

**PLANNING COMMISSION & BOARD OF ZONING ADJUSTMENT
AGENDA
ROSE ROOM
CREEKMORE PARK COMMUNITY CENTER
5:30 P.M.
SEPTEMBER 10, 2013**

I. ROLL CALL

II. APPROVAL OF MINUTES FROM AUGUST 13, 2013

III. STAFF COMMENTS AND PROCEDURES

1. UDO Amendments (Portable Buildings at Fort Smith School Campuses)
2. Rezoning #14-9-13; A request by Steve Beam for a zone change from Not Zoned to Industrial Moderate (I-2) by Extension located at 11508 Roberts Boulevard. (companion item to items #3 & #5)
3. Conditional Use #25-9-13; A request by Steve Beam for a conditional use for a nonmetallic manufacturing and mining plant located at 11508 Roberts Boulevard. (companion item to items #2 & #5)
4. Conditional Use #26-9-13; A request by Josh Niles, agent for Charles Farnam, for an auto and vehicle impoundment or holding yard located at 1302 South Zero Street.

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5. Variance #28-9-13; A request by Steve Beam for a variance from the perimeter landscape requirements located at 11508 Roberts Boulevard. (companion item to items #2 & #3)
6. Variance #29-9-13; A request by Bill Hansen for a variance from the perimeter landscape and parking lot screening requirements located at 1208 North Waldron Road.

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**PLANNING COMMISSION & BOARD OF ZONING ADJUSTMENT
MINUTES
ROSE ROOM
CREEKMORE PARK COMMUNITY CENTER
5:30 P.M.
AUGUST 13, 2013**

On roll call, the following Commissioners were present: Brandon Cox, Marshall Sharpe, Jennifer Parks, Richard Spearman, Don Keesee, Rett Howard and Bob Cooper, Jr. Commissioners Vicki Newton and Michelle Hood were absent.

Chairman Sharpe noted a correction to the minutes of July 9, 2013. Chairman Sharpe stated that the last paragraph on Page 10 reflected Commissioner Spearman's name twice in the vote opposing the conditional use request at 1302 South Zero Street. Chairman Sharpe then called for the vote on the July 9, 2013, minutes as corrected. Motion was made by Commissioner Howard, seconded by Commissioner Parks and carried unanimously to approve the minutes as corrected.

Mr. Wally Bailey spoke on the procedures.

1. UDO Amendments (Signs)

Mr. Bailey stated that as administration of the new outdoor advertising regulations has begun, staff determined that additional or clarifying language regarding a "sign credit" as mentioned in the regulations. Mr. Bailey stated that there may be some confusion with regard to what constitutes a sign credit in the sign bank and what is meant by the loss of a sign credit in Section 27-704-4(f). Mr. Bailey noted that after visiting with the city attorney, the following is being proposed as an amendment to the regulations:

Page 271 – (f) shall read as follows:

(f) No outdoor advertising sign (whether static or digital) shall be permitted to be erected with a sign area in excess of three hundred (300) square feet along non-interstate streets nor to be erected with a sign area in excess of three hundred seventy-eight (378) square feet on interstates. Sign area in excess of three hundred seventy-eight (378) square feet but not exceed six hundred seventy two (672) square feet along interstates may be allowed by the planning commission's approval of a Conditional Use request so long as an equivalent or greater amount of sign square footage is deleted by the loss of one or more of the applicant's sign credits in the sign bank. Consistent with the

definition of “sign area” in Section 27-200, a deletion of sign area footage is not accomplished by removal of only one face of a double faced or V-type outdoor advertising sign.

Page 273 – (2) Sign Bank. (A) shall read as follows:

A. The owners of each outdoor advertising sign existing as of the effective date of these regulations shall be given a credit for the sign and the size of its face(s) within the Sign Bank. A double faced or V-type outdoor advertising sign shall entitle an owner to a single credit in the Sign Bank (not an additional credit for additional faces).

No one was present to speak either in favor or in opposition to the Unified Development Ordinance amendments.

Chairman Sharpe then called for the vote on the amendments to the Unified Development Ordinance relative to Outdoor Advertising Signs. The vote was 7 in favor and 0 opposed.

- 2. Preliminary Plat – TEA – Fort Smith Lot 1. Requested by Hawkins-Weir Engineers and Preliminary Development Plan approval for a medical clinic located at 3700 Cliff Drive. Requested by Mercy Health Fort Smith Communities, agent for H. Weeks Properties Limited Partnership, Christopher Weeks. (companion item to items #3, #4, #5 & #15)**
- 3. Final Plat – TEA – Fort Smith – Lot 1. Requested by Hawkins-Weir Engineers. (companion item to items #2, #4, #5 & #15)**
- 4. Master Land Use Plan Amendment request by Mercy Health Fort Smith Communities, agent for H. Weeks Properties Limited Partnership, Christopher Weeks, from Mixed Use Employment to Commercial Neighborhood located at 3700 Cliff Drive. (companion item to items #2, #3, #5 & #15)**
- 5. Rezoning #13-8-13; A request by Mercy Health Fort Smith Communities, agent for H. Weeks Properties Limited Partnership, Christopher Weeks, for a zone change from Residential Estate One (RE-1) to Transitional (T) by Extension located at 3700 Cliff Drive. (companion item to items #2, #3, #4 & #15)**
- 15. Variance #27-8-13; A request by Mercy Health Fort Smith Communities, agent for H. Weeks Properties Limited Partnership, Christopher Weeks, for the following variances located at 3700 Cliff Drive. (companion item to items #2, #3, #4 & #5)**

Ms. Brenda Andrews read the staff reports indicating that the purpose of these requests is to facilitate the construction of a new medical facility. Ms. Andrews stated that a neighborhood meeting was held on Tuesday, July 30, 2013, at 6:00 p.m. at 7800 Dallas Street with ten (10) surrounding property owners in attendance. Ms. Andrews noted that some property owners expressed concerns that the proposed use was non-residential and that trees and vegetation would be removed from the site due to construction and utility installation. Ms. Andrews noted that some favorable comments were that the proposal was a quality development and would provide a convenient source of medical services for the area.

Ms. Linda George, #6 Old Greenwood Lane, Mr. Cliff Dyer, 3115 Cliff Drive and Ms. Sherri Curtis, 4121 South 35th Street spoke in opposition to these requests citing their concerns relative to traffic and safety concerns due to the fact that this is a dangerous intersection, disruption of wildlife habitat and removal of trees and vegetation, as well as an opposition to approving any variances for this location in order to allow development.

Ms. Barbara Hardcastle, 18 South 35th Circle spoke on behalf of these requests. Ms. Hardcastle indicated that she had received positive feedback from everyone she had spoken with relative to this development.

Following a discussion by the Commission, Chairman Sharpe then called for the vote on these items.

RECESS PLANNING COMMISSION CONVENE BOARD OF ZONING ADJUSTMENT

- 15. Variance #27-8-13; A request by Mercy Health Fort Smith Communities, agent for H. Weeks Properties Limited Partnership, Christopher Weeks, for the following variances located at 3700 Cliff Drive. (companion item to items #2, #3, #4 & #5)**
 - 1) From 2.0 acres to 3.91 acres.**
 - 2) Landscape buffer requirement along the portion of Old Greenwood Road at the drainage and slope easement.**
 - 3) Postpone the requirement for screening adjoining undeveloped property on the south and east sides until it is developed as residential.**
 - 4) From the required street access requirement of a residential collector or higher classification to allow driveways on Cliff Drive.**

Chairman Sharpe called for the vote on the variance requests. Motion was made by Commissioner Howard, seconded by Commissioner Spearman and carried unanimously to amend the variance requests as follows:

- 1) From 2.0 acres to 3.91 acres.
- 2) Landscape buffer requirement along the portion of Old Greenwood Road at the drainage and slope easement with the stipulation that all vegetation remain in place between Old Greenwood Road right-of-way and the building as shown on the approved development plan.
- 3) Postpone the requirement for screening adjoining undeveloped property on the south and east sides until it is developed as residential.
- 4) From the required street access requirement of a residential collector or higher classification which allows the driveways on Cliff Drive.

Chairman Sharpe then called for the vote on the variance requests as amended. The vote was 7 in favor and 0 opposed.

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- 2. Preliminary Plat – TEA – Fort Smith Lot 1. Requested by Hawkins-Weir Engineers and Preliminary Development Plan approval for a medical clinic located at 3700 Cliff Drive. Requested by Mercy Health Fort Smith Communities, agent for H. Weeks Properties Limited Partnership, Christopher Weeks. (companion item to items #3, #4, #5 & #15)**

Chairman Sharpe called for the vote on the preliminary plat/preliminary development plan. Motion was made by Commissioner Parks, seconded by Commissioner Cox and carried unanimously to amend this request to make approval subject to the following:

- The developer agrees to meet all franchise and City utility easement requirements, compliance with the City's Subdivision Design and Improvement Standards and the Standard Specifications for Public Works Construction.
- All construction must be built in accordance with the approved development plan.
- A certified survey shall be submitted for review when submitting for the building permit.
- The plat shall be filed prior to the issuance of the building permit.

- Screening details shall be submitted for trash receptacle enclosure and ground-mounted equipment at the time of building permit submittal and will be reviewed for compliance with the UDO requirements.
- A breakdown of the square footage of the paved surface area and square footage of interior landscaping for vehicular use areas shall be provided at the time of building permit submittal and will be reviewed for compliance with the UDO requirements.
- Roof mounted mechanical equipment shall be screened from street right-of-ways and adjacent properties. The screening shall be architecturally incorporated into the roof design with materials that are visually compatible with the supporting building.
- All exterior lighting shall not produce glare, light trespass (nuisance light) and/or unnecessary sky glow as required by Section 27-602-5 of the UDO. Where used for security purposes or to illuminate walkways, roadways and parking lots, only shielded light fixtures shall be used.

Chairman Sharpe then called for the vote on the preliminary plat/preliminary development plan as amended. The vote was 7 in favor and 0 opposed.

3. Final Plat – TEA – Fort Smith – Lot 1. Requested by Hawkins-Weir Engineers. (companion item to items #2, #4, #5 & #15)

Chairman Sharpe called for the vote on the final plat. Motion was made by Commissioner Parks, seconded by Commissioner Howard and carried unanimously to amend this request to make approval subject to the following:

- All required approvals of the plat and the affixing of all required signatures on the original tracing and other copies and associated documents prior to the plat being filed with the county recorder.

Chairman Sharpe then called for the vote on the final plat as amended. The vote was 7 in favor and 0 opposed.

4. Master Land Use Plan Amendment request by Mercy Health Fort Smith Communities, agent for H. Weeks Properties Limited Partnership, Christopher

Weeks, from Mixed Use Employment to Commercial Neighborhood located at 3700 Cliff Drive. (companion item to items #2, #3, #5 & #15)

Chairman Sharpe called for the vote on the Master Land Use Plan Amendment. The vote was 7 in favor and 0 opposed.

5. Rezoning #13-8-13; A request by Mercy Health Fort Smith Communities, agent for H. Weeks Properties Limited Partnership, Christopher Weeks, for a zone change from Residential Estate One (RE-1) to Transitional (T) by Extension located at 3700 Cliff Drive. (companion item to items #2, #3, #4 & #15)

Chairman Sharpe called for the vote on the rezoning request. Motion was made by Commissioner Cox, seconded by Commissioner Parks and carried unanimously to amend the request to make approval subject to the following:

- All construction must comply with the approved development plan. Any changes to the approved development plan and any future development must be approved by the Planning Commission.

Chairman Sharpe then called for the vote on the rezoning request as amended. The vote was 7 in favor and 0 opposed.

6. Rezoning #10-8-13; A request by Jeff Lee, agent for Tony White, for a zone change from Industrial-2 to a Planned Zoning District located at 7200 South 28th Street.

Mr. Wally Bailey read the staff report indicating that the purpose of the rezoning request is to allow a building addition on the current industrial site for the retreading of tires. Mr. Bailey stated that this would be the only use permitted that is permitted with this Planned Zoning District that is in the Industrial Heavy (I-3) and not in the Industrial Moderate (I-2) zone as shown on the land use chart comparison table.

Mr. Bailey made reference to a project booklet which appears to comply with the minimum requirements of the Unified Development Ordinance and would present no significant issue for the area.

Mr. Bailey noted that a neighborhood meeting was held on Monday, August 5, 2013, at 12:00 p.m. with no neighboring property owners in attendance.

Mr. Jeff Lee was present to speak on behalf of this request.

No one was present to speak in opposition to the request.

Chairman Sharpe called for the vote on the rezoning request. The vote was 7 in favor and 0 opposed.

- 7. Rezoning #11-8-13; A request by Kim Hesse, agent for House of Restoration for a zone change from Unzoned to Residential Single Family Medium High Density (RS-3) by Classification located at 7600 Massard Road. (companion item to items #8 & #14)**
- 8. Conditional Use #23-8-13; A request by Kim Hesse, agent for House of Restoration for a church located at 7600 Massard Road. (companion item to items #7 & #14)**
- 14. Variance #26-8-13; A request by Kim Hesse, agent for House of Restoration for the following variances located at 7600 Massard Road. (companion item to items #7 & #8)**
 1. From 50 square feet to 52 square feet maximum size of a sign.
 2. From 1,500 square feet to 3,300 square feet maximum size of landscape islands.
 3. From the requirement of a permanent opaque 6 foot fence, wall or landscape buffer along any side or rear property line adjacent to residentially zoned property.

Ms. Brenda Andrews read the staff reports indicating that the purpose of these requests is to facilitate the development of a 19,628 square foot church.

Ms. Kim Hesse was present to speak on behalf of these requests.

No one was present to speak in opposition to these requests.

Following a discussion by the Commission, Chairman Sharpe called for the vote on these items.

RECESS PLANNING COMMISSION RECONVENE BOARD OF ZONING ADJUSTMENT

- 14. Variance #26-8-13; A request by Kim Hesse, agent for House of Restoration for the following variances located at 7600 Massard Road. (companion item to items #7 & #8)**
 1. From 50 square feet to 52 square feet maximum size of a sign.

2. From 1,500 square feet to 3,300 square feet maximum size of landscape islands.
3. From the requirement of a permanent opaque 6 foot fence, wall or landscape buffer along any side or rear property line adjacent to residentially zoned property.

Chairman Sharpe, Commissioners Keesee and Howard expressed their concerns relative to increasing the square footage of the sign.

Chairman Sharpe then called for separate votes on each variance request.

Chairman Sharpe called for the vote on variance request #1 which would increase the maximum size of a sign from 50 to 52 square feet. The vote was 5 opposed and 2 in favor (Cox, Cooper).

Chairman Sharpe then called for the vote on variance request #2 which would increase the maximum size of landscape islands from 1,500 to 3,300 square feet. The vote was 7 in favor and 0 opposed.

Chairman Sharpe then called for the vote on variance request #3 which would remove the requirement of a permanent opaque 6 foot fence, wall or landscape buffer along any side or rear property line adjacent to residentially zoned property. The vote was 7 in favor and 0 opposed.

RECESS BOARD OF ZONING ADJUSTMENT RECONVENE PLANNING COMMISSION

- 7. Rezoning #11-8-13; A request by Kim Hesse, agent for House of Restoration for a zone change from Unzoned to Residential Single Family Medium High Density (RS-3) by Classification located at 7600 Massard Road. (companion item to items #8 & #14)**

Chairman Sharpe called for the vote on the rezoning request. Motion was made by Commissioner Howard, seconded by Commissioner Parks and carried unanimously to amend this request to make approval subject to the following:

- All construction must be built in accordance with the submitted development plan/conditional use application.

Chairman Sharpe then called for the vote on the rezoning request as amended. The vote was 7 in favor and 0 opposed.

8. Conditional Use #23-8-13; A request by Kim Hesse, agent for House of Restoration for a church located at 7600 Massard Road. (companion item to items #7 & #14)

Chairman Sharpe called for the vote on the conditional use request. Motion was made by Commissioner Howard, seconded by Commissioner Cox and carried unanimously to amend this request to make approval subject to the following:

- All construction must be built in accordance with the submitted development plan.
- The developer shall provide payment in lieu of sidewalk construction.
- With the future addition of the southbound lanes and a median, access shall be limited to right turn in and right turn out traffic only.
- All drainage improvements shall comply with the City's 2011 Storm Drainage Standards.
- Final plat shall be submitted and approved prior to the issuance of a building permit.
- Submittal of a final landscape plan.
- Final exterior lighting plan shall be submitted for review and approval prior to issuance of building permit.
- All trash receptacles, mechanical equipment, heating/cooling systems and utility boxes shall be completely screened.
- Digital sign illumination setting shall not operate at levels more than 0.3 foot candles above ambient light, as measured using a foot candle meter. Documentation shall be provided to the city certifying the brightness level at the time of issuance of the sign permit. The sign shall have a light sensing device that will adjust the brightness as ambient light conditions change. The message or image on the digital face must remain static for a minimum of eight seconds.

Chairman Sharpe then called for the vote on the conditional use request as amended. The vote was 7 in favor and 0 opposed.

9. Rezoning #12-8-13; A request by Gerdau for a zone change from ETJ Open-1 to ETJ Industrial-2 by Extension located at 7700 Highway 45. (companion item to item #10)

10. Development Plan Approval for a new scale facility located at 7700 Highway 45. Requested by Gerdau. (companion item to item #9)

Ms. Brenda Andrews read the staff reports indicating that the purpose of these requests is to allow for the construction of a new scale facility with a new entrance driveway and parking lot.

Mr. Andy Brown, representing Gerdau, was present to speak on behalf of these requests.

No one was present to speak in opposition to these requests.

Chairman Sharpe called for the vote on these requests.

9. Rezoning #12-8-13; A request by Gerdau for a zone change from ETJ Open-1 to ETJ Industrial-2 by Extension located at 7700 Highway 45. (companion item to item #10)

Chairman Sharpe called for the vote on the rezoning request. Motion was made by Commissioner Parks, seconded by Commissioner Howard and carried unanimously to amend this request to make approval subject to the following:

- All construction must be built in accordance with the submitted development plan.
- Any significant change to the approved development plan or new development will require a development plan approval by the Planning Commission.

Chairman Sharpe then called for the vote on the rezoning request as amended. The vote was 7 in favor and 0 opposed.

10. Development Plan Approval for a new scale facility located at 7700 Highway 45. Requested by Gerdau. (companion item to item #9)

Chairman Sharpe called for the vote on the development plan. Motion was made by Commissioner Parks, seconded by Commissioner Howard and carried unanimously to amend this request to make approval subject to the following:

- All construction shall be built in accordance with the approved development plan.
- An approval letter from Fort Smith Regional Airport and the FAA shall be submitted prior to the issuance of a Certificate of Land Use.
- The wooded area to the north of the new road and scale facility shall remain undisturbed.
- All signs shall require a separate permit submittal and planning staff approval prior to installation.

- Highway 45 is classified as a Class I Bikeway/Trail and requires dedication of a 20' wide bikeway/trail easement prior to the issuance of the Certificate of Land Use.
- Parking lot screening shall be installed for the new parking lot adjacent to Highway 45.

Chairman Sharpe then called for the vote on the development plan as amended. The vote was 7 in favor and 0 opposed.

11. Conditional Use #22-8-13; A request by Goddard United Methodist Church for a pavilion located at 1922 Dodson Avenue.

Mr. Wally Bailey read the staff report indicating that the purpose of this request is to allow for the construction of a pavilion to be used for their ministries.

Reverend Steve Wingo was present to speak on behalf of this request.

No one was present to speak in opposition to this request.

Chairman Sharpe then called for the vote on the conditional use request. Motion was made by Commissioner Parks, seconded by Commissioner Howard and carried unanimously to amend this request to make approval subject to the following:

- All construction must be built in accordance with the submitted development plan.
- No signage is approved with this application. A separate sign permit submittal is required for any future signage.
- If exterior lighting will be provided, it shall not produce glare, light trespass (nuisance light) and/or unnecessary sky glow; as required by Section 27-602-5 of the UDO. Where used for security purposes or to illuminate walkways, roadways and parking lots, only shielded light fixtures shall be used.

Chairman Sharpe then called for the vote on the conditional use request as amended. The vote was 7 in favor and 0 opposed.

12. Conditional Use #24-8-13; A request by Galen Hunter, agent for the Fort Smith Public Schools for a school building addition located at 616 North 14th Street. (companion item to item #13)

13. Variance #25-8-13; A request by Galen Hunter, agent for Fort Smith Public Schools for a variance from 20 feet to 12 feet front yard setback (14th Street) and from 20 feet to 8 feet exterior side yard setback (Grand Avenue) located at 616 North 14th Street. (companion item to item #12)

Mr. Wally Bailey read the staff reports indicating that the purpose of these requests is to allow for the construction of two (2) additions to the existing school (Darby Junior High). Mr. Bailey noted that one addition would be for the Band Room and the other addition is to be the girls locker rooms.

