

STAFF REPORT

March 20, 2019

To: Southwest Consolidated Zoning Board

Fr: Jeff Malotte, AICP, Senior Planner

Re: Application No. SW-CU-3451 (MC)



APPLICATION INFORMATION

Applicants/Owners: Nathaniel Jay Lowder

Requested Action: Conditional Use Permit (CUP)

Purpose: To construct a 40 x 60 foot oversized accessory building with a 15 x 30 foot lean-to (2,850 square feet, total) on a parcel where no more than 1,200 square feet of accessory buildings plus a 300 square foot lean-to would otherwise be permitted.

Legal Description: Part of the Northwest Quarter in Section 7, Township 14, Range 22

Site Address/Location: 36260 W. 154th Street

Existing Land Use and Zoning: Residential and RN-1, Residential Neighborhood 1 District Zoning

Existing Improvements: Single-family home, a 360 square foot accessory building (to be demolished) and an aboveground swimming pool.

Site Size: 2.0 acres

BACKGROUND INFORMATION

Proposal:

The applicant proposes to construct a 40 foot by 60 foot accessory building, with a 15 foot by 30 foot lean-to covered porch (total 2,850 square feet), on the subject property to be used for personal and home occupation related storage. The applicant indicates that he has vehicles, a trailer and various other personal items that this structure would enable him to store indoors. The existing house has no attached garage. For additional information, please see the applicant's narrative, attached.

There is an existing accessory structure, listed above, that the applicant will tear down and remove from the location where he intends to build the new structure. The new, 2,850 square foot structure would exceed the 1,200 square feet allowed for accessory buildings and 300 square foot lean-to allowance on the 2 acre parcel by 1,350 square feet, or 90 percent. Please see **Figure 1**, below, and the applicant's attached site plan (Exhibit A).

Recommendation Summary: Staff is recommending denial of the conditional use permit because we believe the proposed structure is out of character with the neighborhood, too large for a two acre lot with a house having only a 1,256 square foot footprint, and because the applicant proposes part of the building to house a business vehicle and materials which are allowed under home occupation and accessory uses in Article 18 of the *Regulations*. A 2,400 square foot building may allow the home business storage to grow beyond home occupation limits in a residential zoning district. Alternatively, staff would support an 1,800 square foot building with a 300 square foot lean-to porch as being an appropriate compromise for the neighborhood, for the lot, and it would be more likely to control expansion of the business use within the building. For more detail, please see the entire staff report.

Zoning History: The property was zoned RN-1, Residential Neighborhood 1 District, by the countywide rezoning in 1994. RN-1 zoning requires a minimum parcel size of 1 acre, so the 2.0-acre parcel is conforming by size.

Figure 1: Aerial View of Subject Property



Subdivision History: This parcel is one of eight taking access to 154th Street, a cul-de-sac to the west of Sunflower Road, containing from 1.0 to 4.0 acres each with a single large, 15 acre lot at the end of the cul-de-sac. This small neighborhood was created in 1973 under an obsolete subdivision process where a street is platted but the lots taking access to the street are unplatted.

