

Note –The Community Development Building will be open for the public to attend. Those that do attend will be asked to watch the meeting from the building’s lobby. Attendees will only be allowed into the Chambers to make a public comment or to speak during any public hearing on the agenda. Those who do attend should observe the CDC recommendations concerning hygiene and social distancing (keeping at least 6 feet away from other persons present at the meeting). Moreover, no one should attend this meeting if they are experiencing any type of illness involving a fever, sneezing, or coughing. Those wishing to make public comments who do not want to attend the meeting may do so in written form, submitted to planning@bentonvillear.com by 3:00 p.m. on the day of the meeting. Those comments will be communicated to the members of the Board of Adjustment. While email comments are encouraged, accommodation has also been made to allow Bentonville citizens to make “live” public comments orally in the event they cannot or do not feel comfortable attending the meeting in person. To do so, please send an email indicating a desire to make “live” oral public comments to planning@bentonvillear.com by at least 3:00pm on the day of the meeting and a reply email will be sent with instructions about how your comments can be made. Making comments will require you to register with your name, address, phone number, and email address. Procedures with respect to oral public comments still apply.



**BOARD OF ADJUSTMENT
AGENDA**

December 9, 2020

Registration Link: https://us02web.zoom.us/webinar/register/WN_F_shJJ-YTKKTsWgnUGUn1A

- I. Call to Order**
- II. Approval of Minutes**
- III. New Business**

- 1. Wal-Mart Real Estate Business Trust** **Variance***
406 S Walton Boulevard (VAR20-0031)
 - Sign Regulations

- 2. Yates** **Variance***
332 Crestview Drive (VAR20-0033)
 - Setbacks

IV. Other Business

- 1. Update on ADU Ordinance Amendment**
- 2. Election of Officers**
 - a. Chair (Current Chair: Rick Rogers)
 - b. Vice-Chair (Current Vice-Chair: Sam Pearson)
 - c. Secretary (Current Secretary: Rustin Chrisco)

V. Adjournment

**Denotes public hearing*

Board of Adjustment
Minutes
November 18, 2020

Meeting called to order by Rick Rogers, Chairman.

Present: Rustin Chrisco, Joe Haynie, Sam Pearson, and Rick Rogers
Absent: Jan Holland
Staff: Ali Worley

Motion by Mr. Haynie, seconded by Mr. Rogers to approve the minutes of October 28, 2020 as approved
Approved 4-0

Old Business

Item #1

Clear T, LLC: Variance request for 408 SE D Street, Setbacks, VAR20-0026
Opened public hearing
No public comments
Kahry Wright, representative, speaks his reason for the variance request.
There is discussion amongst the Board and the representative.
Approved 4-0

New Business

Item #1

NWA Storage 1, LLC: Variance request for SW Regional Airport Boulevard, Sign Regulations, VAR20-0029
Ali Worley reads the staff report.
Opened public hearing
No public comments
Closed public hearing
Tim Sorey, representative, speaks on the reason for the variance request.
There is discussion amongst the Board, staff, and the representative.
Approved 4-0

Item #2

1SQFT, LLC: Variance request for 302 SW Chardonnay Boulevard, Setbacks, VAR20-0030
Ali Worley reads the staff report.
Mr. Haynie recuses himself.
Opened public hearing
No public comments
Closed public hearing
Alex Constein, representative, speaks on the reason for the variance request.
There is discussion amongst the Board, staff, and the representative.
Approved 3-0

Other Business

The December 23, 2020 meeting will be cancelled.

Planning Commission voted to approve an accessory structure ordinance amendment.

Officers will be elected at the next meeting, December 9, 2020.

Meeting adjourned

Ali Worley

*A copy of this recording can be obtained from the Bentonville Planning Department.

BOARD OF ADJUSTMENT STAFF REPORT



Wal-Mart Real Estate Business Trust

406 S Walton Boulevard

BOA Date: 12/9/2020

Reviewer: Ali Worley, Planning Technician

Project Number	VAR20-0031
Applicant / Current Owner	Wal-Mart Real Estate Business Trust
Site Area	N/A
Current Zoning	C-2, General Commercial
Variance Request	Zoning Code Article 801.12

Property Description

This property is located at 406 S Walton Boulevard and is home to Walmart Store #100. It is currently zoned C-2, General Commercial.