Mr. Bailey stated that a neighborhood meeting was held on Thursday, August 1, 2013, at 5:30 p.m. at 616 North 14th Street with no neighboring property owners in attendance.

Mr. Galen Hunter was present to speak on behalf of these requests.

No one was present to speak in opposition to the requests.

Chairman Sharpe then called for the vote on these requests.

**RECESS PLANNING COMMISSION
RECONVENE BOARD OF ZONING ADJUSTMENT**

13. Variance #25-8-13; A request by Galen Hunter, agent for Fort Smith Public Schools for a variance from 20 feet to 12 feet front yard setback (14th Street) and from 20 feet to 8 feet exterior side yard setback (Grand Avenue) located at 616 North 14th Street. (companion item to item #12)

Chairman Sharpe called for the vote on the variance request. The vote was 7 in favor and 0 opposed.

**RECESS BOARD OF ZONING ADJUSTMENT
RECONVENE PLANNING COMMISSION**

12. Conditional Use #24-8-13; A request by Galen Hunter, agent for the Fort Smith Public Schools for a school building addition located at 616 North 14th Street. (companion item to item #13)

Chairman Sharpe called for the vote on the conditional use request. Motion was made by Commissioner Parks, seconded by Commissioner Howard and carried unanimously to amend this request to make approval subject to the following:

- All construction must be built in accordance with the submitted development plan.
- No signage is approved with this application. A separate sign permit submittal is required for any new or relocated signs.

- If exterior lighting will be provided it shall not produce glare, light trespass (nuisance light) and/or unnecessary sky glow; as required by Section 27-602-5 of the UDO. Where used for security purposes or to illuminate walkways, roadways and parking lots, only shielded light fixtures shall be used.

Chairman Sharpe then called for the vote on the conditional use request as amended. The vote was 7 in favor and 0 opposed.

RECESS PLANNING COMMISSION RECONVENE BOARD OF ZONING ADJUSTMENT

- 16. Variance #24-8-13; A request by Al Prieur, agent for Fort Smith Behavioral Health, for a variance from 10 feet to 1.1 feet street-side yard setback located at 1620 South 46th Street.**

Mr. Wally Bailey read the staff report indicating that the purpose of this variance request is to allow for the construction of a handicap accessible deck to be built on the side of the building next to South P Street.

Mr. Bailey noted that a neighborhood meeting was held on Tuesday, July 30, 2013, at 2:30 p.m. at the subject location with no neighboring property owners in attendance.

Mr. Al Prieur was present to speak on behalf of this request.

No one was present to speak in opposition to this request.

Chairman Sharpe then called for the vote on the variance request. Motion was made by Commissioner Howard, seconded by Commissioner Parks and carried unanimously to amend this request to make approval subject to all construction being built in accordance with the approved development plan. Chairman Sharpe then called for the vote on the variance request as amended. The vote was 7 in favor and 0 opposed.

Meeting Adjourned!

Memorandum

To: Planning Commission
From: Wally Bailey, Director of Development Services
Date: 8/29/2013
Re: Temporary/Portable Buildings

We will continue our general discussion of the temporary/portable buildings at the September planning commission study session and voting session. We were asked to research some other specific communities to see how they might regulate temporary/portable buildings. The results of that research is enclosed along with the information you have previously been provided.

Please let me know if you have any further questions that we might be able to provide answers at the upcoming meetings.

1. City of Austin Texas. Contact was Chris Roberts (512-974-2769). They have an inner local agreement with the 6 surrounding school districts to give them a break on building permits. Essentially they assume that all buildings are permanent and will go through the building permit process to check for (Handicap accessibility, electric, setbacks, ect.) They do not have a temporary permit for buildings. Furthermore, the schools are not required to go through a public hearing. The modular/temporary type office buildings are approved administratively.
2. Oklahoma City – spoke with John Wilson (405-297-1624) and was referred to Randy Edwards, and Jeff Hines at 405-297-2066. The City does considers all buildings permanent and require the school or any citizen to obtain a building permit. No temporary license or permit is allowed for temporary buildings.
3. Fayetteville – I spoke with Andrew Garner (senior planner) at 479-575-8262. He informed me that the school would be required to obtain a conditional use permit. The conditional use permit then could apply any limitation. This is in chapter 162: Use Units (Unit 2) Temporary facilities. **PLEASE SEE ATTACHED.** The schools do not have any special exemption; they require PC approval through a conditional use permit. The C.U. would then stipulate the time the building could be on the site.
4. Conway AR – I spoke with Wes Craigloaf (Planner) 501-450-6105- *Interim Building-* shall obtain a building permit. The temporary building may be allowed for up to 24 months. After the 24 months the Director has the authority to allow a variance for an additional 12 months. **PLEASE SEE ATTACHED ORDINANCE.**
5. Rogers AR – I spoke with Darrell Smith (Senior Planner) 479-621-1186- The temporary/portable buildings are an agenda item for the Planning Commission. They are required to receive Planning Commission approval. If approved it will allow the building to be located there for 1 year. If a time extension is needed they are required to reapply to the Planning Commission again for a 1 year extension. This would allow the building to be on location for a maximum of 2 years if the extension is approved. After the 2 years the school/applicant is required to remove the building. No portable building has been allowed to stay at a location for more than 2 years.

Tom checked with Darrell Smith to see where this is in the Roger's code. They do not have this in the Roger's code, but have handled these building the same for years. Unfortunately the temporary/portable building or trailer is listed as a use but not allowed in any zone. This is why they make the applicant go to the Planning Commission for approval.

1B

TITLE XV UNIFIED DEVELOPMENT CODE

CHAPTER 162: USE UNITS

162.01 Establishment/Listing

The various use units referred to in the zoning district provisions are herein listed in numerical order. Within the use units, the permitted uses are ordinarily listed in alphabetical order. In these use units where there is a preliminary descriptive statement (which may mention specific uses) in addition to the detailed list of uses, the detailed list shall govern. The asterisk (*) next to a specific use indicates that the use has special conditions as required by Chapter 163, Use Conditions and Chapter 164 Supplemental Regulations.

Unit 1	City-wide uses by right
Unit 2	City-wide uses by conditional use permit
Unit 3	Public protection and utility facilities
Unit 4	Cultural and recreational facilities
Unit 5	Government facilities
Unit 6	Agriculture
Unit 7	Animal husbandry
Unit 8	Single-family dwellings
Unit 9	Two-family dwellings
Unit 10	Three-family dwellings
Unit 11	Manufactured home park
Unit 12	Limited business
Unit 13	Eating places
Unit 14	Hotel, motel and amusement facilities
Unit 15	Neighborhood shopping goods
Unit 16	Shopping goods
Unit 17	Transportation Trades and services
Unit 18	Gasoline service stations and drive-in/drive through restaurants
Unit 19	Commercial recreation, small sites
Unit 20	Commercial recreation, large sites
Unit 21	Warehousing and wholesale
Unit 22	Manufacturing
Unit 23	Heavy industrial
Unit 24	Home occupation
Unit 25	Offices, studios, and related services
Unit 26	Multi-family dwellings
Unit 27	Wholesale bulk petroleum storage facilities with underground storage tanks
Unit 28	Center for collecting recyclable materials
Unit 29	Dance halls
Unit 30	Extractive uses
Unit 31	Facilities emitting odors & facilities handling explosives
Unit 32	Sexually oriented business
Unit 33	Adult live entertainment club or bar
Unit 34	Liquor stores
Unit 35	Outdoor music establishments
Unit 36	Wireless communications facilities
Unit 37	Manufactured homes
Unit 38	Mini-storage units
Unit 39	Auto salvage and junk yards
Unit 40	Sidewalk Cafes
Unit 41	Accessory dwellings
Unit 42	Clean technologies
Unit 43	Animal boarding and training
Unit 44	Cottage Housing Development

(A) Unit 1. City-wide uses by right.

- (1) *Description.* Unit 1 consists of public uses, essential services, agricultural uses, open land uses, and similar uses which are subject to other public controls or which do not have significantly adverse effects on other permitted uses and are, therefore, permitted as uses of right in all districts.
- (2) *Included uses.* Public facilities of the types embraced within the recommendations of the Comprehensive Land Use Plan.

Agricultural, forestry, and fishery:	<ul style="list-style-type: none"> •Field crop farms •Fishery •Forest •Fruit, tree, and vegetable farm
Essential services located in public right-of-way:	<ul style="list-style-type: none"> •Fire alarm box •Fire hydrant •Passenger stop for bus •Police alarm box •Sidewalk •Street, highway, and other thoroughfare •Street signs, traffic signs, and signals •Utility mainline, local transformer and station, and similar facilities customarily located in public right-of-way
Recreation and related use:	<ul style="list-style-type: none"> •Arboretum •Historical marker •Park area •Parkway •Wildlife preserve
Water facilities:	<ul style="list-style-type: none"> •Reservoir, open •Watershed •Conservation or flood control project

(B) Unit 2. City-wide uses by conditional use permit.

- (1) *Description.* Unit 2 consists of uses which may be conducted anywhere in the territorial jurisdiction, but which can be objectionable to nearby uses and are therefore permitted subject to conditional use permits in all districts.
- (2) *Included uses.*

Public and private facilities:	<ul style="list-style-type: none"> •Airport, flying fields and heliport •Bed and breakfast facilities* •Campground •Community Recycling Drop-off Facility •Plant nursery •RV sewage disposal facility •Solid waste disposal facility •Water recreation area
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Fayetteville Code of Ordinances

Temporary facilities:	<ul style="list-style-type: none"> •Carnival, circus, and tent revival* •Commercial facilities •Real estate sales office (located at a specific location in an underdeveloped subdivision and operated for the purpose of developing said subdivision) •School and church facility
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Church	
College or university	
Community center	
Crematorium	
Dormitory	
Eldercare	
Hospital	
Mausoleum	
Playfield, playground	
Private club or lodge	
School:	<ul style="list-style-type: none"> •Elementary •Junior High •Senior High
Swimming pool	
Tennis court	
Theater (legitimate)	

(C) Unit 3. Public protection and utility facilities.

(1) Description. Unit 3 consists primarily of public protection and utility equipment which:

- (a) Is ordinarily not located in the street right-of-way and can be significantly objectionable to nearby residential, commercial, and light industrial uses;
- (b) Have requirements for specific locations or are needed to serve residential neighborhood or local areas; and
- (c) Are, therefore, permitted only on review.

(2) Included uses.

Facilities of Public Service Corporations:	<ul style="list-style-type: none"> •Electric regulating station •Pressure control station •Transmission station for tower, radio, telegraph, telephone, television
Other utility and protective facilities:	<ul style="list-style-type: none"> •Airway beacon •Public utility maintenance building, warehouse, or storage building •Water pipeline rights-of-way, sewer or water treatment plant, water storage facility
Railroad rights-of-way	
Communications and utility transmission line rights-of-way	

Cross-reference(s)--Parking and Loading, Ch. 172.

(E) Unit 5. Government facilities.

(1) Description. Unit 5 consists of the main facilities of government agencies.

(2) Included uses.

City or county jail
Courts of law
Fire station
Governmental agencies and offices
Library
Police station
Post office
Detention Home

(F) Unit 6. Agriculture.

(1) Description. Unit 6 consists of agricultural uses and services and certain other uses suitable for location near, but not in, a residential district.

(2) Included uses.

Agricultural uses and services:	Farm:	<ul style="list-style-type: none"> •Egg •Truck
	Services:	<ul style="list-style-type: none"> •Hay baling •Smoking, curing and selling of smoked or cured poultry and livestock •Sorting, packing and selling of fruits, vegetables and flowers •Threshing

(D) Unit 4. Cultural and recreational facilities.

(1) Description. Unit 4 consists of cultural and recreational uses to serve the residents of the community.

(2) Included uses.

Auditorium, stadium	
Art gallery, museum	
Cemetery	
Child care center, nursery school *	

(G) Unit 7. Animal husbandry.

(1) Description. Unit 7 consists of livestock raising and related activities which are

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Conway

ARTICLE 601

SPECIAL PROVISIONS

CONDITIONS APPLYING TO USES

SECTION 601.1 – GENERAL

Uses permitted or subject to A Conditional Use Permit in any district under this Ordinance shall be subject to the requirements of the district provisions as supplemented or modified by this Article.

Section 601.2 - Accessory Buildings, Construction Buildings, Interim Buildings, Temporary Buildings, and Prefabricated Buildings

A. ACCESSORY BUILDING REQUIREMENTS. Accessory buildings shall be governed by the following provisions:

1. **Detached.** Accessory buildings must be detached from the main structure or such accessory building shall be considered as an addition to the main or principle building.
2. **Setbacks.**
 - a. Accessory buildings shall be no closer than 5 feet to any interior lot line.
 - b. Accessory buildings shall be located behind the rear of the main structure or no closer than 60 feet from the front property line.
 - c. Accessory buildings located on a corner lot shall be no closer than 60 feet to one of the two front lot lines. The setback from the other front lot line shall not be closer than the established front setback of the main structure.
 - d. Accessory buildings shall be no closer than 10 feet to the principle building unless attached to and considered part of the principle structure. Attachment to the principle building shall be by means of the structural attachment of abutting walls or by a roofed structure with a minimum 4 foot width.
 - e. Accessory buildings shall be no closer than 10 feet from other accessory buildings on the lot unless the accessory buildings are attached by means of the structural attachment of abutting walls or by a roofed structure with a minimum 4 foot width.
 - f. Accessory buildings shall not be located in any easement unless written approval is provided by the authority holding rights to the easement.
3. **Height.** Accessory buildings shall not exceed the maximum height as allowed for the related main building in that zone.
4. **Area Limitations.**
 - a. Total area of commercial accessory building(s) shall not be larger than 160 square feet.
 - b. Total area of residential accessory building(s) shall not be larger than 50% of the covered roof area of the main building.
 - c. Residential accessory structures located on lots of one acre or greater may have a total accessory building area of 75% of the covered roof area of the main structure.
 - d. There is no limit on accessory building total area on lots of five acres or more located in A-1 zoning districts.

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5. Building Permit Requirement. A building permit is required for all accessory buildings, except residential accessory buildings 50 square feet or less in area.

6. Building Code Requirements.

a. Footing and Foundation Requirements. Accessory buildings larger than 160 square feet, are required to be anchored to footings and foundations in accordance with the adopted building codes.

b. Structural Framing Requirements.

i. Wood frame accessory buildings shall be constructed to meet the prescriptive framing and sheathing requirements of the adopted building codes.

ii. Metal frame accessory buildings require the submittal of engineered drawings and engineered documentation to confirm the design of the accessory building meets the minimum design loads required by the adopted building codes.

iii. Prefabricated accessory buildings shall have:

1. the framing members exposed for inspection to verify compliance with the adopted building codes, or,

2. Engineering drawings and documentation shall be provided to confirm the design and construction of the structural framing in a prefabricated accessory building meets the minimum design loads required by the adopted building codes.

c. Electrical, Mechanical and Plumbing Requirements

i. Electrical, mechanical and plumbing permits and inspections are required for such work when installed in accessory buildings.

ii. Electrical, mechanical and plumbing work done in prefabricated structures that cannot be visually inspected by the city inspector requires engineering drawings and documentation to confirm the design and installation of the electrical, mechanical and plumbing systems meets the requirements of the adopted electrical, mechanical and plumbing codes.

B. Construction, Interim and Temporary Building Requirements. Construction, Interim and Temporary buildings shall be governed by the following provisions:

1. Prohibited Uses

a. In no case shall a Construction, Interim, or Temporary building be used as the primary place of business or for habitation.

2. Building Permits

a. Construction Building. Construction buildings are not required to obtain building permits.

b. Interim Building. Interim buildings are required to obtain interim building permits prior to moving the building onto a parcel. The procedures and fees for obtaining interim building permits will be the same as those for obtaining a building permit except as noted in this ordinance. The interim building permit will only be issued after the issuance of the building permit for the building that is to replace the interim building. The interim building may be permitted for up to 24 months. The interim building permit will state the date the interim building is to depart the parcel or lot. The interim building is to leave the site no later than the end of the day noted on the permit. A variance may be issued to allow an interim building to remain up to an additional 12 months provided there are unusual circumstances that justify the extension of the interim building permit. This variance will be issued by the Director of Planning and Development per variance procedure guidelines as specified in Article 1101. Development Review. Section 1101.9. Exceptions.

- c. **Temporary Building.** Temporary buildings are required to obtain a building permit prior to moving the building onto a parcel. The procedures and fees for obtaining temporary building permits will be the same as those for obtaining a building permit except as noted in this ordinance. The temporary building may be permitted for up to 24 months. The temporary building permit will state the date the temporary building is to depart the parcel or lot. The temporary building is to leave the site no later than the end of the day noted on the permit. A variance may be issued to allow a temporary building to remain up to an additional 12 months provided there are unusual circumstances that justify the extension of the temporary building permit. This variance will be issued by the Director of Planning and Development per variance procedure guidelines as specified in Article 1101. Development Review. Section 1101.9. Exceptions.
- d. **Special Event Temporary Buildings.** The Mayor may grant approval for special event temporary building for events which are fourteen 14 or fewer days in length and which are community-wide events which bring benefits to the community as a whole. At the Mayor's discretion, no fees will be paid for those permits and the permits may be issued for temporary buildings which may be situated in the public right-of-way and/or which may not meet the Zoning Ordinance requirements for building setbacks. At the Mayor's discretion, a tent or awning, or in special circumstances, a building which exceeds the dimensional requirements of this ordinance may be granted a special event temporary building permit. Approval of the Fire Marshall is required for tents larger than 200 square feet in area.

3. Building/Construction Code Requirements. (building, electrical, mechanical and plumbing)

- a. **Construction Buildings -** Construction buildings may be transported onto a parcel or lot without the requirement for verification of building/construction code compliance, but may be subject to code inspection upon placement of the building.
- b. **Interim and Temporary Buildings-** Engineering drawings and documentation shall be provided to confirm the design and construction of interim buildings meet the minimum requirements of all building/construction codes. Certification shall be provided by an approved third party attesting to compliance of the building with the adopted building/construction codes.
- c. **Special Event Temporary Buildings –** Special Event Temporary Buildings may be transported onto a parcel or lot without the requirement for verification of building/construction code compliance, but may be subject to code inspection upon placement of the building.
- d. **Anchorage Requirements for Wind Loads**
 - i. Construction buildings do not require anchorage to a permanent foundation but must have tie downs sufficient to resist design wind loads as established by the building code.
 - ii. Interim buildings must be installed with anchorage adequate to resist the design wind loads as established by the building code.
 - iii. Temporary buildings in place for seven (7) days or less are not required to have foundations or tie downs to resist wind loads.
 - iv. Temporary buildings in place for longer than seven (7) days must be installed with anchorage adequate to resist the design wind loads as established by the building code.
- e. **Electrical Code Requirements.** All power supplies to interim, construction, temporary and prefabricated buildings shall be protected from vehicular traffic. All construction, interim, temporary and prefabricated buildings must meet all requirements of the electrical code adopted by the City of Conway except as stated herein:
 - i. Construction buildings may be served from a temporary power pole.
 - ii. Interim buildings must be served by permanent power.

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- iii. Temporary buildings in place for six (6) months or less may be served from a temporary power pole.
 - iv. Temporary buildings in place for longer than six (6) months must be served by permanent power.
4. **Parking.** In no instance, except for special event temporary building permits, may the movement of an interim, construction, or temporary building onto a parking lot reduce the number of available parking spaces below the minimum required for that building and for other buildings upon that same lot that are complete and ready for occupancy.
5. **Building Moving Permit.** Building moving permits are not required for prefabricated buildings including construction, interim, and temporary buildings.
6. **Health Department Requirements.** All construction, interim and temporary buildings are required to meet all requirements of the State Health Department.

SECTION 601.3 – ANIMALS: KEEPING OR HANDLING OF (OTHER THAN SMALL ANIMALS KEPT AS HOUSEHOLD PETS)

Animals and fowls, where permitted in a district, shall be kept only in accordance with Conway City Ordinances and Codes. Proponents of such uses shall show that adequate measures will be taken to prevent odor, dust, noise or drainage from becoming a nuisance to uses on other properties. No incineration of animal refuse shall be permitted on the premises. *Kennels, Animal Rescue Shelters, and Wildlife Rehabilitators, if located in any residential zoning district, shall be located in an undivided property of not less than two (2) acres. In no circumstance shall a commercial kennel be operated within any residential zoning district. (Ordinance O-05-139)*

SECTION 601.4 – ART GALLERY, LIBRARY, MUSEUM OR SIMILAR FACILITY

An art gallery, library, museum or similar facility shall be located not less than fifteen (15) feet from any other property in an R district, and when located in an R district, shall have its primary vehicular entrance and exit on a major street or on another thoroughfare within one hundred fifty (150) feet of its intersection with a major street.

