

CITY OF SILOAM SPRINGS BOARD OF ADJUSTMENT

Tuesday, February 8, 2022 at 5:30 p.m.
City Administration Building
400 N. Broadway

AGENDA

I. Board of Adjustment

- A. Call to Order
- B. Roll Call
- C. Pledge of Allegiance
- D. Approval of Minutes of the Regular Meeting on January 11, 2022
- E. Variance Request
 - 1. Drive Through Variance, BOA21-02
2690 Hwy. 412 East
Owner: GCM Siloam, LLC
Agent: Kimley-Horn and Associates, Inc. – Lindsey Hearon, PE
- F. Adjourn the Board of Adjustment

MINUTES OF THE REGULAR MEETING
OF THE BOARD OF ADJUSTMENT OF THE
CITY OF SILOAM SPRINGS, BENTON COUNTY, ARKANSAS
JANUARY 11, 2022

The Board of Adjustment of the City of Siloam Springs, Benton County, Arkansas, met in regular session at the City Administration Building on January 11, 2022.

The meeting was called to order by Chairman Smith.

Roll Call: Song, Montgomery, Salley, McKinney, Smith, Rennard, Williams - Present.

Present City Staff: Senior City Planner, Ben Rhoads; City Engineer, Justin Bland; City Attorney, Jay Williams, Permit Technician; Brian Phillips, and Permit Technician Wade Baker; all present.

A copy of the September 14, 2021, minutes had previously been given to each Commissioner. A motion was made by McKinney and seconded by Salley to accept the minutes. A Voice Vote was called. Motion passed unanimously.

There being no further business, a Motion was made by Salley and seconded by McKinney to adjourn. A Voice Vote was called. Motion passed unanimously. Meeting Adjourned.

ATTEST:

APPROVED:

Renea Ellis, City Clerk CAMC/CMC

J.W. Smith, Chairman

(SEAL)



STAFF REPORT

TO: Board of Adjustment
FROM: Ben Rhoads, AICP, Senior Planner *BR*
Cc: Don Clark, Community Development Director
DATE: December 20, 2021
RE: Variance Development Permit, BOA21-02 / 2960 Hwy. 412 East

Recommendation: Based on the hardship presented by the applicant, staff recommends approval BOA21-02 (Variance).

Section A: Background:

A-1) APPLICATION REVIEW DATE

Board of Adjustment Review: February 8, 2022

A-2) APPLICANT AND AGENT

Applicant/Owner: GCM Siloam, LLC

Agent: Kimley-Horn - Lindsey Hearon, P.E.

A-3) SUBJECT PROPERTY ADDRESS

2960 Hwy. 412 East

A-4) PROJECT SUMMARY

The applicant desires to CONSTRUCT AN ELECTRONIC SPEAKER SYSTEM ASSOCIATED WITH A DRIVE THROUGH USE BETWEEN THE HOURS OF 10:00 P.M. TO 7:00 AM ENCROACHING BY 120.23 FEET TO THE NEAREST RESIDENTIAL STRUCTURE FOR USAGE AFTER 10:00 PM AND BEFORE 7:00 AM, on property in the C-2 (Roadway Commercial) zone. This is a direct code violation of §102-77.1(9) of the Siloam Springs Municipal Code.

A-5) LEGAL NOTICE

- Site posted: January 10, 2022.¹
- Newspaper legal notification: January 23, 2022 (Herald Leader).
- Letter legal notification: January 12, 2022.
- Staff received no calls or correspondence on the request.

¹Site was originally posted for an earlier meeting date.

A-6) REFERENCE APPLICATIONS

The following application is associated with this request:

- SU21-18 (Special-Use Development Permit).
- SD21-13 (Significant Development Permit)

Both applications will be heard at the January 11, 2022 regular meeting of the Planning Commission.

A-7) EXISTING LAND USES AND ZONING¹

<i>EXISTING LAND USE</i>	<i>EXISTING ZONING</i>
Vacant – former auto services	C-2 District (Roadway Commercial)
<i>PROPOSED LAND USE</i>	<i>PROPOSED ZONING</i>
Large Impact Commercial or Office Facility (Use Unit 16) ¹	No zoning change is proposed
<i>SURROUNDING LAND USE</i>	<i>SURROUNDING ZONING</i>
Commercial – Auto Service <i>Separated by Hwy. 412 E.</i>	North: C-2 District (Roadway Commercial) <i>Separated by Hwy. 412 E.</i>
Residential, multi-family	South: R-4 District (Residential, multifamily)
Commercial - Office <i>Separated by AR. Hwy. 16.</i>	East: C-2 District (Roadway Commercial) <i>Separated by AR. Hwy. 16.</i>
Commercial – Retail/Restaurant	West: C-2 District (Roadway Commercial)

¹Even though the proposed restaurant will be less than 10,000 square feet, the expected trip ends will exceed more than 200 a day due to the facility being open 24 hours a day.

