



## CITY OF TONTITOWN PLANNING OFFICE

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Meeting: **February 23, 2021**  
Project: **Lot 5 of Admiral Addition**  
Planner: Anthony Apple

### AGENDA ITEM

#### A

#### VARIANCE REQUEST

Lot 5 of Admiral Addition  
1345 E. Henri de Tonti Boulevard  
Parcel #: 830-38880-003

**SUMMARY:** Request to relocate interior site landscaping from front of the building to planting islands on north side of site, and place alternative less maintenance intensive seating and/or décor in front of building.

**CURRENT ZONING:** C-2-General Commercial

**PROPOSED USE:** C-2-General Commercial

**CITY WARD:** 1 – Gene McCartney and Amber Ibarra

**INFRASTRUCTURE SERVICE AREAS (not a guarantee of service availability):**

**Water:** Tontitown

**Sewer:** Tontitown

**Road Access:** Private drive on south side of US Hwy 412 approximately 600 ft west of Jones Road

**Electric:** Ozarks Electric

**Cable:** Cox Communications

**Phone:** ATT

**Natural Gas:** Black Hills Energy

**School District:** Springdale

#### PROJECT SYNOPSIS:

The variance request is to relocate landscaping shrubs from the front of the building to islands that separate a private drive along the north property line and the parking lot on the north side of the building. In exchange for relocating the landscaping shrubs from the front of the building to the islands, the applicant will place seating and/or other décor in the place of the formerly planned shrubs.

#### 153.262 POWERS AND DUTIES

The Board of Zoning Adjustment shall have all the powers and duties prescribed by law and by these regulations, which are more particularly described as follows:

(B) To authorize upon appeal, in specific cases, such variance from the terms of this zoning chapter as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of these regulations would result in unnecessary hardship that would deprive the owner of any reasonable use of the land or building involved. A variance from the terms of these zoning regulations, shall not be granted by the Board of Zoning Adjustment unless and until:

(1) **The applicant demonstrates that special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands,**

structures or buildings in the same district; that literal interpretation of the provisions of these regulations would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of these regulations; that special conditions and circumstances do not result from the actions of the applicant; and that granting the variance requested will not confer on the applicant any special privilege that is denied by the zoning regulations to other lands, structures, or buildings in the same district.

*STAFF ANALYSIS: Per City code:*

(J) Interior site landscaping. Interior site landscaping is immediately adjacent to the front of buildings.

(1) Purpose. The interior parking lot landscaping:

(a) Provides necessary green space to enhance and soften the transition from parking lot to the building; and

(b) Provides pedestrian friendly spaces.

(2) Exemptions. Single-family residential and residential duplex subdivisions are not required to provide interior site landscaping.

(3) Commercial and institutional: interior site landscaping. Shrubs, perennial plants, or other vegetation in curbed planting beds or raised planters to span a minimum of 25% of the building frontage. Planters are encouraged be arranged to create outdoor seating opportunities. At least one large tree or two small trees per unit/suite is required.

(a) Living materials shall make up 80% of the curbed planting beds or raised planters.

(b) Non-living material shall be organic (mulch or other), and shall make up the remainder of the groundcover.

Per the applicant's verbal statement, the building does not face a public street, and the building will be buffered from US Hwy 412 by 7 Brew Coffee and the planned landscaped islands between the northern private drive and the building. Per the applicant's written request:

"the applicants experience these landscaped or shrubbed areas between the building and sidewalk become trash catchers where patrons toss cigarette butts, trash, gum, etc. before they come into the building. They are a maintenance nightmare and irrigation installation nuisance."

*STAFF ANALYSIS: The landscaping requirement is required for all commercial developments; and the applicant has not demonstrated any special conditions or circumstances peculiar to the land, structure or building involved that would prevent the applicant from placing the shrubs per the required percent coverage in front of the building. Additionally, placing the shrubs in front of the building will not deprive the applicant of a right commonly enjoyed by other similar properties in the same district.*

In lieu of placing the shrubs in front of the building, the applicant has requested to place the required percentage of shrubs in the islands along the north property line between the private drive and north parking area, and place planters and seating in front of the building.

*STAFF ANALYSIS: Per City code, "Provides necessary green space to enhance and soften the transition from parking lot to the building". Although "green space" is not provided the alternate submitted by the applicant will soften the transition from the parking lot to the building.*

**(2) No nonconforming use of neighboring lands, structures, or buildings in the same district, and no permitted or nonconforming use of lands, structures, or buildings in other districts shall be considered grounds for the issuance of a variance.**

*STAFF ANALYSIS: Neighboring properties, structures, or buildings in the same district developed since the standard was codified in May 2019 have been held to the standard. Existing developments prior to the landscape standard being codified generally have some form of landscaping at the building front.*

**(3) The Board of Zoning Adjustment shall further make a finding that the reasons set forth in the application justify the granting of the variance, and that the variance is the minimum variance that will make possible the reasonable use of land, building, or structure.**

