

City of Menasha

SPECIAL ZONING APPROVAL

Owner Daniel L. Gueths Case or Plan No. BOA 2011-01
Address W 7255 Manitowoc Rd Fee \$350.00

Applicant (if different than Owner) _____

Address Neighbors, City of Menasha, Whanganie Dog Club

Zoning _____ Parcel Number(s) 700012-00

PLEASE INDICATE WHICH REQUEST IS BEING MADE

- Rezoning
- Special Use
- Flood Plain Map Amendment
- Appeal or Variance
- PUD Plan Approval

Description of Request: To be able to divide the above lot on a zero lot line the present building on the lot ^{line} _{adjacent} to be used as presently used.

Owner/Agent Daniel L. Gueths 9/17/11
Signature

(If applicable) Formal Hearing 10/10/11

Informal Hearing _____ Notice Mailed 9/30/11

Notice Mailed _____ Notice Mailed _____

Action Taken: _____ 20__

- APPROVED
- DENIED

Conditions (if any): _____

City of Menasha
Variance Application Questionnaire

Applicant: Daniel L. Guth Site Address: W 7255 Manitowoc Rd.

Menasha Ordinance 13-153(d) provides that the Board of Appeals shall evaluate a variance request based on the foregoing criteria. Before granting such a request, the Board must find that all of the criteria enumerated apply to the variance requested. Please address each statement; use additional sheets if necessary.

Describe the hardship to the property owner that would result if the variance were not granted and the exceptional, extraordinary, or unusual circumstance or conditions applying to the lot or parcel, structure, use, or intended use that do not apply generally to other properties or uses in the same district:

I wish to sell the property + retire. This lot is not ordinary with a 30' wide by 400' long building on a 100' wide lot. 25 years ago the building was put on the lot going north and south to maximize the use of the lot with the entrance on Manitowoc Rd. The only road at the time. Now there is a road to the south, Saffery St. which allows access from north and south. I wish to split the building and sell the north half, building and property. Under section 13-1-29 (GENERAL Commercial District) under F.4 it allows for a zero lot line which only makes good common sense.

Explain why the conditions upon which the petition for the variance is based are unique to the property and necessary for the preservation and enjoyment of substantial property rights possessed by other properties in the same district and same vicinity:

(SAME AS ABOVE) The building will not change, or the use change. It will only change owners. With access from the north and south and possibly even the west in the future. There is no logic in splitting the building apart and taking out two 10' X 30' storage units. There will be nothing to gain. It does not affect any other property rights. It will only hurt the property value and there would be a loss of income. And also the demolition cost.

Provide evidence demonstrating that the purpose of the variance is not based exclusively upon a desire to increase the value or income potential of the property:

Purpose of the variance is to be able to sell the property, as I was encouraged to do so by the city of Menasha. I wish to retire with the troubled economy and

poor real estate market requiring large down payments, it is not easy to sell property. It will not affect any other property in any way. The buyer I have can only afford to get a loan to buy half of the property.

Describe how the granting of the variance will not be detrimental to the public welfare or injurious to the other property or improvements in the neighborhood in which the property is located:

Basically nothing is going to change other than ownership. It will not affect any other property in anyway. This building has been here 25 years. If anything by putting a 20' area between the two halves of the building would allow an area for junk to collect and also dog club members ~~could~~ would be able to see the outside parking now on the west side of the building. THE BUILDING blocks that now. I have made an effort to keep things out of sight.

Explain why the proposed variance will not undermine the spirit and general or specific purposes of the zoning code:

My opinion is that this is a text book example where a zero lot is the most logical way to split this property and makes good common sense. It would be senseless to destroy part of the building without any good reason and have to pay money to do it and then suffer future lost income from those two units. I believe this boils down to interpretation of the code. The code does not clarify how to determine the front lot, or the back lot, or the side lots. continued on back

Please submit a site plan showing an accurate depiction of the property and any other relevant or required documents. →

I certify that all information provided is to the best of my knowledge accurate and true.

