



MINUTES

Board of Zoning Appeals Meeting

5:30 PM - Thursday, January 7, 2021
Council Room

The Board of Zoning Appeals of the City of Derby was called to order on Thursday, January 7, 2021, at 5:30 PM, in the Council Room, with the following members present:

PRESENT: Jessica Rhein
Mark Tillison
Chris Voth
Patrick Baer
Joe Waugh

ABSENT:

1. **CALL MEETING TO ORDER**
2. **ROLL CALL**
3. **CONSIDERATION OF MINUTES**

3.A. Adoption of Minutes

Approve the regular meeting minutes of November 5, 2020, as presented.

4. **NEW BUSINESS**

Exception: Outdoor Garden Center for Westlake Ace Hardware

BACKGROUND:

Legal Description:

- North 575 feet of Lot A, except the West 110 feet, Oak Forest Addition.

General Location:

- 317 N. Rock Rd., southwest corner of Rock Rd. and Madison Ave. (see attached Location Map).

Applicant:

- Property Owner: Steve Barrett, MWCB Derby LLC
- Lessee: Hilary Murray, Westlake Ace Hardware
- Agent: Matt Cortez and Jeff Petrick, GLMV Architecture

Reason for Request:

- Allow an outdoor garden center for a Westlake Ace Hardware store (see attached Applicant Letter).

Background Information:

- The subject property is 7.04 acres zoned B-3 "General Business" and located at the southwest corner of Rock Rd. and Madison Ave.
- The zoning and land use of surrounding properties is as follows:
 - North: B-3 "General Business" - bank, strip center
 - South: B-3 "General Business" - bank, undeveloped land
 - East: B-3 "General Business" - bank, strip center, convenience store
 - West: B-3 "General Business" and R-3 "Multi-Family Residential" - strip center and multi-family and two-family dwellings
- A Westlake Ace Hardware store (see attached Elevation Drawing) is proposed to be located in the south end of the former Dillon's store, which also contains Planet Fitness and vacant multi-tenant space north of the proposed hardware store.
- An outdoor garden center (see attached Site Plan) is proposed for the Westlake Ace Hardware store. Section 1004 of the Zoning Regulations requires an Exception for an outdoor garden center in the B-3 zoning district.
- Section 1004.C.6. of the Zoning Regulations has the following requirements for an outdoor garden center in the B-3 zoning district:
 - Size: Limited to 20% of the floor area of the enclosed portion of the business.
 - The proposed outdoor garden center is 12,685 square feet, or approximately 76% of the floor area of the 16,638 square-foot hardware store.
 - A Variance request to increase the permitted size of the proposed outdoor garden center is being considered concurrent with the exception. .
 - Fencing: Required to be enclosed by a fence.
 - The outdoor garden center is proposed to be enclosed with an 8-foot tall black, ornamental steel fence (see attached Fence Specifications), which meets the requirement.
 - Screening: Required when adjacent to residential zoning.
 - A new 6-foot tall wood screening fence along with existing landscaping is proposed west of the shopping center paved area to screen the outdoor garden center from residentially-zoned properties to the west, which meets the requirement.
 - Outside Display: An outdoor garden center is allowed by Exception in addition to the 5% of floor area of the business that is permitted for outside display for B-3 zoned properties, unless the Board determines through review of the Exception request that both should not be allowed.
 - A 480 square-foot outside display area is proposed adjacent to the entrance to the hardware store, which is approximately 3% of the floor area of the hardware store.
 - Given the limited size of the proposed outdoor display area near the entrance, staff recommends that both the outdoor garden center and the outdoor display area at the entrance

- be allowed.
- Setbacks: 35 feet from north and east property lines and 10 feet from the south and west property lines.
 - A 64-foot setback from the south property line is noted on the site plan.
 - Other setbacks scaled from the site plan are approximately 273 feet on the east, 62 feet on the west, and 406 feet on the north.
 - All setbacks exceed requirements.
- Surface Material: Concrete or asphalt paving is required when located in front of the building. A hard aggregate surface is permitted when located behind the front wall line of the building.
 - Existing asphalt paving is proposed for the outdoor garden center, which exceeds the requirement.
- Greenhouses: A 40-foot setback is required from all property lines.
 - No greenhouses are proposed.
- Parking: Additional parking is not required unless the Board determines through review of the Exception request that additional parking should be required.
 - Even with the removal of existing parking spaces located within the proposed location of the outdoor garden center, 347 parking spaces will remain for the shopping center, and only 170 parking spaces are required if the entire shopping center is occupied with retail uses.
 - Given the surplus of parking on the site, staff recommends that additional parking not be required for the proposed outdoor garden center.
- The site plan also denotes a 6,830 square-foot area for "Seasonal Outdoor Sales."
 - Section 601.A.9. of the Zoning Regulations permits this area for the temporary display and sale of living plants for 90 days between March 1 and June 30 and for 60 days between August 15 and November 15.
 - A Temporary Use Permit will be required each time the Seasonal Outdoor Sales area is used. Temporary Use Permits are reviewed and approved by staff.

