

EDGERTON COMMUNITY BUILDING
EDGERTON BOARD OF ZONING APPEALS
July 14, 2020
6:30 PM
Minutes

The Edgerton Board of Zoning Appeals (the Board) convened with Chairman John Daley calling the meeting to order at 6:30 p.m.

The Roll Call was answered, indicating those present were Chairman John Daley, Board member Jeremy Little, Board member Charlie Crooks, Board member Tim Berger, and Board member Deb Lebakken. Also present were Development Services Director Katy Crow and Planning and Zoning Coordinator/City Clerk Chris Clinton.

The Planning and Zoning Coordinator/City Clerk indicated a quorum was present.

MINUTES

The approval of the minutes from the meeting held on July 9, 2019 were considered. Chairman Daley stated the year needs to be updated to 2019 and not 2018 on the first page of the minutes. Motion by Mr. Berger, seconded by Ms. Lebakken, to approve the minutes. The minutes were approved, 5-0.

PUBLIC HEARING – VARIANCE REQUEST FOR 32612 W 191st St – VA2020-01

Ms. Katy Crow, Development Service Director, explained flow of the meeting. She stated the Public Hearing will be opened, the applicant will present, then City Staff will present, then the Board will discuss the findings of each criteria. Each criterion will be voted on by the Board, and if any of the criteria is not approved by a majority of the Board, then the request for the variance is denied. Ms. Crow explained the criteria are outlined in Kansas State Statute and are not unique to the City of Edgerton.

Chairman Daley stated the Board has convened to conduct a public hearing to consider Application VA2020-01 requesting approval of a variance from the exterior lighting specifications required under the Unified Development Code Article 10, Section 10.1.G (9.e) for DeLong Company located at 32612 West 191st Street, Edgerton, KS. This request for a variance is allowed by the City of Edgerton Unified Development Code (UDC) which requires that such a matter be heard by the Board. The Board is composed of all five (5) members of the Edgerton Planning Commission. He stated all hearings before the Board of Zoning Appeals shall be open to the public. He explained the Chair of the Board may establish reasonable limitations on the length of testimony and shall have the power to rule on objections and other points of order raised by a board member, an applicant, or member of the public.

Chairman Daley stated the variance requests heard before the Board take into consideration the following criteria:

1. The variance arises from a condition unique to the property in question and is not a general condition found in the neighborhood.

2. That granting the variance will not adversely affect the rights of adjacent property owners or residents.
3. That strict adherence to the regulations in the specific case will constitute unnecessary hardship upon the property owner requesting the variance. The board must determine that the hardship is greater than an economic disadvantage, and in fact extends to a means of livelihood, a matter of protecting title to property, or if left uncorrected, would result in a severe and irrevocable change in the applicant's ability to transfer property. A hardship may also be construed to be "honest error" imposed upon a property owner by a ministerial official, or licensed professional, or through eminent domain or zoning resulting in a substantial {a near taking} loss of property rights.
4. The variance desired will not adversely affect the public health, safety, morals or welfare, convenience, prosperity, or general order.
5. That the variance, if granted, is the minimum variance that will afford relief and is the least modification possible of the Zoning Ordinance provisions that are in question.

In consideration of this item this evening, the following parameters will be in place:

- Each criterion will be addressed one at a time.
- Each criterion must pass by a majority vote.
- Should any one of the five criteria not pass with a majority vote, the item fails.
- The vote for each criterion will be by voice vote and the Planning and Zoning Coordinator will poll each board member individually.

Ms. Lebakken motioned to open the public hearing. Mr. Berger seconded the motion. The public hearing was opened, 5-0.

Mr. Caleb Flake, McClure Engineering, approached the Board. He thanked them for the opportunity to present and stated he is representing the DeLong Company. Mr. Flake explained the request is in conjunction with the Final Site Plan and Final Plat the Planning Commission passed last month. He said the twelve (12) acres that the expansion is going to be on is adjacent to their currently operating facility and south of the Burlington Northern Santa Fe (BNSF) Intermodal facility. DeLong is requesting taller light poles to have better light coverage. Mr. Flake stated their parcels are zoned I-H, Heavy Industrial, and the expansion is going to be used for parking for trailers with cargo containers on them. This parking lot will not be used for a commercial or business storefront. Mr. Flake said the regulations state the maximum height of a light pole is twenty-five (25) feet. DeLong would need to install 12 to fifteen (15) light poles at that height. Mr. Flake said DeLong is requesting the height of sixty-two (62) feet for their light poles. He stated the L-P, Logistics Park, zoning designation allows lighting fixtures to be up to 180 feet tall. The adjacent properties to the west and south they are zoned L-P and some agricultural land to the south of the current operations. He said the 62-foot light poles would be a nice buffer of the 25 and the 180-foot tall fixtures allowed. These poles would allow uniform lighting across the lot and would match other DeLong facilities across the nation. Mr. Flake said the letters were sent to neighboring properties and affidavit was submitted to the City.

