

BOARD OF ADJUSTMENT MEETING AGENDA
SEPTEMBER 12, 2024



723 S. Lewis St., Room 1122 B
Stillwater, OK 74074
5:30 PM

Chair Brian Wiles, Vice-Chair John Houck, Jim Rice, Bryan Langford-Loftis, and Micah Sexton.

Note: Members of the Board of Adjustment and City Staff will gather prior to the regular meeting in Room 1121 beginning at 5:00 p.m. No Board of Adjustment business will be discussed or otherwise acted upon at this time. This is not a closed session, and members of the public and press are welcome to attend.

1. Call Meeting to Order

2. Public Hearing

The Board of Adjustment will hear public comments, discuss, and take action including a vote or series of votes on each item unless otherwise indicated.

- | | |
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| a. | Gamma Delta Chapter of Sigma Chi House Corporation requesting review and granting of a variance to Sec. 23-141.d.2.b & c and Sec. 23-141.e.1 for the required yard setbacks for a three-story building in the Multi-Family Urban (RMU) zoning district (1101 W University) and Sec. 23-211.1.e for the required setback for parking area of the Parking and Loading Standards Design Standards (221 S Lincoln) at the properties addressed as 1101 West University Ave and 221 South Lincoln St. |
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3. Minutes for Discussion and Possible Action:

- | | |
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| a. | Regular meeting minutes of March 7, 2024. |
| b. | Regular meeting minutes of July 11, 2024. |

4. Reports from Board, City Attorney or Staff.

5. Adjourn

On _____ at _____, a true and correct copy of this agenda was posted on the kiosk outside City Hall, 723 S. Lewis Street, Stillwater, OK.

NOTE: The Board of Adjustment may take action including a vote or series of votes on all items listed on this agenda unless the item specifically indicates that no action will be taken. The City of Stillwater encourages participation from all its citizens. If participation at any public meeting is not possible due to a disability, please notify the Community Development Desk at least 48 hours prior to the meeting by calling 405.742.8220.

Date of Meeting: September 12, 2024

Subject: Variance to Sec. 23-141.d.2.b & c and Sec. 23-141.e.1 for the three-story building required yard setback in RMU district at 1101 W University Ave, and Sec. 23-211.1.e for the parking area setback at 221 S Lincoln St

Project Name: VAR24-05 Setback Variance

Location: 1101 West University Avenue and 221 South Lincoln Street

BACKGROUND

The subject property is located at the Southwest corner of the intersection of West University Avenue and South Monroe Street and the Northeast corner of the intersection of South Lincoln Street and West 3rd Avenue. Wallace Design Collective is the applicant on behalf of the Gamma Delta Chapter of Sigma Chi House Corporation and Gamma Delt Investors, LLC. Sigma Chi owns three pieces of property located in this block. The property located at the intersection of West University Avenue and South Monroe Street is the location of the Sigma Chi Fraternity house with a separate structure that is the gymnasium south of the house across from the alley. The final piece of property is located at the intersection of South Lincoln Street and West 3rd Avenue adjacent to the gymnasium for Alpha Sigma Phi Fraternity. Sigma Chi is proposing to build a new fraternity house at the property located at the intersection of West University Avenue, addressed as 1101 West University Avenue, with a new parking lot located at the northeast corner of the intersection of South Lincoln Street and West 3rd Avenue, addressed as 221 South Lincoln Street.

The proposed fraternity house at 1101 W University will be a three-story structure with an encroachment to the rear and side yard setback. The required side yard for a three-story structure in the RMU zoning district is 15 feet plus an additional 3 feet for each adjacent story above the first, making the required side yard setback 21 feet. The proposed side yard setback is 10 feet. The required rear yard setback is 30 feet in the RMU zoning district. The proposed structure's rear yard setback is 10 feet. The new parking lot proposed at the property addressed at 221 South Lincoln Street is requesting a variance to the required setback for a parking lot. The required setback for this property is 5 feet and the request is to allow for zero feet of setback.

CODE APPLICATION

Sec. 23-141. - RMU (Multi-Family Urban) District.

(d) Bulk regulations. Bulk regulation requirements in the RMU district are as follows:

(2) Setbacks. The following are the minimum required setbacks in the RMU district:

b. Minimum side yard:

1. Residential structures: 15 feet.

c. Minimum rear yard: 30 feet.

(e) Exceptions. The following are the exceptions in the RMU district:

(1) For all structures, the minimum side yard for this district shall be increased an additional three feet for each adjacent story above the first story.

Sec. 23-211. - Design standards.

All parking areas and associated driving aisles shall be designed and constructed in accordance with the following standards:

- (1) Perimeter requirements. The relationship of off-street parking and loading areas with adjoining uses and properties shall be regulated as follows:
 - e. Parking area setbacks:
 1. All parking areas adjacent to any residential district shall be set back to provide a five-foot buffer strip along any front property line.

CRITERIA FOR APPROVAL

The Board of Adjustment must find that each of the following four criteria have been met based on evidence and testimony received from the applicant and during the public hearing. Such approval may be granted in whole, in part, or with reasonable modifications and conditions.

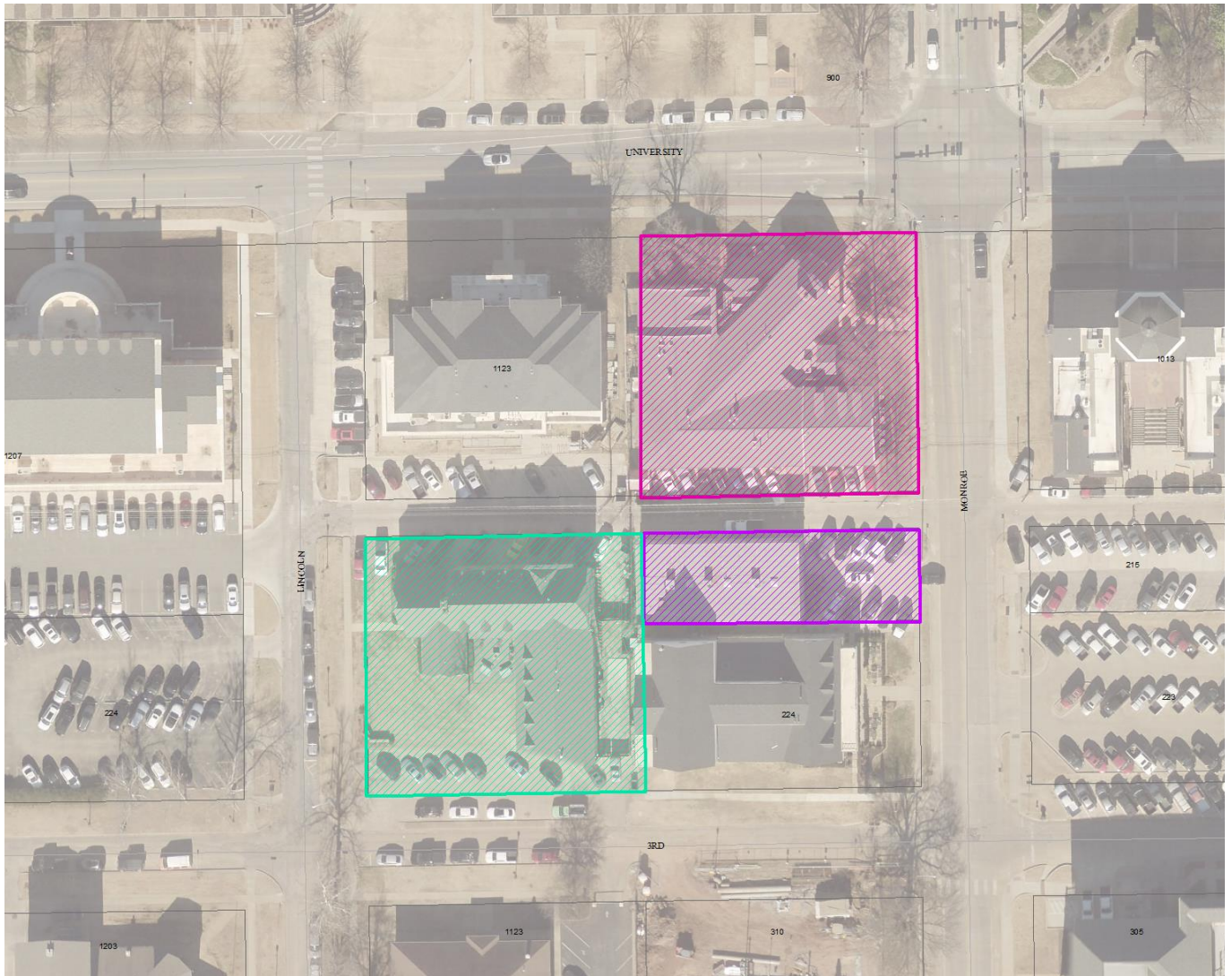
- (1) The application of the ordinance to the particular piece of property would create an unnecessary hardship;
- (2) Such conditions are peculiar to the particular piece of property involved;
- (3) Relief, if granted, would not cause substantial detriment to the public good, or impair the purposes and intent of the ordinance or the Comprehensive Plan; and
- (4) The variance, if granted, would be the minimum necessary to alleviate the unnecessary hardship.

