

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

Tuesday, July 12, 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 February 8, 2022
- E. Variance Request
  - 1. Setback Variance, BOA22-01  
800 Block of E. Harvard St.  
Owner & Agent: Woodcreek Properties, Chris Willis
- 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  
FEBRUARY 8, 2022

The Board of Adjustment of the City of Siloam Springs, Benton County, Arkansas, met in regular session at the City Administration Building on February 8, 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 January 11, 2022, minutes had previously been given to each Commissioner. A motion was made by Salley and seconded by Montgomery to accept the minutes. A Voice Vote was called. Motion passed unanimously.

Item E1. Drive Through Variance, BOA21-02, 2690 Hwy. 412 East. Ben Rhoads briefed the item. Following discussion by the commission, a motion was made by McKinney and seconded by Song to approve the item. Motion passed unanimously

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

ATTEST:

APPROVED:

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Renea Ellis, City Clerk CAMC/CMC

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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: June 2, 2022  
RE: Variance Development Permit, BOA22-01 / 800 Block of E. Harvard St.

**Recommendation:** Based on the hardship presented by the applicant, staff recommends approval BOA22-02 (Variance), subject to the following condition:

A lot consolidation survey, combining Lot 8 and Lot 9 of the Pittman Addition into a single lot shall be filed, prior to building permit issuance on the subject property.

### Section A: Background:

A-1) APPLICATION REVIEW DATE

Board of Adjustment Review: July 12, 2022

A-2) APPLICANT AND AGENT

Owner and Agent: Wood Creek Properties Inc., Chris Willis

A-3) SUBJECT PROPERTY ADDRESS

800 Block of E. Harvard St.

A-4) PROJECT SUMMARY

The applicant desires to CONSTRUCT TWO STRUCTURES THAT BOTH ENCROACH 25 FEET INTO THE FRONT SETBACK AND 5 FEET INTO THE REAR SETBACK, on property in the I-1 (Industrial) zone. This is a direct code violation of §102-54(e)(1)(a)(1)&(4) of the Siloam Springs Municipal Code.

A-5) LEGAL NOTICE

- Site posted: June 9, 2022.
- Newspaper legal notification: June 26, 2022 (Arkansas Democrat-Gazette).
- Letter legal notification: June 16, 2022.
- Staff received a phone call of a questioning nature and no correspondence on the request.

A-6) REFERENCE APPLICATION

The following application is related to this project and will be presented at the July 12, 2022 Planning Commission meeting:

- LC22-13 (Lot Consolidation Permit).

A-7) EXISTING LAND USES AND ZONING<sup>1</sup>

<i>EXISTING LAND USE</i>	<i>EXISTING ZONING</i>
Vacant	I-1 District (Industrial)
<i>PROPOSED LAND USE</i>	<i>PROPOSED ZONING</i>
Industrial Warehouse/ shop building	No zoning change is proposed
<i>SURROUNDING LAND USE</i>	<i>SURROUNDING ZONING</i>
North: Commercial – Office	North: I-2 District (Light Industrial)
South: Vacant  <i>Separated by E. Harvard St.</i>	South: R-2 District (Residential, medium) / <sup>1</sup> I-1 District (Industrial) <sup>1</sup> <i>Separated by E. Harvard St.</i>
East: Vacant	East: I-2 District (Light Industrial)
West: Industrial Equipment Storage	West: I-1 District (Industrial)

