

TO: Board of Adjustment

Item Number: 3

FROM: Planning Department Staff

DATE: Monday, February 13, 2017.

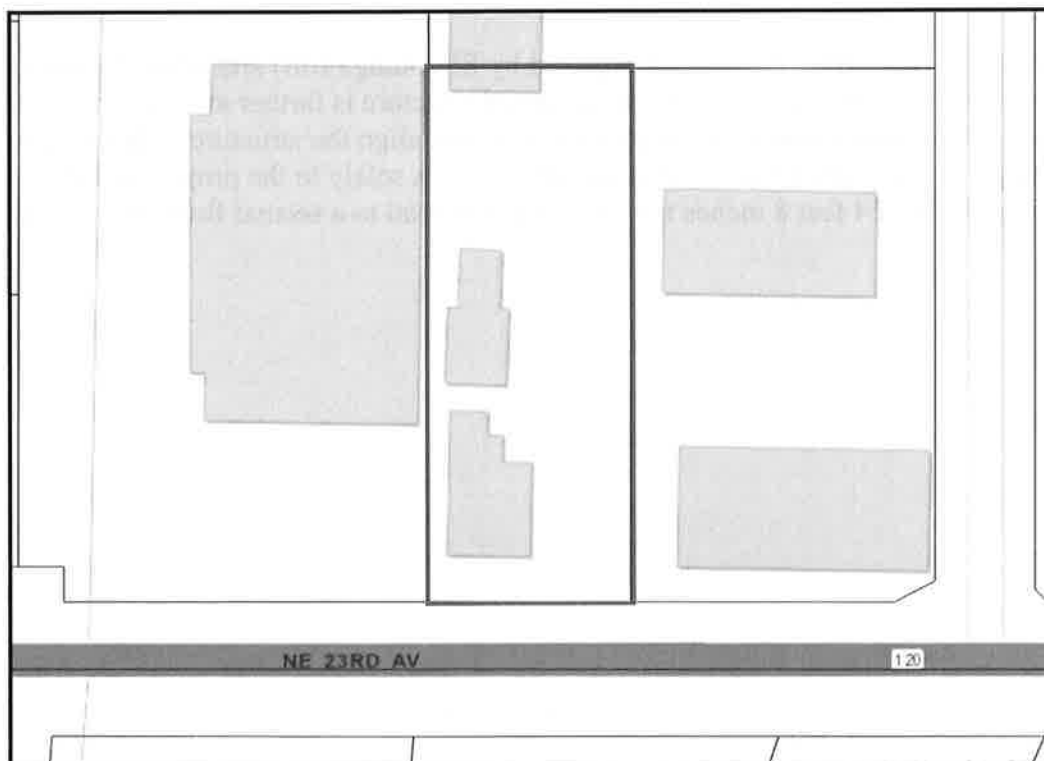
SUBJECT: Petition BA-17-03 VAR

Shatkin Architecture, Agent for Satchel's Pizza. Request for two variances in accordance with Sec. 30-354(d) (3) and Sec. 30-37.1(d) of the Land Development Code to allow reduction of the interior west, side setback from 10 feet to 8.67 feet for reconstruction of a building and a reduction from 10 feet to 4.67 feet to allow metal stairs providing access to the building. Zoned B-I (Business Industrial). Located at 1800 NE 23rd Avenue.

Background and Explanation:

This petition is a request for a variance to reduce the side setback from 10 feet to 8 feet 8 inches along the western property line to allow reconstruction of a dining area and gift shop for a restaurant. The petition also includes a request for a variance to the side setback from 10 feet to 4 feet 8 inches along the same western property line to allow for the construction of stairs leading to a second floor office. The total new development includes 2,690 square feet of floor area. The property is located at 1800 NE 23rd Avenue; the primary frontage is along NE 23rd Avenue (See Map 1).

