



**MINUTES
BOARD OF ADJUSTMENT
ONE ST. PETERS CENTRE BLVD., ST PETERS, MO 63376
MEETING OF APRIL 17, 2013
6:00 P.M.**

CALL TO ORDER

Chairman Dan Meyer called the meeting to order at 6:00 p.m.

ATTENDANCE

Those in attendance were Mr. Bill Kendall; Mr. Tom Fann; Mr. James Selinger; Mr. Dan Meyer Mr. William Jaggi; Ms. Julie Powers, Director of Planning, Community and Economic Development; Mr. Ken Braunfeld, Planning Coordinator; and. Ms. Melissa Vollmer, Recording Secretary. Mr. Nick Trupiano was absent.

MINUTES

Mr. Meyer asked the Board for any comments or questions regarding the minutes of March 20, 2013. Mr. Jaggi made a motion and Mr. Fann seconded to approve the minutes as presented. All in favor, the motion carried and the minutes were approved.

COMMUNICATIONS AND REPORTS OF OFFICERS

Mr. Meyer asked for any reports or communications from the Officers. Ms. Powers indicated there were none.

PETITION 13-H:

Mr. Meyer stated that the purpose of the meeting was to consider Petition 13-H. Circle K c/o Nova Group requests variances in the C-2 Community Commercial District to modify street tree requirements, to reduce the four (4) foot landscape buffer along the off-street parking areas, to reduce the requirement for parking lot islands, to reduce the required distance between service stations with gas pumps, to reduce the setbacks for the existing freestanding signs, to reduce the setback for the fuel island canopy, and to reduce the building setback along the rear property line. The property is located on the southwest corner of Mexico Road and Spencer Road, more commonly known as 6105 Mexico Road.

Mr. Meyer further stated that the evidence and testimony received this evening would be the only record considered by the Board. Title IV Land Use of the Municipal Code, as amended, shall be Exhibit #1 for this petition.

Mr. Meyer declared the public hearing open to consider Petition 13-H. The petitioner or their agent was requested to step forward to present their position. Mr. Cliff Heitmann, Bax Engineering, was sworn in as the petitioner. Mr. Heitmann explained that the subject convenience store with gas pumps was recently damaged by a fire. With the recent fire, the building was substantially destroyed such that current codes must be complied with; therefore they are requesting the noted variances. The building will match the previous building in size, style and location. The canopies and signs will not be relocated; they will remain where they are.

Mr. Meyer asked if there were any questions of the petitioner. Mr. Kendall questioned the need for the variances as nothing on the site was changing. Ms. Powers explained that due to fire, the building was destroyed more than 25% which prompted the legal non-conforming use to expire and the site would

have to be brought up to current code standards as if the site were being totally redeveloped. Ms. Julie Powers was then sworn in to present the City's position for Petition 13-H.

Ms. Powers stated that the subject property has been developed with a convenience store with gas pumps for some time. Recently, most of the building was damaged or destroyed by a fire. At the time the original building was constructed, a special use was not required for this use at this location. After the original building was constructed, the code was changed to require a special use for gasoline sales. With the recent fire the building was substantially destroyed such that current codes must be complied with. Therefore, the applicant recently requested a special use permit for the convenience store and gasoline pumps. The Planning Commission recommended approval of the request and the Board of Aldermen will review it on April 25th.

The proposed building will match the previous building in size, style, and location. Given the small size and triangular shape of the site, there are limited options for layout and building size. The entrance locations will be the same on Spencer and Mexico Roads with entrances as far away from the intersection as possible. The canopy and gas pumps will also be in the same location.

Staff supported the proposed special use, noting it is appropriate at the proposed location. It has functioned well at the subject site for many years and is near a variety of commercial uses in the same commercial district or zoned SD-RC Special District Retail/Commercial. In addition, the site is at a major intersection which includes another service station, a fast food restaurant and a bank. The intersection has been substantially improved to accommodate commercial traffic. Therefore, the proposed use can continue operating in the same fashion without incident.

