

# **CITY OF SILOAM SPRINGS BOARD OF ADJUSTMENT**

Tuesday, October 25, 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 special-called Meeting on July 12, 2016
- D. Variance Permit Approval
  - 1. Variance Development Permit, BOA16-06  
1084 Hwy 412 E.  
Owner: Mike McGooden  
Agent: Mike McGooden
- 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 JULY 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, July 12, 2016.

The meeting was called to order by Chairman Mounger.

Roll Call:

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

City Clerk, Renea Ellis; City Planner, Ben Rhoads; City Engineer, Justin Bland; City Attorney, Jay Williams; Don Clark, Community Services Director, all present.

A copy of the April 12, 2016 special-called minutes had previously been given to each Commissioner. A motion was made by Smith and seconded by Blakely 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, BOA16-04, 120 Hwy, 412 East, Ansley Investments, LLC, George Baker, Ward Jones Realtors, Inc., Ward Jones.

Ben Rhoads, City Planner, briefed the item. Engle asked why there isn't more green space and instead islands of concrete. Rhoads stated it has a lot to do with the City's history and how the highway was initially developed. AHTD took space to make room for additional lanes. Engle asked if it is possible to put green space in. Rhoads answered possibly; they just want to utilize the existing area. Smith asked where the dumpster location is and if it will be enclosed. Rhoads stated they don't have it shown right now; it's not part of the variance. Williams asked if the variance need was due to the building being vacant for over 6 months; if it not vacant for 6 months; it would have been 'grandfathered' in. Rhoads answered yes, that is correct. Ward Jones, 21759 Troon Lane, stated he's sure the buyer will enclose the dumpster if required. A Motion to approve was made by Nation and seconded by Williams.

Discussion on the motion: Engle stated a green space island needs to be included. Ward Jones stated they will discuss it with the buyer. Rhoads stated a condition can be added to the approval. Nation asked about where to add without cutting down on parking space. Rhoads stated he would recommend aboveground planters. Nation amended the motion to include a green space condition with portable planters and without displacing parking; seconded by Blakely. Ward Jones stated buyer would comply within reason.

Roll Call on the Motion to Amend:

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

6 Ayes. No Nays. Motion Amended.

Roll Call on Approval:

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

6 Ayes. No Nays. Motion Approved.

The next agenda item was a Variance Development Permit, BOA16-03, 2998 Hwy. 412 East, Ronnie Self & James Pruden / Commercial Realty NWA, LLC, Jeff Kamp, Bates and Associates, Inc., Geoff Bates, PE.

Ben Rhoads, City Planner, briefed the item. Engle asked if this is a lot split. Rhoads answered no, adjusting the current lot lines. Engle asked if they will be required to go back with green space once paved over if the property is used for something different. Rhoads answered absolutely. Nation asked if paved, and they have to rip it up, what would that do to the parking spaces. Rhoads stated they are overcompensating for parking so there would be no effect. Smith asked to review area in bird's eye view. Rhoads reviewed. Eric Boling, 2957 Katieanna, Fayetteville, stated he is the one purchasing property. He stated it will not be a restaurant; he has a retailer interested. Engle asked if he was aware of the green space requirements. Boling answered yes, and have accounted for it in the drawings. A Motion to approve was made by Williams and seconded by Nation.

Roll Call:

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

6 Ayes.          No Nays.      Motion Approved.

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

ATTEST:

APPROVED:

\_\_\_\_\_  
Renea Ellis, City Clerk

\_\_\_\_\_  
Karl B. Mounger, Chairman

(SEAL)



## STAFF REPORT

TO: Board of Adjustment  
FROM: Ben Rhoads, AICP, Senior Planner *BR*  
Cc: Don Clark, Community Services Director  
DATE: October 17, 2016  
RE: Variance Development Permit, BOA16-06

