

CITY OF SILOAM SPRINGS BOARD OF ADJUSTMENT

(Special-Called)

Tuesday, July 12, 2016 at 4:00 p.m.
City Administration Building
400 N. Broadway

AGENDA

I. Board of Adjustment

- A. Call to Order
- B. Roll Call
- C. Approval of Minutes of the regular Meeting on April 12, 2016
- D. Variance Permit Approval
 - 1. Variance Development Permit, BOA16-04
120 Hwy. 412 East
Owner: Ansley Investment, LLC, George Baker
Agent: Ward Jones Realtors, Inc., Ward Jones
 - 2. Variance Development Permit, BOA16-03
2998 Hwy. 412 East
Owner: Ronnie Self & James Pruden/ Commercial Realty NWA, LLC, Jeff Kemp
Agent: Bates and Associates, Inc., Geoff Bates, PE
- E. Adjourn the Board of Adjustment

MINUTES OF THE SPECIAL-CALLED MEETING
OF THE BOARD OF ADJUSTMENT OF THE
CITY OF SILOAM SPRINGS, BENTON COUNTY,
ARKANSAS, HELD APRIL 12, 2016

The Board of Adjustment of the City of Siloam Springs, Benton County, Arkansas, met in a special-called session at the City Administration Building, April 12, 2016.

The meeting was called to order by Chairman Mounger.

Roll Call:

Colvin, Engle, Blakely, Nation, Mounger, Williams, Smith – Present.

Acting City Clerk, Judy Toler; City Planner, Ben Rhoads; City Engineer, Justin Bland; City Attorney, Jay Williams, all present.

A copy of the March 22, 2016 regular minutes had previously been given to each Commissioner. A motion was made by Colvin and seconded by Nation to accept the minutes.

Mounger called for a voice vote.

All Ayes. No Nays. Motion passed.

The first agenda item was a Variance Development Permit, BOA16-02, 5010, 3902, 3892, and 5000 Thomas Street, BEB Properties, LLC, City of Siloam Springs. Ben Rhoads, Senior Planner, briefed the item, and included there was a Scrivener's error on the original plat map that showed the side setback as being 20' rather than 25'. Rhoads further indicated there were no code changes since 2007 that affect the side-on-corner set-back in the R3 Zone and so this was missed in the original plat review. Staff concurred that there was a unique circumstance with these lots that do not frequently occur in the R3 Zone District and with that there was legitimate hardship. Williams asked if his understanding was correct in that this is a result of an error in the original plat? Rhoads answered yes. Williams asked if these homes are already constructed. Rhoads answered yes, but not the corner lots. A Motion to approve was made by Engle and seconded by Nation.

Roll Call:

Engle, Blakely, Nation, Mounger, Williams, Smith, Colvin – Aye.

7 Ayes. No Nays. Motion Approved.

There being no further business, a Motion was made by Colvin and seconded by Williams to adjourn. A voice vote was taken. All ayes. Meeting Adjourned.

ATTEST:

APPROVED:

Renea Ellis, City Clerk

Karl B. Mounger, Chairman

(SEAL)



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STAFF REPORT

TO: Board of Adjustment
FROM: Ben Rhoads, AICP, Senior Planner *ZLR*
Cc: Don Clark, Community Services Director
DATE: July 6, 2016
RE: Variance Development Permit, BOA16-04

Recommendation: City staff does not provide recommendations for variances. City staff concurs that there is a legitimate hardship in this case. Staff suggests the following condition if this application is approved by the Board of Adjustment:

1.) Should comments from the general public be received between the final approval of this variance and the close of business on the 16th day of July, the applicant shall file a renewed variance request to the Board of Adjustment taking into account the additional testimony received.

Background:

APPLICATION REVIEW DATE

Board of Adjustment Review (special-called meeting): July 12, 2016

APPLICANT AND AGENT

Applicant/Owner: – Ansley Investment, LLC, George Baker

Agent: Ward Jones Realtors, Inc., Ward Jones

SUBJECT PROPERTY ADDRESSES

120 Hwy. 412 East

INTERNET MAP INFORMATION

Planning staff has created a map made with Google My Maps.

Attribution: Map data ©2016 Google Imagery ©2016, Arkansas GIS, DigitalGlobe, Landsat, State of Arkansas, USDA Farm Service Agency Washington County.

Please click on the following link to access. This link will only operate if reading this report digitally.

