

## **BOARD OF ADJUSTMENT**

### **MINUTES**

**September 7, 2023 @ 5:00 p.m.**

The Board of Adjustment held a meeting on Thursday September 7, 2023 at 5:00 p.m.

#### **Members Present**

Wendell Miller, Chairman  
Don Jacimore, Vice Chairman  
Justin Cothren  
Wayne Cummings  
Josh Stroud

#### **Members Absent**

**Visitors Present:** City Planner Sara Jondahl, Planner I Victoria Marchant, Planning Assistant Caden Lemley, J. David Garza, and Public Works Director Kenneth DuVall.

#### **Welcome Visitors**

**The First Order of Business** is a request to review and approve the minutes of the Board of Adjustment August 3, 2023.

Member Cothren made a motion to approve the minutes as written. The motion was seconded by Member Jacimore and passed unanimously.

**The Second Order of Business** is a Variance from Article 7.8(8) to allow replacement of a pylon sign that exceeds the allowable square footage by 301.84 square feet located at 1319 S Arkansas. Submitted by Signs Unlimited on behalf of Leonard's Hardware.  
(VARI-0823-000396)

Planner I Marchant stated that the existing conditions are that located at 1319 S Arkansas within the South Arkansas Commercial Corridor this is the existing Leonard's Hardware. She stated that this property is zoned C-2 Highway Commercial and it is surrounded by C-2 zoned properties on all sides. She stated that it is surrounded by a variety of uses including Marva Workshop, a food truck court, and a variety of retail stores. Planner I Marchant stated that the application is to allow the replacement of the freestanding sign at Leonard's Hardware. The applicant was originally proposing new signage with a different layout but is now proposing to replace the existing sign cabinets with new internally illuminated cabinets of the same size, shape, and arrangement as the existing signage. She stated that staff has found the applicant has demonstrated that special conditions exist as the applicant is replacing like for like. If an applicant is replacing signage like for like and they are not changing the signage structure a permit is not required and a variance is not required. She stated that since the applicant is

replacing the signage cabinets, permits and the variance are required. She stated tha the applicant has met all other variance requirements.

It is staff's recommendation that the Board of Adjustment approve this variance request based on the findings below:

1. The applicant has demonstrated that special conditions exist; and
2. The applicant has met all other Variance requirements.

Member Cothren made a motion to approve the variance. The motion was seconded by Member Cummings and passed unanimously.

**The Third Order of Business** is a Variance from Article 3.23.3 requesting relief from the 5' sidewalk requirement along North Arkansas Ave located at 901 N Arkansas Ave. Submitted by Barrett & Associates on behalf of Mike Fritz. (VARI-0823-000401)

Planner I Marchant stated that this is located in the City Mall Commercial District, this site is the future location of Little Caesars Pizza. She stated that it is a C-2 zoned property surrounded by C-2, CHZ, and C-4 zoned properties including uses such as a bank, a florist, vacant properties, and residential properties. Planner I Marchant stated that the applicant has received building permits for a new commercial development. She stated that per Article 3.21.2 (A) of the 2022 Russellville Zoning Code "Sidewalks required as part of a commercial development site plan approval shall not be less than five feet in clear width." She stated that the applicant is requesting to maintain the existing 4' sidewalks and not come into compliance with the 5' sidewalk requirement. Planner I Marchant stated that staff has not found that the applicant has demonstrated that special conditions exist as the applicant cited the existing four foot sidewalks as a reason to allow the Variance. She stated that this circumstance is not peculiar to this site, there are other commercial sites that have redeveloped that had existing sidewalks that brought those sidewalks up to code. Planner I Marchant stated that examples of those sites include U-Haul on E Main, Slim Chickens, and Mr. Brake and Lube. She stated that the applicant cited Arvest Bank in their cover letter however, that property was redeveloped when there was not a full time City Planner on staff when some guidelines of the Zoning Code were not being fully enforced. She stated that the applicant additionally argued environmental reasons, however, the sidewalk that is torn up typically is able to be reground and reused. She stated that lastly, the applicant cited ADA compliance, 5' in clear width always meets ADA requirements as it is the minimum width where wheelchairs could potentially pass by one another on the sidewalk. She stated that ensuring ADA compliance is not just a legal obligation; it's a commitment to creating an inclusive and accessible environment for everyone. She stated that while we may ont always receive complaints about accessibility issues, it's crucial that we proactively adhere to ADA standards at all times.