Figure 2: Subject Property and the Surrounding Mile and a Half

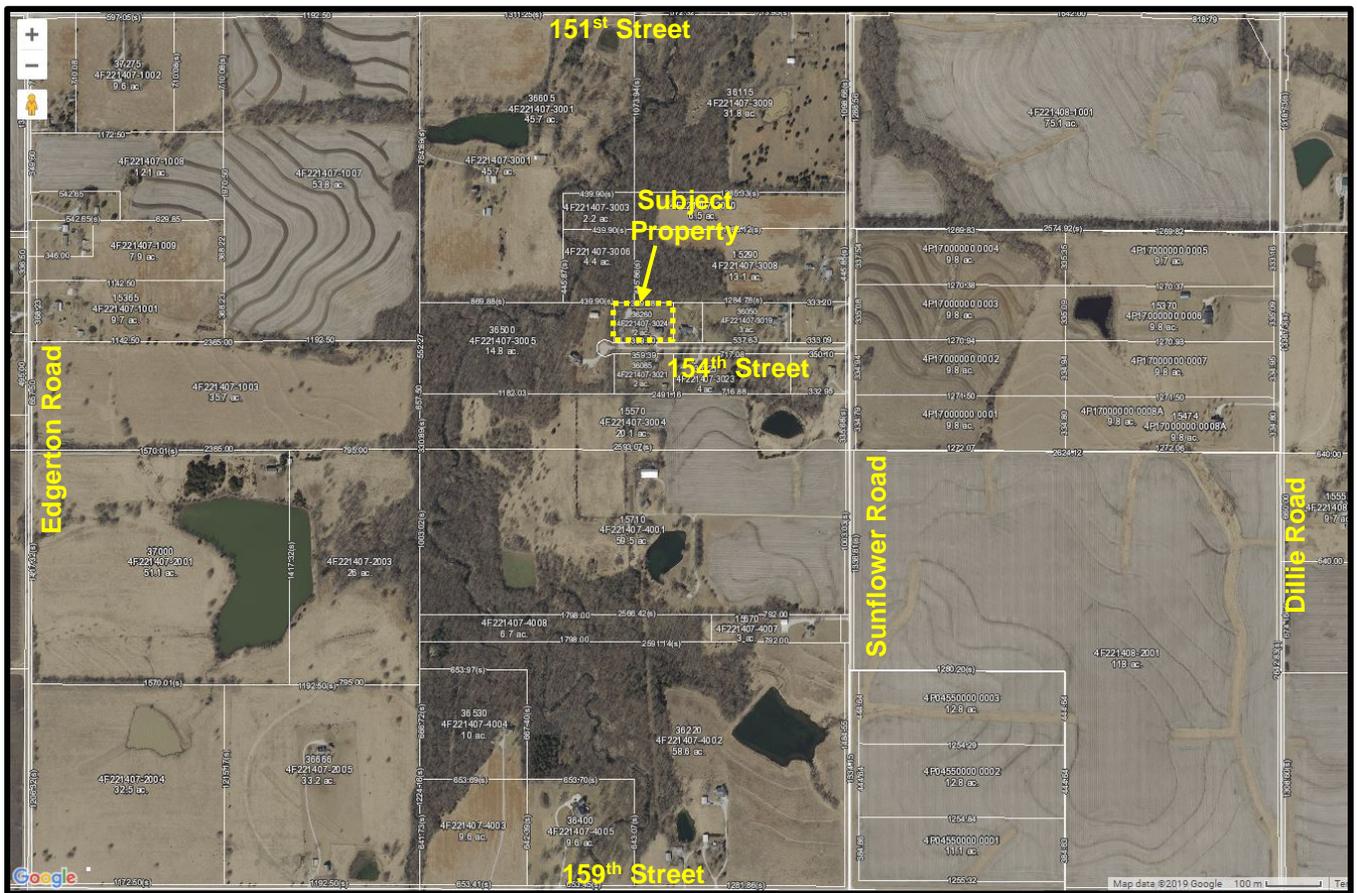
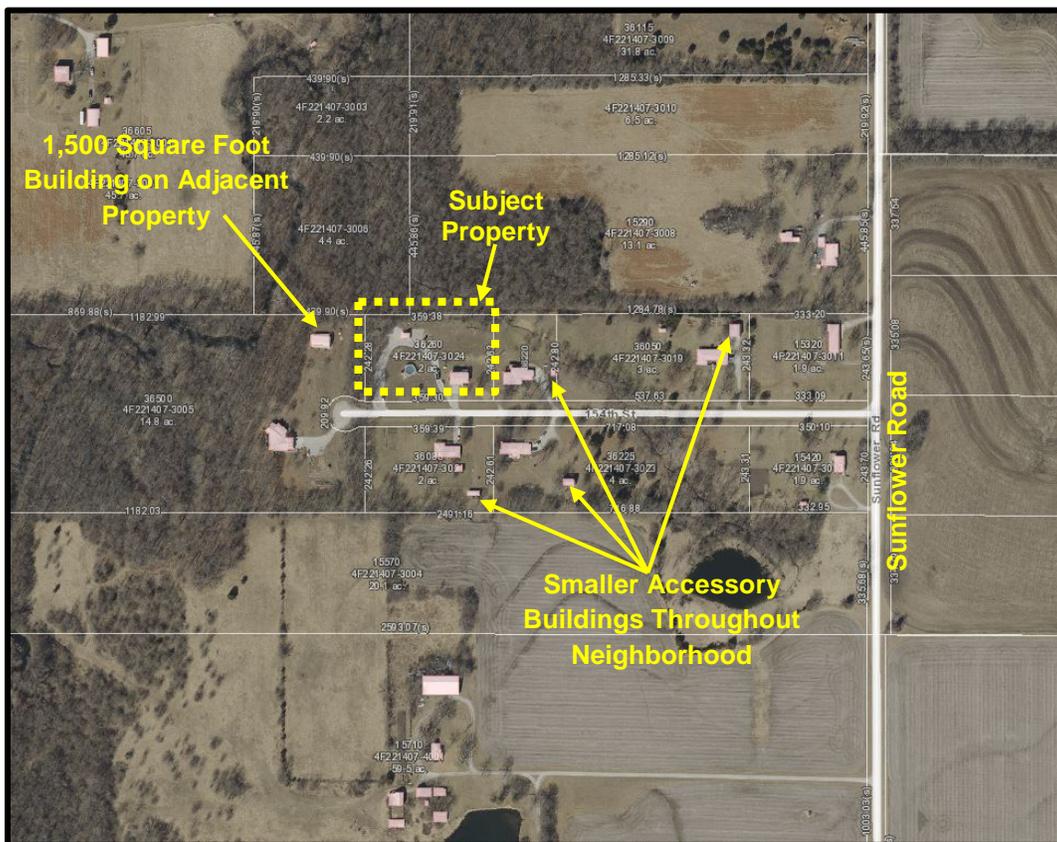