SECTION 601.5 – AUTOMOBILE, GO-KART, MINIATURE AUTO, RACING OR DRIVING TRACKS

Automobile, go-kart, miniature auto, racing or driving tracks shall be located not less than five hundred (500) feet from any residential district unless enclosed by a solid fence or wall at least six (6) feet high, but in no case shall a track be located less than two hundred (200) feet from a residential district.

SECTION 601.6 – AUTOMOBILE WASH SERVICE, INCLUDING SELF-SERVICE ESTABLISHMENTS

Automobile wash service establishments shall provide paved parking space on the lot for not less than five (5) automobiles plus stacking space for no less than 10 vehicles. Where any such use is located on a zoning lot abutting an R district and where any part shall be built along such line, any entrance to such establishment, or exit therefrom shall be by way of a major street.

SECTION 601.7 – BED AND BREAKFAST

Signage for a Bed and Breakfast facility is restricted to one sign with a gross area no greater than twelve (12) square feet. Only one side of the sign shall be utilized to compute the area.

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DAILY & WOODS

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August 5, 2013

Mr. Wally Bailey
Director of Planning
623 Garrison Ave., 3rd Floor
Fort Smith, AR 72901

Via Electronic Mail
& First Class Mail

Re: City Policy Regarding Temporary Buildings

Dear Mr. Bailey:

You have requested that we provide a discussion of appropriate legal standards with reference to the captioned topic. We understand that the governing body of the City has requested the Fort Smith Planning Commission to consider a policy by which the City of Fort Smith would not enforce the provisions of Section 27-327.1 of the Fort Smith Municipal Code as applied to the use of temporary facilities by the Fort Smith Special School District. Section 27-327.1 limits to 120 days administrative approval of temporary facilities.

We note that the Unified Development Ordinance containing the subject provision purports to apply to all property in the City of Fort Smith obviously including property owned by and facilities operated by the Fort Smith Special School District. See Sections 27-103 and 27-104 of the Fort Smith Municipal Code. Application of Section 27-327.1 to property owned and used by another political subdivision of the State presents the initial question of whether the City may apply its planning and property use provisions to the property of other political subdivisions. There is no direct answer to that question from the Arkansas Supreme Court; however, in Lavender v. City of Rogers, 232 Ark. 673, 677, 339 S.W.2d 598 (1960), the Arkansas Supreme Court noted that cities, in certain instances, do have the authority to regulate some features relating to public buildings and that the Court was unwilling to make a sweeping finding that a municipality cannot regulate in any manner the construction of public school buildings. See also Lavender v. City of Rogers, 233 Ark. 161, 163, 343 S.W.2d 103 (1961). The Arkansas Attorney General, as well as leading municipal law authorities, including E. McQuillin, The Law of Municipal Corporations, § 3A.15, at 457-58 (3rd ed. 1999), suggest the application of a balancing test in which municipal regulations would be applicable to other local governmental entities, including school districts, in instances in which the subject of the regulation is more directly related to a municipal function than to the function of the other governmental entity (e.g., regulations of safety features of buildings would be permitted whereas municipal regulation of

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school curricula would not).

It is our opinion that the authority delegated to municipalities with reference to municipal planning (A.C.A. §§ 14-56-401 *et seq.*), safety of persons and property (A.C.A. § 14-43-602), and the power to exercise a full range of legislative functions including safety/police power matters not inconsistent with the laws of the State (A.C.A. § 14-55-102 and 502(a)) authorize municipal regulations of temporary structures even as to school districts and other local governmental entities.

Our opinion proceeds with the assumption that the City of Fort Smith will assert its power over this legislative topic.

It has been proposed that Fort Smith exempt, for some undetermined period of time, the Fort Smith Special School District from the existing 120 day limitation on administrative approval for temporary based on the important governmental mandate to the Special School District to accommodate students of the public school district with classroom facilities.

The proposed policy would implicate the equal protection clauses of the Fourteenth Amendment to the United States Constitution and Article 2, § 3 of the Arkansas Constitution. Real estate owners and other entities affected by application of the City's policy could potentially object that a policy of non-enforcement of the provision as to the public school system would violate their right to equal protection under the law.

The first inquiry with reference to any equal protection claim begins with a determination of whether the involved policy operates to disadvantage some suspect class or impinges upon a fundamental right protected by the Constitution. Here, neither a suspect class nor a fundamental right appear to be implicated. For that reason, we believe the City's policy would not be subject to strict scrutiny by the courts.

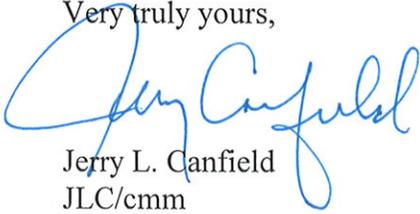
If not subject to strict scrutiny, the City's policy would be judicially evaluated from the framework of whether the policy rationally furthers some legitimate, articulated purpose so as to not constitute improper discrimination prohibited by the Constitution. Berry v. City of Little Rock, 904 F.Supp. 940, *aff'd*, 94 F.3d 648 (8th Cir. 1996). The equal protection clause prohibits the City, in the exercise of its powers, from making arbitrary classifications resulting in different treatment of persons similarly situated. Ghegan & Ghegan v. Barclay, 345 Ark. 514, 521, 49 S.W.3d 652 (2001). The equal protection clause does, however, allow classifications that have a rational basis and are reasonably related to a legitimate government purpose. Rose v. Arkansas State Plant Board, 363 Ark. 281, 293, 213 S.W.3d 607 (2005). "Under the rationality standard of review, . . . [it must be presumed] the legislation is constitutional, i.e., that it is rationally related to achieving a legitimate governmental objective." Medlock v. Leathers, 311 Ark. 175, 178 & 181 (1992), 842 S.W.2d 428, *cert denied*, 508 U.S. 960 (1992). Consequently, a single conceivable rational basis is sufficient to pass muster in an equal protection analysis. *Id.*

It is our opinion that the legal principles discussed above will provide the applicable framework in which the proposed City policy would be judged if challenged. If the City develops the proposed policy, the City should be able to articulate a rational basis for treating differently temporary buildings utilized by the Fort Smith Special School District as compared to other users

of temporary buildings. The articulated basis should give consideration to protection of adjacent property owners as well as other users of temporary buildings. The policy may address time limits for the exemption and efforts to remediate the effects on adjacent property.

Thank you for your attention to this matter.

Very truly yours,



Jerry L. Canfield
JLC/cmm

Memo

To: Ray Gosack, City Administrator
From: Wally Bailey, Director of Development Services
Date: 5/24/2013
Re: Portable Buildings at Fort Smith Public Schools

Through the years, the Fort Smith Public Schools (FSPS) system has placed temporary buildings on school property primarily for temporary classrooms to avoid busing students from one school to another until a permanent structure or addition could be built. Additional portable or temporary buildings are used for support space such as offices and storage. Based on the Fort Smith Public School records, the school system has a twenty nine (29) existing portable buildings on school properties. Enclosed is a spreadsheet provided by FSPS showing the locations and ages of portable buildings on the various school properties.

Historically, the City of Fort Smith has for many decades recognized the need for the Fort Smith Public Schools to utilize temporary classroom facilities and by virtue of a long standing administrative policy has not required the FSPS to obtain approvals from the Planning Commission for its temporary buildings.

The City of Fort Smith ordinances (*specifically section 27-327-1 of the Unified Development Ordinance*) allows the planning department to issue temporary use permits for certain temporary uses for non-retail uses, such as temporary classrooms (public and private), temporary medical offices, temporary recreational facilities, and similar uses that do not involve retail or food or beverage sales activities. A temporary use permit can be administratively issued for up to a 120 day period. Any period exceeding 120 days must be approved by the planning commission.

This is not a new section of the code. This section has existing in the zoning code for many years.

Recently, the planning department received a complaint from a citizen regarding a portable building placed at the Fort Smith Public School's Parker Center at 811 North T Street. The portable building was placed on the school's property adjacent to North 8th Street

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on June 26, 2012, to be used as a temporary office. The citizen's property is adjacent to the Parker Center and the citizen objected to the temporary structure, stating that the building had a significant negative impact on the value of his property.

Please see the enclosed letter from attorney David Rush on behalf of the citizen, as well as photographs of the portable building on North 8th Street and photographs of the two other existing portable buildings at the Parker Center.

There are no regulations that exempt the FSPS from complying with the City of Fort Smith zoning laws and ordinances.

This complaint has caused us to realize that if we are to continue the past decades of practice, we need to consider exemptions for FSPS and include the exemption in our codes and ordinances.

After meeting with Dr. Benny Gooden on this matter, we believe the best course of action is to meet with the Board during a study session and discuss options to address the use of temporary portable buildings by the FSPS. I have enclosed a letter from Dr. Benny Gooden on this matter.

Some possible options to consider would include:

- 1) Continue with past practices of exempting the FSPS from compliance with Section 27-327-1 concerning temporary buildings. Public schools are a public entity with a Board that is accountable to the public. To accomplish the exemption, it will require an ordinance amendment be approved by the City Board of Directors.
- 2) Extend the current administrative time period for approval of temporary buildings from 120 days to a more extended time such as 2 - 3 years. Longer periods of time would require approval by the planning commission. When the FSPS needs to use a portable building, it is typically for at least one academic year or until a building program can be funded and constructed. A 120-day approval isn't useful for school facilities.
- 3) In lieu of a specific time in the ordinance ask that all schools utilizing temporary portable buildings specify a specific time frame that the temporary building would be on the school property. Administrative approval could be granted for a period of time not to exceed 5-years. If the school needed an extension of time from the stated time then approval from the Planning Commission would be required.
- 4) Make no changes and apply the current ordinance.

If you have any questions regarding this matter, please contact me.

Enc.

c: Dr. Benny Gooden
David Rush, attorney
David Railey

Today... and ...



in the **Future**

Office of the Superintendent

3205 Jenny Lind • P.O. Box 1948
Fort Smith, Arkansas 72902-1948
479-785-2501
Fax: 479-785-1722

May 22, 2013

Mr. Ray Gosack, City Administrator
City of Fort Smith
623 Garrison Avenue
P.O. Box 1908
Fort Smith, AR 72902

Re: Portable Buildings on Public School Campuses

Dear Mr. Gosack:

I appreciated the opportunity to meet with you and Wally Bailey, Director of Development Services, a few days ago to discuss the status of a portable building located on the campus of the Parker Center at 811 North T Street. This meeting was in response to previous communication between your staff and Dr. Gordon Floyd and other Fort Smith Public School employees. I understand that you have received complaints from Mr. David Railey, whose residence is located across the street from this campus.

Historical Perspective

For more than forty (40) years the Fort Smith Public Schools have utilized portable classroom buildings to address growth and shifts in student population or to provide necessary space for support services. At times there have been as many as thirty (30) portables located on various campuses. Recent additions on most school campuses have reduced the number of portable buildings, but they are still required as campus needs change.

For all these years, the City of Fort Smith has considered portable buildings as part of the regular campus structures with regard to codes. Permits have been secured each time a building was moved from one campus to another prior to moving on the city streets. FSPS has always conformed with applicable electrical or plumbing codes as portable structures have been connected to existing utilities. However, no additional approval has been required during this entire period.

IN

Parker Center Issues

The Parker Center, located at 811 North T Street, houses a number of support functions associated with early childhood programs, federal programs, student assessment, and various other instructional support activities. Also located on this campus is the clothing center operated by the Children's Service League to assist disadvantaged children. The proximity of these programs to schools requiring most frequent contact makes the Parker Center a suitable location.

For many years, there have been portable buildings located on the Parker Center campus to supplement available building space. These buildings have functioned with little notice and have apparently been of no concern to individuals in the Parker neighborhood—or to City officials.

In June of 2012, when Bruce Grindstaff of our Building and Grounds staff contacted City staff to secure a moving permit to locate an additional portable building on the Parker Center campus, he was provided a "Temporary Use Permit" with a 120 day term and was advised to present information to the Fort Smith Planning Commission to request an extension. Since this was inconsistent with procedures for the past four decades, we continued with the installation and were subsequently advised verbally that the procedure did not apply.

Subsequent to the installation of the portable building in question, both FSPS and the City of Fort Smith have received several items of correspondence from Mr. David Railey who resides across the street from the Parker Center campus. In every instance, Mr. Railey has complained that the latest portable building harms his property values. It is worthy of note that no objection had apparently been raised concerning existing portables adjacent to the latest placement.

Following the original complaint, FSPS immediately initiated renovation projects on the portable buildings on the campus. These activities significantly improved the appearance of the buildings at some considerable expense to the District. Unfortunately, these actions did not satisfy Mr. Railey and I understand that he has continued to press his complaints to the City of Fort Smith. Accordingly, your staff has advised us that we should make application to the Fort Smith Planning Commission in order to continue to locate the building on the campus.

Issues to Consider

As we review these issues, several questions appear to merit consideration:

1. Have ordinances governing school property—including the use of portable classrooms—been revised recently to change the practice of more than four decades?
2. When did City of Fort Smith staff determine to grant "temporary use permits" for the use of portable classrooms and who made this apparent decision to change past practice?
3. Will the proposed review of the use of the portable classroom which is the subject of a citizen complaint establish a pattern applicable for all future placements?
4. Is the proposed review applicable to other portable classrooms currently in use?

Mr. Ray Gosack

May 22, 2013

Page 3

5. In the event that City staff or the Fort Smith Planning Commission refuses to grant long-term approval for portable classrooms, does the city propose solutions to address student population growth and/or shifts in population when the capacity of permanent buildings is inadequate?

Possible Solutions

City staff and the Fort Smith Board of Directors might want to consider continuing past practice using one of these options:

1. Create a zoning class for public school property which affords the school district flexibility allowing the use of portable buildings when use is consistent with the permanent buildings located on school campuses. These buildings would be required to comply with various codes, but this classification would allow flexibility in responding to changing space requirements while acknowledging that the buildings would not be different in purpose from the campus as a whole.
2. Continue the practice of the past forty years with regard to the use of portable buildings on public school property.

Ray, the Fort Smith Public Schools appreciate the excellent cooperation which the City of Fort Smith gives to the District in many areas. We hope that the City acknowledges FSPS cooperation including right-of-way acquisition, facility utilization for City functions, public safety and other important areas.

As you know, we have made many improvements to school campuses in order to make them more useful for educational purposes while enhancing the appearance these public properties present to those who come to our City. We are continuing to improve school facilities as needs change and resources are available. Unfortunately, there will always be a need for the flexibility which portable buildings provide.

I look forward to discussing these issues with you, members of the City staff, and members of the City Board of Directors at your convenience.

Sincerely,



Benny L. Gooden, Ed.D.
Superintendent of Schools

pc: Dr. Gordon Floyd
Alan Love
Board of Education

1P

PORTABLE BUILDINGS

<u>Location</u>	<u>Bldg No</u>	<u>Type of Building</u>	<u>FSPS No</u>	<u>Use of Building</u>	<u>Year Installed at Site</u>
Bonneville	19	Sgl-Armco	80020	Counseling, GATE	1982
Bonneville	13	Sgl-Armco	80014	Special Education Resource, Speech Therapy	1992
Ft. Chaffee	11	Sgl-Armco	80012	Chaffee Warehouse	2011
Ft. Chaffee	14	Sgl-Armco	80015	Chaffee Warehouse	2011
Ft. Chaffee	15	Sgl-Armco	80025	Chaffee Warehouse	2011
Ft. Chaffee	16	Sgl-Armco	80017	Chaffee Warehouse	2012
Ft. Chaffee	8	Sgl-Armco	80008	Chaffee Warehouse	2012
Howard	24	Sgl-Armco	80056	Special Education Classroom	2004
Kimmons	9	Dbl-Armco	80009	Learning Skills, GATE, Social Studies, Career Orientation	1977
Morrison	6	Dbl-Armco	80006	Music, Counselor	2006
Morrison	1	Dbl-Armco	26860	Art, GATE, Speech Pathology	2012
Northside	27	Sgl-Williams	81608	Social Studies	2010
Parker Center	2	Sgl-Armco	80002	Children's Service League Storage	1972
Parker Center	17	Sgl-Armco	80018	Parents as Teachers	2005
Parker Center	7	Sgl-Armco	80007	Art, GATE	2005
Parker Center	20	Sgl-Armco	80021	Nurses' Office	2012
Ramsey	10	Williams	81607	Health	2010
Southside	25	Dbl-Armco	26858	History	1985
Southside	26	Sgl-Armco	26859	History	2012
Spradling	29	Sgl-Williams	81632	Music Lab	2010
Sunnymede	3	Dbl-Armco	80003	GATE, ELA, Interventionist	2002
Tilles	22	Sgl-Armco	80023	ELA	2000
Tilles	4	Sgl-Armco	80004	Book Room	2002
Trusty	5	Sgl-Armco	80005	ELA, GATE, Special Education, Mental Health Counseling	2001
Trusty	12	Sgl-Armco	80013	Social Worker, Speech Pathology	2006
Trusty	28	Sgl-Williams	81633	Music Lab	2010
Wheeler	23	Sgl-Armco	80024	Wheeler Property	2012
Wheeler	18	Sgl-Armco	80019	Wheeler Property	2012
Wheeler	21	Sgl-Armco	80022	Wheeler Property	2012

10

RUSH & RUSH
Attorneys at Law

FORT SMITH OFFICE
1713 South "D" Street
Fort Smith, Arkansas 72901
Telephone: (479) 785-4466

Coy J. Rush, Jr., P.C.
David L. Rush, P.A.
Mark J. Johnson
Patrick Flake

PARIS OFFICE
208 East Walnut
P.O. Drawer 607
Paris, Arkansas 72855
Telephone: (479) 963-3002

Reply to

Reply to

April 18, 2013

Brenda Andrews
P.O. Box 1908
Fort Smith, AR 72902

Re: David Railey
Building Permit #BC-12-01188

Dear Ms. Andrews:

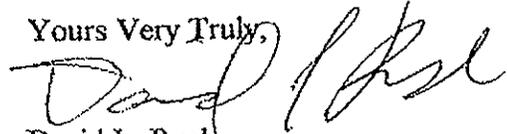
Please be advised that I represent Mr. David Railey, in relation to an issue of a temporary building permit to the Fort Smith School District for a temporary structure located at Parker Center 811 North T street. Mr. Railey has attempted, without success, to have the planning commission enforce its own rules and regulations and zoning laws regarding the placement of the temporary structure. He was subsequently notified by you that the Fort Smith School District is not required to request approval from the planning commission to allow the building to remain in place. I find it somewhat remarkable that a school district would not have to comply with the zoning regulations from the City of Fort Smith like the rest of us mere citizens would. In any event, if you would please educate me of any documentation of any exemption or statutory provision or city ordinance which exempts a school district from complying with the same laws the rest of the citizens have to, please provide me a copy of same and I will notify Mr. Railey and we will be able to decide what to do at that time.

Alternatively if there is no such regulations that exempts the City of Fort Smith, we are requesting that the planing commission require the school district to remove the temporary structure as the temporary structure was permitted in July, and more than six months has transpired since the temporary permit has been issued. Based upon my examination of the rules and regulations of the planning commission, I would think that Mr. Railey would be successful in a lawsuit against the planning commission to require the commission to follow their own rules and regulation, and could be successful in a lawsuit against the Fort Smith School District to have them remove their temporary structures from the above referenced location.

IR

In conclusion, if there is any legal basis that shows the school district does not have to comply with the zoning regulations, I look forward to receiving same from you. Please let me know something within ten days (10) so I can properly advise Mr. Railey of his options. By copy of this letter, I am notifying the school district of my interest in this matter and my representation of Mr. Railey. Your kind cooperation in this matter is certainly appreciated.