(General Area Map on the following Page)

A-8) APPLICABLE CODE REQUIREMENTS
Section 102-77.1 of the Siloam Springs Municipal Code.

Excerpt from Section 102-77.1(9) Drive-through lane design standards

“ * * * * ”

Hours of operation. Facilities utilizing an electronic speaker system and located on a site within 200 feet of any residential property (measured from the order window or station to the outer wall of the nearest residential structure), hours of operation for the drive-up/drive-through service shall be limited from 7:00 a.m. to 10:00 p.m. daily. If the use is located greater than 200 feet from a residential use, or does not use an electronic speaker system, then there are no restrictions on the hours of operation.

* * * * ”

Section B: Site Analysis

B-1) PROJECT ANALYSIS AND APPROVAL CRITERIA

Unlike traditional permit applications that are reviewed by the Planning Commission, variances receive a staff recommendation based on if there is a perceived legitimate hardship. 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 54-35 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.

The undue hardship identified to the property is identified as the presence of residential structures immediately to the south of the subject property, the structure being only 31.1 feet from its northern property line, and the limited lot depth of the property compared to its peers (which was subject of the variance from 2019 for 7-Brew). These hardships are considered unique to the C-2 zone and have existed for 15 years.

- c. The identified hardship relates to a measurable aspect of the property and is not financial in nature.

A hours of operation variance is shown to related to the physical location of the order station and speaker system, which is measured by from the speaker to the nearest residential structure. The applicant has indicated in their attached Statement of Hardship that this is not a financial hardship, but rather a condition of the lot that prevents the reasonable placement of the order station other than on the south side of the building.

- d. The variance granted is the minimum necessary to alleviate such practical difficulties or the identified undue hardship upon the owner of the property.

An hours of operation variance is needed in account of the order speaker system being placed less than 200 feet from the outer wall of a nearby residence. The variance applicant is placing the proposed restaurant on the lot as far north as possible to for parking and drive access. As such, the order station is located as far away from the nearest residential structure as possible.

(See the attached Statement of Hardship form for the applicant's argument for a hardship.)

- (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 any property value in the neighborhood;

An hours of operation variance in this area is not anticipated to impact property values because efforts are proposed to mitigate the impacts of the noise from the speaker box to not impact the residents' peace and rest during quiet hours. The proposed vegetation and block wall will muffle excessive sound to the neighboring properties.

- b. Will be compatible with and respect the context of its location and the character of the surrounding existing neighborhood;

City staff is aware of no evidence that the proposed hours of operation variance will be inconsistent with the neighborhood context and character. The variance will allow for electronic ordering at a drive through service. This is considered consistent with the current built environment associated with the neighboring properties along Hwy. 412.

- c. 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;

City staff is aware of no evidence that the proposed hours of operation variance will cause a consistent disturbance to the peace and enjoyment of the neighboring properties. Quality of life criteria such as traffic impact, sound emission, pedestrian and vehicular access, the visual presentment, and the character associated with a granted variance are not anticipated to change negatively on the neighborhood. This is because the operator has agreed to make mitigative adjustments to the site design so it will not be easily heard during quiet hours when set against the existing background noise in the neighborhood.

- d. 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

City staff is aware of no evidence that the proposed hours of operation variance will cause a use consistent use disturbance. The drive through use will operate and will be used in a consistent manner as others already in place in the neighborhood.

- e. Is mitigated in part by permanent characteristics of the lot or adjacent uses of land including, without limitation, natural features or permanent easements.

Due to the nature of the variance, this criterion is not applicable. The issue at hand is an hours of use variance based on an exterior audio speaker system. That said, there is a permanent access easement of record that does prevent the order station/speaker system from being placed closer to the existing residences to the south.

(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.