Property Owner:

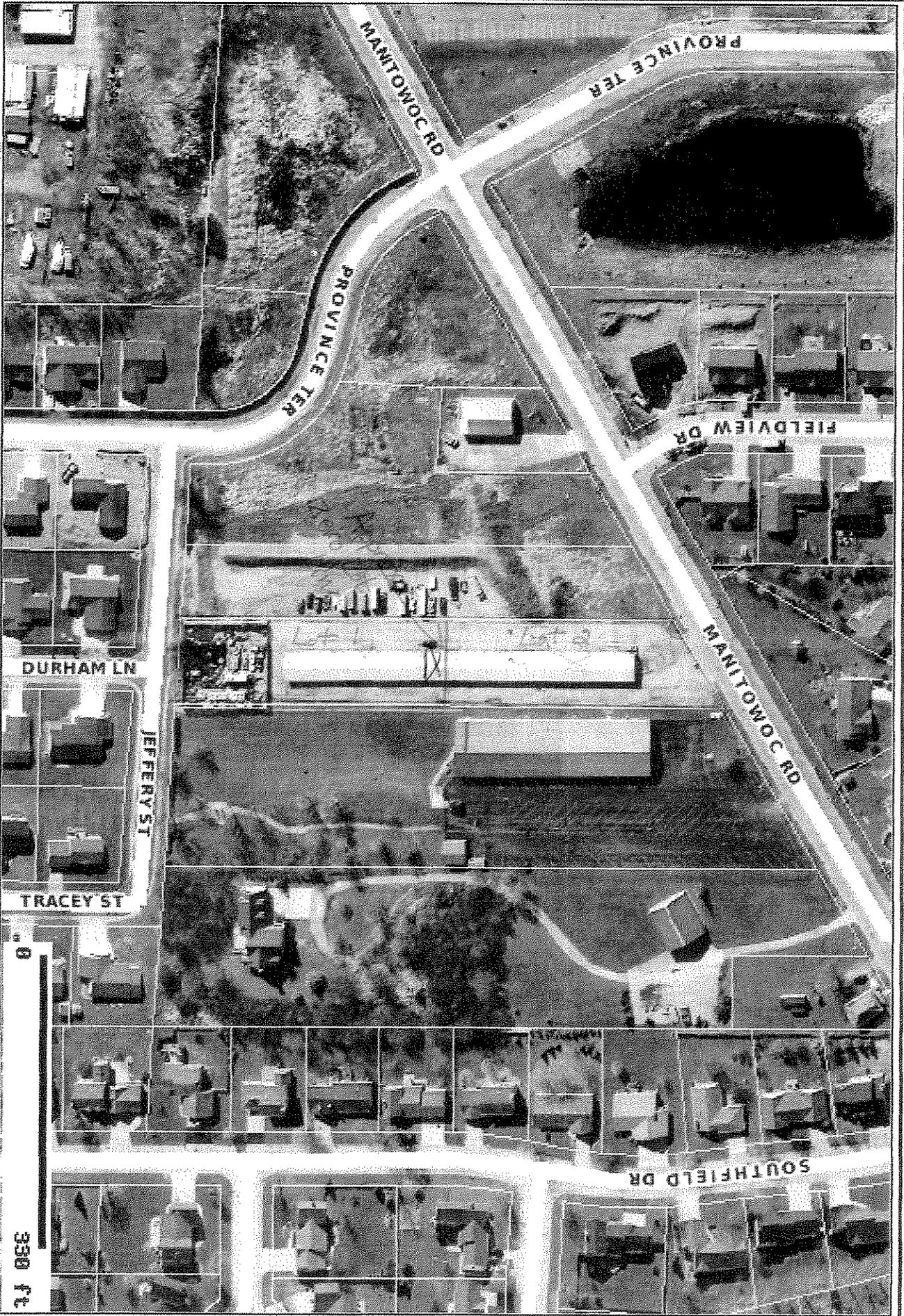
Daniel A. Gueths
Signature

Date:

9/19/11

Usually the ends of the building are the sides. This building was built 25 years ago to maximize the use of the lot. It is the duty of City Government to use logic and good common sense. This is not a new building site with I think the code is more applicable to. To have to destroy 2 of the storage units senselessly would not benefit anyone and would only hurt the value of the property.

Daniel Dr. Gault



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To: Zoning Board of Appeals
From: Kara Homan, AICP, Principal Planner
Date: October 4, 2011
RE: Variance Request for W7255 Manitowoc Road

OVERVIEW

Property Address: 7255 Manitowoc Road

Property Owner: Daniel L. Gueths

Property Zoning: C-1 – General Commercial District

Surrounding Zoning: R-1 – Single Family Residential to the North and South; C-1 – General Commercial to the East and West.