<https://drive.google.com/open?id=1Gp6HwjVaLouKF6vJKOMvDGSpAsA&usp=sharing>

PROJECT INTENT

The applicant desires to UTILIZE A FORMER FAST FOOD RESTAURANT, ABANDONED FOR A PERIOD GREATER THAN SIX MONTHS, WHICH EXCEEDS ITS MAXIMUM LOT COVERAGE BY 15%; WHICH ENCROACHES INTO ITS PERIMETER GREENSPACE REQUIREMENTS BY 6 FEET; WHICH PAVES OVER 5% OF THE PARKING LOT'S GROSS INTERIOR AREA INTENDED FOR LANDSCAPING ISLANDS; AND WHICH UTILIZES PARKING LANES THAT ENCROACHES 35 FEET INTO THE 75 FOOT INTERIOR PARKING LANE SETBACK, on property in the C-2 (Roadway Commercial) zone. This is a direct code violation of §102-53(4); §102-53(f)(1); §102-76(4); and §102-77(4)(b) of the Siloam Springs Municipal Code.

<i>EXISTING LAND USE</i>		<i>EXISTING ZONING</i>	
Abandoned Fast Food Restaurant		C-2 District (Roadway Commercial)	
<i>SURROUNDING LAND USE</i>		<i>SURROUNDING ZONING</i>	
North:	Retail (shopping center)	North:	C-2 District (Roadway Commercial)
South:	Industrial (radio and cell tower)	South:	R-2 District (Residential, medium)
East:	Retail/ office	East:	C-2 District (Roadway Commercial)
West:	Restaurant	West:	C-2 District (Roadway Commercial)

APPLICABLE CODE REQUIREMENTS

§102-53(4); §102-53(f)(1); §102-76(4); and §102-77(4)(b) of the Siloam Springs Municipal Code.

Excerpt from Section 102-53(4) Maximum lot coverage:

“ * * * * ”

85 percent.

* * * * ”

Excerpt from Section 102-53(f) Open Space:

“ * * * * ”

(1) Each developed lot shall provide and maintain: A landscaped buffer, not less than six feet wide, along all property lines, and including a six-foot opaque screen along all abutting residential properties, 12 feet along the front property line if fronting on a principal arterial street;

* * * * ”

Excerpt from Section 102-76 Parking area design standards:

“ * * * * ”

(4) Twelve or more, shall be landscaped at least five percent of the gross interior parking area, which landscaping shall include trees, and shall not include areas containing otherwise-required landscaping, screening, or setbacks;

* * * * ”

Excerpt from Section 102-77(4) Interior drives setback:

“ * * * * ”

b. No driveway which serves more than 15 spaces for a "drive-thru" business, in which patrons' vehicle remain in an active queue and patrons do not leave their vehicle for goods or services, shall itself be intersected by an interior driveway or parking lane within 75 feet of the public right-of-way of an arterial or higher class street.

* * * * ”

STAFF DISCUSSION

Unlike traditional permit applications that are reviewed by the Planning Commission, variances do not receive a staff recommendation. Approval of variances are based on the Board of Adjustment's determination as to if there is a hardship. All variances must have a legitimate hardship associated with the property that is not caused by the applicant and is not financial in nature (see attached Statement of Hardship). The hardship must be unique to the property, must not be caused by the applicant, or must have existed for a minimum of 15 years.

The applicant is requesting to occupy an abandoned fast food restaurant, formerly operating as Taco Tico, in order to open a new Mexican fast food restaurant, with an order counter and drive-thru service. The applicant desires to repaint the facility, update the kitchen, and open for business, with no changes to the exterior site layout. At issue is that the property is no longer covered by the non-conformity clause cited in §102-98. The Zoning Code, Sec. 98, states that, "Each nonconforming use of land shall be deemed expired, and immediately shall conform to current zoning district regulations without any further period of nonconforming use [if] (1) The nonconforming use is discontinued or abandoned for six consecutive months, or for 18 non-consecutive months within three consecutive years,". There is uncertainty on how to interpret this Code section, as to if "use" is referring to the land use, i.e. if it was a restaurant, bank, industrial plant, etc., or if "use" is referring to how the lot is used, in terms of the lot coverage, site treatments, driveways, etc. The City's reading is that the latter Code interpretation is appropriate; however the City intends to clarify this word in a future Code update.

Although there are no exact dates, it is believed that Taco Tico ceased operations approximately three years ago. As seen in the applicable Code requirements section of this report, there are four violations associated with the physical use of the site, these include: 100 percent lot coverage, which leads to green space buffer violations, the lack of interior parking islands, and also violations related to the driveway. There are no available records as to when the site was originally developed, or if the site was classified legal non-conforming. The City has not retained any records from the 1970's, the time the restaurant was likely built.

The 0.44 acre lot size is considered too small, by today's standards, to support a drive-thru, fast food restaurant. The dining room space is approximately 1,000 square feet, which would require at least 10 parking spaces, 16 are provided, including two ADA spaces. The majority of the spaces are end-on-end parallel parking at the property perimeter. These spaces abut an internal driveway that circles the structure, allowing vehicle queuing lanes for the drive-up window. By today's site design standards, 11 of the parking spaces would not be permitted due to the six foot perimeter green space buffer requirement. Bringing the site up to Code would mean that the historic use of the property could not be retained in the future, given that a minimum of 10 parking spaces are needed for the structure's size. There are also challenges with the driveway to parking lane setback. The Code requires that for businesses with drive-up windows, there would be at least 75 feet from the edge of the right-of-way to the beginning of an internal drive or parking lane. Staff measured from the right-of-way to the first parking spaces and there is approximately 45 feet of clearance. It appears these distances were substantially reduced when Hwy. 412 was widened from five lanes to six lanes with a center median. This condition was not caused by the current owner.

