counsel (Commission Chamber), were also present.

Chairman Carson called the meeting to order at 6:00 p.m.

Recording Secretary Parker stated that BOZA2023-006 for Robert Becker at 1879 Village West Parkway will not be heard this evening as the application needs to be republished in the newspaper.

Recording Secretary Parker stated that the Board continued BOZA2022-077 last month for property at 13700 Marxen Road for a revised comprehensive plan to be submitted for the parking and storage. Staff held over this application for another month as the plan was submitted late and was inadequate.

Recording Secretary Parker read the Board of Zoning Appeals Statement: "We would like to welcome those participating by telephone, Zoom or in the Commission Chamber to the meeting of the Board of Zoning Appeals. Members of the Board of Zoning Appeals are participating remotely by Zoom or are present in the Commission Chamber and Mr. Jeff Carson is serving as chairman this evening.

Please note the following instructions for the meeting:

1. If you are joining by Zoom Video, please make sure you have an appropriate background and plan to stay visible during the meeting;
2. Board Members - Use the raise your hand feature when you want to speak, and after Chairman Carson recognizes you, please unmute your microphone and state your name when you begin to speak. If you are in the Commission Chamber, please state your name before speaking once Chairman Carson recognizes you.
3. For those members of the public attending the meeting virtually this evening, please use the "raise your hand" feature if you want to speak on an application. If you are present in the Commission Chamber, please come to the microphone at the front of

the room when the application is called. After the Chairman recognizes you, please state your name and address and make your comments.

4. If you are having issues getting in the Zoom meeting, please email [planninginfo@wycokck.org](mailto:planninginfo@wycokck.org) and let Secretary Parker know.
5. Proper meeting decorum is expected of all participating in the meeting and anyone who fails to act properly may be removed from the meeting. The City reserves the right to discontinue a meeting if any improper behavior occurs which prevents the uninterrupted conduct of business.

The format for this evening's meeting is as follows:

1. The applicant will make the opening statement explaining the proposal. The applicant will be given fifteen (15) minutes to present their case, which includes the applicant, consultants, and other members of the applicant's team.
2. Members of the Board will then address any questions they may have to the applicant.
3. Any persons wishing to speak in favor will be recognized and allowed to do so at that time.
4. Then those persons in opposition will be recognized to make their statements and ask questions with each member of the public being given five (5) minutes to express their opinions. Time may not be shared between speakers.
5. A speaker's time may be extended in five-minute intervals by a 2/3<sup>rd</sup> majority vote of the Board.
6. The Chairman will ask for a show of hands of people who are in support or opposition that did not speak.
7. The applicant will then answer questions and make a closing statement.
8. The public hearing portion of the meeting will be closed, and the public will only be allowed to address the Board if a question is directed to them.
9. The staff will make their recommendation.
10. The Board will discuss the application and make their decision with a brief statement of the reason for the motion preceding the making of the motion.
11. Motions to approve shall include the staff stipulations unless otherwise stated in the motion.

**Application starts at 5:49 and the Applicant was not present, and the application was recalled at 1:23:25:**

**BOZA2022-065 – LUKE KUSH**, 1315 State Avenue, Zoned C-3 Commercial District. This appeal has been filed to grant a variance from the paved area setback. Section 27-467(d)(2)e states that parking and other paved areas shall be not less than six (6) feet from any property line and not less than 10 feet from any street right-of-way. The appellant is requesting a paved area/parking space setback of no more than zero (0) feet from the property line and no more than zero (0) feet from the street right-of-way, a violation of six (6) feet and 10 feet, respectively.

Recording Secretary Parker asked if the Board had any contact to disclose on this application. (No one responded in the affirmative.)

**Appeared in Support:**

- Tracy Kush, applicant, Luke Kush Corporation, 1401 Minnesota Avenue, Kansas City, Kansas 66102

**Appeared in Opposition:**

- No one appeared

**Staff Recommendation starts at 1:25:50:** Planning Director Hand stated this case is being heard in conjunction with Vacation VAC2022-007, which will be heard by the City Planning Commission later this evening. This property is in the Downtown Area Plan. Staff has received no letters in support nor in opposition. There are numerous Notices of Violation on this property. Staff recommends approval subject to the conditions in the staff report including an architectural screen fence, rectifying the remaining code violations and mimicking the fence design across the street on 14<sup>th</sup> Street. The parking facing 14<sup>th</sup> Street must have wheel stops.

Board Member Beth stated that he drove by the site this evening and noted all the violations on the property. Director Hand stated that the violations are due to the Applicant's tenant. The Applicant has divided the building into several spaces for auto body businesses. The previous appeal had a parking plan for this site, which includes screening. The Applicant has taken care of several of the violations.

Board Member Connelly asked if the Applicant was aware of the conditions of approval and Director Hand stated Staff has been working with the Applicant since last November and the draft staff report was sent to the Applicant three (3) weeks ago. Mrs. Kush stated that she was out of the country and had just read the staff report this evening and she was confused about some of the conditions as she had not discussed them with her assigned Planner. Director Hand stated that he is confident moving forward that Staff can work with the Applicant on clarifying all of the conditions of approval.