Regulation

According to Zoning Code Article 801.12, General regulations, section h, Nonconforming signs, subsection 4, a nonconforming sign shall be removed or brought into compliance if the development on the site on which the sign is located requires large scale development approval.

Variance Request

The applicant is requesting to allow the existing nonconforming pole sign to remain as is.

Background

On December 1, 2020 Planning Commission approved a large scale development for an expansion to Walmart's pick-up area. This large scale development necessitates bringing the existing pole sign into compliance with the city's sign code. Currently, pole signs are prohibited.

According to the applicant's narrative, the location of the existing sign in relation to Peel Mansion would cause significant view obstructions if it were to be brought into compliance. The applicant states that any reduction in height would cause the sign to be further obscured from the mature trees, landscaping, and dense vegetation on the Peel Mansion site.

The applicant states that the sign has been in its current location since 1992 and only a portion of Walmart Store 100 is being expanded.

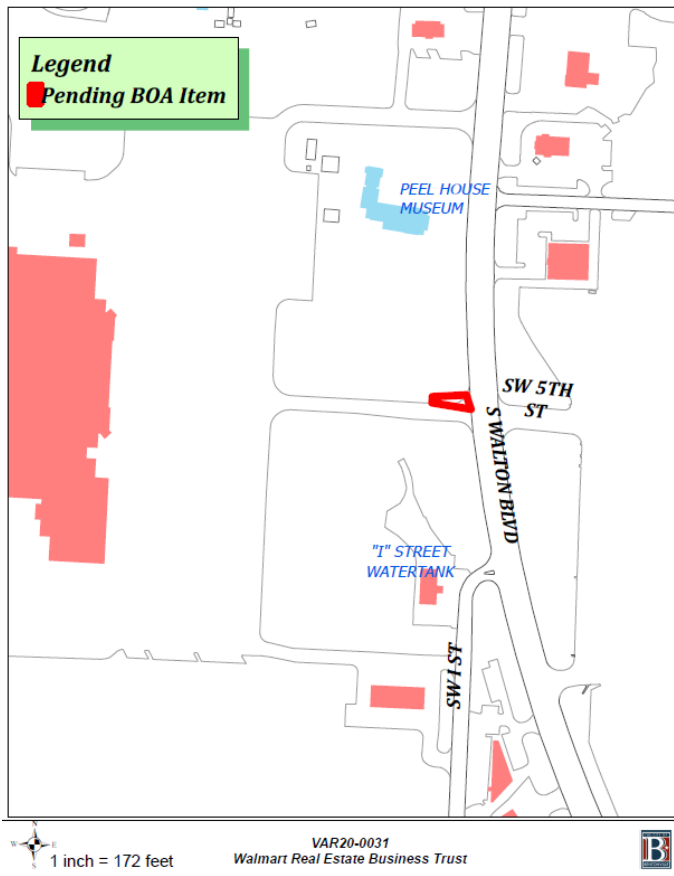
Public Comment

Staff has **NOT** received public comment regarding this request.

Conditions of Approval

If approved, the following conditions shall apply:

1. The approved variance shall be for the proposed sign height, location, and materials as provided by the applicant within the application.
2. The applicant shall be required to obtain an approved sign permit prior to construction.



BOARD OF ADJUSTMENT STAFF REPORT

Section 301.10.c, Standards of Approval, of the Zoning Code

Standards for approval. A variance from the terms of this chapter shall not be granted by the board of adjustment unless and until:

(1) The applicant demonstrates that:

- a. special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, structure or buildings in the same district;
- b. that literal interpretation of the provisions of this chapter would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this chapter;
- c. that special conditions and circumstances do not result from the actions of the applicant; and,
- d. that granting the variance requested will not confer on the applicant any special privilege that is denied by this chapter to other lands, structures, or buildings in the same district.

(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.

(3) The board of 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.

(4) The board of adjustment shall further make a finding that the granting of the variance will be in harmony with the general purpose and intent of this chapter, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

(5) *Conditions.* In granting any variance, the board of 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 this chapter.

