

# BOARD OF ADJUSTMENT

July 12, 2012

**Case Number**

BOA2012-03

**Applicant**

Gus & Jack's Tire Shop

**Applicant Representative**

J. Mark Rothwell

**Property Location**

1101 7th Street South  
Neighborhood Council #6

**Requested Action**

Variance to Section 17.20.4.010 of the City Code that would reduce the required rear yard setback from the property line in order to build a new commercial retail space.

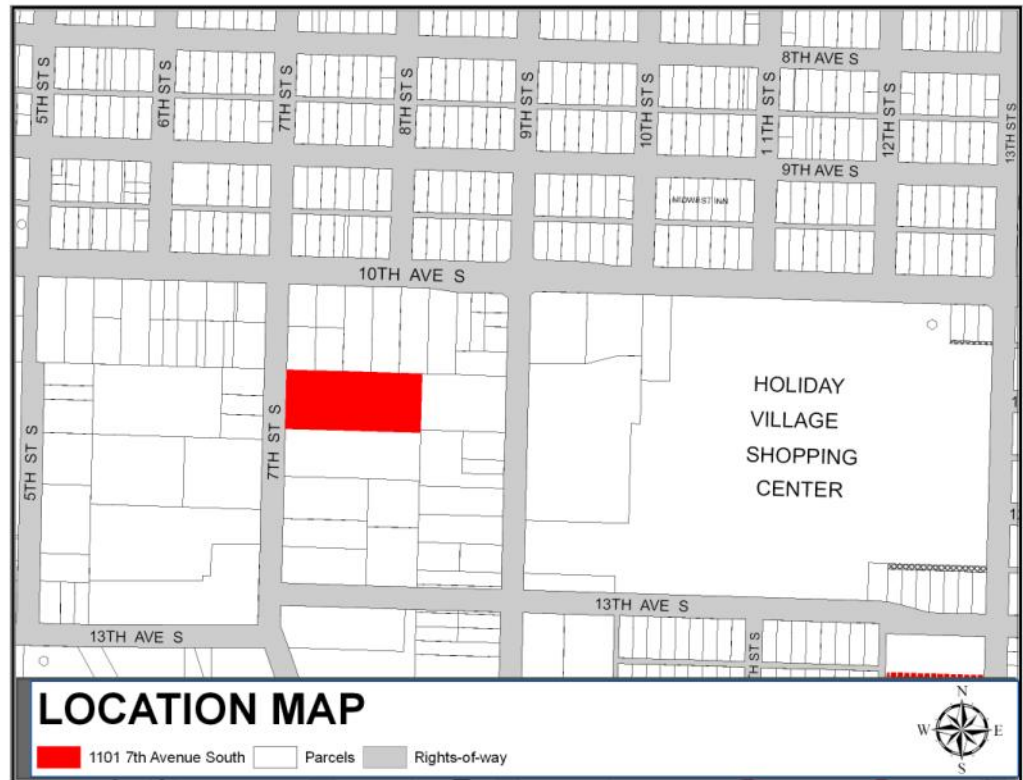
**Recommendation**

Approve design with conditions

**Project Planner**

Charlie Sheets

1101 7TH STREET SOUTH



Synopsis

The applicant is requesting a variance to City Code, Title 17, Chapter 20, Article 4, Section 010, Exhibit 20-4, Minimum rear yard setback. The applicant is requesting a 0-foot rear yard setback from the east property line, adjoining existing commercial development. City Code requires a rear yard setback of 1/10 of lot depth or ±48 foot setback.

17.16.32.040 Basis of decision for a dimensional variance

A dimensional variance shall only be granted when the evidence shows and a finding can be made that each of the following conditions exist:

- The variance is not contrary to the public interest.
- A literal enforcement would result in unnecessary hardship, owing to conditions unique to the property.
- The spirit of the Title would be observed and substantial justice done by granting the variance.

