

Staff Report

ACTION ITEM: Continuation of discussion of a request for allowance of a tree buffer in lieu of a privacy fence for construction of min-storage units in a C-2 General Commercial zoning district at 720 South Old Orchard Road (contingent upon successful annexation into the city limits).

APPLICANT: Independence Self Storage, LLC

APPLICANT STATUS: Property Owner

PURPOSE: To annex the property into the City of Jackson and have access to city utilities and services.

SIZE: 2.65 acres

PRESENT USES: Self-storage units currently under development in county.

PROPOSED USE: Self-storage units in the city limits with some climate-controlled units.

PROPERTY ZONING: Currently no zoning. All newly annexed property is automatically zoned R-1 Single Family. Rezoning to C-2 General Commercial is currently being pursued and has attained a positive recommendation from the Planning and Zoning Commission. A public hearing and vote of the Board of Aldermen are needed to complete the process and obtain a final decision.

SURROUNDING ZONING: North – R-2 Single Family Residential; South – out of city; East – R-1 Single Family Residential (30’ strip along Old McKendree driveway) otherwise C-2 General Commercial and CO-1 Enhanced Commercial Overlay; West – out of city

HISTORY: This property began development while in the county before the owner had interest in annexing into the city. The city obtained a 20’ utility easement across this county property from the property owner for the Williams Creek Sewer Interceptor Sewer (a trunk sewer serving the entire eastern part of town from East Jackson Boulevard north to East Main). In negotiating the easement, the city agreed to define the easement between the proposed self-storage buildings. The sewer has now been constructed and zig zags through the building layout, preventing a shift in the building locations. A pond has been located just south of the building footprints. The pond has now been drained.

The Board of Adjustment approved in January two parts of the initial variance request regarding setbacks. Some clarification was requested from the City Attorney. That information has been added to the Comments section of this staff report.

This meeting is continuing a previously addressed item. It does not include a public hearing. The public hearing and opportunity for adjacent citizens to give input was on January 27, 2022.

TRANSPORTATION AND PARKING: All required street frontage currently exists. No minimum parking is required for self-storage units. South Old Orchard Road is a collector street on the Major Street Plan. This section of road was designed with a 100' right-of-way to accommodate future expansion to a 4-lane pavement width with a center turn lane.

CODE SECTION(s) REQUESTED TO BE VARIED: Zoning Code (Chapter 65) excerpts:

Sec. 65-12. - C-2 General commercial district regulations.

(1) *Use regulations.* A building or premises shall be used only for the following purposes:

ww. The following uses when located fifty (50) feet or more from any residential district (as measured to the property line) and separated from an adjacent residential district by a privacy fence:

26. Self-service storage facilities.

2009 COMPREHENSIVE PLAN: Regional Center (commercial)

FLOODPLAIN INFORMATION: This property is not located in a floodplain per FEMA panel 29031C0163, dated 9/29/11.

PHYSICAL CHARACTERISTICS: City trunk sewer zig-zags between the footprints of the buildings under construction.

COMMENTS: The 2.65 acres is currently in the annexation process. The annexation, variance, and rezoning are being pursued simultaneously. All three processes are dependent upon the success of the others. If the Board of Aldermen votes to recommend approval of the variance, **any approval must be contingent upon successful annexation and rezoning.**

If the board grants the portion of the variance related to a tree buffer in lieu of a privacy fence, they may define what constitutes an adequate tree-line or landscape buffer.

ANSWERS FROM CITY ATTORNEY (copied into this report with his permission):

Generally, the research I performed finds the following principles:

When a board grants a variance, fair administration demands that adjacent and nearby owners should be protected from any adverse effects likely to be caused by such relief. Such protection can be accomplished by attaching conditions to the variance.

The authority to impose variance conditions is recognized legislatively through the language of the statute or ordinance empowering the board to grant variances. For us, these include Missouri Revised Statute 89.090 and Section 65-28 of the Jackson Code of Ordinances.

Section 89.090 states in relevant part:

“1. The board of adjustment shall have the following powers: (3)..., to vary or modify the application of any of the regulations or provisions of such ordinance relating to the construction or alteration of the buildings or structures or the use of land so that the spirit of the ordinance shall be observed, public safety and welfare secured and substantial justice done...”

Section 65-28 (5) c, states in relevant part:

“...The zoning board of adjustment may impose conditions in the granting of a variance to ensure compliance and to protect adjacent property.”

In my opinion, the enabling statute and ordinance granting the authority for the BOA to operate both infer from the language of the statute and ordinance the authority of the BOA to impose variance conditions. However, it is important that any conditions imposed are sufficiently clear, and relate directly to the land (as opposed to the person or entity, i.e. Lackamp or Independent Self Storage, LLC and how it does its business).

Question #1, Can BOA allow a tree buffer in lieu of a privacy fence? YES, if that is what is reasonably required to protect nearby owners and there is substantial and competent evidence to support the condition(s).

Question #2, Can BOA add requirements for a fence since that term is not defined? YES, if that is what is reasonably required to protect nearby owners and there is substantial and competent evidence to support the condition(s). At first glance it may seem troubling that the ordinance doesn't further define "privacy fence". However, privacy fence carries with it the idea that the fence will make sufficiently private the structure or item sought to be kept out of view. I believe this would infer that the BOA has the authority to set a height sufficient, but not more than reasonably necessary, to block the storage sheds from McKendree Hills.

Question #3, Can BOA require both a fence and a landscape buffer? YES, if that is what is reasonably required to protect nearby owners and there is substantial and competent evidence to support the condition(s). The conditions must be reasonable and relate to the mitigation of adverse land use impacts caused by the variant use. If there is no relation to the condition, or if the condition is more than reasonably necessary, then the condition is improper.

Question #4, If a tree buffer is allowed, how is it enforced? By including reasonably specific conditions as part of the variance, such as that no trees can be removed, trimmed or altered unless it is first determined that the maintenance of the tree is required and only done if inspected and agreed by the City (I haven't thought of all the ways to protect the tree line, but this gives you an idea).

Question #5, Is a fence required along the 500 plus depth and the 200 plus width? It appears that a fence would be required by the code, but doesn't seem necessary as I understand the makeup of the property located in these other described areas since Lackamp's property is not adjacent to structures in those locations (I may be wrong about that). It would seem that Lackamp could be granted a variance for a privacy fence in these two areas and this could be further addressed if and when property is developed. I may not be fully understanding the issue here and this could require some further discussion.

ACTION REQUIRED: The Board shall approve or deny this request based on the criteria for granting variances. Special conditions may be added as needed.