



**BOARD OF ADJUSTMENT
MEETING AGENDA
November 23rd, 2022
Bentonville City Hall
305 SW A St
4:00 PM**

Registration Link: https://us06web.zoom.us/webinar/register/WN_Fdi6xOyuRoabcN91Yy0XRg

- I. Call to Order**
- II. Approval of November 9^h Meeting Minutes**
- III. New Business**

1. Zoning Code Variances

Discussion Item

- Discussion - Board of Adjustments Standards of Approval

2. Sonic- South Walton Blvd

Variance*

208 S Walton Blvd ([VAR22-0040](#))

- Front setback variance – drive-in canopy
- Side setback variance – drive-in canopy

3. Sonic- South Walton Blvd

Variance*

208 S Walton Blvd ([VAR22-0041](#))

- Building separation variance – drive-in canopy



**BOARD OF ADJUSTMENT
MEETING MINUTES
November 9th, 2022
Bentonville City Hall
305 SW A St
4:00 PM**

Recording Link:

<https://us06web.zoom.us/rec/share/P1FCHsLBZ8PF9zedDZsq2q9rgmf7UGRSeP8VO3-rxgulpUq6czLRqo-eYBcagUeG.FgrshzOcAUIKOUtv>

I. Call to Order

- Called to order by Mr. Kruithof at 4:00pm
- Board Member Present: Sam Pearson, Joe Haynie, Celia Swanson, Dean Kruithof, BJ Phillips
- City Staff Present: Christopher Hyatt, Tom Adler

II. Approval of October 26th Meeting Minutes

- Motion by Mr. Pearson to approve the minutes as presented, seconded by Mr. Haynie
- **Minutes are approved 5-0**
- Mr. Kruithof requests information on the meeting for the week of Thanksgiving and if anyone will be absent. Mr. Pearson will not be in attendance at the next meeting
- Mr. Kruithof addresses board procedures with staff and requests an item be added to the November 23rd agenda to cover board procedures for granting variance. Additionally, Mr. Kruithof asks board members to address any reason for a no vote

III. New Business

1. Aurora Subdivision Perimeter Fence

Variance*

SW Awakening Ave ([VAR22-0039](#))

- Fence Location Variance
- Mr. Hyatt reads staff report
- Mr. Kruithof calls Nate Bachelor (CEI) up to the microphone to discuss request
- Nate Bachelor, representing the applicant, details the amended request to allow the perimeter fence in question to be placed along the property lines of lots 18-30 at the northern end of the subdivision.
- Mr. Phillips requests grade difference and discusses the idea of adding taller pickets in requested variance section
- Mr. Pearson speaks, agreeing with Mr. Phillips on amending to a fence height variance and expresses concerns of bike and pedestrian safety with the fence being close to the edge of the sidewalk.

- Staff and Board have additional questions regarding fence design.
- Bob David (Developer) speaks regarding safety concerns and utility conflicts that arose during project development, as well as, concerns about proposing taller pickets
- Mr. Kruithof questions if there is a utility easement and staff discusses right-of-way
- Nate Bachelor provides emails from city utility staff agreeing to use of right-of-way
- Mr. Kruithof asks board to review criteria for variance approval and asks if members feel all criteria is met for approval
- Mr. Kruithof requests for a motion to approve and a motion to deny
- Mr. Pearson and Mr. Phillips do not agree with approving
- Motion by Pearson, seconded by Phillips to deny, but further discussion takes place on amending the variance request
- Further staff discussion with applicant
- Mr. Pearson Makes an amendment to the motion. Mr. Phillips agrees to amendment. Amended motion of approval at 18 inches off of property line with continuous height of six feet along top of fence line when measuring from sidewalk elevation
- Further staff discussion
- Mr. Kruithof provides offer of substitute motion to approve variance as presented. Seconded by Mr. Haynie
- **Request is approved 4-1**

Meeting Adjourned.

Minutes prepared by: Christopher Hyatt, Planning Technician

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.



