

VARIANCE STAFF REPORT

City-County Planning Commission
1141 State Street
Bowling Green, Kentucky 42101
(270) 842-1953

Summary: The applicants are requesting two variances for a proposed commercial building. The property is zoned HB (Highway Business).

Docket Number: 2009-V-16

Public Hearing Date: October 22, 2009

Pre-Application Meeting Date: August 6, 2009

Property Owners:

Steve & Lori Lee Rone
1647 Porter Pike
Bowling Green, KY 42103

Site Plan: See attached map.

Variance Requests:

1) 168' variance from the 250' setback from the residential zoning district for a proposed drive-thru with speakers; and,

2) 11' variance from the 40' setback requirement from the residential zoning district for a proposed commercial building.

Acreage or Square Footage of Tract:
1.0288 Acres

PVA Parcel Number:
051B-02-006

Site District: Urban Density Development District

Focal Point: 102-1A Bypass North

Characteristics: Dominant Use Area. Strip shopping center and neighborhood commercial on 31-W Bypass. Some transition to institutional in area surrounding the medical complex.

Existing Land Use: Commercial

Zoning History: HB (Highway Business) is the original zoning.

Flood Plain:

The property is not located in the 100 year flood area according to FEMA map #21227C0306E.

Traffic Considerations:

The property has frontage on U.S. 31-W By-Pass, an urban minor arterial roadway, with 80' of right-of-way and 40' of pavement and frontage on Brockley Way, a local City Street, with 50' of right-of-way and 24' of pavement.

Location of Proposed Variances:

430 U.S. 31-W By-Pass

Items of concern:

- Stacking spaces for drive thru
- Traffic flow

Previous Variances in the Immediate Area.

- 250 Park Street, Medical Center at BG, 14' var. from 25' setback, 02-22-90.
- 335 U.S. 31-W By-Pass, Old Fort Sandwich Shop, 8' var. from 20' setback for a sign, 3' var. from 9' above curb requirement for a sign, 02-14-72.
- 350 U.S. 31-W By-Pass, The Kroger Co., 112' var. from 250' setback adjacent to residential for drive thru, 11-16-06.
- 226 Riverwood Avenue, H. W. Huffman, 3' var. from side yard setback & 4' var. from rear setback for an accessory structure, 11-12-70.
- 420 U.S. 31-W By-Pass, Lavoy Burch, 25' var. from 25' rear setback for an addition, 02-27-86.
- 503 U.S. 31-W By-Pass, Madrian Lee, 33' var. from 40' front yard setback & 24' var. from 25' front setback along Raymer Way, 12-10-87.
- 115 Nellums Avenue, Mark, Wayne & Yvonne Guy, 8.8' var. from 25' rear setback, 12-10-98.
- 543 U.S. 31-W By-Pass, Service One Credit Union, 25.5' var. from 40' setback for an ATM, 02-25-99.

ZONING ORDINANCE REVIEW	HIGHWAY BUSINESS DISTRICT
Article: 5.2.4.A.5.b.(1) & 4.6.8.C.1	<p><u>5.2.4.A.5.b.(1) Specific Use Standards</u> A drive thru must be located at least 250' from a residential district.</p> <p><u>4.6.8.C.1 Additional Setback Adjacent to Residential</u> HB (Highway Business) zoning district requires a 40' rear yard setback adjacent to residential for all new structures.</p>
ZONING ORDINANCE COMPLIANCE	
Zoning Ordinance Article:	Application:
	<p>The applicants are proposing to demolish the existing building located at 430 U.S. 31-W By-Pass and plan to build a 10,010 square foot commercial building with drive-thru window that includes a speaker and a pick-up window without a speaker. They are planning to have one access from U.S. 31-W By-Pass that aligns with the driveway across the road. There will be one access from Brockley Way. The applicants are also decreasing the amount of lot coverage that currently exists and plan to cover only 77 percent of the lot compared to the existing 91 percent.</p>

VARIANCE REQUESTS

Docket number: 2009-V-16

KRS 100.243 - Findings necessary for granting variances:

- (1) Before any variance is granted, the board must find that the granting of the variance will not adversely affect the public health, safety or welfare, will not alter the essential character of the general vicinity, will not cause a hazard or a nuisance to the public, and will not allow an unreasonable circumvention of the requirements of the zoning regulations. In making these findings, the board shall consider whether:
 - (a) The requested variance arises from special circumstances which do not generally apply to land in the general vicinity, or in the same zone;
 - (b) The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant; and
 - (c) The circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought.
- (2) The board shall deny any request for a variance arising from circumstances that are the result of willful violations of the zoning regulation by the applicant subsequent to the adoption of the zoning regulation from which relief is sought.

The provision of the Zoning Ordinance from which these variances are requested is referenced in Section 4.6.8.C.1 & 5.2.4.A.5.b.(1):

- The applicants are requesting a 168' variance from the 250' setback requirement from residential zoning for the proposed drive-thru speaker and an 11' variance from the 40' setback requirement from residential zoning for a proposed commercial building located at 430 U.S. 31-W By-Pass.

STAFF REVIEW AND RECOMMENDATION

The Staff finds that the proposed **Variances** are in compliance with KRS 100.243 (Findings necessary for granting variances). Staff recommends that the Variance requests be **APPROVED**.

MOTIONS

MOTION TO **APPROVE** THE **VARIANCE** REQUESTS:

- I make the motion to **approve** the request for variances at 430 U.S. 31-W By-Pass, docket number 2009-V-16, a 168' variance from the 250' setback requirement from residential zoning for the proposed drive-thru speaker and an 11' variance from the 40' setback requirement from residential zoning.
- The testimony presented in this public hearing has shown that the granting of these variances will not adversely affect the public health, safety or welfare; will not alter the essential character of the general vicinity; will not cause a hazard or a nuisance to the public; and will not allow an unreasonable circumvention of the requirements of the zoning regulations.

OR

MOTION TO **DENY VARIANCE**:

- I make the motion to **deny** the request for variances at 430 U.S. 31-W By-Pass, docket number 2009-V-16, a 168' variance from the 250' setback requirement from residential zoning for the proposed drive-thru speaker, an 11' variance from the 40' setback requirement from residential zoning.
- Sufficient testimony has **not** been presented in this public hearing that the requested variances meet the criteria set forth in KRS 100.243, "Findings necessary for granting variances," as:

(Choose appropriate findings and specific items)

- **will** adversely affect the public health, safety or welfare.
- **will** alter the essential character of the general vicinity.
- **will** cause a hazard or a nuisance to the public
- **will** allow an unreasonable circumvention of the requirements of the zoning regulations.
- The proposed development plan does **not** show that the requested variance arises from special circumstances which do not generally apply to land in the general vicinity, or in the same zone;
- The proposed development plan does **not** show that the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant;
- The circumstances are the result of willful violations of the zoning regulation by the applicant subsequent to the adoption of the zoning regulation from which relief is sought.