Yours Very Truly,



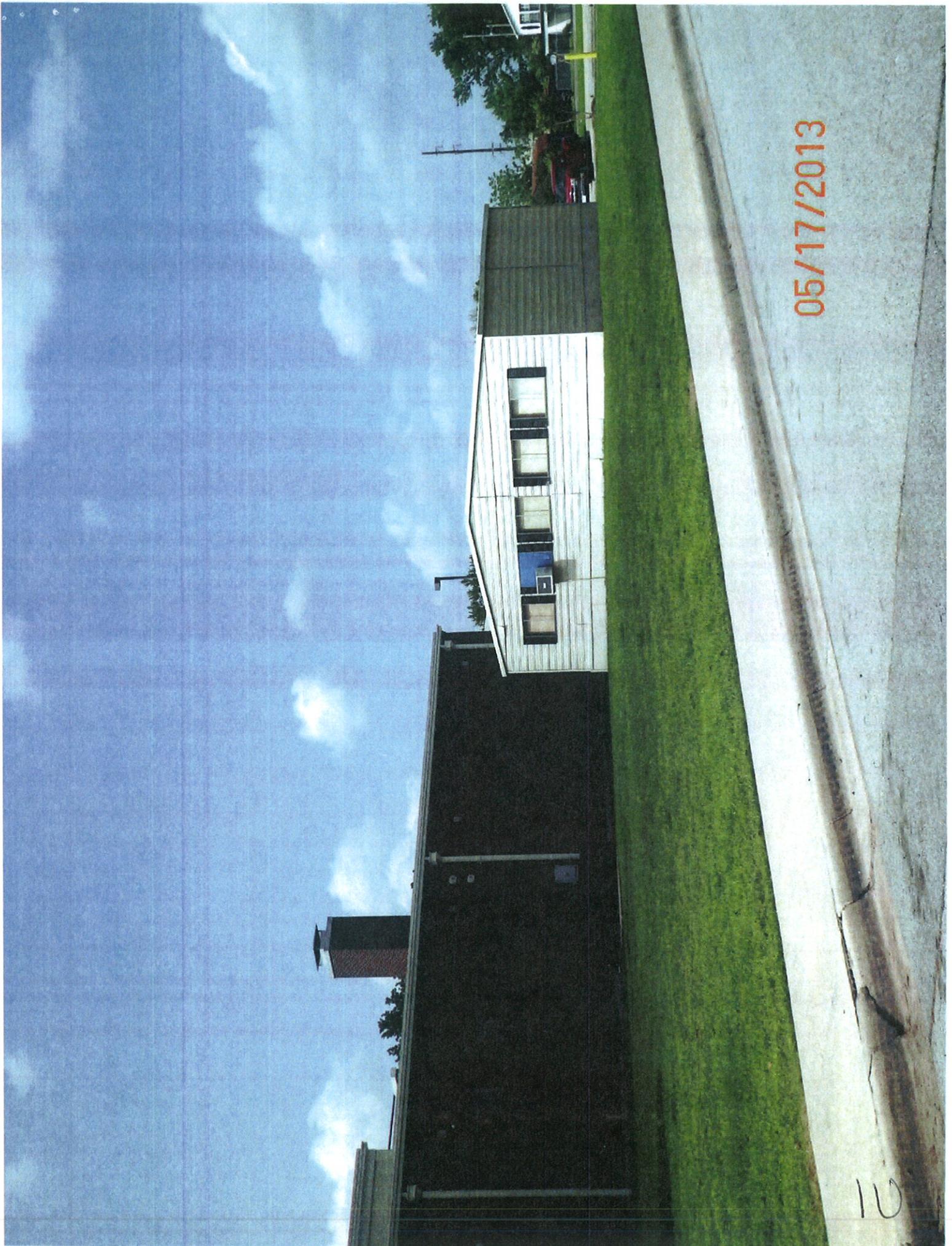
David L. Rush
Attorney at Law

DLR:ag
cc: Mr. Railey
Fort Smith School District



05/22/2013

F



05/17/2013

10

27-327-1 Special temporary use permits (nonretail). The director may grant a special temporary use permit (nonretail) for religious revivals, temporary recreational facilities, temporary medical facilities, temporary classroom facilities (for public or private institutions) and similar uses that do not involve retail or food or beverage sales activities. This is provided that the uses shall comply with parking, signs, sanitation requirements, etc. for the area and shall not constitute a nuisance for adjacent neighboring or nearby properties. Temporary use permits shall be granted for a period not to exceed sixty (60) days, and are renewable for sixty (60) day periods thereafter. Permits for periods in excess of one hundred twenty (120) days, (one (1) initial period plus one (1) renewal permit), must be reviewed and approved by the planning commission.

14

Memo

To: City Planning Commission

From: Planning Staff

Date: August 26, 2013

Re: Rezoning #14-9-13 - A request by Steve Beam, owner, for Planning Commission consideration of a zone request from Not Zoned to Industrial Moderate (I-2) by extension at 11508 Roberts Boulevard (Companion to items #3 & #5)

LOT LOCATION AND SIZE

The subject property is on the southwest side of Roberts Boulevard in-between Collier Street and Terry Street. The tract contains an area of 12.9 acres with approximately 780 feet of street frontage along Roberts Boulevard.

EXISTING ZONING

The site is currently not zoned.

REQUESTED ZONING

The proposed zoning on this tract is Industrial Moderate (I-2). Characteristics of this zone are as follows:

Purpose:

To provide for industrial land uses which can be operated in a clean and quiet manner that shall not be obnoxious to adjacent land uses, and shall have relatively limited environmental impacts. The land uses within an I-2 zoning district are primarily contained indoors and have heavier traffic generation than Industrial-1 uses. I-2 zoning is appropriate within the Industry classification of the Master Land Use Plan.

Permitted Uses:

Auto and boat related businesses, a variety of retail businesses, offices, animal and pet services, manufacturing and commercial communication towers are examples of permitted uses.

Conditional Uses:

Truck stop, pet cemetery, animal food processing, bus station, sports complex and police station are examples of uses permitted as conditional uses.

2A

Area and Bulk Regulations:

Minimum Lot Size – 20,000 square feet
Maximum Height - 45 feet (1+1),
27-431(C)3
Maximum Lot Coverage - 60%

Minimum Parcel/Lot Size for Rezoning – New District (By Classification) - 10 acres
Existing District (By Extension) – 20,000 square feet

Minimum Lot Width – 100 feet
Front Yard Setback - 50 feet
Side Yard on Street Side of Corner Lot - 50 feet
Side Yard Setback – 25 feet
Rear Yard Setback - 20 feet
Side/Rear (adjoining SF Residential District/Development) – 100 feet (may be reduced to 60 feet with Planning Commission approval of screening and/or landscaping through the Development Plan approval process)
Minimum building separation – to be determined by current City building and fire code.
Required street access – Major Arterial or higher

SURROUNDING ZONING AND LAND USE

The areas to the north are Not Zoned and are developed as a nonmetallic manufacturing and mining plant and a contractor’s shop and storage.

The areas to the east are zoned CEMU and Not Zoned. The properties are developed as general offices, vacant, and Arkansas Game and Fish Commission.

The area to the south is zoned Industrial Moderate (I-2) and is developed as a petroleum distribution facility.

The area to the west is Not Zoned and is undeveloped.

LAND USE PLAN COMPLIANCE

The *Chaffee Crossing Redevelopment Plan* currently classifies the site as Mixed Use: Industrial/Office. This classification is intended to guide the appropriate development of nonresidential uses with a larger community context, establish a strong street presence, though setbacks are greater than in other mixed use categories, and promote parking on the sides and rear of the buildings. Approval of the zone change will not conflict with the goals and objectives of the Chaffee Crossing Redevelopment Plan. A companion variance application to waive the perimeter landscaping and a companion conditional use application to allow a nonmetallic manufacturing and mining plant have been submitted for review.

2B

PROPOSED ZONING

The proposed zoning to I-2, variance from perimeter landscaping, and conditional use for a nonmetallic manufacturing and mining plant will allow for the industrial precast business located across the street in the Historic node of Chaffee Crossing to infill the existing buildings at 11508 Roberts Boulevard if approved. The precast merchandise materials will be stored outside on the most southerly tract of land. All precast, forming, and manufacturing procedures will take place indoors.

STAFF COMMENTS AND RECOMMENDATIONS

A neighborhood meeting was held on Friday, August 30th 10:30 P.M. on site. No neighboring property owners attended the neighborhood meeting. A copy of the attendance record and meeting summary are enclosed.

Should the Planning Commission approve this rezoning, staff recommends the approval be contingent upon the following.

1. All construction must comply with the approved Development Plan.
2. Any significant change to the approved development plan or new development proposed will require approval by the Planning Commission.

20

PETITION FOR CHANGE IN ZONING MAP

Before the Planning Commission of the City of Fort Smith, Arkansas

The undersigned, as owner(s) or agent for the owner(s) of the herein described property, makes application for a change in the zoning map of the City of Fort Smith, Arkansas, pursuant to Ordinance No. 3391 and Arkansas Statutes (1974) 19-2830, representing to the Planning Commission as follows:

1. The applicant is the owner or the agent for the owner(s) of real estate situated in the City of Fort Smith, Sebastian County, Arkansas, described as follows: (Insert legal description) SEE SITE PLAN

2. Address of property: 16508 Roberts Blvd

3. The above described property is now zoned: NOT zoned

4. Application is hereby made to change the zoning classification of the above described property to F-2 by Extension.
(Extension or classification)

5. Why is the zoning change requested?
To move our precast plant out of the
Chaffee Historic Area

6. Submit any proposed development plans that might help explain the reason for the request.

Signed:

CHAFFEE COMMERCIAL PROPERTIES LLC
Owner or Agent Name
(please print)

Steve Sec
Owner

7201 So 28th Ft. Smith, AR
Owner or Agent Mailing Address 72908

or

Agent

479-651-3153
Owner or Agent Phone Number

AUTHORIZATION OF AGENT

If an agent (i.e., contractor) is acting on behalf of the owner(s), all owners must sign in the space provided. This form is necessary only when the person representing this request does not own all the property.

We the undersigned, being owners of real property, and requesting a rezoning by application do hereby authorize STEVE BEAM to act as our agent in the matter.
(Print Name of Agent)

(Type or clearly print)

<u>NAMES OF ALL OWNERS.</u>	<u>SIGNATURE OF ALL OWNERS.</u>
1. <u>STEVE BEAM</u>	<u>[Signature]</u>
2. <u>ROD BLAKE</u>	<u>[Signature]</u>
3. _____	_____
4. _____	_____
5. _____	_____
6. _____	_____
7. _____	_____
8. _____	_____
9. _____	_____
10. _____	_____

This form is necessary only when the person representing this request does not own all property.

2E

LETTER REGARDING RESTRICTIVE COVENANTS

Restricted covenants are regulations that are maintained and enforced by the property owners of the subject subdivision. These covenants may be found in your abstract or at the County Circuit Clerks Office. Restrictive covenants are often enforced in subdivisions with homeowner's associations and can always be more restrictive but never less restrictive than the City of Fort Smith's Zoning Regulations. *(See attached additional information on restrictive covenants)*

TO: Planning Department

SUBJECT: Legal Description of Property *(Insert legal description)*

See site Plan

I have searched all applicable records, and to my best knowledge and belief, there are no restrictive covenants running with the above described land except as follows: *

FCRA Master Development Guidelines


Signature

(* If no restrictive covenants exist, indicate "none".)

ATTENDANCE LIST FOR NEIGHBORHOOD MEETING

List the names, addresses & telephone numbers of all residents/property owners who attended the meeting.

Meeting Location 11508 Roberts Blvd

Meeting Time & Date 10:30 8-30-13

Meeting Purpose Zoning Variance, Conditional Use

	<u>NAME</u>	<u>ADDRESS</u>	<u>PHONE #</u>
1.	<u>Bill Stepler</u>	<u>City of Fort Smith</u>	<u>784-2211</u>
2.	<u>Steve Beam</u>	<u>Chapple Commercial Prop</u>	<u>651-3153</u>
3.			
4.			
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7.			
8.			
9.			
10.			
11.			

Monaco, Tom

From: Steve Beam [sbeam@stevebeamconstruction.com]
Sent: Friday, August 30, 2013 12:42 PM
To: Monaco, Tom
Subject: FW: Neighborhood Meeting
Attachments: Attendance sheet.pdf

From: Steve Beam
Sent: Friday, August 30, 2013 11:52 AM
To: 'Miller, Perry'
Subject: Neighborhood Meeting

Minutes of the neighborhood meeting

We had a neighborhood meeting at 11508 Roberts blvd on 8-30-13 at 10:30 am. The only people that attended were myself and the city representative, no neighboring property owners attended.

Meeting was adjourned.

Steve Beam
7201 So. 28th
Ft. Smith, AR 72908
479-484-1634 office
479-484-1657 fax
sbeam@stevebeamconstruction.com



FORT CHAFFEE
REDEVELOPMENT
AUTHORITY

August 6, 2013

City of Fort Smith Planning and Zoning Department
Attention: Wally Bailey
623 Garrison Avenue, Suite 331
Fort Smith, AR 72901

Mr. Bailey:

On July 25, 2013, the Fort Chaffee Redevelopment Authority reviewed and approved a request to change the land use of 11508 Roberts Boulevard for Chaffee Commercial Properties, LLC. This land use was reclassified from Mixed Use: Business Park to Mixed Use: Industrial/Office. By this approval, Fort Chaffee Redevelopment Authority gives permission for Chaffee Commercial Properties, LLC to move forward in their construction plans.

If there are any further questions, please feel free to contact me at (479) 452-4554 or via email at iowen@chaffeecrossing.com.

Best Regards,

A handwritten signature in cursive script that reads 'C. Ivy Owen'.

C. Ivy Owen,
Executive Director

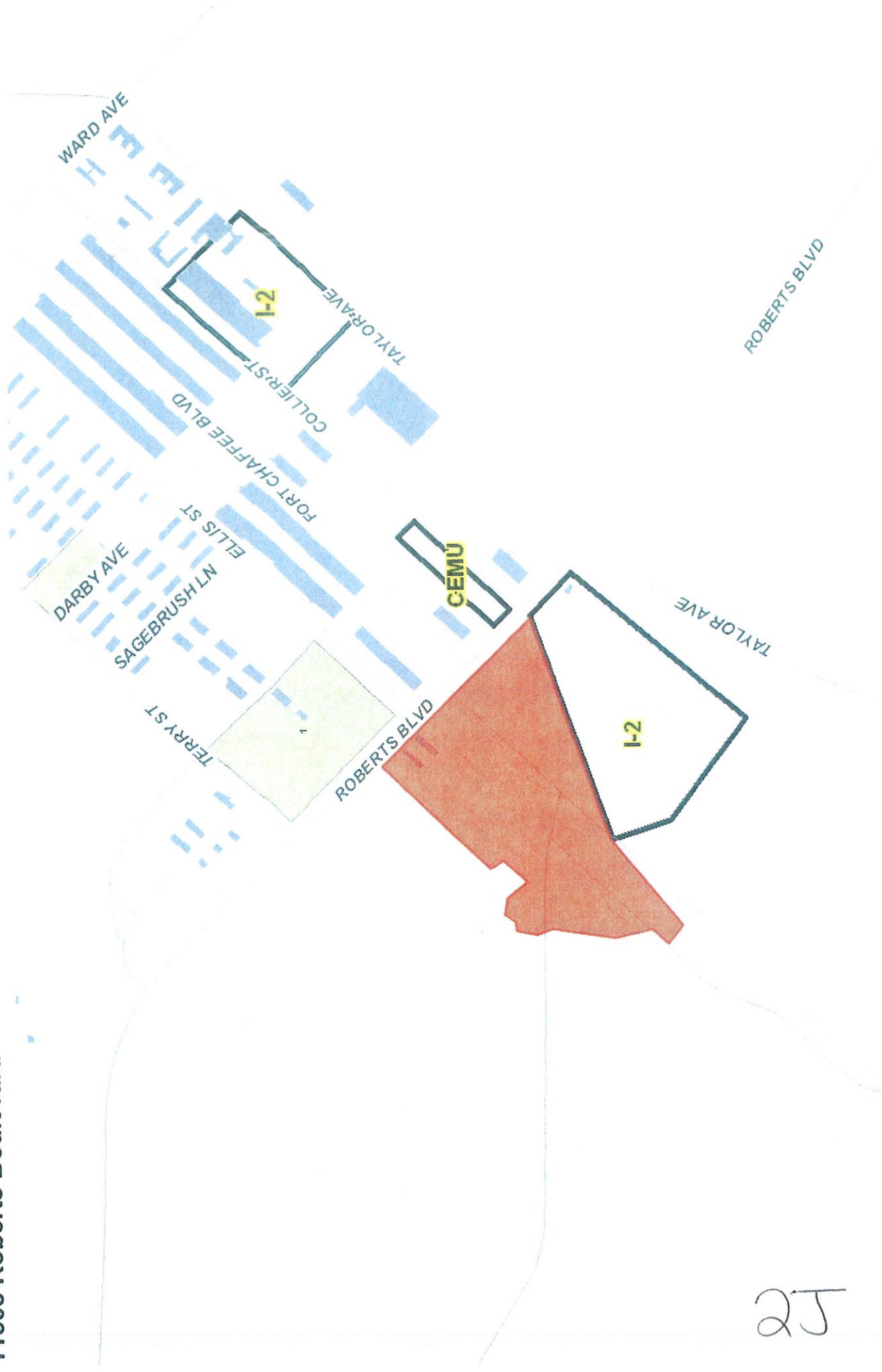
CIO::ll

Cc: Tyler Miller, City of Fort Smith Planning and Zoning Department
Steve Beam, Steve Beam Construction

21

Rezoning #14-9-13: From Not Zoned to Industrial Moderate (I-2)

11508 Roberts Boulevard



25

Memo

To: City Planning Commission

From: Planning Staff

Date: August 27, 2013

Re: Conditional Use #25-9-13 - A request by Steve Beam, owner, for Planning Commission consideration of a Conditional Use request to develop a nonmetallic manufacturing and mining plant (Industrial Precast) located at 11508 Roberts Boulevard (Companion to items #2 & #5)

LOT LOCATION AND SIZE

The subject property is on the southwest side of Roberts Boulevard in-between Collier Street and Terry Street. The tract contains an area of 12.9 acres with approximately 780 feet of street frontage along Roberts Boulevard.

PROPOSED ZONING

The proposed zoning on this tract is Industrial Moderate (I-2). Characteristics of this zone are as follows:

Purpose:

To provide for industrial land uses which can be operated in a clean and quiet manner that shall not be obnoxious to adjacent land uses, and shall have relatively limited environmental impacts. The land uses within an I-2 zoning district are primarily contained indoors and have heavier traffic generation than Industrial-1 uses. I-2 zoning is appropriate within the Industry classification of the Master Land Use Plan.

Permitted Uses:

Auto and boat related businesses, a variety of retail businesses, offices, animal and pet services, manufacturing and commercial communication towers are examples of permitted uses.

Conditional Uses:

Truck stop, pet cemetery, animal food processing, bus station, sports complex and police station are examples of uses permitted as conditional uses.

Area and Bulk Regulations:

Minimum Lot Size – 20,000 square feet
Maximum Height - 45 feet (1+1),
27-431(C)3
Maximum Lot Coverage - 60%

Minimum Parcel/Lot Size for Rezoning – New District (By Classification) - 10 acres
Existing District (By Extension) – 20,000 square feet

Minimum Lot Width – 100 feet
Front Yard Setback - 50 feet
Side Yard on Street Side of Corner Lot - 50 feet
Side Yard Setback – 25 feet
Rear Yard Setback - 20 feet
Side/Rear (adjoining SF Residential District/Development) – 100 feet (may be reduced to 60 feet with Planning Commission approval of screening and/or landscaping through the Development Plan approval process)
Minimum building separation – to be determined by current City building and fire code.
Required street access – Major Arterial or higher

SURROUNDING ZONING AND LAND USE

The areas to the north are Not Zoned and are developed as a nonmetallic manufacturing and mining plant and a contractor’s shop and storage.

The areas to the east are zoned CEMU and Not Zoned. The properties are developed as general offices, vacant, and Arkansas Game and Fish Commission.

The area to the south is zoned Industrial Moderate (I-2) and is developed as a petroleum distribution facility.

The area to the west is Not Zoned and is undeveloped.

PURPOSE OF CONDITIONAL USE

Certain uses are defined as conditional uses because of the potential harmful effects the use can cause to nearby properties and because the requirements to eliminate harmful effects vary from site to site. In considering conditional uses, the Planning Commission will review the overall compatibility of the planned use with the surrounding property as well as specific items such as screening, parking, and landscaping to make sure that no harmful effects occur to nearby properties.

CONDITIONS FOR A CONDITIONAL USE

All requirements for a Conditional Use must be met before any part of the use may be utilized. If any specific condition is not met, the Conditional Use authorization may be revoked by the City of Fort Smith pursuant to Section 27-314. Requirements for a Conditional Use must begin to be met within one (1) year of the authorization unless a special time limit has been imposed by the Planning Commission. An extension of time beyond one (1) year or that imposed by the Planning Commission may be granted by the Director one (1) time for up to ninety (90) days.

LAND USE PLAN COMPLIANCE

The *Chaffee Crossing Redevelopment Plan* currently classifies the site as Mixed Use: Industrial/Office. This classification is intended to guide the appropriate development of nonresidential uses with a larger community context, establish a strong street presence, though setbacks are greater than in other mixed use categories, and promote parking on the sides and rear of the buildings. Approval of the conditional use for a nonmetallic manufacturing and mining plant will not conflict with the goals and objectives of the Chaffee Crossing Redevelopment Plan. A companion variance application to waive the perimeter landscaping and a companion rezoning application proposing a zone change from not zoned to Industrial Moderate (I-2) have been submitted to accompany the conditional use request.

