

Sumter City-County Board of Zoning Appeals

August 12, 2015

BOA-15-09, China Palace, 459 Broad St. (City)

A variance from the required 22.5 foot setback from Miller Rd.; variances from the 10 foot wide street buffer from Broad St. & Miller Rd.; variance from the 5 foot wide parking lot landscaping buffer (along interior side and rear); a variance from required parking lot curb & guttering, and; a reduction in required parking spaces in order to rebuild a Chinese restaurant.



Appeals - Variance - Special Exception

Sumter City-County Board of Appeals

August 12, 2015

BOA-15-09, 459 Broad St. (City)

I. THE REQUEST

Applicant: Albert Yip

Status of the Applicants: Property & Business Owner

Request: Applicant is requesting a decrease from the exterior side setback (Miller Rd.) from 22.5 to 5 feet; buffer yard width variance along Miller Road to reduce the bufferyard width to 5 feet from the required 10 feet; a bufferyard width variance along Broad St. to reduce bufferyard from 10 feet to 0 feet; a variance from the requirement for curb & guttering in the parking lot; a 5 foot variance from the required 5 foot parking lot bufferyard width to reduce the interior side and rear buffers to 0 feet, and; to reduce the parking space requirement from 32 spaces to 30 spaces.

Location: 459 Broad St. (.54 acre)

Present Use/Zoning: General Commercial (GC)

Tax Map Reference: 229-10-02-018

II. BACKGROUND

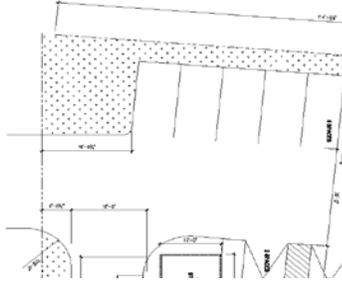
Site History:

BOA 13-11

This site came to the Board of Zoning Appeals for review back in August 14, 2013 to request two variances. The variance requests were for a reduction in the street front buffer yards along Broad St. and Miller Rd. to allow for 5 foot wide buffer yards instead of 10 feet wide and a variance in the parking perimeter landscaping buffers to allow for 4 feet wide instead of 5 feet wide. These variances were approved.

In 2013, the owner wished to demolish the entire building and build a new restaurant to update the facilities at this high-profile intersection. He worked with Planning Staff to develop a reconstruction plan that would meet as many of the current development standards as possible, the proposed structure was reduced in size from 2,716 sq. ft. to 2,400 sq. ft. and the site had 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 proposed at that time to construct the site plan shown on the next page. The applicant had also provided building renderings as shown below because the site is within the Highway Corridor Overlay District.

2013 Submitted Plan BOA13-11



With exception of the Miller Road bufferyard width (From 10 ft wide to 5ft wide) and the interior side and rear bufferyard width (From 5 ft wide to 4 ft wide), the proposed plan shown above meets all other applicable development standards. **Variiances have already been granted for the width on these bufferyards with BOA 13-11. The applicant could construct the above plan today without any further variances.**



Since the 2013 Board of Zoning Appeals meeting, the owner changed his mind on demolishing the building and decided to do renovations instead after getting feedback from SCDOT concerning new encroachment drive permit approvals. Approvals would require some mitigation measures to be taken on Broad Street and applicant considered this not within his budget for the project.

The applicant then submitted plans to the Planning Department and Building Department to do renovations to the building instead so he could continue the grandfathering of his nonconforming site. Renovations under this permit included such work as some partial demolition to the roof so it could be raised and create a parapet wall, some top windows, apply stucco to walls, aluminum store front windows and change face of sign.

Planning approved the Highway Corridor Application in house for the exterior materials (HCPD-14-34) on January 5, 2015. (Photos above) Applicant's contractor received building permit and started working in April 2015.

