

5/1/2017

John H Davidson
Monroe Eaton LLC
PO Box 10647
Fayetteville AR 72703

RECEIVED
MAY 01 2017
CITY OF FAYETTEVILLE
CITY CLERK'S OFFICE

Fayetteville City Council
Attn: City Clerk
113 W Mountain St - Suite 302
Fayetteville AR

To whom it may concern:

Please accept this letter requesting an appeal to the City Council of Fayetteville from the April 27th Planning Commission meeting. Monroe Eaton LLC, as applicant, requested a variance from the Access Management Ordinance for a curb cut on MLK Blvd.

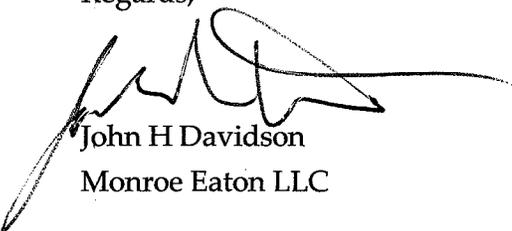
The property currently has four curb cuts long MLK. The new development would reduce that number to one. Due to the fact that we have streets on both the East and West of the property, there is not a location along MLK that would meet the spacing requirements of the Access Management Code; therefore, we need a variance for the single curb cut.

In the design phase of the project, the former director of development services explained that we would need the variance for the single curb cut, but that with almost 300 feet of frontage along MLK and the fact we currently had four curb cuts, he could support the variance. Additionally, the City Attorney's office assured the applicant that Arkansas law constitutionally protected access to MLK.

The denial of the requested variance would result in our anchor tenant canceling its lease. The tenant made clear when signing the lease that full access to MLK was a must. I spoke with the tenant after the planning commission meeting and was assured the same.

I can be reached at 479-841-4296.

Regards,



John H Davidson
Monroe Eaton LLC

MEETING OF JUNE 6, 2017

TO: Mayor, Fayetteville City Council

THRU: Andrew Garner, City Planning Director

FROM: Quin Thompson, Current Planner

DATE: April 28, 2017

SUBJECT: **VAR 17-5782: Variance Item (1541 W. MLK BLVD./PANERA BREAD, 521):** Submitted by BATES & ASSOCIATES, INC. for properties located at 1541 W. MLK BLVD. The properties are zoned CS, COMMUNITY SERVICES and contain approximately 1.80 acres. The request is for a variance to the Access Management Ordinance for a new driveway on an arterial.

RECOMMENDATION:

The Planning Commission approved a limited access driveway (right in, right out only) on Martin Luther King Boulevard, where a full access drive was proposed. The decision has been appealed by the developer. City Planning Division staff recommends in favor of a variance to allow access to Martin Luther King Boulevard, consistent with the advice of the City Attorney.

BACKGROUND:

The property is located on Martin Luther King Boulevard between Eastern Avenue and Arbuckle Lane. The property is currently zoned as CS, Community Services, and contains approximately 1.8 acres. Existing buildings on this site have been removed recently in preparation for redevelopment. The site currently contains four full access driveways from the previous development, in addition to access from both Eastern Avenue and Arbuckle Street, a condition which does not conform to current code requirements.

On Friday April 21, the Assistant City Attorney provided Planning staff with a memo (attached) citing case law and arriving at the following conclusion:

“A blanket denial of Panera Bread's request for access to or from Martin Luther King, Jr. Blvd., even for important traffic safety issues and even though it has access by way of Eastern Avenue and South Arbuckle Lane, might be deemed a taking by a Court for which the City of Fayetteville would have to pay just compensation. “

As a result of this memo, City Planning Division staff modified their initial recommendation and advised the Planning Commission to approve a variance.

Request: The proposal is for a full access driveway on Martin Luther King Drive.

Public Comments: No public comment has been presented.

DISCUSSION:

At the April 24, 2017 Planning Commission, discussion was centered on traffic safety and the constitutionality of limiting access to City streets. After a considerable amount of discussion the variance was granted approval of a limited access curb cut by a vote of 6-2-0. Commissioners Hoffman and Autry voted 'No'.

BUDGET/STAFF IMPACT:

N/A

Attachments:

- City Attorney Memo
- Planning Commission Staff Report
- VAR 17-5782 Application
- April 24, 2017 Planning Commission minutes



DEPARTMENTAL CORRESPONDENCE



OFFICE OF THE
CITY ATTORNEY

Kit Williams
City Attorney

Blake Pennington
Assistant City Attorney

Rhonda Lynch
Paralegal

TO: **Planning Commission**

CC: **Andrew Garner**, City Planning Director
Quin Thompson, Current Planner

FROM: **Blake Pennington**, Assistant City Attorney

DATE: **April 21, 2017**

RE: **Potential financial liability for denying Panera Bread access to MLK, Jr. Blvd.**

I have some concerns about the recommendation to deny a variance for Panera Bread to directly access Martin Luther King, Jr. Blvd. from its property. In short, cutting off a landowner's access to a street, even for reasons of traffic safety, could very well lead to a damage award against the City because the landowner has a property interest in that access. I am attaching two previous memos from City Attorney Kit Williams on this subject.

The last time this issue arose was during the large scale development review of Casey's General Store on Wedington in 2013, though it had arisen at least twice within two years before that. On an appeal of the Planning Commission's 5-3 denial of Casey's LSD, the City Council voted 7-0 to allow a right turn in only.

In 2012, the City Council considered an appeal by the applicant for the Kum & Go on Martin Luther King, Jr. Blvd at the Hill Avenue intersection. The Planning Commission had voted to deny a full access driveway onto MLK but approved a right in-right out only driveway along with a connection to the street just west of the development. After considering the advice of City Attorney Kit Williams, the City Council unanimously voted to approve a compromise with the applicant to allow the right in-right out with some additional improvements and removal of the connection west.

Arkansas law has remained unchanged since the City Attorney's 2011, 2012 and 2013 memos on this issue. When the City Council considered the Casey's General Store issue in 2013, Kit included in his memo portions of his memo dated December 6, 2011, about Liberty Bank on Joyce Avenue. Relevant portions of that 2011 memo follow:

“(There is) very well established law that an abutting property owner has a legally protected access easement onto a city street. Eighty years ago, the Arkansas Supreme Court explicitly recognized an access easement as a property right.