LEGAL CONSIDERATIONS:

- The Board is authorized to grant an Exception to allow an outdoor garden center in the B-3 zoning district in accordance with the standards established by state law and described in Section 1004 of the Zoning Regulations.
- The request for an Exception requires a public hearing.
 - Notice of the public hearing was published in the Derby Informer on December 16, 2020.
 - Notice of the public hearing was mailed to property owners within 200 feet of the property on December 14, 2020.
 - A sign advertising the public hearing was posted on-site on December 16, 2020.
 - The certified ownership list is on file at City Hall.

- At the time this report was prepared, staff has been contacted by one citizen seeking clarification of the size of the proposed outdoor garden center.
 - Any testimony provided during the public hearing should be considered by the Board in making a determination.
 - Any correspondence received by staff subsequent to preparation of this report will be provided at the meeting.
- Approval of an Exception requires adoption of a resolution.
 - A draft resolution has been prepared by staff based upon the consideration of each finding as presented in this report. The draft resolution is attached.
 - The Board may instruct staff to modify the resolution as necessary to reflect the findings of the Board.
- Section 1004.E of the Zoning Regulations provides the standards for the development of findings of fact which act to support the Board's actions. The Board may grant an Exception when it makes specific written findings of fact, based upon the particular evidence presented to it at the hearing, which support the standards. The standards which must be considered are listed below with staff's considerations included.
- The decision of the Board is final and does not require any further action.

FINDINGS OF FACT:

1. The proposed exception complies with all applicable regulations, including lot size requirements, bulk regulations, use limitations, and performance standards, unless a concurrent application is in process for a variance.
 - The proposed outdoor garden center complies with all applicable regulations except for the limitation on size of 20% of the floor area of the enclosed portion of the business.
 - The proposed outdoor garden center is 12,685 square feet, or approximately 76% of the floor area of the 16,638 square-foot hardware store.
 - A Variance request to increase the permitted size of the proposed outdoor garden center has been submitted for consideration concurrent with the Exception, and if granted, the proposed outdoor garden center will comply with all applicable regulations.
2. The proposed exception will not cause substantial injury to the value of other property in the neighborhood.
 - The proposed outdoor garden center will facilitate the reuse of a vacant commercial property, which will bring needed retail services to the neighborhood while also addressing adverse impacts that vacant commercial properties can have on a neighborhood such as negative community perception and detrimental visual impacts from trash, weeds, and run-down buildings.
 - The required screening and setbacks of the Zoning Regulations will mitigate adverse impacts from outdoor commercial uses on nearby residential uses.
 - A seasonal outdoor nursery has operated on the subject property for several years without adverse impacts on the neighborhood.
3. The location and size of the exception, the nature and intensity of the

operation involved in or conducted in connection with it, and the location of the site with respect to streets giving access to it are such that the exception will not dominate the immediate neighborhood so as to prevent development and use of neighboring property in accordance with the applicable zoning district regulations. In determining whether the exception will so dominate the immediate neighborhood, consideration shall be given to: a) the location, nature, and height of buildings, structures, walls and fences on the site; b) the hours of operation; c) the nature and extent of landscaping and screening on the site.

