

Board of Adjustment

Staff Report

CASE NUMBER: BA15-045
STAFF PLANNER: Gordon Sheffield AICP CNUa; Zoning Administrator
LOCATION/ADDRESS: 1255 East Southern Avenue
COUNCIL DISTRICT: 2
OWNER: De Rito Partners
APPLICANT: Withey Morris PLC, Adam Baugh Esq.

REQUEST: *Requesting a Substantial Conformance Improvement Permit (SCIP) to facilitate redevelopment of a group commercial center in the LC zoning district, including a proposed encroachment into a setback required for a commercial loading area when placed adjacent to a residential zoning district.*

SUMMARY OF APPLICANT'S REQUEST

This request involves the addition of a second load lane to the rear of an existing grocery tenant space, within an existing group commercial center. The existing loading dock encroaches 9-ft into a required 50-ft wide setback for loading areas adjacent to residential zoning districts. Widening this loading dock would create further encroachment into the setback to about 31-ft. Development of the commercial center dates back to 1991, when the grocery tenant space was being developed the now defunct Mega Foods chain of grocery stores. A new grocery chain wishes to occupy this same tenant space, but believes that a wider loading dock is needed to facilitate stocking the store.

STAFF RECOMMENDATION

Staff recommends approval of case BA15-045, *conditioned upon:*

1. *Compliance with the site plan as submitted, except as may be modified by compliance with the conditions listed below.*
2. *Compliance with all conditions listed for Administrative Review cases PLN2013-00353 (both September 18, 2013 and February 18, 2014 letters), and PLN2015-00100.*
3. *Compliance with all requirements of the Development Services Department in the review and issuance of a building permit.*

SITE CONTEXT

CASE SITE: Group Commercial Center, zoned LC
NORTH: (Across Southern Ave). Various retail and commercial uses, zoned LC
EAST: Single residence subdivision, zoned RS-9
SOUTH: Attached single residence subdivision (twin homes), zoned RM-2-PAD
WEST: (Across Stapley Drive) SRP substation and a single residence subdivision, zoned RS-6; and a group commercial center (Organ Stop Pizza and Walgreens), zoned LC

STAFF SUMMARY AND ANALYSIS:

One of the topics of the Zoning Ordinance Update project included a detailed review of activities that may detrimentally impact differing adjacent land uses. The idea was to create buffers and setbacks related to the specific detrimental activity, as opposed to setting setbacks and buffering distances that take a 'one size fits all' approach. One of those situations was the loading area at the back of a commercial center when adjacent to a residential district. The setback distance of 50-feet for such circumstances was set to take into account noise

and similar impacts, and create a minimum distance to provide some minimal measures of buffering and attenuation between the commercial activity and neighboring residential sites.

In this circumstance, the existing loading dock is already within the required 50-ft setback, and is therefore a non-conforming or 'grandfathered' situation. This grocery tenant space has been vacant for several years, and the owner has been looking for a replacement tenant during that time. Such a willing replacement has been found. However, in the grocer's analysis of the tenant space, they have found that current practices for delivery of replacement stock make the existing single truck well design outdated. A second truck well is needed, and because of the existing building placement, the placement of the second truck necessitates further encroachment into the 50-setback. In an effort to attenuate sound and excess light to neighboring residential areas, the applicant has proposed an expansion of the enclosed receiving shed; a 12-ft high, 52-ft long masonry screening wall placed on the outside edge of the truck well. The truck well masonry screening wall continues another 52-ft past 12-ft section at a 6-ft height.

In addition, the applicant has completed extensive remodeling and redesign of the center, including freshening up the center's building elevations, updating and replacing the center's landscaping, and removing a vacant pad building on the north side of the center, largely because it inhibited visibility into the remaining center from Southern Avenue. Pdf files documenting the extensive work already completed based on these administrative review applications are included in the electronic packet (PLN2013-00353, and PLN2015-0100).