‘Under our decisions, the owner of property abutting upon a street or highway has an easement in such street or highway for the purpose of ingress and egress which attaches to his property and in which he has a right of property as fully as in the lot itself; and any subsequent act, by which that easement is substantially impaired for the benefit of the public, is a damage to the lot itself within the meaning of the constitutional provision for which the owner is entitled to compensation.’ *Campbell v. Arkansas State Highway Commission*, 183 Ark. 780, 38 S.W. 2d 753, 753-754 (1931).

“Four decades later, the Arkansas Supreme Court reaffirmed this access easement right as a property right for a lot abutting a street.

‘The owner of property abutting upon a street has an easement in such street for the purpose of ingress and egress which attaches to his property and in which he has a right of property as fully as in the lot itself.’ *Flake v. Thompson*, 249 Ark. 713, 460 S.W. 2d 789, 795 (1970).

“In that case, the City of Little Rock had passed an ordinance that would have denied access to University Avenue to the property owner and argued that it could do so because the property owner had access to another (lower level) city street. The Arkansas Supreme Court held “that the ordinance constituted an unwarranted invasion of private rights and was discriminatory and oppressive, and thus it is unreasonable and arbitrary.” *Id.* at 796

‘The property right of ingress and egress of appellants in the easement was one that could not be taken from them by the city, at least without the payment of just compensation.’ *Id.*

“Ten years ago, the Arkansas Supreme Court yet again affirmed the property owner’s right to access a city street and found that interference with that right by the city would require compensation to be paid to the property owner.

‘We have held that the owner of property abutting upon a street has an easement in such street for the purpose of ingress and egress which attaches to his property and in which he has a right of property as fully as in the lot itself. *Flake v. Thompson, Inc.*, 249 Ark. 713, 460 S.W. 2d 789 (1970). **We have also noted that this property right is not diminished merely because the property owner has alternative means of ingress and egress.**’ *Wright v. City of Monticello*, 345 Ark. 420, 47 S.W. 3d 851, 857 (2001).”

CONCLUSION

A blanket denial of Panera Bread's request for access to or from Martin Luther King, Jr. Blvd., even for important traffic safety issues and even though it has access by way of Eastern Avenue and South Arbuckle Lane, might be deemed a taking by a Court for which the City of Fayetteville would have to pay just compensation.



Kit Williams
City Attorney

Jason B. Kelley
Assistant City Attorney

TO: **Mayor Jordan**
City Council

CC: **Don Marr**, Chief of Staff
Jeremy Pate, Development Services Director

FROM: **Kit Williams**, City Attorney

A handwritten signature in black ink, appearing to read 'Kit Williams', with a long horizontal flourish extending to the right.

DATE: **March 27, 2013**

RE: **Casey's General Store's Appeal**
of its Large Scale Development denied

I believe the three newly elected Aldermen may not have faced this street access issue before and have not received my memos explaining that a property owner has legally protected access easement rights to an abutting street. I hope that the Mayor and the five other Aldermen forgive me for repeating my concerns expressed in previous memos when a Large Scale Development is proposed for denial or otherwise denied access easement rights. This is especially concerning when Casey's seeks a very limited right-in only access along an abutting street.

The City Council adopted standards for streets and access management a few years ago to enhance traffic safety and discourage too frequent curb cuts. Prior to passage of the Access Management ordinance, I cautioned that the City should provide a variance to ensure we would not violate established property rights of a landowner abutting a street to access this street. Accordingly, the following specific variance was enacted along with the rest of the Access Management requirements. During an appeal from the Planning Commission's 5-3 denial of Casey's LSD, you sit with the same (but no greater) powers than the Planning Commission. Therefore, you are required to follow all the regulations of the Unified Development Code including this variance:

“(e) Variance. In order to protect the ingress and egress access rights to a street of an abutting property owner, a variance to the curb cut minimums shall be granted by the Planning Commission to allow an ingress/egress curb cut at the safest functional location along the property. Such a curb cut may be required to be shared with an adjoining parcel of feasible. If a parcel on the corner of

an arterial or collector street provides such short frontage along a major street that there is no safe ingress/egress functional location on that street, the Planning Commission may deny the curb cut or may limit such curb cut to ingress or egress only.” §116.08 (F)(1)(e) of the UDC.

Please note that the mandatory “**shall**” is used to **require** a variance be allowed with the only exception being when the parcel “provides such short frontage along a major street that there is no safe ingress/egress functional location on that street” I believe our Planning and Engineering divisions have stated that they believe even the very restrictive right-in only access from Wedington is too dangerous to allow. As the finders of fact on this issue, you should carefully consider the City Staff’s opinions, but also consider well reasoned opinions and arguments of the applicant for Casey’s General Stores, Inc. and citizen input.

Both in 2011 and 2012, the City Council faced street access variance issues for which I provided the results of my legal research. In the Liberty Bank on Joyce Street issue, I presented that research in a memo dated December 6, 2011, from which I will quote some relevant parts:

“(There is) very well established law that an abutting property owner has a legally protected access easement onto a city street. Eighty years ago, the Arkansas Supreme Court explicitly recognized an access easement as a property right.

‘Under our decisions, the owner of property abutting upon a street or highway has an easement in such street or highway for the purpose of ingress and egress which attaches to his property and in which he has a right of property as fully as in the lot itself; and any subsequent act, by which that easement is substantially impaired for the benefit of the public, is a damage to the lot itself within the meaning of the constitutional provision for which the owner is entitled to compensation.’ *Campbell v. Arkansas State Highway Commission*, 183 Ark. 780, 38 S.W. 2d 753, 753-754 (1931).

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“In that case, the City of Little Rock had passed an ordinance that would have denied access to University Avenue to the property owner and argued that it could do so because the property owner had access to another (lower level) city street. The Arkansas Supreme Court held “that the ordinance constituted an unwarranted invasion of private rights and was discriminatory and oppressive, and thus it is unreasonable and arbitrary.” *Id.* at 796

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CONCLUSION

There is at least a possibility that denial of Casey’s General Stores, Inc.’s request for its right-in only access from Wedington even for important traffic safety issues might be deemed a takings by a Court for which the City of Fayetteville would have to pay fair compensation.



**TO: Mayor Jordan
City Council**

**Kit Williams
City Attorney**

**Jason B. Kelley
Assistant City Attorney**

**CC: Don Marr, Chief of Staff
Jeremy Pate, Development Services Director
Andrew Garner, Senior Planner – Current Planning**

FROM: Kit Williams, City Attorney

A handwritten signature in black ink, appearing to read "Kit Williams", written over a horizontal line.

