

Sumter City-County Board of Zoning Appeals

August 12, 2015

BOA-15-10, 825-845& 865-885 Bama Ln. (City)

The applicant is requesting variances for a reduction of six feet from the required 50 foot front setback to allow 44 feet and a reduction of 1 foot from the required 50 foot rear setback to allow 49 feet as required per *Article 3, Section 3.i.3.p and Exhibit 3-6 Suburban Multi-Family Apartments – General Commercial District Development Standards. The property is located at 825, 845, 865 and 885 Bama Lane in the Wall Street Green Apartment Complex and is represented by Tax Map # 229-00-01-016.*



Sumter City-County Zoning Board of Appeals

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I. THE REQUEST

Applicant: United Developers, Inc.

Status of the Applicant: Agent for Owners, Wall Street Green Phase II Associates LP

Request: The applicant is requesting a 6 ft. variance from the required 50 ft. front setback requirement and a 1 ft. variance from the required 50 ft. rear setback requirement for two (2) recently constructed multi-tenant apartment buildings.

Location: 825-845 & 865-885 Bama Ln.

Present Use/Zoning: Multi-Family Apartments / General Commercial (GC) / HCPD (Highway Corridor Protection District)

Tax Map Reference: 229-00-01-016

II. BACKGROUND

825-845 and 865-885 Bama Ln. are part of phase 2 of the Wall Street Green Apartment Complex. The project received development approval in November of 2013 (CU-13-36/MSP-13-50/HCPD-13-26).

The facility location is shown in the area indicated in red in the 2011 Pictometry to the right.



Construction began on the two buildings in 2014 (Master Permit Numbers 2013-04348 and 2013-04356). The approved site and building plans met development standards and showed each structure meeting the minimum 50 ft. setback. Each building passed footing inspections on July 8, 2014—the first inspection in the building process—based upon the premise that the surveyor and/or engineer working with the building contractor properly sited both structures according to the approved development plans. This is common inspections practice for commercial structures.

Certificates of Occupancy were issued for both buildings on April 30, 2015 and are currently occupied by tenants. The setback discrepancies were not discovered until the issuance of the ALTA Survey commissioned as part of the final project close-out. The applicants are seeking a 6 ft. front setback variance and a 1 ft. rear setback variance in order to bring the structures into legal compliance. This will allow the builder to complete project close-out and conveyance to the final ownership entity.

III. FOUR PART TEST

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

The parcel has more depth than width with an irregularly shaped frontage that follows the curve of S. Pike West. This results in a decrease in the developable area from east to west, however; construction plans clearly showed that the proposed structures could be developed within this building area. A field error in the inspections process resulted in the buildings making it to completion, receiving Certificates of Occupancy, and being occupied prior to the identification of the setback deficiencies.

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

Other properties in the vicinity were developed under different regulations. Were this development site a standard General Commercial development site, because the parking for the structures is located to the side of the buildings and not along the street frontage, the minimum front setback would have been 20 ft. Because this project is a multi-family development, the front setback standards are more stringent.

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.

These buildings have passed inspections, received Certificates of Occupancy and are being legally occupied by tenants. Not granting the requested variances will leave the site in legal limbo, possibly preventing future conveyance.

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 this variance will not be of substantial detriment to the adjacent property. The adjacent apartment complex, Wall Street Green (Phase I) was developed using standard General Commercial (GC) setbacks—which are less restrictive than the established multi-family apartment development standards. This is due in part because Wall Street Green (Phase I) was developed prior to the adoption of *Exhibit 3-6 Development Standards for Residential Uses in Commercial Districts*. Staff believes that granting of these variances will not harm the character of the district. The buildings have been occupied and in use since April 30, 2015 with no negative impacts on the surrounding area.

IV. STAFF RECOMMENDATION

Staff recommends approval of this request. We find that authorization of the variances is a reasonable option considering the alternatives.

V. DRAFT MOTIONS FOR BOA-15-10

- A. I move that the Zoning Board of Appeals approve BOA-15-10, subject to the findings of fact and conclusions contained in the draft order, dated August 12, 2015 attached as Exhibit 1.
- B. I move that the Zoning Board of Appeals deny BOA-15-10, subject to the following findings of fact and conclusions:
- C. I move that the Zoning Board of Appeals enter an alternative motion for BOA-15-10.

VI. BOARD OF ZONING APPEALS – AUGUST 12, 2015

The Sumter Board of Appeals at its meeting on Wednesday, August 12, 2015, approved this request subject to the findings of fact and conclusions contained in the draft order dated August 12, 2015.

Exhibit 1
Order on Variance Application
Board of Zoning Appeals

BOA-15-10, 825, 845, 865 & 885 Bama Ln. (City)
August 12, 2015

Date Filed: August 12, 2015

Permit Case No. BOA-15-10

The Board of Zoning Appeals held a public hearing on Wednesday, August 12, 2015 to consider the appeal of United Developers, Inc. 2939 Breezewood Ave., Suite 201, Fayetteville, NC 28303 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 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 parcel has more depth than width with an irregularly shaped frontage that follows the curve of S. Pike West. This results in a decrease in the developable area from east to west, however; construction plans clearly showed that the proposed structures could be developed within this building area. A field error in the inspections process resulted in the buildings making it to completion, receiving Certificates of Occupancy, and being occupied prior to the identification of the setback deficiencies.

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 were developed under different regulations. Were this development site a standard General Commercial development site, because the parking for the structures is located to the side of the buildings and not along the street frontage, the minimum front setback would have been 20 ft.

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 unreasonably restrict the utilization of the property based on the following findings of fact:

These buildings have passed inspections, received Certificates of Occupancy and are being legally occupied by tenants. Not granting the requested variances will leave the site in legal limbo, possibly preventing future conveyance.