## BACKGROUND INFORMATION:

Gus & Jack's Tire Shop is the owner of the property addressed as 1101 7th Street South, and legally described as Lot 19A, Fifteenth Addition to Great Falls. Lot 19A is currently zoned C-2 General Commercial District and is completely surrounded by properties that have been redeveloped over the past 30 years. Surrounding land uses support high-traffic businesses such as restaurants, retail stores and vehicle repair services.

Subject Lot 19A is 2.32 acres and has a  $\pm 210$  foot frontage on 7th Street South and a  $\pm 480$  foot lot depth. Warehouses were developed on the rear of the property in the late 1950s. In 2007, the frontage along 7th Street was developed to accommodate Boston's Pizza Restaurant. The warehouse use has continued on the rear 1-acre portion of the property.

The owner is now considering future uses of the property and would like to develop 15,000 s.f. of retail space and associated parking, which would complete the development and provide better vehicular and pedestrian circulation onsite and through the neighboring commercial development he owns. The owner is working with a business that would lease the proposed commercial space as well as vacant neighboring commercial structures. The neighboring structure to the east is owned by others and a portion of the building has been vacant for close to 15 years.

The Notice of Public Hearing was mailed to the neighboring property owners and published in the *Great Falls Tribune* on June 24, 2012.

As of writing of this report, Staff had not received any questions or comments from the neighboring property owners or the public.

### Variance Issues:

The subject property is zoned C-2 General Commercial. The standard setback from the rear property line is 1/10 of the property depth. City Commission rezoned all the properties within the City in 2005 and established new zoning and setbacks, making the existing warehouse and neighboring commercial buildings legal nonconforming structures with zero rear yard setback. Setbacks established in the Code are provided to promote sound development patterns to regulate the construction of structures and maintain the existing streetscape in various neighborhoods. In this case, due to the very deep lot ( $\pm 480$  feet), the 1/10 setback requirement represents a clear hardship and constraint on redevelopment of the site.



View at the property frontage along 7th Street South.



View looking east from the Boston's Pizza parking lot.



View looking west from the east property line across Lot 19A.

## Staff Response:

Staff supports the request for a 0-foot rear yard setback for the development of a 15,000 s.f. retail commercial in the vicinity of the existing warehouse space that was originally built in the 1950s.

Staff provides the following Basis of Decision for the proposed alternate dimensional variance:

1. The variance is not contrary to the public interest.

The requested variance is not contrary to the public interest because the subject property and commercial neighborhood was developed in the 1950s when no uniform standards for site development were required. This is an opportunity to redevelop the property from the existing warehouse and gravel parking area into a 15,000 s.f. retail commercial space that would benefit neighboring properties. The commercial property immediately to the east was developed with a 0-foot rear yard setback. The redevelopment and proposed site development of the retail commercial space, and associated parking lot, completes the already developed properties surrounding the subject area. When the property was given a new zoning designation by virtue of the adoption of the Land Development Code and corresponding zoning map amendments, existing warehouse and undeveloped parking area became legally nonconforming. The rear yard setback required by the new C-2 General Commercial zoning district did not anticipate the unique size and configuration of the subject property. Staff believes that the 0-foot rear yard setback provides a better condition for development that parallels the existing surrounding development and is not contrary to public interest.

2. A literal enforcement would result in unnecessary hardship, owing to conditions unique to the property.

The depth to width ratio of the lot and minimum setbacks were not a major consideration when the lot was created in the 1950s. A literal enforcement of the setback would create hardship. If the required rear yard setback of 1/10 of lot depth or  $\pm 48$  feet was required, it would arbitrarily limit commercial development and preclude improvements to vehicular and pedestrian circulation.



View looking north along the rear property boundary of Lot 19A.



View looking north into the Hastings Parking Lot north of Lot 19A.

3. The spirit of this Title would be observed and substantial justice done by granting the variance.

The proposed 0-foot rear yard setback provides additional space and better accommodates vehicle and pedestrian traffic flow between parking facilities in the commercial neighborhood, and it promotes a sound development pattern for the subject property.

Staff finds adequate basis and hardship for the alternate variance and supports the granting of the reduction of the rear yard setback.