The variance will not impede or disrupt existing traffic flow, it is also designed in such a way as maximize the effectiveness or drainage patters and facilities on the site and in the area. Finally, it will remain compatible with the existing neighborhood architecture and layout and with the general city growth and planning.

B-2) STAFF ANALYSIS

General Summary

The applicant is requesting an hours of operation variance to permit the use of an outdoor audio speaker system, associated with an order station for a drive through use after 10 p.m. and before 7 a.m. This is the first such variance request for this Code since its adoption in May of 2020. The variance is unusual in that its focus is not primarily on a physical change to the property, but more in the manner of its use, in that it is proposed during what is considered typically deemed as quiet hours.

Code Violation

Section A-8 of this report covers the Code in question, which, states that there cannot be an outdoor electronic speaker system within 200 feet of a residential use as measured from the outer wall of the residential structure and the location of the speaker. In this case, there is approximately 79 feet between the two uses, which is a 120 foot encroachment, but this is only a violation of the Code *after* 10:00 p.m. and *before* 7:00 a.m. on any day of the week. Therefore, the nature of the Code violation is temporal as well as spatial. In other words, no variance is required for any aspect of the proposed operation after 7:00 a.m. and before 10:00 p.m.

Hardship

The first aspect to consider is the nature of the lot in question that prevents the applicant from complying with the 200 foot separation. The second aspect is limiting the applicant from operating its drive through after 10:00 p.m. through to the earlier morning hours, which will put its use at a operational disadvantage compared to its peers along Hwy. 412, which offer late night and early morning quick service meal service through a drive through delivery system.

Focusing first on the subject property's lot, it should be noted that a similar variance was filed and granted by the Board of Adjustment for the property immediately to the west for 7-Brew. This hardship associated with that variance (BOA20-02) was the limited lot depth, "The shallow lot depth is not typical to the peer lots along the highway, which have an average depth of 373.4 feet, whereas the subject property is only at 191.2 feet, this represents a 49 percent decrease from the mean lot depth in the area." This same condition exists for the subject property, which was split from the 7-Brew lot in 1983, thus existing for more than 15 years. The shallow lot depth is relevant in this case as it prevents the applicant from shifting the drive through service further north, away from the multifamily residential structure to the south. Furthermore, if the service was moved to the east or west sides of the proposed structure, insufficient space would be gained to meet the 200 foot separation, making those redesign options inviable. The drive through cannot be placed on the north side of the proposed restaurant, as that would violate part 8 of the drive through regulations that prohibits the order and pick-up windows from facing on the most traveled street, in this case, Hwy. 412. The applicant argues that "the site design cannot meet this standard due to property restrictions." The applicant goes on to argue that "the property does not have sufficient space for the 200 feet buffer."

When focusing on the temporal aspect of this variance, the question is what prevents the applicant from ceasing drive through operations at 10:00 p.m. and then resuming operations again at 7:00 a.m. The proposal is a formulaic restaurant with locations throughout the southern United States, operating in 11 States. Based on an internet search, all 871 locations, to staff's knowledge, keep to the same hours of operation, being known and marketed as open for service 24-hours a day according to the restaurant's website and it also being known for breakfast service. Requesting limited hours for this particular location would likely cause confusion to the general public due to advertising and other announcements made for its other locations being open for business (including the drive through service) 24-hours a day. Furthermore, the restaurant's many peers, such as McDonald's, Wendy's, and Taco Bell, are not limited on their hours of operation either because they were in operation prior to May of 2020 [when the Code in question was adopted], or that they are not in violation of the Code.

Conditions and Staff Conclusions

In terms of both factors, the special location of the drive through service and its hours of operation, staff finds that there are grounds for a hardship, particularly due to the limited space there is on the lot and the existing land use condition on the south side of the lot, placing the subject property in a unique position of both being shallow compared to its peers as well as having residential uses abutting to the south, which is not the case with other quick service restaurants using a drive through service that either have deeper lots (Burger King) or have commercial behind them (Wendy's & Popeyes). The nearest equivalency to the existing lot condition in this neighborhood is with Tropical Smoothie on the west