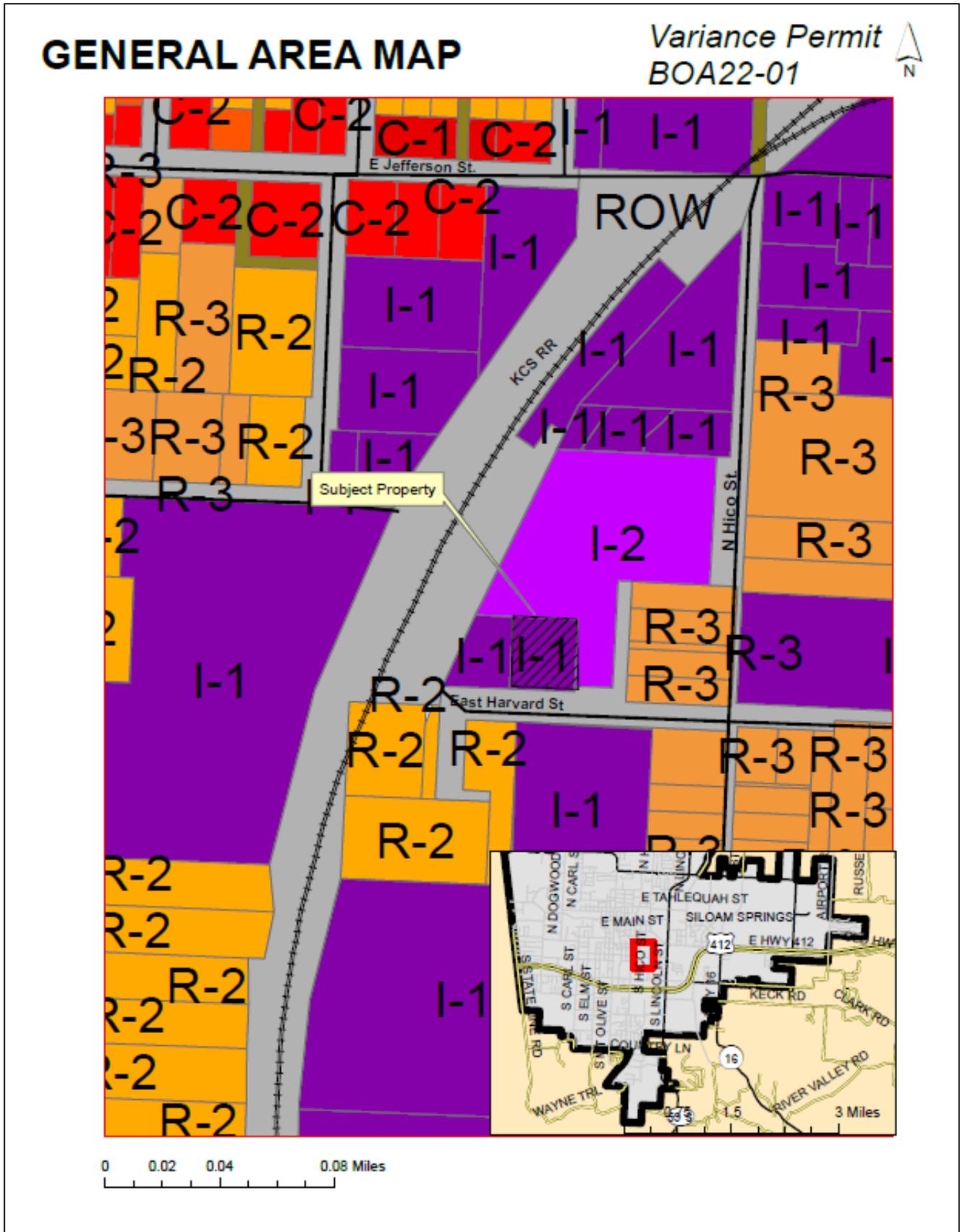
<sup>1</sup>Properties are also located within the H-1 Historic overlay zone district.

Figure A-7 (1): Site View

*North*



Figure A-7 (2): General Area Map



A-8) APPLICABLE CODE REQUIREMENTS

Section 102-54(e)(1)(a)(1) and (4) of the Siloam Springs Municipal Code.