**Motion/Vote starts at 1:38:32:**

After considering the reasons for the appeal and the evidence and testimony presented at the hearing, on motion by Mrs. Jones, seconded by Mr. Ernst, the Board of Zoning Appeals voted as follows to **APPROVE BOZA2022-065:**

<b>Carson</b>	<b>Chairman</b>
<b>Armstrong</b>	<b>Aye</b>
<b>Beth</b>	<b>Aye</b>

Connelly           Aye  
Eilts               Aye  
Ernst              Aye  
Jones             Aye  
Miller             Not Present  
Mohler            Aye  
Straws            Aye  
Ward               Not Present  
Motion to APPROVE Passed: 8 to 0  
Subject to:

1. To maintain pedestrian safety on State Avenue, wheel stops must be installed at the head of each parking space. The location of these wheel stops must be demonstrated in the revised parking site plan;
2. Per Section 27-467(c)(6), “[a]ny outside storage or keeping of parts, equipment, inoperable vehicles or residual materials which is necessary, normally related and accessory to the principal use of the premises shall be screened from view from off the premises. Such outside storage shall be limited to areas directly adjacent to the main building, not including more than 20 percent of the area of the main building and not in a required yard.” Unless Property Owner-Applicant installs fencing that fully screens the parking lot and is architecturally or aesthetically consistent with the subject property, inoperable vehicles are prohibited from being parked outside on the subject property. Therefore, if Property Owner-Applicant constructed a wrought-iron fence with vegetative screening, the following conditions shall apply: inoperable vehicles, vehicles to be serviced, vehicles being serviced, or serviced vehicles waiting to be picked up shall not be parked within the public right-of-way; all inoperable vehicles or vehicles being serviced must be parked inside the primary building on site; the only vehicles which may be parked within the parking lot of the subject property are the operable vehicles of customers or employees; and, no vehicles shall be parked within the North 14th Street right-of-way;
3. At least 30 on-site parking spaces must be provided and striped, as required by the conditions of approval for appeals BZA-2065 and BZA2068;
4. Applicant must cure all outstanding violations on the subject property, regardless of the address assigned to the administrative citations. The administrative citation case must be closed before the variance can go into effect and the right-of-way vacation recorded with the Register of Deeds;
5. Compliance with the submitted parking plan, which includes the following requirements: all parking spaces must be clearly marked and the total number of parking spaces must be provided; the number of parking spaces designated for each tenant must be provided, and the location of the designated parking for each tenant clearly marked and distinguishable from the designated parking of the other tenants; fencing not encroaching within

- the sight-distance triangle; and, compliance with all conditions of approval of BZA-2065 and BZA-2068, as contained within the respective staff reports for BZA-2065 and BZA-2068, and reflected within this staff report;
6. Architectural screening in the form of a wrought-iron fence is required. Submit a revised site plan to include a six (6) foot opaque fence with masonry columns every 32 feet on center. The fence must run along the northern and western boundaries of the subject property, along the State Avenue and North 14th Street rights-of-way, respectively;
  7. The wrought-iron fencing must not be installed within the sight distance triangle, as defined by Section 27-637(b) (“the short leg of which shall be 15 feet and the long leg of which shall be 140 feet measured along the curblin e or edge of pavement”). This will result in the northwest-most existing parking space being left outside of the fence line. This area within the sight-distance triangle should be landscaped with low-lying vegetation in order to keep the area free of visual impediments;
  8. Compliance with the design principles of the Downtown Area Plan, with particular emphasis on the design principles of corner lots and surface parking in the West End District;
  9. Compliance with all conditions of approval of previous entitlements associated with the subject property, including BZA-2065, A-2012-9, and BZA-2068;
  10. A building permit is required for the construction of a permanent structure greater than 120 square feet, for the expansion of or addition to an existing structure, and/or a change in the use of (i.e., change of occupancy) an existing structure. The applicant is required to contact the Building Inspections Division at (913) 573-8620 or by [buildinginspection@wycokck.org](mailto:buildinginspection@wycokck.org) to confirm if they need a building permit, and if so, must take it upon themselves to initiate the building permit process accordingly;
  11. All exterior lighting on the building must be hooded or controlled to direct light 90 degrees downward. No light may cast light or glare off the property or onto the public street;
  12. Per Section 27-723(a), no sign (including the structure or sign surface) shall be erected, installed, altered, relocated, rebuilt, or refaced until the unified government issues a sign permit. Only those signs permitted in this division shall be granted a sign permit. Contact the Department of Planning and Urban Design at (913) 573-5750 or [signpermits@wycokck.org](mailto:signpermits@wycokck.org) to begin this process;
  13. All businesses on site must file and maintain a current business occupation tax application with this office;
  14. All existing and future driveways must feature curb cuts that are constructed to UG standards;
  15. A Right-of-Way Permit is required for any use of the right-of-way while erecting fencing along the subject property’s boundary. The applicant is required to contact the Public Works Department at (913) 573-5311 or by

[info@wycokck.org](mailto:info@wycokck.org) to confirm if they need a right-of-way permit, and if so, must take it upon themselves to initiate the permit process accordingly;