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 this variance will not be of substantial detriment to the adjacent property. The adjacent apartment complex, Wall Street Green (Phase I) was developed using standard General Commercial (GC) setbacks—which are less restrictive than the established multi-family apartment development standards. This is due in part because Wall Street Green (Phase I) was developed prior to the adoption of *Exhibit 3-6 Development Standards for Residential Uses in Commercial Districts*. Granting of these variances will not harm the character of the district. The buildings have been occupied and in use since April 30, 2015 with no negative impacts on the surrounding area.

THE BOARD, THEREFORE, ORDERS that the variance is **DENIED**
 GRANTED with the following conditions:

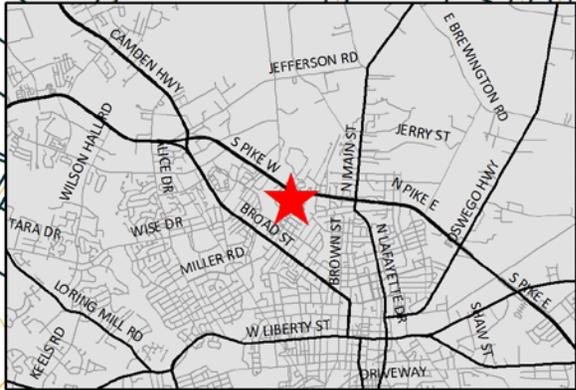
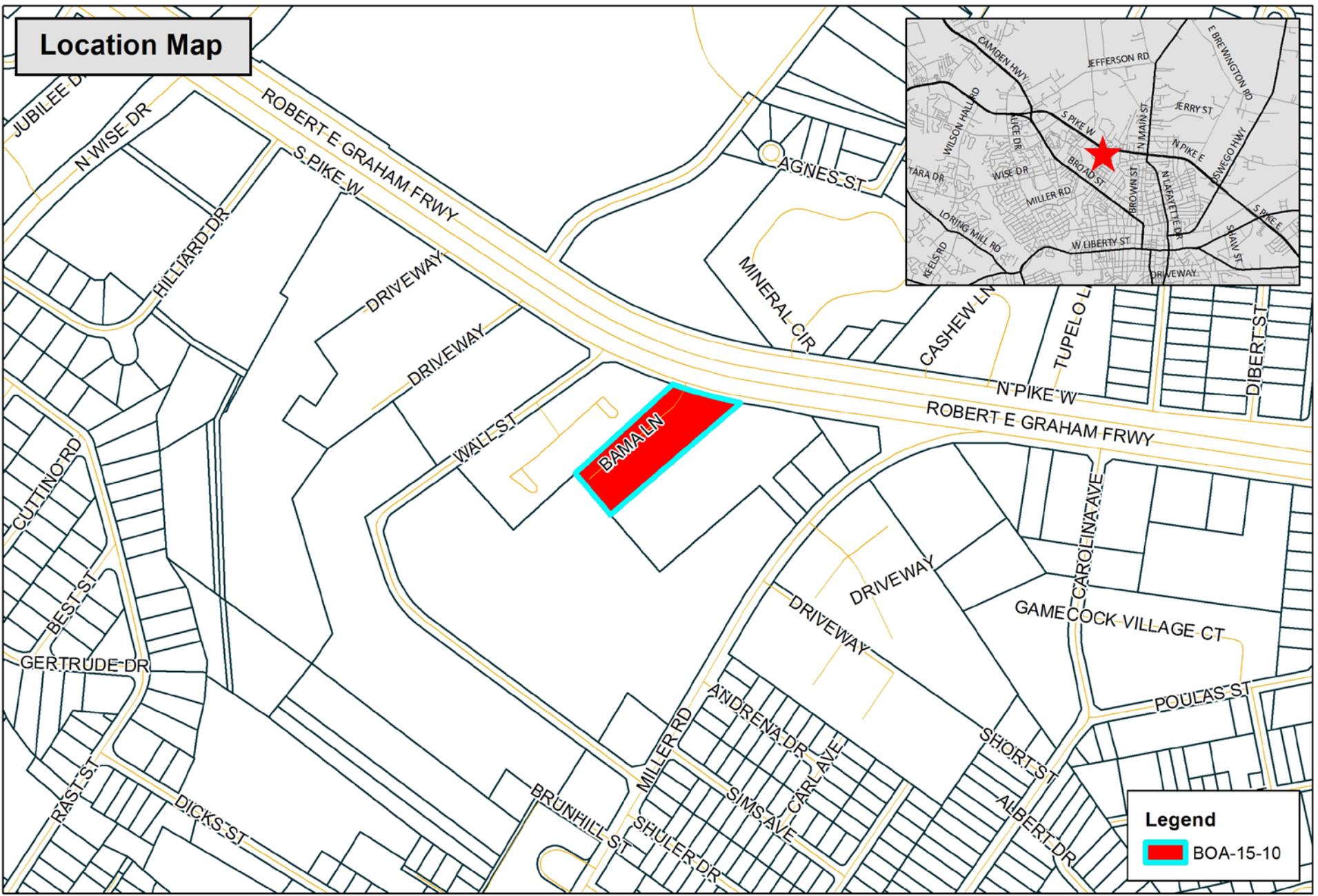
Approved by the Board by majority vote.

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.

Location Map

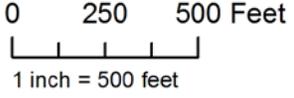


Legend

 BOA-15-10

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Map Prepared by: Sumter Planning Department
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Geographic Information Systems (GIS)
Date: 7/21/2015

BOA-15-10
825, 845, 885 Bama Ln., Sumter, SC
Tax Map # 229-00-01-016