DATE: January 12, 2012

RE: Potential financial liability for denying Kum & Go's curb cut appeal

**DANGEROUS TRAFFIC CONDITIONS
HAVE BEEN A CONSIDERATION FOR 37 YEARS**

When the Access Management Ordinance was passed by the City Council on August 5, 2008, it did not fundamentally change the Unified Development's Code's regulations concerning "dangerous" street access from proposed developments. Since at least September 17, 1974, a proposed large scale development could be denied if "(t)he proposed development would create or compound a dangerous traffic condition." Ordinance No. 2044, September 17, 1974 (attached). That ordinance regulating developments has remained within the Fayetteville City Code and/or the Unified Development Code for the last 37 years. It defines "dangerous traffic condition" as follows:

"For the purpose of this section, a "dangerous" traffic condition shall be construed to mean a traffic condition in which the risk of accidents involving motor vehicles is significant due to factors such as, but not limited to, high traffic volume, topography, or the nature of the traffic pattern."

I believe that virtually all of the commercial developments along Martin Luther King Boulevard have been constructed or redeveloped since 1974 (which

predates I-540 and the five laning of MLK and Razorback Road). Many of these would have been large scale developments with full access easements to MLK (and some with full access to Razorback Road, the frontage road, Hollywood or other cross streets) and were evidently permitted to be developed by the City as not presenting the "dangerous traffic condition" that could have caused a development's rejection.

The 2008 adoption of the Access Management Ordinance included a clear variance section which **requires** that the Planning Commission grant a variance to a property owner for access to a street unless "there is no safe ingress/egress functional location on that street" This is a higher standard of "dangerousness" for the City to meet than the old "create or compound a dangerous traffic condition" under which the existing development was approved along MLK. And yet much of that development along Martin Luther King Boulevard, North College Avenue and other arterial streets in Fayetteville have much closer to the intersection (and thus less safe) full access easements than the three quarters access easement requested by Kum & Go,

In 2008, the City of Fayetteville rebuilt sidewalks and curbs along North College from Rock Street to Maple and constructed numerous full access easements on this arterial street for a gas station/convenience store, auto parts store, grocery store, etc. much closer to major street intersections than Kum & Go's proposal. This is true even though these businesses also had full curb cuts on a collector street. It could certainly hurt us in Court if these inconsistencies are pointed out to a jury. Most concerning to me as City Attorney (if the City Council does not grant Kum & Go's request for the three-quarters access curb cut) is the apparently unequal treatment of Kum & Go versus its business competitors who have not been denied full access curb cuts closer to intersections between higher volume streets. This could inflate any damage award our taxpayers would have to pay.

The law that an abutting property owner has a property right to a curb cut which cannot be deprived without the state or city paying just compensation to the property owner has been consistently applied by the Arkansas Supreme Court for at least 80 years. The City of Fayetteville cannot change or ignore this law which is embedded in constitutional provisions by passing an Access Management Ordinance, nor its earlier "dangerous traffic situation" regulation. We can and should work with developers to try to find the safest and best access possible for an abutting property owner. Kum & Go has agreed to voluntarily give up 25% of its

access rights to MLK by removing its request for a left turn out. The City Council should think very hard before rejecting this compromise proposal.

I should note that during my decade as City Attorney, access or curb cut issues have all been worked out between developers and the Planning Department (except for Liberty Bank). I am not aware of any suit in which the city of Fayetteville has had to pay a damage award for denying a curb cut. I obviously hope this will not be the first, especially since potential damages would be higher here than for other smaller projects on smaller parcels.

COMPENSATION HAS BEEN ASSESSED FOR DAMAGING ACCESS EASEMENT RIGHTS IN THE PAST

I was requested to do more research by the Administration about whether Fayetteville could actually be liable and have to pay for a restrictive curb cut in this case. Further research has only supported my earlier conclusion that the property owner has a property interest to access an abutting street and the requirement of compensation if the government deprives or damages such access.

“However, we think the commission, in making this argument, overlooks a basic right of an abutting property owner, **for the right of access to a street or highway is one of the incidents of the ownership or occupancy of land abutting thereon.** In Volume 25, *Am. Jur.*, Section 154, Page 448, it is said:

“Such right is appurtenant to the land **It is a property right of which the owner cannot be deprived without just compensation.**” *Arkansas State Highway Commission v. Kesner*, 239 Ark. 270, 388 S.W. 2d 905, 909 (1965) (emphasis added).

I should note that I believe constructing a **median in the street** is not a taking of an abutting owner’s property interest and falls within the power of the state or city to control its streets. I believe that a median affects **all** drivers and should be controlled by the rule of circuitry because abutting owners have no greater rights than the driving public and do not suffer the particular and unique harm that a restrictive curb cut inflicts upon the landowner. Thus, I do not believe

that construction of a median for a boulevard endangers our taxpayers like denying or restricting an abutting property owner's access rights to a street.

The Arkansas Court of Appeals rejected the State Highway Commission's contention that it could restrict or deny a property owner's access easement rights without compensation. It discussed the *Kesner* decision (quoted above) and the rule of circuitry. The rule of circuitry holds that a state or city can move a road or highway causing a longer drive for a property owner without any liability for such inconvenience.

"In *Kesner*, the Supreme Court noted the general rule that circuitry of travel is not compensable. Unlike the situation here, the landowners in *Kesner* suffered no actual taking of their land. Even so, the court held the evidence established the landowners suffered damages peculiar to themselves and therefore it **awarded compensation.**" *Arkansas State Highway Commission v. Cottrell*, 9 Ark. App. 359, 660 S.W. 2d 179, 182 (1983) (emphasis added)

CONCLUSION

I do not like to intrude upon the City Council's policy prerogatives, but felt your responsibilities required the knowledge of this area of law before your decision because the applicant stated the access easement issue was the "deal breaker" or deciding factor. That elevated this decision and its potential ramifications on Fayetteville's taxpayers. Therefore, my duty as Fayetteville City Attorney is to advise you, as the protectors and conservators of taxpayer revenues, that denying Kum & Go's appeal and its compromise three quarters access easement to Martin Luther King, Jr. Boulevard could result in a substantial judgment against Fayetteville's taxpayers.

1974

FILED
FOR RECORD

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WASHINGTON COUNTY
ARKANSAS
ALMA KOLLMEYER
CIRCUIT CLERK

ORDINANCE NO. 2044

AN ORDINANCE AMENDING SECTION 4 OF ORDINANCE NO. 1998; TO CLARIFY THE REQUIREMENTS FOR APPROVAL OF A LARGE-SCALE DEVELOPMENT; AND FOR OTHER PURPOSES.