PROPOSED CONDITIONAL USE

The proposed conditional use for a nonmetallic manufacturing and mining plant will allow the applicant to relocate his current business Industrial Precast located across the street in the Chaffee Crossing historic node into an approved land use category for the business. The business is a manufacturer of precast concrete products such as concrete walls, retaining wall blocks, concrete pipe, and other various precast concrete products.

SITE DESIGN FEATURES

Ingress/egress/traffic circulation – All traffic will enter on the current drives located on Roberts Boulevard.

Drainage – No drainage improvements are proposed or required at this time. The site is currently developed and the minor improvements will not require any drainage improvements

Landscaping – The applicant has requested a variance from the perimeter landscaping requirements because of the location of the existing buildings and existing concrete foundation.

Screening – No screening is proposed at this time. The applicant wishes to utilize the current 6' chain link located at the southern end of the property to store merchandise instead of a privacy fence for customer visibility of products.

Signage – No signage is proposed at this time. The applicant has agreed obtain a sign permit that complies with the UDO and the Chaffee Crossing Design Guidelines prior to the installation of a sign.

Lighting – No site lighting is proposed for the site.

Architectural features – The site contains four existing buildings. No new facades or changes are proposed for the buildings at this time that would affect the existing architectural features.

Setbacks – Most of the site is currently developed. The only additions will be two 35' tall silos used for storing the material used for mixing the concrete. The proposed silos meet the current setback requirements.

STAFF COMMENTS AND RECOMMENDATIONS

A neighborhood meeting was held on Friday, August 30th 10:30 P.M. on site. No neighboring property owners attended the neighborhood meeting. A copy of the attendance record and meeting summary are enclosed.

Should the Planning Commission approve this rezoning, staff recommends the approval be contingent upon the following.

1. All construction must comply with the approved development plan.
2. Any significant change to the approved development plan or any new development will require approval by the Planning Commission.
3. Approval by the Chaffee Crossing – Design Review Committee.
4. Approval of the companion rezoning application.
5. The installation of perimeter landscaping or the approval or amendment of the companion variance application.
6. All signs shall require a separate sign permit submittal and shall comply with the UDO and the Chaffee Crossing Design Guidelines upon submittal.
7. If exterior lighting is provided in the future it shall not produce glare, light trespass (nuisance light) and/or unnecessary sky glow; as required by Section 27-602-5 of the UDO. Where used for security purposes or to illuminate walkways, roadways, and parking lots, only shielded light fixtures shall be used. The exterior lighting shall be of an approved fixture type with the Chaffee Crossing Design Guidelines.

Conditional Use # 25-9-13

APPLICATION FOR CONDITIONAL USE

Name of Property Owner: Chaffee Commercial Properties LLC

Name of Authorized Agent (if applicable) _____

Legal Description of property included in the conditional use request:
SEE SITE PLAN

Street Address of Property:
11508 Roberts Blvd

Existing Zoning Classification: ~~_____~~ NOT ZONED

Proposed Zoning Classification (if applicable): I-2

Describe Proposed Conditional Use Request, including the development of any construction proposed of the property:
Relocate our existing Precast plant from across the street in the Historic Area to this property.

What amenities are proposed such as landscaping and screening?
NONE

CHAFFEE COMMERCIAL PROPERTIES LLC
Owner or Agent Name (please print)

7201 So 28th Ft. Smith, AR. 72908
Owner or Agent Mailing Address

479-651-3153
Owner or Agent Phone Number

Signed: Steve Bean
Owner

Or

Agent

AUTHORIZATION OF AGENT

If an agent (i.e., contractor) is acting on behalf of the owner(s), all owners must sign in the space provided. This form is necessary only when the person representing this request does not own all the property.

We the undersigned, being owners of real property, and requesting a conditional use by application do hereby authorize STEVE BEAM to act as our agent in the
(Print Name of Agent)

matter.

(Type or clearly print)
NAMES OF ALL OWNERS.

SIGNATURE OF ALL OWNERS.

- 1. STEVE BEAM
- 2. ROD BLAKE
- 3. _____
- 4. _____
- 5. _____
- 6. _____
- 7. _____
- 8. _____
- 9. _____
- 10. _____

Steve Beam
Rod Blake

This form is necessary only when the person representing this request does not own all the property.

Monaco, Tom

From: Miller, Perry
Sent: Wednesday, September 04, 2013 10:03 AM
To: Monaco, Tom; Andrews, Brenda; Bailey, Wally; Striplin, Bill; Perceful, Lestene; Rice, Maggie
Subject: FW: Neighborhood Meeting
Attachments: Attendance sheet.pdf

From: Steve Beam [<mailto:sbeam@stevebeamconstruction.com>]

Sent: Friday, August 30, 2013 11:52 AM

To: Miller, Perry

Subject: Neighborhood Meeting

Minutes of the neighborhood meeting

We had a neighborhood meeting at 11508 Roberts blvd on 8-30-13 at 10:30 am. The only people that attended were myself and the city representative, no neighboring property owners attended.

Meeting was adjourned.

Steve Beam
7201 So. 28th
Ft. Smith, AR 72908
479-484-1634 office
479-484-1657 fax
sbeam@stevebeamconstruction.com

ATTENDANCE LIST FOR NEIGHBORHOOD MEETING

List the names, addresses & telephone numbers of all residents/property owners who attended the meeting.

Meeting Location 11508 Roberts Blvd.

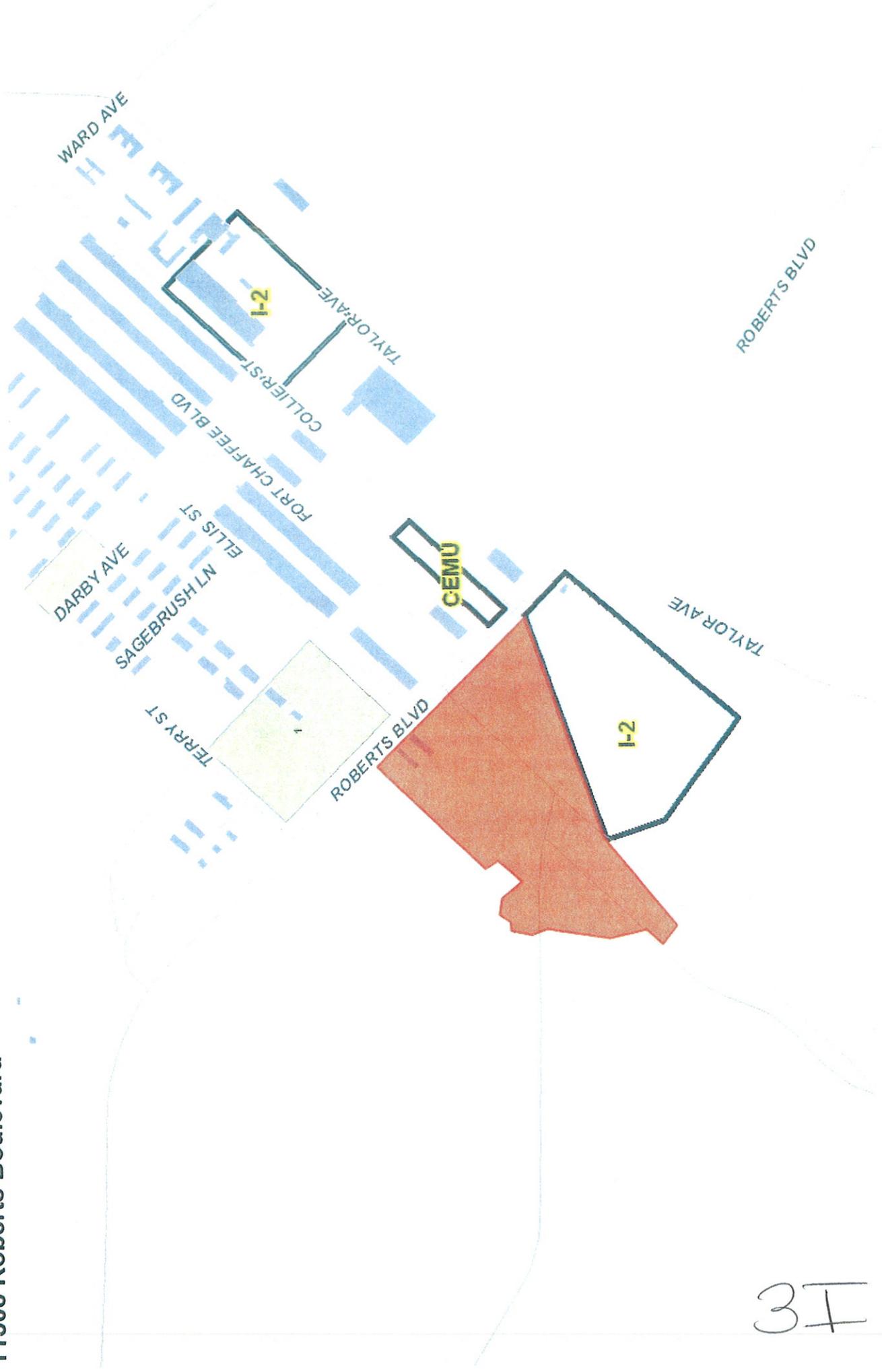
Meeting Time & Date 10:30 8-30-13

Meeting Purpose Zoning Variance, Conditional Use

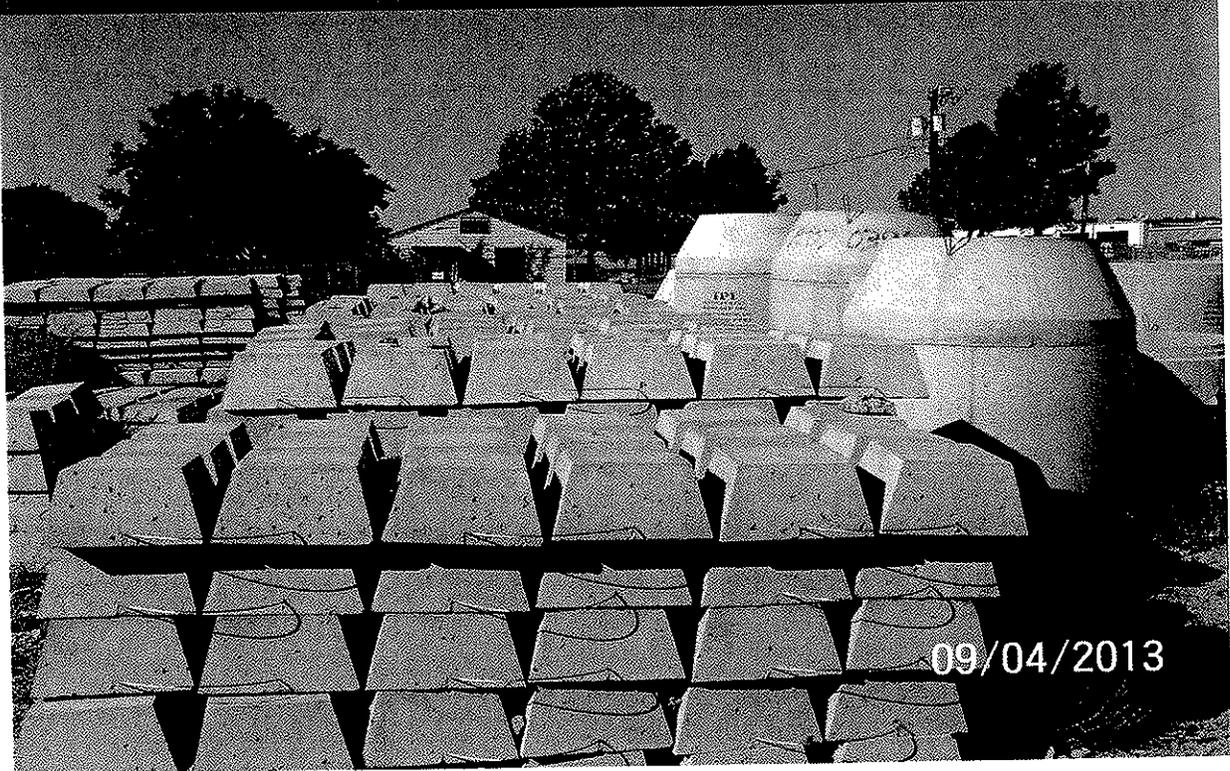
	<u>NAME</u>	<u>ADDRESS</u>	<u>PHONE #</u>
1.	<u>Bill Staplin</u>	<u>City of Fort Smith</u>	<u>784-2211</u>
2.	<u>Steve Beam</u>	<u>Chapple Commercial Prop.</u>	<u>651-3153</u>
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Conditional Use #25-9-13: Nonmetallic Manufacturing and Mining Plant

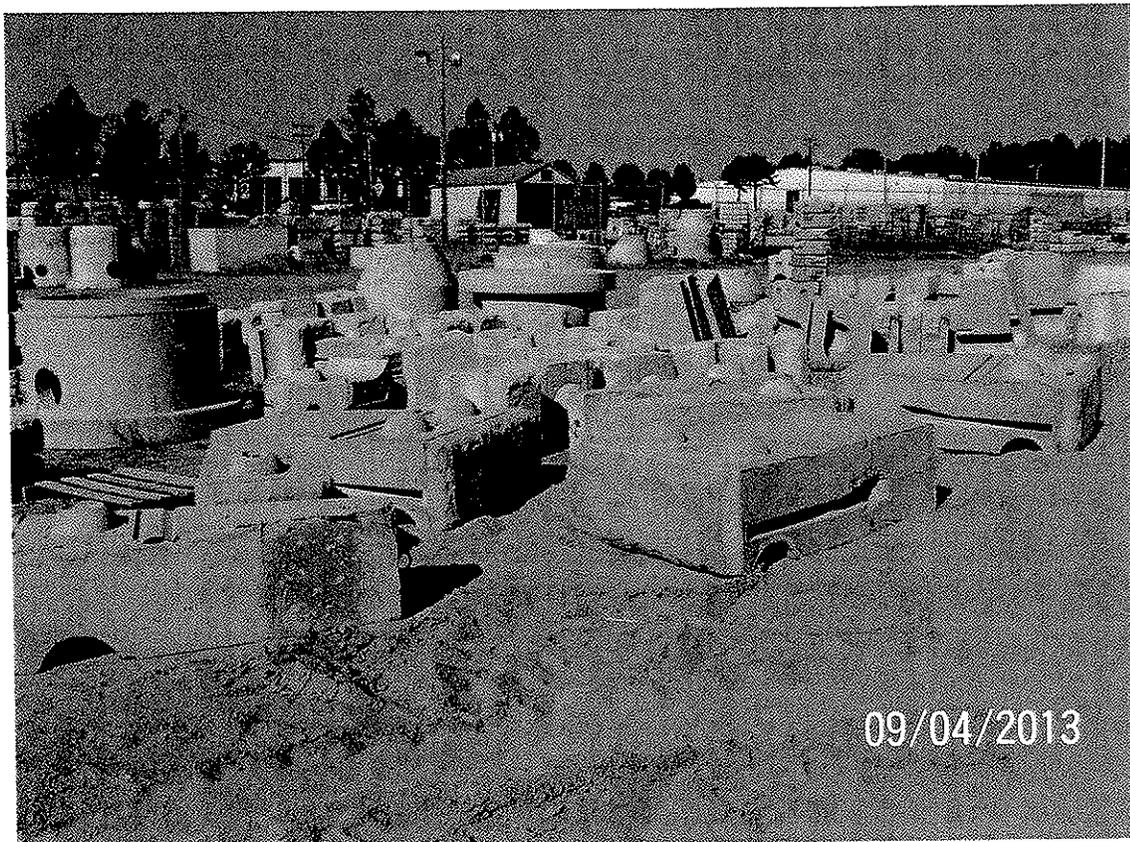
11508 Roberts Boulevard

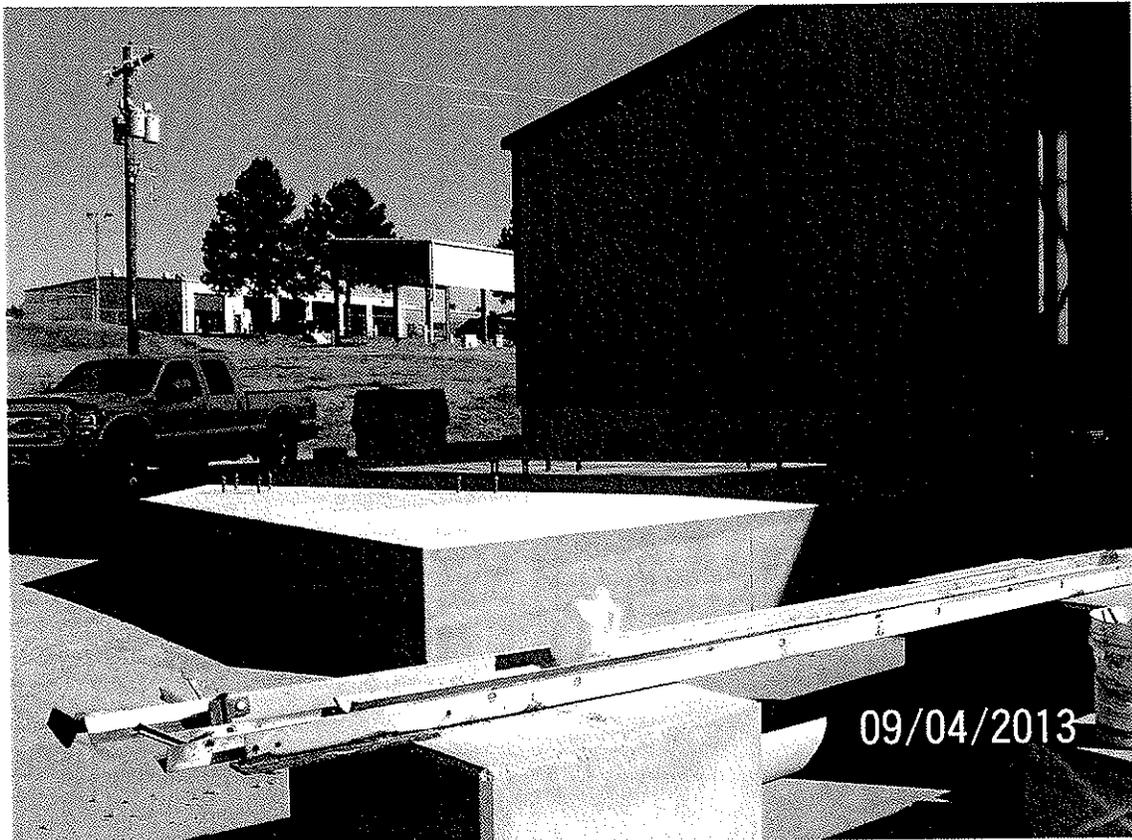


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3N





3P

Memo

To: City Planning Commission

From: Planning Staff

Date: September 6, 2013

Re: Conditional Use #26-9-13 - A request by Josh Niles, agent for Charles Farnam, for Planning Commission consideration of a Conditional Use request for an auto and vehicle impoundment or holding yard at 1302 South Zero Street

LOT LOCATION AND SIZE

The subject property is on the south side of Zero Street between Hwy 271 and Hwy 71. The tract contains an area of 0.52 acres with approximately 131 feet of street frontage along South Zero Street.

EXISTING ZONING

The existing zoning on this tract is Commercial Heavy (C-5). Characteristics of this zone are as follows:

Purpose:

To provide adequate locations for retail uses and services that generate moderate to heavy automobile traffic. The C-5 zoning district is designed to facilitate convenient access, minimize traffic congestion, and reduce visual clutter. The C-5 zoning district is appropriate in the General Commercial, Office, Research, and Light Industrial, Mixed Use Residential, and Mixed Use Employment classification of the Master Land Use Plan.

Permitted Uses:

A wide variety of retail uses including clothing stores, specialty shops and restaurants. Commercial-5 zones also allow professional offices and multi-family apartments, community residential facility and neighborhood group homes are examples of permitted uses.

Conditional Uses:

Orphanage, dormitory, sorority, fraternity, auto vehicle impoundment or holding yard, auto body shop, medical laboratory, beer garden, restaurants with outdoor dining, pet cemetery, bus station, utility substations, museum, parks, educational facilities, police station, community food service, nursing home and churches are examples of uses permitted as conditional uses.

HA

Area and Bulk Regulations:

Minimum Lot Size – 14,000 square feet
Minimum Parcel/Lot Size for Rezoning – New District (By Classification) - 2 acres
Existing District (By Extension) – 14,000 square feet
Minimum Lot Width – 100 feet
Front Yard Setback - 25 feet
Side Yard on Street Side of Corner Lot - 15 feet
Side Yard Setback – 20 feet
Rear Yard Setback - 20 feet
Side/Rear (adjoining SF Residential District/Development) – 30 feet
Minimum building separation – to be determined by current City building and fire code.
Required street access – Minor Arterial or higher

Maximum Height - 45 feet (1+1)
Maximum Lot Coverage - 75%

SURROUNDING ZONING AND LAND USE

The areas to the north are zoned Commercial Heavy (C-5) and are developed as a restaurant and a single family home.