**Map 1
Location of Subject Property**



The property is zoned BI (business industrial) and is bordered by properties to the east and west that are zoned BI and a property to the north that is zoned I-1 (general industrial). The dimensional requirements for development in BI districts are as follows:

(1) Required yard setbacks:

- a. Front setback from an arterial street or collector street: 25 feet minimum, 60 feet maximum.
- b. Front setback from roads internal to the BI district: zero feet minimum, 20 feet maximum.
- c. Side, interior: 10 feet.
Except where the side yard abuts property which is in a residential district or which is shown for residential use on the future land use map of the comprehensive plan: 50 feet.
- d. Side, street: 20 feet.
- e. Rear: 20 feet.
Except where the rear yard abuts property which is in a residential district or which is shown for residential use on the future land use map of the comprehensive plan: 50 feet.
- f. Maximum building height:
When not located within an airport zone of influence: 5 stories
When located within an airport zone of influence: in accordance with the Airport Hazard Zoning Regulations
- g. Maximum Floor Area Ratio: 4.0.
- h. Maximum lot coverage: 80 percent

- (2) Within 300 feet of any property which is in a residential district or which is shown for residential use on the future land use map of the comprehensive plan, all activity and uses, except storage of equipment and parking, shall be conducted within completely enclosed buildings.

The property has been the home of Satchel's Pizza since 2003. In December 2016, a fire destroyed the Lightning' Salvage area of Satchel's which included a gift shop, bar, stage, and dining area. The property owners wish to rebuild the burned structure with similar functional space.

The previous structure was within the setback required by BI zoning (10ft) and while the proposed new structure continues to fall within the setback, the proposed structure is farther away from property line than the previous building. The newly proposed configuration will also align the structure with the adjacent existing building (see Image 1). The additional variance request pertains solely to the proposed stairs. The applicant is requesting a side setback of 4 feet 8 inches for stairs that will lead to a second floor office (see Image 2).

