

City of Fayetteville Staff Review Form

2017-0263

Legistar File ID

6/6/2017

City Council Meeting Date - Agenda Item Only
N/A for Non-Agenda Item

Lee Porter

5/10/2017

Parks & Recreation /
Parks & Recreation Department

Submitted By

Submitted Date

Division / Department

Action Recommendation:

Staff recommends approval of a variance of Chapter 167.04(D)(1) to excuse the Applicant of being charged with the Prior Tree Removal Penalty.

Budget Impact:

N/A	N/A										
Account Number	Fund										
N/A	N/A										
Project Number	Project Title										
<table border="0" style="width: 100%;"> <tr> <td style="width: 30%;">Budgeted Item?</td> <td style="border-bottom: 1px solid black; text-align: center;">NA</td> </tr> </table>	Budgeted Item?	NA	<table border="0" style="width: 100%;"> <tr> <td style="width: 30%;">Current Budget</td> <td style="text-align: right;">\$ -</td> </tr> <tr> <td>Funds Obligated</td> <td style="text-align: right;">\$ -</td> </tr> <tr> <td style="border-bottom: 1px solid black;">Current Balance</td> <td style="text-align: right; border: 1px solid black;">\$ -</td> </tr> <tr> <td>Item Cost</td> <td style="text-align: right;">\$ -</td> </tr> </table>	Current Budget	\$ -	Funds Obligated	\$ -	Current Balance	\$ -	Item Cost	\$ -
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Budget Adjustment Attached?	NA										
Budget Adjustment											
Remaining Budget	\$ -										

V20140710

Previous Ordinance or Resolution # _____

Original Contract Number: _____

Approval Date: _____

Comments:



CITY COUNCIL AGENDA MEMO

MEETING OF JUNE 6, 2017

TO: Mayor and City Council

THRU: Quin Thompson, Planner

FROM: Lee Porter, Urban Forester

MEETING DATE: June 6, 2017

SUBJECT: **VAR 17-5800: 1541 W. MLK Blvd. (Panera Bread, 521):** Submitted by John Davidson for property located at 1541 W. MLK Blvd. The property is zoned CS, COMMUNITY SERVICES, and contains approximately 1.80 acres. The request is for a variance of the Prior Tree Removal Penalty.

RECOMMENDATION:

Staff recommends approval of a variance of Chapter 167.04(D)(1) to excuse the Applicant of being charged with the Prior Tree Removal Penalty.

BACKGROUND:

The subject property is located south of West Martin Luther King Boulevard between Arbuckle Lane and Eastern Avenue, and contains approximately 1.8 acres.

Prior to development review one significant tree and one minor tree, consisting of approximately 850 square feet of canopy total, were removed on site.

The tree removal was detected during development review in March of 2017. Additionally, the original tree survey submitted to Urban Forestry was incomplete (See Attachment D); the two trees removed, along with other trees still existing on site were not shown. The incomplete survey made the prior tree removal amount seem larger than it was in reality.

Through a combination of aerial imagery, conversations with the demolition company and a proper tree survey, an updated Tree Preservation Plan (See Attachment E) has been submitted and reviewed.

DISCUSSION:

Request: The Applicant is requesting a variance from the Tree Preservation Plan as afforded in the Unified Development Code Chapter 156.03 (C)(6) (See Attachment A). In order to excuse the applicant from being charged with the Prior Tree Removal Penalty, the applicant is requesting a variance of the Unified Development Code Chapter 167.04 (D)(1) (See Attachment B).

Variance: A variance of Chapter 167.04(D)(1), Tree Preservation and Protection, to not charge the applicant with the Prior Tree Removal Penalty amount.

The Prior Tree Removal Penalty is intended to ensure the reforestation of properties that have had significant deforestation prior to development review. In this case, the trees removed do not fit the intention of the code, nor did the applicant conduct removal with intentions of circumnavigating the Tree Preservation and Protection Code.

According to the Prior Tree Removal Penalty code, if prior tree removal has occurred within five (5) years prior to development review, the Applicant is responsible for reforesting to the Minimum Canopy Requirements for the site (twenty percent (20%) for Community Services), plus an additional ten percent (10%) penalty. In this case, the total amount of penalty would necessitate the reforestation of thirty percent (30%) of the site (See Attachment F), equivalent to approximately eighty seven (87) trees.