The area to the east is zoned Commercial Heavy (C-5) and is developed as an office.

The areas to the south are zoned Residential Multifamily Medium Density (RM-3) and are developed as duplexes and one single family residence.

The area to the west is zoned Commercial Heavy and is developed as a call service center.

PURPOSE OF CONDITIONAL USE

Certain uses are defined as conditional uses because of the potential harmful effects the use can cause to nearby properties and because the requirements to eliminate harmful effects vary from site to site. In considering conditional uses, the Planning Commission will review the overall compatibility of the planned use with the surrounding property as well as specific items such as screening, parking, and landscaping to make sure that no harmful effects occur to nearby properties.

CONDITIONS FOR A CONDITIONAL USE

All requirements for a Conditional Use must be met before any part of the use may be utilized. If any specific condition is not met, the Conditional Use authorization may be revoked by the City of Fort Smith pursuant to Section 27-314.

Requirements for a Conditional Use must begin to be met within one (1) year of the authorization unless a special time limit has been imposed by the Planning Commission. An extension of time beyond one (1) year or that imposed by the Planning Commission may be granted by the Director one (1) time for up to ninety (90) days.

4B

LAND USE PLAN COMPLIANCE

The Master Land Use Plan classifies the site as General Commercial. This classification is intended to provide opportunities for business transactions and activities, and meet the consumer needs of the community. Approval of the conditional use will not conflict with the goals and objectives of the Master Land Use Plan.

PROPOSED CONDITIONAL USE

The proposed conditional use, if approved, will allow for an auto and vehicle impoundment or holding yard to occupy the location.

SITE DESIGN FEATURES

Ingress/egress/traffic circulation – The applicant is proposing to use an existing driveway located on the adjacent property to the east as the access to the property. The entrance to the holding yard will be located on the side between the two properties. This proposed driveway will eliminate the need for a new driveway on South Zero Street.

Landscaping – The site is currently developed with concrete around the entire area, the applicant is proposing to plant Dogwood trees and Nandina's in accordance with the UDO requirements along South Zero Street.

Screening – An eight foot cedar fence is proposed to be located ten feet from the right-of-way along South Zero Street. The remaining property will have an eight foot cedar fence constructed on the property line.

Signage – No new signage is proposed at this time. The existing broken sign face will be removed.

Lighting – No site lighting is proposed on the location. The applicant noted that if site lighting is installed it shall not produce light trespass, or unwanted skyglow.

STAFF COMMENTS AND RECOMMENDATIONS

A neighborhood meeting was held Monday, August 26, 2013 at 1304 South Zero Street. No surrounding property owners attended the meeting.

On July 9, 2013, the Planning Commission denied the applicant's previous Conditional Use application by a vote of 4 to 4. Upon the applicant's appeal to the Board of Directors upheld the Planning Commission's decision to deny the conditional use permit with a vote of 6 to 1. A copy of the Board's resolution is enclosed.

Planning Staff believes that the landscaping materials utilized should be from the Unified Development Ordinance's primary and secondary list of shrubs and trees, such as an evergreen holly and crepe myrtles. Staff also suggests that at planting time, the shrubs be at least 24" and planted at three feet on center and trees be at least a 2" caliper to ensure better screening as the plants grow to maturity.

Should the Planning Commission approve this conditional use, staff recommends the approval be contingent upon the following.

1. All construction must comply with the submitted development plan and with any planning commission amendments and attached statement from Absolute Towing.
2. All landscaping materials used shall be the correct species, size, and quantity approved and applicant shall work with the planning staff to select appropriate plant species.
3. An irrigation system or maintenance plan shall be provided.
4. All site lighting shall conform to Section 27-602-5 of the UDO.

1A.

RESOLUTION NO. R-111-13

A RESOLUTION AFFIRMING THE ACTION OF THE PLANNING COMMISSION DENYING
CONDITIONAL USE #18-7-13 FOR AN AUTO AND VEHICLE IMPOUNDMENT OR HOLDING YARD

BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE CITY OF FORT SMITH,
ARKANSAS, THAT:

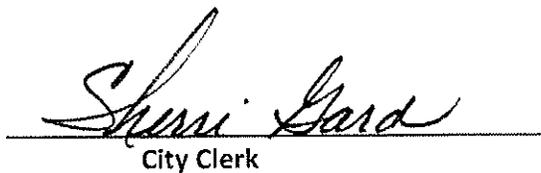
The Board of Directors hereby affirms the action of the Planning Commission which denied the conditional use request for an auto and vehicle impoundment or holding yard located at 1302 South Zero Street.

THIS RESOLUTION ADOPTED THIS 6th DAY OF August, 2013.

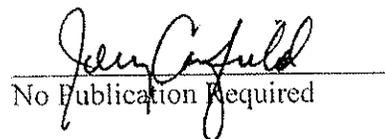
APPROVED:


Mayor

ATTEST:


City Clerk

Approved as to form:


No Publication Required



- All construction must be built in accordance with the submitted development plan and with any Planning Commission amendments
- Fences placed at or in proximity to the right of way line must not create a sight obstruction for vehicles exiting the site
- The proposed fence will be 8 ft privacy fence constructed out of cedar and maintained
- All site lighting shall comply with the lighting requirements of the UDO – Section 27-602-5
- All signage shall comply with the UDO General Sign Regulation and Permitted signs in open, commercial and industrial zones – Section 27-704-5 and Section 27-704-3
- Landscaping is proposed and will be maintained in accordance with UDO along the Zero Street Frontage
- Removal of all broken plastic sign pieces
- Proposed gate will be located on the side of the property avoiding vehicles stopping or standing in the right of way

Conditional Use # 26-9-13

APPLICATION FOR CONDITIONAL USE

Name of Property Owner: Charles Farum

Name of Authorized Agent (if applicable) Josh Niles

Legal Description of property included in the conditional use request:

SEE ATTACHED

Street Address of Property:

1307 Zeroth East Smith, Ar 72908

Existing Zoning Classification:

C-5

Proposed Zoning Classification (if applicable):

Describe Proposed Conditional Use Request, including the development of any construction proposed of the property:

Proposed 8FT cedar privacy fence

What amenities are proposed such as landscaping and screening?

Dogwood - Nandina

Josh Niles
Owner or Agent Name (please print)

Signed:

PO Box 181484 Fort Smith, AR
Owner or Agent Mailing Address

Owner

479-221-4334
Owner or Agent Phone Number

Or
[Signature]
Agent

HG

AUTHORIZATION OF AGENT

If an agent (i.e., contractor) is acting on behalf of the owner(s), all owners must sign in the space provided. This form is necessary only when the person representing this request does not own all the property.

We the undersigned, being owners of real property, and requesting a conditional use by application do hereby authorize Josh Niles to act as our agent in the
(Print Name of Agent)

matter.

(Type or clearly print)
NAMES OF ALL OWNERS.

SIGNATURE OF ALL OWNERS.

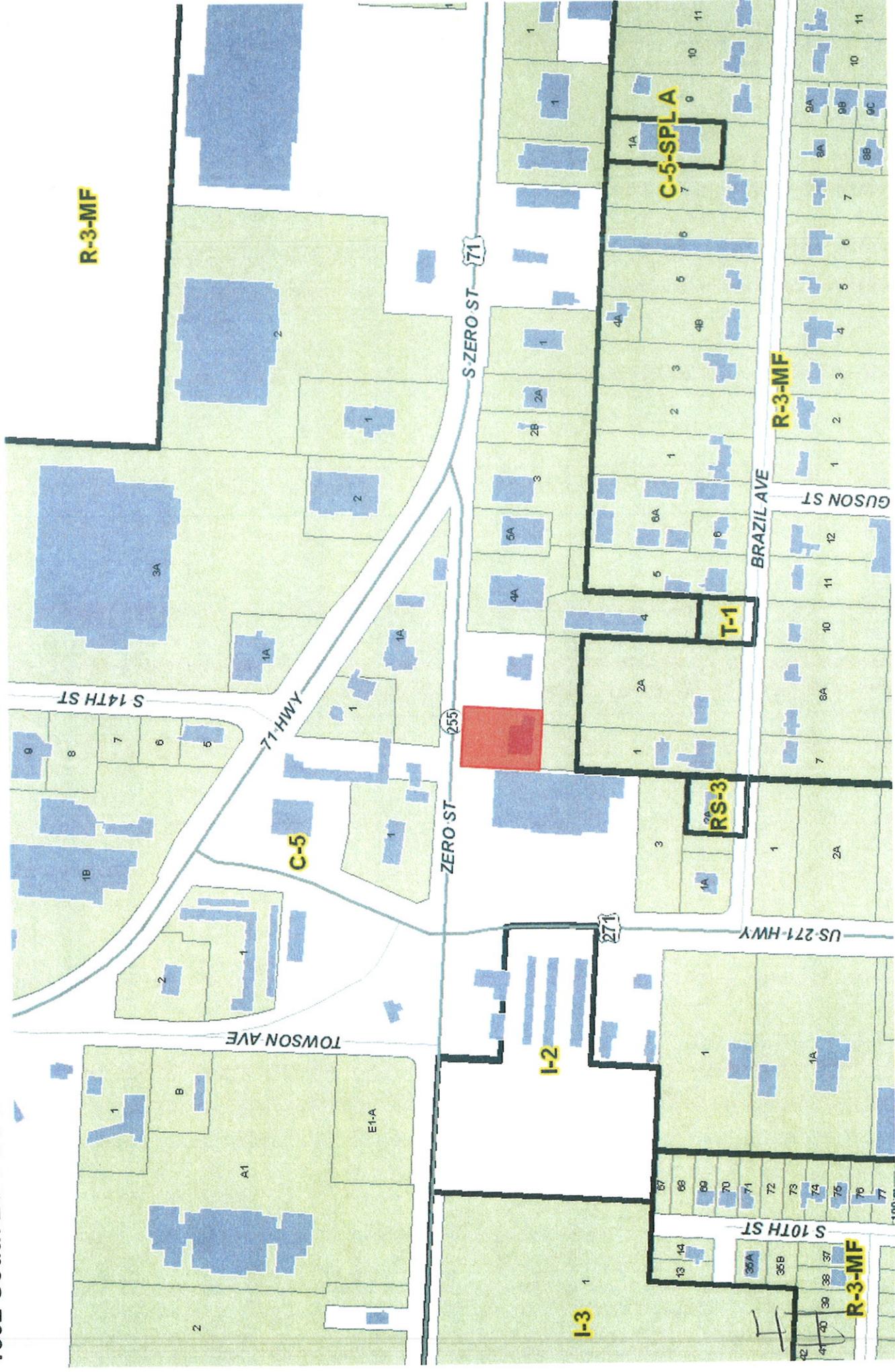
- 1. CHARLES FARHAM
- 2. _____
- 3. _____
- 4. _____
- 5. _____
- 6. _____
- 7. _____
- 8. _____
- 9. _____
- 10. _____

Charles Farham

This form is necessary only when the person representing this request does not own all the property.

Conditional Use #26-9-13: Auto and vehicle impoundment or holding yard

1302 South Zero Street





FR

Google earth

feet
meters

700

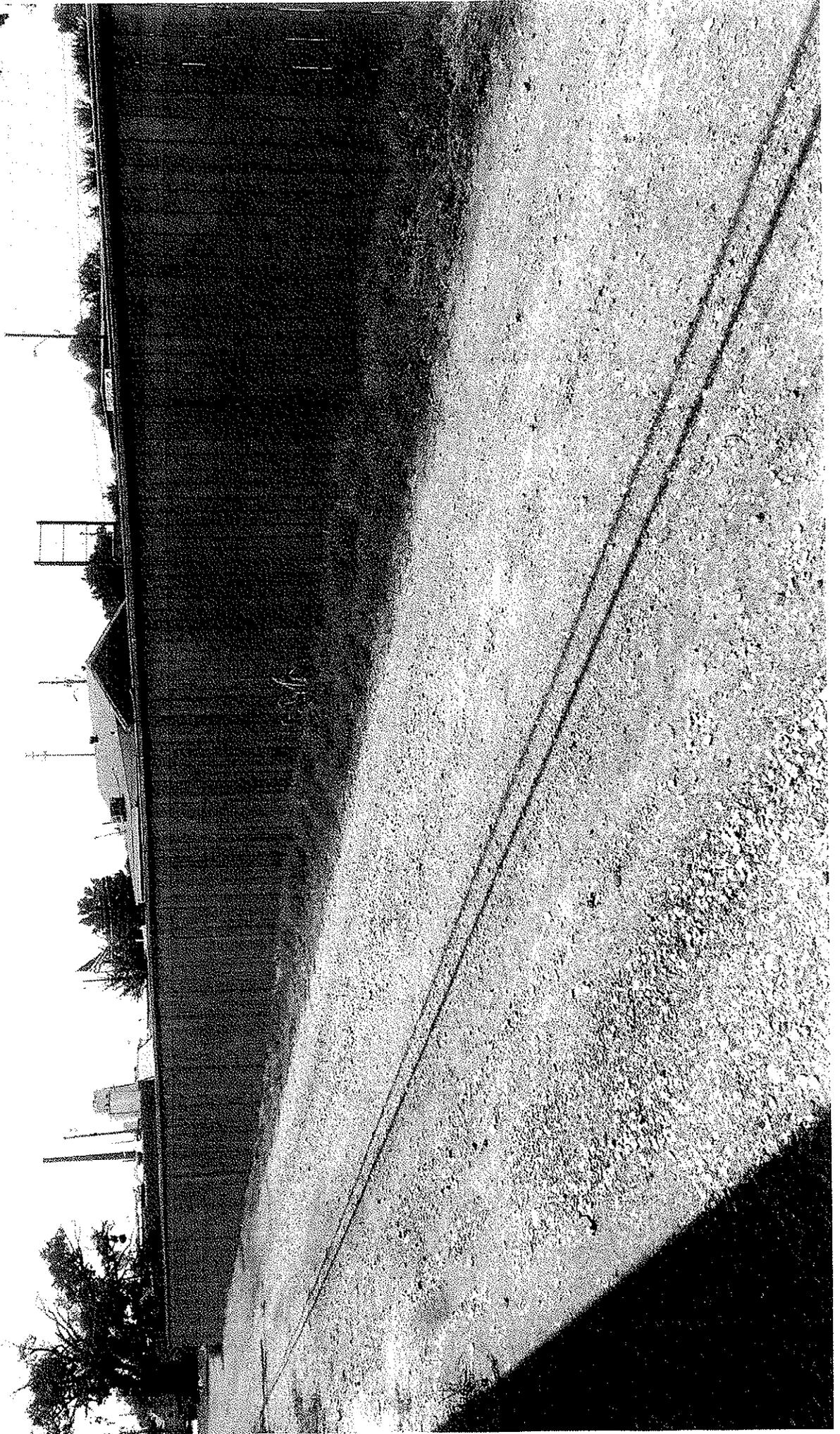
200



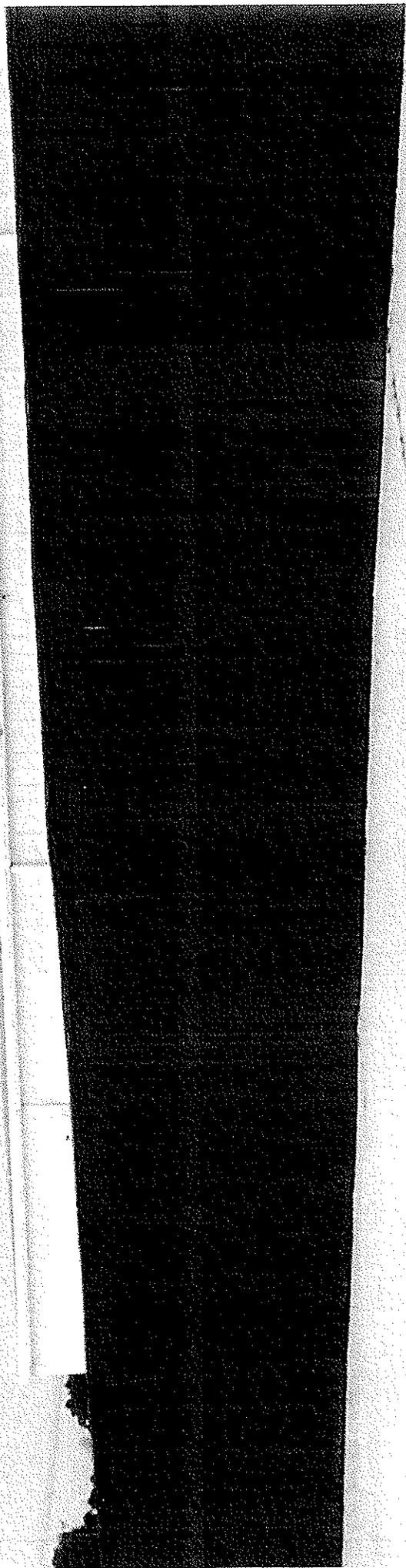
Google earth

© 2019 Google

Proposed 8' Fence



Proposed 8' Fence



HM



479-434-6700

Minutes

On august 26th 2013 at 830am a neighborhood meeting was held. Nothing was discussed due to know one showing.

Respectfully

Josh Niles

4N

Memo

To: City Planning Commission

From: Planning Staff

Date: August 26, 2013

Re: Variance #28-9-13 - A request by Steve Beam, owner, for Board of Zoning Adjustment consideration of a zoning variance request from the perimeter landscape requirements (Companion to items #2 & #3)

LOT LOCATION AND SIZE

The subject property is on the southwest side of Roberts Boulevard in-between Collier Street and Terry Street. The tract contains an area of 12.9 acres with approximately 780 feet of street frontage along Roberts Boulevard.

REQUESTED ZONING

The proposed zoning on this tract is Industrial Moderate (I-2). Characteristics of this zone are as follows:

Purpose:

To provide for industrial land uses which can be operated in a clean and quiet manner that shall not be obnoxious to adjacent land uses, and shall have relatively limited environmental impacts. The land uses within an I-2 zoning district are primarily contained indoors and have heavier traffic generation than Industrial-1 uses. I-2 zoning is appropriate within the Industry classification of the Master Land Use Plan.

Permitted Uses:

Auto and boat related businesses, a variety of retail businesses, offices, animal and pet services, manufacturing and commercial communication towers are examples of permitted uses.

Conditional Uses:

Truck stop, pet cemetery, animal food processing, bus station, sports complex and police station are examples of uses permitted as conditional uses.

Area and Bulk Regulations:

Minimum Lot Size – 20,000 square feet
Maximum Height - 45 feet (1+1),
27-431(C)3
Maximum Lot Coverage - 60%

Minimum Parcel/Lot Size for Rezoning – New District (By Classification) - 10 acres
Existing District (By Extension) – 20,000 square feet

Minimum Lot Width – 100 feet
Front Yard Setback - 50 feet
Side Yard on Street Side of Corner Lot - 50 feet
Side Yard Setback – 25 feet
Rear Yard Setback - 20 feet
Side/Rear (adjoining SF Residential District/Development) – 100 feet (may be reduced to 60 feet with Planning Commission approval of screening and/or landscaping through the Development Plan approval process)
Minimum building separation – to be determined by current City building and fire code.
Required street access – Major Arterial or higher

SURROUNDING ZONING AND LAND USE

The areas to the north are Not Zoned and are developed as a nonmetallic manufacturing and mining plant and a contractor’s shop and storage.

The areas to the east are zoned CEMU and Not Zoned. The properties are developed as general offices, vacant, and Arkansas Game and Fish Commission.

The area to the south is zoned Industrial Moderate (I-2) and is developed as a petroleum distribution facility.

The area to the west is Not Zoned and is undeveloped.

MASTER STREET PLAN CLASSIFICATION

The Master Street Plan classifies this section Roberts Boulevard as a Boulevard classification.

LAND USE PLAN COMPLIANCE

The *Chaffee Crossing Redevelopment Plan* currently classifies the site as Mixed Use: Industrial/Office. This classification is intended to guide the appropriate development of nonresidential uses with a larger community context, establish a strong street presence, though setbacks are greater than in other mixed use categories, and promote parking on the sides and rear of the buildings. Approval of the variance will not conflict with the goals and objectives of the Chaffee Crossing Redevelopment Plan. A companion rezoning application to change the zone from Not Zoned to Industrial Moderate and a companion conditional use application to allow a nonmetallic manufacturing and mining plant have been submitted for review.

5B

REQUESTED VARIANCE

The variance request, if approved, will allow the applicant to eliminate perimeter landscaping adjacent to Roberts Boulevard.

APPLICANT HARDSHIP

The applicant has presented the hardship that the existing buildings are closer than 10' from the property line and the existing concrete foundation for the merchandise storage yard is on the property line where the landscaping would be required to be installed. Please see the enclosed pictures of the front property line.