(6) *Uses.* Under no circumstances shall the board of adjustment grant a variance to allow a use not permissible under the terms of this chapter in the district involved, or any use expressly or by implication prohibited by the terms of this chapter in said district.

November 12, 2020

VIA ELECTRONIC MAIL
planning@bentonvillear.com

Board of Adjustments
City of Bentonville
305 SW A Street
Bentonville, AR 72712

Re: Variance Request – Bentonville Sign Ordinance – Walmart Store #100,
Bentonville, Arkansas

To Whom it May Concern:

On behalf of Wal-Mart Real Estate Business Trust (“Walmart”) this letter is provided as a formal request for a variance regarding certain signage on Walmart’s property located at 406 S. Walton Blvd, Bentonville, AR 72712, Parcel Number 01-01133-000 (“Store #100”). As required, please find attached a General Warranty Deed for the real property on which Store #100 is located and a signed acknowledgment from Walmart.

As a result of Walmart’s proposed improvements to a portion of Store #100, the Planning Department for the City of Bentonville (“City”) has noted that the current pole sign located on Store #100 is non-conforming and must be brought into compliance pursuant to Section 801.12(h) of the Bentonville Sign Ordinance (“Sign Ordinance”), unless a variance is obtained to allow Walmart to retain such pole sign as currently exists. Pictures of the pole sign on Store #100 are depicted on Exhibit A attached hereto.

Walmart respectfully requests a variance to allow the existing non-conforming pole sign to remain non-conforming in connection with the planned improvements to a portion of Store #100. According to the City, the pole sign violates the specifications for freestanding signs stated in Section 801.15 of the Sign Ordinance; however, the Board of Adjustments may grant a variance for the pole sign pursuant to Section 301.10 of the Bentonville Zoning Code.

In consideration of Walmart’s variance request, Walmart provides the following justifications of special conditions and circumstances for consideration pursuant to Section 301.10:

- Special conditions and circumstance affecting Store #100 arise due to the current location of the Peel Mansion Museum & Heritage Gardens (“Peel Mansion”) in relation to Store

#100 and S. Walton Boulevard. In particular, the Peel Mansion is located at 400 S Walton Boulevard, which is situated directly in front of Store #100 and between Store #100 and S. Walton Boulevard. Conforming the existing pole sign to the Sign Ordinance would require such sign to be reduced in height, among other requirements. The Peel Mansion property contains certain improvements, numerous mature trees and other landscaping, as well as dense vegetation, which obscures Store #100, including a portion of the current pole sign, from S. Walton Boulevard. As shown in Exhibit A, any reduction in the height of the pole sign would further obscure the sign from S. Walton Boulevard due to the improvements, trees and vegetation of the Peel Mansion. The location of Store #100 behind the Peel Mansion and the existence of their improvements, trees and vegetation creates a special condition which is unique to Store #100 and not applicable to any other lands in the same district.

- In the event the pole sign is brought into conformity with the Sign Ordinance, Walmart would be deprived of rights commonly enjoyed by other properties along S. Walton Boulevard. A conforming sign would be materially obscured by the improvements, trees and vegetation of the Peel Mansion. As pictured on Exhibit B, similar properties including those operated by Arvest Bank, Panda Express and McDonalds possess non-conforming pole signs that are not at risk of being obscured by improvements, trees and vegetation of neighboring properties. A literal interpretation of the Sign Ordinance requiring Walmart to conform the pole sign would deprive Walmart from enjoying the reasonable advertising and marketing rights enjoyed by other nearby properties.
- The circumstances surrounding a conforming sign being further obscured is not the result of any action by Walmart, but rather the result of improvements, trees and vegetation of the Peel Mansion, which Walmart does not control.
- Due to the above special conditions and circumstances, granting Walmart the requested variance for the current pole sign is the minimum variance that will make possible the reasonable use of the pole sign for its intended purpose, and any reduction in height or required conformity of the pole sign to the Sign Ordinance would prevent the reasonable use of displaying visible signage on S. Walton Boulevard for Store #100.
- The pole sign has existed in its current location on Store #100 without controversy since 1992, has not been injurious to the neighborhood or otherwise determinantal to the public welfare, and, but for the planned improvements to only a portion of Store #100, such pole sign would be allowed to remain in harmony with the general purpose and intent of the Bentonville Zoning Code. Granting of a variance would be consistent with the non-controversial and harmonious existence of the pole sign since originally installed in 1992.