Mr. Flake said the first criterion states the variance arises from a condition unique to the property in question and is not a general condition found in the neighborhood. He explained the condition is unique as the DeLong property is surrounded by L-P zoned properties which allows for 180-foot high light poles.

Mr. Flake read the second criterion is that granting the variance will not adversely affect the rights of adjacent property owners or residents. He stated there would be no negative or adverse effects as many neighboring properties can construct 180-foot high poles. He said there are no residential dwellings within one (1) mile of the site.

Mr. Flake stated the third criterion is that strict adherence to the regulations in the specific case will constitute unnecessary hardship upon the property owner requesting the variance. The board must determine that the hardship is greater than an economic disadvantage, and in fact extends to a means of livelihood, a matter of protecting title to property, or if left uncorrected, would result in a sever and irrevocable change in the applicant's ability to transfer property. A hardship may also be construed to be "honest error" imposed upon a property owner by a ministerial official, or licensed professional, or through eminent domain or zoning resulting in a substantial loss of property rights. Mr. Flake explained the hardship posed by the regulation is the cost of additional light poles, the infrastructure to power them, and the installation of the poles. Having a fewer number of light poles would allow flexibility to reconfigure and restripe the lot easier than a higher number of poles. It would also reduce the number of objects snowplows would have to avoid in the winter.

Mr. Flake explained the fourth criterion states the variance desired will not adversely affect the public health, safety, morals or welfare, convenience, prosperity, or general order. He stated the granting of the variance would allow DeLong to maintain safety with no adverse effect on any neighbors. The taller light poles are designed to spread light so somebody would not be able to tell the difference when comparing it to one that meets the regulated height.

Mr. Flake the final criterion is that the variance, if granted, is the minimum variance that will afford relief and is the least modification possible of the Zoning Ordinance provisions that are in question. He explained the spirit is to protect the neighbors from glare and to have uniform lighting over the area so this would allow maintain the area. The height of the poles, the area has other high poles so one will not see them stick out along the horizon.

Mr. Sam Hanni, DeLong Trucking, thanked the Board for their time and consideration. He said the 25-foot height requirement is tough because the truck chassis and container is about fourteen (14) to fifteen (15) feet in height. There would not be enough room for the light to be distributed. He said the parking lot will be open at all hours of the day, so the lighting is for the security of other Logistics Park Kansas City (LPKC) members and their cargo. Mr. Hanni stated the two (2) grain elevators used for their current operations are taller than the proposed light poles.

Chairman Daley stated City Staff will present their findings. Ms. Crow confirmed the Site Plan and Plat for the parcel was approved by the Planning Commission on June 9, 2020.

Ms. Crow stated the applicant notes the L-P district allows light fixtures up to 180 feet in height in regard to the first criterion. She read Article 5, Section 5.2.N (3.j) of the UDC which states "Parking Lot lighting facilities shall provide illumination within parking areas not to exceed a maintained average of one and one half (1.5) foot candles at ground level, and shall not distribute more than one half (0.5) foot candles of light at the property line and two tenths of one (0.2) foot candle of light upon any adjacent single family residential property. For uses within 24 hour operations or uses that operate during the evening and night, a maximum maintained average of two and one half (2.5) foot candles at ground level shall be allowed; such uses shall distribute not more than one half (0.5) foot candles of light at the property line and two tenths of one (0.2) foot candle of light upon any adjacent single family residential property. A minimum average of the greater of either one (1) foot candle maintained or that required by applicable Illuminating Engineering Society of North America (IESNA) practice shall be required to be maintained."

The facilities the applicant eludes too are lighting fixtures on top of radio towers or other tall structures to warn aviators about the structure. Ms. Crow stated a good example of this is the light atop the water tower on West 196th Street.

Ms. Crow said Article 5 of the UDC does not specify a height limit for parking light facilities, but Article 10 specifies the 25-foot height requirement and it applies to all zoning designations. She stated this situation is not unique to this property as the two neighboring L-P zoned properties use lighting fixtures less than thirty (30) feet. The adjacent property has light poles 28-feet in height and the cargo container storage yard across the street has light poles 25-feet in height. The cargo container storage yard can stack the containers up to a height of fifty (50) feet, double the height of light poles on site.

Ms. Crow stated in regard to the second criterion, the adjacent property owners to the east, Dot's Pretzels and Midwest Gateway, would be affected by the lighting. The photometric plan submitted shows a reading of 1.1-foot-candles being measured along that property line.

Ms. Crow addressed the third criterion. She stated the current operations were approved before the recent amendment to Article 10. Therefore the 30-foot tall luminary on that lot is considered a legal nonconforming use. The proposed luminaries would also be 15 feet higher than warehouses in LPKC. She stated the cost of additional lights is not a hardship per State Statute.