16. A Pre-Construction meeting is required for any improvements to public infrastructure upon the approval and issuance of a Development Review Committee (DRC) Permit. Any improvements to, construction or alteration of sanitary systems, stormwater systems, public or private streets, sidewalks, or other public infrastructure will require a pre-construction meeting with the Department of Public Works. The applicant is required to contact the County Engineer at (913) 573-5400 or by [info@wycokck.org](mailto:info@wycokck.org) prior to construction to arrange this meeting;
17. Section 27-467(g) requires that trees are required at not less than one (1) per 7,000 square feet of site area. The subject property has an area of 53,133 square feet, requiring 8 trees be provided on the site plan;
18. Section 27-699(a)(4) states that at least one-half of the trees planted to fulfill the tree planting requirements shall be shade trees;
19. Section 27-699(a)(6) states that non-industrial and non-structural parking lots that have a paved area wider than a double-loaded aisle and more than 20,000 square feet in area shall provide one shade tree for each 20 parking spaces on the interior of the parking lot. Interior tree plantings are in addition to other landscaping requirements. The subject property has a parking lot with an area of approximately 26,000 square feet (including the area to be vacated);
20. Section 27-702(1)(a-d) states that shade trees shall be at least two (2) inch caliper when planted as measured 12 inches above the ground. All ornamental deciduous trees shall be at least two (2) inch caliper when planted as measured 12 inches above the ground. All evergreens shall be five (5) to six (6) feet in height when planted as measured 12 inches above the ground. Ornamental deciduous trees shall be six (6) to 8 feet when planted as measured 12 inches above the ground;
21. This Board of Zoning Appeals case is being heard in conjunction with VAC2022-003. Any approval by the Board of Zoning Appeals of this case, and the conditions of approval contained herein, are contingent, and shall only go into effect, upon the approval of Petition VAC2022-003 by the Unified Government Board of Commissioners and upon any ordinance publications required by law; and,
22. All conditions of approval herein must be constructed, executed, implemented, or otherwise completed within six (6) months of approval unless otherwise determined by the Director of Planning or their designee.

**Application starts at 6:30:**

**BOZA2022-070 – AUSTIN THOMPSON WITH ATLAS LAND CONSULTING.** 706 Shawnee Road, Zoned R-1 Single Family District. Variance 1: This appeal has been filed to grant a variance from the minimum size of a residential lot that abuts a major street. Section 27-280(f) states that a residential lot facing or receiving access onto a street designated as a major street must have a minimum lot size of five (5) acres. The subject

property receives access from Shawnee Road, which is designated as a Collector Street per Section 27-763(f)(32). The appellant is requesting a lot of 0.39 acres, a violation of 4.61 acres. Variance 2: This appeal has been filed to grant a variance from the minimum frontage of a residential lot that abuts a major street. Section 27-280(f) states that a residential lot facing or receiving access onto a street designated as a major street must have a minimum frontage of 300 feet. The subject property created receives access from Shawnee Road, which is designated as a Collector Street per Section 27-763(f)(32). The appellant is requesting a lot with a frontage of 154 feet, a violation of 146 feet.

Recording Secretary Parker asked if the Board had any contact to disclose on this application. (No one responded in the affirmative.)

**Appeared in Support:**

- Austin Thompson, applicant, Atlas Land Consulting, 14500 Parallel Road, Unit R, Basehor, Kansas 66007

**Appeared in Opposition:**

- No one appeared

**Staff Recommendation starts at 8:10:** Planning Director Hand stated this case is being heard in conjunction with Change of Zone COZ2022-051, which will be heard later this evening by the City Planning Commission. The property is in the City-Wide Comprehensive Plan in the Shawnee Heights area. Staff has received no letters in support nor in opposition. There are several Notices of Violation associated with this property being vacant, which will be rectified with this proposed redevelopment. Staff recommends approval of this application subject to the conditions in the staff report.

**Motion/Vote starts at 9:17:**

After considering the reasons for the appeal and the evidence and testimony presented at the hearing, on motion by Mrs. Jones, seconded by Ms. Armstrong, the Board of Zoning Appeals voted as follows to **APPROVE BOZA2022-070:**

<b>Carson</b>	<b>Chairman</b>
<b>Armstrong</b>	<b>Aye</b>
<b>Beth</b>	<b>Aye</b>
<b>Connelly</b>	<b>Aye</b>
<b>Eilts</b>	<b>Aye</b>
<b>Ernst</b>	<b>Aye</b>
<b>Jones</b>	<b>Aye</b>
<b>Miller</b>	<b>Not Present</b>
<b>Mohler</b>	<b>Not Present</b>
<b>Straws</b>	<b>Aye</b>

Ward                      Not Present  
Motion to APPROVE Passed: 7 to 0  
Subject to:

1. If, at a later date, the property owner intends to construct an accessory building that is in violation of the Zoning Code, the said property owner must apply for a separate variance from such violations prior to applying for a building permit;
2. The sidewalk along the frontage of the subject property (along Shawnee Road) must be cleared and repaired, if necessary;
3. A building permit is required for the construction of a permanent structure greater than 120 square feet, for the expansion of or addition to an existing structure, and/or a change in the use of (i.e., change of occupancy) an existing structure. The applicant is required to contact the Building Inspections Division at (913) 573-8620 or by [buildinginspection@wycokck.org](mailto:buildinginspection@wycokck.org) to confirm if they need a building permit, and if so, must take it upon themselves to initiate the building permit process accordingly;
4. This Board of Zoning Appeals case is being heard in conjunction with COZ2022-051. Any approval by the Board of Zoning Appeals of this case, and the conditions of approval contained herein, are contingent, and shall only go into effect, upon the approval of Petition COZ2022-051 by the Unified Government Board of Commissioners and upon any ordinance publications required by law;
5. All existing and future driveways must feature curb cuts that are constructed to UG standards;
6. A Right-of-Way Permit is Required. The applicant is required to contact the Public Works Department at (913) 573-5311 or by [info@wycokck.org](mailto:info@wycokck.org) to confirm if they need a right-of-way permit, and if so, must take it upon themselves to initiate the permit process accordingly;
7. Issuance of a certificate of occupancy for any project or property associated with an entitlement from the City Planning Commission or UG Board of Commissioners, shall not be issued prior to the completion of all landscape elements for the project to the standards and requirements for a Final Certificate of Occupancy and the successful review by departmental inspection. As an alternative to completely meeting all standards and requirements for a Final Certificate of Occupancy, to allow for cases of weather delays, plant seasonality, or shortages of labor or materials, the applicant may request to submit a landscape performance bond or surety. Requests to submit a landscape performance bond or surety for a particular project must receive eligibility approval from the Department of Planning and Urban Design prior to submission. Submissions must meet all requirements of the Bonding Procedure Policy and pass the review process. Bond applications shall only be approved by the Zoning Enforcement Officer, Lead Planner, or Director of Planning + Urban Design. Bond applications shall receive final



approval before the applicant may request any inspection or re-inspection of a project or property for a Bonded Final Certificate of Occupancy;

8. Approval of this case by the Board of Zoning Appeals, and the conditions of approval contained herein, has been granted independent of any and all covenants, conditions, and restrictions (CC&R) of the plat or subdivision within which the subject property is located. It is the responsibility and duty of the applicant and/or landowner to ensure that the exercise of variance(s) approved, or any portion thereof, do(es) not violate the applicable and enforceable CC&R of the plat or subdivision within which the subject property is located; and,
9. All conditions of approval herein must be constructed, executed, implemented, or otherwise completed within six (6) months of approval unless otherwise determined by the Director of Planning or their designee.

**Application starts at 10:30:**

**BOZA2023-007 – CHRISTOPHER CIESIEL WITH THE CAMPGROUND LLC**, 1639 Southwest Boulevard, Zoned C-3 Commercial District. This appeal has been filed to convert a vacant storefront into a drinking establishment and allow sales and consumption within an existing coffee shop. Sec. 27-668(a)(12) states taverns or private clubs serving alcoholic or cereal malt beverages shall provide one (1) space for each 50 square feet of seating area or assembly area plus one (1) space for each remaining 200 square feet of total floor area. The Appellant is requesting three (3) spaces for the building, a violation of 33 spaces.

Recording Secretary Parker asked if the Board had any contact to disclose on this application. (No one responded in the affirmative.)

**Appeared in Support:**

- Christopher Ciesiel, The Campground LLC, dba Sagebrush, 4137 Kenwood Avenue, Kansas City, Missouri 64110

**Appeared in Opposition:**

- No one appeared

**Staff Recommendation starts at 14:35:** Planning Director Hand stated that this case is being heard in conjunction with Special Use Permit SP2023-005, which will be heard by the City Planning Commission later this evening. The Applicant wants to convert a vacant storefront into a drinking establishment thereby triggering the parking requirement. There is no off-street parking available for this use. There are three (3) off-street parking spaces on the subject property, but are used for the renters for the residential units on the second story of the mixed-use buildings. This property is in the City-Wide Comprehensive Plan in the downtown Rosedale area. Staff has received no letters in support nor in opposition.

There are some older Notices of Violation from when the property was vacant. Staff recommends approval subject to the conditions in the staff report.

**Motion/Vote starts at 16:20:**

After considering the reasons for the appeal and the evidence and testimony presented at the hearing, on motion by Mrs. Jones, seconded by Ms. Armstrong, the Board of Zoning Appeals voted as follows to **APPROVE BOZA2023-007**:

<b>Carson</b>	<b>Chairman</b>
<b>Armstrong</b>	<b>Aye</b>
<b>Beth</b>	<b>Aye</b>
<b>Connelly</b>	<b>Aye</b>
<b>Eilts</b>	<b>Aye</b>
<b>Ernst</b>	<b>Aye</b>
<b>Jones</b>	<b>Aye</b>
<b>Miller</b>	<b>Not Present</b>
<b>Mohler</b>	<b>Aye</b>
<b>Straws</b>	<b>Aye</b>
<b>Ward</b>	<b>Not Present</b>

**Motion to APPROVE Passed: 8 to 0**  
**Subject to:**

- 1. This Board of Zoning Appeals case is being heard in conjunction with SP2023-005, which is to operate a drinking establishment;**
- 2. The three (3) spaces in the rear of the property shall be reserved for the residents who reside in the second-floor apartments;**
- 3. Obtain a Right-of-Way permit via Public Works and plant two (2) street trees along the sidewalk adjacent to the west side of the building;**
- 4. Resurface and strip the parking lot in the rear of the property;**
- 5. All existing and future driveways must feature curb cuts that are constructed to UG standards. Rebuild concrete apron and pave parking in the rear (asphalt, concrete or pervious pavers);**
- 6. Applicant shall comply with Planning Engineering Comments for General Engineering, Erosion Control, Sanitary Sewer, Storm Drainage, Stormwater Quality, Streets, and Retaining Walls, or other requirements as applicable; and,**
- 7. Approval of this case by the Board of Zoning Appeals, and the conditions of approval contained herein, has been granted independent of any and all covenants, conditions, and restrictions (CC&R) of the plat or subdivision within which the subject property is located. It is the responsibility and duty of the applicant and/or landowner to ensure that the exercise of variance(s) approved, or any portion thereof, do(es) not violate the applicable and enforceable CC&R of the plat or subdivision within which the subject property is located.**