Variance Requested: Section 13-1-29(f)(5); Minimum Rear Yard of 10 Feet. Requesting that there be no setback, thus allowing for a zero lot line.

Reason for Variance: To allow Mr. Gueths to divide his property and business as a means of facilitating a sale.

REGULATIONS FOR GRANTING A VARIANCE

Per Chapter 13-1-153(d), the Zoning Board of Appeals must find the following five items to be true prior to granting a variance:

- 1) Hardship to the Property Owner due to Physiographical Considerations
- 2) Unique Property Conditions
- 3) Exclusive Desire to Increase Property Value or Income
- 4) Will Not be Detrimental to the Neighborhood
- 5) Will not Undermine the Spirit of the Zoning Code

Please see the enclosed copy of the municipal code for more detailed information on each of these items; the entire text of each item is also included in the discussion below.

ANALYSIS OF VARIANCE REQUEST

Below is staff's analysis of each of the five required items per Chapter 13-1-153(d) as they pertain to the variance requested by Mr. Gueths.

1. Hardship to the Property Owner due to Physiographical Considerations

SEC 13-1-153(D)1: "Denial of variation may result in hardship to the property owner due to physiographical consideration. There must be exceptional, extraordinary or unusual circumstances or conditions applying to the lot or parcel, structure, use or intended use that do not apply generally to other properties or uses in the same district and the granting of the variance would not be of so general or recurrent nature as to suggest that the Zoning Code should be changed."

ANALYSIS: The current and intended use for the site is as a storage locker facility; no modifications or additions to the site are planned, thus there are no physiographic barriers to even consider. The land is flat and the lot is rectangular in nature. The parcel has a suitable building envelope that would not prevent any future re-development of the site.

Not granting this variance to allow the property and building to be split thus creating a "zero lot line" at the rear lot line would not preclude the property from continuing in its current use.

In addition, there are several other options for Mr. Gueths to accomplish the division of his building for the purpose of facilitating a sale. These include 1) creating a condominium; or 2) creating two separate building by eliminating storage units within 10 feet of a new rear yard lot line.

2. Unique Property Conditions

SEC 13-1-153(D)2: The conditions upon which a petition for a variation is based are unique to the property for which variation is being sought and that such variance is necessary for the preservation and enjoyment of substantial property rights possessed by other properties in the same district and same vicinity.

ANALYSIS: Their variance is not required to preserve the current use and enjoyment of the property. As stated above, the property is flat and rectangular in nature, and faces the same zoning regulations (e.g. rear yard setback requirements) that other similarly zoned properties are subject to. Granting the variance is not required for preservation and continued use as a Storage Locker facility.

3. Exclusive Desire to Increase Property Value or Income

SEC 13-1-153(D)3: The purpose of the variation is not based exclusively upon a desire to increase the value or income potential of the property.

ANALYSIS: It appears as if the primary reason for requesting the variance is to allow for a prospective buyer to purchase a portion of the building, thus increasing income for Mr. Gueths. Mr. Gueths states in his application that dividing the building in a way that is compliant with the zoning code (e.g. creating two separate buildings) would "only hurt the property value and there would be a loss of income, and the demolition costs."

4. Will Not be Detrimental to the Neighborhood

SEC 13-1-153(D)4: The granting of the variation will not be detrimental to the public welfare or injurious to the other property or improvements in the neighborhood in which the property is located.

ANALYSIS: Although the proposed use will remain the same, should the two newly created lots and parts of the storage lockers ever be in different ownership, the south part of the property may require access onto Jeffrey drive, thus substantially increasing traffic and noise in what is currently a quiet residential neighborhood.

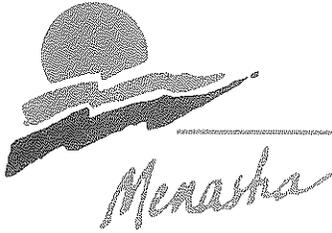
5. Will not Undermine the Spirit of the Zoning Code

SEC 13-1-153(D)5: The proposed variation will not undermine the spirit and general and specific purposes of the Zoning Code.

ANALYSIS: Approving the proposed variance would undermine the rear yard setbacks of the C-1 General Commercial District (Sec 13-1-29) of the zoning code, by setting a precedent that variances to setbacks can be granted for reasons other than those allowed for in Chapter 13-1-153(d) of the City Code.