- The front and rear setbacks of the proposed outdoor garden center are in line with the building on the site; therefore, it will only be visible from the Rock Rd. frontage, from which it is set back approximately 273 feet. The proposed outdoor garden center will be enclosed by a decorative black steel fence. The location and design of the proposed outdoor garden is such that it will not dominate the immediate neighborhood, and the additional retail traffic it brings to the neighborhood could facilitate development on nearby sites.
 - The proposed outdoor garden center will be open only during traditional retail store hours to mitigate any adverse impacts from late night noise on nearby residential uses.
 - The proposed new screening fence and existing landscaping west of the proposed outdoor garden center will screen and buffer the outdoor commercial use from nearby residential uses.
4. Off-street parking and loading areas will be provided in accordance with the standards set forth in Article 5 of the regulations. Such areas may be screened from adjoining residential uses and located so as to protect such residential uses from injurious effects.
- Additional parking is not required for the proposed outdoor garden center, unless the Board determines through review of the Exception request that additional parking should be required.
 - Even with the removal of existing parking spaces located within the proposed outdoor garden center, 347 parking spaces will remain for the shopping center, and only 170 parking spaces are required if the entire shopping center is occupied with retail uses.
 - More than adequate parking and loading areas will be provided, and all parking and loading areas are screened from adjoining residential uses as required by the Zoning Regulations.
5. Adequate utility, drainage, sidewalks, and other such necessary facilities have been installed or will be provided by platting, dedications, and/or guarantees.
- The proposed outdoor garden center is located on an existing parking lot and does not change the needed facilities to support the site.
 - Adequate utility, drainage, sidewalks, and other such necessary facilities are installed on the site.
6. Adequate access roads, entrance and exit drives and/or access control is available or will be provided by platting, dedications, and/or guarantees and shall be designed to prevent traffic hazards and to minimize traffic congestion in public streets and alleys.
- The entrance and exit drives to the site will not change and are

- currently designed to minimize traffic hazards and traffic congestion on abutting public streets.
- With a minimum 24-foot wide access drive to be provided around the exterior of the proposed outdoor garden center, adequate access drives will be provided on-site.
7. Adequate fire and police protection will be provided which promotes the safety of individuals and property.
- Fire and police protection are currently provided to the site.
 - The Fire and Rescue Department has reviewed and approved the proposed access drives on-site.
8. Orderly land use planning will be achieved in keeping with the goals and proposals of the Comprehensive Plan.
- The Future Land Use Map of the Vision Derby 2040 Comprehensive Plan identifies the site as appropriate for "mixed-use" development. Therefore, the site is appropriate for commercial uses located in close proximity to residential uses.
 - The design of the proposed outdoor garden center provides screening and buffering for compatibility with nearby residential uses as is recommended by the Design Guides of the Vision Derby 2040 Comprehensive Plan.

POLICY IMPLICATIONS:

- Based on the preceding findings, staff recommends that the Board grant an Exception to permit an outdoor garden center in the B-3 "General Business" zoning district. Staff's recommendation for approval is subject to the following conditions:
 - a. Granting of the Exception is subject to the granting of a Variance from Section 1004.C.6 of the Zoning Regulations to increase the maximum allowed size of the outdoor garden center from 20% of the floor area of the enclosed portion of the business to approximately 76% of the floor area of the enclosed portion of the business.
 - b. The Exception is limited to a 12,685 square-foot outdoor garden center operated in conjunction with an adjoining hardware store and shall not be operated separately or at hours when the hardware store is not open.
 - c. The outdoor garden center shall be developed in accordance with the approved site plan and elevation drawing and shall be inspected and approved for conformance with the requirements of the Exception prior to commencing operation.
 - d. The outdoor garden center shall be completely enclosed by an 8-foot tall black, ornamental steel fence meeting the approved fence specifications.
 - e. Material displayed in the outdoor garden center shall not be stacked higher than the fence enclosing the outdoor garden center.
 - f. Stacks of material in the outdoor garden center shall be arranged in a neat and orderly fashion at all times with adequate provisions for safe pedestrian circulation.
 - g. The outdoor garden center shall be kept free of trash, debris, and

- weeds at all times.
- h. The surface of the outdoor garden center shall be paved with asphalt, which shall be maintained in good condition at all times.
 - i. Signs and banners shall not be permitted on the fence enclosing the outdoor garden center or on stacks of material located within the outdoor garden center.
 - j. No outdoor storage for the hardware store is permitted other than the outdoor display of merchandise for sale within the fenced area enclosing the outdoor garden center and in the area identified on the approved site plan adjacent to the store entrance.
 - k. Use of the "Seasonal Outdoor Sales" area shown on the site plan requires approval of a separate Temporary Use Permit for the display and sale of living plants.
 - l. A greenhouse or other accessory structure is not permitted within the outdoor garden center unless a revised site plan and elevation drawing is approved by the Zoning Administrator and the greenhouse or other accessory structure conforms with the design criteria and permitting requirements of the Zoning Regulations.
 - m. The Exception shall comply with all other applicable zoning and building code requirements of the City.
 - n. Any additional requirements of the Board.