STAFF COMMENTS AND RECOMMENDATIONS

A neighborhood meeting was held on Friday, August 30th 10:30 P.M. on site. No neighboring property owners attended the neighborhood meeting. A copy of the attendance record and meeting summary are enclosed.

If the BZA approves this variance, staff requests that it substantiate its reason for approval in accordance with Section 27-337-2 of the Unified Development Ordinance, which permits the granting of a variance only when it is demonstrated that such action is in keeping with the spirit and intent of the provisions of the zoning chapter.

Staff believes that the Planning Commission should consider a compromise of locating some landscaping in between the buildings and other open areas highlighted in green as shown in the attached drawing. These areas are not paved but are located behind an existing fence. We suggest some taller landscaping such as crepe myrtles or trees.

Should the Board of Zoning Adjustment approve the variance, staff recommends the approval be contingent upon all construction complying with the approved development plan and any amendments.

Var. # 28-9-13

APPLICATION FOR VARIANCE

Notice is hereby given that the undersigned, as owner(s) of the following property in the Fort Smith District of Sebastian County, Arkansas, to-wit: (Legal Description)

Address of property 11508 Roberts Blvd, Existing or Proposed

Zoning Classification I-2, has filed with the Planning Department a written application pursuant to Article 5-6 of Ordinance 2324 of the City of Fort Smith, Arkansas, to secure a variance from the literal provisions of the zoning ordinance as follows:

<u>Office Use Only-List the Specific Variance Requested and Applicant Stated Hardship</u>

FROM

TO

- _____ - _____ Front Yard Setback or Minimum Distance from Right-of-Way
- _____ - _____ Exterior Side Yard Setback
- _____ - _____ Interior Side Yard Setback
- _____ - _____ Rear Yard Setback
- _____ - _____ Maximum Height of Structure
- _____ - _____ Minimum Distance Between Structures on the Same Lot
- _____ - _____ Minimum Lot Area (Square Feet)
- _____ - _____ Minimum Lot Frontage
- _____ - _____ Maximum Size of a Sign
- _____ - _____ Other: Landscape

The undersigned will present said application to the Board of Zoning Adjustment at the first regular City Planning Commission meeting following the expiration of seven (7) days from the date of this publication, at which meeting the Board of Zoning Adjustment will conduct a public hearing on

5E

said application. All interested persons are invited to attend and are entitled to be heard. This notice is published this _____ day of _____, 20 ____.

Signed:

STEVE BEAM
Owner or Agent Name (please print)

Steve Beam
Owner

or

479-651-3153
Owner or Agent Phone Number

Agent

7201 So. 28th Pl. Smith, AR
Owner or Agent Mailing Address 72908

Variance # _____

VARIANCE INFORMATION FORM

The following paragraph (Section 27-337-2) of the Fort Smith Unified Development Ordinance defines the criteria for granting a variance:

The Board of Zoning Adjustment shall hear requests for variances from the literal provision of the zoning chapter in instances where strict enforcement of the zoning chapter would cause undue hardship due to circumstances unique to the individual property under consideration, and shall grant such variances only when it is demonstrated that such action will be in keeping with the spirit and intent of the provisions of the zoning chapter. The Board of Zoning Adjustment shall not permit, as a variance, any use in a zone that is not permitted under the chapter. The Board of Zoning Adjustment may impose conditions in the granting of a variance to insure compliance and to protect adjacent property.

1. To aid the Board of Zoning Adjustment in arriving at a decision on your application, please note the lot information requested and check the appropriate answer to each of the questions that follow.

<u>Yes</u>	<u>No</u>	
_____	<u>X</u>	Is this variance needed because of previous actions taken by yourself?
_____	<u>X</u>	Is this variance needed because of previous actions taken by a prior owner?
<u>X</u>	_____	A zoning hardship is present only when a property has no reasonable use without a variance. Do you have use of your property without a variance?
<u>X</u>	_____	Is the variance needed due to the unique circumstances of the property (such as lot area, lot width, setbacks, yard requirements, or building height)? If yes, please explain on the following page.
<u>X</u>	_____	Is the lot of an odd or unusual shape?
_____	<u>✓</u>	Does the lot have "radical" topography (steep, unbuildable slopes - streams or bodies of water - unstable or eroded area)?
_____	<u>✓</u>	Does the lot contain required easements other than those that might be located on its perimeter?
_____	<u>✓</u>	Is any part of the lot in a flood plain or flood way?
_____	<u>✓</u>	Is the lot smaller than minimum lot area or minimum frontage for its zoning classification?
_____	<u>X</u>	Is the lot developed with structures in violation of current zoning requirements?
<u>X</u>	_____	Does the lot front any street classified as an arterial or collector on the Master Street Plan? <u>Boulevard.</u>

Explanation of question #4 (if applicable)

The Buildings are closer than 10' from the property line and a concrete storage yard is on the property line and the asphalt drive goes to the property line.

2. Describe how the strict enforcement of the zoning code causes an undue hardship for your project:

3. List any special circumstances/conditions which exist that have not been created by the owner/applicant and do not apply to other properties in your area:

AUTHORIZATION OF AGENT

If an agent (i.e., contractor) is acting on behalf of the owner(s), all owners must sign in the space provided. This form is necessary only when the person representing this request does not own all the property.

We the undersigned, being owners of real property, and requesting a variance by application do hereby authorize STEVE BEAM to act as our agent in the matter.
(Print Name of Agent)

(Type or clearly print)

NAMES OF ALL OWNERS.

SIGNATURE OF ALL OWNERS.

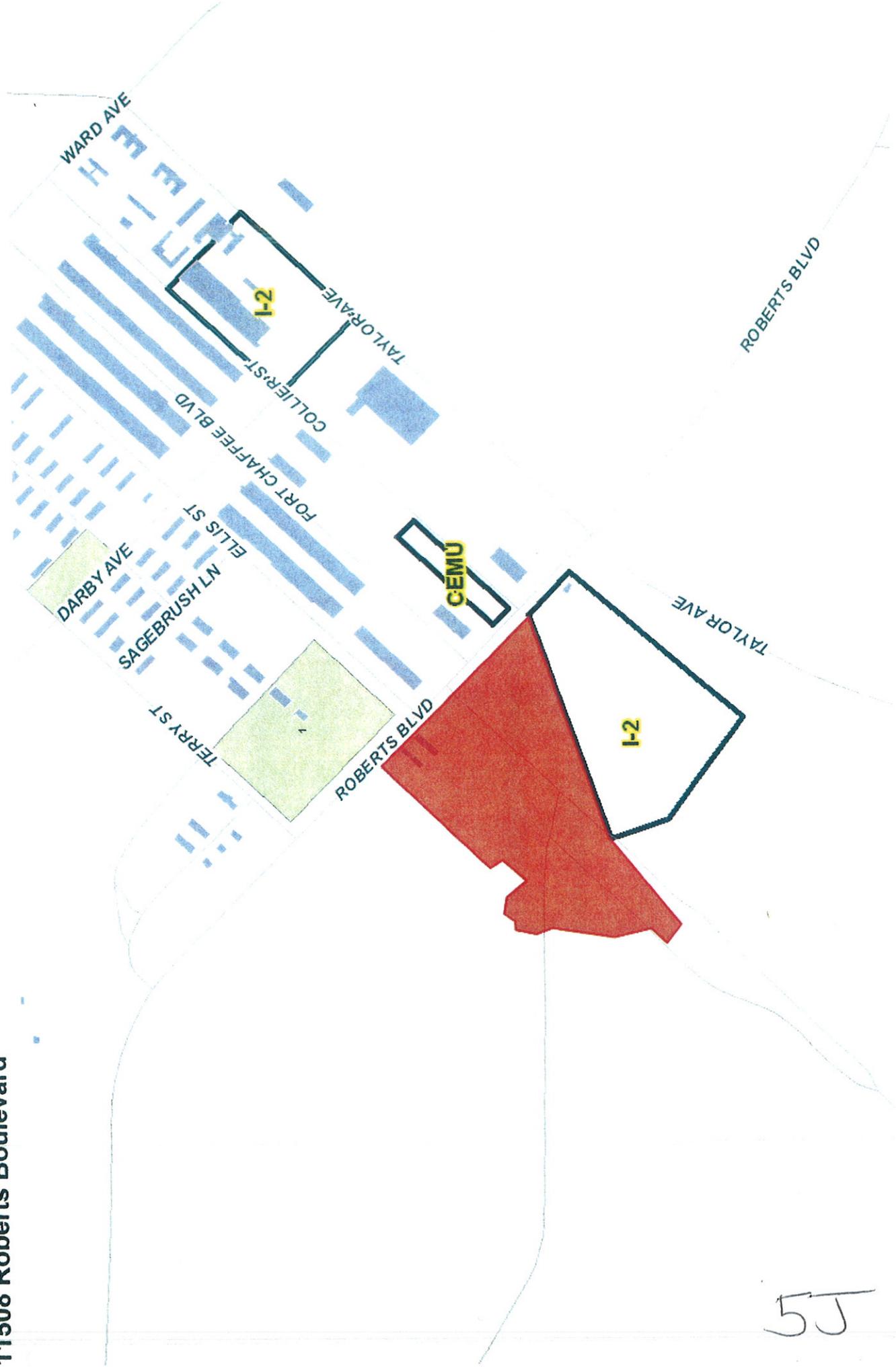
1. STEVE BEAM
2. ROD BLAKE
3. _____
4. _____
5. _____
6. _____
7. _____
8. _____
9. _____
10. _____
11. _____
12. _____
13. _____

Steve Beam
Rod Blake

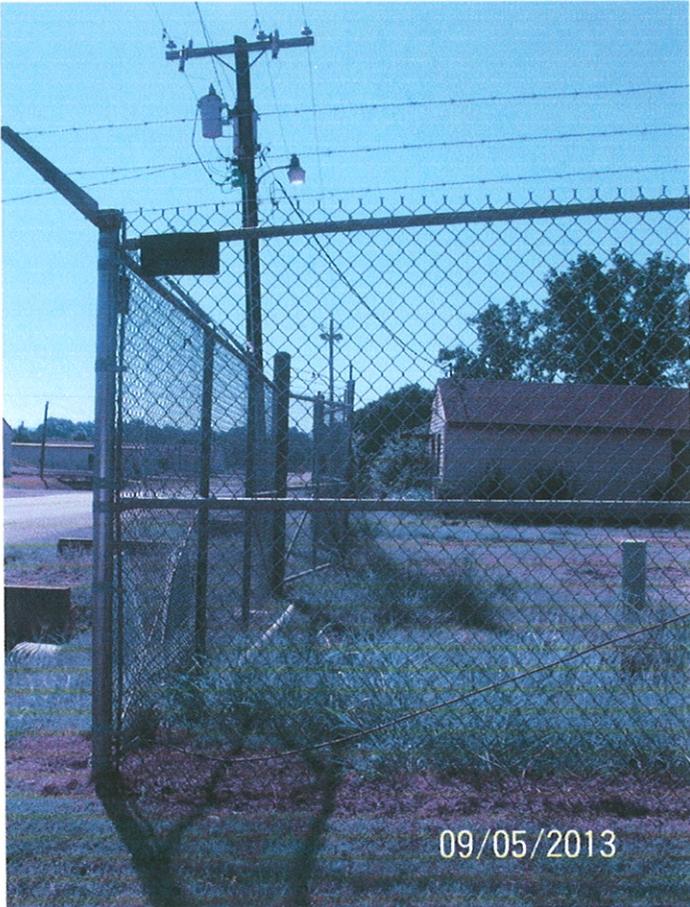
This form is necessary only when the person representing this request does not own all the property.

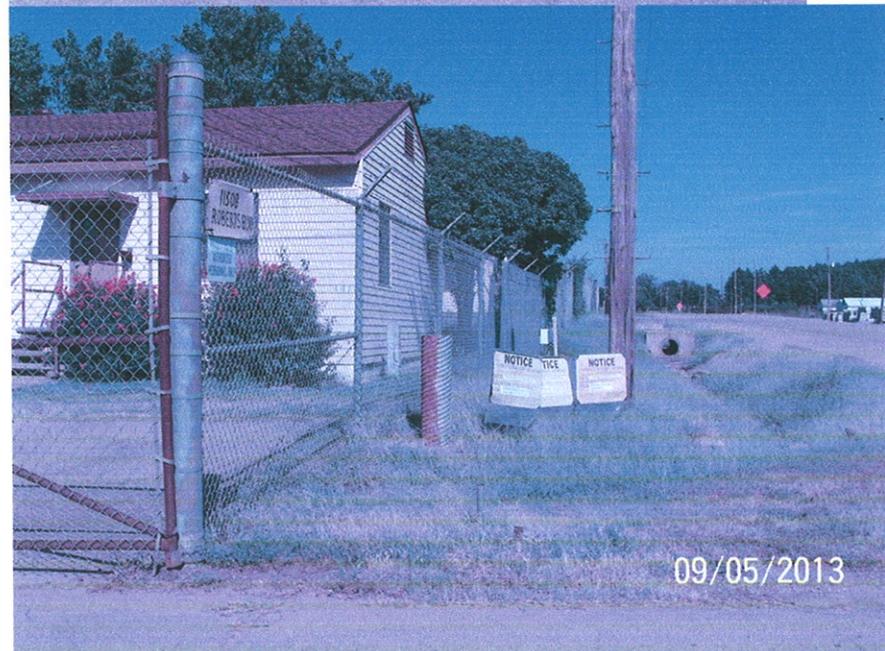
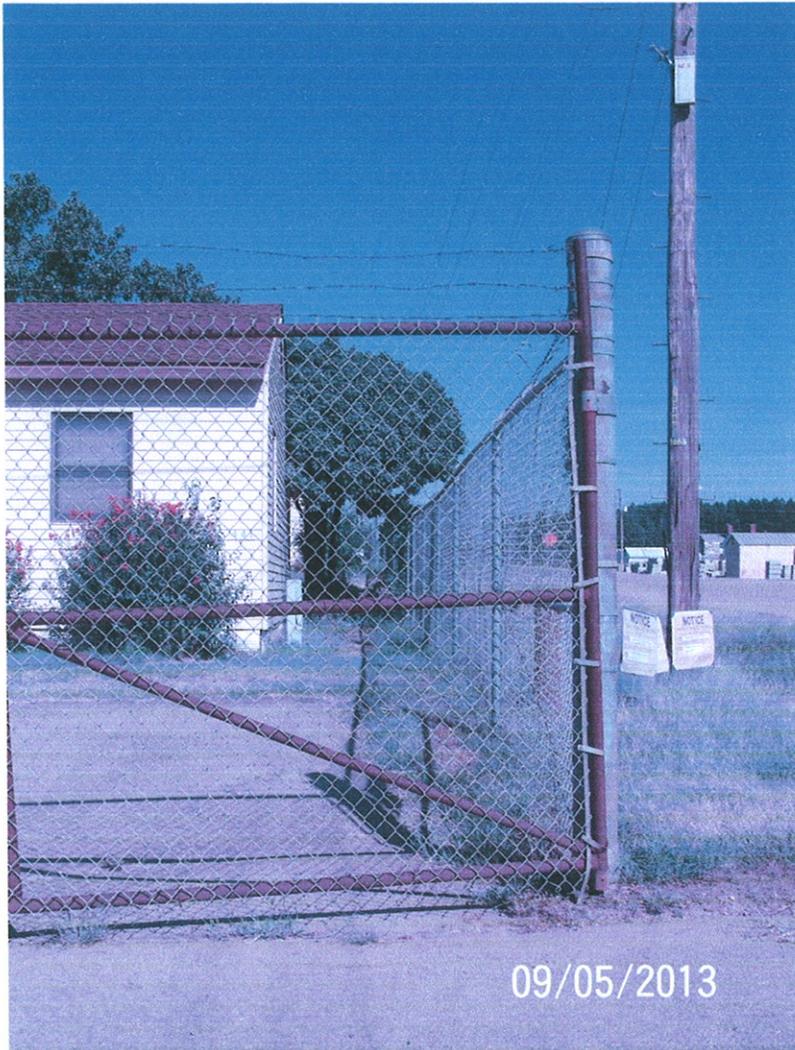
Variance #28-9-13: From the perimeter landscape requirements

11508 Roberts Boulevard



55





Memo

To: Board of Zoning Adjustment

From: Planning Staff

Date: August 26, 2013

Re: Variance #29-9-13 - A request by William Hanson, agent, for Board of Zoning Adjustment consideration of a zoning variance request from UDO, Section 27-602-3 – Landscaping and Screening at 1208 North Waldron Road

LOT LOCATION AND SIZE

The subject property is on the west side of Waldron Road between Duncan Road and Summit Street. The tract contains an area of 16.54 acres with 550 feet of street frontage along Waldron Avenue.

EXISTING ZONING

The existing zoning on this tract is Commercial Regional (C-4). Characteristics of this zone are as follows:

Purpose:

To provide for the development of large shopping centers, mixed use developments, entertainment venues, and other appropriate land uses that serve the broad retail, commercial, and entertainment needs of the metropolitan area. The C-4 zoning district is appropriate in the Regional Center, General Commercial, Mixed Use Residential, and Mixed Use Employment classification of the Master Land Use Plan.

Permitted Uses:

A wide variety of retail uses including clothing stores, specialty shops and restaurants. Commercial-4 zones also allow professional offices and multi-family apartments, community residential facility and neighborhood group homes are examples of permitted uses.

Conditional Uses:

Orphanage, dormitory, sorority, fraternity, bicycle sales and service, beer, wine and liquor store, convenience store, restaurants with outdoor dining, pet cemetery, parking garage, utility substations, event center, community recreation center, golf course, parks, educational facilities, police station, nursing home and churches are examples of uses permitted as conditional uses.

6A

Area and Bulk Regulations:

Minimum Lot Size – 40,000 square feet
Minimum Parcel/Lot Size for Rezoning – New District (By Classification) - 10 acres
Existing District (By Extension) – 3 acres
Minimum Lot Width – 150 feet
Front Yard Setback - 25 feet
Side Yard on Street Side of Corner Lot - 20 feet
Side Yard Setback – 20 feet
Rear Yard Setback - 20 feet
Side/Rear (adjoining SF Residential District/Development) – 100 feet
Minimum building separation – to be determined by current City building and fire code.
Required street access – Major Arterial or higher

Maximum Height - 45 feet (1+1)
Maximum Lot Coverage - 80%

SURROUNDING ZONING AND LAND USE

The areas to the north are zoned as RSD-2 and Transitional (T) and are developed as Multifamily and Single Family dwelling units and an office building.

The areas to the east are zoned Commercial Light (C-2) and are developed as a bank and shopping center.

The areas to the south are zoned Commercial Regional (C-4) and is developed as the Central Mall.

The areas to the west are zoned Commercial Regional (C-4) and is developed as a mental health clinic.

MASTER STREET PLAN CLASSIFICATION

The Master Street Plan classifies Waldron Road as a Major Arterial.

LAND USE PLAN COMPLIANCE

The *Unified Development Ordinance* currently classifies the site as Regional Center. To provide for major destination clustering of major employers, retailers, entertainment and regional level services of all types in a walkable setting.

REQUESTED VARIANCE

The variance request is to eliminate the perimeter and parking lot screening landscaping along North Waldron Road.

APPLICANT HARDSHIP

The applicant states that the required landscaping will eliminate essential parking (approximately 12-15). Also, as a result of the Waldon Road widening additional right-of-2ay was acquired, which resulted in a loss of property frontage. By installing the landscaping it would result in the loss of essential parking necessary for our 8-10 employees.