Image 1

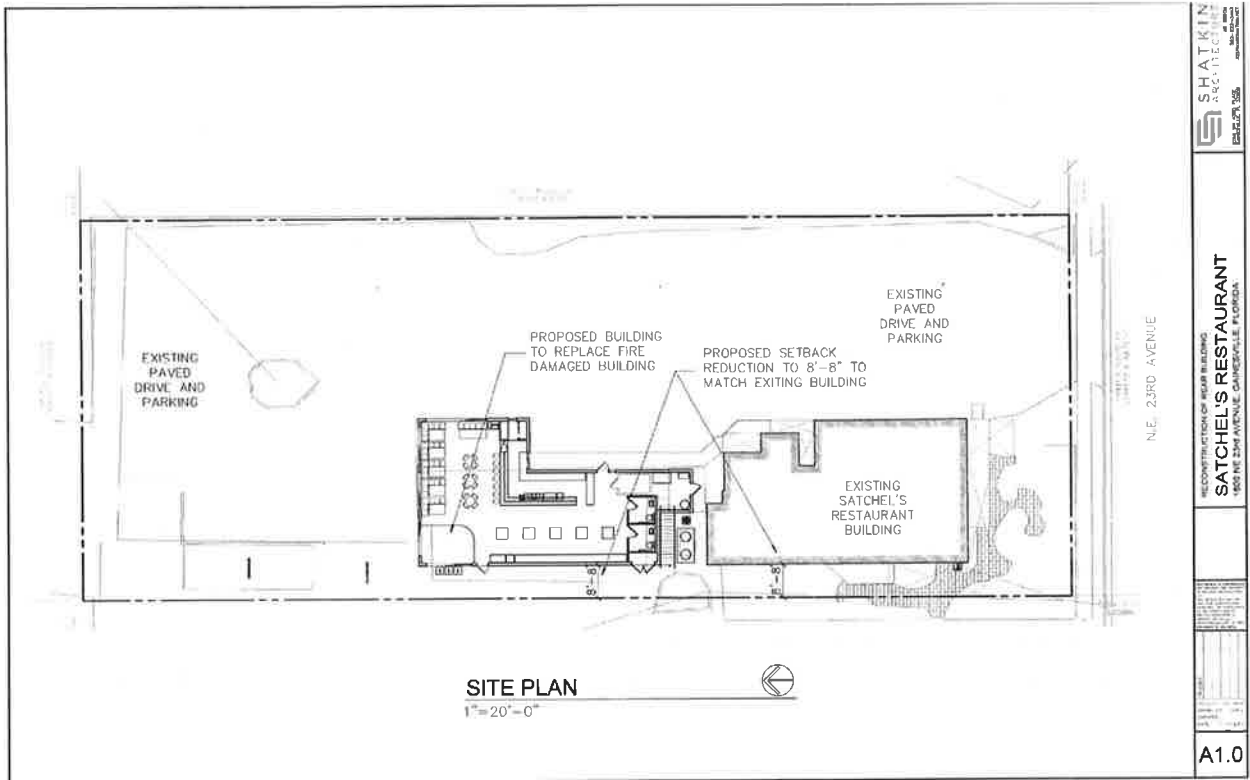
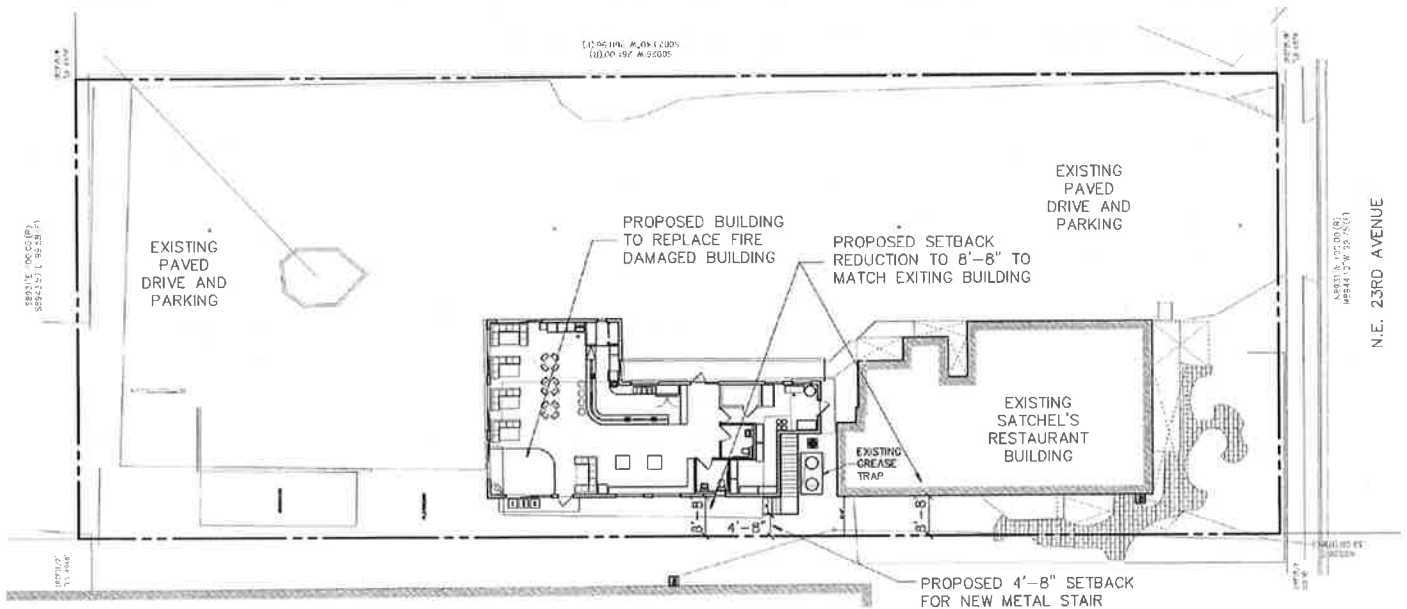


Image 2



Analysis of request:

Staff has reviewed this petition in the context of Section 30-354(d) (3) and Sec. 30-Sec.30-65.1 of the Land Development Code. Those sections of the code set development standards, defines a variance and authorize the Board of Adjustment to grant variances from certain provisions of the code. It places restrictions on granting these variances, and outlines the general requirement for granting a variance. These requests to reduce the west, interior side yard setback, classifies as a type of variance that may be authorized by the Board of Adjustment.