**Suggested Motions:**

Board Member moves:

“I move that the Board of Adjustment deny the application of Gus & Jack Tire’s Shop, represented by J. Mark Rothwell, President, 1101 7th Street South, for the requested variance of City Code Title 17, Chapter 20, Article 4, Section 010, Exhibit 20-4, Minimum side yard setbacks.”

Or:

“I move that the Board of Adjustment (approve with conditions) the application of Gus & Jack’s Tire Shop, represented by J. Mark Rothwell, President, 1101 7th Street South, as shown in the conceptual development plans contained within this report, for the requested variance of City Code Title 17, Chapter 20, Article 4, Section 010, Exhibit 20-4, Minimum rear yard setback of 1/10 of lot depth or ±48 foot setback from the rear property line for the proposed 15,000 s.f. commercial retail space located at the rear of the existing commercial tract of land subject to the following conditions:

- The proposed project shall be developed consistent with the conditions in this agenda report, all codes and ordinances of the City of Great Falls, the State of Montana, and all other applicable regulatory agencies.
- If after the approval of the conceptual development plan as amended by this Board, the owner proposes to expand or modify the conceptual development plans, the Director of the Planning and Community Development Department shall determine in writing if such proposed change would alter the concept for one or more review criteria. If such proposed change would alter the plan, the proposal shall be resubmitted for review as a new application.”

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Chairman calls for a second, discussion, inquiries from the public, and calls the vote.

Cc: City Engineering, Dave Dobbs  
City Neighborhood Council Rep., Patty Cadwell  
Gus & Jack’s Tire Shop, J. Mark Rothwell, 1117 7th Street South #1, Great Falls, MT 59405

# EXHIBIT A - APPLICATION

CITY OF GREAT FALLS  
 PLANNING & COMMUNITY DEVELOPMENT DEPT.  
 P.O. Box 5021, GREAT FALLS, MT, 59403-5021  
 406.455.8431 • WWW.GREATFALLSMT.NET

**VARIANCE APPLICATION**

Date: \_\_\_\_\_  
 Application Number: \_\_\_\_\_  
 Fee: \$200  
 Paid (Official Use ONLY):

## CONDITION FOR VARIANCE

Montana Statues mention "unnecessary hardship" as a condition for a variance. Variance means a grant of relief from the strict application of a rule or regulation that would permit development in a manner otherwise prohibited.

GUS & JACKS FIRE SHOP / J. MARK COLWELL, PRESIDENT

Owner / Representative Name: \_\_\_\_\_  
1117 7TH STREET SOUTH #1 GREAT FALLS, MT 59405

Mailing Address: \_\_\_\_\_  
406.454.3406 / 406.770.5650 BIGOTWAY 2510 2002 BLDG IN N. 7TH

Phone: \_\_\_\_\_ Email: \_\_\_\_\_

Requested Action: A variance from Title: \_\_\_\_\_ Chapter: \_\_\_\_\_ Article: \_\_\_\_\_  
ELIMINATE PERM LOT SURFACE

Basis for Request: \_\_\_\_\_  
IN ORDER TO TOTALLY UTILIZE THE LOT & CONNECT TO A BUILDING ON AN ADJOINING LOT FOR A RETAIL LOCATION

PROPERTY DESCRIPTION LOCATION: -- GREAT FALLS 15TH ADDITION, S13, T20N, R03E, BLOCK 002, LOT 19A

Mark/Lot: <u>19A</u>	Section: <u>13</u>	Township/Block: <u>20N</u>	Range/Addition: <u>LOT 19A</u>
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Street Address: 101 7TH STREET SOUTH GREAT FALLS, MT