Staff's opinion is that this project does not fit the intention of the code requiring a penalty for prior tree removal (167.04 (D)(1)). Staff believes removal of the trees in question requiring the potential planting of approximately eighty seven (87) trees, plus additional mitigation trees with normal development review, puts an unfair burden on the developer.

It should be noted that, the Applicant will still be required to mitigate for all canopy removed in association with the project, in accordance with Chapter 167.04(I).

RECOMMENDATION: Staff recommends in favor of the variance to excuse the applicant from the Prior Tree Removal Penalty, 167.04(D)(1).

Attachments:

- A) Chapter 156.03 (C)(6)
- B) Chapter 167.04(D)(1)
- C) Request Letter
- D) Original Tree Preservation Plan
- E) Updated Tree Preservation Plan
- F) Prior Tree Removal Penalty Explained

156.03 - Development, Parking And Loading

(C) *Consideration by the Planning Commission.*

- (6) *Tree Preservation Plan.* A developer may petition the Planning Commission for a variance from the requirements of Chapter 167, Tree Preservation and Protection, in those cases where their strict application would work an injustice as applied to the proposed development due to a situation unique to the subject real property; provided that such variance shall not have the effect of nullifying the intent and purpose of the chapter. The Planning Commission's approval of said variance must be affirmed by the City Council to become effective, and a denial of the requested variance may be appealed to the City Council.

167.04 - Tree Preservation And Protection During Development

(D) *Prior tree removal.*

- (1) If trees have been removed below the required minimum within the five (5) years preceding application for development approval, the site must be forested to meet the Percent Minimum Canopy requirements set forth in Table 1, plus an additional ten percent (10%) of the total area of the property for which the applicant is seeking approval, less the right-of-way and park land dedications. The number of trees required to be planted shall be calculated using the Base Density for High Priority trees.
- (2) *Waiver.* If an applicant is able to demonstrate to the Planning Commission's satisfaction that the trees were removed for a bona fide agricultural purpose, and not with the intent to thwart enforcement of this chapter, the additional 10% reforestation requirement shall be waived.



7230 S. Pleasant Ridge Dr / Fayetteville, AR 72704
PH: 479-442-9350 * FAX: 479-521-9350

April 17, 2017

Planning Commission
City of Fayetteville
113 West Mountain St.
Fayetteville, AR 72701

RE: Prior Tree Removal Variance Request – LSIP 17-5740 / Panera Bread Co

Dear Commissioners,

Bates & Associates, Inc, on behalf of John Davidson, requests a variance from the requirement of full site mitigation due to Prior Tree Removal (Unified Development Code, Chapter 167.04 D) for the proposed Large Site Improvement Plan at 1541 W Martin Luther King Blvd.

Per the ordinance, if there has been prior tree removal within the past 5 years, the site must be brought up to the Minimum Canopy requirements for its zoning designation (Community Services – 20%), plus an additional 10% of the total area of the property.

During removal of the existing buildings and parking lot on this site to prepare for the new development in late Winter of 2016, one large-species tree, determined to be an Oak, with a canopy diameter of approximately 35' was removed from western area of the site. Another tree, which appears to be a clustered Maple with a canopy diameter of approximately 15', was removed from the eastern area of the site along the property's street frontage of S. Arbuckle Lane. Other small trees removed were not significant enough to necessitate mitigation had they been documented as part of the usual LSIP process.

After review by Urban Forestry, it was determined that in order to mitigate for the additional 10% of the site area, the Applicant would be required to plant 36 trees, in addition to the usual required interior landscaping and street frontage landscape as required as part of the LSIP.

The Landscape Plan prepared as part of the LSIP proposes extensive plantings, and a majority of the site will be canopied solely by the development requirements, even before the Prior Tree Removal mitigation. Due to the Applicant's requirements of the site's parking and building configuration, there is not enough room on-site to allow 36 additional trees to be planted without proposed tree canopies encroaching on one another, preventing the healthy growth of these trees over time.