**Application starts at 17:15:**

**BOZA2023-008 – ROBERT GEORGE**, 4439 Shawnee Road, Zoned MP-1 Planned Light Industrial and Industrial Park District. This appeal has been filed to grant a variance from the buffering requirement in the MP-1 District. Section 27-700(b)(3) states that a buffer area shall be provided along all side and rear property lines common to or across an alley from residentially zoned property and shall consist of an area 15 feet in width improved with a six (6)-foot architectural screen adjacent to the property line and one (1) row of shade trees spaced not more than 40 feet on center and one (1) row of large shrubs spaced not more than eight (8) feet on center. The west boundary line of the subject property is adjacent to residentially zoned properties. The appellant is requesting that, along the west boundary line, there be a landscaped buffer of zero (0) feet before the architectural screen, a violation of 15 feet.

Recording Secretary Parker asked if the Board had any contact to disclose on this application. (No one responded in the affirmative.)

**Appeared in Support:**

- Robert George, applicant, Creative Investments, LLC, 4435 Shawnee Drive, Kansas City, Kansas 66106

**Appeared in Opposition:**

- No one appeared

**Staff Recommendation starts at 19:26:** Planning Director Hand stated that this case as stated by the Applicant is the result of numerous violations by the previous owner. This property is in the City-Wide Comprehensive Plan in the Turner area. Director Hand pointed out the line of landscaping required. When Staff reviewed the history of the original approval of this property, the building was built under the existing zoning code. That 15' landscaping buffer should have been implemented, but was not completed at the time of initial construction. He stated that because there is not a 15' buffer on the western property line available without impeding current circulation on the site, the architectural fence abutting residential properties is also required. He stated that the Applicant needs to obtain a survey of the property and determine whether the existing single-family back yard fences are on the subject property. Staff recommends denial of this application, but has included conditions of approval if the Board wishes to recommend approval of this application. Staff recommends that the Applicant come back with a new appeal from the 15' buffer fence to invert the screening standard so that the architectural fence is built along the property line and the required landscape buffer is interior to the fence all along the western property line.

Board Members directed questions to Staff. Director Hand stated that Staff worked with the Applicant on this request. He further stated that the fences shown in the picture are the fences of the back yards of the residents. Those fences are not part of this property. If a

survey determines the fences are on the Applicant's property, the fences need to be removed and a new code-compliant architectural screen fence built.

**Motion/Vote starts at 29:11:**

After considering the reasons for the appeal and the evidence and testimony presented at the hearing, on motion by Mr. Ernst, seconded by Mr. Connelly, the Board of Zoning Appeals voted as follows to **DENY BOZA2023-0008**:

<b>Carson</b>	<b>Chairman</b>
<b>Armstrong</b>	<b>Aye</b>
<b>Beth</b>	<b>Aye</b>
<b>Connelly</b>	<b>Aye</b>
<b>Eilts</b>	<b>Aye</b>
<b>Ernst</b>	<b>Aye</b>
<b>Jones</b>	<b>Aye</b>
<b>Miller</b>	<b>Not Present</b>
<b>Mohler</b>	<b>Aye</b>
<b>Straws</b>	<b>Aye</b>
<b>Ward</b>	<b>Not Present</b>

**Motion to DENY Passed: 8 to 0**

**For the following reasons:**

- 1. The variance request does not fulfill Statutory Requirement #1. Property Owner-Applicant had full knowledge of the existing violations and actions of the previous property owner; these actions created the conditions under which the need for the request variance arose; and,**
- 2. The variance request does not fulfill Statutory Requirements #5. The removal of the 15-foot buffer required to between a residential property and the architectural screening of an industrial property severely lessens the intended buffering impact and weakens the compatibility of uses of the adjacent parcels.**

**Application starts at 32:91:**

**BOZA2013-010 – AUSTIN THOMPSON WITH ATLAS LAND CONSULTING**, 1001 Metropolitan Avenue, Zoned R-1(B) Single Family District. This appeal has been filed to build a 23-unit mobile home park in a single-family, cottage-like style.

Variance #1: Sec. 27-462(b)(1) states mobile home dwellings in a mobile home park of at least five (5) acres that shall be designed for a maximum density of 7 mobile homes per acre. Appellant requests 2.61 acres and 8.81 homes per acre, a violation of 2.39 acres and 1.81 homes per acre, respectively.

Variance #2: Sec. 27-462(c)(3)d. states the home must be at least 22 feet wide over a major part of the mobile home. Appellant requests 15 feet wide, a violation of 7 feet.

Variance #3: Sec. 27-462(d)(1) states on a minimum 24-foot-wide paved public street no more than 50 feet from a street designated and improved as a collector or thoroughfare on the major street plan. Appellant requests not to improve Ruby Avenue, which is 22 feet wide, a violation of two (2) feet.