As noted above, since the site was substantially damaged from the recent fire, the rebuild of the site and building must comply with the current code. The code has been modified in several areas since the building was constructed, and the roads in the area have been widened. Therefore, the applicant has requested several variances; these include:

1. *A variance from the front building setbacks for the canopy.* The code requires buildings be set back thirty feet from a street right-of-way. The subject site has two road frontages; compliance with these setbacks for the canopy is not possible because of its small size and shape.
2. *A variance from the rear setback for the building.* The code requires buildings be set back twenty-five feet from a rear property line that abuts residential development. This site is adjacent to Vanderbilt Apartments. Compliance with this setback would make the site undevelopable.
3. *A variance from the four foot landscape buffer along the off-street parking areas.* Similarly, the addition of this would be difficult due to the small size; very little development area would be available.
4. *A variance from the interior landscape requirements.* The site is paved to accommodate vehicular traffic; the addition of planting islands would make the small site difficult to maneuver.
5. *A variance from street tree requirements.* The site is lined with sidewalks and is very small due to roadway widening over time at this intersection. Adding a wide enough grass area to support tree growth would leave an inadequate area for development.
6. *A variance from the 1,000 foot distance from another gas station.* This requirement was added at a time when density of gasoline stations was a concern; it remains in the code. However,

this site has operated across the street from another station with no adverse affects to the site area.

7. *A variance from the sign setback requirements.* The code requires signs to be set back a minimum of ten feet from the property line. However, with road widening in this area, the signs cannot comply with this requirement. Shifting the signs back would place them in a location that could conflict with vehicular traffic.

Ms. Powers noted that the variance requested by the applicant is from requirements of the Zoning and Subdivision Regulations (Title IV Land Use Chapter 405 as amended) it states:

SECTION 405.200: "C-2" COMMUNITY COMMERCIAL DISTRICT

G. *Yard Requirements.*

1. *Front yard.* All buildings shall be set back from the street right-of-way line to provide a front yard having not less than thirty (30) feet in depth.
2. *Side yard.* Side yard width shall be ten (10) feet except when adjacent to a residential district, then twenty (20) feet is required.
3. *Rear yard.* Rear yard depth shall be fifteen (15) feet except when adjacent to a residential district, then twenty-five (25) feet is required.

SECTION 405.390: LANDSCAPING AND SCREENING

B. *Non-Residential Districts (Commercial/Industrial).* In "C" (Commercial) and "I" Districts, the landscaping/screening requirements are as follows:

2. *Landscaping requirements.*

- a. A landscape plan shall accompany, or be a part of, each site plan, and no site plan shall be approved without the Planning and Zoning Commission's approval of said landscape plan. This landscape plan shall include size, type and location of plantings and shall include parking lot planting islands, perimeter plantings, and similar landscape features. The majority of white pines shall be a minimum of six (6) feet in height; the majority of spruce trees shall be four (4) feet in height.
- b. Where off-street parking spaces are provided, a minimum of ten (10) square feet of landscaping shall be provided for each space within the parking area or lot, or as approved by the Commission. While no specific tree species or plantings are given in this Chapter, the developer or owner shall be expected to provide sufficient landscaping details on the plans at the time of submittal. The use of earth berms or sculpting shall be encouraged provided these are designed in an area of enough size so as to cause no erosion, drainage or maintenance problems.

C. *Screening And Landscaping.* All off-street parking facilities, with the exception of a single-family detached dwelling or a two-family dwelling, shall be screened and landscaped in accordance with the following design standards.