STAFF RECOMMENDATION

Staff recommends the variance, as requested, be denied by the Board of Zoning Appeals. Per the analysis presented above, staff believes that of the five required items to be met prior to granting a variance, none have been satisfied.



**City of Menasha
Board of Zoning Appeals
Public Hearing**

A Public Hearing will be held by the Board of Zoning Appeals on October 10, 2011 at 3:00 p.m. in the City Hall Council Chambers, 140 Main Street, Menasha, WI to hear the appeal of Daniel L. Gueths, for the property at W7255 Manitowoc Road, Menasha, WI.

The applicant is requesting to split parcel 7-000012-00 (W7255 Manitowoc Road, Menasha, WI) into two parcels. Absent a variance, this action would create two lots that would not have a 10 foot rear yard setback as required in the C1 General Commercial zoning district.

All interested persons objecting to or supporting this appeal are requested to be present. Written comments may be considered by the Board.

Deborah A. Galeazzi
City Clerk

Run: Sept. 30, 2011

ARTICLE L

Appeals

SEC. 13-1-150 APPEALS TO THE ZONING BOARD OF APPEALS.

- (a) **SCOPE OF APPEALS.** Appeals to the Board of Appeals may be taken by any person aggrieved or by any officer, department, board or bureau of the City affected by any decision of the administrative officer. Such appeal shall be taken within thirty (30) days of the alleged grievance or judgment in question by filing with the officer(s) from whom the appeal is taken and with the Board of Appeals a notice of appeal specifying the grounds thereof, together with payment of a filing fee as may be established by the Common Council. The officer(s) from whom the appeal is taken shall forthwith transmit to the Board of Appeals all papers constituting the record from which action the appeal was taken.
- (b) **STAY OF PROCEEDINGS.** An appeal shall stay all legal proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certified to the Board that, by reason of facts stated in the certificate, a stay would, in his opinion, cause immediate peril to life or property. In such cases, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board of Appeals or by a court of record on application, on notice to the officer from whom the appeal is taken and on due cause shown.
- (c) **POWERS OF ZONING BOARD OF APPEALS.** In addition to these powers enumerated elsewhere in this Code of Ordinances, the Board of Appeals shall have the following powers:
- (1) Errors. To hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by the Zoning Administrator or Building Inspector.
 - (2) Variances. To hear and grant appeals for variances as will not be contrary to the public interest where, owing to practical difficulty or unnecessary hardship, so that the spirit and purposes of this Chapter shall be observed and the public safety, welfare and justice secured. Use variances shall not be granted.
 - (3) Interpretations. To hear and decide application for interpretations of the zoning regulations and the boundaries of the zoning districts after the City Plan Commission has made a review and recommendation.
 - (4) Substitutions. To hear and grant applications for substitution of more restrictive nonconforming uses for existing nonconforming uses provided no structural alterations are to be made and the City Plan Commission has made a review and recommendation. Whenever the Board permits such a substitution, the use may not thereafter be changed without application.
 - (5) Unclassified Uses. To hear and grant applications for unclassified and unspecified uses provided that such uses are similar in character to the principal uses permitted in the district and the City Plan Commission has made a review and recommendation.
 - (6) Temporary Uses. To hear and grant applications for temporary uses, in any district provided that such uses are of a temporary nature, do not involve the erection of a substantial structure and are compatible with the neighboring uses and the City Plan Commission has made a review and recommendation. The permit shall be temporary, revocable, subject to any condition required by the Board of Zoning Appeals and shall be issued for a period not to exceed twelve (12) months. Compliance with all other provisions of this Chapter shall be required.

- (7) Permits. The Board may reverse, affirm wholly or partly, modify the requirements appealed from and may issue or direct the issue of a permit.

SEC. 13-1-151 HEARING ON APPEALS.

The Board of Appeals shall fix a reasonable time for the hearing, cause notice thereof to be published in the official newspaper not less than seven (7) days prior thereto, cause notice to be given to the appellant or applicant and the administrative officer(s) appealed from by regular mail or by personal service not less than five (5) days prior to the date of hearing. In every case involving a variance, notice shall also be mailed not less than five (5) days prior to the hearing of the fee owners of records of all land within one hundred (100) feet of any part of the subject building or premises involved in the appeal.