*Excerpt from Section 102-54(e) Building limits*

“ \* \* \* \* ”

(1) Setbacks:

a. Setback required from boundaries abutting any public right-of-way, or abutting any zoning district not designated "R" (Residential):

1. Front: 50 feet.
4. Rear: 25 feet.

\* \* \* \* ”

(Note: No. 2 and 3 under subsection a, as shown above, are omitted as they are no relevant to the request)

**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 on the property is the substandard lot sizes for lots in the I-1 zone, this hardship has existed for 15 years. City records indicate that the property has been zoned I-1 since 1983, which meets the criteria that the identified uniqueness has existed for at least 15 years. The applicant purchased the property in 1995.

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

A setback variance is shown to be related to the allowed building limits on the property, which is measured by taking the distance from the property line to the prescribed setback distance. The applicant has indicated in their attached Statement of Hardship that requesting relaxed setbacks is not a financial hardship, but rather is related to the allowed building envelope being prohibitive for construction when compared to existing I-1 lots in the City.

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

A setback variance is shown to be the narrowest encroachment possible to obtain the desired building size requested by the applicant, he is not requesting further relaxation of the setbacks on other sides of the property.

(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;

A setback variance in this area is not anticipated to impact property values. The variance request, if granted, will allow for the construction of a new structure that is nearly identical to one that exists to the west of the subject property. Given the industrial nature of this area, additional storage/warehouse structures are not believed to negatively impact existing property values. Note that the applicant may construct an additional structure on the lot to the west of the proposed structure on the site plan, therefore the setback variances should run abreast of the lot once it is merged.

- 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 setback variance will be inconsistent with the neighborhood context and character. The variance will allow for the construction of additional warehouse building, which will be generally consistent with the current built environment associated with the neighboring properties.

- 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 setback variance will cause a consistent disturbance to the peace and enjoyment of the neighboring properties. Quality of life criteria such as traffic impact, sound emissions, pedestrian and vehicular access, the visual presentment, and the character associated with a granted variance are not anticipated to change negatively on 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 setback variance will cause a use disturbance. The difference between a granted variance versus one that is not granted would be that the buildings on the site will be smaller and set back further from the street. There are no structures existing on the south side of the street immediately adjacent to the subject property. Therefore, allowing new structures to take up more of the lot is not seen as a substantial burden to the land uses in the area.

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

A setback variance in this area is mitigated by the following permanent characteristics: the limited lot size as platted in the original Pittman's Addition. The Pittman's Addition (1909) pre-dates the current I-1 zone bulk and area standards, including the setbacks. When the I-1 zone was applied with the current regulations, this lot was made nonconforming with the zone's minimum lot size regulations, thus putting it under legal nonconforming status.

(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 variance, as presented, appears to 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, the site design appears compatible with the existing neighborhood architecture and layout and with the general 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.

## B-2) STAFF ANALYSIS

### **General Summary and Code Violation**

The applicant is requesting a setback variance so he may construct a 40 foot wide by 80 foot deep industrial building. The applicant has indicated that one building will be constructed on the site plan, however there is an option for a second building due to the applicant's desire to merge two adjoining lots (under the same ownership), which is subject to a related lot consolidation permit. In order to site the building on the lot, the applicant must seek a 25 foot front setback variance, encroaching into the 50 foot front setback by 25 feet and also a 5 foot rear setback variance, encroaching into the 25 foot rear setback by 5 feet. While the site plan, as presented, appears to meet the bulk and area requirements for a building solely on Lot 8, the lot consolidation is still required, through the staff suggested condition, to best accommodate parking and other required site paving.

It should be noted that the same applicant requested and received a similar variance on the neighboring property in 2006, at the time considered under a "prohibited use permit". This permit (which is no longer offered by the City) was used because at that time there was a limit on allowed setback encroachments for variances, so the prohibited use permit was used as the applicant's only option. The 2006 report is attached to provide context as to the reasonings behind that request, which is nearly identical to the subject application. Note also that the side setback referenced in the 2006 report is no longer valid, the Zoning Code has been updated since that time.