Figure 3: Immediate Surrounding Neighborhood



MINIMUM INFRASTRUCTURE REQUIREMENTS

The *Johnson County Zoning and Subdivision Regulations* (the *Regulations*) state that the minimum infrastructure requirements shall be guidelines for interpretation of the minimum infrastructure required for each conditional use.

- Water:** Water 7 provides water via a 2-inch main along 154th Street.
- Sewers:** Community sewers are not available to the subject property. A private septic system provides wastewater disposal for the home on the property.
- Public Safety:** The Johnson County Sheriff's Department provides police protection.
- The Northwest Consolidated Fire District provides fire protection. Station Number 2, the closest station, is approximately 7.8 miles to the northeast, by roads. Though a fire station within 5 miles would be required for a rezoning to RN-1 or a new RN-1 subdivision, this subdivision has existed with homes and accessory buildings since the 1970s. Staff does not believe that the existence of one more 1,800 or 2,400 in a neighborhood 7.8 miles rather than 5 miles from a fire station, a negligible difference, would constitute a hazard to the applicant or to surrounding property.
- Transportation:** Access to this property is from 154th Street, a gravel, publicly maintained street.
- Summary:** The existing infrastructure is adequate for the proposed accessory building.

STAFF ANALYSIS

The size of any accessory buildings allowed on parcels smaller than 10 acres is based on a formula related to the parcel or lot size. In the case of the subject property, that formula results in a maximum of 1,200 square feet for all accessory buildings on the lot. Accessory buildings larger than the formula permits may be allowed if the County first approves a Conditional Use Permit.

The *Regulations*, the *Rural Comprehensive Plan* and laws in Kansas indicate that consideration should be given to whether the proposed conditional use is in the interest of the public health, safety, morality, and the general welfare of the community. The conditional use permit application has been considered with regard to:

1. Whether the building would be consistent with the zoning and uses of nearby properties.

154th Street is the only residential street in its land section. In the surrounding nine square miles, there are only 4 residential streets and only 128.5 acres of residentially zoned land. The vast majority of parcels in this area access only the arterial street system. This is a very rural part of the county. Including the subject property, of the eight lots served by the cul-de-sac, seven parcels contain between one and four acres each and the eighth contains 15 acres. All eight are zoned RN-1. In the surrounding square mile, only one other isolated three-acre parcel is residentially zoned. All other parcels in the land section are RUR, Rural zoned.

Given the isolation of this small, residential neighborhood in an area otherwise composed of large farm parcels, farmsteads, and vacant land; staff believes the only fair comparison of consistency is

whether or not the proposed 2,850 square foot building and lean-to is consistent with the zoning and uses on the seven other lots served by the 154th Street cul-de-sac, which, together, constitute the neighborhood. There is a 1,500 square foot accessory building on the 15-acre lot adjacent to the west. The 3-acre lot located two parcels to the east has a 900 square foot detached garage, of which 240 square feet is open-sided lean-to. A four-acre lot has a 500 square foot storage building. The four remaining lots have only small sheds.

