

ALDERMAN APPEAL REQUEST FORM


July 3, 2012 City Council Meeting

PLANNING COMMISSION MEETING OF: June 11, 2012

**FROM: Alderman Bobby Ferrell
Ward 3**


APPEAL TITLE AND SUBJECT:

ADM 12-4144: Administrative Item (3078 N. COLLEGE AVE./SIEBERT, 252):
Submitted by ERIC SIEBERT for property located at 3078 NORTH COLLEGE AVENUE.
The property is zoned C-2, THOROUGHFARE COMMERCIAL and contains
approximately 1.88 acre. The request is a variance to allow for an outdoor mobile
vendor (Shave the Planet snow cones) for longer than 90 days.


Alderman

6-13-12
Date

ENTERED
6-13-12 KG


Approved as to form

6-18-12

ENTERED
6/18/12
PH


Finance + Internal Serv. Dir.

6-18-2012


Chief of Staff

6-18-12


Mayor

6/18/12

June 12, 2012

Sondra,

Please consider this an official Alderman appeal, of the June 11, 2012 Planning Commission's decision to grant a variance for the following:

ADM 12-4144: Administrative Item (3078 N. COLLEGE AVE./SIEBERT, 252):
Submitted by ERIC SIEBERT for property located at 3078 NORTH COLLEGE AVENUE. The property is zoned C-2, THOROUGHFARE COMMERCIAL and contains approximately 1.88 acre. The request is a variance to allow for an outdoor mobile vendor (**Shave the Planet** snow cones) for longer than 90 days.



Bobby Ferrell
Alderman Ward 3

RESOLUTION NO. _____

A RESOLUTION TO REVERSE THE PLANNING COMMISSION'S DECISION TO GRANT AND THEREBY TO DENY THE VARIANCE TO ERIC SIEBERT TO OPERATE HIS SHAVE THE PLANET SNOW CONE BUSINESS LONGER THAN 90 DAYS AS AN OUTDOOR MOBILE VENDOR

WHEREAS, the Planning Commission by a 6 yes, 1 no and one abstain granted the variance to Eric Siebert to continue operating his Shave the Planet snow cone business as an outdoor mobile vendor at 3078 North College for a longer period than 90 days.

NOW, THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby reverses the Planning Commission's decision to grant and thereby denies the variance to Eric Siebert to operate his Shave The Planet snow cone business longer than 90 days as an outdoor mobile vendor.

PASSED and APPROVED this 3rd day of July, 2012.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

By: _____
SONDRA E. SMITH, City Clerk/Treasurer

TITLE XV UNIFIED DEVELOPMENT CODE

CHAPTER 155 APPEALS

155.01 Circuit Court

Unless set forth otherwise below, all appeals from final actions taken by the City Council, Planning Commission, Board of Adjustment, Construction Board of Adjustment and Appeals, and the Zoning and Development Administrator shall be taken to the Circuit Court of Washington County.

(Code 1965, App. A., Art. 9(6); Ord. No. 1747, 6-29-70; Ord. No. 2323, 4-5-77; Ord. No. 2538, 7-3-79; Code 1991, §160.175; Ord. No. 3925, §7, 10-3-95; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 4652, 12-07-04))

State law reference(s)--Appeals to circuit court, A.C.A. §14-56-425.

155.02 Form/Time/Place

Unless an appeal is filed with the court, the following requirements shall be met:

(A) *Form*. All appeals shall be submitted in writing referencing the applicable UDC section(s) and setting out the reasons the applicant contends the decision was in error.

(B) *Time*.

(1) *Appeals*. Appeals shall be submitted within 10 working days from the date of the final action taken.

(2) *Hearings*. The entity hearing the appeal shall fix a reasonable time for hearing an appeal.

(C) *Place*. Appeals shall be filed with the following:

(1) *City Clerk*. Appeals made to the City Council shall be filed with the City Clerk.

(2) *Zoning and Development Administrator*. Appeals made to the Planning Commission or Board of Adjustment shall be filed with the Zoning and Development Administrator.

(3) *Building Safety Division Director*. Appeals made to the Board of Adjustment, [for inspecting purposes] shall be filed with the Building Safety Division Director.

(Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. 4652, 12-07-04)

155.03 Stay

An appeal shall stay all proceedings in furtherance of the action appealed from unless the person in charge of administration of the chapter certified that a stay would, in their opinion cause imminent peril to life or property.