Staff believes the site is limited by its size and thus presents certain characteristics not frequently occurring in the C-2 zone. All peer lots in Siloam Springs, containing fast food restaurants with drive-thru windows, are larger; making the subject property the *smallest* fast food lot in the City. For comparison, a "fast food" restaurant is defined as a single use, stand-alone, structure which serves food quickly, typically ordered at a counter, with a drive-thru window. See the chart on page 4 of this report.

Name	Location	Lot Size (ac.)	Lot Size Rank
TJ's Pizza	Hwy 412 W.	1.67	1 st - largest
McDonalds	Hwy 412 W.	1.35	2 nd
Hardee's	Hwy 412 W.	1.17	3 rd
Sonic	Hwy 412 W.	0.96	4 th
Braum's	Hwy 412 W.	0.95	5 th
Mazzios	Hwy 412 W.	0.93	6 th
Wendy's	Hwy 412 E.	0.92	7 th
Panda Express	Hwy 412 E.	0.91	8 th
KFC	Hwy 412 W.	0.81	9 th
Long John Silver's	Hwy 412 W.	0.81	10 th
Taco Bell	Hwy 412 W.	0.61	11 th
Arby's	Hwy 412 W.	0.59	12 th
Shipley Do-Nuts	Hwy 412 W.	0.55	13 th
Taco Tico	Hwy 412 E.	0.44	14th - smallest

Given that the restaurant is of similar size to its peers, with similar parking demands, it is at a disadvantage due to its limited lot size. In fact it is 0.11 acres (or 20%) smaller than the next smallest lot for a fast food restaurant, Shipley Do-Nuts, and is only 26.3 percent of the size of the largest lot, for TJ's Pizza. Furthermore, the highest and best use for the property is a fast food restaurant, given that the site and structure are set up for this use and the site has historically functioned for fast food for at least 35 years, excluding the time it has been vacant. Even if the property was converted to general commercial retail use, there would not be sufficient parking, in that the kitchen area would be considered retail space. The structure is 1,800 sq. ft., which requires 9 parking spaces. According to staff's review, only five or six parking spaces can be retained and still meet the current green space requirements. The applicant argues in his Statement of Hardship that the property was designed and has operated for many years as a small restaurant with only 14 (regular) parking spaces. The new owner intends to operate a small restaurant and needs all the existing parking spaces for the anticipated demand.

These conditions, when taken in whole, leads staff to concur that the need for the variance arises out of uniqueness on the property and that the applicant has demonstrated that the "uniqueness of the property has existed for a minimum of fifteen (15) years." In this case, this unique condition is the unusually small lot size. Therefore, staff concurs that there is a legitimate hardship in this case meeting the proscribed variance approval tests.

Lastly, the Board of Adjustment review date was shifted from the regular meeting of June 28, 2016 to the special-called meeting of the Board of Adjustment of July 12, 2016, due to a lack of quorum of the Board. Due to this meeting time shift, the applicant was unable to make the deadline to have their newspaper ad placed in the local newspaper 15 days in advance of the rescheduled meeting. The City's ordinance on notice requires that a variance applicant notify the public of the Board of Adjustment meeting through letters to surrounding property owners and placing notice in a newspaper of local circulation. The letters were mailed within this proscribed time limit; however the newspaper notice appeared in the Wednesday, June 29, 2016 edition of the Herald-Leader, or 13 days prior to the July 12th meeting. City staff has not received any commentary from the public on this variance request, however, should comments be registered in the two-day period *after* review of this variance, staff recommends a condition to be added to this approval that would allow anyone to be heard within the proscribed 15 day period. In conclusion, staff is recommending that if comments are registered between July 13th to the end of business on July 14th, the applicant must re-apply for this variance to allow the Board of Adjustment the opportunity to re-review the case in light of new commentary received from the public.

LEGAL NOTICE

Staff received no information that:

- the proposal interferes with the reasonable peace or enjoyment of the neighboring properties;
- the property values will be substantially damaged;
- the proposal is not adequately supported by infrastructure.

- Site posted: June 02, 2016; reposted June 22, 2016
- Newspaper legal notification: June 05, 2016 (Herald-Leader); 2nd *revised* notice June 29, 2016.
- Letter legal notification: May 31-June 2, 2016; 2nd *revised* letter June 27-30, 2016
- Staff received no phone calls or correspondence on the request.