ALTERNATIVES

The Board of Adjustment has the following alternatives of action:

1. Find that each of the criteria for approval of the request is met. The Board will explain how each criterion is met in order to approve the variance(s).
2. Find that each of the criteria for approval of the request is met by imposing modifications or conditions to ensure that the criteria are met. The Board will explain how the criteria are met to grant partial, conditional, or modified approval of the variance(s).
3. Find that one or more of the criteria for approval of the request is not met and deny the request.
4. Table the discussion to a certain date to allow for additional information to be presented.

Prepared by:	Jacquelyn Porter, City Planner
Date of Preparation:	September 5, 2024
Attachments:	Area Map, Application Packet, Letter of Justification, Site Plan



Stillwater OKLAHOMA
stillwaterok.gov

Project Type: VARIANCE (VAR24-05)
Request: For a variance to the set back requirements for the building and parking lot
Address: 1101 W University, 221 S Lincoln, 206 S Monroe
Applicant: Wallace Design on behalf of Sigma Chi

Findings Necessary for Granting Variances

In determining whether or not the variance should be granted, the Board of Adjustment shall consider and record in the official minutes of the meeting, the extent to which the evidence demonstrates that:

1. The application of the ordinance to the particular piece of property would create an unnecessary hardship;
2. Such conditions are peculiar to the particular piece of property involved;
3. Relief, if granted, would not cause substantial detriment to the public good, or impair the purposes and intent of the ordinance or the Comprehensive Plan; and
4. The variance, if granted, would be the minimum necessary to alleviate the unnecessary hardship.

Certification:

I (We) do hereby certify that the information provided herein is both complete and accurate to the best of my (our) knowledge, and I (we) understand that any inaccuracies may be considered just cause for invalidation of this application and any action taken on this application. I (We) do hereby understand that a variance of any requirement does not exempt the development from any other requirements of the Zoning Ordinance, Subdivision Regulations, or other City or State Regulations. This application must be completed, signed, and dated by the applicant(s) and the owner(s).

Applicant



Date 7/2/2024

Owner/Agent (provide documentation)

See letter of authorization

Date _____

For City of Stillwater Use Only:

CASE NO.#: _____

Submission Date: 7/2/24
Approval Date: _____

Processing Tract: IRC 7/17/24, BOA 8/1/24
Fees: _____ Number of Copies: _____

RECEIVED 7/2/24 AM

July 2, 2024

City of Stillwater
Board of Adjustment
723 S. Lewis Street
Stillwater, OK 74074

RE: Sigma Chi Fraternity House Variance Requests

Dear Board Members,

This letter is to request variances to allow for a new fraternity house and parking lot for Sigma Chi – located at 1101 W. University Avenue, 206 S. Monroe Street, and 221 S. Lincoln Street (Payne County Account #600015163, #600015141, and #600015158). The applicant seeks your consideration in the request to reduce the side yard setback from 21 feet to 10 feet, reduce the rear yard setback from 30 feet to 10 feet, and waive the parking setback of 5 feet. Please see the attached site plan callouts for a visual representation of the requests.

The requested changes to the above requirements would allow for the proposed development to be designed in accordance with the surrounding area. Many surrounding fraternity and sorority houses have similar setbacks and parking designs. Such changes would not impair the intent of the Comprehensive Plan, nor be detrimental to the public good. The proposed development would further increase walkability in the area and provide appropriate parking for current/future residents.

Sigma Chi and the design team are appreciative of your time and consideration. If you have any questions, please feel free to reach the design team via the contact information below.

Sincerely,

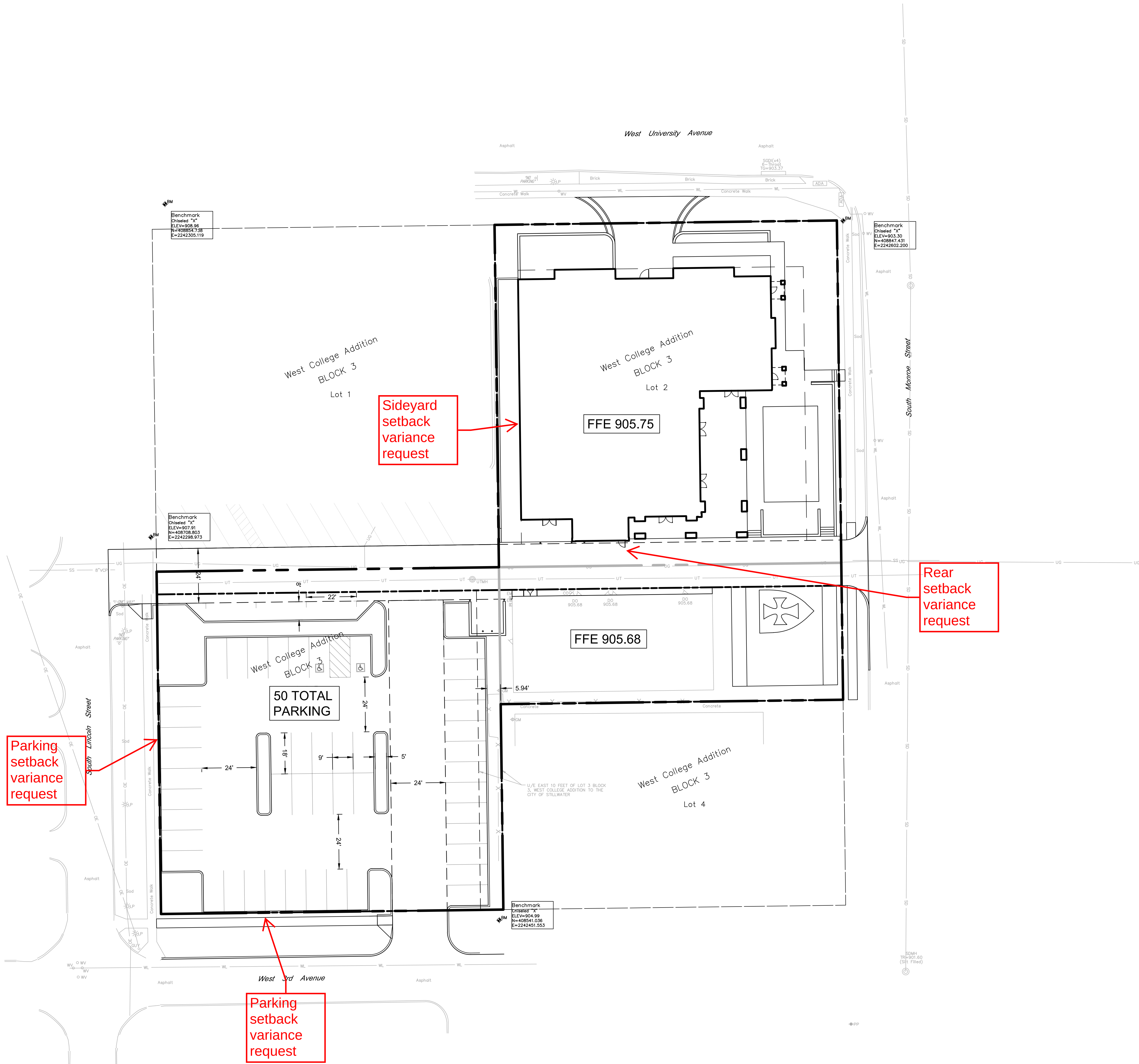


Colton Wayman
Wallace Design Collective
405-536-2035
colton.wayman@wallace.design
Representative of the Applicants:
Gamma Delta Chapter of Sigma Chi House Corporation and Gamma Delta Investors, LLC



CAUTION
NOTICE TO CONTRACTOR

THE CONTRACTOR IS SPECIFICALLY CAUTIONED THE LOCATION AND ELEVATION OF EXISTING UTILITIES AS SHOWN ON THESE PLANS ARE BASED ON RECORDS OF THE VARIOUS UTILITY COMPANIES AND MEASUREMENTS TAKEN IN THE FIELD. THE INFORMATION IS NOT TO BE RELIED ON AS BEING EXACT OR COMPLETE. THE CONTRACTOR MUST CALL THE LOCAL UTILITY LOCATION CENTER AT LEAST 72 HOURS BEFORE ANY EXCAVATION TO REQUEST EXACT FIELD LOCATIONS OF THE UTILITIES.