BE IT ORDAINED BY THE BOARD OF DIRECTORS OF THE CITY OF FAYETTEVILLE, ARKANSAS:

Section 1. That Section 4 of Ordinance No. 1998 is hereby amended by adding Subsection e to read as follows:

e) The proposed development would create or compound a dangerous traffic condition. For the purpose of this section, a "dangerous" traffic condition shall be construed to mean a traffic condition in which the risk of accidents involving motor vehicles is significant due to factors such as, but not limited to, high traffic volume, topography, or the nature of the traffic pattern.

Section 2. That all ordinances and resolutions, or parts thereof, in conflict herewith, be, and are hereby, repealed.

Section 3. It is hereby found and determined by the Board of Directors that the requirements for the development of a lot or parcel larger than one acre required by Ordinance No. 1998 are in need of clarification in order to avoid unnecessary loss of time to property owners and to the Planning Commission; and that the immediate passage of this ordinance is necessary to clarify the requirements for the development of a lot or parcel larger than one acre. Therefore, an emergency is hereby declared to exist, and this ordinance being necessary for the immediate preservation of the public health, safety, and welfare, shall be in full force and effect from and after its passage and approval.

PASSED AND APPROVED THIS 17th DAY OF September, 1974.

APPROVED:

Russell J Purdy
MAYOR

ATTEST:

Arleene Westbrook
CITY CLERK

DEED 874 PAGE 887

MICROFILMED
DATE OCT 16 1978
REEL 174

Fayetteville Code of Ordinances

Plat Review Committee: Lot Split, Small Site Improvement Plans, Large Site Improvement Plans, Large Scale Development, Planned Zoning District, Preliminary Plat, Final Plat, and Concurrent Plat. After the Technical Plat Review Committee meeting staff may administratively approve Lot Splits, Final Plats, Small Site Improvement Plans, and Large Site Improvement Plans after review for compliance with all applicable codes subject to UDC 166.02(C).

(2) *Subdivision Committee.* The following development applications are required to be reviewed by the Subdivision Committee: Large Scale Development, Planned Zoning District with Development, Preliminary Plat, and Concurrent Plat. From these applications, the Subdivision Committee may approve only Large Scale Developments.

(3) *Planning Commission.* The following development applications are required to be reviewed by the Planning Commission: Preliminary Plat, Concurrent Plat, and Planned Zoning District with Development. The Planning Commission may approve, deny, table, or approve development applications with conditions. A Planned Zoning District cannot be approved by the Planning Commission, but may be forwarded to City Council.

(C) *Approval and Denial Criteria*

(1) *Administrative Approval.* The following applications shall be approved administratively by the Planning Division as long as the proposal meets all requirements of the Unified Development Code: Property Line Adjustment, Lot Split, Final Plat, Small Site Improvement Plan, and Large Site Improvement Plan. Approval by the Planning Commission for these applications is not required unless an appeal is filed in accordance with Ch. 156 of the UDC.

(a) *Reasons for denial.* The Planning Division may refuse administrative approval based on the following criteria:

(i) *Property Line Adjustment; Lot Split.* The application does not comply with zoning and development requirements including, but not limited to: lot width, lot area, setback requirements, buildable area, required parking, impervious surface, dedication of required right-of-way or easements, etc., or the requested action would make

an existing non-conforming property or structure more non-conforming.

(ii) *Final Plat.* The conditions of approval of the preliminary plat have not been met, the proposed plat does not meet the zoning and development requirements of the UDC, and/or the required improvements have not been completed or guaranteed in accordance with Fayetteville Unified Development Code Chapter 158.

(iii) *Small or Large Site Improvement Plans.* The Planning Division may refuse to approve a Small or Large Site Improvement Plan for any of the following reasons:

a. The development plan is not submitted in accordance with the requirements of this chapter.

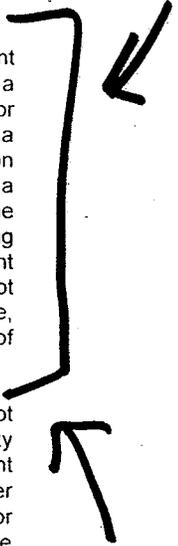
b. The proposed development would violate a city ordinance, a state statute, or a federal statute.

c. The developer refuses to dedicate the street right-of-way, utility easements or drainage easements required by this chapter.

d. The proposed development would create or compound a dangerous traffic condition. For the purpose of this section, a dangerous traffic condition shall be construed to mean a traffic condition in which the risk of accidents involving motor vehicles is significant due to factor such as, but not limited to, high traffic volume, topography, or the nature of the traffic pattern.

e. City water and sewer is not readily available to the property within the site improvement plat area and the developer has made no provision for extending such service to the development.

f. The developer refused to comply with ordinance requirements or condition of



PLANNING COMMISSION MEMO

TO: Fayetteville Planning Commission

THRU: Andrew Garner, City Planning Director

FROM: Quin Thompson, Planner

MEETING DATE: ~~April 24, 2017~~ **UPDATED 4/26/2017**

SUBJECT: **VAR 17-5782: Variance Item (1541 W. MLK BLVD./PANERA BREAD, 521):** Submitted by BATES & ASSOCIATES, INC. for properties located at 1541 W. MLK BLVD. The properties are zoned CS, COMMUNITY SERVICES and contain approximately 1.80 acres. The request is for a variance to the Access Management Ordinance for a new driveway on an arterial.

RECOMMENDATION:
 Staff recommends denial of **VAR 17-5782** based on the findings discussed herein.

BACKGROUND:

The property is located on Martin Luther King Boulevard between Eastern Avenue and Arbuckle Lane. The property is currently zoned as CS, Community Services, and contains approximately 1.8 acres. Existing buildings on this site have been removed recently in preparation for redevelopment. The site currently contains four full access driveways from the previous development, in addition to access from both Eastern Avenue and Arbuckle Street, a condition which does not conform to current code requirements. The surrounding zoning and land uses are depicted in *Table 1*.