SEC. 13-1-152 DECISIONS OF BOARD OF APPEALS.

- (a) **TIME FRAME.** The Board of Appeals shall decide all appeals and applications within thirty (30) days after the public hearing and shall transmit a signed copy of the Board's decision to the appellant or applicant and the Zoning Administrator.
- (b) **CONDITIONS.** Conditions may be placed upon any zoning permit ordered or authorized by this Board.
- (c) **VALIDITY.** Variances, substitutions or use permits granted by the Board shall expire within six (6) months unless substantial work has commenced pursuant to such grant.

SEC. 13-1-153 VARIATIONS.

- (a) **PURPOSE.**
- (1) A request for a variance may be made when an aggrieved party can submit proof that strict adherence to the provisions of this Zoning Code would cause him undue hardship or create conditions causing greater harmful effects than the initial condition. A variance granted to a nonconforming use brings that use into conformance with the district and zoning requirements.
- (2) The Board of Appeals may authorize upon appeal, in specific cases, such variance from the terms of the Zoning Code as will not be contrary to the public interest, where owing to special conditions a literal enforcement of the provisions of the Zoning Code will result in unnecessary hardship and so that the spirit of the Zoning Code shall be observed and substantial justice done. No variance shall have the effect of allowing in any district uses prohibited in that district, permit a lower degree of flood protection that the flood protection elevation for the particular area or permit standards lower than those required by state law.
- (3) For the purposes of this Section, "unnecessary hardship" shall be defined as an unusual or extreme decrease in the adaptability of the property to the uses permitted by the zoning district which is caused by facts, such as rough terrain or poor soil conditions, uniquely applicable to the particular piece of property as distinguished from those applicable to most or all property in the same zoning district.
- (b) **APPLICATION FOR VARIATION.** The application for variation shall be filed with the Zoning Administrator. Applications may be made by the owner or lessee of the structure,

land or water to be affected. The application shall contain the following information:

- (1) Name and address of applicant and all abutting and opposite property owners of record.
 - (2) Statement that the applicant is the owner or the authorized agent of the owner of the property.
 - (3) Address and description of the property.
 - (4) A site plan showing an accurate depiction of the property.
 - (5) Additional information required by the City Plan Commission, City Engineer, Board of Zoning Appeals or Zoning Administrator.
 - (6) Fee receipt in the amount of Two Hundred Twenty-five Dollars (\$225.00).
- (c) **PUBLIC HEARING OF APPLICATION.** The Board of Appeals shall conduct at least one (1) public hearing on the proposed variation. Notice of such hearing shall be given not more than thirty (30) days and not less than ten (10) days before the hearing in one (1) or more of the newspapers in general circulation in the City of Menasha, and shall give due notice to the parties in interest, the Zoning Administrator and the City Plan Commission. At the hearing the appellant or applicant may appear in person, by agent or by attorney. The Board shall thereafter reach its decision within thirty (30) days after the final hearing and shall transmit a written copy of its decision to the appellant or applicant, Zoning Administrator and Plan Commission.
- (d) **ACTION OF THE BOARD OF APPEALS.** For the Board to grant a variance, it must find that:
- (1) Denial of variation may result in hardship to the property owner due to physiographical consideration. There must be exceptional, extraordinary or unusual circumstances or conditions applying to the lot or parcel, structure, use or intended use that do not apply generally to other properties or uses in the same district and the granting of the variance would not be of so general or recurrent nature as to suggest that the Zoning Code should be changed.
 - (2) The conditions upon which a petition for a variation is based are unique to the property for which variation is being sought and that such variance is necessary for the preservation and enjoyment of substantial property rights possessed by other properties in the same district and same vicinity.
 - (3) The purpose of the variation is not based exclusively upon a desire to increase the value or income potential of the property.
 - (4) The granting of the variation will not be detrimental to the public welfare or injurious to the other property or improvements in the neighborhood in which the property is located.
 - (5) The proposed variation will not undermine the spirit and general and specific purposes of the Zoning Code.
- (e) **CONDITIONS.** The Board of Appeals may impose such conditions and restrictions upon the premises benefitted by a variance as may be necessary to comply with the standards established in this Section.

SEC. 13-1-154 REVIEW BY COURT OF RECORD.

Any person or persons aggrieved by any decision of the Board of Appeals may present to a court of record a petition, duly verified, setting forth that such decision is illegal and specifying the grounds of the illegality. Such petition shall be presented to the court within thirty (30) days after the filing of the decision in the offices of the Board.

