

**STAFF REPORT ON VARIANCE REQUESTED FROM PLANNING COMMISSION**

**PLN-MAR-17-00038: WILLSTONE, LLC**

**REQUESTED VARIANCE**

1. Reduce the minimum side yard setback from 12 feet to 5 feet along the western property line.

**ZONING ORDINANCE**

Article 6-4(c) states: "The Planning Commission may hear and act upon requested conditional uses and variances associated with a zone change. If the Planning Commission should choose to hear a conditional use or variance request, the Planning Commission shall have all of the powers and responsibilities of the Board of Adjustment, as defined in Articles 7-6(a) and 7-6(b) of the Zoning Ordinance. All conditional use and variance applications shall be acted upon by the Planning Commission within ninety (90) days of the application, unless postponed further by the applicant."

Article 8-16(i) states that the side yard setback has no limitation in a B-1 zone.

Article 8-15(i) states that the minimum side yard setback for the P-1 zone is 12 feet.

Article 15-3 states that where a property adjoins the side yard of a lot in a more restrictive zone, the side yard in the zone with the less restrictive yard requirements "shall equal the adjoining side yard of the zone with the more restrictive yard. This restriction also applies to rear yards, as appropriate."

**CASE REVIEW**

The applicant has requested a dimensional variance to reduce the required side yard from 12' to 5' for the subject property on Dennis Drive. They seek to gain approval of a dimensional variance at the same time as their zone change, to permit a 1,950 square-foot commercial building for an undefined user. A new shop or retail space accompanied by an off-street parking lot is anticipated on the 75-foot wide site.

The B-1 zone does not have a minimum side yard requirement, per se; but the subject lot is adjacent to a P-1 lot, which is required to have a 12' side yard. Article 15-3 requires this (proposed) B-1 lot to match the side yard requirement for the adjacent lot. The applicant asks for relief from this requirement.

The subject lot narrows from front to back, making the building site non-rectangular due to the pavement (drive aisle and parking lot) site improvements currently planned for this location. There is a 10' utility easement along the east lot line, adjacent to an existing B-1 zone, but a drive aisle and 5' landscape area is proposed for that portion of the property. The drive aisle on this portion of the site is intended to connect to the rear of commercial property adjacent to the subject site to the northeast. Although the 10' easement also traverses the rear of the site, it is immaterial to the requested variance proposed along the front of the property and along the western property line, where the buildable area of this commercial site is to be located.

The applicant believes that the requested variance, which would allow a larger structure on the subject site, will not alter the existing character of the vicinity; nor will it adversely affect the public health, safety or welfare of the community. However, in the view of the staff, a compliant structure, meeting all setback requirements would fit in as well, especially when reviewing the existing setbacks of other similar commercial structures situated along Dennis Drive west of Nicholasville Road.

The staff cannot identify any special circumstances associated with the subject property, except for the 10' easement (that is immaterial to this request) that does not already apply to the other B-1 and P-1 properties in the Dennis Drive commercial neighborhood. Such a finding is a requirement for the approval of a dimensional variance by the Planning Commission (and Board of Adjustment).

Strict application of the 12' side yard requirement of the Zoning Ordinance would still allow a new commercial building on the subject property, especially if averaging provisions of Article 15 of the Zoning Ordinance are employed. Since there is no firm design currently anticipated for the building on this site, this would pose no unnecessary hardship to the applicant.

The corollary Zoning Preliminary Development Plan, under review by the Planning Commission in conjunction with this zone change, has a number of variables which have not yet been resolved. At this time, there are no known architectural details for this development, and the scale of the potential B-1 building has not been finalized. Thus, the staff's position on this variance is that this request is premature and should not be acted upon by the Commission at this time. Changes that might be incorporated into the Final Development Plan could clearly affect the need for, or the extent of, a dimensional variance, which the Board of Adjustment could consider at a future date.

The Staff Recommends: **Postponement**, for the following reasons:

- a. Strict application of the 12' side yard requirement of the Zoning Ordinance would still allow a new commercial building on the subject property, especially if averaging provisions of Article 15 of the Zoning Ordinance are employed.
- b. The staff cannot identify any special circumstances associated with the subject lot that do not already apply to the other B-1 and P-1 properties in the Dennis Drive commercial neighborhood. Such a finding is a requirement for approval of any dimensional variance by the Planning Commission (or Board of Adjustment).
- c. Strict application of the 12' side yard requirement of the Zoning Ordinance would pose no unnecessary hardship to the applicant, since a final design of the commercial building at this location has not been completed.
- d. This variance request is premature and should not be acted upon by the Commission at this time, because changes might be incorporated into the Final Development Plan that could affect the need for a dimensional variance, which the Board of Adjustment could consider at a future date.

TLW/BJR/dw  
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