Fiscal Impact

None

Attachments

Statement of Hardship
Bird's Eye View
General Area Map



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STATEMENT OF HARDSHIP

Name: GEORGE BAKER by WARD & JONES Circle one: Agent for Owner / Owner

Address or description of property: 120 HIGHWAY 412 E SILDAM SPRINGS

The Board of Adjustment and/or Board of Directors may approve a variance development permit **only** after determining from the evidence and arguments presented that the conditions listed below do exist. Please describe how your request satisfies each of these conditions.

1. The need for this variance arises from a uniqueness of the property not frequently occurring in the zoning district:

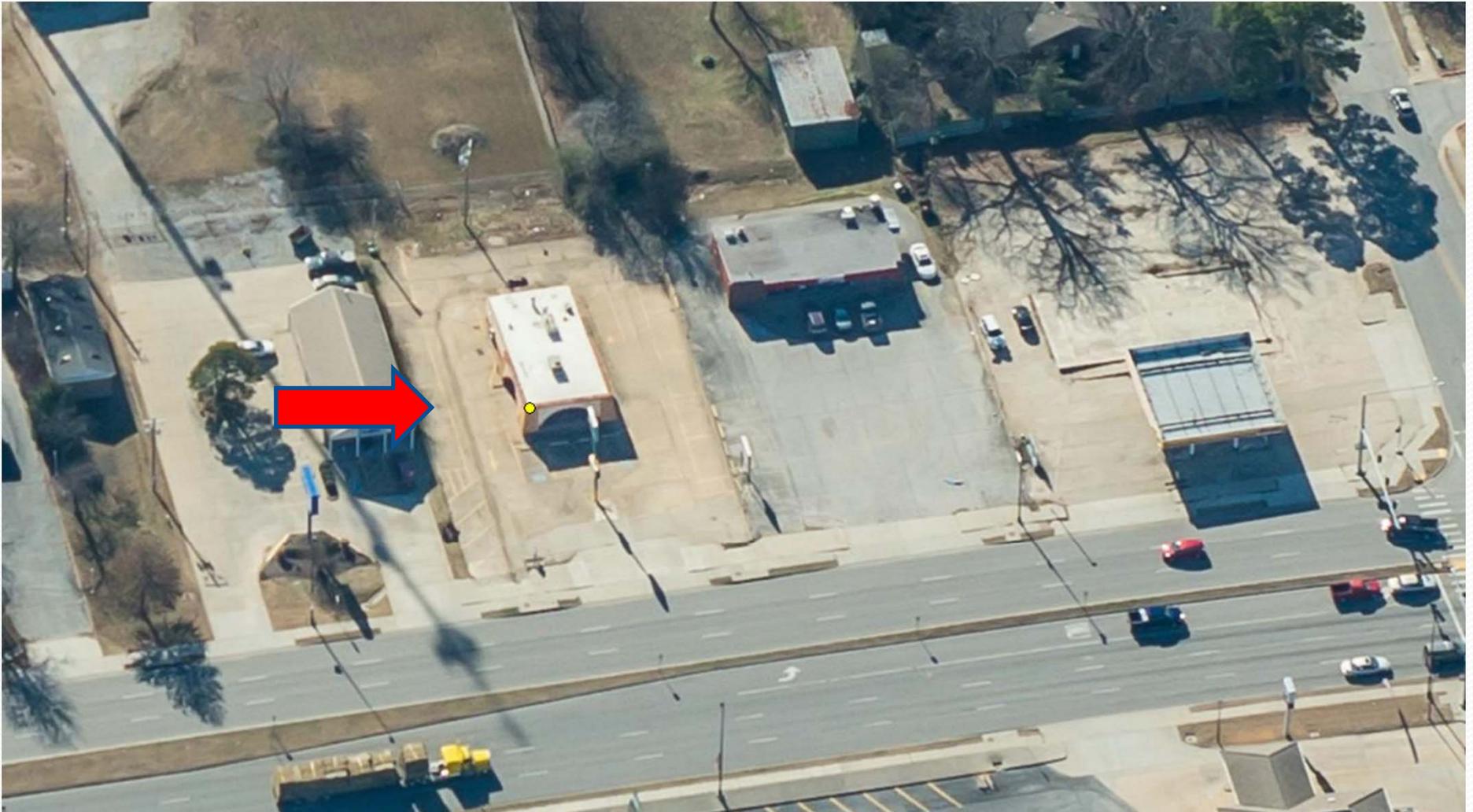
THE PROPERTY WAS DESIGNED AND HAS OPERATED FOR MANY YEARS AS A SMALL RESTAURANT WITH ONLY 14 PARKING SPACES NEW OWNER INTENDS TO OPERATE A SMALL RESTAURANT AND NEEDS ALL PARKING SPACES

2. This uniqueness of the property was not caused, allowed, or known prior to purchase by the owner or has existed for a minimum of fifteen (15) years:

3. If approved, this variance will not burden the present or future use of neighboring properties and will not damage any property value or quality of life in the neighborhood:

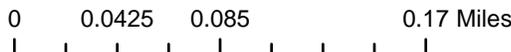
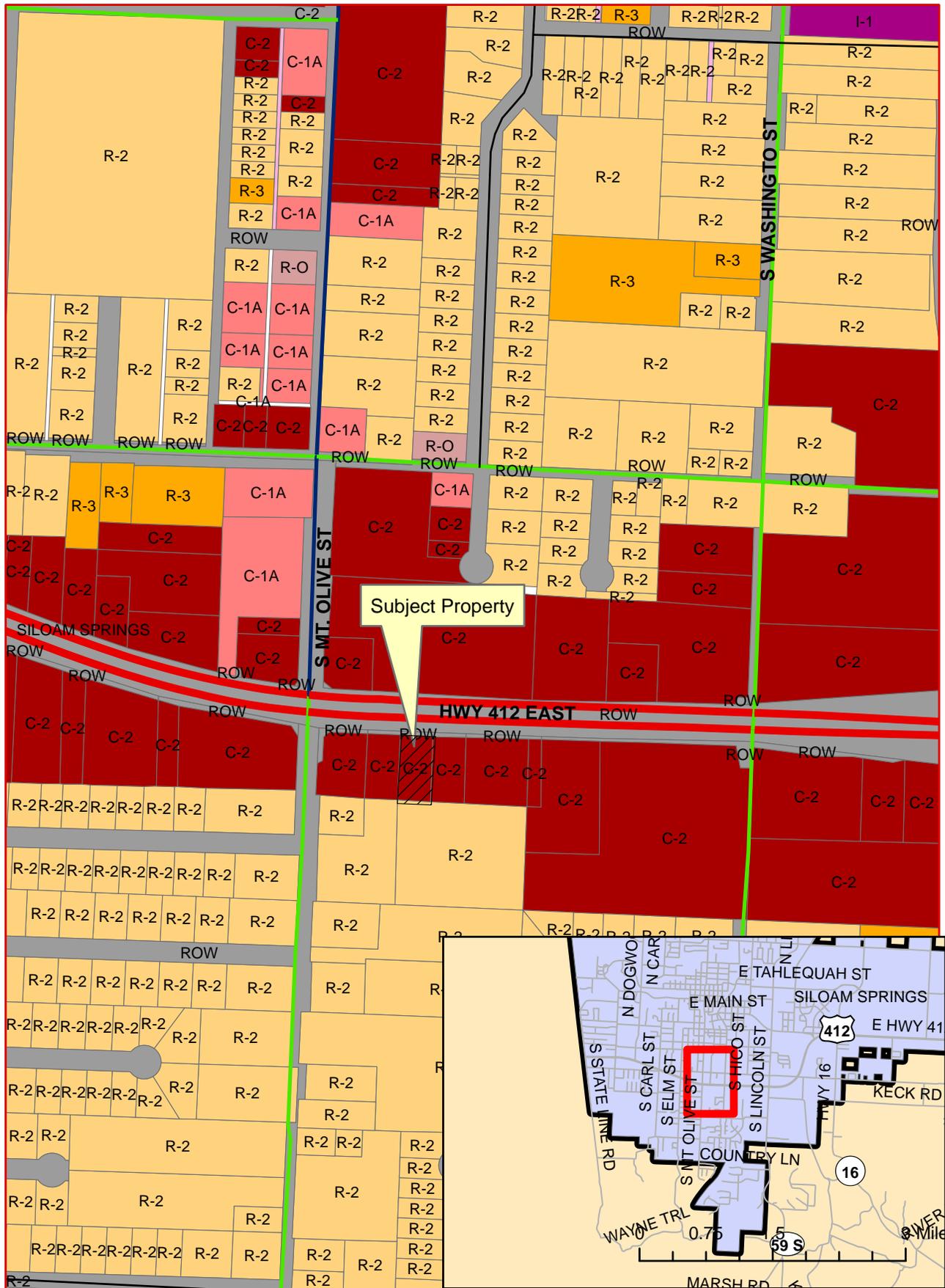
BOA16-04 – Baker

**Bird's Eye View
(looking south)**



GENERAL AREA MAP

Variance
BOA 16-04





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STAFF REPORT

TO: Board of Adjustment
FROM: Ben Rhoads, AICP, Senior Planner *ZLR*
Cc: Don Clark, Community Services Director
DATE: July 6, 2016
RE: Variance Development Permit, BOA16-03

Recommendation: City staff does not provide recommendations for variances. City staff concurs that there is a legitimate hardship in this case.

Background:

APPLICATION REVIEW DATE

Board of Adjustment Review (special-called meeting): July 12, 2016

APPLICANT AND AGENT

Applicant/Owner: Ronnie Self & James Pruden / Commercial Realty NWA, LLC – Jeff Kemp.