1. *Planting strip along property lines.*

- a. Along each property line of the zoning lot, a planting strip of four (4) feet minimum width shall be provided between said property line and the off-street parking facilities. Where parking facilities for non-residential uses abut a residential district, a sight-proof fence or hedge of not less than six (6) feet in height shall be provided along the perimeter of the off-street parking facility within the planting strip herein described.
 - b. In the case of a common/shared driveway entrance/exit the requirement for a four (4) feet minimum width planting strip will be waived. However, the remainder of the site shall contain sufficient additional landscaped areas to compensate for the loss of the planting strip or a portion thereof.
2. All off-street parking facilities shall be appropriately broken by linear planting strips or variable shaped islands in the interior of the facility. Such planting strips or islands shall be satisfactorily landscaped with trees or other suitable vegetation and shall constitute no less than five percent (5%) of the total area of the off-street parking facility excluding the four (4) foot planting strip previously mentioned.

SECTION 405.405: COMPLIANCE WITH CHAPTER 535, TREE AND LANDSCAPE CHAPTER

All site plans and preliminary plat shall be subject to and reviewed for compliance with Chapter 535, Tree and Landscape Chapter. Compliance with Chapter 535 shall be verified by the City prior to issuance of a building permit.

SECTION 405.500: STRUCTURES REQUIRED, SPACING REQUIREMENTS, LOT WIDTHS -- SERVICE STATIONS -- RESTROOM FACILITIES

- B. No gasoline station shall be erected within one thousand (1,000) feet of any church, hospital, school or any other such type of public assembly building used by large numbers of people or within one thousand (1,000) feet of an existing filling station or service station or gasoline station. The method of measurement that shall apply shall be the airline distance measured from the nearest boundary of the premises upon which there exists such churches, hospitals, schools, or other types of public assembly, buildings or filling stations or service stations.

SECTION 405.745: PERMANENT SIGN REGULATIONS BY ZONING DISTRICT

- D. *Signs Permitted In All "C" Commercial And "I" Industrial Districts (Non-Residential).* In certain non-residential districts, the following signs are permitted in accordance with the regulations set forth herein:
1. *Ground signs.*
 - b. The following regulations shall apply to all ground (pole and monument) signs in all zoning district

- (4) Ground signs shall not extend nearer than ten (10) feet to the public right-of-way (as measured from the sign edge).

Ms. Powers noted that the configuration of the lot coupled with the small size of the parcel make redevelopment of this site difficult. Staff notes that any commercial use would be challenged by this site shape and size. A small restaurant, coffee shop, or drive-through kiosk would have similar difficulties. Staff also notes that redevelopment of the site is important to the appearance of the area, and the ability to join the property with another parcel for more redevelopment options does not exist. Noting these factors, staff is supportive of the site redevelopment with this use.

As noted above, a series of variances are needed falling into several categories: landscaping, setbacks, and miscellaneous. The landscaping requirements of the City are in place to ensure development is attractive and that adequate buffers are provided between land uses. Street trees add enhancement to a streetscape and provide shade on sidewalks. However, the site size and shape is such that these landscaping features cannot be accommodated. Staff supports these variances, given the small site size and shape. In addition, it is noted that the subject intersection has been enhanced with stamped concrete and upgraded lighting.

The second category of variances relates to setbacks. The proposed site includes a building and gas pump canopy in the same locations they have always been. With the widening of roads over time and modifications of setback requirements since the site was initially constructed, the canopy and building cannot now meet the C-2 District setback requirements. While setback requirements have been established to provide for adequate separation of buildings and uses, and create reasonable amount of open space between structures to enhance the general health, safety and welfare of the community, staff believes the continued use of the building and canopy at the same location will not negatively impact the area. The general public is used to the site layout and the limits of the small, triangular site are obvious to residents and visitors to the area. Similarly, the signs have been in place for some time and are now closer to the street due to street widening. There has been no negative impact from the sign location and placement of them further back from the street could negatively impact circulation within the site.

The final variance relates to the distance from another gas station. As noted above, this was put in place when the density of gas stations within the City was of concern. This item remains in the Code. The service station across the street and the subject site have operated without issue and are both appropriate uses at the subject intersection.

In general, it is staff's opinion that the proposed variances will not impair an adequate supply of light or air to adjacent property, substantially increase congestion in the public streets, increase the danger of fire, endanger the public safety, or substantially diminish or impair property values within the neighborhood.