(Code 1965, App. A., Art. 13(3); Ord. No. 1747, 6-29-70; Code 1991, §160.173; Ord. No. 4100, §2 (Ex. A), 6-16-98)

155.04 Alderman Appeal On Behalf Of Resident

An alderman may bring an appeal on behalf of any resident of the city a decision by the Planning Commission to approve or deny the requests as set forth below.

(Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. 5296, 12-15-09)

155.05 Appeals From Planning Commission Decisions

(A) *Appeals to City Council*.

(1) Owners of record of the property being considered may appeal a decision by the Planning Commission to deny the following requests, in accordance with the procedures set forth in §155.02.

- (a) Annexation
- (b) Rezoning
- (c) Planned Zoning District
- (d) Subdivision (Preliminary Plat, Final Plat, Concurrent Plat, Lot split)
- (e) Large Scale Development
- (f) Vacation of utility easement, access easement, public right-of-way

TITLE XV UNIFIED DEVELOPMENT CODE

- (g) Commercial Design Standards
- (h) Tree Preservation Plan
- (i) Variances and waivers of the UDC

(2) *Conditions of Approval.* An owner of record may appeal the conditions of approval determined by the Planning Commission for any of the requests listed in (A)(1).

(3) *Conditional Use Request.* Three aldermen, two of whom must reside in the effected ward, may in unison appeal a decision by the Planning Commission approving or denying a conditional use request.

(B) All other decisions by the Planning Commission must be appealed to Circuit Court.

(Code 1965, §13A-40, App. C., Art. II, Art. V., §B; Ord. No. 1509, 8-8-66; Ord. No. 1750, 7-6-70; Code 1991, §§156.017, 159.12, 159.54(F)(1), (2), 159.66; Ord. No. 3781, §1, 4-19-94; Ord. No. 3925, §6, 10-3-95; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. 4334, 9-4-01; Ord. No. 4340, 10-2-01)

Sondra Smith - Re: Fwd: appeal

From: Andrew Garner
To: Smith, Sondra
Date: 6/14/2012 8:25 AM
Subject: Re: Fwd: appeal
CC: Pate, Jeremy

Sondra,

I will be putting together a packet to go along with this appeal and will hopefully route it over to you tomorrow. This item would then be placed on the July 3rd CC meeting.

Thanks,
Andrew

Andrew M. Garner, AICP
Senior Planner
City of Fayetteville
125 West Mountain Street
Fayetteville, Arkansas 72701
Tel.479.575.8262
Fax.479.575.8202
agarner@ci.fayetteville.ar.us
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Telecommunications Device for the Deaf: (479) 521-1316

>>> Sondra Smith 6/13/2012 12:53 PM >>>
Hi Andrew

What is the next step?

Sondra Smith CAMC, CMC
City Clerk/Treasurer
City of Fayetteville
113 West Mountain
Fayetteville, AR 72701

(479) 575-8323
ssmith@ci.fayetteville.ar.us

>>> Bobby Ferrell 6/12/2012 8:47 PM >>>
Sondra- Please consider this an official appeal, of the planning Commission's granting a variance to shaved Ice business at last night's Planning Commission, meeting, by an Alderman.

From: Sondra Smith
To: Garner, Andrew
Date: 6/14/2012 12:03 PM
Subject: Re: Fwd: appeal
Attachments: Sondra Smith.vcf

Thanks Andrew

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www.accessfayetteville.org

CITY COUNCIL AGENDA MEMO

To: Mayor Jordan, City Council
Thru: Don Marr, Chief of Staff
Jeremy Pate, Development Services Director ✕
From: Andrew Garner, Senior Planner
Date: ADM 12-4144 (Shave the Planet Appeal)

RECOMMENDATION

On June 11, 2012 the Planning Commission recommended approval of a variance to allow Shave the Planet snowcone stand to be in operation at 3078 N. College Avenue for a total of 180 days.

BACKGROUND

The subject property is located at 3078 North College Avenue, near Hobby Lobby and Fiesta Square north of the intersection of College Avenue and Rolling Hills Drive. The snowcone stand is across College Avenue (approximately 400 feet away) from an existing ice cream shop, Maggie Moo's at 3155 College Avenue.

On March 14, 2011 the Planning Commission approved CUP 11-3765 (Shave the Planet) which permitted a snowcone stand on the property for a period of 175 days. In late spring 2012 the applicant applied for another conditional use permit to allow for their snowcone stand to remain on the property for longer than 90 days during 2012. The City Attorney advised the Planning Commission that a more appropriate approval process for these types of requests would be a variance, not a conditional use permit. The applicable ordinance has been recently changed to allow these types of requests as a variance and the applicant is again requesting permission to continue operation of their snowcone stand at this property for longer than 90 days.