SEC. 13-1-155 THROUGH SEC. 13-1-159 RESERVED FOR FUTURE USE.

SEC. 13-1-29 C-1 GENERAL COMMERCIAL DISTRICT.

- (a) **INTENT.** The purpose of this district is to accommodate a wide range of retail and commercial service and product establishments. It is also intended to accommodate the development of mixed land uses which will allow the association of commercial and residential land uses in the same zoning district.
- (b) **PERMITTED USES.**
- (1) All permitted uses in the R-2 Two Family Residence District.
 - (2) Administrative, management, and support services.
 - (3) Arts, entertainment, and recreation facilities and services, indoor only.
 - (4) Construction services and contractors offices.
 - (5) Day care facilities.
 - (6) Education services and schools serving thirty (30) students or less.
 - (7) Financial and insurance services.
 - (8) Food services and drinking establishments.
 - (9) Health, medical and social services.
 - (10) Hotels and motels.
 - (11) Parks and playgrounds.
 - (12) Personal services.
 - (13) Professional, scientific, and technical services.
 - (14) Public administration buildings.
 - (15) Real estate services.
 - (16) Religious, grant making, civic, professional, and similar organizations.
 - (17) Rental and leasing services, excluding mini-warehousing.
 - (18) Retail trade:
 - a. Automotive, truck, recreational vehicle, and heavy equipment parts and accessory stores, excluding facilities with repair or maintenance facilities.
 - b. Furniture and home furnishings stores.
 - c. Electronics and appliance stores.
 - d. Building material, garden equipment and supplies dealers, indoor only.
 - e. Food and beverage stores.
 - f. Health and personal care stores.
 - g. Clothing and clothing accessories stores.
 - h. Sporting goods, hobby, book, music, and similar stores.
 - i. General merchandise and retail stores.
 - (19) Repair services, excluding automotive, truck, recreational vehicle, and heavy equipment repair and maintenance services.
 - (20) Utility substations.
 - (21) Other permitted uses.
 - a. Adult establishments which are more than five hundred (500) feet from schools, churches, community living arrangements, day care centers, nursery schools, family day care homes, parks, playgrounds, other community facilities, and other adult establishments.
 - b. Uses not explicitly enumerated in the section as permitted uses, but determined by the Community Development Director to be closely similar thereto provided that these uses are not specified elsewhere as requiring a special use permit.
- (c) **SPECIAL USES.**
- (1) Airport/heliport.

- (2) Amusement and recreation facilities, outdoor only.
 - (3) Automotive, truck, recreational vehicles, and heavy equipment sales, rental, and leasing.
 - (4) Automotive, truck, recreation vehicle, and heavy equipment repair and maintenance services.
 - (5) Bed and breakfast facilities.
 - (6) Building and garden equipment and supply dealers with outdoor displays.
 - (7) Gasoline stations.
 - (8) Landscape nurseries, orchards, and commercial greenhouses.
 - (9) Manufactured or mobile home dealers.
 - (10) Multi-family uses permitted in the R-4 Multi-Family District.
 - (11) Museums, historical sites, and similar institutions, outdoor only.
 - (12) Radio and television broadcasting facilities.
 - (13) Railroad right-of-way and uses essential to railroad operation.
 - (14) RV Parks and recreational camps.
 - (15) Schools serving more than thirty (30) students.
 - (16) Spectator sport facilities, outdoor only.
 - (17) Other uses requiring a special use permit:
 - a. Any use which utilizes outdoor storage or outdoor display of merchandise or equipment. This requirement does not apply to outdoor display items which are removed each night.
 - b. Office buildings exceeding three (3) stories in height.
 - c. Major telecommunications facilities in accordance with 13-1-81.
- (d) **SITE, ARCHITECTURAL, LANDSCAPING AND LIGHTING REVIEW**
 (1) Review shall be required for projects and uses listed in 13-1-12(b)
- (e) **ACCESSORY BUILDINGS AND USES.**
 (1) Accessory building and uses customary with and incidental to the principal use are permitted unless otherwise excluded by this chapter.
 (2) Warehousing customarily incidental to any of the preceding permitted uses or special uses.
- (f) **GENERAL STANDARDS.**
 (1) Minimum Lot Width. Eight (80) feet for lots established after the effective date of this ordinance.
 (2) Minimum Lot Size. Nine thousand five hundred (9,500) square feet for lots established after the effective date of this ordinance.
 (3) Minimum Front Yard Setback. Ten (10) feet for all structures, parking, and paving, except for points of ingress and egress approved by the Plan Commission. For properties abutting a residential district, the front yard setback requirement of the adjacent residential district shall apply.
 (4) Minimum Side Yard. None, unless abutting a residential use or district, then transitional area requirements apply.
 (5) Minimum Rear Yard. Ten (10) feet, unless abutting a residential use or district, then transitional area requirements apply.
 (6) Maximum Height. Forty-five (45) feet or three (3) stories, except as provided herein.
 (7) Maximum lot coverage of buildings shall not exceed thirty percent (30%). The Plan Commission, upon review, may reduce this requirement by up to fifty percent (50%).
 (8) If residential development is the principal use, then all requirements and standards of the applicable residential district apply.
 (9) Design Standards.