Ms. Powers stated the code considerations as follows:

1. If the petitioner complied with the provisions of this Zoning Code (does not obtain the variance they are requesting), will they not be able to get a reasonable return from, or make reasonable use of the property?

The proposed redevelopment of the site will result in the same layout and function. If the site is not granted the requested variances, commercial redevelopment would not be an option as the

building and parking would not be adequate to meet current standards. Therefore, a reasonable return would not be obtained.

2. Does the hardship result from the strict application of these regulations?

The application of the regulations on the subject site, which is small and triangular shaped, create the hardships. Staff notes that the site size has been reduced from the original size due to road widening. Strict application of the regulations would severely limit development options for this site.

3. Is the hardship suffered by the property in question?

The subject property is of limited size and a unique shape which significantly limits the development options of the site.

4. Is the hardship the result of the applicant's own actions?

The subject property is of limited size and triangular shape; this is a result of development on and around the site over time and is not due to the applicant's actions.

5. Is the requested variance in harmony with the general purpose and intent of the zoning regulations and does it preserve the spirit?

If the variance is approved the site will be redeveloped as previously laid out. However, the site will be upgraded. In general, this use will be in harmony with the general purpose and intent of the zoning regulations, since it will allow for the reasonable redevelopment of the business at an appropriate location.

6. If the variance is granted, will the public safety and welfare have been assured and will substantial justice have been done?

The public safety and welfare will be assured and substantial justice will have been done because the applicant will be able to use their property to the fullest extent and will have no ill effects on surrounding properties or the City as a whole.

Based on this analysis, it is staff's recommendation to permit variances to allow modification of landscaping requirements, reduced building setbacks, reduced sign setbacks, and modification of the distance between gasoline service stations.

Mr. Meyer asked if any of the board members had questions for Ms. Powers. Mr. Meyer asked if there was anyone in the audience to speak in favor, opposition or in comment of Petition 13-H. Seeing no one present to comment, Mr. Meyer closed the public hearing.

Mr. Jaggi made a motion and Mr. Fann seconded to approve Petition 13-H.

Mr. Meyer requested Ms. Vollmer call the roll, which resulted in the following votes:

Mr. Fann Yes

Mr. Kendall Yes
Mr. Selinger Yes
Mr. Meyer Yes
Mr. Jaggi Yes

There being 5 yes and 0 no vote, Mr. Meyer declared that Petition 13-H was approved.

Mr. Fann presented the findings of fact as follows:

1. The property is located on a tract of land known at 6105 Mexico Road.
2. The lot is presently zoned C-2 Community Commercial District.
3. Adjacent zoning is SD-RC Special District – Retail/Commercial District and R-3 Multiple Family District.

Mr. Jaggi made a motion and Mr. Kendall seconded to approve the findings of fact. All in favor, the motion carried.

Mr. Jaggi presented the Conclusions of Law for Petition 13-E as follows:

1. The variance will not impair the supply of light or air to the adjacent properties.
2. The variance will not increase congestion in the public streets.
3. The variance will not impact the safety of the community.
4. The variance will not impact on the general health and welfare of the community.

Mr. Kendall made a motion and Mr. Fann seconded to enact the Conclusions of Law. All in favor, the Conclusions of the Law were adopted.

PETITION 13-I:

Mr. Meyer stated that the purpose of the meeting was to consider Petition 13-I. Neighbors Credit Union c/o Warren Sign Co. requests a variance to allow signage in the Special District General Retail/Service Commercial District (SD-RC) that exceeds twenty-four (24) square feet in area and a changeable copy sign which exceeds twenty-four (24) square feet in area and a sign which exceeds six (6) feet in height. The property is location on Lot 2 of St. Peters Centre South as recorded in plat book 46 page 359 at the St. Charles County Recorder of Deed Office, more commonly known as 4745 Mexico Road.

Mr. Meyer further stated that the evidence and testimony received this evening would be the only record considered by the Board. Title IV Land Use of the Municipal Code, as amended, shall be Exhibit #1 for this petition.