6B

STAFF COMMENTS AND RECOMMENDATIONS

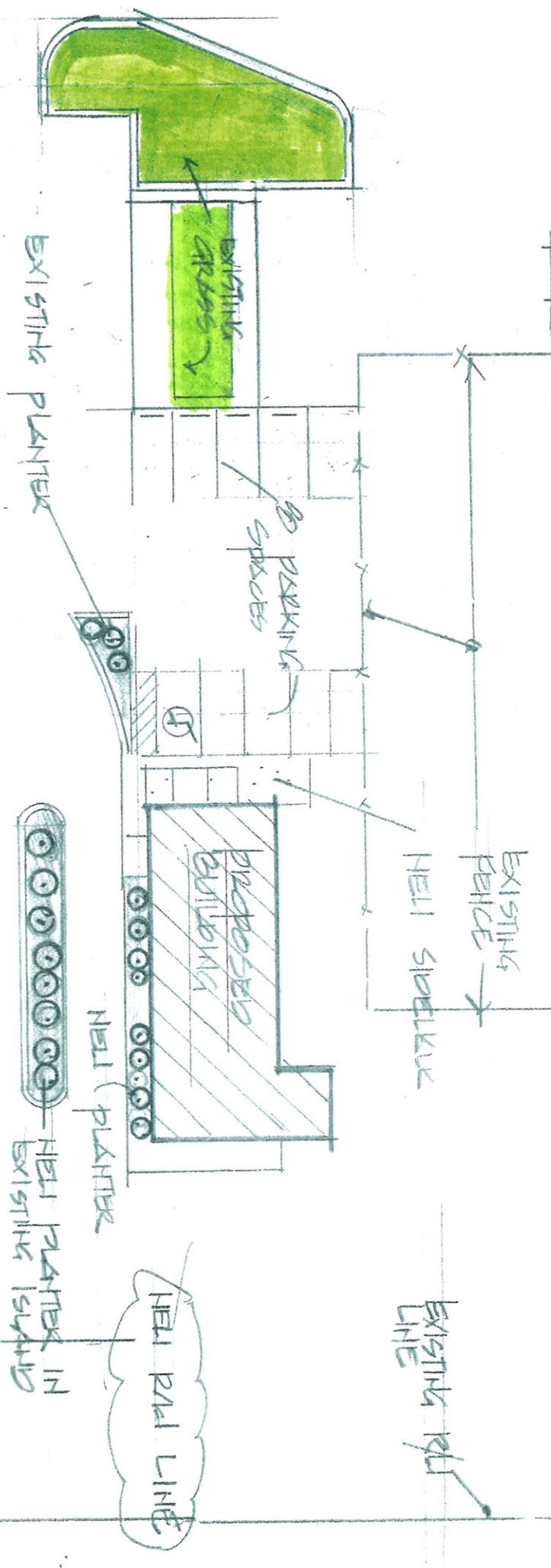
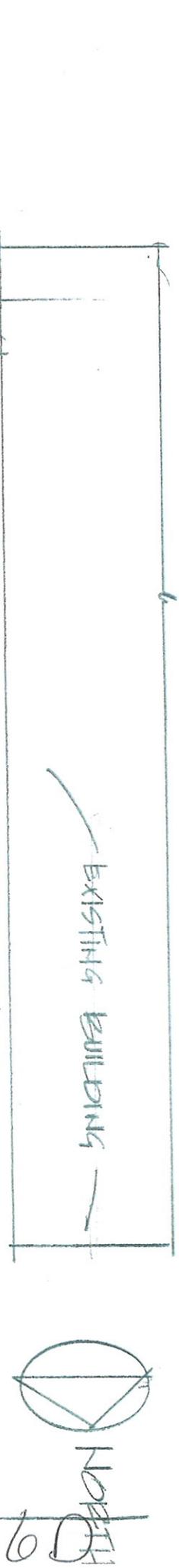
A neighborhood meeting was held Friday, August 30, 2013 at 1208 North Waldron Road and no surrounding property owners were in attendance.

The staff has reviewed the survey and compared it to the Waldron road widening plans. We also talked with the survey and believe the right of way is at or near the back of the curb for the parking lot and not 3 feet inside the parking lot. This appears to be consistent the length of the Waldron Road frontage for Central Mall. However, the issue still exists that strict application of the landscaping requirements would require the removal of at least 10 feet of the existing parking lot concrete which will result in the loss of several parking spaces.

Should the Board of Zoning Adjustment agree with the proposed hardship, we recommend a compromise that would include approval of the variance request to eliminate the perimeter/parking lot screening landscaping along the Waldron Road frontage contingent upon the installation of landscaping in the islands which are shaded on an attached site plan. The islands would be planted with shrubbery, trees, etc. from the recommended planting guidelines in the UDO.

During the study session we talked about the existing sign on the property. This sign was to be removed as a condition of a sign variance that was approved earlier this year. We have contacted the property owners and have asked them to remove the sign structure to comply with the conditions of the previous variance approval.

The BZA shall substantiate its reason for approval in accordance with Section 27-337-2 of the Unified Development Ordinance, which permits the granting of a variance only when it is demonstrated that such action is in keeping with the spirit and intent of the provisions of the zoning chapter



Var. #29-9-13

APPLICATION FOR VARIANCE

Notice is hereby given that the undersigned, as owner(s) of the following property in the Fort Smith District of Sebastian County, Arkansas, to-wit: (Legal Description)

Address of property 208 N Waldron Rd., Existing or Proposed

Zoning Classification C-2, has filed with the Planning Department a written application pursuant to Article 5-6 of Ordinance 2324 of the City of Fort Smith, Arkansas, to secure a variance from the literal provisions of the zoning ordinance as follows:

<u>Office Use Only-List the Specific Variance Requested and Applicant Stated Hardship</u>

FROM

TO

- _____ - _____ Front Yard Setback or Minimum Distance from Right-of-Way
- _____ - _____ Exterior Side Yard Setback
- _____ - _____ Interior Side Yard Setback
- _____ - _____ Rear Yard Setback
- _____ - _____ Maximum Height of Structure
- _____ - _____ Minimum Distance Between Structures on the Same Lot
- _____ - _____ Minimum Lot Area (Square Feet)
- _____ - _____ Minimum Lot Frontage
- _____ - _____ Maximum Size of a Sign
- _____ - _____ Other: VARIANCE FROM LANDSCAPE REQUIREMENTS
"PARAMETER AND PARKING LOT SCREENING"

The undersigned will present said application to the Board of Zoning Adjustment at the first regular City Planning Commission meeting following the expiration of seven (7) days from the date of this publication, at which meeting the Board of Zoning Adjustment will conduct a public hearing on

6 E

said application. All interested persons are invited to attend and are entitled to be heard. This notice is published this _____ day of _____, 20____.

Signed:

(Bill) William Hanson
Owner or Agent Name (please print)

Owner

or

479-883-8006
Owner or Agent Phone Number

Agent

8508 Rosewood Dr. 72903
Owner or Agent Mailing Address

Variance # _____

6F

VARIANCE INFORMATION FORM

The following paragraph (Section 27-337-2) of the Fort Smith Unified Development Ordinance defines the criteria for granting a variance:

The Board of Zoning Adjustment shall hear requests for variances from the literal provision of the zoning chapter in instances where strict enforcement of the zoning chapter would cause undue hardship due to circumstances unique to the individual property under consideration, and shall grant such variances only when it is demonstrated that such action will be in keeping with the spirit and intent of the provisions of the zoning chapter. The Board of Zoning Adjustment shall not permit, as a variance, any use in a zone that is not permitted under the chapter. The Board of Zoning Adjustment may impose conditions in the granting of a variance to insure compliance and to protect adjacent property.

1. To aid the Board of Zoning Adjustment in arriving at a decision on your application, please note the lot information requested and check the appropriate answer to each of the questions that follow.

<u>Yes</u>	<u>No</u>	
_____	<u> ✓ </u>	Is this variance needed because of previous actions taken by yourself?
_____	<u> ✓ </u>	Is this variance needed because of previous actions taken by a prior owner?
<u> ✓ </u>	_____	A zoning hardship is present only when a property has no reasonable use without a variance. Do you have use of your property without a variance?
<u> ✓ </u>	_____	Is the variance needed due to the unique circumstances of the property (such as lot area, lot width, setbacks, yard requirements, or building height)? If yes, please explain on the following page.
_____	<u> ✓ </u>	Is the lot of an odd or unusual shape?
_____	<u> ✓ </u>	Does the lot have "radical" topography (steep, unbuildable slopes - streams or bodies of water - unstable or eroded area)?
_____	<u> ✓ </u>	Does the lot contain required easements other than those that might be located on its perimeter?
_____	<u> ✓ </u>	Is any part of the lot in a flood plain or flood way?
_____	<u> ✓ </u>	Is the lot smaller than minimum lot area or minimum frontage for its zoning classification?
_____	<u> ✓ </u>	Is the lot developed with structures in violation of current zoning requirements?
<u> ✓ </u>	_____	Does the lot front any street classified as an arterial or collector on the Master Street Plan?

66

Explanation of question #4 (if applicable)

The required landscaping will eliminate essential parking (approximately 12-15). Also, as a result of the Waldron Rd. widening, additional right-of-way was acquired, which resulted in a loss of frontage.

2. Describe how the strict enforcement of the zoning code causes an undue hardship for your project:

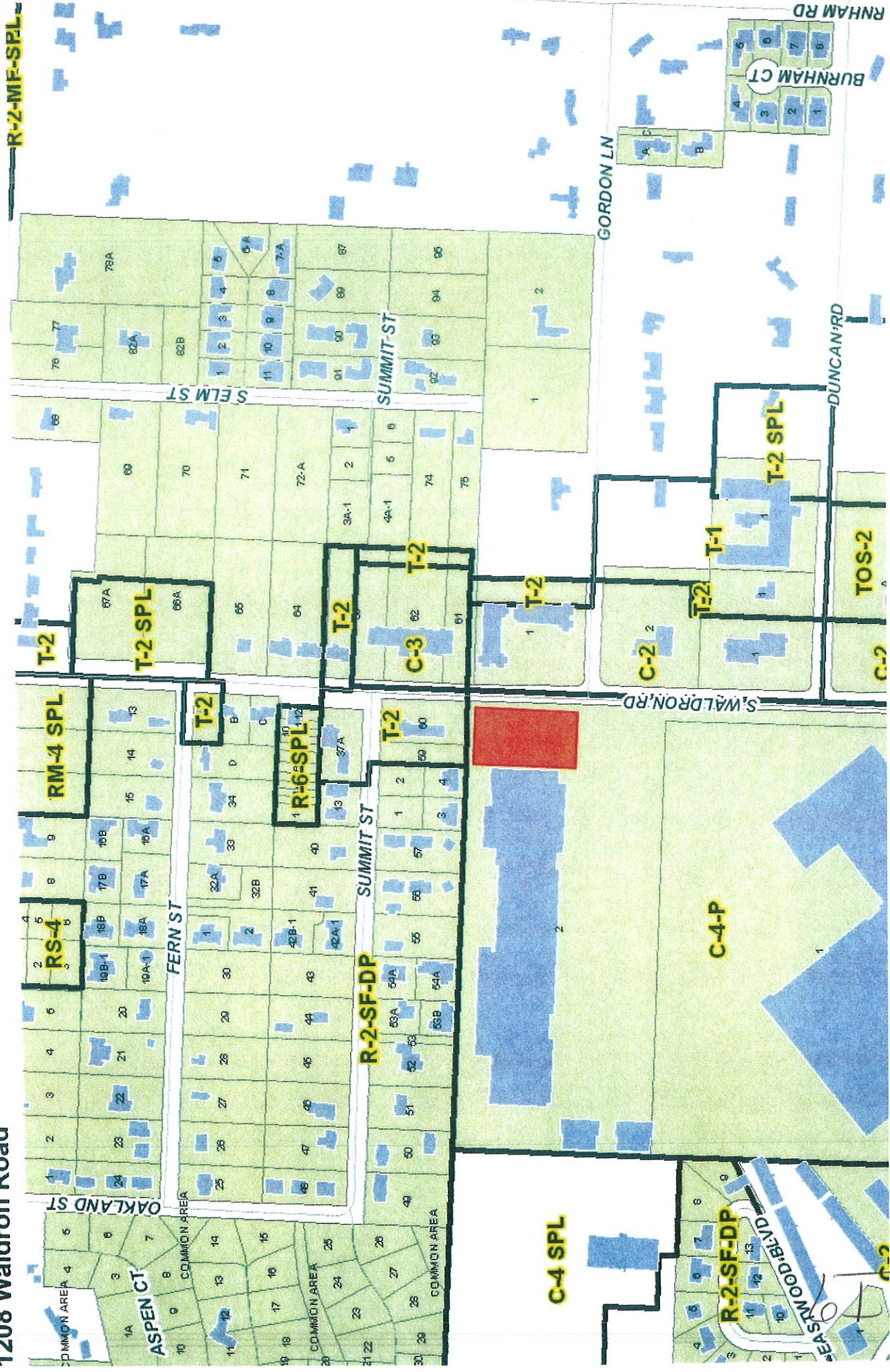
This would result in the loss of essential parking necessary for our 8-10 employees.

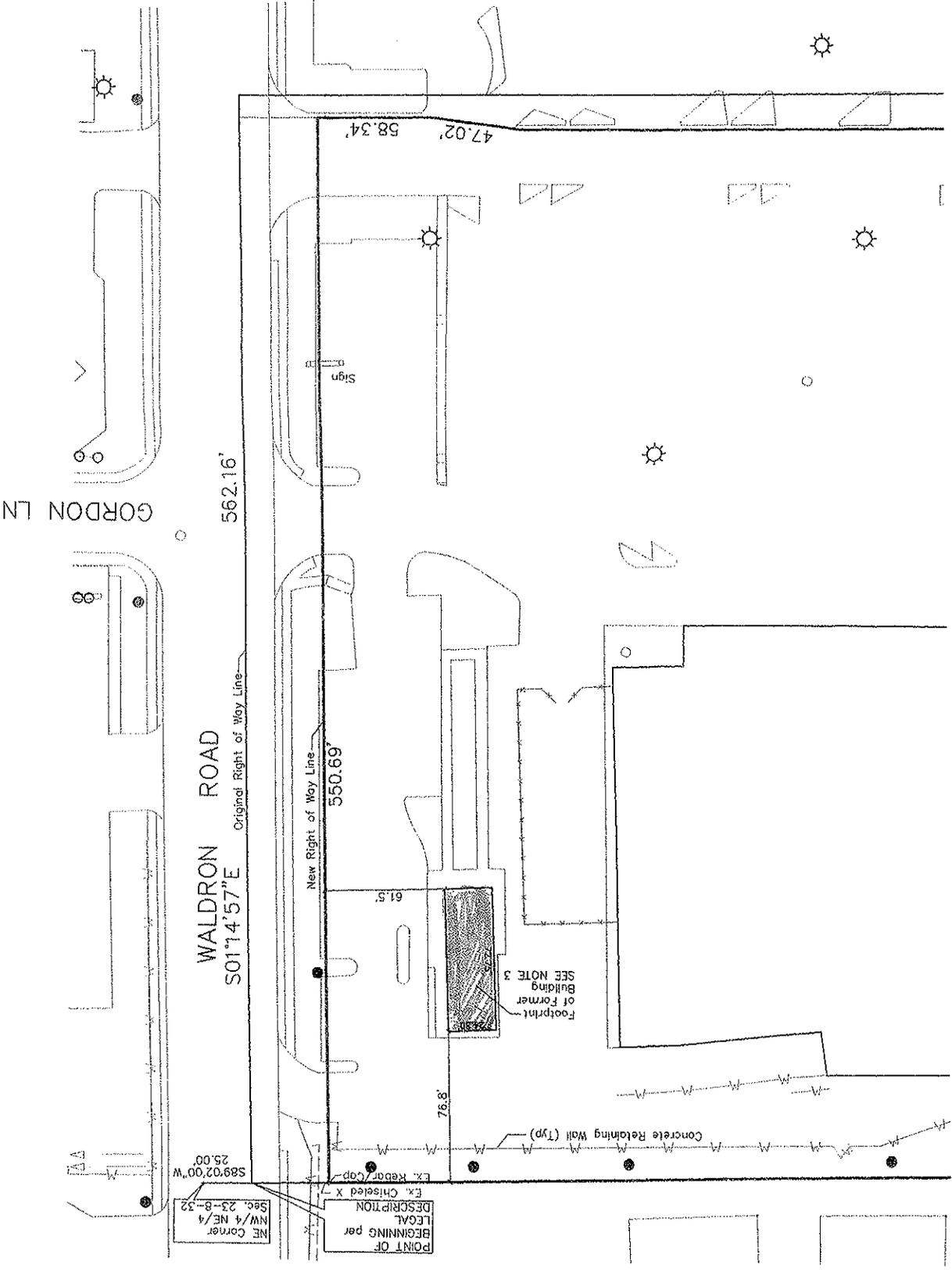
3. List any special circumstances/conditions which exist that have not been created by the owner/applicant and do not apply to other properties in your area:

None

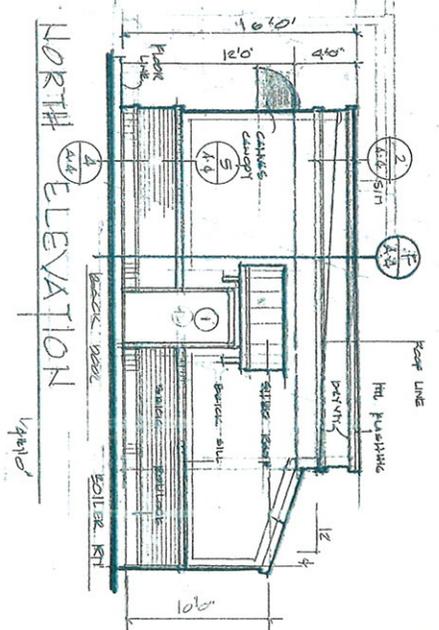
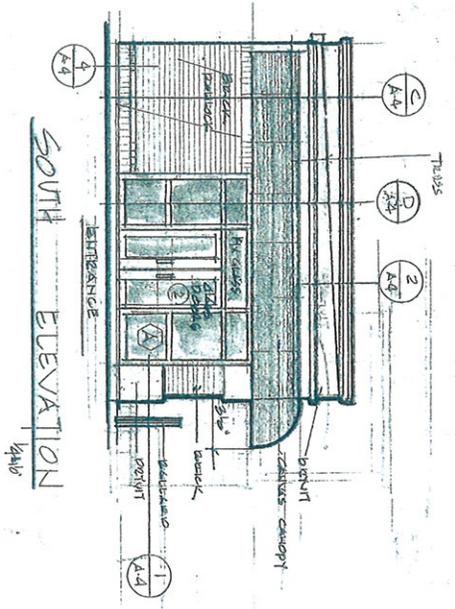
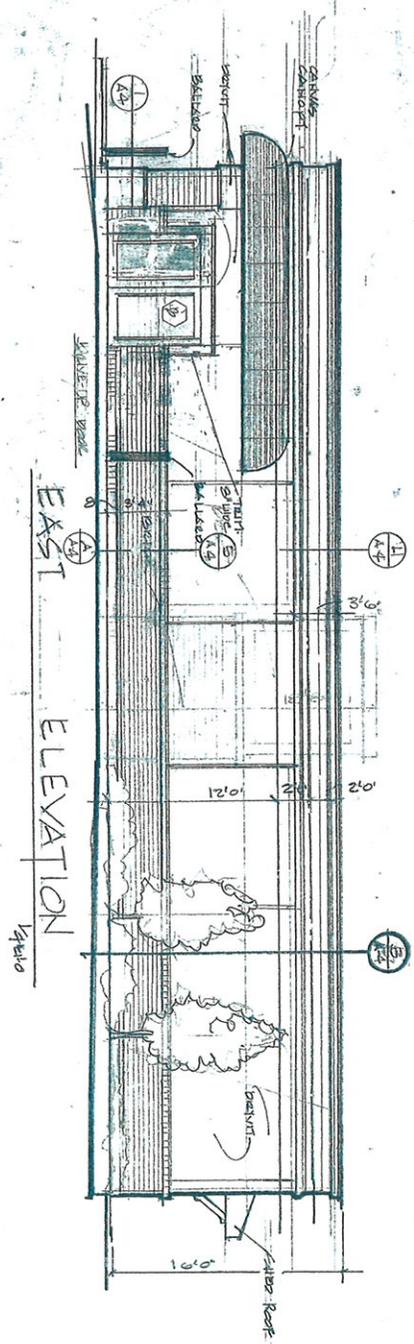
Variance #29-9-13: From the perimeter landscape and parking lot screening requirements

1208 Waldron Road





65



PROPOSED FACILITY FOR:
COMET CLEANERS
 FT. SMITH, ARKANSAS

Ozarchitecture Inc.
 Architecture, Art & Design
 Chris Shirley, R.A.
 Isaac Moran
 415 N. Dueland Road
 Rogers, Arkansas 72756
 kmoran@ozarch.com / bassndraft@aol.com
 FAX 479 631.8414
 www.ozarchitecture.org

01307
NO. REVISION DATE

SHEET
 A-2

66

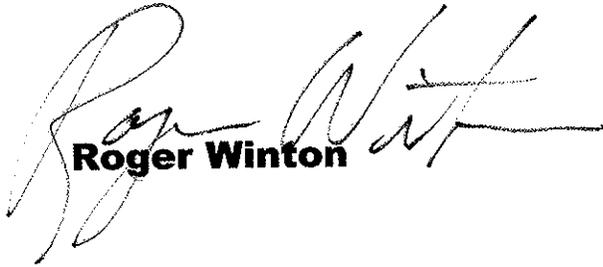
**Reply to building permit review 1208 Waldron road
Public meeting For variance of planter strip.**

**The meeting was held at 1208 Waldron road Friday
August 30th at 12.00 noon. The meeting started at
12.00 noon with...**

**City personnelTom Monaco
Property owner Bill Hanson
Arch. representative..... Roger Winton**

**No one from the public showed up to objected to the
elimination of the 10 foot wide planter strip at the East
property line.**

Meeting was closed 12.15pm


Roger Winton

6M