The applicant requests a variance of Fayetteville Unified Development Code Section 178.04(C) to allow for their Outdoor Mobile Vendor Permit to be granted for a total of 180 days, when the maximum by ordinance is 90 days. The snowcone stand is proposed in the same location as approved last year, as indicated on the attached site plan.

DISCUSSION

At the June 11, 2012 Planning Commission meeting nine members of the public spoke (including several employees of Shave the Planet and the owner of Maggie Moo's ice cream). Their comments are summarized in the draft meeting minutes (attached). The Planning Commission approved the variance. The approval passed with a 6-1-1 vote (Commissioner Honchell voted 'no' and Commissioner Hoskins recused). Alderman Bobby Ferrell has appealed the decision.

BUDGET IMPACT

None.

Planning Commission
June 11, 2012
Page 1 of 4

New Business:

ADM 12-4144: Administrative Item (3078 N. COLLEGE AVE./SIEBERT, 252): Submitted by ERIC SIEBERT for property located at 3078 NORTH COLLEGE AVENUE. The property is zoned C-2, THOROUGHFARE COMMERCIAL and contains approximately 1.88 acre. The request is a variance to allow for an outdoor mobile vendor (Shave the Planet snow cones) for longer than 90 days.

Andrew Garner, Senior Planner, gave the staff report.

Jason Kelley, Assistant City Attorney, asked Commissioner Hoskins if he would be recusing from the item.

Commissioner Hoskins indicated that he would be recusing.

Commissioner Winston indicated that if Commissioner Hoskins was recusing he would need to leave the room.

Commissioners Hoskins indicated he did not think he would need to leave the room as he was not directly involved in the application.

Garner discussed that it was a general practice for commissioners to leave the room when recusing.

Kelley confirmed that it was a general practice but not a legal requirement.

Commissioner Hoskins left the room.

Eric Siebert, applicant, discussed that ice cream and shaved are different. He discussed that Andy's Frozen Custard closed this year and they did not see an increase in business. They are not getting the same customers.

Katie Siebert, applicant, discussed that people come for the experience and product. She discussed different customers that come to their business from long distances for their product (Bentonville, West Fork, Siloam Springs and further as far as Stillwell, Oklahoma). They come for our experience and our produce. It is a destination.

Eric Siebert, applicant, discussed that they would be willing to plant a tree or anything we could do to make it a little more permanent.

Katie Siebert, applicant, discussed that they are willing to work with the City.

Public Comment:

Andrea Lister, discussed that the prices at Maggie Moo's are exorbitant. Shave the Planet is a place in town where I can take all my kids to get something for \$2. Ice cream and shave ice are totally different markets and two different experiences. Shave the Planet is a homegrown business.

Sarah McNeil, I work at Shave the Planet. She discussed that shaved ice and ice cream are very

Planning Commission
June 11, 2012
Page 2 of 4

different products. This site has always been used for an ice cream stand and is not a transient vendor. I was offended by that. I have lived in Fayetteville all my life and there has always been shaved ice in this location. We have people coming all the way from Centerton three times a week to get this product. Shutting down a homegrown business might be frowned upon. Shave the Planet is a locally owned business.

Jacqueline Buntin, is thankful for the existing 90-day permit. I trust the City will make a fair decision. I have known Eric and Katie for eight years. They are really interested in obeying the guidelines and doing this right. Shave the Planet has 25 total employees. Fifteen of them work at this College Avenue location. This keeps people with a job during the summer months. When I decide I want ice cream I have 10 locations in Fayetteville, that is not counting the fast food restaurants. There is plenty of competition for ice cream in Fayetteville. Their business is successful and they should be rewarded.

Cody Buntin, a resident of Fayetteville my entire life, commercial realtor. This business creates another reason to drive and spend money in this area of Fayetteville. Fiesta Square is not what it used to be. It seems out of place to deny extending this permit to a successful business. They are just bringing more traffic to this side of town.

Ben Israel, I own the property that Shave the Planet is on. I don't pay any less tax because they are only there for six months. They pay sales tax. I'm a little confused why a brick-and-mortar is preferred over this kind of business. I would encourage you to give them this variance.

Justin Leflar, school teacher at Holt Middle School. He spoke about a donation from Shave the Planet to their school to reward kids for their hard work. If this is denied where will the kids use their voucher.

Cody Yancey, discussed that it is an unfair advantage that he has to go through all this to be in business. He has to apply for a different variance every year. He has to carry the same insurance for his employees. Snow cones and ice cream are two separate things. There is no proof that it is detrimental to their sales.