Mr. Meyer declared the public hearing open to consider Petition 13-I. The petitioner or their agent was requested to step forward to present their position. Ms. Christine Mudd, Warren Sign Co., and Ms. Becky Buell, Neighbors Credit Union were sworn in as the petitioners. Ms. Mudd explained that City regulations allow each business in the Special District one free-standing business sign up to six feet in height per street frontage. Neighbors Credit Union would like to group two of the three permitted signs together to create one sign approximately ten feet tall and sixty-seven square feet in area. The larger and taller sign will be more visible by motorists driving down Mexico Road at 40 mph.

Mr. Meyer asked if there were any questions of the petitioner. Being none, Mr. Ken Braunfeld was sworn in to present the City's position for Petition 13-I.

Mr. Braunfeld stated that the subject property is located in the Special District and is bounded by Mexico Road to the north and Klondike Crossing to the west and south. The property is zoned SD-RC (General Retail/Service Commercial). The property contains the new Neighbors Credit Union which is under construction.

City regulations allow each building in the Special District one free standing business sign up to six feet in height per street frontage. Due to the configuration of the property, it has three street frontages. The applicant has indicated they would group two of the three permitted signs together to create one sign approximately ten feet tall and sixty-seven square feet in area. Although not planned at this time, one additional sign could be constructed along Klondike Crossing and it would be in compliance with all Special District regulations. It is noted that the applicant has indicated that a slightly larger and taller sign will better identify the site and be easier to read.

Based on this, Neighbors Credit Union c/o Warren Sign Co. requests a variance to allow signage that exceeds twenty-four (24) square feet in area and a changeable copy sign which exceeds twenty-four (24) square feet in area and sign which exceeds six (6) feet in height. The property is located on Lot 2 of St. Peters Centre South as recorded in plat book 46 page 359 at the St. Charles County Recorder of Deeds Office, more commonly known as 4745 Mexico Road.

Mr. Braunfeld noted that the variance requested by the applicant is from requirements of the Zoning and Subdivision Regulations (Title IV Land Use Chapter 405 as amended) it states:

SECTION 405.260: ST. PETERS CENTRE SPECIAL DISTRICT

K. *Sign Regulations.*

2. All other developments shall be limited to one (1) freestanding, monument-type business sign per street frontage which shall be limited to a maximum height of six (6) feet and a maximum size of twenty-four (24) square feet per facing and a total aggregate area of forty-eight (48) square feet. A changeable copy sign of a maximum of twenty-four (24) square feet shall be permitted in conjunction with each business sign. The changeable copy sign shall comply with the general regulations of Section 405.745(D)(5) of this Chapter.
 - a. In lieu of a business sign and changeable copy sign, one (1) freestanding, monument-type business sign limited to a maximum of six (6) feet in height and a maximum size of forty-eight (48) square feet per face shall be permitted.

Mr. Braunfeld noted that the Special District continues to develop with a variety of office, banking, and insurance businesses. The City has also been in support of continued development of these and other ancillary retail services.

As also noted earlier, each building is permitted a ground sign per street frontage. The unique configuration of the property creates three frontages. The applicant has indicated they would group two of the three permitted signs together to create one sign approximately ten feet tall and sixty-seven square feet in area. Although not planned at this time, one additional sign could be constructed along Klondike Crossing and it would be in compliance with all Special District regulations. It is noted that the applicant has indicated that a slightly larger and taller sign will better identify the site and be easier to read.

This proposal seems reasonable because the overall signage area for the property will be reduced while benefiting both the applicant and the City. The applicant gets the requested increase in height in exchange for the construction of only two signs on the site in place of three, thus meeting their sign visibility goals. The City gets a reduction in the number of signs, which reduces the overall number of signs along Mexico Road and therefore, the general road frontage clutter.

Staff also believes that one slightly larger sign will be more attractive than up to three separate signs because the owner can concentrate their design and investment into just two sign structures. A review of the proposed sign finds a modern and attractive design that will be appropriate along Mexico Road in the Special District.