After working with Urban Forestry, it has been proposed that application of the Prior Tree Removal mitigation requirements could be considered to be an excessive penalty for the removal of two trees that would have been removed as part of the LSIP. The Applicant understands the spirit of the ordinance, as well as the desire to retain as much canopy in the City as possible during development, and regrets that there was tree removal unsupervised by Urban Forestry.

The developer proposes that the Prior Removed Trees be included in the mitigation calculations, as if they were removed as part of the LSIP. Bates & Associates Engineering has also reconfigured the drainage areas to retain as much existing canopy as possible in the Southwest corner, in an effort to retain native canopy on-site. The Site will be extensively canopied after installation of the landscaping as required by the conditions of LSIP approval, and the Applicant will ensure that everything is done to protect the existing canopy during the development process.

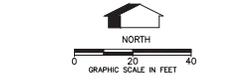
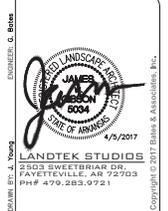
Please contact Bates & Associates with any questions or concerns regarding this variance request.

Sincerely,

A handwritten signature in blue ink, appearing to read 'J. Young', written in a cursive style.

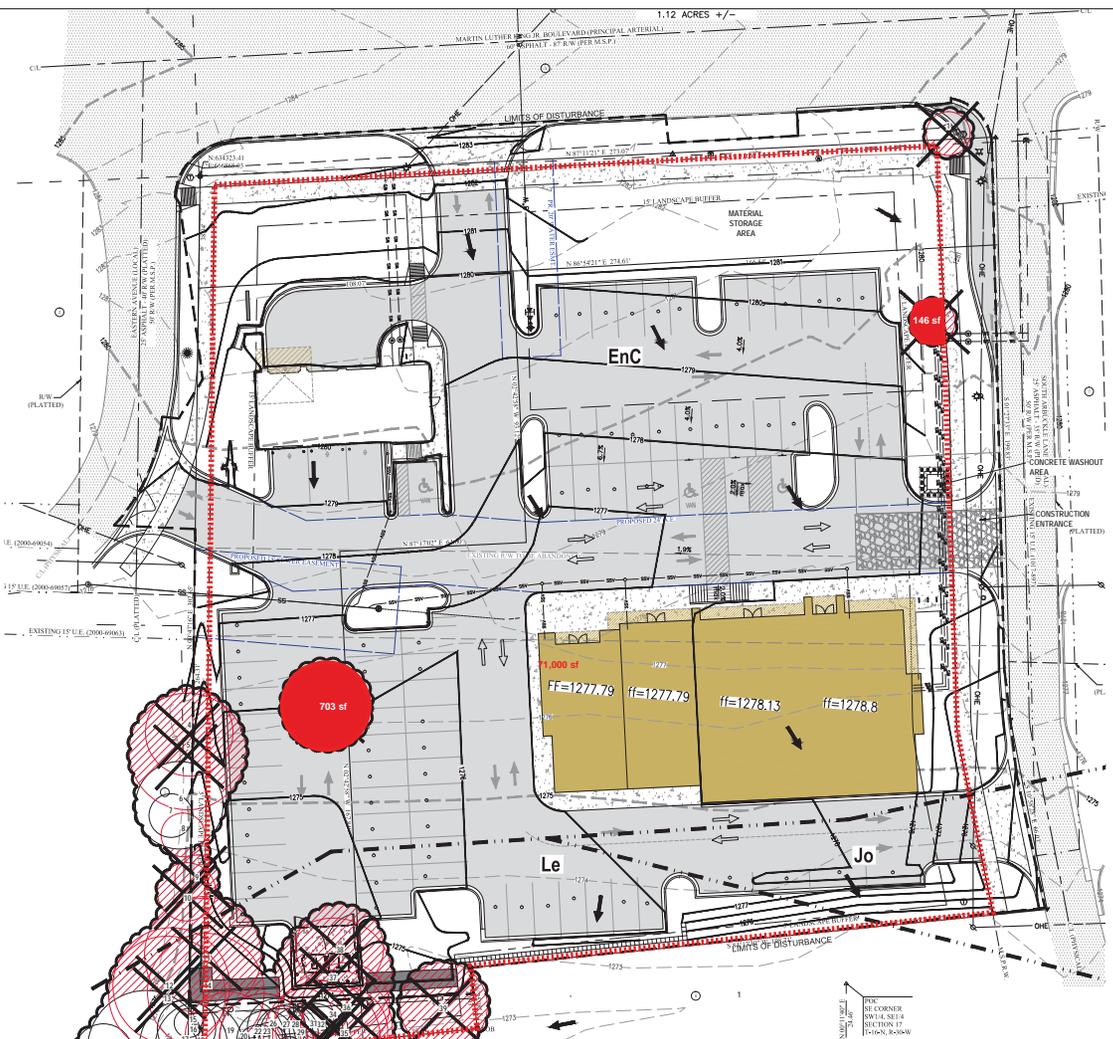
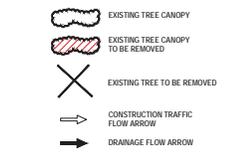
Jason Young
Bates & Associates, Inc