Agent: Bates and Assoc., Inc. – Geoff Bates, PE

SUBJECT PROPERTY ADDRESSES

2998 Hwy. 412 East

INTERNET MAP INFORMATION

Planning staff has created a map made with Google My Maps.

Attribution: Map data ©2016 Google Imagery ©2016, Arkansas GIS, DigitalGlobe, Landsat, State of Arkansas, USDA Farm Service Agency Washington County.

Please click on the following link to access. This link will only operate if reading this report digitally.

<https://drive.google.com/open?id=1Gp6HwjVaLouKF6vJKOMvDGSpAsA&usp=sharing>

PROJECT INTENT

The applicant desires to PAVE 6 FEET INTO THE 6 FOOT PERIMETER GREENSPACE BUFFER on portions of a proposed lot on property in the C-2 (Roadway Commercial) zone. This is a direct code violation of §102-53(f)(1) of the Siloam Springs Municipal Code.

REFERENCE APPLICATIONS

The following applications are associated with this request: LA16-01 (Lot Line Adjustment - Staff Review Only) and SD16-03 (Significant Development Permit) requests.

<i>EXISTING LAND USE</i>		<i>EXISTING ZONING</i>	
Retail store / Vacant*		C-2 District (Roadway Commercial)	
<i>SURROUNDING LAND USE</i>		<i>SURROUNDING ZONING</i>	
North:	Retail (gas station and office)	North:	C-2 District (Roadway Commercial)
South:	Residential, two-family/ Residential, multi-family	South:	R-4 District (Residential, multi-family)
East:	Residential, multi-family/ Vacant lot	East:	R-4 (Residential, multi-family)
West:	Retail (grocery store)	West:	R-2 District (Residential, medium)

*For the purpose of existing zoning and land use, the entirety of the development site is used since an associated lot line adjustment has not yet been approved.

APPLICABLE CODE REQUIREMENTS

§102-53(f)(1) of the Siloam Springs Municipal Code.

Excerpt from Section 102-53(f) Open Space:

“ * * * * ”

(1) Each developed lot shall provide and maintain: A landscaped buffer, not less than six feet wide, along all property lines, and including a six-foot opaque screen along all abutting residential properties, 12 feet along the front property line if fronting on a principal arterial street;

* * * * ”

STAFF DISCUSSION

Unlike traditional permit applications that are reviewed by the Planning Commission, variances do not receive a staff recommendation. Approval of variances are based on the Board of Adjustment’s determination as to if there is a hardship. All variances must have a legitimate hardship associated with the property that is not caused by the applicant and is not financial in nature (see attached Statement of Hardship). The hardship must be unique to the property, must not be caused by the applicant, or must have existed for a minimum of 15 years.

The applicant is requesting to develop the front half of an out lot associated with the development of the Shoppes at Siloam Springs. For more on this application, please refer to the corresponding staff report for project SD16-03. The applicant desires to create an out lot for a future restaurant pad, however, unlike the existing out lots in front of Wal-Mart and Lowe’s, this one is incorporated into the main parking facility for the shopping center. This poses challenges to the development with respects to the greenspace buffer, as the parking for the shopping center is seamlessly tied together, regardless of the lot lines, see embedded diagram on pg. 3, Figure 1.