Mr. Braunfeld stated the code considerations as follows:

1. If the petitioner complied with the provisions of this Zoning Code (does not obtain the variance they are requesting), will they not be able to get a reasonable return from, or make reasonable use of the property?

The proposed use could be identified by three smaller signs. However, by allowing for the combining of signage the site will be more visible but have less total signage. This furthers the goals of the Special District aesthetics, and ensures a reasonable return.

2. Does the hardship result from the strict application of these regulations?

If the sign complies with the code, visibility may be limited because of the reduced height which may impose a hardship for the applicant. A variance will allow them to have a maximum visibility from the nearby commercial intersection.

3. Is the hardship suffered by the property in question?

The installation of a smaller, lower sign could pose a hardship for the subject property. The grouping of two of the three permitted ground sign together will further the goals of the applicant and the Special District.

4. Is the hardship the result of the applicant's own actions?

The property was zoned prior to the purchase of the property. The grouping together of ground signage will further the aesthetic goals of the Special District and the City.

5. Is the requested variance in harmony with the general purpose and intent of the zoning regulations and does it preserve the spirit?

If the variance is approved the development will be in harmony with the general purpose and intent of the zoning regulations, since the sign height and size increase will not cause hazards to pedestrian and vehicular traffic or cause blighting within the community.

6. If the variance is granted, will the public safety and welfare have been assured and will substantial justice have been done?

The public safety and welfare will have been assured and substantial justice will have been done because the applicant will have been able to use their property to the fullest extent and will have no ill effects on surrounding properties or the City as a whole.

Based on this analysis staff recommends approval of the requested variance to allow an increase in the height and size of the sign with the following contingencies:

1. The property shall contain a maximum of two ground signs.
2. The maximum height of one ground sign shall not exceed:
 - a. Eleven (11) feet in height.
 - b. The combined fixed and changeable copy portion of the sign shall not exceed seventy-five (75) square feet in area.
 - c. The changeable copy portion of the sign shall not exceed thirty (30) square feet.
3. The second ground sign on the property shall be in compliance with all Special District sign regulations.

Mr. Meyer asked if any of the board members had questions for Mr. Braunfeld. Mr. Meyer asked if there was anyone in the audience to speak in favor, opposition or in comment of Petition 13-I. Seeing no one present to comment, Mr. Meyer closed the public hearing.

Mr. Kendall made a motion and Mr. Selinger seconded to approve Petition 13-I.

Mr. Meyer requested Ms. Vollmer call the roll, which resulted in the following votes:

Mr. Fann	Yes
Mr. Kendall	Yes
Mr. Selinger	Yes
Mr. Meyer	Yes
Mr. Jaggi	Yes

There being 5 yes and 0 no vote, Mr. Meyer declared that Petition 13-I was approved.

Mr. Jaggi presented the findings of fact as follows:

1. The property is located on lot 2A of the Resubdivision of Lot 2 of St. Peters Centre South, as recorded in book 46 page 359 at the St. Charles County Recorder of Deeds.
2. The lot is presently zoned Special District General Retail/Service Commercial (SD-RC).
3. The surrounding zoning is presently zoned Special District General Retail/Service Commercial (SD-RC).

Mr. Fann made a motion and Mr. Kendall seconded to approve the findings of fact. All in favor, the motion carried.

Mr. Fann presented the Conclusions of Law for Petition 13-I as follows:

1. The variance will not impair the supply of light or air to the adjacent properties.
2. The variance will not increase congestion in the public streets.
3. The variance will not impact the safety of the community.
4. The variance will not impact on the general health and welfare of the community.

Mr. Jaggi made a motion and Mr. Selinger seconded to enact the Conclusions of Law. All in favor, the Conclusions of the Law were adopted.