GENERAL SITE NOTES:

- ALL WORK AND MATERIALS SHALL COMPLY WITH ALL MUNICIPAL REGULATIONS AND CODES, WHICHEVER IS MORE STRINGENT.
- ALL WORK AND MATERIALS SHALL COMPLY WITH O.S.H.A. STANDARDS.
- CONTRACTOR SHALL BE RESPONSIBLE FOR ALL RELOCATIONS, INCLUDING BUT NOT LIMITED TO, ALL UTILITIES, STORM DRAINAGE, SIGNS, TRAFFIC SIGNALS & POLES, ETC. AS REQUIRED. ALL WORK SHALL BE IN ACCORDANCE WITH GOVERNING AUTHORITIES' SPECIFICATIONS AND SHALL BE APPROVED BY SUCH. ALL COST SHALL BE INCLUDED IN BASE BID.
- REFER TO LANDSCAPE PLANS FOR GRASS, TREES, AND PLANTED MATERIALS.
- ALL DIMENSIONS AND COORDINATES ARE FROM FACE OF CURB UNLESS SHOWN OTHERWISE.
- RADII = 2'-0" UNLESS OTHERWISE INDICATED.

GENERAL PAVING NOTES:

- ALL MATERIALS, EXECUTION, AND TESTING TO CONFORM TO AHJ REQUIREMENTS (I.E. LOCAL OR STATE DOT STANDARDS AND SPECIFICATIONS).
- ALL PAVING AND EARTHWORK OPERATIONS SHALL CONFORM TO THE RECOMMENDATIONS IN THE GEOTECHNICAL REPORT.
- CONTRACTOR TO PROVIDE PRODUCT DATA SUBMITTALS INCLUDING, BUT NOT LIMITED TO, DESIGN MIXES, MATERIAL CERTIFICATES, AND MATERIAL TEST REPORTS FOR MATERIALS AND PRODUCTS ASSOCIATED WITH PAVING AND PAVEMENT MARKING OPERATIONS.
- CONTRACTOR SHALL DEVELOP AND IMPLEMENT PROPER TRAFFIC CONTROL IN CONFORMANCE WITH THE LATEST REVISION OF THE MUTCD. ACCESS FOR EMERGENCY VEHICLES AND LOCAL TRAFFIC SHALL BE MAINTAINED AT ALL TIMES DURING CONSTRUCTION.
- PAVEMENT SUBGRADE SHALL BE PREPARED IN ACCORDANCE WITH THE RECOMMENDATIONS IN THE GEOTECHNICAL REPORT AND TO THE GRADES AND ELEVATIONS REQUIRED BY THE CONSTRUCTION DOCUMENTS.
- PAVEMENT CONTRACTOR TO INSPECT PAVEMENT SUBGRADE AND CORRECT ANY DEFICIENCIES PRIOR TO PAVING OPERATIONS.
- CONTRACTOR TO COORDINATE CONSTRUCTION TESTING UNLESS OTHERWISE INDICATED IN THE CONTRACT DOCUMENTS.
- THE PAVEMENT SECTIONS SHOWN IN DETAIL XX / CXXX ARE SHOWN FOR REFERENCE AND WERE PROVIDED BY [GEOTECHNICAL ENGINEER NAME] BASED ON SITE SPECIFIC CONDITIONS AS OUTLINED IN THEIR REPORT DATED XX.XX.XXXX. ANY QUESTIONS REGARDING THE SUITABILITY OF THESE OR ALTERNATE PAVEMENT SECTIONS, SPECIFIC PAVEMENT MAINTENANCE REQUIREMENTS, OR POTENTIAL PAVEMENT LIFE SHOULD BE DIRECTED TO [GEOTECHNICAL ENGINEER NAME], AS THIS IS BEYOND WALLACE'S SCOPE OF SERVICES FOR THIS PROJECT.

ASPHALT PAVEMENT:

- CONSTRUCT JOINTS TO ENSURE A CONTINUOUS BOND BETWEEN ADJOINING PAVEMENT SECTIONS. OFFSET LONGITUDINAL JOINTS, IN SUCCESSIVE COURSES, A MINIMUM OF 6 INCHES AND TRANSVERSE JOINTS A MINIMUM OF 24 INCHES.
- WHERE DIFFERENT THICKNESS PAVEMENTS ABUT, PROVIDE A THICKENED EDGE ON THE THINNER PAVEMENT SECTION, WHICH TRANSITIONS TO THE THICKER PAVEMENT DEPTH ACROSS FOUR FEET.
- UNIFORM DENSITY REQUIREMENTS:
 - AVERAGE DENSITY: 96 PERCENT OF REFERENCE LABORATORY DENSITY ACCORDING TO ASTM D 6927 BUT NOT LESS THAN 94 PERCENT OR GREATER THAN 100 PERCENT, OR
 - AVERAGE DENSITY: 92 PERCENT OF REFERENCE MAXIMUM THEORETICAL DENSITY ACCORDING TO ASTM D 2041 BUT NOT LESS THAN 90 PERCENT OR GREATER THAN 96 PERCENT.
- INSTALLATION TOLERANCES:
 - PAVEMENT THICKNESS: BASE COURSE PLUS OR MINUS 1/2 INCH; SURFACE PLUS 1/4 INCH.
 - PAVEMENT SMOOTHNESS: BASE COURSE 1/4 INCH IN 10 FEET; SURFACE COURSE 1/8 INCH IN 10 FEET.

CONCRETE PAVEMENT:

- CONCRETE PLACEMENT TO CONFORM TO ACI 301 / 306 / 330 REQUIREMENTS.
- CONCRETE MATERIAL:
 - 28 DAY COMPRESSIVE STRENGTH: 4000 PSI MINIMUM
 - MAXIMUM W/C RATIO AT POINT OF PLACEMENT: 0.45
 - SLUMP: 4 INCHES PLUS OR MINUS 1 INCH
 - AIR CONTENT: 6 PERCENT PLUS OR MINUS 1-1/2 PERCENT
- STEEL:
 - GRADE 60
 - COMPLY WITH CRSI'S "MANUAL OF STANDARD PRACTICE" FOR FABRICATION, PLACEMENT, AND SUPPORT.
- JOINTS:
 - FORM CONSTRUCTION, ISOLATION, AND CONTRACTION JOINTS WITH FACES PERPENDICULAR TO SURFACE PLANE OF CONCRETE. WHEN JOINING EXISTING PAVING, PLACE JOINTS TO ALIGN WITH PREVIOUSLY PLACED JOINTS UNLESS OTHERWISE INDICATED.
 - FORM ISOLATION JOINTS OF PREFORMED JOINT-FILLER STRIPS ABUTTING LIGHT STANDARD FOUNDATIONS, MANHOLES, INLETS, STRUCTURES, OR OTHER FIXED OBJECTS. EXTEND JOINT FILLERS THE FULL WIDTH AND DEPTH OF PAVEMENT.
 - CONTRACTION JOINT DEPTH TO BE 1/4 OF THE TOTAL CONCRETE THICKNESS. JOINTS SHOULD EXTEND THROUGH ADJACENT CURB AND GUTTER.
- JOINT SPACING:
 - JOINT SPACING SHALL NOT EXCEED 24 TO 30 TIMES THE PAVEMENT THICKNESS (E.G. 0.5" THICK CONCRETE x 30 = 15' MAXIMUM JOINT SPACING) WITH A MAXIMUM SPACING OF 15 FEET.
 - LAY OUT JOINTS TO FORM SQUARE PANELS. WHEN THIS IS NOT PRACTICAL, RECTANGULAR PANELS CAN BE USED, BUT THE LENGTH SHALL NOT BE MORE THAN 25% LONGER THAN THE WIDTH (E.G. A 15' LONG PANEL CANNOT BE WIDER THAN 12').
 - CONTRACTOR TO SUBMIT A JOINT LAYOUT PLAN FOR REVIEW AND APPROVAL PRIOR TO COMMENCING PAVING OPERATIONS. CONTRACTOR TO TAKE INTO ACCOUNT REVIEW TIME AND CHANGES PER ANY COMMENTS WHEN SCHEDULING THE SUBMISSION OF THE JOINT LAYOUT PLAN.
- REINFORCEMENT OF IRREGULARLY SHAPED PANELS OR MISMATCHED JOINTS:
 - ON PANELS WITH RADI, ON PANELS THAT TAPER TO A SHARP ANGLE, AND/OR WHEN THE LENGTH TO WIDTH RATIO EXCEEDS 1.25, PROVIDE A MINIMUM OF 0.05 PERCENT STEEL IN BOTH DIRECTIONS ACROSS THE ENTIRE PANEL.
 - WHERE JOINT PATTERNS OF ABUTTING PAVEMENTS DO NOT MATCH AND ARE NOT SEPARATED BY AN EXPANSION JOINT, PROVIDE A MINIMUM OF 0.05 PERCENT STEEL IN THE PAVEMENT OPPOSITE OF THE MISMATCHED JOINT FOR A DISTANCE OF THREE FEET BACK FROM THE JOINT ALONG THE FULL WIDTH OF THE PANEL.
- WHERE DIFFERENT THICKNESS PAVEMENTS ABUT, PROVIDE A THICKENED EDGE ON THE THINNER PAVEMENT SECTION WHICH TRANSITIONS TO THE THICKER PAVEMENT DEPTH ACROSS FOUR FEET.
- PROVIDE MEDIUM TO FINE TEXTURED BROOM FINISH UNLESS OTHERWISE INDICATED ON THE PLANS.
- INSTALLATION TOLERANCES:
 - ELEVATION: 1/4 INCH
 - THICKNESS: PLUS 3/8 INCH, MINUS 1/4 INCH
 - SURFACE: 1/4 INCH IN 10 FEET

PAVEMENT MARKINGS:

- ALLOW PAVING TO AGE A MINIMUM OF 30 DAYS BEFORE STARTING PAVEMENT MARKING OPERATIONS.
- PAVEMENT MARKING PAINT SHALL BE ACRYLIC, WATERBORNE EMULSION, LEAD AND CHROMATE FREE, READY MIXED, COMPLYING WITH FS TT-P-1952, TYPE II, WITH A DRYING TIME OF LESS THAN THREE MINUTES.
- COLOR AS INDICATED.