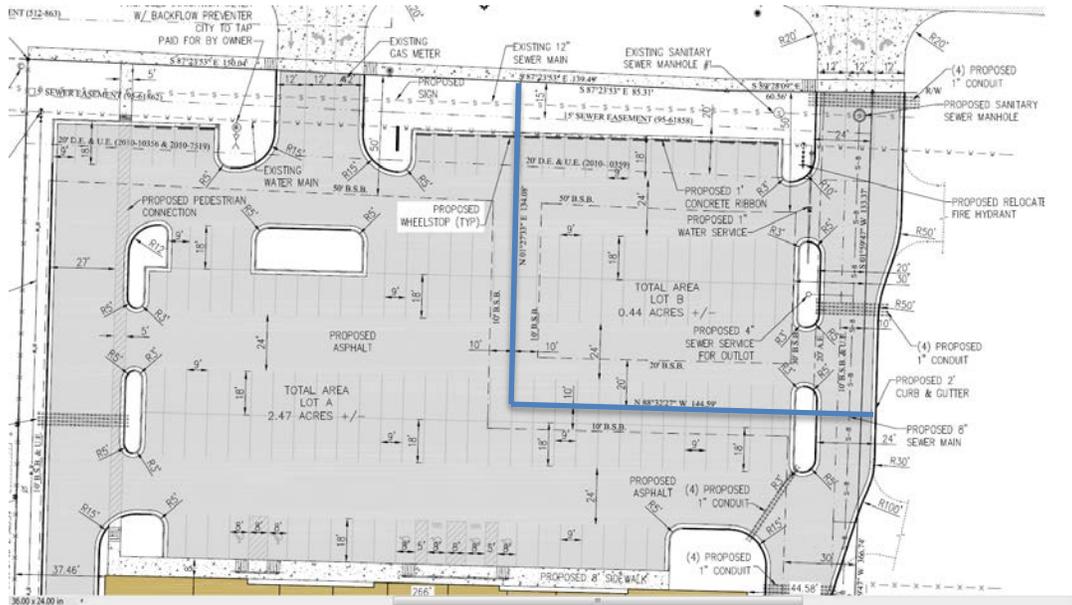


Figure 1

Figure 1 shows how the parking will be incorporated as part of the lot. The blue lines represent the adjusted property lines. At issue is the staging of future development because the developer does not know the future use of the out lot, therefore he cannot reasonably design the interior workings of the proposed lot. In addition, the developer is reluctant to leave the space undeveloped for aesthetics, but more importantly, because he believes the future tenants of the shopping center will require more parking than required by Code. Parking is calculated assuming a general retail use at 1 space for every 200 sq. ft. of retail space, however a more intense parking ratio is required if portions of the shopping center will be used for restaurants. The developer believes the more intensive space configuration will be needed. Furthermore, if the developer leaves the out parcel undeveloped, there will also be limited areas where traffic can flow east and west, as two of the east west interior parking aisles would not be serviceable. The parking lot is designed to operate as one unit. Should development occur on the out lot, the paved parking area will be taken up and redesigned to accommodate the new use, and will be laid out to flow with the shopping center parking lot. The developer is willing to expend the extra costs now to pave the entire space, since the timing is uncertain as to when, or even if, the out lot will be developed.

The applicant's Statement of Hardship argues that the lot is intended for future development, and the proposed parking will be removed in the future (should development commence). The long term intent by the developer is to provide the required greenspace and open areas when the lot is eventually developed. The Code does not address this particular situation, thus requiring a variance.

Therefore, it is argued that this circumstance poses a unique situation, not frequently occurring in the C-2 zone. Of all variances on record filed with the City, staff is not aware of one that permits temporary development as a place holder until the time that a future project is proposed. In terms of design impact, the shopping center's lot will appear as one lot, and the green space buffers would not be required if the lots consolidated into a single lot. So in effect, the developer is foregoing a lot consolidation because he does not wish to apply for a future lot split for the out lot. Should he desire to market for a potential out lot, it is more effective for marketing the property if the out lot already exists.

These conditions, when taken in whole, lead staff to concur that the need for the variance arises out of uniqueness on the property. In this case, these unique conditions include the unusual need to stage temporary site improvements as a placeholder until more permanent development occurs at a later phase of the project. Staff also concurs that the variance, if approved, will not harm or burden surrounding property owners, or reduce any property values or the quality of life for the neighborhood. Therefore, staff concurs that there is a legitimate situational hardship, meeting the proscribed variance approval tests.

LEGAL NOTICE

Staff received no information that:

- the proposal interferes with the reasonable peace or enjoyment of the neighboring properties;
- the property values will be substantially damaged;
- the proposal is not adequately supported by infrastructure.

- Site posted: June 02, 2016; reposted June 22, 2016.
- Newspaper legal notification: June 24, 2016 (Herald-Leader).
- Letter legal notification: June 01-June 03, 2016; 2nd *revised* notice June 22-25, 2016.
- Staff received no phone calls or correspondence on the request.