While detached accessory structures are the norm in the neighborhood, a building as large as the one proposed by the applicant is inconsistent with the smaller structures on the other lots. Even the 15-acre lot has only 1,500 square feet. As such, staff believes a building smaller than the 2,850 square foot building proposed would be more consistent with the zoning and uses on nearby properties. We think that 1,800 square feet with a 300 square foot lean-to/porch, or 50 percent over the 1,200 square foot standard, is a compromise more supportable by staff than 2,400 square feet, or 100 percent over the 1,200 square foot standard. This would allow the home without an attached garage to have some additional storage and parking and yet it would not be so large as to be inconsistent with the neighborhood and not so large that it would facilitate the applicant's home business parking and storage to grow beyond levels otherwise allowed in a residential neighborhood.

2. Whether the building is compatible with the character of the neighborhood.

The opportunity for indoor rather than outdoor storage of vehicles and equipment eliminates the view of these items and enhances the appearance of the neighborhood. The character of the neighborhood is homes along the cul-de-sac with smaller detached structures scattered around the lots. We think the 2,850 square foot structure would be out of character with the smaller structures in the rest of the neighborhood and out of character with the applicant's home, which has a 1,256 square foot footprint. Staff believes an 1,800 square foot building with a smaller porch would be more compatible.

3. Suitability of the property for uses to which it has been restricted.

The subject parcel and the surrounding, small residential area has existed for 46 years. The property is zoned RN-1, Residential Neighborhood 1 District. Uses allowed in the RN-1 Zoning District include residential and accessory uses. The present use of the property is residential with accessory uses.

The property is suitable for the uses to which it is restricted.

4. Extent of detrimental effects to nearby parcels should the Conditional Use Permit be approved.

The primary detrimental effects of large accessory buildings are twofold, the visual effects of a large building from the street and adjacent homes and the noise and visual degradation that a large building makes possible, if not more likely. The applicant proposes his building in the northwest quadrant of his property, to the northwest of the existing home (*see Figure 1, above*). The home on the parcel adjacent to the west is about 420 feet from the building site and is screened by an area of deciduous trees along the common property line, though the building could likely be seen from the west in the winter months. On the east, the nearest home is 230 feet from the building site. To the south, the nearest home is about 280 feet from the building site, across 154th Street. The next house to the southeast is about 360 feet away.

A 2,400 square foot building with a 450 square foot lean-to/porch would be about twice as large as the applicant's home and most other homes in the neighborhood. It would be, by far, the largest accessory building in the neighborhood. Though it would be 100 feet further from 154th Street than the house, 100 feet is not enough to significantly change the visual perspective of the larger bulk of the accessory building from the street and adjacent property. From the homes across the street and the home on the adjacent lot to the east, the applicant's proposed building will appear and will in fact be larger than any other building in neighborhood, including most of the homes. Landscaping to soften the view would mitigate this to an extent, but it will never hide a structure that size. Add to that the possibility of increased business activity in a larger building and staff believes the applicant's proposed building exceeds the extent of detrimental effects that the neighborhood nearby parcels should have to bear. Alternatively, we believe an 1,800 square foot building with a 300 square foot porch would be less detrimental from both visual and a business use perspectives.

5. Length of time the property has remained vacant as zoned.

The property is not vacant. County Appraiser's records indicate the home on the subject property was constructed in 1988. The property has been zoned RN1, Residential Neighborhood 1 District, since the countywide rezoning of 1994.

6. Relative gain to the public health, safety, and welfare as opposed to the hardship imposed upon the landowner by denying the request.

The building is 100 percent larger than is allowed on the property by right. Staff believes that the detrimental effects from the building, for the reasons listed in Item 4, exceed what is reasonable for the neighborhood. The proposed building may create increased activity in the neighborhood from expansion of the home occupation storage use proposed in the building. Therefore, there would be a relative gain to the public health, safety and welfare if this request were denied and the applicant built a smaller building. Staff believes that the applicant has no hardship if he is denied his request. He would be limited to build a smaller building according to the requirements in the Regulations (no more than 1,200 square feet with a 300 square foot lean to).

7. Whether the use is in keeping with the Comprehensive Plan.

This subject property is located in the Rural Policy Area of the *Comprehensive Plan* (the *Plan*) about a mile and a half to the west of the City of Gardner and a mile and a half south of the former Sunflower Army Ammunition property. The Plan recommends that the standard land uses and lot densities in the Rural Policy Area should be large agricultural tracts with residential uses on lots no smaller than 10 acres each, but the Plan also acknowledges that existing development patterns of isolated, older, smaller lot subdivisions exist and should be recognized. Beyond this, the Rural Policy Area of the Comprehensive does not speak to the sizes of residential accessory buildings.