On or about June 15, 2015, during the initial construction and partial demolition process, the contractor stated the building walls gave in and because of self-described safety reasons, went ahead and demolished the entire building without proper permissions. Below is the Building Department Timeline for review of Plans and issuing Permit:

- **11/18/2014** - Building Department received the plans and permits
- **04/02/2015** – Building Department receives partial revisions and sends an email requesting the remaining items be addressed and resubmit the second set of revisions.
- **04/16/2015** – Mr. Albert Yip emails a copy of the architects responses, however we still have not received the second set of revisions.
- **04/17/2015** – The Building Department requests again for the second set of revisions to be submitted.
- **04/21/2015** – The architect sends responses to explain his reasoning for not providing the second set of revisions.
- **04/27/2015** – The Building Department receives the final revisions and plans/permits are approved.
- **06/15/2015** – **The Department observed that the building in its entirety had been demolished without a demolition permit.**
- **06/16/2015** – The Building Department posts a STOP WORK order on the jobsite.
- **06/18/2015** – Demolition permit applied for
- **06/22/2015** – Demolition permit issued

The plans and permits approved were for a partial demolition and remodel of the remaining portion of the building. The only demolition that was approved was for the roof system because it was going to be raised and for the front half of the building. It was clearly understood and stated in several conversations with contractor Mr. Nam Kim, that a “majority” of the building had to remain in tact in so that the building would be deemed as an “existing building”. Below is what the Site currently looks like.



Planning staff met with the owner and contractor to see how to move forward with the project. Once the building was completely demolished all the zoning rules changed for this project.

The current permit was for renovations to an existing grandfathered nonconforming site which allowed for existing nonconforming standards. Now the site is vacant and the Zoning Ordinance requires this project to be treated as a brand new commercial site meeting all development standards for the General Commercial Zoning District. Staff, by Ordinance, has no latitude to allow for nonconforming standards at this point. Therefore, this is the reason the applicant is applying for numerous variances because he wishes to construct the restaurant in the same footprint as it previously was and not have to construct new parking lot. He wants to restripe the parking lot.

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



Article 6, Section 6.c.6 Accidental Destruction states: A nonconforming Site may be altered, extended, or replaced if razed by fire or other natural causes, provided such alteration, extension, or replacement does not increase the degree of nonconformity by size, lot area, floor space, or otherwise result in a greater degree of nonconformity with Development Standards in any respect.

Because the demolition of the entire building happened during construction and not from natural causes, the new construction desired by the applicant, even if rebuilt in same location, requires all of the variances to be approved by this Board.

THE REQUEST

The applicant is requesting:

- a decrease from the exterior side setback (Miller Rd.) from 22.5 to 5 feet;
- buffer yard width variance along Miller Road to reduce the bufferyard width to 5 feet from the required 10 feet;
- buffer yard width variance along Broad St. to reduce bufferyard from 10 feet to 0 feet;
- a variance from the requirement for curb & gutter in the parking lot;
- 5 foot variance from the required 5 foot parking lot bufferyard width to reduce the interior side and rear buffers to 0 feet and;
- to reduce the number of required parking spaces from 32 to 30 spaces.

Below is a site plan placing the building back where it previously was located on the existing foundation. Applicant plans to install some landscaping in the front green space and some along Miller Road and change out the face of the freestanding sign. We are unable to determine at this time whether the landscaping proposed meets current requirements. That will take place during site plan review process.

2015 BOA 15-06 Site Plan

III. 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.

We find no extraordinary conditions pertaining to this corner property except for the fact that during construction some unexpected things happened that the contractor did not foresee with the project. The property is a General Commercial corner parcel with sufficient space to build the site plan that has already been approved back in 2013 and shown in this report. Site has already previously received variances from the bufferyards back in 2013 and this request will further reduce these bufferyards. Corner lots do required stricter setbacks and restaurants have more intense parking requirements but the site plan shown above scaled the building back to better fit this lot and provide the required parking. Staff understands that the applicant will incur additional costs in having to build a new parking lot but this does not constitute an extraordinary condition on this parcel.

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

The zoning regulations are the same for all General Commercial parcels except for the ones which are nonconforming sites with currently active businesses. These are allowed to continue without improvements under Article 6, Section C. Nonconforming Sites. Since this entire building was demolished during construction and not by natural causes, grandfathering no longer exists for this property. If the other nonconforming lots wish to demolish and reconstruct their buildings, they will have to do the same in meeting all the current development regulations.

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 not unreasonably restricted. There are several alternatives including but not limited to constructing a new restaurant based on the 2013 BOA approvals, building a smaller structure, or moving the building pad to better conform to the current requirements. This can be accomplished.