It is staff's recommendation that the Board of Adjustment deny this variance request based on the findings below:

1. The applicant has not demonstrated that special conditions exist; and

2. Ensuring ADA compliance is not just a legal obligation; it's a commitment to creating an inclusive and accessible environment for everyone; and
3. The granting of this variance is not the minimum variance allowing reasonable use of the land; and
4. This variance is not in line with the purpose and intent of the Zoning Code.

Chairman Miller asked Planner I Marchant to elaborate on the environmental concerns. She stated that the applicant cited that replacing the sidewalk would be wasteful.

Member Cummings asked staff if the ADA obligation is a legal requirement. City Planner Jondahl stated that ADA requirements are that you have a 5' passable area every so many feet. She stated that it is acceptable to allow a reduced area down to 3' in width as long as there are passing zones. She stated that 5' always meet ADA requirements because it is enough space for wheelchair users to pass one another. She stated that for commercial areas with more walking traffic, this makes it safer for wheelchair uses.

Member Stroud asked Planner I Marchant if there were any 5' sidewalks nearby. Planner I Marchant stated that adjoining this property is all 4'.

Dave Garza, Barret & Associates, stated that they are taking down a perfectly good sidewalk. He stated that Planner I Marchant stated that the material could be reused but he does not know of anyone that does that. Mr. Garza stated that by doing a 5' sidewalk, it would be going against the intent of the landscape ordinance. He stated that adding more concrete takes space away from landscaping which gives a reverse effect of that ordinance. Mr. Garza stated that if the sidewalk gets damaged and has to be pulled out, a 5' sidewalk would go in to be in compliance. He stated that any new development where there is not already a sidewalk should have to put in a 5' sidewalk. He stated that as to why other businesses did not seek a variance is unknown to him. Mr. Garza stated that if you have anything less than a 5' sidewalk, you have to have a 5'x5' turning area every two hundred feet at maximum. He stated that there is a 5'x5' area on I street which falls within 60 to 70 feet of this sidewalk. Mr. Garza stated that there was a purchase of an easement there in 2016 because the city was going to construct a sidewalk, but it did not happen. He stated that if the city had done that, they would not need a variance.

Member Jacimore made a motion to approve the variance with a stipulation that if it is damaged then a 5' sidewalk is to be put in. The motion was seconded by Member Stroud and passed unanimously.

**The Fourth Order of Business** is a Variance from Article 4.1 to allow an 8' fence along the rear yard, located at 800-810 S Louisville Ave. Submitted by the City of Russellville on behalf of Janice Phillips, Delia Garcia, Victoria Crossley, Walter Perks, Hannah Harula, and Carolyn Edmundson. (VARI-0823-000414)

Planning Assistant Lemley stated that located within the Cyclone Neighborhood, there are existing Single Family Homes. He stated that they are R-2 (Medium Density Residential) zoned properties surrounded by other R-2 and C-2 zoned properties. He stated that surrounding property includes other single family homes, a car rental, and a closed gas station. Planning

Assistant Lemley stated that the application is to allow an 8' fence on the back side of 800-810 S Louisville along S Knoxville where the city is constructing new sidewalks. He stated that staff has found the applicant has demonstrated that special conditions exist due to the increased foot traffic expected on the trail infringing on the privacy of the homes adjacent to the trail. He stated that the applicant has met all other JVariance requirements.

It is staff's recommendation that the Board of Adjustment approve this variance request based on the findings below:

1. The applicant has demonstrated that special conditions exist; and
2. The applicant has met all other Variance requirements.

Member Cumming made a motion to approve the Variance. The motion was seconded by Member Jacimore and passed unanimously.

**Meeting Adjourned**

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**Chairperson**