Table 1 - Surrounding Zoning and Land Use

Direction from Site	Land Use	Zoning
North	Commercial Retail/Restaurant	C2, Thoroughfare Commercial
South	Undeveloped/Railroad ROW	UT, Urban Thoroughfare
East	Commercial Retail/Restaurant	C2, Thoroughfare Commercial
West	Industrial	I-1, Heavy Commercial/Light Industrial

DISCUSSION:

Request: The applicant proposes to entirely redevelop the site with a new multi-tenant commercial project with approximately 9,000 square feet. The proposed curb cut on Martin Luther King, a 'principal Arterial' street, requires a variance of the City's Access Management Ordinance (Fayetteville Unified Development Code 166.08.F) which requires that if a property has access to two streets, access should only be taken from the lower classification street; in this case Eastern Avenue and Arbuckle Street rather than Martin Luther King Boulevard.

The Access Management Ordinance also requires minimum separation for 250 feet from a driveway or intersection. In this case, the proposed driveway on Martin Luther King Boulevard is located approximately 67 feet from Eastern Avenue and 138 feet from Arbuckle Lane. The minimum separation distance is not met by this proposal. The minimum separation distance is intended to provide safe access to properties by reducing the number of vehicle turning movements and vehicle interactions, and is dependent on traffic speed and volume. The 250 foot separation distance is applied to those streets with highest speeds and traffic volumes.

This site is not appropriate for a curb cut on Martin Luther King for several reasons. The proposed curb cut would create and exacerbate a dangerous traffic condition. A new development for a restaurant and drive-thru will generate much more traffic and turning movements than the previous small church/non-profit use and car wash. This section of MLK contains high volumes of regional traffic and is the major east-west connector directly into the University of Arkansas and the greater downtown area. MLK will at times be very congested with bumper-to-bumper vehicles on eastbound lanes from the major intersection of Razorback Road further to the east, while vehicles travel at higher speeds on westbound lanes. This situation creates a dangerous situation for vehicles turning on and off of the thoroughfare. To minimize traffic danger and protect the public interest, access to this site should be limited to the adjacent local streets. These local streets are spaced approximately 260 apart providing very convenient and acceptable access for the applicant's proposed development while mitigating the potential for traffic and pedestrian accidents.

Recommended Motion:

Staff recommends denial of **ADM 17-5782**, finding that the site is adjacent to local streets on two sides which provide opportunity for safe and functional access to the property.

Condition of Approval:

1. Planning Commission determination of a variance of UDC Section 166.08(F) for the proposed driveway on Martin Luther King Boulevard. *Staff denial of the variance based on the findings discussed in this staff report.*

PLANNING COMMISSION ACTION: Required

Date: April 24, 2017 Approved Forwarded Denied

Motion: - **QUINLAN, MOTION TO APPROVE VARIANCE WITH A LIMITED RIGHT IN / RIGHT OUT ACCESS.**

Second: **HOFFMAN**

Vote: — **6-2-0, with Commissioners Hoffman and Autry voting 'No'**

BUDGET/STAFF IMPACT:

None

Attachments:

- UDC Section 166.08 (Access Management)
- Applicant's letter
- Site plan
- Existing conditions exhibit
- Close up map
- One mile map

Fayetteville Unified Development Code

166.08 Street Design and Access Management Standards

(F) Access Management. Safe and adequate vehicular, bicycle, and pedestrian access shall be provided to all parcels. Local streets and driveways shall not detract from the safety and efficiency of bordering arterial routes. Property that fronts onto more than one public street shall place a higher priority on accessing the street with the lowest functional classification, ex. Local and Collector. In a case where the streets have the same classification, access shall be from the lower volume street, or as determined by the City Engineer.

(2) Separation for two-family, three-family, multi-family and nonresidential development.

(a) Principal and Minor Arterial Streets. Where a street with a lower functional classification exists that can be accessed, curb cuts shall access onto those streets. When necessary, curb cuts along arterial streets shall be shared between two or more lots. Where a curb cut must access the arterial street, it shall be located a minimum of 250 feet from an intersection or driveway.

(b) Collector Streets. Curb cuts shall be located a minimum of 100 feet from an intersection or driveway. When necessary, curb cuts along collector streets shall be shared between two or more lots.

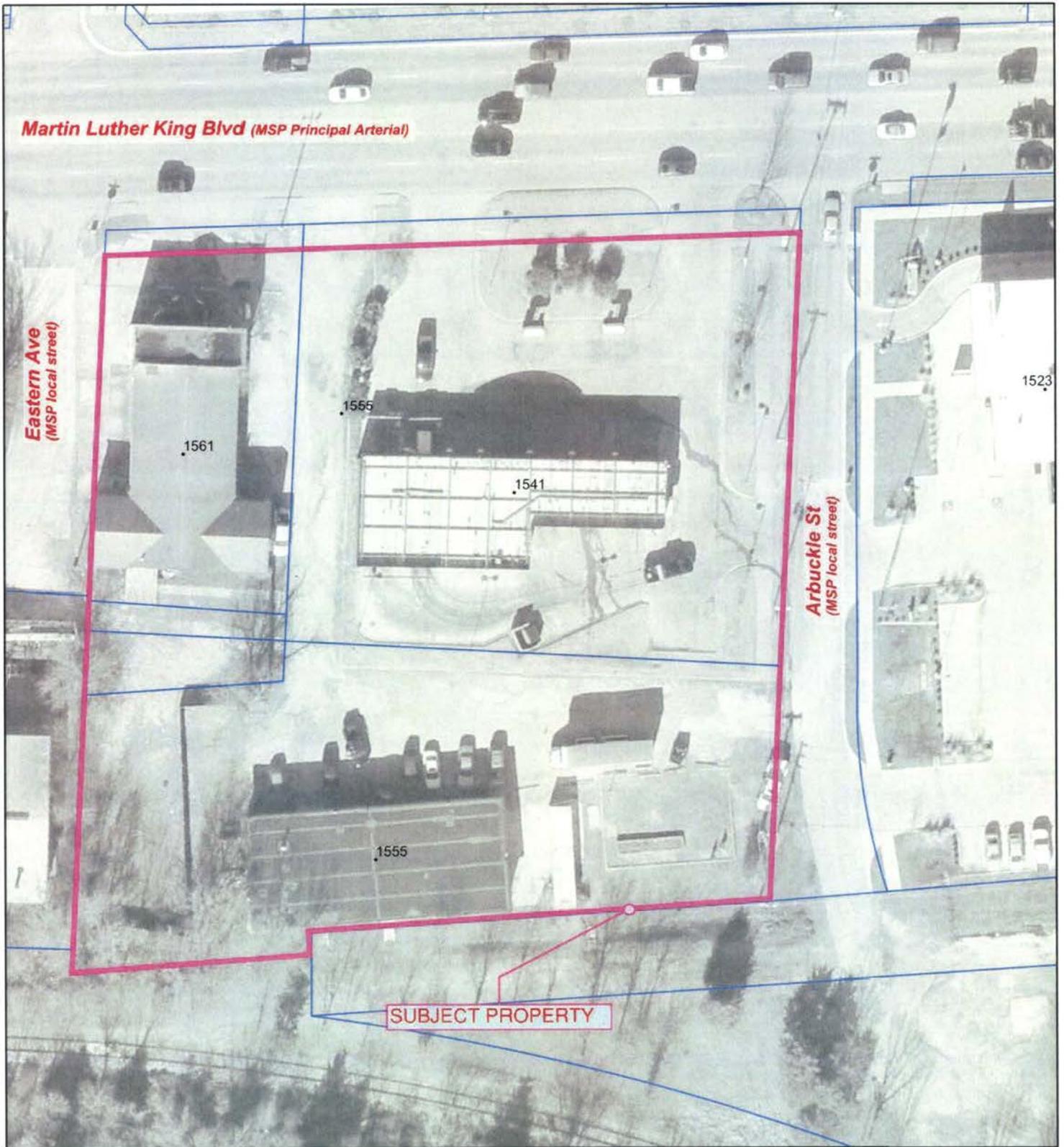
(c) Local and Residential Streets. Curb cuts shall be located a minimum of 50 feet from an intersection or driveway. In no case shall a curb cut be located within the radius return of an adjacent curb cut or intersection.