side of 3200 Hwy. 412 West. However, in that case, the parking for the multifamily is spaced between the buildings, so the 200 foot buffer is met if operating after 10 p.m. Staff finds that the root of the problem is the limited lot depth as was argued in the 7-Brew variance and the unique placement of the parking lot and building placement compared to the Spring Valley apartment complex to the east. Furthermore, limiting a breakfast service to not begin operations prior 7:00 a.m. is not feasible for the nature of the applicant's business. The applicant is aware that the outdoor speaker service may cause harm and a decreased quality of life for residents seeking quiet and rest during the overnight and early morning hours. As such, the applicant has agreed to mitigative treatments to site design that will reduce the overall decibel level and direct the sound to the vehicles in the drive through and not broadcasted outward to neighboring properties. This includes planting 19 Alta Magnolia trees, which has year-round foliage that will act as a natural sound buffer. The proposed 8 foot block wall will also act as a sound barrier. Finally, strictly in terms of the sound impact, and the spirit of the Code in question, the overall background environment in this area has noise levels that are equal to or higher than the proposed speaker service, being in close proximity to Hwy. 412. These factors, when combined, suggests that the approval of this variance will not unreasonably impact residents to the south of the subject property in any demonstrative fashion and may (through the construction of the proposed wall) improve the overall auditory conditions.

Section C: Fiscal Impact

There is no fiscal impact anticipated at this time.

Attachments:

- Statement of Hardship with Addendum
- Site Plan



STATEMENT OF HARDSHIP

Name: Whataburger Restaurants, LLC

Check one:

Agent for Owner
 Owner

Address or description of property:

The site is located at the southwest corner of US Highway 412 & AR 16

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:
Based on section 102-77.1 in the Siloam Springs, AR Codes of ordinance, the site design does not meet the hours of operation design standards that require any electronic speaker system on site to be at least 200' from a residential property. The site design cannot meet this standard due to property restrictions. The property does not have sufficient space for the 200 feet buffer.
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 adjacent property is a multi-family residential development. The owner was not able to counteract for this restriction due to the amount of land the residential property accounts for.
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 proposed free-standing restaurant will be improve quality of life by providing another food option adjacent to any surrounding residential and/or commercial properties.



MEMORANDUM

To: Brian Phillips, City of Siloam Springs

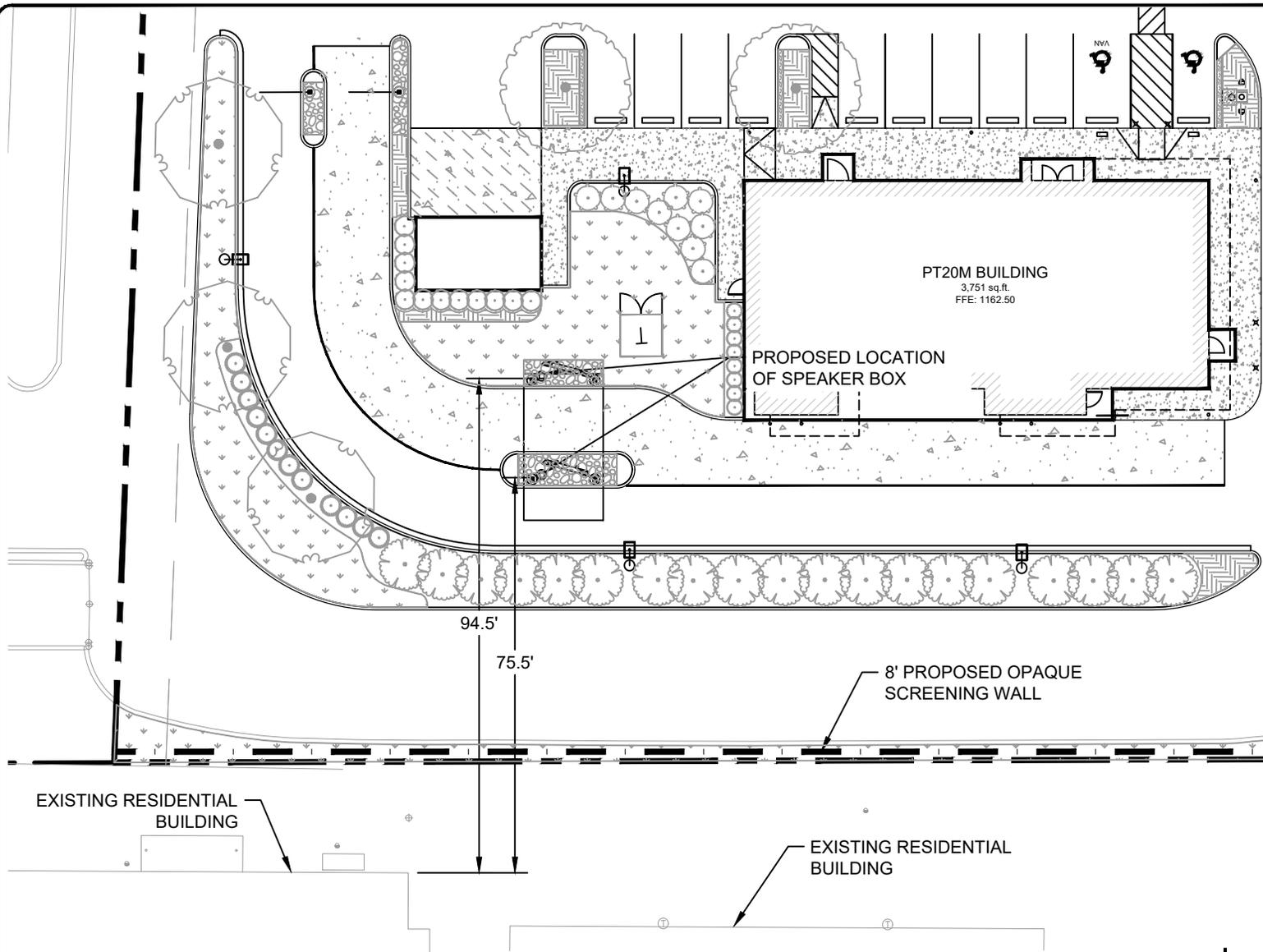
From: Lindsey Hearon
Kimley-Horn and Associates, Inc.