ZONING AND SUBDIVISION REGULATION STANDARDS

Article 23 Sec. 6 (C) establishes that the granting of the requested CUP shall not be recommended unless the Zoning Board first makes a finding that the following conditions are met:

- 1) *Is in harmony with the general purpose and intent of the regulations.*

The purposes of the *Regulations* requirements that limit the size of accessory buildings are to promote uniformity of building streetscapes in residential neighborhoods and to prevent the construction of oversized accessory buildings that overshadow adjacent properties and may be used for commercial or industrial uses that may not be compatible with residential neighborhoods. At the size proposed, staff believes the larger building may allow his home business storage use to grow beyond what would otherwise be allowed by the *Regulations* in a residential neighborhood. Further, the building as large as proposed is inconsistent with the residential and other, smaller accessory buildings in the neighborhood. A smaller building closer in size to neighboring accessory buildings (staff alternately proposes 1,800 square feet with a 300 square foot lean-to/porch) and the size of the applicant's house would be more in harmony with the purpose and intent of the *Regulations*.

- 2) *Will not impair the adequate supply of light and air to adjacent property.*

The proposed building will meet minimum setback requirements and will not impair the supply of light or air to adjacent property.

- 3) *Will not increase hazards from fire or other dangers.*

With the suggested stipulations, the proposed accessory building should not create any activity of a hazardous or dangerous nature.

- 4) *Will not increase traffic on streets beyond their capacity.*

It is unknown whether the proposed building would increase traffic on 154th Street. A smaller building with staff's suggested stipulation limiting the home business use would be less likely to increase traffic on 154th Street.

- 5) *Will not increase the potential for flood damage to adjacent property or lead to additional public expense for flood protection, rescue or relief.*

There is no floodplain on the subject property.

- 6) *Will not otherwise unduly impair the public health, safety, comfort, morals, or general welfare of the inhabitants of the County, or otherwise create a nuisance or nuisance-like situation.*

At the size proposed, and with business storage, staff believes the use and building could be a visual nuisance because it is inconsistent with the residential and other, smaller accessory uses in the area. A smaller building closer in size to neighboring accessory buildings (staff alternately proposes 1,800 square feet with a 300 square foot lean-to/porch) and the size of the applicant's house would be more in harmony with the neighborhood.

- 7) *Will not pollute the air, land, or water.*

The proposed use will not pollute air, land, or water.

Public Works Department Staff: Public Works comments discuss triggers for stormwater management and stormwater quality management plans (if the applicant disturbs less than an acre during construction, then neither will be required) and the requirement for a Land Disturbance Permit.

RECOMMENDATION

Planning staff recommends **denial** of a Conditional Use Permit to allow the construction of a 40 foot by 60 foot (2,400 square feet) oversized accessory building with a 450 square foot lean-to/porch.

Reasons for Staff Recommendation of Denial:

1. The proposed accessory building is inconsistent and incompatible with the surrounding zoning and land uses and as proposed is too large for the site.
2. The proposed accessory building will have detrimental effects on nearby properties.
3. The proposed conditional use permit does not satisfy the "Standards for Issuance of a CUP" [Article 23 Sec. 6 (C)].

Alternatively, staff could support an 1,800 square foot building with a 300 square foot lean-to/porch, which we believe would be more appropriate for the neighborhood and more likely to control the business storage use in the building.

Staff Reasons to Approve an 1,800 Square Foot Building With a 300 Square Foot Lean-To:

1. An 1,800 square foot building with a 300 square foot lean-to/porch would be consistent and compatible with the surrounding zoning and land uses and would be appropriate for the site. It would allow the home without an attached garage to have some additional storage and parking and yet it would not be so large that it would facilitate the applicant's home business parking and storage to grow beyond levels otherwise allowed in a residential neighborhood.
2. An 1,800 square foot building with a 300 square foot lean-to/porch would not be likely to have detrimental effects on nearby properties because it would have less of a visual impact and it would be less likely to facilitate growth of the home business use beyond allowed business intensity levels.
3. An 1,800 square foot building with a 300 square foot lean-to/porch would not be likely to adversely affect the public health, safety or welfare, by becoming a visual nuisance in the neighborhood. It would be consistent with the residential and other, smaller accessory uses in the area. A building close in size to neighboring accessory buildings and the size of the applicant's house would be in harmony with the neighborhood.
4. A conditional use permit for an 1,800 square foot building with a 300 square foot lean-to/porch would satisfy the "Standards for Issuance of a CUP" [Article 23 Sec. 6 (C)].