KUTAKROCK

Board of Adjustments
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For the above reasons, Walmart respectfully requests the Board of Adjustments approve a variance allowing the pole sign to remain in connection with the planned improvements to a portion of Store #100.

Walmart would like to thank the Board of Adjustments for taking the time to consider this variance request, and should you have any questions, comments or need additional information, please contact me at your convenience.

Sincerely,



Terry W. Pool

cc: Camille Steadman Thompson, Staff Attorney, City of Bentonville
(via electronic mail: cthompson@bentonvillear.com)

Attachments

TWP/hdp

KUTAKROCK

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EXHIBIT A



KUTAKROCK

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EXHIBIT A

[continued]



KUTAKROCK

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EXHIBIT B



KUTAKROCK

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EXHIBIT B

[continued]



BOARD OF ADJUSTMENT STAFF REPORT



Yates

323 Crestview Drive

BOA Date: 12/9/2020

Reviewer: Ali Worley, Planning Technician

Project Number	VAR20-0033
Applicant / Current Owner	Hall Yates
Site Area	+/- 0.25 acres
Current Zoning	R-1, Single Family Residential
Variance Request	Zoning Code Article 401.07

Property Description

This property is located at 323 Crestview Drive. It is currently zoned R-1, Single Family Residential and is surrounded by R-1 on all sides.

Regulation

According to Zoning Code Article 401.07, Residential districts regulations, section c, Residential setback standards, subsection 2, Garages, the minimum front setback for a street-facing garage shall be 30 feet from the property line that the garage faces.

Variance Request

The applicant is requesting a setback of 25 feet, which is a variance of five feet.

Background

Because the property has dual street frontage with Crestview Drive to the south and NW 5th Street to the north, a garage facing either street shall have a setback of 30 feet. According to the applicant's narrative, NW 5th Street, although being classified as a Collector street per the Master Street Plan, is functioning more like a residential street as there it dead ends to the west. Therefore, the applicant is seeking a variance of the street-facing garage setback standard, while still meeting the intent of a rear yard setback of 25 feet.

Per our Code, residences are not allowed access onto a Collector street. However, Planning Commission approved a waiver on December 1, 2020 for the applicant to be able to access NW 5th Street.

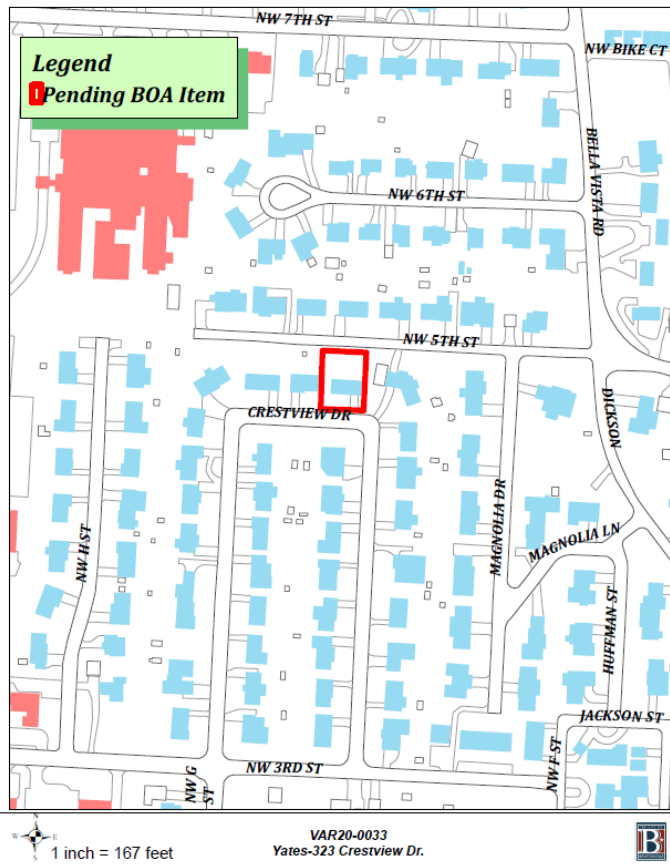
Public Comment

Staff has **NOT** received public comment regarding this request.