ORDINANCE REQUIREMENTS:

Zoning Ordinance

Chapter 73, Substantial Conformance Improvement Permits (SCIPs)

Section 11-73-1 Purpose and Applicability

The purpose of this chapter is to establish a review process by which improvement standards required by this [Ordinance](#) can be incrementally installed on non-conforming sites when such sites are enlarged; buildings are replaced, extended or have additions constructed; or other site modification developed. The intent is to recognize existing site constraints, and work proportionately with the degree of improvement being sought by the applicant to also improve the property based upon the development standards adopted by the Ordinance, and therefore bring non-conforming developments into substantial compliance with this Ordinance through approval of a [Substantial Conformance Improvement Permit](#) (SCIP).

Section 11-73-2 Allowed Modifications

The only development requirements that may be modified in a [SCIP](#) are building setbacks, landscaping design, on-site parking, building height, right of way dedication, and other site development provisions, contained in this [Ordinance](#).

Section 11-73-3 Required Findings

A [SCIP](#) shall not be granted unless the [Zoning Administrator](#), acting as a [Hearing Officer](#), or [Board of Adjustment](#) shall find upon sufficient evidence that:

- A. The entire development site will be brought into substantial conformance. Substantial conformance shall mean physical improvements to the existing development site which constitute the greatest degree of*

compliance with this [Ordinance](#) that can be attained without causing or creating any of the following conditions:

1. The demolition or reconstruction of existing buildings or other significant structures (except signs);
or
 2. The cessation of the existing conforming use, or the preclusion of any other lawful, permitted use.
 3. The creation of new non-conforming conditions.
- B. The improvements authorized by the [SCIP](#) will result in a development that is compatible with, and not detrimental to, adjacent properties or neighborhoods.

Chapter 30, General Site Development Standards

Section 11-30-13 Truck Docks, Loading and Service Areas

Design Objectives: Reduce the negative impact of noise and activity associated with truck docks, loading and service areas on quieter activities of adjacent properties. Minimize the impact of visual clutter associated with open bay doors and parked trucks being loaded and unloaded from adjacent lots and street rights-of-way.

Truck docks, loading, and service areas shall be located and screened as follows:

- A. **Minimum Distance from Residential District.** Truck docks, loading, and service areas are not permitted within 50 feet of the boundary of any residential district or use.
- B. **Location on Lot.** In all districts except the [GI](#), and [HI](#) districts, truck docks, loading areas and service areas must be located at the rear or side of buildings, rather than facing a street.
- C. **Screening.** Truck docks, loading areas, and service areas located in any zoning district shall be screened from any adjacent residential districts or uses. Docks, loading and service areas in any district except the [GI](#) and [HI](#) districts shall be screened from public view. Screening shall consist of a solid masonry wall at least 8 feet in height or opaque automated gates.

FINDINGS:

- 1.1 The initial site plan approval for this group commercial center came in 1991 (Z91-051), and Design Review approval came in 1992 (DR92-001). The site was developed with a grocery tenant designed to old the anchor tenant space. This initial tenant has left, and a subsequent tenant has occupied the space, and left. The site has since remain vacant for several years.
- 1.2 The applicant has completed extensive remodeling and redevelopment of the center, Each of these applications has not triggered a requirement to bring the site into conformance with present zoning ordinance development standards, but has represented significant reinvestment into a commercial center.
- 1.3 The existing truck well loading dock is approximately 41-ft from the east property line, which is coterminous with a single residence subdivision. As such, it is a 9-ft encroachment into the present 5ft setback for loading docks from residential zoning districts. The proposed widening of the existing dock is not a new encroachment, but an expansion of an existing encroachment into a setback.
- 1.4 The applicant has proposed to offset impacts related to the additional encroachment by increasing the height of a screen wall placed immediately next to the truck well to 12'ft, and extending this 12-ft high wall over 50-ft from the loading/receiving dock. In addition, the applicant is extending the

enclosed receiving bay closer to edge of the loading dock to further address questions about excess light and noise that may occur during loading and receiving operations. Extending the enclosed receiving shed closer allows materials to be transferred from the truck trailer to the interior of the grocer's back of space warehouse area more quickly, and impacts of excess light and noise become better attenuated by the enclosed space.