Variance #4: Sec. 27-462(e)(2)b. states the front yard setback is 25 feet. Appellant requests 20 feet from Metropolitan Avenue and 15 feet from Ruby Avenue, a violation of five (5) feet from Metropolitan Avenue and 10 feet Ruby Avenue, respectively.

Variance #5: Sec. 27-462(e)(2)c. states side yard, interior setback not less than 20 feet on the entry side of the mobile home and not less than five (5) feet on the non-entry side from the side lot line. Appellant requests two (2) feet for the community building, a violation of three (3) feet.

Variance #6: Sec. 27-462(e)(2)d. states side yard, corner setback not less than 25 feet. Appellant requests five (5) feet from South 10<sup>th</sup> Street and 15 feet from Ruby Avenue, a violation of 20 feet and 10 feet, respectively.

Variance #7: Sec. 27-462(f)(1) states a concrete patio 128 square feet or larger with a minimum width of 8 feet for each mobile home space convenient to the to the entrance of the mobile home and appropriately related to the open area of the space. Appellant requests 90 square feet for each mobile home, a violation of 38 square feet per mobile home.

Variance #8: Sec. 27-462(f)(7) states a storm shelter shall be provided for persons living in the mobile home park. The storm shelter shall be adequately designed to protect occupants, and shall have an area of not less than 12 square feet per mobile home lot. The storm shelter shall have adequate fresh air ducts to accommodate the occupants, and storm shelters shall be so located to provide a reasonable degree of safety for all residents. Appellant requests 7 square feet per person to accommodate a 162 square foot pre-made shelter, a violation of 5 square feet per person.

Variance #9: Sec. 27-700(b) Buffer plantings, which shall include the equivalent of a minimum of one (1) evergreen tree or one (1) shade tree and three (3) large shrubs for each 30 feet of adjacent project boundary, shall be provided for such development adjacent to single-family or two-family zoned property. Appellant requests a six (6) foot fence around the entire property in lieu of buffer plantings, a violation of 18 trees and 53 shrubs.

Variance #10: Sec. 27-462(h) Two off-street parking spaces shall be provided for each dwelling unit. In addition, mobile home parks that do not have public streets shall provide visitor parking at a rate of one-quarter parking space for each mobile home lot, appropriately located and dispersed in separate parking lots having no more than 8

parking spaces each. Appellant proposes 10 parking spaces, a violation of 42 parking spaces.

Recording Secretary Parker asked if the Board had any contact to disclose on this application. (No one responded in the affirmative.)

**Appeared in Support:**

- Austin Thompson, applicant, Atlas Land Consulting, 14500 Parallel Road, Unit R, Basehor, Kansas 66007
- Katrina Gerber, Board Member, Three Dog Night Charities (Eden Village KC)
- Kerry Poolman, Board Member, Three Dog Night Charities (Eden Village KC)
- Dr. Evelyn Hill, Director of Equity + Avenue of Life, 640 Washington Boulevard, Kansas City, Kansas 66101
- Peggy Pierce, 968 and 972 Ruby Avenue, Kansas City, Kansas
- Randy Callstrom, Wyandot Behavioral Health Network, 757 Armstrong Avenue, Kansas City, Kansas 66101
- Secretary Parker read an email from Brennan Crawford, CHWC into the record in support.

Board Members directed questions to the developers.

**Appeared in Opposition:**

- No one appeared

**Staff Recommendation starts at 54:28:** Planning Director Hand stated that this application is being heard in conjunction with Master Plan Amendment MPL2023-005, Change of Zone COZ2023-007, Plat PLAT2023-011 and Plan Review PR2023-011, all of which will be heard by the City Planning Commission later this evening. This property is in the City-Wide Comprehensive Plan in the Argentine neighborhood. The property was a mobile home park and when the property was cleaned up and the mobile homes removed, the property lost its legal non-conforming status. The variances before the Board this evening are needed for the other entitlements that will be heard by the City Planning Commission for the project as a whole. Staff recommends approval of Variances 1, 2, 3 and 10. If the City Planning Commission approves the Plat later this evening, half of the requested variances will be resolved. What would be before the Board of Zoning Appeals is a smaller storm shelter than required by ordinance, the minimum patio space for each unit, and whether additional landscaping is required above and beyond Multi-Family Design Guidelines. Staff would be in favor of a 5' sidewalk in lieu of a 10' sidewalk in Condition #5. If the Board denies Variance #7, then condition number 10 could be removed. The trash bin should not face the public right-of-way which can be worked out with the Applicant. Staff recommends denial of Variance #8.

The Board of Zoning Appeals directed questions to Staff.

Chairman Carson asked the Applicant if they are agreeable to holding over this variance for one (1) month. Ms. Gerber stated that they want to move forward with this application this evening.

The Board asked Director Hand to restate the Staff's recommendation on each of the ten (10) variances requested. Director Hand stated Staff recommends approval of Variances 1, 2, 3, and 10 and denial of the remainder of the variances. Staff recommends amendment of Condition #1 from a 10-foot sidewalk to a 5-foot sidewalk and deletion of Condition #10.