ZONING: \_\_\_\_\_ LAND USE: \_\_\_\_\_

Current: \_\_\_\_\_ Current: \_\_\_\_\_

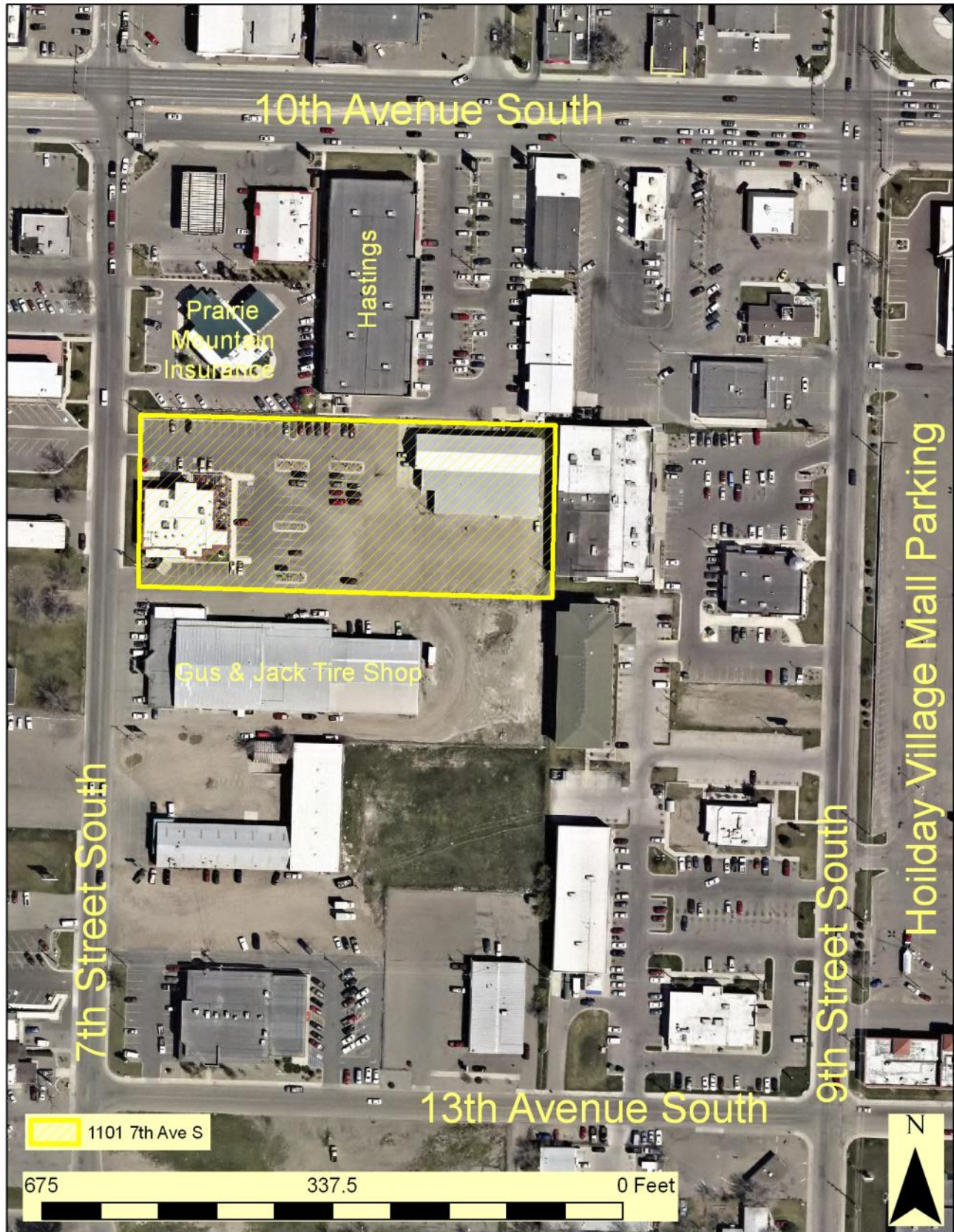
I (We) the undersigned understand that the filing fee accompanying this application is not refundable. I (we) further understand that the fee pays for the cost of processing, and the fee does not constitute a payment for approval of the application. I (we) further understand that other fees may be applicable per City Ordinances. I (We) also attest that the above information is true and correct to the best of my (our) knowledge. NOTE: If the applicant is not the owner of record, the signature of the owner of record must also be obtained.

J. Mark Colwell 22nd GUS & JACKS FIRE

Property Owner's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Representative's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

# EXHIBIT B - AERIAL PHOTO



# EXHIBIT C - SITE PLAN