*STAFF ANALYSIS: The applicant strictly complying with the code will not inhibit the reasonable use of the land, building or structure. The installation of irrigation to support the vegetation at the building front is not out of the ordinary for commercial structures. If the Board of Zoning Adjustments approves the relocation of the plantings, the applicant will be installing irrigation in the islands to support the relocated shrubs and planned trees in the islands per 153.212 (E)(3).*

*Relocating the shrubs from the building front to the landscape islands will reduce maintenance of the landscaped areas due to potential thrown down trash and cigarette butts. However, relocating the shrubs will not inhibit the throwing down of trash or cigarette butts.*

**(4) The Board of Zoning Adjustment shall further make a finding that the granting of the variance will be in harmony with the general purpose and intent of these zoning regulations, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.**

*STAFF ANALYSIS: If the variance is approved, seating and planters will be placed in lieu of the required planting areas. This is a reasonable alternative that per the Code 153.212 (J)(1)(a) and (b) "Provides necessary green space to enhance and soften the transition from parking lot to the building; and provides pedestrian friendly spaces."*

**(5) In granting any variance, the Board of Zoning Adjustment may prescribe appropriate conditions and safeguards that it deems necessary or desirable. Violations of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of these regulations.**

*STAFF ANALYSIS: As stated above, the variance presented to staff is to allow the relocation of shrubs from planting areas in front of the building to the islands north of the north parking lot. In lieu of the planting areas, seating and planters will be placed in front of the building. The granting of this variance will be upheld by refraining to provide a Certificate of Occupancy until the provisions of the variance are met.*

**(6) Under no circumstances shall the Board of Zoning Adjustment grant a variance to allow a use not permissible under the terms of these zoning regulations in the district involved, or any use expressly, or by implication, prohibited by the terms of these regulations in said district.**

*STAFF ANALYSIS: Per the Code 153.212 (J)(1)(a) and (b) "Provides necessary green space to enhance and soften the transition from parking lot to the building; and provides pedestrian friendly spaces."*

*Although a green space is not provided between the parking lot and the building, an alternative softening and pedestrian friendly space is presented using planters and seating. Although the request does not explicitly comply with the code, the request is in the spirit of the code.*

**TECHNICAL INFORMATION:**

**Utilities:**

**Water:** The development is serviced by Tontitown Water

**Electric:** Ozarks Electric – No concerns were submitted for the requested variance.

**Sewer:** The development is serviced by Tontitown Sewer

**Cable:** Cox Communications - No concerns were submitted for the requested variance.

**Phone:** AT&T - No concerns were submitted for the requested variance.

**Natural Gas:** Black Hills Energy - No concerns were submitted for the requested variance.

**Streets:**

This property is accessed through private drives on the north and east sides of the project site. No additional drives are being proposed.

**Fire:**

No concerns were submitted for the requested variance.

**Police:**

The Police Chief has no concerns for the requested variance.

*STAFF ANALYSIS: The impact of this variance request will be minimal to the surrounding area, existing utilities, and streets and fire.*

**NEIGHBOR COMMENTS:** All neighboring properties within 200 feet of the property boundary were notified by certified mail of this project, additionally, a sign was placed on the property. No comments have been received.

**STAFF FINDINGS:** *Per City Code 153.262, "a literal enforcement of the provisions of the regulations do result in unnecessary hardship that would deprive the owner of any reasonable use of the land or building involved." Although literal enforcement of the provision does not create a hardship on the owner, the owner has presented an alternate design that, per 153.212 (J)(1)(a) and (b), has softened and created a pedestrian friendly space using planters and seating.*

**CONDITIONS FOR CODE COMPLIANCE:**

1. The landscape plan as presented in the variance request shall be constructed per plan prior to granting the Certificate of Occupancy. See Figures 1 and 2 below for reference.