Should the zoning board wish to approve the oversized accessory building as proposed or a smaller but still oversized building, the zoning board will need to state reasons as to why the building will not adversely affect the public health, safety or welfare.

If the zoning board elects to approve the application, staff suggests the following stipulations:

1. This Conditional Use Permit (CUP) allows the construction of a (***insert building size here***) oversized accessory building, with a (***insert porch size here***) square foot lean-to/porch, in the location as shown on the site plan. The existing accessory building on the property shall be demolished or

removed from the property to a location that can legally accept it prior to the applicant obtaining a building permit for the building permitted by this CUP.

2. The oversized accessory building shall be used only for residential accessory uses permitted in the RN-1 Residential Neighborhood 1 District, by the *Johnson County Zoning and Subdivision Regulations* (the *Regulations*). In accordance with the requirements of Article 18 of the Zoning and Subdivision Regulations, the applicant may have one light duty truck, one flatbed trailer, and a one month supply of materials for his mud jacking business stored in the building.
3. All applicable County code and regulation requirements, including but not limited to building code, fire code, wastewater, stormwater, land disturbance, and post construction water quality shall be met prior to construction of the accessory building.
4. Storage and use of gasoline, chemicals, liquids or any other potentially hazardous materials that may be stored in the oversized building shall be according to manufacturers' directions.
5. The term of this permit shall be for a period not to exceed 10 years, commencing from the date of approval of this resolution by the Board of County Commissioners.
6. To minimize the visual impact of the oversized accessory building on adjoining properties:
 - a. The building's exterior shall be muted, earth tone colors, and
 - b. In areas around the building that are not serving as driveways, the applicant shall plant a row of evergreen trees around the building no more than 20 feet from the foundation of the building, maximum, or the minimum setback from structures recommended for the particular species of trees, whichever is less. Trees shall be 6 feet tall at time of planting and placed on 10-foot centers. Trees shall be continually maintained and replaced when dead throughout the duration of the permit.
7. If outdoor lighting is attached to or placed around the building, all light fixtures shall be a cut-off or shoebox design to prevent bulb glare. Light fixtures that produce light spillage onto adjacent property are prohibited.

Attachments: Site Plan & Elevations, Applicant's Narrative, Public Works Comments, Department of Health and Environment comments