Sonic - South Walton Blvd

Esch Family Limited Partnership
208 S Walton Blvd

BOA Date: 11/23/2022

Reviewer: Luke Aitken, Planning Technician

Project Number	VAR22-0040
Applicant / Current Owner	Sand Creek Engineering / Esch Family Limited Partnership
Site Area	+/- 0.72 Acres
Current Zoning	C-2, General Commercial
Variance Request	Zoning Code Article: 401 Zoning District Regulations Section: Sec 401.08 Commercial (C) Districts Regulations, <i>Commercial (C) Districts Setback Standards</i>
Related Projects	LSD22-0055, VAR22-0041



Property Description

This property is located at 208 South Walton Blvd, south of the intersection of S Walton and SW 2nd Street, and is currently zoned C-2, General Commercial.

Regulation

[Sec 401.08 Commercial \(C\) Districts Regulations, Commercial \(C\) Districts Setback Standards](#) requires a minimum front setback of 50 feet from the front property line, on property zoned C-2, General Commercial. This code section also requires a minimum side setback of 30 feet, from the rear property line to the west.

Variance Request

The applicant is requesting two variances from the Zoning Code:

1. A variance of 12 feet from the minimum front setback of 50 feet, required by code, to allow the construction of a drive-in canopy 38 feet from the front property line.
2. The applicant also requests a variance of 24 feet along the western property line, from the minimum rear setback of 30 feet, required by code, to allow construction of a second drive-in canopy along the back property line, 6 feet from the western property line.

Background

The applicant states that the layout of their lot combined with a redevelopment requirement by code to eliminate an existing second driveway on the site creates a unique hardship. Their narrative states they have rotated the building to face south, which places the typical Sonic order areas on the east and west sides of the building. With the setback requirements of their current zoning district, the normal Sonic order area canopies are mostly within the front and west side setback areas. The applicant has consulted the Bentonville Fire Department, which instructed them to locate the canopy at least six feet from the west property line.

The applicant concluded that, due to the size of their lot and having to eliminate one of two existing drives, they would not be able to construct the building laid out to face south, as proposed, without being granted a variance from the Commercial District setback requirements. The original Sonic was destroyed by fire and could be built in its original configuration, keeping the second driveway if the applicant so chose however the applicant has been working with the City to rebuild a project acceptable to all stake holders.

Public Comment

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

Conditions of Approval

If approved, the approved variances shall be for the proposed layout, as provided by the applicant within this application and the applicant must obtain a building permit before construction.

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.