PETITION 13-J:

Mr. Meyer stated that the purpose of the meeting was to consider Petition 13-J. Kennelwood Village Inc. requests a variance to allow a reduction in the side yard setback on the north and south side of the property in the C-2 Community Commercial District. The property is located on the east side of South Church Street, north of Mexico Road, more commonly known as 418 South Church Street.

Mr. Meyer further stated that the evidence and testimony received this evening would be the only record considered by the Board. Title IV Land Use of the Municipal Code, as amended, shall be Exhibit #1 for this petition.

Mr. Meyer declared the public hearing open to consider Petition 13-J. The petitioner or their agent was requested to step forward to present their position. Mr. Gabriel DuBois, St. Charles Engineering and Surveying was sworn in as the petitioner. Mr. DuBois explained that Kennelwood is looking to expand/update their outdoor area, which includes a new covered pavilion to the rear as well as and expansion of a covered canopy to the south. A covered canopy currently exists to the north. The existing and new canopies will serve to provide a more comfortable environment and improve sanitation.

Mr. Meyer asked if there were any questions of the petitioner. Being none, Mr. Ken Braunfeld was sworn in to present the City's position for Petition 13-J.

Mr. Braunfeld stated that the proposed project is located on a 0.91 acre tract of ground on the east side of South Church Street, north of Mexico Road. Kennelwood Pet Resort has been at this location since 1995. The business originally began as a comprehensive pet care store including grooming and training. In 1998 it expanded to include overnight animal boarding. In February of 2009 the existing one-story, 6,950 square foot building was expanded by 4,751 square feet to accommodate an indoor kennel operation as well as revised and expanded outdoor training, exercise and play areas. The current and proposed outside areas are screened by a sight proof fence. It is noted that the canopy expansion is being reviewed at the staff level, as the project does not warrant a review by the Planning and Zoning Commission. It is also noted that over the last eighteen years, Kennelwood Village has operated without any problems.

The current proposal further refines the outdoor training, exercise, and play areas. The updates include a new covered pavilion to the rear as well as expansion of a covered canopy to the south. A covered canopy currently exists to the north. The existing and new canopies will serve to provide both a more comfortable environment and improve sanitation.

The canopies will provide shade for the animals, thus providing for a more comfortable environment during the hot summer months. The canopies will also allow for enhanced sanitary conditions. Currently waste is collected by the employees and thrown away. However, any residue washes off into the storm water system. The installation of the canopies in conjunction with new curbing will keep rainwater out and allow for better collection of any waste residue by directing the flow into new sanitary sewer drains to be installed under the canopies.

Based on this, Kennelwood Village Inc. requests a variance to allow a reduction in the side yard setback on the north and south side of the property in the C-2 Community Commercial District. The property is

located on the east side of South Church Street, north of Mexico Road, more commonly known as 418 South Church Street.

Mr. Braunfeld noted that the variance requested by the applicant is from requirements of the Zoning and Subdivision Regulations (Title IV Land Use Chapter 405 as amended) it states:

Section 405.200 (C-2 Community Commercial)

G. Yard Requirements.

2. Side yard. Side yard width shall be ten (10) feet except when adjacent to a residential district, then twenty (20) feet is required.

Mr. Braunfeld noted that the canopies are being used to provide a more comfortable environment for the animals and to better control waste run-off and improve sanitation. To limit the amount of rain and storm water that could get into the proposed sanitary sewer system, the canopies need to be extended out as far as possible. A review of the site finds the existing canopy to the north is adjacent to a seventeen foot wide green belt beyond which is a parking lot of a church. To the south the proposed canopy would be adjacent to a driveway used by an equipment rental company. Therefore, the proximity of the greenbelt and driveways will prevent the encroachments from interfering with the use of the adjacent properties and mitigate any visual impact.

Since the facility included the re-use of an older building, the existing layout of the building and lot restrict the practical options to accommodate canopy additions, thus causing the existing and proposed encroachments. It is noted that a review by the Building Department found that the existing and proposed encroachments can be designed in a manner to conform to the Building Code.

Therefore, it is in both the applicant's interest and the general public's interest to allow the canopy encroachments to provide a more comfortable and sanitary condition for the animals and the site.