## **Hardship**

In terms of hardships, staff concurs that there is one in this case. As stated in the 2006 report, “the property was platted not meeting minimum zoning requirements.” The plat dates back to 1909 before zoning existed in Siloam Springs. When zoning was applied, the lots did not conform. It is a reasonable request to seek a variance due to the I-1 setbacks assuming a much larger lot, thus not confining the building envelope to a 75 foot deep space. This is inconsistent with other industrial properties common to the I-1 zone and furthermore is inconsistent with the property immediately to the west, which received approval for a similar structure also in violation of the setbacks (see the attached 2006 report). The applicant argues that the site is a “small area [at] 50 x 125 & 68 x 125. I-1 makes unusable setbacks.” The applicant goes on to argue that he “has owned since 1995, at that time property was buildable.”

Staff cannot confirm what zoning rules were in place at the time of the original purchase, however the developability of the site is clearly hindered by the extensive setbacks. Furthermore, should the setbacks be adhered to, they would not be consistent with the context of E. Harvard St. The property to the west is approximately 28 feet from the front property line and the property to the east (not abutting), with a side on the same street, is 5-10 feet from the property line as it fronts on E. Harvard St. A 50 setback front setback does not make sense in this area given the neighborhood context and the existing built environment. The rear setback change is also minimal and would not pose any noticeable impacts to the office structure to the north, which is approximately 51 feet to the north property line of the subject property. In terms of the unique aspects of the property, the root of the problem is the limited lot sizes for the existing zoning, being atypical in the I-1 zone, that has been in place for nearly 39 years.

## **Conditions and Staff Conclusions**

Staff concurs that there is a legitimate hardship in this case. Given that the proposed structures, as shown in the attached site plans, requires a lot consolidation, staff has added a suggested condition that a lot consolidation permit be granted, and filed, prior to building permit issuance on the subject property.

## **Section C: Fiscal Impact**

There is no fiscal impact anticipated at this time.

## **Attachments:**

- Staff Report PU06-02 (Prohibited Use Permit)
- Statement of Hardship
- Site Plan



## STAFF REPORT MEMORANDUM

**TO:** PLANNING COMMISSION  
**FROM:** CASSANDRA OLVERSON, CITY PLANNER  
**PLANNING COMMISSION REVIEW:** NOVEMBER 14, 2006  
**DATE:** NOVEMBER 6, 2006  
**RE:** PU06-02 PROHIBITED USE  
**APPLICANT/OWNER:** CHRIS WILLIS  
**AGENT:** SAME

### SUBJECT PROPERTY ADDRESS

915 E. Harvard St.

### PROJECT INTENT

The applicant is requesting a prohibited use development permit from the City of Siloam Springs Municipal Code, Sec. 102-54(e)(1), to allow for: AN 11 FOOT SIDE SETBACK AND 28 FOOT FRONT SETBACK (FROM PROPERTY LINES) ON EACH SIDE, RATHER THAN 30' AND 50' REQUIRED on property zoned I-1 (Industrial).

EXISTING LAND USE	EXISTING ZONING
Vacant	I-1 District (Industrial)
SURROUNDING LAND USE	SURROUNDING ZONING
North: Commercial	North: I-2 District (Light Industrial)
South: Residential, Single-Family	South: R-2 District (Residential, Medium)
East: Residential, Single-Family	East: I-1 District (Industrial)
West: Commercial	West: I-1 District (Industrial)

### ZONING USE UNIT CONSISTENCY

Industrial uses fall within Use Unit 20 (General Industry). Unit 20 uses are permitted in the I-1 District.

### APPLICABLE CODE REQUIREMENTS

Prohibited Use Development Permits are designed for situations where, because of the potential for a use to be somewhat objectionable to surrounding property owners, an additional level of review is necessary. In this particular case, the applicant is proposing setbacks that are not consistent with the general zoning district standards.