RECOMMENDED MOTION

- Adopt a resolution granting an Exception to permit an outdoor garden center in the B-3 "General Business" zoning district, subject to conditions, staff comments, and discussion.

Adopt a resolution granting an Exception to permit an outdoor garden center in the B-3 "General Business" zoning district, subject to conditions, staff comments, and discussion.

Variance: Increase the Permitted Size of an Outdoor Garden Center for Westlake Ace Hardware

BACKGROUND:

Legal Description:

- North 575 feet of Lot A, except the West 110 feet, Oak Forest Addition.

General Location:

- 317 N. Rock Rd., southwest corner of Rock Rd. and Madison Ave. (see attached Location Map).

Applicant:

- Property Owner: Steve Barrett, MWCB Derby LLC
- Lessee: Hilary Murray, Westlake Ace Hardware
- Agent: Matt Cortez and Jeff Petrick, GLMV Architecture

Reason for Request:

- Increase the permitted size of the outdoor garden center for Westlake

Ace Hardware from 20% of the floor area of the enclosed portion of the business to approximately 76% of the floor area of the enclosed portion of the business (see attached Applicant Letter).

Background Information:

- The subject property is 7.04 acres zoned B-3 "General Business" and located at the southwest corner of Rock Rd. and Madison Ave.
- The zoning and land use of surrounding properties is as follows:
 - North: B-3 "General Business" - bank, strip center
 - South: B-3 "General Business" - bank, undeveloped land
 - East: B-3 "General Business" - bank, strip center, convenience store
 - West: B-3 "General Business" and R-3 "Multi-Family Residential" - strip center and multi-family and two-family dwellings
- A Westlake Ace Hardware store (see attached Elevation Drawing) is proposed to be located in the south end of the former Dillon's store, which also contains Planet Fitness and vacant multi-tenant space north of the proposed hardware store.
- An outdoor garden center (see attached Site Plan) is proposed for the Westlake Ace Hardware store. Section 1004 of the Zoning Regulations requires an Exception for an outdoor garden center in the B-3 zoning district, which is being considered by the Board concurrent with the Variance request.
- Section 1004.C.6. of the Zoning Regulations limits the size of an outdoor garden center to 20% of the floor area of the enclosed portion of the business.
 - The proposed outdoor garden center is 12,685 square feet, or approximately 76% of the floor area of the 16,638 square-foot hardware store.
 - A Variance has been requested to increase the permitted size of the proposed outdoor garden center from 20% of the floor area of the enclosed portion of the business to approximately 76% of the floor area of the enclosed portion of the business.
- The site plan also denotes a 6,830 square-foot area for "Seasonal Outdoor Sales."
 - Section 601.A.9. of the Zoning Regulations permits this area for the temporary display and sale of living plants for 90 days between March 1 and June 30 and for 60 days between August 15 and November 15.
 - A Temporary Use Permit will be required each time the Seasonal Outdoor Sales area is used. Temporary Use Permits are reviewed and approved by staff.

LEGAL CONSIDERATIONS:

- The Board is authorized to grant a Variance to increase the allowed size of an outdoor garden center in the B-3 zoning district in accordance with the standards established by state law and described in Section 1003 of the Zoning Regulations.
- The request for a Variance requires a public hearing.
 - Notice of the public hearing was published in the Derby Informer on December 16, 2020.

- Notice of the public hearing was mailed to property owners within 200 feet of the property on December 14, 2020.
- A sign advertising the public hearing was posted on-site on December 16, 2020.
- The certified ownership list is on file at City Hall.
- At the time the report was prepared, staff had been contacted by one citizen seeking clarification of the size of the proposed outdoor garden center.
 - Any testimony provided during the public hearing should be considered by the Board in making a determination.
 - Any correspondence received by staff subsequent to this report will be provided at the meeting.
- Approval of a Variance requires adoption of a resolution.
 - A draft resolution has been prepared by staff based upon the consideration of each finding as presented in this report. The draft resolution is attached.
 - The Board may instruct staff to modify the resolution as necessary to reflect the findings of the Board.
- Section 1003.C of the Zoning Regulations provides the standards for the development of findings of fact which act to support the Board's actions. The Board may grant a Variance when it makes specific written findings of fact, based upon the particular evidence presented to it at the hearing, which support the standards. The standards which must be considered are listed below with staff's considerations included.
- The decision of the Board is final and does not require any further action.