(3) Separation for single-family homes.

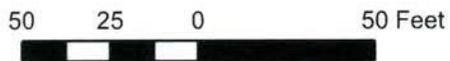
(a) For all street classifications, curb cuts shall be located a minimum of 10 feet from another driveway. Driveways serving corner lots shall be located as far from the street intersection as possible while still meeting a 5 foot separation from an adjoining property line. In no case shall a curb cut be located within the radius of an adjacent curb cut or street intersection.

(b) Arterial and Collector Streets. Individual curb cuts for along arterial and collector streets shall be discouraged. When necessary, curb cuts along arterial and collector streets shall be shared between two or more lots.

(4) Variance. In order to protect the ingress and egress access rights to a street of an abutting property owner, a variance to the curb cut minimums shall be granted by the Planning Commission to allow an ingress/egress curb cut at the safest functional location along the property. Such a curb cut may be required to be shared with an adjoining parcel if feasible. If a parcel on the corner of an arterial or collector street provides such short frontage along a major street that there is no safe ingress/egress functional location on that street, the Planning Commission may deny the curb cut or may limit such curb cut to ingress or egress only.



EXISTING ACCESS CONDITIONS





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

March 31, 2017

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

RE: Access Management Ordinance Variance Request – LSIP 17-5740 / Panera Bread Co

Dear Commissioners,

Bates & Associates, Inc, on behalf of John Davidson, requests a variance from The City of Fayetteville Unified Development Code XV.166.08.F.2.a, regarding minimum separation of curb cuts in Nonresidential developments, for the proposed Large Site Improvement Plan at 1541 W Martin Luther King Blvd.

Per the ordinance, minimum separation of curb cuts is required to be 250' for Nonresidential developments accessing Principal and Minor Arterial Street.

The proposed development has one proposed entrance on the north side of the property's street frontage.

The property in question lies between Eastern Avenue to the West, and South Arbuckle lane to the East, both designated as Local Streets per the Fayetteville Master Street Plan.-The proposed curb cut for access to Martin Luther King Blvd is 67.49' from the curb line of Eastern Avenue, and 138.47' from the proposed curb line of South Arbuckle Land after street improvements.

The Applicant feels that the variance is justified, considering the existing configuration of 4 access points to Martin Luther King Blvd will be reduced to only 1 access point after development.

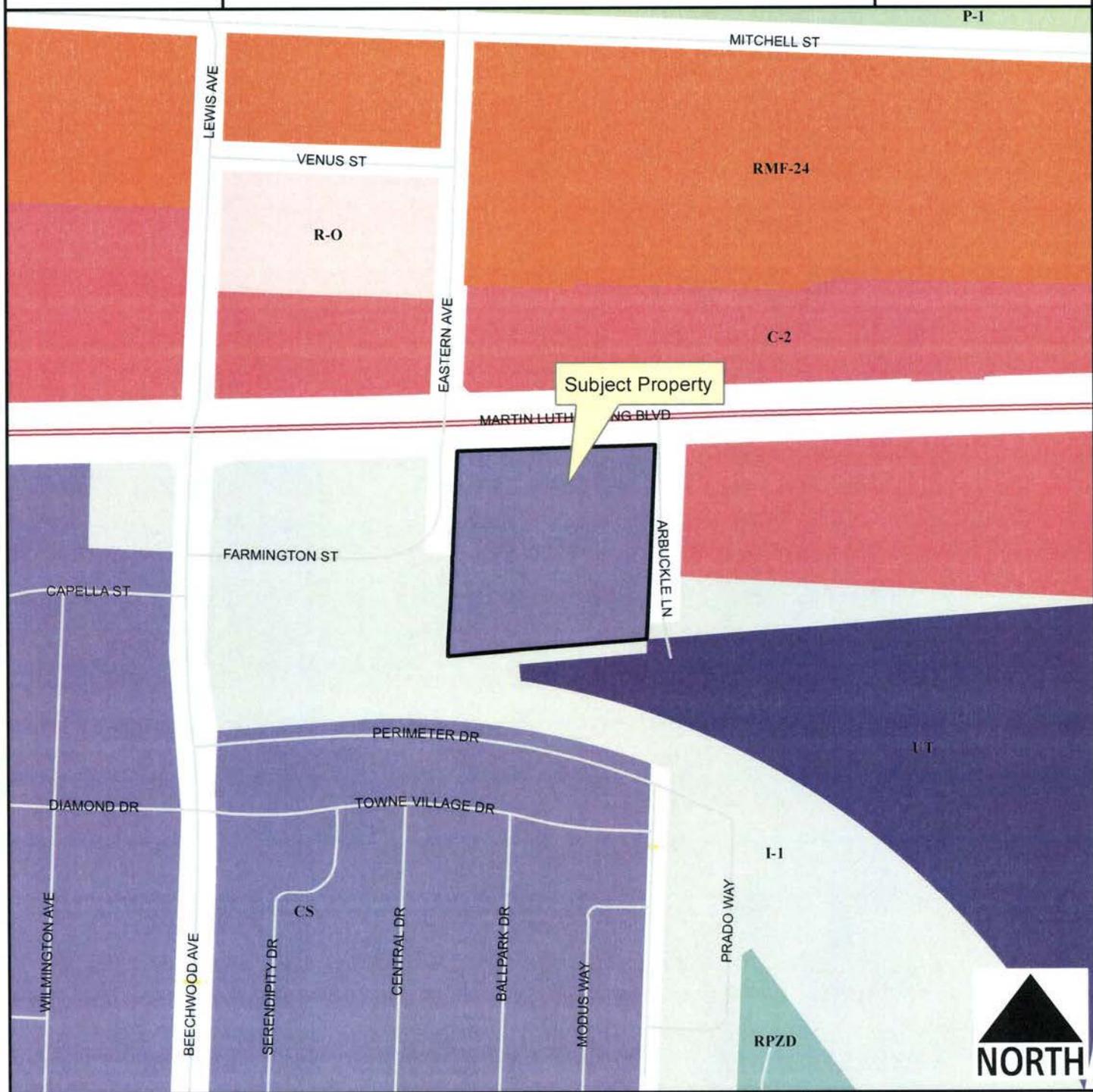
Please contact Bates & Associates with any questions or concerns regarding this variance request.