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 could be of substantial detriment to the adjacent property or the public good. The intent of the Zoning Ordinance is to bring nonconforming parcels into compliance with current regulations. We understand that perhaps the owner did not intend to demolish the entire building. **However, the fact of the matter is that a nonconforming site was cleared and with that, the loss of any pre-existing status.** It is an unwanted precedent to allow owners non-conforming properties to demolish existing structures only to rebuild and extend the non-conforming status. The City of Sumter expressly intends to eliminate non-forming properties when the opportunity arises.

V. STAFF RECOMMENDATION

The requirements of the four-part test have not been met. Staff recommends denial of BOA-15-09.

VI. DRAFT MOTIONS for BOA-13-11

- A. I move that the Zoning Board of Appeals deny BOA-15-09, subject to the findings of fact and conclusions attached as Exhibit I.
- B. I move that the Zoning Board of Appeals approve BOA-15-09, subject to the following findings of fact and conclusions.
- C. I move that the Zoning Board of Appeals enter an alternative motion for BOA-15-09.

VII. ZONING BOARD OF APPEALS – AUGUST 12, 2015

The Sumter Board of Appeals at its meeting on Wednesday, August 12, 2015, voted to approve this request subject to findings of fact and conclusions.

Exhibit 1
Order on Variance Application
Sumter Board of Appeals

BOA-15-09, 459 Broad St. (City)
August 12, 2015

Date Filed: August 12, 2015

Permit Case No. BOA-15-09

The Sumter Board of Appeals held a public hearing on Wednesday, August 12, 2015 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:

There are no extraordinary conditions pertaining to this corner property except for the fact that during construction some unexpected things happened that the contractor did not foresee with the project. The property is a General Commercial corner parcel with sufficient space to build the site plan that has already been approved back in 2013 and shown in this report. Site has already previously received variances from the bufferyards back in 2013 and this request will further reduce these bufferyards. Corner lots do required stricter setbacks and restaurants have more intense parking requirements but the site plan shown above scaled the building back to better fit this lot and provides the required parking. Staff understands that the applicant will incur additional costs in having to build new parking lot but this does not constitute a extraordinary condition on this parcel. This is a highly visible corner in our Highway Corridor overlay.

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:

The zoning regulations are the same for all General Commercial parcels except for the ones which are nonconforming sites with currently active businesses. These are allowed to continue without improvements under Article 6, Section C: Nonconforming Sites. Since this entire building was demolished during construction and not by natural causes, grandfathering no longer exists for this property. If the other nonconforming lots wish to demolish and reconstruct their buildings, they will have to do the same in meeting all the current development regulations.

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:

The property is not unreasonably restricted. There are several alternatives including but not limited to constructing a new restaurant based on the 2013 BOA approvals, building a smaller structure, or moving the building pad to better conform to the current requirements. This can be accomplished.

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 could be of substantial detriment to the adjacent property or the public good. The intent of the Zoning Ordinance is to bring nonconforming parcels into compliance with current regulations. We understand that perhaps the owner did not intend to demolish the entire building. **However, the fact of the matter is that a nonconforming site was cleared and with that, the loss of any pre-existing status.** It is an unwanted precedent to allow owners of non-conforming properties to demolish existing structures only to rebuild and extend the non-conforming status. The City of Sumter expressly intends to eliminate non-forming properties when the opportunity arises.