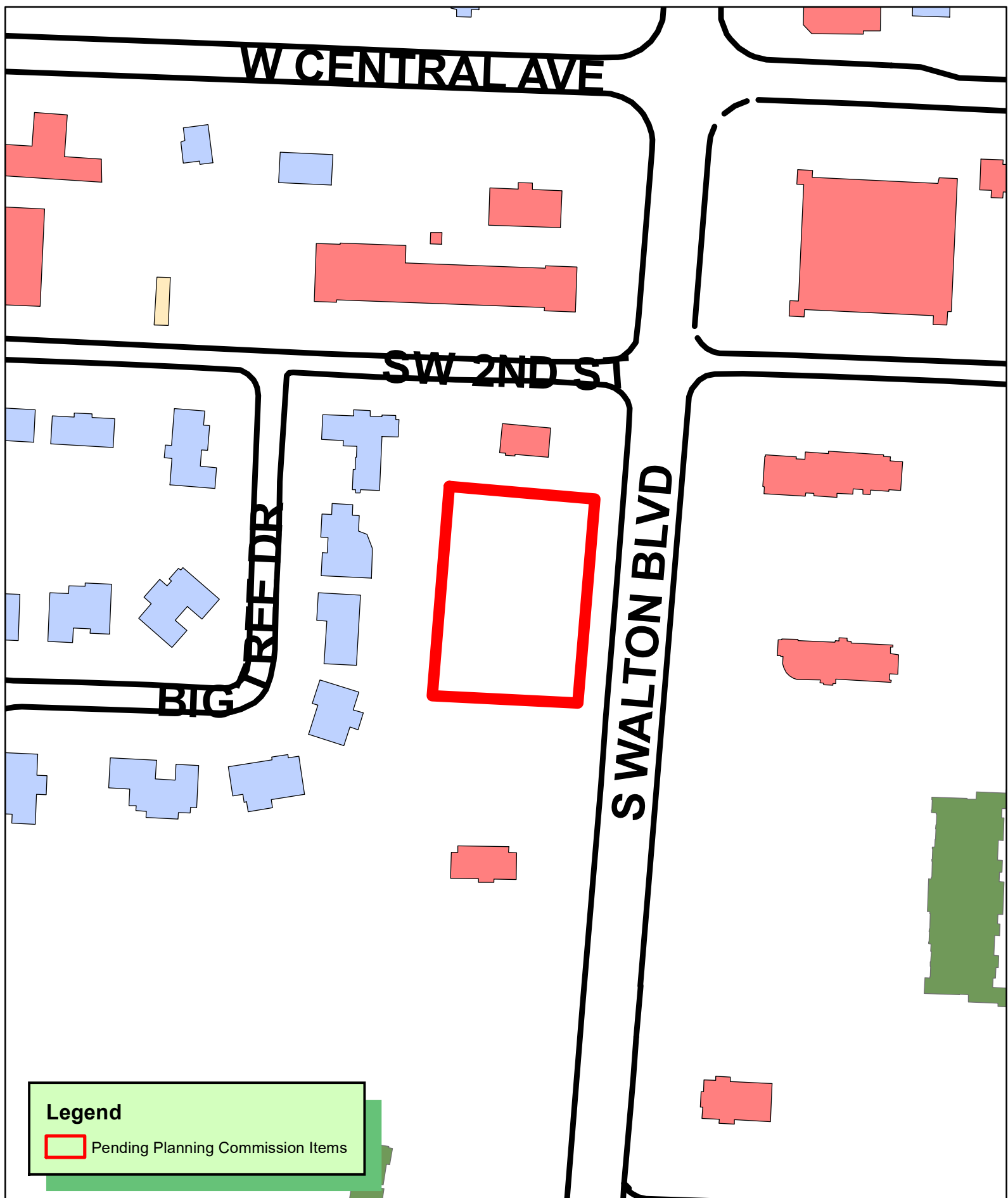
(2) No nonconforming use of neighboring lands, structures, or buildings in the same district, and no permitted or nonconforming use of lands, structures, or buildings in other districts shall be considered grounds for the issuance of a variance.

(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.

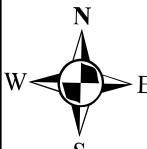
(5) *Conditions.* In granting any variance, the board of adjustment may prescribe appropriate conditions and safeguards that it deems necessary or desirable. Violations of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of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



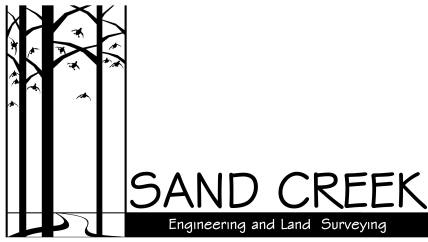
Legend

 Pending Planning Commission Items


1 inch = 125 feet

LSD22-0055 11/1/22
LARGE SCALE DEVELOPMENT
SONIC
208 S WALTON BLVD





Nov. 4, 2022 - Rev - Nov. 18, 2022

Project: 22013

Reference: LSD22-0055 Sonic 208 South Walton

Variance Request of
Zoning Code Article 401, Section 401.08 Paragraph C - Setback Requirements

To whom it may concern,

Because the Planning staff requested that we eliminate one of the two driveways existing on this site, we have rotated the building to face south, which places the normal Sonic order areas on the east and west sides of the building. With the setback requirements, the normal order area canopies are mostly within the setback areas.

1. The front, street side, requires a 50' setback. The canopy, being 14' wide, has 11.53' within the setback area. A variance of 12 feet wide and 95 feet long is requested along the street side setback.
2. The west side, bordering two residential homes in the Sycamore Heights Addition, requires a 30' setback. The canopy in this area is 14 feet wide and 110 feet long. The face of the canopy is 6' from the west property line as agreed with the Fire Dept. We hereby request a variance for this entire canopy 14' x 110' to be placed within the setback.