Sincerely,

Jason Young
Bates & Associates, Inc

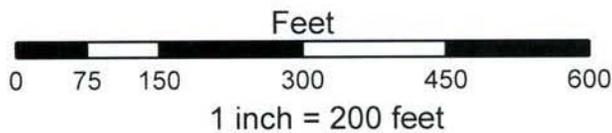
PANERA DRIVEWAY

Close Up View



Legend

- Planning Area
- Fayetteville City Limits
- Shared Use Paved Trail
- Trail (Proposed)
- Building Footprint



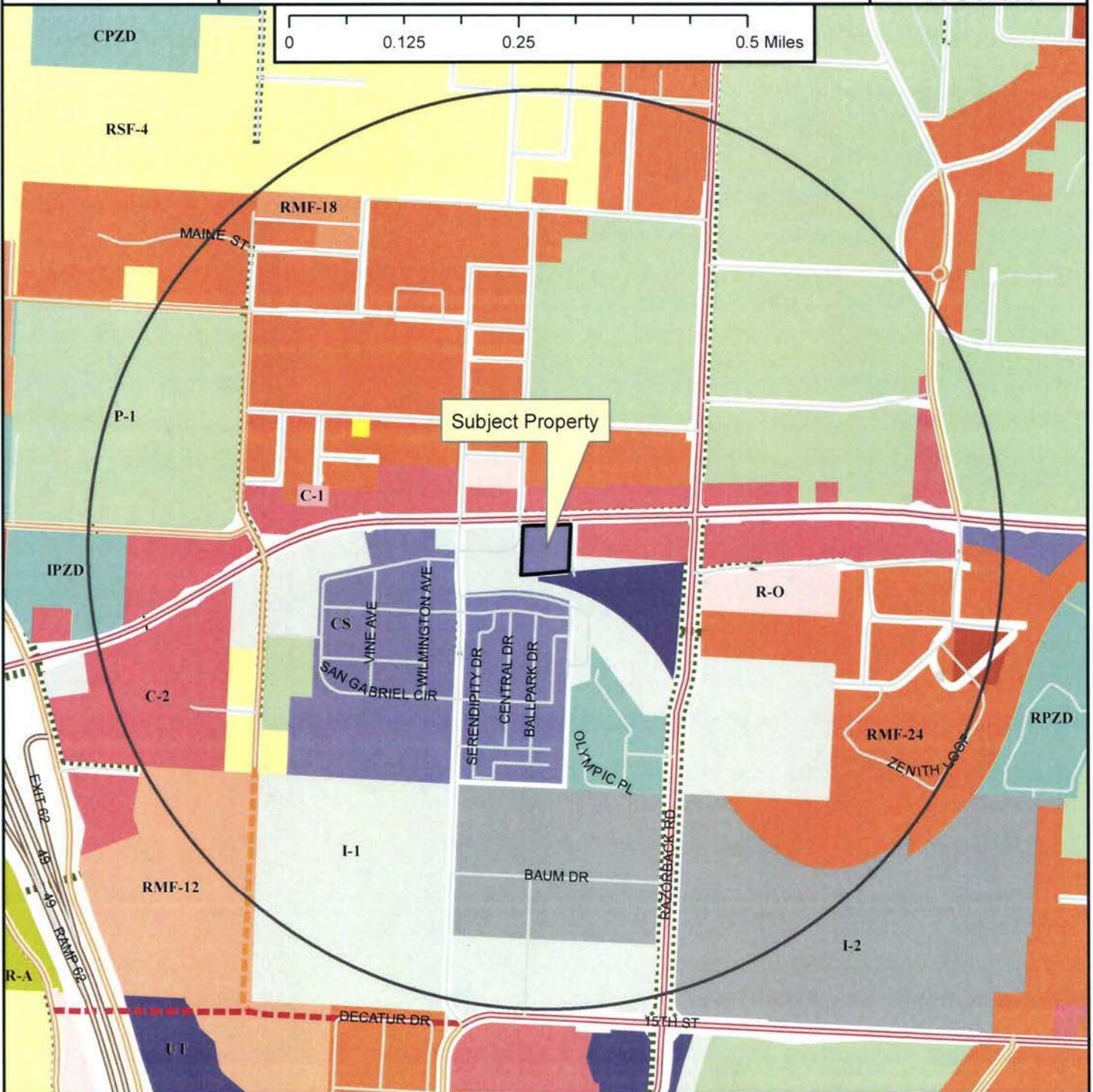
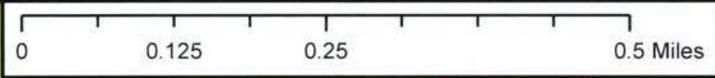
- RMF-24
- I-1 Heavy Commercial and Light Industrial
- Residential-Office
- C-2
- Urban Thoroughfare
- Community Services
- Commercial, Industrial, Residential
- P-1

VAR 17-5782

PANERA DRIVEWAY



One Mile View



Legend

- Planning Area
- Fayetteville City Limits
- Shared Use Paved Trail
- Trail (Proposed)
- Design Overlay District
- Building Footprint