The applicant is required to receive prohibited use approval based on the Municipal Code requirements of Section 102-54. The applicant has requested a prohibited use for a setback encroachment of 19 ft on both sides of the structure and 22 ft front setback encroachment, as required by the Municipal Code. This is in direct violation with section 102-54.

Excerpt from Section 102-54(e)(1) Setbacks:

“\*\*\*

(1) Front: 50 Feet.

(2) Side: 30 Feet.

\*\*\*”

Sec. 102-3. Prohibited uses.

(a) No land shall be used, and no use of land shall be permitted, except uses expressly named within the planned uses and special uses of each zoning district, and which uses are maintained within the setback, lot coverage, and density limits provided in paragraph (b), below of this section. All other uses are prohibited and shall not be granted by any variance; provided, however, that this provision shall not limit special uses permitted by ordinance as provided in Title 14.

(b) Notwithstanding any other provision of this Code, but without limiting special uses permitted as provided in Title 14, no land shall be used, and no use of land shall be permitted, which:

(1) Requires any setback variance greater than 50 percent of the zoning district setback, unless the setback is measured from a public easement or public right-of-way not presently used by any party;

(Ord. No. 01-03, § 1(15.13), 3-20-2001)

### **COMPREHENSIVE PLAN CONSISTENCY**

The future land use map describes this site as Medium Density Residential. The Medium Density Residential designation is designed to provide appropriate locations for all existing and future single-family, two-family and manufactured housing residential that are less than 18 dwelling units per acre.

### **LOT STANDARDS CONSISTENCY**

The applicant's proposal is situated on E. Harvard St. The following are the minimum requirements for this lot in the I-1 District.

<b>MINIMUM ZONING REQUIREMENTS</b>	<b>SUBJECT PROPERTY PROPOSAL</b>
Lot Area: 30,000 sq ft	Approx. 6,250 sq ft.
Lot Width: 150 ft	50 ft

### **STAFF DISCUSSION**

The property was platted not meeting minimum zoning requirements as stated in the Municipal Code. The current zoning setbacks prohibit the use of the 125' x 50' lot. The applicant plans to utilize the lot with a storage building for construction materials on the property.

As seen in the survey, the lot was configured in a unique manner with a 50' wide lot by 125' of lot depth. If the applicant conformed to the Code, he could not provide a structure meeting the minimum setback requirements. The side setbacks of 30' and front of 50' drastically limit the economically viable use of the property. By allowing a (28' x 72') structure, the applicant will need a 28' front setback, 11' side setbacks and a 25' rear setback to best utilize the property. Staff approves of the storage usage on this property due to its location to other industrial components in the area. This property is also located within the vicinity of the railroad.

Staff has not received information indicating that the proposal interferes with other owners' reasonable peace or enjoyment of the neighboring properties, or substantially damages any property value in the neighborhood, or burdens the present or future use of the neighboring properties, or is not adequately supported by infrastructure.

Notification was sent to all property owners within 300 ft of the request. Staff has received no phone calls or correspondence regarding the request. The subject property was posted on October 17, 2006 and legal notification appeared in the October 29, 2006 edition of the Herald-Leader. After review of this item, it will be forwarded to the Board of Directors on December 5, 2006.

**STAFF RECOMMENDATION**

Staff recommends approval of PU06-02 (Prohibited Use Development Permit).

**ATTACHMENTS**

1. Site Specific Proposal.
2. Site Photos.
3. General Area Map.

2006



**City of Siloam Springs**  
*It's a national*

STATEMENT OF HARDSHIP

Name: CHRIS WILLIS

Check one:

- Agent for Owner  
 Owner

Address or description of property:

900 block E HARVARD

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:

Small area 50x125 & 68x125 II makes unusable  
get back for combined will greatly increase  
expense of building. see attached

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:

I have owned since 1995  
at that time property was buildable

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:

correct  
improvements & use will be consistent