Respectfully Submitted,

Ken Booth

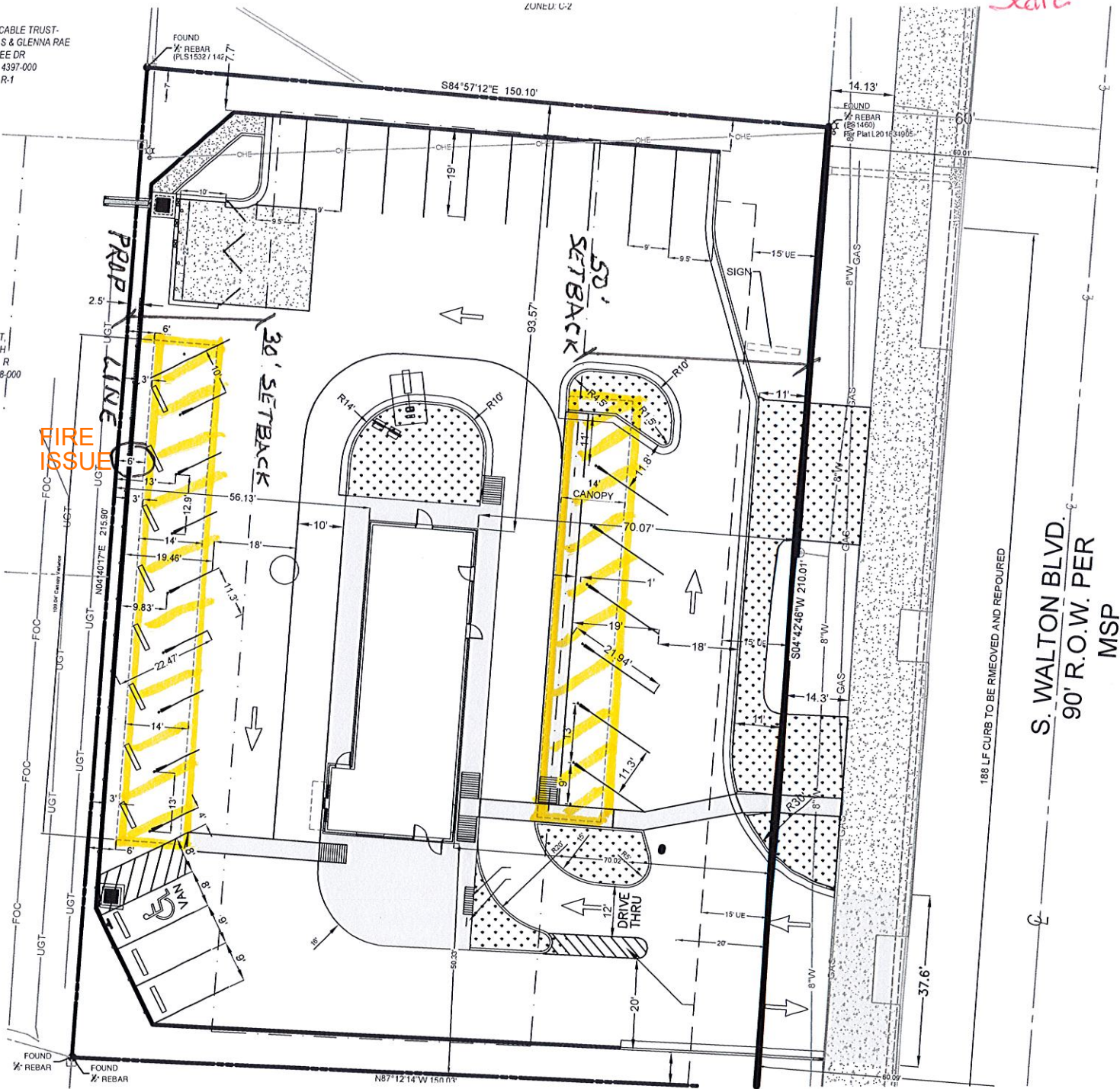
Project Manager

kbooth@sandcreek.us



Area of Variance

Not to Scale





Sonic - South Walton Blvd

Esch Family Limited Partnership

208 S Walton Blvd

BOA Date: 11/23/2022

Reviewer: Luke Aitken, Planning Technician

Project Number	VAR22-0041
Applicant / Current Owner	Sand Creek Engineering / Esch Family Limited Partnership
Site Area	+/- 0.72 Acres
Current Zoning	C-2, General Commercial
Variance Request	Arkansas State Fire Code - Fire Separation Requirements (Code Section 602)
Related Projects	LSD22-0055, VAR22-0040



Property Description

This property is located at 208 South Walton Blvd, south of the intersection of S Walton and SW 2nd Street, and is currently zoned C-2, General Commercial.

Regulation

According to the Fire Marshall, per the 2012 Arkansas State Fire Code, the canopy covering the patron order areas along the west side, needs to be 10' from the property line.

Variance Request

The Fire Marshall has agreed to allow a 5' separation, in place of the 10-foot requirement, conditional upon approval of this variance request. The applicant is requesting a variance of four feet from the minimum separation of 10 feet, required by code, to allow the construction of a drive-in canopy 6 feet from the west property line.

Background

The applicant states that the layout of their lot combined with a redevelopment requirement by code to eliminate an existing second driveway on the site creates a unique hardship. Their narrative states they have rotated the building to face south, which places the typical Sonic order areas on the east and west sides of the building. According to the Fire Marshall the canopy covering the patron order areas along the west side, needs to be 10 feet from the west property line. The applicant states that no combustible materials are present in this structure, and that, with the necessary layout of the site related to the order boards and parking, they have set the face of the canopy at six feet from the property line exceeding the five-foot requirement discussed with the Fire Marshal.