Conditions of Approval

If approved, the following conditions shall apply:

1. The approved variance shall be for the proposed layout and setbacks, as provided by the applicant within this application.
2. The applicant shall be required to obtain an approved building permit prior to construction.



1 inch = 167 feet

VAR20-0033
Yates-323 Crestview Dr.



BOARD OF ADJUSTMENT STAFF REPORT

Section 301.10.c, Standards of Approval, of the Zoning Code

Standards for approval. A variance from the terms of this chapter shall not be granted by the board of adjustment unless and until:

(1) The applicant demonstrates that:

- a. special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, structure or buildings in the same district;
- b. that literal interpretation of the provisions of this chapter would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this chapter;
- c. that special conditions and circumstances do not result from the actions of the applicant; and,
- d. that granting the variance requested will not confer on the applicant any special privilege that is denied by this chapter to other lands, structures, or buildings in the same district.

(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.

(3) The board of 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.

(4) The board of adjustment shall further make a finding that the granting of the variance will be in harmony with the general purpose and intent of this chapter, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

(5) *Conditions.* In granting any variance, the board of 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 this chapter.

(6) *Uses.* Under no circumstances shall the board of adjustment grant a variance to allow a use not permissible under the terms of this chapter in the district involved, or any use expressly or by implication prohibited by the terms of this chapter in said district.

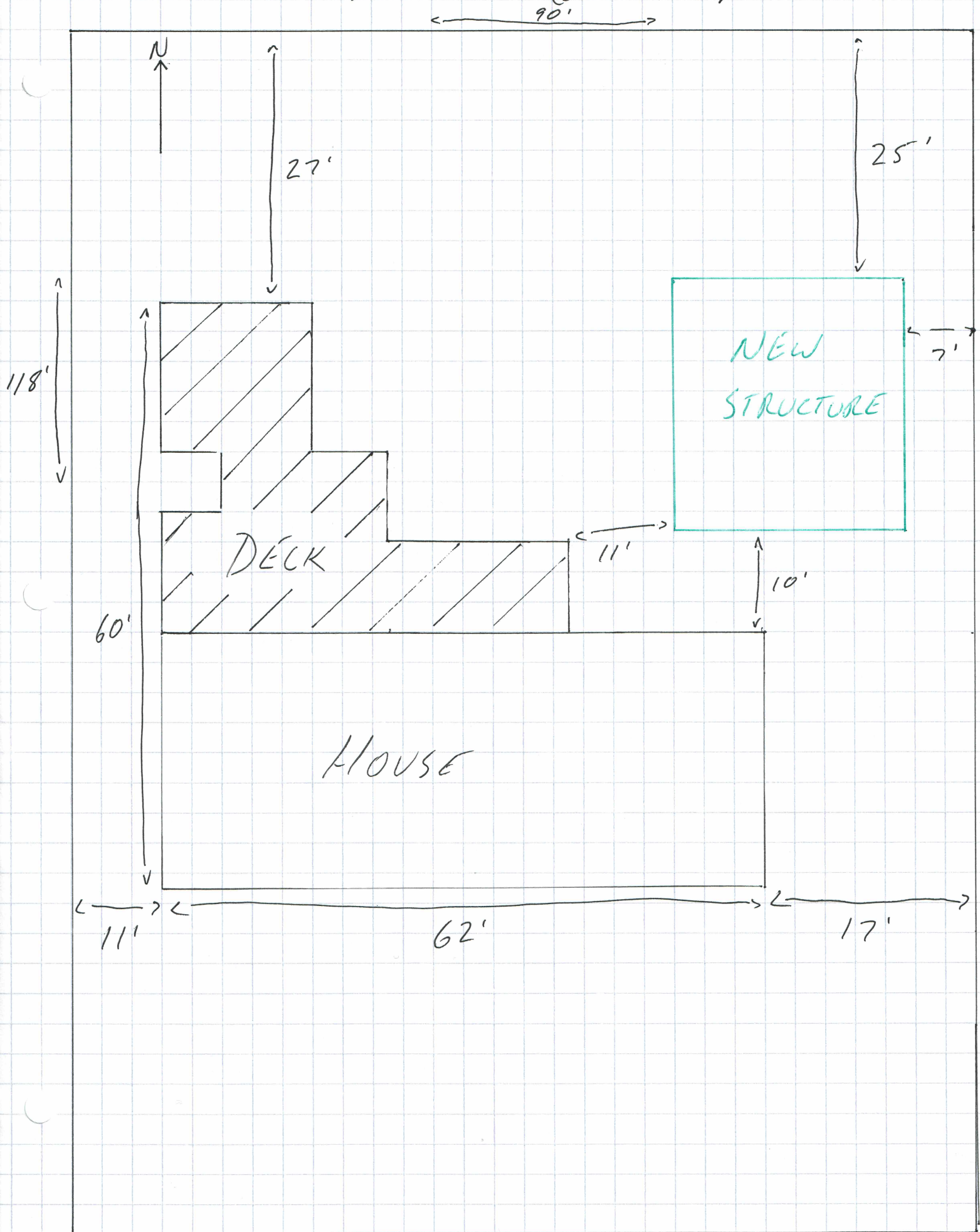
323 Crestview Drive Variance Board of Adjustment