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571,210.2 ft

189,778 ft



36260
4F221407-3024
87,123.6 ft

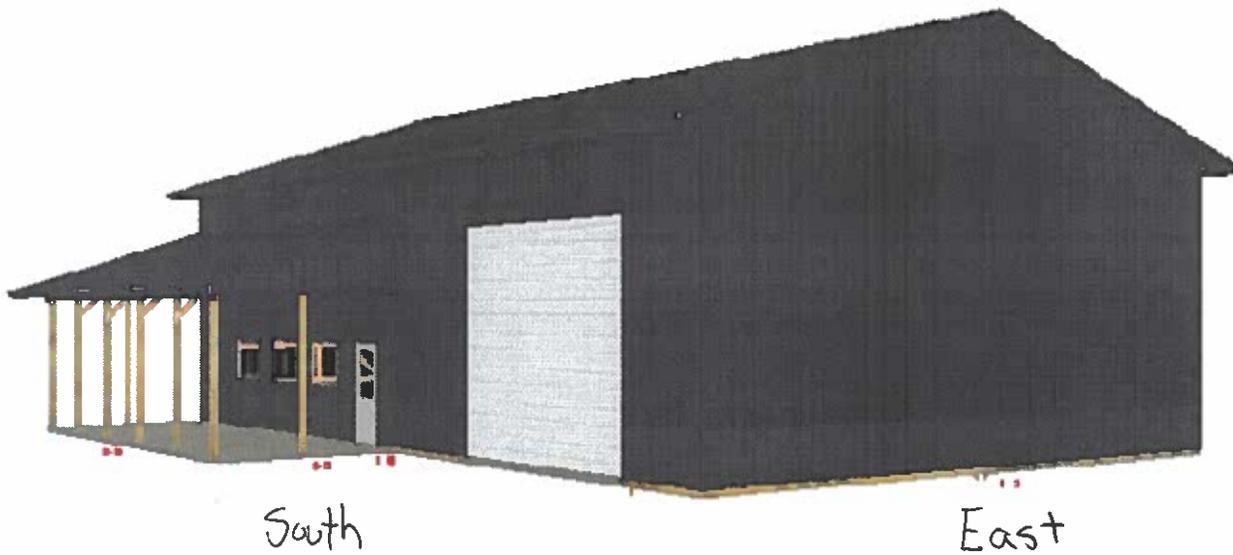
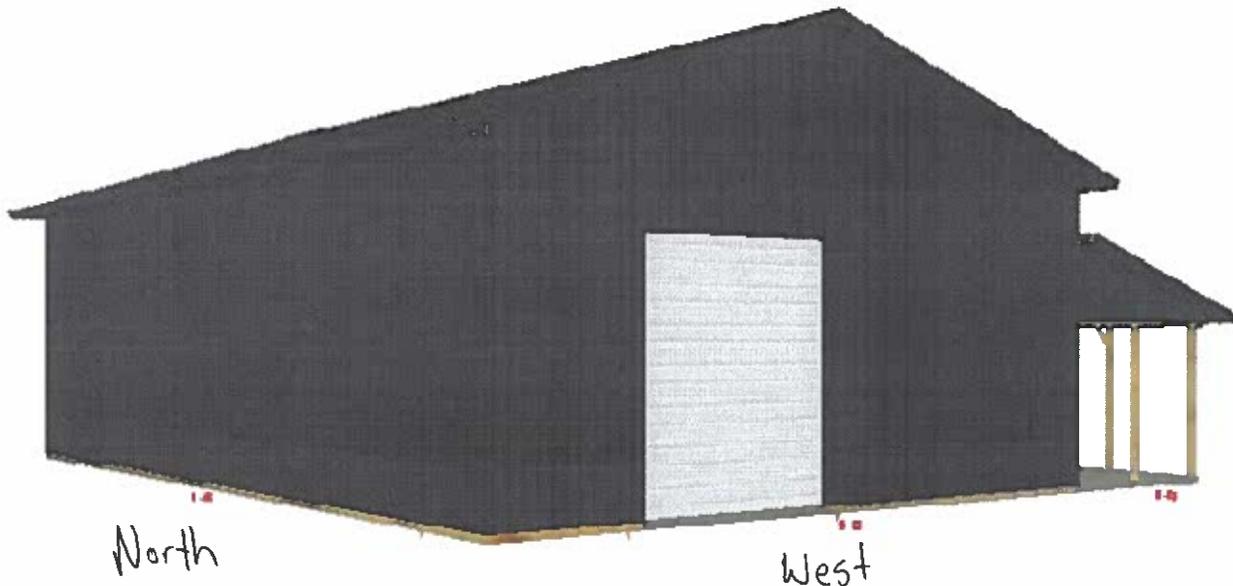
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Elevation Views



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FEB 04 2019

JOHNSON COUNTY
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60
40' X 64' 40 X 60 X 18
COMMERCIAL



FEB 04 2019

2/2/2019
https://clearybuilding.com/floorplanner/
Contact us at 1-800-373-5550

JOHNSON COUNTY
PLANNING AND BUILDING DEPARTMENT
*Floor plan is for conceptual purposes only.

40x60x18

Narrative pole barn description

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From: Sales (sales@jocofoampro.com)

FEB 04 2019

To: lowdertrucking@yahoo.com

Date: Saturday, February 2, 2019, 10:48 AM CST

JOHNSON COUNTY
PLANNING AND BUILDING CODES

Reason for a Conditional Use Permit. I am writing this letter to explain why we want to build a large garage/building on our property. We purchased our home 2 years ago and were very happy to move outside of the city limits. We enjoy the peace and quiet and the handful of neighbors we have are great neighbors. Our home is a split level home with 4 bedrooms and 1 office. As well as 2 living areas. The original garage was converted into living space by the previous owner. We have 5 children so we don't have a lot of space for all of our stuff. We currently have 2 strollers, a large wagon, 2 car seats, 2 bikes, a bike trailer for our 2 young sons, exercise equipment, plus several other items in our downstairs living room because we do not have any space to store them. We also have several items outside on our back porch, pool deck, behind our shed, and in our lean to that have been out in the sun and weather that are getting ruined. My log splitter sat outside for 2 years and is now rusted to the point I have to replace it. All of our children's bikes are rusted as well. We also have our pool supplies and lawn furniture that is outside getting weathered and ruined throughout the winter. We need space to store our belongings because we can't afford to replace several hundred or even several thousand dollars worth of property every couple years.