FINDINGS OF FACT:

1. The Variance requested arises from such condition which is unique to the property in question and which is not ordinarily found in the same zone or district, and is not created by an action or actions of the property owner or the applicant.
 - Limiting the size of the proposed outdoor garden center to 20% of the floor area of the enclosed portion of the business would require an expansion of the building on the site; however, the topography of the site is such that a building expansion to the south would require significant fill for site. Such topographical limitations are not commonly found in property zoned B-3 "General Business" district and hinder the economic value of the property if a larger outdoor commercial use is not permitted.
2. The granting of the Variance will not adversely affect the rights of adjacent property owners or residents.
 - The required screening and setbacks of the Zoning Regulations will mitigate adverse impacts from outdoor commercial uses on nearby residential uses. A seasonal outdoor nursery has operated on the subject property for several years without adverse impacts on adjacent properties.
3. Strict application of the provisions of the Zoning Regulations of which the Variance is requested will constitute unnecessary hardship upon the property owner represented in the application.
 - The subject property was originally developed with a grocery store and has struggled to maintain viable businesses since the

grocery store relocated to another property. Revitalization of the struggling commercial property requires a different approach than development within the strict standards of the B-3 district. The proposed hardware store requires a larger outdoor garden center than is permitted by the B-3 district standards, in part due to an increasing need for outdoor business environments during a time when significant indoor occupancy restrictions are in place due to a global pandemic.

4. The Variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare.
 - o With the exception of its size, the proposed outdoor garden center meets all requirements of the Zoning Regulations intended to protect public health, safety, morals, order, convenience, prosperity or general welfare. Increasing the permitted size of the proposed outdoor garden center is not anticipated to adversely affect the public.
5. Granting the Variance will not be opposed to the general spirit and intent of the Zoning Regulations.
 - o The intent of the Zoning Regulations is to enact the policies of the Vision Derby 2040 Comprehensive Plan. The Future Land Use Map of the Vision Derby 2040 Comprehensive Plan identifies the site as appropriate for "mixed-use" development. Therefore, the site is appropriate for commercial uses located in close proximity to residential uses. The design of the proposed outdoor garden center provides screening and buffering for compatibility with nearby residential uses as is recommended by the Design Guides of the Vision Derby 2040 Comprehensive Plan.

POLICY IMPLICATIONS:

- Based on the preceding findings, staff recommends that the Board grant a Variance of Section 1004.C.6 of the Zoning Regulations to increase the permitted size of an outdoor garden center from 20% of the floor area of the enclosed portion of the business to approximately 76% of the floor area of the enclosed portion of the business in the B-3 "General Business" zoning district. Staff's recommendation for approval is subject to the following conditions:
 - a. Granting of the Variance is subject to the granting of an Exception to permit an outdoor garden center in the B-3 "General Business" zoning district.
 - b. The outdoor garden center shall be limited in size to 12,685 square feet and shall be developed and operated in accordance with the conditions of approval for the Exception.
 - c. Application for a building permit for the outdoor garden center shall be submitted within 180 days of the granting of the Variance.
 - d. The outdoor garden center shall comply with all other applicable zoning and building code requirements of the City.
 - e. Any additional requirements of the Board.

RECOMMENDED MOTION

- Adopt a resolution granting a Variance of Section 1004.C.6 of the

Zoning Regulations to increase the permitted size of an outdoor garden center from 20% of the floor area of the enclosed portion of the business to approximately 76% of the floor area of the enclosed portion of the business in the B-3 “General Business” zoning district, subject to conditions, staff comments, and discussion.

Adopt a resolution granting a Variance of Section 1004.C.6 of the Zoning Regulations to increase the permitted size of an outdoor garden center from 20% of the floor area of the enclosed portion of the business to approximately 76% of the floor area of the enclosed portion of the business in the B-3 “General Business” zoning district, subject to conditions, staff comments, and discussion.

5. ANNOUNCEMENTS

6. ADJOURNMENT

Stephanie Cox, Recording Secretary

Jessica Rhein, Chairperson