- | | |
|---|-------------------------------------|
| Zoning | EXTRACTION |
| RESIDENTIAL SINGLE-FAMILY | E-1 |
| Residential-Agricultural | COMMERCIAL |
| RSF-5 | Residential-Office |
| RSF-1 | C-1 |
| RSF-2 | C-2 |
| RSF-4 | C-3 |
| RSF-7 | FORM BASED DISTRICTS |
| RSF-8 | Downtown Core |
| RSF-18 | Urban Thoroughfare |
| RESIDENTIAL MULTI-FAMILY | Main Street Center |
| RT-12 Residential Two and Three-family | Downtown General |
| RMF-6 | Community Services |
| RMF-12 | Neighborhood Services |
| RMF-16 | Neighborhood Conservation |
| RMF-24 | PLANNED ZONING DISTRICTS |
| RMF-40 | Commercial, Industrial, Residential |
| INDUSTRIAL | INSTITUTIONAL |
| I-1 Heavy Commercial and Light Industrial | P-1 |
| I-2 General Industrial | |

VAR 17-5782

PANERA DRIVEWAY



Current Land Use

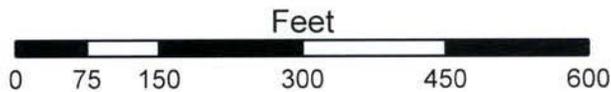


2015 Imagery

- VAR17-5782
- Street
- PRINCIPAL ARTERIAL
- Shared Use Paved Trail
- Trail (Proposed)
- County Parcels
- Planning Area
- Fayetteville City Limits

FEMA Flood Hazard Data

- 100-Year Floodplain
- Floodway



1 inch = 200 feet



Excerpted from :
Planning Commission Meeting
April 24, 2017
5:30 PM
113 W. Mountain, Room 219

6. VAR 17-5782: Variance Item (1541 W. MLK BLVD./PANERA BREAD, 521): Submitted by BATES & ASSOCIATES, INC. for properties located at 1541 W. MLK BLVD. The properties are zoned CS, COMMUNITY SERVICES and contain approximately 1.80 acres. The request is for a variance to the Access Management Ordinance for a new driveway on an arterial.

Quin Thompson, Planner: Gave the staff report.

John Davidson, Applicant: Said that the discussion should be centered on the access and form-based zoning concerns should not be considered. He said that the design team has met with staff on multiple occasions, and that the former Director of Development services has suggested that a property with 300' of frontage probably could not be prevented. He said that two projects would certainly abandon the contract if the variance is denied.

Public Comment:

No public comment was presented.

Blake Pennington, Asst. City Attorney: Said that it is clear upon review of the case law, that a property owner has a right to access from an adjacent road. He said that the discussion tonight should be about what kind of access the applicant should have.

Leslie Belden, Commissioner: Said that she was in complete agreement with the applicant, and that she appreciates the attempt to improve the area. She noted that the development does not meet the intent of the code, and she regrets the proposed layout. She acknowledged that the proposed access was in the safest location in her opinion.

Matthew Hoffman, Commissioner: Said that he is concerned with pedestrian safety, and thinks that saying that one curb cut is better than four and so this access should be approved is a dangerous road to go down. He spoke about form-based zoning and its beneficial effects on pedestrian traffic and safety. He said he would be in favor of a condition of approval if the building is paced within the build-to-zone.

Matt Johnson, Commissioner: Cited traffic accident records at this location, and noted that at typical MLK traffic speeds it takes approximately 250 feet to stop.

Alison Quinlan, Commissioner: Asked staff to show the similar access arrangement at MLK and Hill. She said that the conditions are different enough based on separation and traffic signal, that this condition should not be used as an example.

Tom Brown, Commissioner: Asked staff to the overall distance of street frontage for the site.

Thompson: Said that it was between 250 and 300 feet.

Brown: Discussed traffic safety studies that he has researched in relation to the City Access Management Code. He said that in terms of accident levels, MLK falls somewhere between Crossover Road and Highway 71b. He said we must not reinforce bad precedent, and yet must provide access that meets the requirements of the law. He said that the site has adequate access from Eastern and Arbuckle. He said that the access management code should be applied in a disciplined way to provide citizen safety. He said that the City Attorney should support the ordinance if we are to provide safe traffic conditions in future.

Pennington: Said that according to case law, removing access to MLK is unconstitutional, and that doing so would open the City to being liable to significant damages.

Zara Niedermann, Commissioner: Said that in looking at access to this road, we are vacating land with considerable value, and that this is a high demand area. He said that he was confused by a project which gives up developable land with a great deal of value along MLK.

Hoffman: Asked Pennington if a 200 foot curb cut would be allowed along this property.

Pennington: Said that providing access to the property is required, but that that does not mean that the entire property does not need to provide access.

Hoffman: Said that the variance should be denied for the reasons outlined by Mr. Brown.

Quinlan: Said that she supports the variance, but that she has concerns about the pedestrian access which does not go anywhere. She said that an adverse impact to pedestrians on MLK exists and should be improved.

Pennington: Said that no conditions may be placed on a variance of 166.08.

Quinlan: Said that improved pedestrian access should be provided. She said she would support the variance. She recommended approval of the variance if access be limited to right in and right out only.

Davidson: Said that he has met with Planning Staff and the Development Services Director for months in order to make sure that he was in compliance with development codes. He said that he was aware that a variance would be required, but understood that the variance would be supported by staff.

Ron Autry, Chair: Said that constitutional law requires this approval, and that that could not be escaped.

Quinlan: Asked Pennington if in his opinion, a limited access could be required.

Pennington: Said he could not give a definitive answer, but that certainly a limited access would remove value from the property. How much value is difficult to determine.

Davidson: Said that he would be potentially willing to accept a three-quarter access in this case, but that if it was limited to right in and right out then his client will cancel the project.

Garner: Discussed the history of the project, including the many conversations between the applicant and staff that had led to this development proposal. He said that in early meetings the applicant understood that staff would support the variance, but that he did not recall that particular conversation.

Brown: Said that he is opposed to the variance, but that he respects the opinion of the Attorneys office and will vote to approve.

Motion:

Commissioner Quinlan made a motion to **approve VAR 17-5782** as a right-in right-out curb cut only. **Commissioner Belden** seconded the motion. **Upon roll call the motion passed with a vote of 6-2-0. Commissioners Hoffman and Autry voted 'no'.**