We also would like somewhere to park our vehicles when there is bad weather expected. Snow, Rain, and Hail are expected every year and we would appreciate a safe place to park our vehicles. I also have 5 sons. Sometime in the next 4 years the older boys will start driving. I want to be able to have a place to do routine maintenance on their vehicles and teach them the basics of owning a vehicle as well.

My wife and I would also like a warm in the winter/ cool in the summer space to do home projects and hobbies. She likes to keep a small garden and also restores furniture in her spare time. I think about having a warm place to hang out in the winter and work on my motorcycle. I eventually would like to have a 5th wheel camper if I can afford one so it would be nice to have space to store that as well.

I am also self employed and keep a service vehicle at my home. It does fall under the guidelines according to a limited business at a residential home. This new building will not change anything as far as traffic to my home or bother my neighbors. I leave in the morning to go to work and then come home in the evening just like anyone else. I have spoke with most of my neighbors about my building plan and they all seemed to approve of the idea. Several of them actually said if you can't have a garage on your own property outside of city limits, than we have a bigger problem we need to address. My point here is that we are all on the same page. We work, take care of our kids, and enjoy our homes.

The Garage I want to build is a pole barn style building. I am requesting a conditional use permit for 10 years. My building size will be 40'wide x 60' long x 18' sidewalls. I plan to keep it a grey color to match our home. The South end of the building will have a 15 x 30 awning over the front walk door with 2 to 3 standard windows as well. There will also be a large roll up door on the South side as well. This will be for our vehicles and lawn equipment. The West end of the building will have 1 large overhead door. It is sized for the future 5th wheel camper. I have not decided who I will have build the building. I have been in contact with 3 local and well known companies to discuss details and pricing. Once I receive my conditional use permit I will then move forward and make my decision on who to have build. I have included pictures of my property, property lines, building location, as well as a sample picture of what the building will look like.

I also want to explain why I chose a 40 x 60 x 18 building. I have run some simulators online that cover a general area. According to my calculations and amount of property and belongings, we will fill up that space fairly quickly. I do want enough room to where we can have storage for our seasonal items, lawn furniture, and outdoor fitness equipment and toys. We have 3 vehicles now and will eventually have a couple more when the boys get older. I also have a large riding lawnmower with several attachments. Being in construction and a laborer/ worker my whole life I have purchased a lot of tools as well. So having space for my tool boxes and other power tools will take up a large section of the back wall of my building.

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FEB 04 2019

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PLANNING AND BUILDING CODES

From: [Markway, Keith, PWK](#)
To: [Malotte, Jeffrey, PLN](#)
Cc: [Lage, Kent, PWK](#)
Subject: RE: SW-CU-3451 (MC) Lowder Oversized Accessory Building
Date: Monday, February 18, 2019 2:27:17 PM
Attachments: [Lowder Oversized Accessory Building - Public Works Comments.docx](#)

Jeff,

The following are Public Works revised comments on the Lowder Oversized Accessory Building:

Based on the plan submitted, the improvements will not cause an increased area of impervious surface on the site in excess of 10-percent of the existing impervious area and the existing impervious area of the site is less than 20-percent of the total property. Therefore the improvements will be excepted from the Stormwater Management requirements of APWA 5600.

A Land Disturbance Permit will be required prior to any land disturbing activities. A LD Permit is required for any LD activities that are part of a larger, phased, staged, common plan of development shall be considered a single site for the purposes of calculating the disturbed area.

If grading or other land disturbance of one acre or more is going to be performed during the construction of the proposed Accessory Building a Stormwater Quality Management Plan and calculations will need to be approved and a Stormwater Treatment Facility Permit(SQMP) issued prior to the issuance of a building permit. The SQMP and calculations must conform to the Manual of Best Management Practices for Stormwater Quality, published by the Mid America Regional Council and the Kansas City Metro Chapter of the APWA, 1980 edition.

I have also attached the comments in memo form. Please contact me if you have any questions or comments.

Keith

From: [Rogers, Todd, DHE](#)
To: [Malotte, Jeffrey, PLN](#)
Subject: RE: SW-CU-3451 (MC) Lowder Oversized Accessory Building
Date: Monday, February 11, 2019 3:11:08 PM

Jeff,

We would need to do a re-inspection to make sure there are no concerns with where they are building this structure.

Thanks, Todd Rogers