INTERIM REVIEW ONLY

THESE DOCUMENTS ARE INCOMPLETE. THEY ARE NOT INTENDED TO BE USED FOR PERMIT, BIDDING, OR CONSTRUCTION.
5/22/2024 3:16:48 PM



**STILLWATER BOARD OF ADJUSTMENT
Regular MEETING OF March 7, 2024
IN ACCORDANCE WITH THE OKLAHOMA OPEN MEETING
LAW, THE AGENDA WAS POSTED February 5, 2024
IN THE MUNICIPAL BUILDING AT 723 SOUTH LEWIS STREET**

Members Present:

John Houck
Brian Wiles
Bryan Langford-Loftis
Michah Sexton

Members Absent:

Jim Rice

Staff Present:

Tammy Ewing, Assistance City Attorney
Jacquelyn Porter, City Planner
Diana Hood, Associate Planner
Cindy Gibson, Admin. Services Manager
Ally Maged, Admin. Assistant
Joshua Brown, Project Manager
Bill Millis, Deputy Director

Guests:

Michael Hankins
Melissa Higgins
Rylan Ragen

1. CALL MEETING TO ORDER.

Chair Wiles calls the meeting to order at 5:30 PM. Chair Wiles introduces the board including the two new members Bryan Langford-Loftis and Michah Sexton and explains the proceedings for the evening.

The following individuals are sworn in:

Michael Hankins	Melissa Higgins	
Jacquelyn Porter	Rylan Ragen	Bill Millis

2. BUSINESS ITEMS FOR CONSIDERATION, DISCUSS AND POSSIBLE ACTION ON:

Chair Wiles switched order of items on the agenda and the hearing starts with item b.

- b. Hankins Development, LLC, **VARIANCE (VAR24-03)**, requesting review and granting of a variance to Sec. 23-153.c.2.a.1 for front yard setback encroachment on property addressed as 4420 W. 6th Avenue in the Commercial General (CG) district

Chair Wiles invites staff forward to present the item.

Jacquelyn Porter presents the item and maps and asks if the board has any questions for staff.

Boarder Houck asks staff to clarify easement locations on map. Ms. Porter clarifies

that all dashed lines are the utility easement and the access easement is the semi-bold line running along the south and east side.

Boarder Houck asks staff to clarify where the encroachment is occurring. Ms. Porter clarifies it is the whole east side of the structure.

Ms. Tammy Ewing, Assistant City Attorney asks if this is a typical dollar store layout. Ms. Porter states that the trigger is 5,000 sq ft. this one is 10,000 sq ft and Stillwater currently has one on Perkins that is 17,500 sq ft. this is specific to dollar tree staff didn't check dollar generals but believes those have a smaller footprint.

Boarder Landford-Loftis asks if construction has already begun; Ms. Porter responds no.

Mr. Sexton asks if this is because the owner of the property wants to put a building on it that doesn't fit the lot size and asks if the applicant is not creating this hardship for themselves. Mr. Porter says they could build it differently, but they are making this request as this is the template they would like to construct it and the applicant can explain more their reasoning behind this proposal.

Chair Wiles opens the hearing to the public and invites the applicant forward as well as anyone who wishes to speak in favor of the item.

Michael Hankins, Applicant

- Is requesting a variance to the 25 ft setback because the code here requires a front set back on two sides since the east side access is also considered a "street".
- A street's definition in the code includes private access drives.
- The driveway that creates the setback requirement only services their property and the property next to them, there is another main access for the other businesses nearby.
- The street in question triggering the setback also does not connect with pavement to the main access.
- The code also states that any parcel adjacent to a parcel with a drive access requires this set back regardless of how close the parcel is to the drive.
- The driveway is not on the property line, it is about 20 feet from the property line with parking spaces in between the drive and the property line so the building is actually 28 ft from the drive so the applicant believes they are still adhering to the essence of the code requirements to not crowd the street.
- Additionally, across the street the car wash across the street also has a structure in the setback requirement. The difference being it is considered an accessory structure and not part of the main building.
- The applicant believes their building is less burdensome on the drive as it is set further back than the neighboring properties structure since they have 28 feet.
- The applicant says if the plot had been done differently, they would be complying and that there is an easement on the west side of the property as well, so they are boxed in.

Mr. Sexton asks why there is a 20-25 ft gap in between the road and the property line. Mr. Hankins responds that there are parking spaces there, but it does not belong to their property; the owner of the drive did write them letters of support for putting the business there; and the applicant also wanted to note that the building will be stucco wrapped.

Boarder Langford-Loftis asks applicant to elaborate on the building material statement and how that pertains. Mr. Hankin states that sometimes the setbacks are to keep unsightly buildings hidden.

Boarder Langford-Loftis asks if any other building solutions have been explored. Mr. Hankin states yes, they looked at many other building options. This one was the best for truck access, so the trucks did not have to back up.

Mr. Sexton asks if that means the trucks will be using the mixed material part of the drive. Mr. Hankin says no that is on the other drive, on the west where the truck will go it will be all concrete.

Chair Wiles asks if there is anyone that would like to speak in opposition to the item or anyone who would like to make additional comments, none respond.

Chair Wiles closes the public hearing and asks staff to present criteria and alternatives.

Ms. Porter states that criteria for approval, which are:

1. The application of the ordinance to the particular piece of property would create an unnecessary hardship.
2. Such conditions are peculiar to the particular piece of property involved;
3. Relief, if granted, would not cause substantial detriment to the public good, or impair the purposes and intent of the ordinance or the Comprehensive Plan; and
4. The variance, if granted, would be the minimum necessary to alleviate the unnecessary hardship.

Ms. Porter continues, stating the alternatives:

1. Find that each of the criteria for approval of the request is met. The Board will explain how each criterion is met in order to approve the variance(s).
2. Find that each of the criteria for approval of the request is met by imposing modifications or conditions to ensure that the criteria are met. The Board will explain how the criteria are met to grant partial, conditional, or modified approval of the variance(s).
3. Find that one or more of the criteria for approval of the request is not met and deny the request.
4. Table the discussion to a certain date to allow for additional information to be presented.

Mr. Hankin comes back up to the stand to state that they've been having difficulties

with the seller on this project and a deferral would be a killer for this project.

Chair Wiles opens for discussion of the board.

Mr. Sexton states that he goes by the law and a hardship created by the owner is not the basis for a variance; believes they put too big of a building on too small of a property and created this hardship and it's not grounds for a variance. Boarder Langford-Loftis agrees.

Mr. Sexton asks staff who owns the parking spaces in between the property and the access. Ms. Porter states she doesn't know who owns them and that they are part of the access agreement; there is a covenant and a revised covenant, and the access agreement attached to them; and it provides parking and access for the three parcels around them.

Mr. Hankin comes back to the stand to state that they build buildings on lots this size and smaller all the time. He states that the amount of setback requirements on this property is what makes it an unusual hardship preventing them from making their standard building size; and additionally, he believes the car wash next door also violates the code by being in the setback, but they didn't need a variance.

Boarder Langford-Loftis explains that they were not on the board at the time and are looking at this case in the existing circumstances.

Ms. Porter also clarifies that the car wash was approved by prior staff and the theory was that the primary structure was compliant and it was the accessory structure that was closer to the easement which is allowed.

Boarder Houch states that he does believe that there is a particular hardship to this since the street triggering the setback requirements is essentially just a driveway and so the requirement is onerous and believes that this meets the finding requirements for the other items as well.

Boarder Houck moves to approve the request, Chair Wiles seconds.

Roll Call:	Wiles	Rice	Houck	Langford-Loftis	Sexton
	Yes	Absent	Yes	No	No

Time: 27 minutes

Motion fails.

- b. Ideal Homes of Norman, LP and IH Development, **VARIANCE (VAR24-01)**, requesting review and granting of a variance to Sec. 23.83.a.3 to allow retaining walls to remain within utility and drainage easements as constructed for Block 3, Lots 6 thru 9, Block 4, Lots 1 thru 5 and in a dedicated easement adjacent to and north of Block 4, Lots 8 thru 14 of Park Valley Addition, Section 1 subdivision.