- a. Permitted uses requiring conditional site plan approval shall comply with the requirements of Section 13-1-12.
- b. The following shall apply to additions or expansions not required to obtain site plan approval;
 - i. The primary façade material for all additions or expansions shall be brick or natural stone. Where there is an addition or an expansion to an existing building, the façade materials on the portion of the building being altered or added must visually match or complement the appearance of the existing building. The Plan Commission may consider the use of alternative façade materials that are durable and of high quality for such additions or expansions.
 - ii. Secondary façade materials may be used for architectural details or enhancements to additions or expansions. Such materials shall be high quality, durable, and cover not more than twenty-five percent (25%) of the building façade. The Plan Commission shall approve all secondary materials.
- (10) Screening. Permitted uses requiring conditional site plan approval shall comply with the requirements of Section 13-1-12.
- (11) Landscaping. Permitted uses requiring conditional site plan approval shall comply with the requirements of Section 13-1-12. Requirements set forth in Sec. 13-1-17 for commercial transitional landscaping areas shall apply to this district. If multi-family residential development is the principal use, then transitional area requirements apply.
- (12) Lighting. Permitted uses requiring conditional site plan approval shall comply with the requirements of Section 13-1-12.
- (13) Parking. The parking requirements listed in Section 13-1-51(b) shall apply to this district.
- (14) Loading. No loading shall be allowed in between any building and any street right-of-way. The loading requirements stated in Section 13-1-50 shall apply to this district.
- (g) **NUISANCE CONTROL.** No operation, process, manufacturing, or building shall produce or create excessive noise, light, odor, smoke, vibration, heat, glare, dust, gas, electronic interference, toxic matter, industrial waste, or other external nuisance.
- (h) **SIGNS.** Refer to Article F.

SEC. 13-1-30 C-2 CENTRAL BUSINESS DISTRICT.

- (a) **INTENT.** The purpose of this district is to provide a centrally located, pedestrian-oriented business district with a wide range of retail and commercial service and product establishments. It is also intended to accommodate the development of mixed land uses that will allow the association of commercial and residential uses in the same zoning district.
- (b) **PERMITTED USES.**
 - (1) Administrative, management, and support services.
 - (2) Arts, entertainment, recreation and sport facilities and services, indoor only.
 - (3) Construction services and contractors offices.
 - (4) Day care facilities.
 - (5) Educational services and schools serving thirty (30) students or less at any one

Variance Decision Form

FINDINGS OF FACT

Variance – The variance (does/does not) meet all three of the following tests:

- A. The hardship (is/is not) due to physical limitations of the property rather than the circumstances of the appellant because

- B. The variance (will/will not) harm the public interest because

- C. Unnecessary hardship

- For a dimensional variance, unnecessary hardship exists when compliance would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. Whether this standard is met depends upon a consideration of the purpose of the zoning restriction in question, its effect on the property, and the effect of a variance on the neighborhood and the larger public interest.
- For a use variance, unnecessary hardship exists only if there is no reasonable use of the property without the variance.

Unnecessary hardship (is/is not) present because

ORDER AND DETERMINATION

On the basis of the above findings of fact, conclusions of law and the record in this matter the board orders:

Variance/Conditional Use – The requested (variance/conditional use) is (denied/granted/granted-in-part) subject to the following conditions/mitigation:

1.

2.

3.

4.

5.