The applicant concluded that, due to the size of their lot and having to eliminate one of two existing drives, they would not be able to construct the building laid out to face south, as proposed, without being granted a variance from the Arkansas state fire code via the Bentonville Fire Marshal and the Board of Adjustments. The Fire Marshall's justification for allowing the variance is that 2021 Fire Code does allow a structure 5' from the property line, the City of Bentonville however is currently using the 2012 Fire Code.

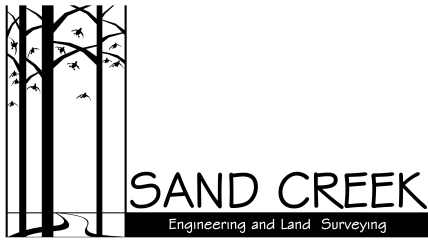
Public Comment

Staff has **NOT** received a 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, as provided by the applicant within this application.
2. The applicant must obtain a building permit before construction.



Nov. 4, 2022

Project: 22013

Reference: LSD22-0055 Sonic 208 South Walton

Variance Request of
Arkansas State Fire Code - Fire Separation Requirements Code 602

To whom it may concern,

Because the Planning staff requested that we eliminate one of the two driveways existing on this site, we have rotated the building to face south, which places the normal Sonic order areas on the east and west sides of the building.

According to the Fire Marshall the canopy covering the patron order areas along the west side, needs to be 10' from the property line. With the 2021 Fire Code coming into effect January 1st of 2023, the Fire Marshall has agreed to allow a 5' separation, with a Variance approval.

The order canopies are constructed of aluminum panels to create the canopy and is supported by 4" steel poles that hold the order boards and rise from the order boards up to support the canopy. No combustible materials are present in this structure. With the necessary layout of the site and making the order boards fit the car locations we have set the face of the canopy at 6' from the property line. This is more than the 5' discussed with the Fire Marshal but works with our site layout and dimensions. Based on the 2012 Fire Code, we are requesting a variance of 4' along the 110' length of the west side canopy. See attachment.

Reason for requesting the Variance:

1. The Sonic corporation is wanting the order boards to be covered to protect their wait staff and patrons during storm events.

Respectfully Submitted,

Ken Booth

Project Manager

kbooth@sandcreek.us