Chair Wiles invites staff forward to present the item.

Jaquelyn Porter presents the item and maps and suggests that the board looks at the item in three different sections:

- First Block 3, Lots 6 thru 9 (see page 13, attachment A),
- then Block 4, Lots 1 thru 5 (see page 14, attachment B - vertical),
- then Block 4, Lots 8-14 (see page 14, attachment B – horizontal).

Ms. Porter presents all three parts the board; clarifies where on the maps the retaining wall crosses the sewer lines and what the requirements were/why the casing was needed.

Ms. Porter refers to the full map on page 16 to clarify where the retaining wall crosses the sewer, around the bottom corner of lot 8 block 3. Ms. Porter invites staff member Mr. Bill Millis. Engineering Deputy Director to come to the stand to aid in explaining engineering requirements for the lines.

Mr. Millis explains that having casing over the sewer line is required since the retaining wall not only is with in the easement, it crosses over the sewer line, the casing protects the line from future degradation of the wall that may cause pressure on the line.

The board agrees with staff's suggestion to break down the variance and look at the various issues in three sections, they continue with discussion focused on Block 3, Lots 6 thru 9

Ms. Porter comments that has circled Block 3, Lots 6 thru 9 on the map (see page 16 of packet west wall in Block 3) and asks the board if they have any more questions regarding Block 3

Vice-Chair Hock clarifies this is the same sewer line discussed earlier in the middle of the circle that the retaining wall crosses. Mr. Millis states yes, there are actually multiple points where the retaining walls cross the sewer lines but this one in [block 3](#) is the one that requires casing and it was required separately from this application because even if the retaining was has not been running within the easement casing would have been required anywhere a sewer line was crossed.

Vice-Chair Houck asks how would we protect that line with the weight of this wall on top of it and what would you do to remediate the structure already there. He says he thinks tearing out that portion of the wall and exposing the line so that engineering staff can examine it to see if its protected okay. Mr. Millis says that is one possible option, he says staff had discussed this with the builders and there were 3 or 4 possible locations where the retaining was going to cross the sewer line and so the requirements where to encase the line for a certain length at each of those crossings and all but this one were covered. So, the upfront solution would be for the builders to go back, take the wall down and encase it like it was supposed to be.

Mr. Millis says that the staff offered to receive other alternatives for review, and they

didn't receive any other alternatives. Vice-Chair Houck recommends that an alternative would be if it is exposed for them to inspect it, they would also probably ask it to be protected at that point; points out that staff do not typically come up with solutions for the developer; usually, the developer comes up with the solution and it's the city's job to just say if it works or not; and that way staff couldn't be accused of coming up with a gold-plated solution and the developers are allowed to control their system as much as possible.

Vice-Chair Houck points out that the existing topography of the land is not in the developers control and since the land is essentially a hill, they would eventually need to come up with some sort of structure to do this development; and now that the wall is there, they are looking for a solution assuming that the encroachment can get by the board.

Mr. Millis agreed; and states that staff did offer the opportunity to for other options to be brought forward with the most obvious to be go back in and put in casing; inspecting it wouldn't be enough, they need to be able to protect the line for the future deterioration because the wall is in a drainage easement right on top of a flume; and a bridging option might work but it is ultimately up to the developer.

Mr. Loftis asks for clarification that there were two other cases where casing was required and were installed and this one that is not is just an error. Mr. Millis confirms that this one was because of an oversight.

Mr. Sexton asks if that point of termination on the north end is retaining wall that has been removed; Mr. Millis confirms.

Discussion is held about how long the sewer easement is which is 20 feet; how far into the sewer/utilities easement is the retaining wall; it is not in the sewer easement, it just crosses that one, the wall is built in the drainage easement and is along the property line.

Mr. Millis clarifies that you've got the property line in the middle with the 20 ft easement on one side and the 10 ft easement on the other and they all abut; and the utilities easement is where the sewer line and potentially other utilities are but the sewer is the main concern.

Mr. Sexton asks if the retaining wall is going to affect the use of the utility easement in the future. Mr. Millis says it could impact any legal user of that easement; you can't dig a 10 ft deep trench right next to that wall.

Mr. Sexton asks the board if you can't service that sewer line wouldn't that have an adverse effect on the public. Mr. Millis comments that it is what triggered the need for the variance with an encroachment agreement and release; and in the future it could impact the use of the utility projects.

Discussion is held about potential removal of the line if needed in the future.

Mr. Langford-Loftis asks if the retaining wall is in the drainage easement and not the sewer easement how would that affect things and asks for a summary on what a release of liability would do for the situation. Ms. Ewing explains that the city had said in advance not to build a wall until there is a variance and an encroachment agreement which is an agreement that the city council approves granting authorization to build or have something in the easement or right of way with the understanding that we can tear it down at any point in time and the owners would have to put it back up; and in the case of the retaining wall hopefully the backyard won't come sliding down if there is work being performed there; and so, what would happen is the developer would get this variance and encroachment agreement and if they sell the lot that would run with the land and then the owner would be stuck with that situation.

Mr. Langford-Loftis points out that would lead to an adverse effect on the homeowner; and if something happens to the sewer line and it were to need maintenance, this could lead to a landslide in someone's back yard.

Further discussion is held regarding the sloping topography; sloping is northwest to southeast; wall height being varied based upon topography; and potential setback issues.

The board advises that is all their questions for Block 3, Lots 6 thru 9 of the variance requests and confirms with legal that even though there is one variance request they can vote on it in sections.

Ms. Porter re-presents the map shown in attachment B page 14 with the specs for the wall that goes North to South in Block 4, Lots 1 thru 5

Discussion is held about the wall in this area being built in a drainage easement as well; and there is drainage to the west and utilities to the east.

Ms. Sexton asks if the retaining wall has impact if the drainage easement itself, does it cause it to be less useful as a drainage easement or is it just that it is in it. Mr. Millis points out that a retaining wall is not allowed in a drainage easement and that's why they're here; the builders did put a concrete plume on the high side of the wall to take the drainage away from the wall; and so in years it could break down but currently that's what the plume will address.

Vice-Chair Houck points out that the base of the wall has three-inch holes for drains so he also doesn't think the way it is currently constructed will affect the drainage easement.

Ms. Ewing asks if this would be solved if the developers gave the city more drainage easement on the other side of the wall and just moved the easement over. Mr. Millis says that would be possible, but it would move the easement to the middle of people's backyard instead of the back edge and would possibly create an issue with building setback requirements. So, it could work but it would cost them usable real estate.

Mr. Sexton asks if the retaining wall is right on the property line. Ms. Porter says it varies by less than a foot but it is essentially on the property line. Mr. Sexton asks if it is on the east edge of the current drainage easement. Ms. Porter confirms.

Mr. Sexton asks if they could move the easement over the less than foot would it take the retaining wall out of the easement; Ms. Porter says yes you could move it one foot.

Vice-Chair Houck states that moving it one foot away wouldn't interfere with the usable property. Mr. Millis points out that if the abutting easements are separated anybody working in the easement wouldn't be able to cross that line anymore, so the utilities couldn't cross there.

Ms. Porter comments that the city would technically be trespassing if it then went to work on where every the utilities cross; lots 1-5 wouldn't be impacted but with the typography, if the city needed to do work it, would need to do so on the east side of the wall which could potentially impact the wall.

Mr. Millis states the big issue of the wall being in the easement is that there is potential impact to the wall so even if it is moved over a foot that doesn't solve the problem.

Mr. Sexton asks what is the problem if you move the easement so it is no longer in the easement. Mr. Millis explains that you could potentially not even be able to work since it's so close.

Further discussion is held about a potential new 10 ft easement; the city would still want some release of liability; if it is moved over it is still potentially effecting future work in both easements; if instructions to the builder were to not build before this was approved; there were instruction not to build within the easement as the code doesn't allow it, the builders were instructed to go to council and get the encroachment agreement before it was constructed but construction was completed anyway.

Mr. Sexton asks what future work would you have in a drainage easement, would it be if a flume cracked and you needed to go replace something; Mr. Millis responds yes or if the joints were letting water through that was damaging the wall or if brush or trees needed to be removed; staff try to look forward because at some time the flume in the easement will need to be replaced, it might be 50 years from now but they're trying to be prepared so the future home owners don't have to deal with it.

Mr. Sexton asks if this is something the developer would have to disclose to the buyers, that it would be on them for the repair and maintenance of the retaining wall. Ms. Porter says she doesn't know if it is required.

Mr. Sexton says if there are encroachment agreements and release of liability would

those records be in the county clerk's office. Ms. Porter says yes. Mr. Sexton says so they would show up in the abstract.

Chair Willes asks if there are any questions for Jaqueline for part 2 Block 4, Lots 1 thru 5; none respond.