**Motion/Vote starts at :**

After considering the reasons for the appeal and the evidence and testimony presented at the hearing, on motion by Mrs. Jones, seconded by Mr. Ernst, the Board of Zoning Appeals voted as follows on the ten (10) requested variances (see below) for **BOZA2023-010**:

<b>Carson</b>	<b>Chairman</b>
<b>Armstrong</b>	<b>Aye</b>
<b>Beth</b>	<b>Aye</b>
<b>Connelly</b>	<b>Aye</b>
<b>Eilts</b>	<b>Aye</b>
<b>Ernst</b>	<b>Aye</b>
<b>Jones</b>	<b>Aye</b>
<b>Miller</b>	<b>Not Present</b>
<b>Mohler</b>	<b>Aye</b>
<b>Straws</b>	<b>Aye</b>
<b>Ward</b>	<b>Not Present</b>

**Motion Passed 8 to 0:**

**APPROVED** - Variance #1: Sec. 27-462(b)(1) states mobile home dwellings in a mobile home park of at least five (5) acres that shall be designed for a maximum density of 7 mobile homes per acre. Appellant requests 2.61 acres and 8.81 homes per acre, a violation of 2.39 acres and 1.81 homes per acre, respectively.

**APPROVED** - Variance #2: Sec. 27-462(c)(3)d. states the home must be at least 22 feet wide over a major part of the mobile home. Appellant requests 15 feet wide, a violation of 7 feet.

**APPROVED** - Variance #3: Sec. 27-462(d)(1) states on a minimum 24-foot-wide paved public street no more than 50 feet from a street designated and improved as a collector or thoroughfare on the major street plan. Appellant requests not to improve Ruby Avenue, which is 22 feet wide, a violation of two (2) feet.

**DENIED** - Variance #4: Sec. 27-462(e)(2)b. states the front yard setback is 25 feet. Appellant requests 20 feet from Metropolitan Avenue and 15 feet from Ruby Avenue, a violation of five (5) feet from Metropolitan Avenue and 10 feet Ruby Avenue, respectively.

**DENIED** - Variance #5: Sec. 27-462(e)(2)c. states side yard, interior setback not less than 20 feet on the entry side of the mobile home and not less than five (5) feet on the non-entry side from the side lot line. Appellant requests two (2) feet for the community building, a violation of three (3) feet.

**DENIED** - Variance #6: Sec. 27-462(e)(2)d. states side yard, corner setback not less than 25 feet. Appellant requests five (5) feet from South 10<sup>th</sup> Street and 15 feet from Ruby Avenue, a violation of 20 feet and 10 feet, respectively.

**APPROVED** - Variance #7: Sec. 27-462(f)(1) states a concrete patio 128 square feet or larger with a minimum width of 8 feet for each mobile home space convenient to the to the entrance of the mobile home and appropriately related to the open area of the space. Appellant requests 90 square feet for each mobile home, a violation of 38 square feet per mobile home.

**DENIED** - Variance #8: Sec. 27-462(f)(7) states a storm shelter shall be provided for persons living in the mobile home park. The storm shelter shall be adequately designed to protect occupants, and shall have an area of not less than 12 square feet per mobile home lot. The storm shelter shall have adequate fresh air ducts to accommodate the occupants, and storm shelters shall be so located to provide a reasonable degree of safety for all residents. Appellant requests 7 square feet per person to accommodate a 162 square foot pre-made shelter, a violation of 5 square feet per person.

**APPROVED** - Variance #9: Sec. 27-700(b) Buffer plantings, which shall include the equivalent of a minimum of one (1) evergreen tree or one (1) shade tree and three (3) large shrubs for each 30 feet of adjacent project boundary, shall be provided for such development adjacent to single-family or two-family zoned property. Appellant requests a six (6) foot fence around the entire property in lieu of buffer plantings, a violation of 18 trees and 53 shrubs.

**APPROVED** - Variance #10: Sec. 27-462(h) Two off-street parking spaces shall be provided for each dwelling unit. In addition, mobile home parks that do not have public streets shall provide visitor parking at a rate of one-quarter parking space for each mobile home lot, appropriately located and dispersed in separate parking lots having no more than 8 parking spaces each. Appellant proposes 10 parking spaces, a violation of 42 parking spaces.



**Subject to:**

- 1. Add crosswalks across Ruby Avenue to delineate a clear and noticeable pedestrian path between both parcels;**
- 2. Utility easements shall be provided along each side of the lot to form a continuous utility easement. All easements shall be at least 10 feet wide. The required ten-foot width may be provided through five-foot easements on either side of lot or parcel lines when lines do not form, in whole or in part, the outside boundaries of the plat;**
- 3. Utility easements shall connect with easements established in adjoining properties;**
- 4. Per Sec. 27-317 Electrical power, telephone service, and cable television (if applicable) shall be provided by underground wiring for all new wiring provided;**
- 5. Per the goDotte Mobility Plan, Metropolitan Avenue is designated as a Regional Trail, which requires a 10-foot sidewalk. As a 10-foot wide sidewalk cannot be built due to site constraints, a 5-foot sidewalk along Metropolitan Avenue is acceptable;**
- 6. Sidewalks and pedestrian paths shall be ADA compliant;**
- 7. All mobile homes shall have skirting around the perimeter of the trailers;**
- 8. Community storm shelter shall comply with Building Inspection Division requirements and ADA requirements;**
- 9. Maintain existing tree stands, as existing trees provide an enhanced buffer between the edge of the parcels around the perimeter bordering Metropolitan Avenue, South 10<sup>th</sup> Street and Baltimore Street;**
- 10. All parking lot islands shall be curbed and landscaped. Painted, hatched islands are not permitted;**
- 11. All deciduous and shade trees shall be at least two (2) inch caliper when planted. Evergreens shall be at least six (6) feet in height when planted. Shrubs shall be at least five (5) gallons when planted. Throughout the development, there may be a variety of native grasses and plants (wildflowers);**
- 12. All landscaping shall be irrigated;**
- 13. Section 27-699(b)(5) states that all outside bins or trash container areas must be completely enclosed by an architectural screen to a height not less than the height of the bin or container. No trash enclosures may be located in required yards adjacent to street right-of-way. In commercially and industrially zoned areas where the trash container will not be visible from off the property due to other screening or topographic conditions and will not be visible from public parking or pedestrian areas on the site, such trash bin screening need not be provided. In industrially zoned areas where the trash container will not be visible from residential property and where such containers are kept directly alongside the building and in a well-kept manner, such screening need not be provided;**