**Recommendation:** City staff does not provide recommendations for variances.

### Background:

#### APPLICATION REVIEW DATE

Board of Adjustment Review: October 25, 2016

#### APPLICANT AND AGENT

Applicant/Owner: Michael McGooden / Pamela Hutchinson (formerly Hammersla)

Agent: Michael McGooden

#### SUBJECT PROPERTY ADDRESS

1084 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=1PqgXBuXIPElj3nN0M0luInfnVN8&usp=sharing>

#### PROJECT INTENT

The applicant desires to REOPEN AN EXISTING DRIVEWAY THAT ENCROACHES 36 FEET INTO THE SETBACK FROM A DRIVEWAY THAT INTERSECTS THE SAME SIDE OF AN ARTERIAL STREET, AND ENCROACHES 2 FEET INTO THE DRIVEWAY SETBACK FROM THE EAST LOT BOUNDARY, on property in the C-2 (Roadway Commercial) zone. This is a direct code violation of §102-78(1)(a) and (c) of the Siloam Springs Municipal Code.

EXISTING LAND USES AND ZONING

| <i>EXISTING LAND USE</i>    |  | <i>EXISTING ZONING</i>            |  |
|-----------------------------|--|-----------------------------------|--|
| Liquor Store/ Office        |  | C-2 District (Roadway Commercial) |  |
| <i>SURROUNDING LAND USE</i> |  | <i>SURROUNDING ZONING</i>         |  |
| North:                      | Commercial—Retail/<br>Residential, single-family | North:                            | I-1 District (Industrial)/<br>C-2 District (Roadway commercial)/<br>R-2 District (Residential, medium) |
| South:                      | Industrial—Factory                               | South:                            | I-1 District (Industrial)  |
| East:                       | Commercial—Retail/<br>Industrial—Storage Area    | East:                             | I-1 District (Industrial)  |
| West:                       | Industrial—Storage Area                          | West:                             | I-1 District (Industrial)  |

APPLICABLE CODE REQUIREMENTS

§102-77(a)(1) & (c) of the Siloam Springs Municipal Code.

*Excerpt from Section 102-77(1) Arterial (and larger) streets:*

“ \* \* \* \* ”

- a. 100 feet from the centerline of any other driveway which intersects the same arterial (or larger) street from the same side;
- c. 50 feet from all boundaries of the lot, except the boundary abutting the intersected arterial (or larger) street.

\* \* \* \* ”

APPROVAL CRITERIA

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 based on the following criteria shown in Section 54-34 of the Municipal Code.

- (1) The board's determination of whether there is "undue hardship unique to the property" should reflect whether, and the degree to which, the applicant has convincingly demonstrated that:
  - a. The need for the variance arises from a uniqueness of the property not frequently occurring in the zone; and that
  - b. The uniqueness of the property was not caused, allowed, or known prior to purchase, by the owner, **or** has existed for a minimum of 15 years.

(See the attached Statement of Hardship form for the applicant’s argument for a hardship. Hardships cannot be financial in nature.)

- (2) The board's determination of whether approval of the development permit would be “in keeping with the spirit and intent of the Code” shall reflect whether, and the degree to which, the applicant has convincingly demonstrated that the proposed variance:

- a. Will not substantially damage, without fair recompense, any property value in the neighborhood;
- b. Will not substantially impair the neighborhood's quality of life, including without limitation, sound and traffic levels, pedestrian and vehicular access, visual presentment, and character;
- c. Will not, by the nature of the variance, tend to burden the present or future use of neighboring properties in accordance with current zoning standards; and
- d. Is mitigated in impact by permanent characteristics of the lot or adjacent uses of land including, without limitation, natural features or permanent easements.

(3) *Conditions.* The development permit allowing variance from land regulations may require, as a material condition essential to any authorization it confers, that any lots and any construction be located and designed in a manner which best:

- a. Provides safe and convenient traffic flow;
- b. Maximizes the effectiveness of all drainage patterns and facilities; and
- c. Remains compatible with neighborhood architecture and layout, and with city growth and planning.