Mena Shombod (sp?), Shave the Planet employee. We really rely on this job. There are not a lot of places where you can find a summer job so you can focus on academics during the other time of the year. This is a great opportunity for high school and college students to gain experience and grow their character. This stand on College has established itself as a great environment for customers. There have not been issues with traffic or any other detrimental effects. I hope that you guys consider that.

Celeste Hoskins, Maggie Moo's. I like Shave the Planet and eat there with my kids. What I was asking for is that they take into consideration that there are ordinances. We have no issue with the 90-day permit. What I am asking for is that when they are asking for that extension that an ordinance be established so that we are all on the same playing field. I think it's great to support the community. I like the couple and Shave the Planet. It is just the ordinance. I think we need to establish some playing rules here. I think this is a great business model. What stops someone like me or other businesses from doing it. I don't think this is about competition or a customer base. I'm just wanting to see some guidelines on where we're going with mobile or transient vendors. If this is something you want to set precedence for that's great.

Planning Commission
June 11, 2012
Page 3 of 4

No more public comment was presented.

Commissioner Chesser asked about the mobile vendor ordinance.

Garner discussed that this ordinance was under examination at the request of council members.

Commissioner Chesser discussed that this body doesn't write ordinance we just interpret the ordinance. There is a very specific part of the ordinance we are considering regarding whether this is a similar business. You said you had proof this was not a similar business?

Katie Siebert, applicant, discussed the HMR tax records for March, April, May, and June of last year for Shake's, Andy's, Maggie Moo's, and us. Last year Andy's was the highest grossing and they are now out of business. Last year we saw a 113% increase in our sales and most of that was due to the weather. This year you would expect since an ice cream shop went out of business we would see an increase. However, we only saw a 101% increase in our sales, this is 12% less than last year. It kind of shows that an ice cream business going out of business didn't help us.

Commissioner Chesser asked staff how an extension would hurt when the first three months of the busy season have been utilized. That seems like something we should take into consideration. The bulk of the problem is already occurring.

Garner discussed that the commission is just looking at the variance findings and he read the variance findings.

Commissioner Chesser asked staff why staff felt it was a similar business.

Garner discussed that we did not do a market study. In our drafting the findings and for the commission to consider, the rationale was what would a reasonable person think. I thought yes they are similar because it is a desert, you eat it mainly during the summer, and it is similar. Would it create an unfair advantage? I thought it could because you could have some of the same types of customers.

Commissioner Chesser asked if it would be worth it for them to only be there for 90 days.

Katie Siebert indicated that they would open in this location even if it is only for 90 days.

Commissioner Chesser asked about property tax on a brick-and-mortar versus a mobile vendor.

Jason Kelley, Assistant City Attorney, discussed that more improvements create more value and more property tax.

Commissioner Chesser discussed that lower property taxes could potentially be an unfair advantage.

Commissioner Cook agreed with Commissioner Chesser that it is not our responsibility to legislate. In this case the City Council has established the factors and it is up to our judgment. I think it is compatible and it does not create an unfair advantage.

Commissioner Cook made a motion to approve **CUP 12-4144 Commissioner Cabe** seconded the

Planning Commission
June 11, 2012
Page 4 of 4

motion.

Garner requested Commissioner Cook clarify condition of approval #3.

Commissioner Cook clarified that condition #3 be modified to require the Urban Forester to approval the type and size of tree that is planted. Commissioner Cabe agreed with this modification to the motion.

Commissioner Cabe asked when this applicant's previous application came before the commission.

Katie Siebert confirmed that it was March 26th.

Commissioner Cabe discussed that the new ordinance was revised and came through May 1 of this year. He also asked about the City Attorney's memo that was in their packet and direction for the commission on several of the terms in the ordinance such as 'similar', 'compatible'. 'not detrimental.

Jason Kelley, Assistant City Attorney, stated that it is completely up to your judgment based on the facts that have been presented. The best thing I can equate it to is if you are on a jury and you hear all this testimony and you have to decide. That is the job.

Commissioner Cabe stated that the ordinance did change and it requires judgment. The ordinance was first written and first became an opportunity for businesses to get their legs under them and do something that is atypical. I fully feel like a seasonal business is exactly that sort of opportunity. Like the applicant said there are very few brick-and-mortar businesses of this type around the country and as a seasonal business model like pool cleaning or window washing. I will be able to support this without a problem.