- 14. BPU ground mounted transformers shall be screened on all four (4) sides from public view. Architectural screening walls are the preferred method, but landscape screening is an allowable alternative. Screening shall be designed to be solid to the view, and any designs incorporating air circulation shall not be visible. Screening height must be the greater of either six (6) feet tall or the height of the utility being screened. Designs shall show two (2) possible site orientations. Designs will also incorporate all BPU Engineering specifications and largest of all the required dimensions. Refer to attached BPU Engineering documents for details;**
- 15. Mechanical equipment or other utility hardware whether on the ground or on a building shall be screened from public view. Such screening shall be harmonious with building design and materials;**
- 16. Any lighting used to illuminate an off-street parking area, sign or other structure shall be arranged to deflect light away from any adjoining residentially zoned property or from public streets. Direct or sky-reflected glare, from floodlights or commercial operations, shall not be directed into any adjoining property. The source of lights shall be hooded or controlled. Bare incandescent light bulbs shall not be permitted in view of adjacent property or public right-of-way. Any light or combination of lights that cast light on adjacent residentially zoned property shall not exceed one-foot candle as measured from said property line. All lighting on the property, both on the buildings and in parking lots shall have 90-degree cutoff fixtures;**
- 17. Per Section 27-723(a), no sign (including the structure or sign surface) shall be erected, installed, altered, relocated, rebuilt, or refaced until the Unified Government issues a sign permit. Only those signs permitted in this division shall be granted a sign permit. Contact the Department of Planning and Urban Design at (913) 573-5750 or [signpermits@wycokck.org](mailto:signpermits@wycokck.org) to begin this process;**
- 18. Per Business Licensing Department: All occupying business will need to file and maintain the occupation tax application with our office for their business activity located at the Neighborhood Resource Center, 4953 State Avenue, Kansas City, KS 66102, (913) 573-8780 or [businesslicense@wycokck.org](mailto:businesslicense@wycokck.org);**
- 19. A building permit is required for the construction of a permanent structure greater than 120 square feet, for the expansion of or addition to an existing structure, and/or a change in the use of (i.e., change of occupancy) an existing structure. The applicant is required to contact the Building Inspections Division at (913) 573-8620 or by [buildinginspection@wycokck.org](mailto:buildinginspection@wycokck.org) to confirm if they need a building permit, and if so, must take it upon themselves to initiate the building permit process accordingly;**
- 20. The City of Kansas City, Kansas reserves to itself the right to, at any time after the effective date of this ordinance, reenter or permit a public utility to reenter that portion of said tract of land hereby vacated for the purpose of repairing installing, constructing or reconstructing any public utilities, including, but not limited to sewers, conduits, electric light pole lines, etc. that are now or may hereafter be installed in the tract of land hereby vacated;**

21. All existing and future driveways must feature curb cuts that are constructed to UG standards;
22. A Right-of-Way Permit is Required. The applicant is required to contact the Public Works Department at (913) 573-5311 or by [info@wycokck.org](mailto:info@wycokck.org) to confirm if they need a right-of-way permit, and if so, must take it upon themselves to initiate the permit process accordingly;
23. A Pre-Construction meeting is required for any improvements to public infrastructure upon the approval and issuance of a Development Review Committee (DRC) Permit. Any improvements to, construction or alteration of: sanitary systems, stormwater systems, public or private streets, sidewalks, or other public infrastructure will require a pre-construction meeting with the Department of Public Works. The applicant is required to contact the County Engineer at (913) 573-5400 or by [info@wycokck.org](mailto:info@wycokck.org) prior to construction to arrange this meeting;
24. Approval of this case by the Board of Commissioners, and the conditions of approval contained herein, has been granted independent of any and all covenants, conditions, and restrictions (CC&R) of the plat or subdivision within which the subject property is located. It is the responsibility and duty of the applicant and/or landowner to ensure that the real or constructive operation of any use allowed by right or by Special Use Permit under the new zoning district, or any portion thereof, does not violate the applicable and enforceable CC&R of the plat or subdivision within which the subject property is located; and,
25. A requirement that construction commence within six (6) months and be completed by a time identified by the Board of Zoning Appeals.

The meeting adjourned at 7:41 p.m.

***THE BOARD OF ZONING APPEALS***

BY: [Janet L. Parker, CSC/APC](#)  
\_\_\_\_\_  
Janet L. Parker, Secretary, CSC/APC