

## AMENDED STAFF REPORT ON VARIANCE REQUEST



As part of their application, the petitioner is also requesting an increase of the maximum building line within a Neighborhood Business (B-1) zone from twenty (20) feet to twenty-six (26) feet.

Before any variance is granted, the Planning Commission must find the following:

- a. The granting of the variance will not adversely affect the public health, safety or welfare, will not alter the essential character of the general vicinity, will not cause a hazard or a nuisance to the public, and will not allow an unreasonable circumvention of the requirements of the zoning regulations. In making these findings, the Planning Commission shall consider whether:
  1. The requested variance arises from special circumstances which do not generally apply to land in the general vicinity or in the same zone.
  2. The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant; and
  3. The circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought.
- b. The Planning Commission shall deny any request for a variance arising from circumstances that are the result of willful violations of the zoning regulation by the applicant subsequent to the adoption of the zoning regulation from which relief is sought.

### ZONING ORDINANCE

Article 6-4(c) states that the Planning Commission may hear and act upon requested variances associated with a zone change. In such cases, they may assume all of the powers and responsibilities of the Board of Adjustment, as defined in Article 7-6(b) of the Zoning Ordinance.

Article 8-16(h)a states that the maximum front yard within the Neighborhood Business (B-1) zone is twenty (20) feet.

### CASE REVIEW

Since the January Zoning Committee meeting, the applicant met with the Planning staff to discuss the requested variance and clarify the site layout. The applicant indicated that the patio area, located in front of the proposed building would include a canopy. The canopy, which is part of the structure itself, reduces the variance request from a twenty (20) foot increase to a six (6) foot increase to the maximum building setback in the Neighborhood Business (B-1) zone.

Additionally, the applicant provided greater information regarding the operation of the site and the need for a drive lane in front of the proposed structure. The applicant indicates that due to the floodplain and the restricted area for use, the need for directed vehicular movement that circulates the entirety of the property is necessary for the safest development. By circulating vehicular movement around the structure, potential conflicts that may arise from vehicles entering the site and those exiting the site are reduced. Additionally, a sixteen (16) foot drive lane is necessary in front of the building to allow for commercial vehicles (e.g. waste management and delivery trucks) to circulate safely through the site. Staff finds the need to allow waste management vehicles circulation through the site of particular importance, as the truck's movement on such a small site is limited.

The applicant also states that a six (6) foot variance reasonably balances the requirements of the B-1 zone and the existing legal non-conforming commercial properties located east of the subject property and the residential properties located to the west. The newly adopted vehicular use area (VUA) requirements will also provide adequate buffer between the pedestrian facilities along Versailles Road. Additionally, street trees and pedestrian facilities proposed by the applicant are in keeping with the character of recent improvements, which have been completed by the Urban County Government west of the property along Versailles Road.

The applicant indicates that by granting this variance there will not be an unreasonable circumvention of the requirements of the Zoning Ordinance as the applicant has applied for the necessary variance as soon as it was determined that it was needed, and prior to beginning construction. Additionally, they indicate that granting the variance would not adversely affect the public health, safety, or welfare of the general vicinity, nor alter the character of the general vicinity.

**STAFF RECOMMENDS: APPROVAL OF THE LESSER REQUESTED VARIANCE FOR THE FOLLOWING REASONS:**



1. Approval of the variance should not adversely affect the public health, safety, or welfare, nor should it create a hazard or nuisance to the public. The variance will allow for safe circulation throughout the small site by both passenger and commercial vehicles.
2. The restricted area for use caused by the floodplain creates limitations to safe vehicular ingress and egress into the proposed site.
3. The circumstances of this variance are not a result of actions taken by the applicant subsequent to the adoption of the Zoning Ordinance.

This recommendation of Approval is made subject to the following conditions:

- a. Provided the Planning Commission and Urban County Council approve the requested zone change to modify the conditional zoning restrictions within the B-1 zone, otherwise the requested variances shall be null and void.
- b. The development shall be constructed in accordance with the approved Final Development Plan, or as amended by the Planning Commission.
- c. All necessary permits shall be obtained from the Divisions of Planning, Traffic Engineering, Engineering, and Building Inspection prior to construction and occupancy.
- d. Action of the Planning Commission shall be noted on the Development Plan for the subject property.