

Sumter City-County Board of Zoning Appeals

August 14, 2013

BOA-13-11, 459 Broad St. (City)

A variance from the required 10 foot wide street buffer at Miller Road to allow for a 5 foot street buffer; also requesting a decrease of 1 foot from the required 5 foot parking lot buffer from the interior side and rear of the property to allow for a 4 foot buffer per Article 8, Section 8.d.7.c.2. Buffering and Article 8, Section 8.j.3.k. Design Requirements – Buffering and Landscaping.



Appeals - Variance - Special Exception

Sumter City-County Board of Appeals

August 14, 2013

BOA-13-11, 459 Broad St. (City)

I. THE REQUEST

Applicant: Albert Yip

Status of the Applicants: Property & Business Owner

Request: Applicant is requesting a 5 foot buffer yard width variance along Miller Road to reduce the bufferyard width to 5 feet from the required 10 feet; also the applicant is requesting a 1 foot variance from the required 5 foot parking lot bufferyard width to reduce the interior side and rear buffers to 4 feet.

Location: 459 Broad St.

Present Use/Zoning: General Commercial (GC)

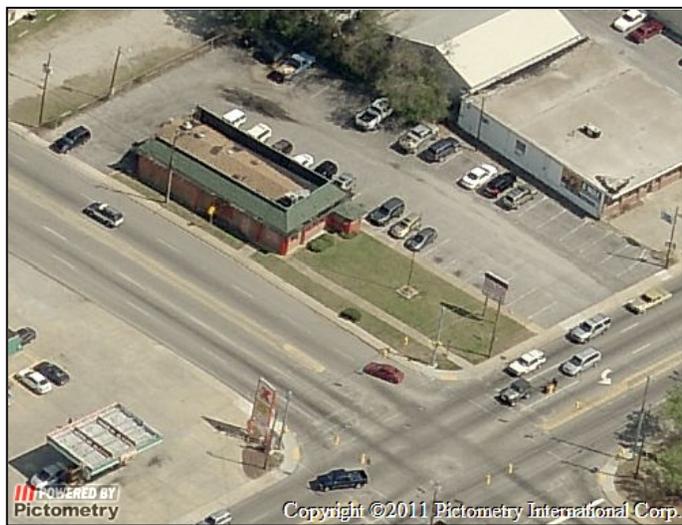
Tax Map Reference: 229-10-02-018

II. BACKGROUND

The applicant seeks two variances from the bufferyard widths—(1) for the Miller Rd. street frontage, (2) for the interior side and rear parking lot bufferyards in order to demolish and reconstruct the China Palace restaurant located at 459 Broad St. The photograph below shows the existing structure.



As can be seen in the 2011 Pictometry to the right, the site is currently grandfathered non-conforming. The +/- 0.53 acre parcel houses a 2,716 sq. ft. restaurant structure which does not meet any of the current development standards in terms of parking lot design, landscaping, access or building placement.



As per **Article 6, Section 6.a.2.d.** the property is classified as a nonconforming site.

d. Nonconforming Site: Any structure, building, house, shed, accessory dwelling, or improvement on real property, or any parcel, lot, or unimproved real property, that does not comply with Development Standards.

Site History:

Based upon the Sumter County Assessor's Record Property Card, 459 Broad St. was initially constructed in 1968 and appears to have had no major improvements since its construction. The restaurant currently located on the property, China Palace has been in continuous operation under the same ownership group since August of 1980. After 33 years of continuous operation, the owners would now like to demolish and rebuild to update the facilities at this high-profile intersection. In working with Planning Staff to develop a reconstruction plan that meets as many of the current development standards as possible, the proposed structure has been reduced in size from 2,716 sq. ft. to 2,400 sq. ft. and the site has been redesigned to meet all current building setbacks to include front, side and rear landscape buffers as well as the appropriate number of off-street parking spaces. Based on submitted plans, the applicant proposes to construct the attached site plan. The applicant has also provided building renderings as shown below.



With exception of the Miller Road bufferyard width and the interior side and rear bufferyard width, the proposed plan meets all other applicable development standards. Because this project is a voluntary demolition and reconstruction project, Planning Staff does not have latitude under **Article 6, Non-Conforming Zoning Uses and Sites**, to grant any variances from the development standards. The two requested variances must be reviewed and approved by the Board of Zoning Appeals.

III. THE REQUEST

The Applicant requests a 5 foot buffer yard width variance along Miller Road to reduce the street front bufferyard width to 5 feet from the required 10 feet; also the Applicant requests a 1 foot variance from the required 5 foot parking lot bufferyard width to reduce the interior side and rear buffers to 4 feet in order to demolish and reconstruct the China Palace Restaurant while meeting all other development standards.

IV. FOUR-PART TEST

In order to grant the requested variances, the request must meet all parts of a State mandated four-part test. When reviewing a variance request, the Board may not grant a variance that would do the following:

- Allow the establishment of a use not otherwise permitted in a zoning district;
- Extend physically a nonconforming use of land;
- Change zoning district boundaries shown on the Sumter City-County Official Zoning Map.

The fact that a property may be utilized more profitably should a variance be granted shall not be considered grounds for approving a variance request.