Staff identifies the following key issues as directly related to the requested variance:

1. The parcel is among the narrowest of the BI zoned parcels in the area.
2. The subject property is in a unique area and is directly adjacent to the Northeast Industrial Park area.
3. The proposed development intends to rebuild previously existing structure and continue with previously existing use of premises.
4. The proposed development reduces the degree to which the previous structure encroached into the required setback.

In considering a request for a variance, the code requires that the board establish findings that the request demonstrates the following:

1. *That special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, structures or buildings in the same district.*

The Special conditions peculiar to the parcel are the narrow configuration of the parcel and the challenges presented by rebuilding part of a structure within existing development. The proposed rebuild is adjacent to the primary restaurant building, the existing parking facilities, and a variety of landscape elements that were not affected by the fire.

2. *That literal enforcement of the provisions of the Land Development Code or building chapters would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of the Land Development Code or Building code.*

Strict application of the zoning code will not deprive the applicant of development rights commonly enjoyed by other property owners. The literal enforcement of the provisions of the Land Development Code will limit the extent of development. The limitation to new development could impact the business functionality of the property that had existed previously.

3. *That the special conditions and circumstances do not result from the action of the applicant.*

The existing site is currently improved with the primary dining area and kitchen building and the associated parking facilities. The proposed design is intended to utilize the development opportunities available to the applicant.

4. That granting the variance requested will not confer on the applicant any special privilege that is denied by this section to other lands, structures or buildings in the same district.

Granting the variance request based on findings of fact will not confer upon the applicant any special privileges that are denied to other land, structures, or buildings in the same district. In reaching a decision on the requested variance, the board must consider the material facts and competent substantial evidence presented. The applicant has provided documentation illustrating reasons for the request which must be considered in reaching a decision. A variance based on the listed criteria establishes a sound basis for deviating from the zoning standards and is not considered a special privilege.

5. The evidence presented justifies the granting of the variance and that the variance is the minimum variance that will make possible the reasonable use of the land, building or structure.

The applicant has provided documentation addressing the findings of fact necessary to grant a variance. The evidence demonstrates the characteristics of the site and the existing limitations. The applicant is proposing a 12% encroachment into the 10 foot setback leaving a distance of 8 feet 8 inches. The second variance, regarding the proposed stairs leading to the second floor office, would result in a 53% encroachment into the 10 foot setback leaving a distance of 4 feet 8 inches. Staff cannot determine whether the requested variance is the minimum possible to make reasonable and functional use of the proposed expansion.

6. Granting of the variance will be in harmony with the general intent and purpose of the zoning or building chapters and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

The intent of the variance procedure is to provide relief to property owners who have demonstrated hardships in pursuing development in strict compliance with the Land Development regulations. To this end, the intent of the standards is to provide flexibility and to establish reasonable separation, adequate space and efficient operation of adjacent uses with the general public and adjacent public realm. Those factors relate to the overall character of the neighborhood, the pattern of developments in the area, neighborhood types, lifestyle, and cultural and socioeconomic factors. The development is proposed as a rebuild of a previously existing structure and the resumption of a previously existing business activity. The proposed structure will actually improve the previously existing setback non-conformity by creating extra separation between the new structure and the property line.

Given the above conditions and a determination that the proposed encroachment will not result in an incompatible relationship between the building and the public realm, it is reasonable to conclude that granting the variance will not be injurious to the surrounding property owners.

The petitioner must demonstrate compliance with the findings necessary to issue a variance and show restricting hardships.

Respectfully Submitted:



Signature: _____

Title: Lead Planner

Prepared by: Forrest Eddleton, Planner

Date: Monday February 13, 20170.

LDC: ldc



Attachment:

Attachment A: Application and Supporting Documents.

Attachment B: Some Relevant Land Development Code References.