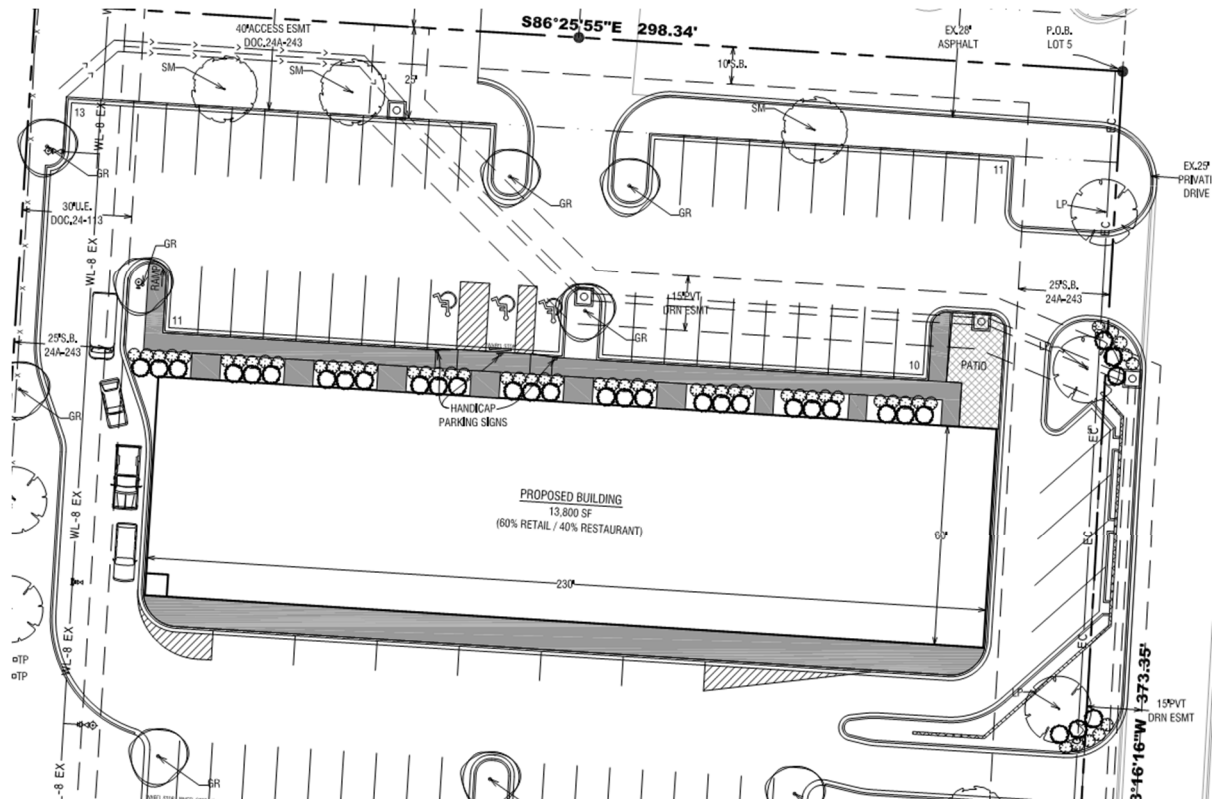


Figure 1: Original Landscape Plan

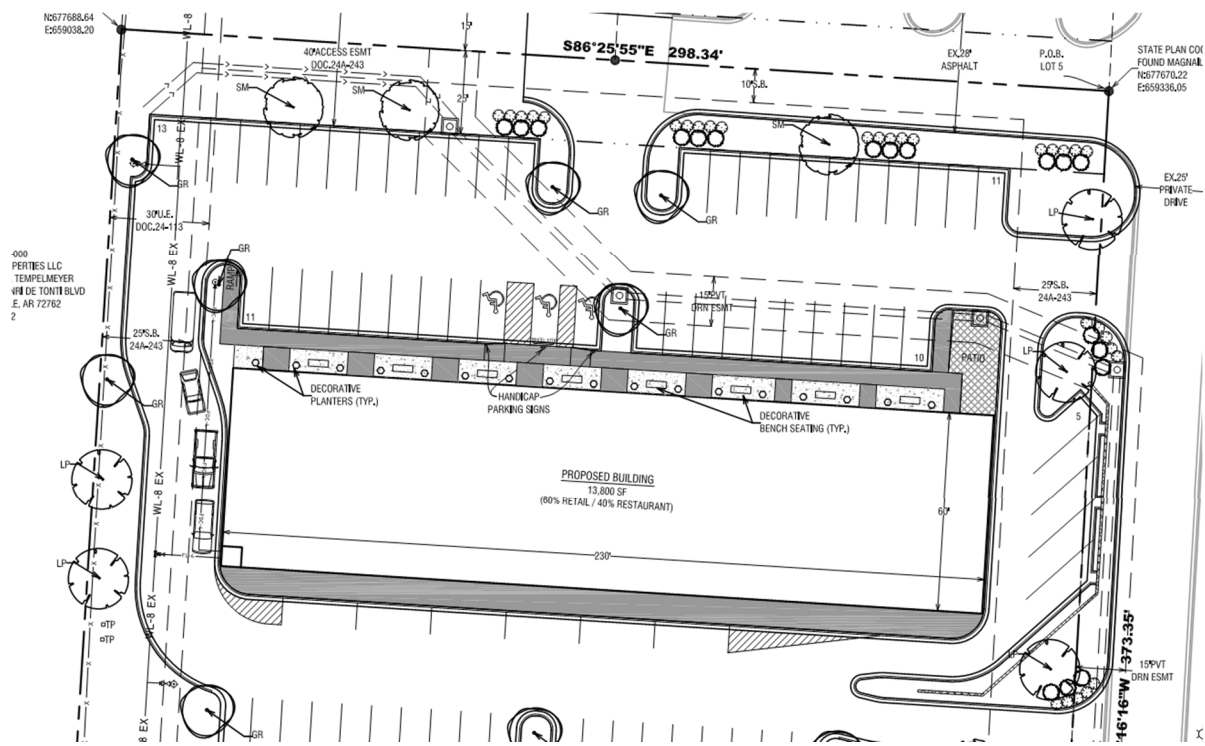


Figure 2: Alternate Landscape Plan