Fiscal Impact

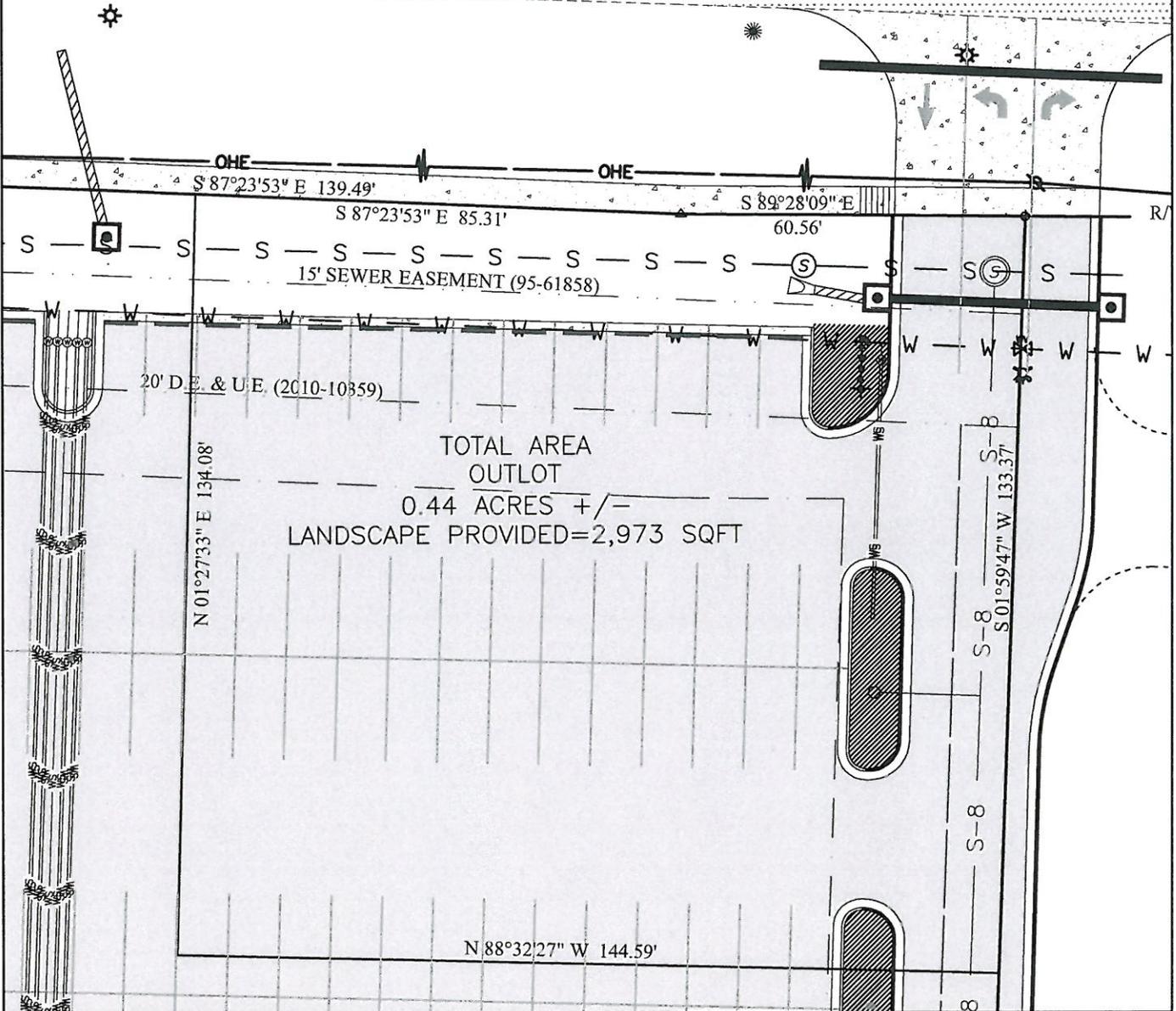
None

Attachments

Site Plan
Statement of Hardship
Bird's Eye View
General Area Map

HWY #412 (PRINCIPAL ARTERIAL)

ASPHALT WIDTH VARIES
75' R/W FROM CENTERLINE
(PER AHTD JOB #9626)



PROJECT NO
16-032

DRAWN BY: GHM
DATE: 5/1/16

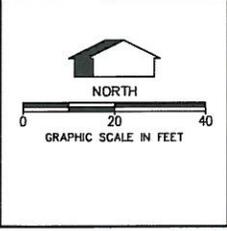
Bates & Associates, Inc.
www.nwbatesinc.com Civil Engineering & Surveying

7230 S. Pleasant Ridge Dr.
Fayetteville, Arkansas 72704 • 479.442.9350 • Fax 479.521.9350

SHOPPES AT SILOAM

OUT PARCEL MAP

SILOAM SPRINGS, ARKANSAS





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STATEMENT OF HARDSHIP

Name: Geoff Bates Circle one: Agent for Owner / Owner ✓

Address or description of property: 2998 US Highway 412 East, Siloam Springs, AR 72761

The Board of Adjustment and/or Board of Directors may approve a variance development permit **only** after determining from the evidence and arguments presented that the conditions listed below do exist. Please describe how your request satisfies each of these conditions.

1. The need for this variance arises from a uniqueness of the property not frequently occurring in the zoning district:
This lot is intended for future development, and the proposed parking area will be removed in the future. As
the nature of the future development is not yet determined, the developer has decided to use the lot as a temporary
parking area. The intent is to provide the required greenspace and open area when the lot is eventually developed.
Code does not address this particular situation, therefore a variance is requested.

2. This uniqueness of the property was not caused, allowed, or known prior to purchase by the owner or has existed for a minimum of fifteen (15) years:
The uniqueness of this situation is based on the proposed Large Scale Development and the included temporary
parking area. The future development of this lot will fulfill the greenspace requirements that this variance request
addresses.

3. If approved, this variance will not burden the present or future use of neighboring properties and will not damage any property value or quality of life in the neighborhood:
The surrounding area either contains similar parking areas or is undeveloped, therefore the Applicant does not feel
that a temporary parking area on the outlot will either burden the use or affect the value of property or the quality
of life in the neighborhood.

BOA16-03 Jeff Kemp

Bird's Eye View



GENERAL AREA MAP

Variance Permit
BOA 16-03