Ms. Porter continues with part 3 Block 4, Lots 8-14

Ms. Porter states this part is unique because it is not part of the plats but she will reference the lots 8-14 to the south as reference the dedicated utility easement is directly north of the properties. Ms. Porter references page 14 of the packet.

Ms. Porter states that this easement is not part of the Park Valley Section 1 as it was dedicated to the city as part of the utility easement that will provide for the future development of this project and Frye Farms which is located to the south. Ms. Porter points out that there is a water line that the walls cross here but this item has been addressed.

Mr. Langford-Loftis asks if that's where it had been braced. Mr. Millis states in the original submittal, there was a gap in the wall but once the wall was built it was continuous so what the city said was to satisfy that there was no impact on the water line show us how the wall was built and the cross section and the distance in the ground to the waterline and the bottom of the footing was still 2.5-3 feet above the waterline and the wall is only 3 foot tall here so staff was satisfied that it wouldn't jeopardize the water line.

Mr. Sexton confirms that there is no casing here either and Chair Willes asks for clarification on the gap in the original wall plans but then it was made continuous. Mr. Millis confirms.

Mr. Langford-Loftis says so in the original submission there was not a continuous wall and that was agreeable and then there was a continuous wall and they satisfied that the line wasn't going to be impacted by what they built. Mr. Millis says it was okay with respect to the water line but nothing else.

Mr. Langford-Loftis asks how it was discovered that the wall was continuous. Mr. Millis says by a site inspection and also subsequent submittal showed the wall continuous

Mr. Sexton asks if that inspection was before or after the subsequent submittal. Mr. Millis states that it was more of an observation than inspection as the walls aren't officially inspected. The subsequent submittal where the walls were continuous was submitted after the walls were already built and that's when they decided to go out and inspect them and require the builder to demonstrate that the walls had not created an issue by going over the water line other than the encroachment and easement

Mr. Landford-Loftis asks for clarification on the time line. Ms. Porter states that

there are several retaining walls throughout this whole subdivision and that they has originally submitted all of them in bulk and they were part of the original review where mostly the concrete walls were reviewed and discussed and in those plans there was a gap.

Mr. Langford-Loftis states he is trying to determine who suffers the hardship and where it comes from; understands that the initial submission was fine but as new problems are being found, trying to figure out where those problems stem from.

Mr. Sexton asks who required the retaining wall in the first place did the city require them. Mr. Millis said no, but on a site with that much contour, retaining walls are a common solution, when Ms. Porter said there were multiple walls in the original plan she meant there are dozens of retaining walls in this subdivision.

Mr. Langford-Loftis says so it's the developers decision on how to deal with the land. Mr. Millis confirms its their decision on how to deal with the lot lines, utilities, roads, etc.

Mr. Sexton comments that the hardship would probably be the typography since the walls or some kind of structure would be necessary to develop those areas. Vice-Chair Houck agrees. Mr. Millis says yes but the wall could have been placed outside the easement

Mr. Sexton says yes but then you lose half the back yard. Ms. Porter also points out on this one eventually there will also be lots to the north that abut this like the other walls

Mr. Sexton asks if they can put conditionals for each section while voting, for example, in part one where it crosses the sewer can there be a condition for just that part since the rest of them don't cross a sewer; and asks for confirmation that there is already casing in section 3 where the sewer crosses. Ms. Millis says yes section 3 required a casing when it was installed.

Ms. Ewing confirms that they could split it up into separate approvals with separate conditions.

Chair Wiles asks if there are any more questions for staff; none respond.

Chair Wiles opens the hearing to the public and asks the applicant and anyone to speak in favor to come forward

Melissa Higgins and Rylan Ragan with Ideal Homes come forward and speak on the following:

- Mrs. Higgins explains they are both up there as Mr. Regan worked on this project originally and she is the current contact
- Mrs. Higgins says in regards to your question on the first section in regards to the casing that got missed, they've since met with the utility contractor and although she had not confirmed this with city staff yet they have come

up with a solution to have an auger bore come in and put the casement in so that is scheduled but not done yet

Mr. Sexton asks if they would be agreeable to additional encroachment agreements and releases of liability if they accept this conditionally. Mrs. Higgins says yes that's what they were told they would have to do by city staff.

Mr. Regan states he would also wanted to address the drainage easement:

- The only reason the drainage easement was there was because Ideal Homes wanted to put a flume outside that wall because the lots sit below the curve
- So the only way the lots have to drain is backwards in the past when they had not put the flume there in a similar situation the water would essentially make the retaining walls a waterfall.
- In order to prevent that, Ideal Homes wanted to put in a flume, the city did not require it, and that is the only reason there is a drainage easement there.
- It was 2021 when these plans were initially going through the city and was under the impression these plans were approved by former city staff where they would put a 20 foot utility easement on the bottom side of the wall and then they would scoot the retaining wall outside the utility easement so if the sewer line was ever an issue it would give the city more room to access to the utility easement and then later they added the drainage easement
- The drainage easement was added later when the flumes were installed which has made the issue of easements come up again.

City Attorney Ewing asks if the flumes were dedicated; Mr. Regan says he doesn't know. Mr. Millis says he does not think so since they are just to drain the back lots.

Mr. Ragan says the flumes are their responsibility to maintain then.

Mr. Sexton asks the lots are sold to homeowners doesn't it become the homeowner's responsibility. Mr. Regan says it would be the homeowners or the Homeowners Association.

City Attorney Ewing says it would be the homeowner's not the HOA because it is not built on common property.

Mr. Sexton asks if they entered an encroachment agreement and a release of liability would that apply to both the drainage easement and the utility easement. Ms. Porter points out that the drainage and the utility easement are on different properties.

Mr. Sexton asks if the city went in and did work on that utility easement to the east that the wall is next to but not in and damaged the wall who would be responsible for repairing the wall as that's why he wants to make sure any release of liability agreement would apply to both sides of the wall. Ms. Ewing responds the wall is only abutting and not in one of the easements.

Mr. Sexton points out that since they're so close, if there was work that needed to be done even, if it wasn't in the easement the work could still cause damage to the wall. Mrs. Higgins states that was why they had to put the easement on either side of the line.

Mr. Sexton says he's talking about the line that runs parallel to the wall but the wall does not technically cross. Mr. Millis states that he thought the release of liability was for the wall but asks Mr. Sexton if he is asking if the EARL can go through both the drainage and utility easement as well. Mr. Sexton says that is correct.

Ms. Ewing responds it should be possible with the city have access to go to the easement where the wall is located and do what it needs; and the EARL can be written to cover whether its in the utility or drainage easement, the EARL would cover the release of liability.

Mr. Sexton specifies that they are currently talking about the property lines in section one. Ms. Porter clarifies since the property lines split through the middle, the EARL cover both properties or the city would be liable if it went and did work and damaged the side that was not part of the legal description for one of the properties.

Mr. Sexton asks if he can make the approval on the condition that the EARL cover both easements. Ms. Ewing says yes.

Mr. Sexton comments even though the wall is not in the utility easement if they go in and start working on that sewer it could cause problems with that wall.

Chair Wiles ask how far is that easement going to be. Mrs. Higgins says 10 feet on either lot, so 20 feet total. Ms. Ewing reviews the encroachment and release of liability form and clarifies that the wall is going to be on one lot and the utility easement is on a different lot.

Mr. Sexton says that the sewer line is only 10 feet away from the wall even though they are on different lots in a different easement so work on that sewer line could cause problems with the retaining wall. Ms. Ewing says typically the agreement applies to the easement and the encroachment and is not drafted to apply to that and the abutting easement on a different lot.

Mr. Sexton asks if it's possible to cover the abutting easement on a different lot, is there anything that says we can't. Ms. Ewing responds that she believes as long as it is owned by the same person then they can re-draft the agreement it's just going to be a challenge but can figure out how to do it.

Mr. Sexton states his concern isn't with the drainage easement that the wall is actually in as Mr. Millis said there won't be too much work done there but there could definitely be work in the future in the utility easement and working on the sewer line could have serious impact on the retaining wall. Mrs. Higgins asks if the board has any more questions for them.

Mr. Regan states that there is one more thing he would like to add, that the walls were approved prior to construction by former city staff before they started it; they had conversations with a member of city staff that is no longer with the city and that they had come to a planning board and city council originally and that he had approved this construction before they started; states he knows it was stated earlier that they were told they were not supposed to build until this EARL was in place and he doesn't know if he missed something on their end but him and Melissa was under the impression they were approved for construction; they built the wall and then later they were told now you need a variance from the city because you built in an easement.

Vice-Chair Houck asks if it was the placement of the walls that was approved by the city or the construction of the walls. Mrs. Higgins says it was the construction and they had to submit building permits and location of site plans.

City Attorney Ewing asks if they have that in writing. Mr. Ragan says they have an email from Andy (the former staff member) saying that they were approved for construction.