Date: January 19, 2022

Subject: Whataburger – City Submittal #2 – Variance Statement of Hardship

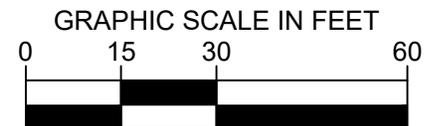
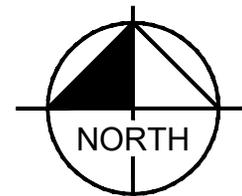
The existing lot width is less than 200' and therefore, most site configurations would likely require a variance request for a speaker box. Due to the drive thru configuration and speaker box proximity to the residential area to the south, several measures have been proposed to limit noise projection to the residential area south of the development. While only 5 trees are required along the southern property, 19 have been proposed to create a green barrier to aid in dissipating the volume projection of the speaker box. In addition, the tree species were replaced with Alta Magnolias to provide additional sound barrier. Alta Magnolias have a full ground growth habit with dense and heavy foliage that will mitigate sound projection to the adjacent areas. Finally, an 8' tall opaque screen wall is proposed along the full length of the southern property line, which will serve to dissipate the sound generated by the speaker box towards the southern residential area.

Please see the included exhibit demonstrating the proposed landscaping and screen wall location in relation to the existing residential buildings.



NOTES

- THE EXISTING RESIDENTIAL PROPERTIES STAND AS EXISTING APARTMENT BUILDINGS.
- THE MITIGATION TECHNIQUES TO BE ENFORCED BY THE DEVELOPER WILL INCLUDE SOUND SUPPRESSION AND VOLUME CONTROL THROUGH THE USAGE OF TECHNIQUES INCORPORATED INTO LANDSCAPING AND THE PROPOSED SCREEN WALL.
- ADDITIONAL LANDSCAPING HAS BEEN ADDED IN THE LANDSCAPE ISLAND BETWEEN THE DRIVE THRU AND SHARED DRIVEWAY TO PROVIDE A LIVING BARRIER TO BLOCK NOISE PROJECTION. THE MAGNOLIAS TO BE PLANTED ARE SPECIFIED TO BE 6'-8' TALL AT INSTALL. IN ADDITION, AN 8' TALL OPAQUE SCREEN WALL HAS BEEN PROPOSED ALONG THE LENGTH OF THE SOUTHERN PROPERTY LINE TO DISSIPATE SOUND PROJECTION TO THE RESIDENTIAL AREA.



CLIENT:
WHATABURGER

TITLE:
SPEAKER BOX EXHIBIT

PROJECT:
2690 U.S. 412 HIGHWAY
 ARKANSAS
 SILOAM SPRINGS

JOB NO.: 115339020
 SCALE: 1" = 30'
 DATE: 01/19/2022

SHEET:
1 of 1