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

Date issued: _____

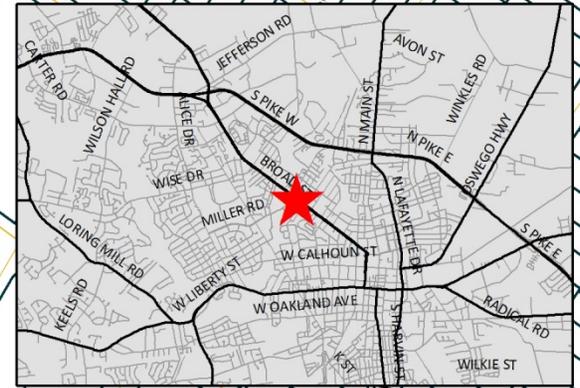
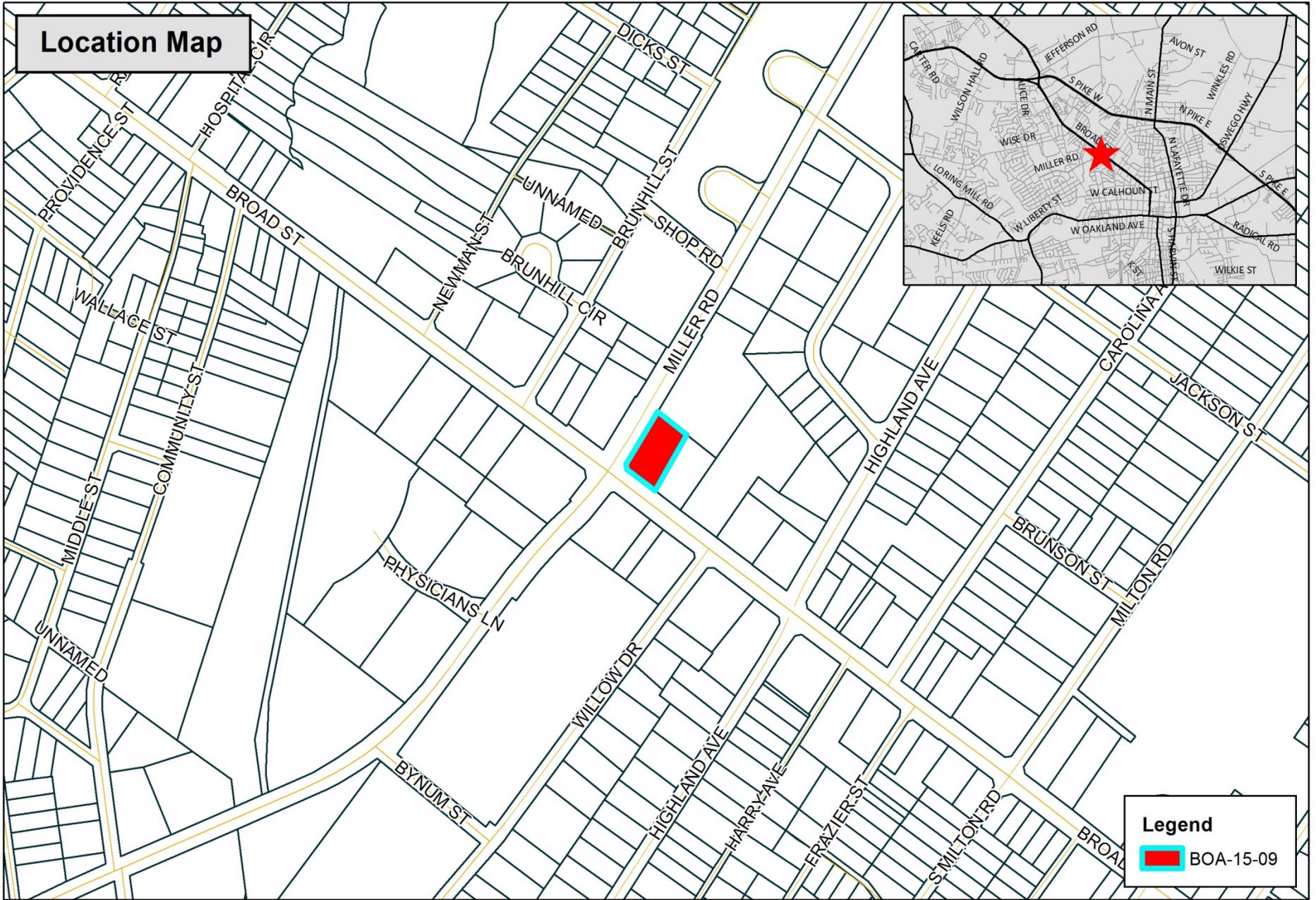
Chairman

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.

Location Map



Legend

 BOA-15-09

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0 250 500 Feet

1 inch = 400 feet



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Geographic Information Systems (GIS)
Date: 7/21/2015

BOA-15-09
459 Broad St., Sumter, SC
Tax Map # 229-10-02-018