Mr. Sexton starts with Block 3 Lots 6 thru 9, being called Section 1, move for approval of the variance conditional upon the casing saddle being put in at ten (10) feet on either side covering, covering the sanitary sewer that intersects the retaining wall between lots 7 and 8 condition upon that saddle being put in and the Encroachment Agreement and Release of Liability covering both the ten (10) feet drainage easement to the west that is included in Lots 6, 7, 8 & 9 of Block 3 and the 20' utility easement in Lots 1, 2, 3, 4 & 5 of Block 3 based upon criteria #1 the topography of this particular piece of property is the hardship and the topography is what necessitates the retaining walls to be built and causes the unnecessary hardship; criteria #2 again the conditions that are peculiar to this piece of property are the topography; criteria #3 the relief would not cause substantial detriment to the public by putting in the saddle for the sanitary sewer and by doing the Encroachment Agreement and Release of Liability as to both the drainage and utility easement on the east side would prevent there from being any serious detriment to the public; and criteria #4 the variance would be necessary for the minimum to alleviate the unnecessary hardship and other hardship could have been that according to the applicant, the location of the retaining wall was approved by previous staff, Vice-Chair Houck seconded the motion.

Mr. Millis returns to the podium and explains that while staff understands that Mr. Rylan believes the construction was approved, staff couldn't locate the exact approval for these areas and wanted the board to understand that staff didn't necessarily disagree with him but tried to confirm or repute it but can't as staff can't tell them to move forward that that is only authorized by this body and City Council so to staff that was irrelevant.

Chair Wiles calls for board discussion.

Mr. Langford-Loftis states that he does take a bit of an issue with the ambiguity of whether there was an ability to proceed at that time given the correspondence with staff and takes issue with that in not granting the approval to this particular part of the variance and to finish his point, with there being an abundance of correspondence advising against the construction of the walls given the rules that needed to be followed also takes issue with that as it being self-inflicted and not a peculiar hardship but a series of decisions that could have been clarified with questioning so not very comfortable at this time with agreeing with the variance.

Chair Wiles states that Mr. Sexton also mentioned the hardship not necessarily related to not agreeing to move forward but to the particular piece of property itself. Mr. Loftis responds that from a legal standpoint, that is what you have to look at and Chair Wiles agrees but if it's self-inflicted that is one thing. Mr. Loftis states that he believes that if it was constructed before or afterward, I still think there is no hardship or unnecessary hardship that is going to require that retaining wall being built before or after.

Chair Wiles calls for a vote.

Roll Call:	Wiles	Rice	Houck	Langford-Loftis	Sexton
	Yes	Absent	Yes	No	Yes

Mr. Sexton for Block 4, lots 1 thru 5, referred to as Section 2 which is the north/south portion of the 2nd retaining wall, excluding the north 7.5 feet, again moved for approval of the variance conditionally upon acceptance of the Encroachment Agreement and Release of Liability covering both the 10' drainage easement on lots 1, 2, 3, & 4 in Block 4 as well as the 20' utility easement covering lots 6, 7 & 8 of Block 4 based upon criteria approval as stated in first motion, Chair Wiles seconds.

Roll Call:	Wiles	Rice	Houck	Langford-Loftis	Sexton
	Yes	Absent	Yes	Yes	Yes

Mr. Sexton states that related to the dedicated utility easement portion of the retaining wall that covers Lot 8, 9, 10, 11, 12, outlot C, 13 and 14 of Block 4, referred to as Section 3, moved for approval conditionally upon acceptable Encroachment Agreement and Release of Liability covering both the 20' utility easement, platted easement that covers Lots 8, 9, 10, 11, 12, outlot C, 13 and 14 in Block 4 and in addition would cover the 10' utility easement right to the north of the retaining wall that has not been platted yet so it will be called the existing dedicated utility easement lying north of the retaining wall based upon criteria approval as stated in first motion, Vice-Chair Houck seconds.

Roll Call:	Wiles	Rice	Houck	Langford-Loftis	Sexton
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	Yes	Absent	Yes	Yes	Yes
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Time: 77 minutes

4. Minutes for Discussion and Possible Action:

- a. Regular meeting minutes of February 1, 2024.

Mr. Langford-Loftis and Mr. Sexton ask if they can vote on the minutes of if they need to abstain as they were not present.

Ms. Ewing confirms that as long as they read the minutes, they can approve them.

Chair Wiles moves to approve the request, Vice-Chair Houck seconds.

Roll Call:	Wiles	Rice	Houck	Langford-Loftis	Sexton
	Yes	Absent	Yes	Yes	Yes

Time: 1 minute

5. Reporters from Officers and Boards

- a. Next regular meeting is Thursday, April 4, 2024.

6. Adjournment.

Chair Wiles moves to adjourn, Vice-Chair Houck seconds.

Roll Call:	Wiles	Rice	Houck	Langford-Loftis	Sexton
	Yes	Absent	yes	Yes	Yes

Time: 1 minute

This regular meeting of the Board of Adjustment adjourned at approximately 7:17 p.m.

Prepared by – Alexandria Maged, Administrative Assistant

Reviewed by – Cindy Gibson, Administrative Services Manager

Approved by: _____
Stillwater Board of Adjustment

**STILLWATER BOARD OF ADJUSTMENT
Regular MEETING OF July 11, 2024
IN ACCORDANCE WITH THE OKLAHOMA OPEN MEETING
LAW, THE AGENDA WAS POSTED July 8, 2024
IN THE MUNICIPAL BUILDING AT 723 SOUTH LEWIS STREET**

Members Present:

Jim Rice
Bryan Langford-Loftis
Michah Sexton

Members Absent:

Staff Present:

Tammy Ewing, Assistance City Attorney
Jacquelyn Porter, City Planner
Diana Hood, Associate Planner
Cindy Gibson, Admin. Services Manager
Ally Maged, Admin. Assistant
Joshua Brown, Project Manager
Bill Millis, Deputy Director

Guests:

1. CALL MEETING TO ORDER.

Mr. Rice calls the meeting to order at 5:30 PM.

2. BUSINESS ITEMS FOR CONSIDERATION, DISCUSS AND POSSIBLE ACTION ON:

- a. Steuver Holding Company (Justin Steuver), VARIANCE (VAR24-04), requesting review and granting of a variance to Sec.23.138.c.2 for minimum lot width in the Two-Family Residential (RT) district for property addressed as 1205 S. Duck Street

Mr. Rice invites staff forward to present the item.

Jaquelyn Porter presents the item and asks if the board has any questions for staff.

Mr. Sexton clarifies that the city has granted the change in zoning and now the lot meets the minimum square footage and all the other requirements except the width now, and this is similar to quite a number of these we've done in the area. Ms. Porter responds yes because these lots are from the original plat and are really narrow also the footage required for RT zoning doesn't quite add up.

Mr. Langford-Loftis asks why the lot was rezoned to RT. Ms. Porter responds it's because the applicant wanted to build a duplex.

Mr. Langford-Loftis asked if the lot becoming non-compliant was brought up during council and if the lot originally compliant. Ms. Porter responds that it was originally zoned RSS so it was conforming, the applicant wanted to do a duplex for infill in this area, and so requested the rezoning to do two-family which triggered the need

for a Variance.

Mr. Langford Loftis asks if this was brought up during the Council meeting and was it recommended that the applicant file for a variance. Ms. Porter responds the staff told him he would need a variance before applying for the map amendment, City Council knew that the variance would be needed, but it was only triggered once they approved it.

Mr. Rice asks if they should have done the variance first. Ms. Porter explains that they could only get a variance for the current zoning of a lot.

Ms. Sexton clarifies that they didn't need a variance until they got the map amendment; Ms. Porter confirms.

Ms. Langford- Loftis responds that sounds peculiar. Ms. Tammy Ewing, Assistant City Attorney responds it is, and believes she might have interpreted the code's text differently, the variance is under section 23-23 of the ordinances in the section titled variances, it states the variances terms, standards and criteria pertain to an allowed use category so it could be interrupted they would usually be asking the board to grant a variance to a use category but a lot size is not necessarily a use.

Ms. Porter responds that the whole section is variances but includes bulk standards as well. Ms. Ewing asks that it says use category within a zoning district. Ms. Porter clarifies that's just the title of the article.

Discussion is held regarding the chapter and article; that article is the uses and bulk standards which fall under variances being all in one.

Ms. Sexton comments its goofy to rezone it when you can't put something on it anyway without the variance and questions why you would do that. Ms. Porter explains that this variance is more of a formality because it would make the lot conforming, he would still build it all the standards as required and so this is clear title if needed in the future.

Mr. Sexton asks if staff understands that from the board's standpoint, they have to meet the legal requirements and it doesn't meet the legal requirements to be able to have a variance, as the owner created hardship is not a hardship that is recognized to allow a variance, and this is basically an owner created hardship. Mr. Rice says, respectfully, it's a City Council created hardship.

Ms. Porter responds yes, but our code doesn't allow for duplexes at all in RSS even with a specific use permit where most cities do, and that the other avenue would have mitigated this issue.

