

## Board of Zoning Appeals Staff Report

*290 pages  
Retulaw  
for patio*

### Applicant

Jim and Tina Novak  
1725 Upland  
Marion, KS 66861

### Application

Application number ZP06.033. Applicant has requested a double frontage setback variance from fifty (50) feet to one (1) feet; and a back yard setback variance from twenty (20) feet to three (3) feet in a "CP-2" Planned General Business Zone District.

### Project Description

The proposed project is for the construction of an outdoor dining patio. A construction application has been received. Refer to file ZP 06.032.

### Planning Issues

The Public Hearing Notice and Adjacent Property Owner Notification was completed in accordance with the Marion County Zoning Regulations and Kansas State Statutes. No written public comments have been received as of May 5, 2006.

Yard variances are provided for in the Marion County Zoning Regulations to relieve hardships caused by exceptional narrowness, shallowness or shape of a specific piece of property.

The Marion County Zoning Regulations provide that the following conditions must be met in order to grant a variance:

- 1) The variance requested arises from such condition, which is unique to the property in question and which is not ordinarily found in the same zone or district; and is not created by and action or actions of the property owner(s) or the applicant.
- 2) The granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents.

- 3) The strict application of the provisions of the Marion County Zoning Regulations of which a variance is requested will constitute unnecessary hardship upon the property owner represented in the application.
- 4) The variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare.
- 5) That granting the variance will not be opposed to the general spirit and intent of the Marion County Zoning Regulations. The purpose of the variance is to provide relief where normal adherence to the regulations is not possible.

An outdoor dinning area is an allowed use within the CP-2 District

**Staff Recommendation**

- 1) Approve a double frontage yard variance of no more than forty (40) feet for the dinning patio; and a variance of no more than forty-nine (49) feet for a traffic safety guard rail. Approve a back yard variance of no more than seventeen (17) feet for the dinning patio. Recommend traffic safety guard rail installation as a condition of approval. Recommend dinning patio use not extend past 11:00 pm on any night as a condition of approval. Recommend back yard fencing be constructed as proposed. (Planning Factors: #2 and #3) (Reason: To Balance needs of adjacent land uses)

3. <sup>noises</sup> ~~noises~~  
 4. safety guard rail  
 5. rail fence

live music  
 1. App have county engineer! guard rail - county expense  
 2. Back yard fencing be constructed as proposed. blind corner