Ms. Crow explained that the applicant had not provided enough data to show the existence of a security concern which could be relieved by providing additional lighting.

Ms. Crow said on the final criterion, the proposed 62-foot-tall luminaries are twice as tall as the existing 30-foot luminary and more than twice the 25-foot allowed by the current UDC. While neither zoning designation, L-P or I-H, has a height limit specifically listed for luminaries in the UDC, but the Site Plan article does. The UDC does not disallow lighting, it simply requires lighting to be installed at a reasonable height.

Ms. Crow explained Article 10 was recently rewritten to require development projects in all zoning designations to meet a standard that was both functional and attractive. LPKC is a very

important development to the City of Edgerton and as such the City has been very deliberate in enforcing the requisite design standards which keep LPKC an attractive asset to the Edgerton community. She stated the use of lighting facilities which meet the height requirement of 25 feet would meet the spirit and intent of the zoning regulations outlined in the Edgerton UDC.

There were no further comments from the applicant, City Staff, or the public. Chairman Daley closed the public hearing.

Chairman Daley stated after hearing the information provided, the Board will now address each criterion individually. As the board finishes discussing each item, they will vote on each one by a voice vote. A 'yes' vote means the Board member agrees with the statement, a 'no' vote means the Board member disagrees with the statement. He explained for the criterion to pass it must receive a 'yes' majority vote from the Board.

Chairman Daley read the first criterion. He stated the parcel is not zoned L-P. He said he does not think this issue is unique to this parcel. He explained there are taller lights, but not luminaries used in a parking lot.

Mr. Berger asked if light efficiency or safety could be maintained if the containers would be stacked. Chairman Daley said the containers cannot be stacked on this lot. Mr. Berger stated the taller lights are to warn aviators about the structure and not to light the area. Chairman Daley agreed and stated no lot has luminaries of the requested height.

Mr. Crooks said the Intermodal has taller lights, but the sits lower on grade and no other neighboring parcels have this tall of light poles. Chairman Daley asked how many light poles are hit by vehicles on the DeLong property. Mr. Hanni answered there is currently one light pole on their property. Mr. Crooks asked if the expansion lot will have spaces for other LPKC tenants to rent to store cargo containers. Mr. Hanni stated that is correct, but the lot and containers have had to be well lit to see the containers and numbers. Mr. Crooks inquired if DeLong will be making a profit from the renting of the spaces. Mr. Hanni answered they will be. Ms. Lebakken asked if the numbers were harder to read during the winter months as it is it gets darker earlier. Mr. Hanni replied the peak season of grain harvest is late fall and during the night is when the drivers cannot see the trucks and containers which has led to a few accidents. He stated there is only one light on their current operations, and it does not give enough light. Chairman Daley inquired to why there was only one light installed. Mr. Hanni answered he is unsure why only one was set up. He said luckily there has been only one theft on the property. Mr. Hanni explained it is dark on the DeLong property even with the Intermodal next to their property. The large lights on their cranes are designed to allow the operator to see the container number. Ms. Crow stated BNSF is governed by a different set of rules because as they are a federal entity. Ms. Crow explained that a photometric plan is typically designed to show no light pollution onto other parcels. Mr. Little stated parking trailers can be difficult and can be dangerous as the drivers are looking for a number and not checking for other trucks or pedestrians. Chairman Daley inquired if more lights would alleviate that. Ms. Crow replied City Staff believes it would. Mr. Hanni explained that DeLong has only one company currently driving their trucks, but as more companies rent spaces on the lot, there would be a variety of company drivers contribute to the truck traffic. Ms. Crow said other warehouses at LPKC have

many companies that deliver and haul the containers. Mr. Flack informed the Board the lights can be angled in such a way to prevent any light spill over to neighboring properties.

Chairman Daley polled the Board to see if each Board member agreed that the variance should be allowed due to a condition that is unique to the property in question, and is not a general condition found in the neighborhood:

Commissioner Berger – No

Commissioner Crooks – No

Commissioner Daley – No

Commissioner Lebakken - No

Commissioner Little – No

The variance was denied as no Board member found the variance arose from a unique condition.

Chairman Daly informed the applicant that any other alternative related to a variance could be brought forward for another Board meeting. Ms. Crow stated the deadline for the August meeting has passed so the earliest Board meeting the applicant can resubmit to would be in September.

ADJOURNMENT

Chairman Daley said the Board will meet again on August 11, 2020.

Motion to adjourn the meeting was made by Mr. Crooks, seconded by Mr. Berger. The motion was approved, 5-0.

The meeting adjourned at 7:11 PM.

Submitted by:

Chris Clinton

Planning and Zoning Coordinator/City Clerk