Mr. Langford-Loftis comments it seemed that the legal counsel has arrived at an understanding with the code after review just now; and asks if they could help the board to arrive at a similar understanding and explain what helped them understand the code here.

Ms. Ewing explains that initially looking at the code she did not think the board grant a variance to allow a lot that's not wide enough to be considered in compliance because it's not in use of that lot, but after discussion with Planning staff, the determination was made that the board could grant a variance.

Ms. Porter explains that variances are usually for setback and uses but this does fall under this category in the text. Ms. Ewing says this is more of an academic argument of the structure of the code.

Mr. Langford-Loftis asks if he can be walked through how procedurally they decided to adjust the zoning from RT to RSS knowing that it would create a conflict and was the applicant advised with that understanding that once this is complete, the necessary next step would be to appeal for a variance. Mr. Porter explains that in previous cases City Council has made it a condition of the approval of a map amendment that they would need to get a variance in this case they did not make a variance a condition of approval, but the applicant was advised he would need to do so, therefore, he submitted the rezoning and the variance request at the same time.

Ms. Ewing advises that conversation with City Attorney Carnley, the question was asked whether they could make the variance of condition of the rezoning, and was advised no as that would be making an amendment to the zoning map so it wouldn't be a condition; and everyone understood that there would need to be a variance.

Ms. Porter responds there have been past cases where they made getting a variance a condition of the map amendment. Ms. Ewing said but either way it sounded like everyone understood a variance would be needed if they approved the map amendment.

Mr. Rice summarizes that the Council considered it, decided that they wanted to do it, duly deliberated and passed it, but they couldn't pass the variance, so they left that down to this board. Ms. Porter said yes, they don't have the power to grant the variance.

Ms. Ewing explains, for council to allow them to build a duplex on this lot they would have to either grant a map amendment or amend the city's zoning code.

Mr. Langford Loftis clarified if they amended the zoning code that would sweepingly apply. Ms. Ewing said yes, which is not what council chose to do.

Ms. Porter says it was determined by council that this was an appropriate zoning for the projected high density and would help with infill.

Mr. Langford-Loftis asks staff to clarify if the variance is needed because the applicant wishes to build a duplex and that is triggering the variance OR is it

because since it is zoned RT and the lot must be a certain dimension. Ms. Ewing confirmed that it is the latter

Mr. Langford-Loftis asked if that makes it difficult because this is a City Council made issue because now the applicant can't even build a popsicle stand because the lot itself is non-conforming.

Mr. Rice asks if the applicant can still build a single-family house on it. Ms. Porter responds yes; they could do that with a specific use permit.

Mr. Langford- Loftis points out that the lot would still be non-conforming though because the lot itself is non-compliant

Mr. Sexton asks if we denied the variance is he going to have to go back and do a special use permit or ask for zoning back to an RSS. Ms. Porter responds with a specific use permit in RT you can do a duplex for a single-family structure.

Ms. Ewing points out that the lot itself would still not be wide enough. Ms. Porter confirms.

Mr. Langford-Loftis says so the fundamental problem of the lot size remains, and the lot will just sit there with a red flag on it. Ms. Porter shares since the Map Amendment didn't have any conditions, if the variance doesn't go through, the project dies and leaves a non-conforming lot.

Ms. Ewing says but they can still build on it if the building meets the City's standards.

Mr. Langford Loftis asks what the consequences are then. Ms. Ewing says If somebody really looked at it, and even a title attorney might not catch this, but it could possibly affect the sale of the property down the road; however, she's not certain of this. Ms. Porter responds since it's also close to the original downtown, they're just going to assume its legally non-conforming and not just non-conforming. Mr. Sexton says that the title attorney wouldn't check for it, at the firm he works at, they put a disclaimer that it is up to the purchaser to check zoning and related items.

Ms. Ewing asks if council has approved the map amendment how would this not be a legal non-conforming lot. Ms. Porter responds a lot can only be legally non-conforming prior to the adoption of the current code or by annexation

Mr. Langford Loftis says that this puts them in a tough position. Ms. Ewing asks if there are no consequences, how is there an undue hardship.

Mr. Langford Loftis says surely there must be consequences that have not foreseen. Ms. Porter states technically, because staff knows about it, they would have to write them up.

Ms. Ewing asks if they could get a building permit if they must write them up. Mr. Porter responds yes, the building permit process does not require they check if the lot is legal non-conforming or just non-conforming, if this hadn't been brought to current staff's attention anyone reviewing it would think it was legal non-conforming because everything the applicant is proposing in the building aspect is conforming.

Ms. Ewing asks if he wanted to build on the lot in the future to expand or add accessory structures would that be allowed. Ms. Porter responds it would be allowed as long as the structure met the zoning requirements.

Ms. Ewing confirms that is because it's not the use and the structure that's not conforming, it's just the lot; Mr. Porter confirms.

Mr. Langford-Loftis asks if the building permit processes checks if the lot is conforming. Ms. Porter explains that they check but would assume it is legally non-conforming and certain circumstances would require a variance prior to obtaining a building permit.

Mr. Langford-Loftis states older parts of Blackwell experience similar issues; states that he was thinking the board would need to kick this back, but there are so many of these older non-conforming lots that, by denying this one, could create a whole ripple effect.

Mr. Rice asks if there is another duplex two houses down from this one. Ms. Porter responds yes there is actually a whole RT zoning district nearby.

Ms. Ewing says there's a letter in the packet from the applicant explaining that he did something similar close by. Mr. Porter confirms that the plans are attached, and he has some other duplexes in town.

Mr. Langford-Loftis asks if they had to go through a variance request for those. Mr. Porter responds they were done before she was at the city and isn't sure about a variance but the applicant did get another rezoning.

Ms. Ewing says a lot of these older lots are consolidating which is fixing the issue of lot size as they go, so they don't need a variance, they do in this case.

Mr. Rice asks if there are any other questions from the Board; none respond

Mr. Rice opens the public hearing and asks if anyone would like to speak in opposition to the item or anyone who would like to make additional comments; none respond.

Mr. Rise closes the public hearing and invite staff to present criteria and alternatives.

Ms. Porter states that criteria for approval, which are:

1. The application of the ordinance to the particular piece of property would create an unnecessary hardship.
2. Such conditions are peculiar to the particular piece of property involved;
3. Relief, if granted, would not cause substantial detriment to the public good, or impair the purposes and intent of the ordinance or the Comprehensive Plan; and
4. The variance, if granted, would be the minimum necessary to alleviate the unnecessary hardship.

Ms. Porter continues, stating the alternatives:

1. Find that each of the criteria for approval of the request is met. The Board will explain how each criterion is met in order to approve the variance(s).
2. Find that each of the criteria for approval of the request is met by imposing modifications or conditions to ensure that the criteria are met. The Board will explain how the criteria are met to grant partial, conditional, or modified approval of the variance(s).
3. Find that one or more of the criteria for approval of the request is not met and deny the request.
4. Table the discussion to a certain date to allow for additional information to be presented.

Mr. Langford-Loftis asks if any alternatives were presented to the applicant other than these. Ms. Porter responds the criteria is presented to the applicant, but the applicant is responsible for arguing how that criterion is met.

Mr. Sexton asks if they deny this will the applicant go back to RSS and still build a single-family residence. Ms. Porter explains that the applicant would have to apply again to rezone it back to RSS since the variance was not a condition of the rezoning.

Mr. Langford-Loftis says the hardship is created by the way the code is worded. Mr. Rice says this definitely qualifies as a peculiar issue to a piece of property.

Mr. Langford-Loftis moves to approve the criteria as it is peculiar to the piece of property as otherwise the land becomes illegal just by existing which creates a hardship of the land being unusable as well as other possible unforeseen consequences; granting this variance doesn't cause any detriment as the lot could sit unused otherwise; granting this variance is the minimum necessary as opposed to rewriting the code or asking the applicant to re-apply back to another zoning. Mr. Rice seconds.

Mr. Sexton votes no; explaining he does not believe this meets the criteria as although it is the fault of the City Council that it is in front of them now, the applicant knew if he would create a non-conforming lot before he applied for the map amendment, so this hardship is created by the property owner and does not meet the criteria.

Roll Call:	Wiles	Rice	Houck	Langford-Loftis	Sexton
	Absent	Yes	Absent	Yes	No

Time: 39 minutes

The motion fails.

3. Reporters from Officers and Boards

- a. Next regular meeting is Thursday, August 1st, 2024.

4. ADJOURNMENT.

Mr. Langford Loftis moved and Mr. Rice seconds to adjourn the meeting.

Roll Call:	Wiles	Rice	Houck	Langford-Loftis	Sexton
	Absent	yes	Absent	Yes	Yes

Time: 1 minute

This regular meeting of the Board of Adjustment adjourned at approximately 6:11 p.m.

Prepared by – Alexandria Maged, Administrative Assistant

Reviewed by – Cindy Gibson, Administrative Services Manager

Approved by: _____
Stillwater Board of Adjustment