The applicant's failure to fully perform the conditions shall render the development permit void and invalid and of no further effect, and the use shall immediately be conformed to the applicable regular zoning standards of this Code without any period of nonconformity.

#### **STAFF DISCUSSION**

The applicant is requesting permission to reopen an existing driveway located at 1084 Hwy. 412 E. for the benefit of McGoo's Liquor store. The store currently has vehicular access from the drive to the west of the subject drive. The liquor store received approval through the Board of Directors on September 6<sup>th</sup>, however with the condition that the applicant could not make use of the eastern-most drive leading to Hwy. 412. The reason this drive was closed is because it does not adhere to the standards for such drives and it lost its legal non-conforming status in 2012. It should be noted that the variance under present review is *not* related to if the drive was abandoned or not prior to 2012—the drive was closed until the time the applicant began to make improvements to the property over the summer in preparation for the new liquor store; therefore there is nothing to “grandfather in”..

The applicant believes that by reopening the subject drive, it will improve traffic flow on the property. Staff met on this issue and it was determined that the chief concern is a right turn movement out of the subject drive while another vehicle is attempting a left turn from the next drive to the east servicing Bynum's Furniture. The use of both drives simultaneously creates a conflict zone. Furthermore, according to the Siloam Springs Police Dept., eastbound traffic on Hwy. 412 tends to increase in speed from the top of the railroad bridge downwards to the Hwy. 59 overpass. This is due to the decline of the roadway surface and the lack of perceived impediments, such as roadway curves. With faster traffic, there is less reaction time for motorists to check if the roadway is clear to make a left turn, and he or she may miss if there was another vehicle attempting to turn right at the time due to the natural focus on if traffic has cleared the highway—thus creating the conflict zone between the two drives. Staff has no information as to when these drives were constructed and what regulations were in place at that time. In terms of similar drive situations, there are closer drives typically on Hwy. 412 W., however with the addition of the center highway median, this conflict zone does not exist—all vehicles are forced to turn right, even if they are intending to travel the opposite direction.

The applicant's Statement of Hardship refers to safer egress for customers. By entering the west driveway and utilizing the eastern driveway to exit onto Hwy. 412, it is argued that customers will have more time to enter traffic approaching from the west. It is unclear how the applicant has demonstrated unique aspects of the property other than a desire for improved customer access. As seen in the approval criteria section of this report, determining unique characteristics on the property, leading to a hardship, qualifies the approval of variance.

#### LEGAL NOTICE

- Site posted: October 4, 2016.
- Newspaper legal notification: October 9, 2016 (Herald-Leader).
- Letter legal notification: October 3-6, 2016,
- Staff received one phone call from one of the surrounding property owners of a questioning nature. Staff answered the callers question to his satisfaction.

#### **Fiscal Impact**

None

#### **Attachments**

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



CITY OF  
**Siloam Springs**  
*It's a natural.*

STATEMENT OF HARDSHIP

Name: Mike McGarden / McGoo's Liquor / Service Express Staffing Circle one: Agent for Owner / Owner

Address or description of property: 1084 E. Hwy 412, 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:

Reopening the east driveway at 1084 E. Hwy 412 will make it safer for customers exiting McGoo's Liquor. If the west driveway is marked ENTER and the east driveway EXIT, it will give drivers more time to enter traffic approaching from the west.

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:

As was erroneously stated, the property has not been abandoned since its purchase by Pamela Hutcheson in 2007. Although it has not always been occupied, the utilities have continued to be paid, and the property has been mowed. Therefore, it should actually be grandfathered in.

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:

Kansas City Southern and PipeLife are two of the neighboring properties. Bynum's Furniture is the other. They are all well-established, and McGoo's is of no danger to their property values or quality of life.



Google earth



# BOA16-06 – McGooden

# Bird's Eye View



# GENERAL AREA MAP

## Driveway Variance BOA 16-06