The applicants are of the understanding that special conditions and circumstances exist in relation to building a proposed structure on 323 Crestview Drive, which may or may not be applicable to other properties in the same district. The section of NW 5th Street in question has been designated a "Collector Road" however does not adhere to the minimum 70ft of width required for "Collector Road" designation. This section of NW 5th Street is also a no-through road for the entire length of road west of the Bella Vista Road junction. Both circumstances are unlikely to ever change.

The literal interpretation of the "Collector Road" ordinance would deprive the applicants of the right to effectively use their property's entire assets, in this case dual-road frontage. This is the only "Collector Road" in the downtown district that does not function as, or adhere to, the practical purposes of a "Collector Road".

These special conditions and circumstances were not a result of the applicants' actions. They purchased the 323 Crestview Drive property with the understanding that dual-road frontage could be utilized as proposed.

323 CRESTVIEW SITE PLAN (SCALE 1:3)





Amendment to Accessory Structures

PC Date: 11/17/2020

Reviewer: Shelli Kerr, AICP, Comprehensive Planning Manager

Type	Amendment
Code Impacted	Zoning Code
Section(s)	Art. 601 Use Regulations

Proposed Changes

The proposed changes are designed so that all accessory structures, whether residential or non-residential, are regulated the same. It also eliminates the maximum footprint requirements. Other regulations including the maximum percent of primary structure, lot coverage and setbacks will determine the size. This allows the structure to be in-scale with the lot and the primary structure, without specifying an exact size.

The amendment proposes the following:

1. Eliminate distinguishing between detached and attached accessory structures. By its definition, an accessory structure is detached.
2. Equally apply the maximum size for the accessory structure as a maximum of 50% of the primary structure. Currently this is 40% for a non-residential structure and 50% for a residential structure.
3. Eliminate the maximum footprint of 720 sq. ft. as well the setbacks required if a variance is given to exceed the maximum footprint.
4. Exempt lots greater than two acres from the maximum size limit. Currently A1 and RE districts are allowed a maximum footprint of 1,000 sq. ft.
5. For all accessory structures less than or equal to 720 sq. ft., the side and rear setbacks should be 7' to meet Fire Code regulations.
6. For all accessory structures larger than 720 sq. ft., the structure must meet the side and rear setbacks as required by the zoning district.
7. Require similar architectural design only on accessory structures over 200 sq. ft. Currently, all accessory structures are required to have a similar architectural design as the primary structure.
8. Eliminate the requirements regarding barns and stables. Currently, they are not considered an accessory structure and have to meet the requirements of the zoning district. The proposal ensures that they are treated the same as other accessory structures.
9. Remove requirement of only having one front entrance on a primary structure. This section should only apply to the accessory structure.

Recommendation

Staff recommends approval of the amendment to streamline the accessory structure regulations.