1. *There are extraordinary and exceptional conditions pertaining to the particular piece of property.*

The lot was originally developed in 1968 under different regulations related to building setbacks, parking lot development standards, landscaping, and site access. The property is a corner parcel. Each road that the property fronts on is a major arterial which requires a more restrictive setback than when sited on a local/collector street requiring very specific building placement.

2. *These conditions do not generally apply to other property in the vicinity.*

Other properties in the vicinity have either been redeveloped for a use with a less intense parking requirement than a restaurant allowing more space for bufferyards, or they are grandfathered non-conforming. In addition, the only adjacent corner lot that has not been redeveloped is approximately a quarter acre larger than the property under review, resulting in more developable area.

3. *Because of these conditions, the application of the ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property.*

The property is classified as a Nonconforming site as established in Article 6, Section 6.a.2.d. of the Ordinance. If the property were damaged by a natural disaster or subject to a discontinuance, Under **Section 6.c.5. Nonconforming Sites Incapable of Compliance**, the Zoning Administrator would have the latitude to grant certain minimal variances from the development standards as follows:

6.c.5. Nonconforming Sites Incapable of Compliance. Sites, lots, or parcels that are physically constrained from complying with Development Standards shall comply to the maximum extent practicable, as determined by the Zoning Administrator.

However, because the Applicant is voluntarily undertaking a demolition/rebuild project, on the site, they must comply with all development standards as established or be granted variances.

- 4. *The authorization of a variance will not be of substantial detriment to adjacent property or to the public good, and the granting of the variance will not harm the character of the district.***

Authorization of the requested variances will not be of substantial detriment to the adjacent property or the public good. In-fact, the proposed redevelopment of this site will implement bufferyards, modify site access, and move the structure out of multiple vision triangles which will improve public health, safety and welfare while improving the overall appearance of the intersection.

V. STAFF RECOMMENDATION

The requirements of the four-part test have been met. Staff recommends approval of BOA-13-11.

VI. DRAFT MOTIONS for BOA-13-11

- A.** I move that the Zoning Board of Appeals approve BOA-13-11, subject to the findings of fact and conclusions attached as Exhibit I.
- B.** I move that the Zoning Board of Appeals deny BOA-13-11 subject to the following findings of fact and conclusions.
- C.** I move that the Zoning Board of Appeals enter an alternative motion for BOA-13-11.

VII. ZONING BOARD OF APPEALS – AUGUST 14, 2013

The Sumter City-County Board of Appeals at its meeting on Wednesday, August 14, 2013, voted to approve this request subject to the findings of fact and conclusions contained in the draft order, dated August 14, 2013.

Exhibit 1
Order on Variance Application
Sumter Board of Appeals

BOA-13-11, 459 Broad St. (City)
August 14, 2013

Date Filed: August 14, 2013

Permit Case No. BOA-13-11

The Sumter Board of Appeals held a public hearing on Wednesday, August 14, 2013 to consider the appeal of Albert Yip, 459 Broad St., Sumter SC 29150 for a variance from the strict application of the Zoning Ordinance as set forth on the Form 3 affecting the property described on Form 1 filed herein. After consideration of the evidence and arguments presented, the Board makes the following findings of fact and conclusions.

1. The Board concludes that the Applicant **has** - **does not have** an unnecessary hardship because there are extraordinary and exceptional conditions pertaining to the particular piece of property based on the following findings of fact:

The lot was originally developed in 1968 under different regulations related to building setbacks, parking lot development standards, landscaping, and site access. The property is a corner parcel. Each road that the property fronts on is a major arterial which requires a more restrictive setback than when sited on a local/collector street requiring very specific building placement.

2. The Board concludes that these conditions **do** - **do not** generally apply to other property in the vicinity based on the following findings of fact:

Other properties in the vicinity have either been redeveloped for a use with a less intense parking requirement than a restaurant allowing more space for bufferyards, or they are grandfathered non-conforming. In addition, the only adjacent corner lot that has not been redeveloped is approximately a quarter acre larger than the property under review, resulting in more developable area.

3. The Board concludes that because of these conditions, the application of the ordinance to the particular piece of property **would** - **would not** effectively prohibit or unreasonable restrict the utilization of the property based on the following findings of fact:

If the property were damaged by a natural disaster or subject to a discontinuance, under **Section 6.c.5. Nonconforming Sites Incapable of Compliance**, the Zoning Administrator would have the latitude to grant certain minimal variances from the development standards. However, because the Applicant is voluntarily undertaking a demolition/rebuild project on the site, they must comply with all development standards as established or be granted variances.

4. The Board concludes that authorization of the variance will – will not be of substantial detriment to adjacent property or to the public good, and the character of the district will – will not be harmed by the granting of the variance based on the following findings of fact:

Authorization of the requested variances will not be of substantial detriment to the adjacent property or the public good. In-fact, the proposed redevelopment of this site will implement bufferyards, modify site access, and move the structure out of multiple vision triangles which will improve public health, safety and welfare while improving the overall appearance of the intersection.

THE BOARD, THEREFORE, ORDERS that the variance is DENIED – GRANTED, subject to the following conditions:

Approved by the Board by majority vote.

Date issued: _____

Chairman

Date mailed to parties in interest: _____

Secretary

Notice of appeal to Circuit Court must be filed within 30 days after date this Order was mailed.