April 14, 2017
 Redlines + Comments
 Lee Porter
 Urban Forester



LANDSCAPE LEGEND

---	PROPERTY LINE
---	UTILITY SERVICE LINE
---	LIMITS OF DISTURBANCE
---	TREE PROTECTION FENCE
---	EXISTING CONTIGURS
---	PROPOSED CONTIGURS



EXISTING TREE LIST

No	DBH	Type	Health	Status	Priority	On/Off	Property
1	10	CATALPA	GOOD	REMOVE	MED	ON	
2	6	TREE	GOOD	REMOVE	MED	ON	
3	6	TREE	GOOD	REMOVE	MED	ON	
4	18	ELM	GOOD	REMOVE	MED	ON	
5	10	ELM	GOOD	REMOVE	MED	ON	
6	14	ELM	GOOD	SAVE	MED	ON	
7	4	REDBUD	GOOD	SAVE	MED	ON	
8	6	ELM	GOOD	SAVE	MED	ON	
9	4	ELM	GOOD	REMOVE	MED	ON	
10	6	ELM	GOOD	REMOVE	MED	ON	
11	14	OAK	GOOD	REMOVE	MED	ON	
12	12	ELM	GOOD	REMOVE	MED	OFF	
13	12	ELM	GOOD	REMOVE	MED	ON	
14	14	OAK	GOOD	REMOVE	MED	ON	
15	4	CEDAR	GOOD	SAVE	MED	ON	
16	10	ELM	GOOD	SAVE	MED	OFF	
17	12	ELM	GOOD	SAVE	MED	OFF	
18	14	ELM	GOOD	SAVE	MED	ON	
19	12	ELM	GOOD	SAVE	MED	ON	
20	14	ELM	GOOD	SAVE	MED	ON	
21	6	OAK	GOOD	SAVE	MED	ON	
22	8	OAK	GOOD	SAVE	MED	ON	
23	4	OAK	GOOD	SAVE	MED	ON	
24	6	ELM	GOOD	SAVE	MED	ON	
25	3	OAK	GOOD	SAVE	MED	ON	
26	6	ELM	GOOD	SAVE	MED	ON	
27	6	ELM	GOOD	SAVE	MED	ON	
28	8	ELM	GOOD	SAVE	MED	ON	
29	8	ELM	GOOD	SAVE	MED	ON	
30	6	CEDAR	GOOD	SAVE	MED	ON	
31	6	ELM	GOOD	SAVE	MED	ON	
32	6	ELM	GOOD	SAVE	MED	ON	
33	12	ELM	GOOD	REMOVE	MED	ON	
34	12	ELM	GOOD	REMOVE	MED	ON	
35	12	ELM	GOOD	REMOVE	MED	ON	
36	8	OAK	GOOD	REMOVE	MED	ON	
37	18	MIMOSA	FAIR	REMOVE	MED	ON	
38	14	MIMOSA	FAIR	REMOVE	MED	ON	
39	8	MIMOSA	FAIR	REMOVE	MED	ON	