Mr. Braunfeld stated the code considerations as follows:

1. If the petitioner complied with the provisions of this Zoning Code (does not obtain the variance they are requesting), will they not be able to get a reasonable return from, or make reasonable use of the property?

The proposed canopies are being used to provide a more comfortable environment for the animals and to better waste run-off control thus improving sanitation and the environment. The proposed variance allows for the most practical mechanism to accomplish these goals, providing for the reasonable use of the property.

2. Does the hardship result from the strict application of these regulations?

While there will be an encroachment of the side yard setbacks, the visual impact of the encroachment will be mitigated by the adjacent greenbelt and driveways. The strict application of setback regulations would make the practical improvements to the facility difficult resulting in a hardship.

3. Is the hardship suffered by the property in question?

The subject property is of limited size and the unique characteristics and environmental factors of the facility restrict the practical options for an expansion and, therefore, the ability to achieve the highest and best use of the property.

4. Is the hardship the result of the applicant's own actions?

The subject property is of limited size, and the unique characteristics of the facility restrict the practical location for the improvements thereby creating the hardship.

5. Is the requested variance in harmony with the general purpose and intent of the zoning regulations and does it preserve the spirit?

If the variance is approved it would be in harmony with the general purpose and intent of the zoning regulations, since it will allow for the reasonable expansion of the facility, thus providing for the reasonable use of the property.

6. If the variance is granted, will the public safety and welfare have been assured and will substantial justice have been done?

The public safety and welfare will have been assured and substantial justice will have been done because the applicant will have been able to use their property to the fullest extent and will have no ill effects on surrounding properties or the City as a whole.

Based on this analysis it is staff's recommendation to permit a variance to allow reduction in the side yard setback on the north and south side of the property with the following contingencies:

1. The setback shall only apply to open air canopies.
2. The open air canopies may be fenced and screened.
3. A zero foot setback shall be maintained on the north side of the building.
4. A five foot setback shall be maintained on the south side of the building.

Mr. Meyer asked if any of the board members had questions for Mr. Braunfeld. Mr. Meyer asked if there was anyone in the audience to speak in favor, opposition or in comment of Petition 13-J. Seeing no one present to comment, Mr. Meyer closed the public hearing.

Mr. Jaggi made a motion and Mr. Fann seconded to approve Petition 13-J

Mr. Meyer requested Ms. Vollmer call the roll, which resulted in the following votes:

Mr. Fann	Yes
Mr. Kendall	Yes
Mr. Selinger	Yes
Mr. Meyer	Yes
Mr. Jaggi	Yes

There being 5 yes and 0 no vote, Mr. Meyer declared that Petition 13-J was approved.

Mr. Selinger presented the findings of fact as follows:

1. The property is located on Lot 1 of Kennelwood Pet Resort – Equip Rental & Sales Boundary Adjustment Plat as recorded in Plat Book 46 Page 101, more commonly known as 418 South Church Street.
2. The lot is presently zoned C-2 Community Commercial District.
3. Adjacent zoning is C-2 Community Commercial District to the south and east, C-1 Neighborhood Commercial to the north, and South Church Street to the west.

Mr. Fann made a motion and Mr. Jaggi seconded to approve the findings of fact. All in favor, the motion carried.

Mr. Fann presented the Conclusions of Law for Petition 13-J as follows:

1. The variance will not impair the supply of light or air to the adjacent properties.
2. The variance will not increase congestion in the public streets.
3. The variance will not impact the safety of the community.
4. The variance will not impact on the general health and welfare of the community.

Mr. Jaggi made a motion and Mr. Kendall seconded to enact the Conclusions of Law. All in favor, the Conclusions of the Law were adopted.

Mr. Meyer made a motion and Mr. Jaggi seconded to adjourn the meeting at 7:12 p.m. All in favor, the motion carried.

Respectfully submitted:

Melissa Vollmer
Recording Secretary

Dan Meyer
Chairman