Canopy Below Requirements	Sq. Ft.	Preservation Priority Type	Forestation Base Density	Number of 2" Caliper Trees to be Planted
High	810	High Priority	233	4
Mid	436	Mid Priority	290	17
Low	0	Low Priority	436	0

Site Analysis
 The proposed Panera restaurant is located south of Martin Luther King Blvd. on 1.80 acres. The proposed Panera restaurant will be approximately 1,000 sf and will have 70 parking spaces. This site was previously a commercial site but has been razed and contains no building, parking or roads. The site is bounded to the east by South Arkansas Ln, a local road, to the west by Eastman Ave, a local road as well, and to the south by a commercial development. The site drains to the south at about 3%. There are no streams or wetlands on the site. The property is currently zoned C5.

There are currently only three trees on the site. Two are volunteer mimosa trees, which is an invasive species and have canopies of 30 and 40 feet and the other appears to be a red maple with about a 12 foot canopy. All three of these trees are proposed to be removed to make way for detention on the property and the new sidewalk/parking lot.

SOILS TYPES
 100% Enders gravelly loam, 1 to 8 percent slopes
 5% Johnsonburg silt loam, 0 to 2 percent slopes
 1% All soil loam

PRIOR TREE REMOVAL PENALTY AMOUNT:
 Reforesting to 20% = 51 Trees
 10% Prior Tree Removal Penalty = 36 Trees
TOTAL = 87

URBAN FORESTRY RECOMMENDATION:
 Mitigate for Trees Removed at High/Mid Priority Level
TOTAL = 21

Tree Preservation Calculations

	Square Feet	Percent of site
Total Site Area *Minus Right of Way and Easements	71,000	100%
Zoning Designation * Select Below with drop down arrow		
C5 Community Services	14,200	20%
HA00 * Select Below with Drop Down Arrow		
No	0	0%
Total Canopy for Minimum Preservation Requirements	14,200	20.0%
Existing Tree Canopy * Minus Right of Way and Easements	4,414	6.3%
Tree Canopy Preserved	793	1.1%
Tree Canopy Removed *On Site	3,645	5.4%
Tree Canopy Removed *Off Site	1,899	
Tree Canopy Removed Total	5,744	8.1%
Removed Below Minimum	11,411	
Mitigation Requirements	5,744	

PANERA BREAD
 LARGE SCALE DEVELOPMENT PLANS
 TREE PRESERVATION PLAN
 FAYETTEVILLE, ARKANSAS



DRAWING NO.
TREE PRESERVATION PLAN
 TP-01

Prior Tree Removal Penalty

(D) *Prior tree removal.*

PART 1

(1) If trees have been removed below the required minimum within the five (5) years preceding application for development approval, the site must be forested to meet the Percent Minimum Canopy requirements set forth in Table 1, plus an additional ten percent (10%) of the total area of the property for which the Applicant is seeking approval, less the right-of-way and park land dedications. The number of trees required to be planted shall be calculated using the Base Density for High Priority trees.

PART 2

(2) *Waiver.* If an applicant is able to demonstrate to the Planning Commission's satisfaction that the trees were removed for a bona fide agricultural purpose, and not with the intent to thwart enforcement of this chapter, the additional 10% reforestation requirement shall be waived.

PART 1: REFORESTING

Total Site Area = 78,478 sq ft

Percent Minimum Canopy Requirements = 20%

20% of Site = 15,695 sq ft*

*Site already has 6.5% canopy coverage. 6.5% is 4,614 square feet of canopy. The amount above is 15,695 minus 4,614, totaling 11,081 sq ft.

Mitigation Requirements			
Canopy Below Requirments Sq. Ft.	Preservation Priority Type	Forestation Base Density	Number of 2" Caliper Trees to be Planted
11,081	High Priority	218	51
0	Mid Priority	290	0
0	Low Priority	436	0

PART 2: 10% PENALTY

Total Site Area = 78,478 sq ft

10% of Site = 7,847 sq ft

Mitigation Requirements			
Canopy Below Requirments Sq. Ft.	Preservation Priority Type	Forestation Base Density	Number of 2" Caliper Trees to be Planted
7,847	High Priority	218	36
0	Mid Priority	290	0
0	Low Priority	436	0

TOTAL

51+36 = 87 trees