Commissioner Winston discussed that he has become convinced that there is a substantial amount of different between shaved ice and ice cream and I will support this.

Upon roll call the motion passed with a vote of 6-1-1. Commissioner Honchell voted 'no' and **Commissioner Hoskins** recused.



PC Meeting of June 11, 2012

THE CITY OF FAYETTEVILLE, ARKANSAS

125 W. Mountain St.
Fayetteville, AR 72701
Telephone: (479) 575-8267

PLANNING DIVISION CORRESPONDENCE

TO: Fayetteville Planning Commission
FROM: Andrew Garner, Senior Planner
THRU: Jeremy Pate, Development Services Director
DATE: ~~June 6, 2012~~ Updated June 12, 2012

ADM 12-4144: Administrative Item (3078 N. COLLEGE AVE./SIEBERT, 252): Submitted by ERIC SIEBERT for property located at 3078 NORTH COLLEGE AVENUE. The property is zoned C-2, THOROUGHFARE COMMERCIAL and contains approximately 1.88 acre. The request is a variance to allow for an outdoor mobile vendor (Shave the Planet snowcones) for longer than 90 days.
Planner: Andrew Garner

Findings:

Property Description and Background: The subject property is located at 3078 North College Avenue, near Hobby Lobby and Fiesta Square north of the intersection of College Avenue and Rolling Hills Drive. The snowcone stand is across College Avenue (approximately 400 feet away) from an existing ice cream shop, Maggie Moo's at 3155 College Avenue. Surrounding zoning and land use is listed in *Table 1*.

**Table 1
Surrounding Zoning and Land Use**

Direction from Site	Land Use	Zoning
North	Hobby Lobby shopping center	C-2, Thoroughfare Commercial
South	Mixed commercial	C-2, Thoroughfare Commercial
East	Mixed commercial/office	C-2, Thoroughfare Commercial
West	Fiesta Square shopping center	C-2, Thoroughfare Commercial

On March 14, 2011 the Planning Commission approved CUP 11-3765 (Shave the Planet) which permitted a snowcone stand on the property for a period of 175 days. In late spring 2012 the applicant applied for another conditional use permit to allow for their snowcone stand to remain on the property for longer than 90 days. The City Attorney advised the Planning Commission that a more appropriate approval process for these types of requests would be a variance, not a conditional use permit. The applicable ordinance has been recently changed to address the potential legal concerns and the applicant is again requesting permission to continue operation of their snowcone stand at this property for longer than 90 days.

Proposal: The applicant requests a variance of Fayetteville Unified Development Code Section 178.04(C) to allow for their Outdoor Mobile Vendor Permit to be granted for a total of 180 days, when the maximum by ordinance is 90 days. The snowcone stand is proposed in the same location as

approved last year, as indicated on the attached site plan.

Public Comment: At the previous Planning Commission meeting when this applicant was requesting a conditional use permit to operate their snowcone stand for longer than 90 days, the owner of the Maggie Moo's ice cream shop across College Avenue discussed objections to this proposal citing several concerns including an unfair advantage to this applicant compared to their brick-and-mortar business. The applicant notified all adjacent property owners and posted a public notice sign advertising for this meeting and staff has not received any public comment.

RECOMMENDATION: There is the potential for this snowcone business to adversely affect the Maggie Moo's ice cream shop across College Avenue as both businesses sell similar products and are in close proximity. Both businesses are very seasonal with a majority of their products sold during the summer months. As a snowcone stand is not subject to many of the same requirements as a permanent business, staff finds that the variance would create an unfair advantage that could adversely impact the ice cream shop. For these reasons staff recommends denial of the variance. These findings are discussed in more detail in the report.

Should the Planning Commission choose to approve this conditional use permit staff would recommend the following conditions of approval:

Conditions of Approval:

1. The snowcone stand shall be permitted for total of 180 days in 2012. The current Outdoor Mobile Vendor ordinance was issued on March 29, 2012, so this variance grants approval for operation until September 25, 2012.
2. The temporary vending structure shall be removed from the property by September 25, 2012.
3. Because this property has been utilized for a snowcone stand on a semi-permanent basis for a several consecutive years, the applicant or property owner shall install one ~~two-inch caliper large species shade~~ tree in the greenspace adjacent to the stand, the species and size to be determined by the urban forester prior to installation, to start bringing the property into compliance with the parking lot landscape codes.

PLANNING COMMISSION MODIFIED AND APPROVED THIS CONDITION AS NOTED (06/11/2012).

Additional Conditions/Comments:

PLANNING COMMISSION ACTION: yes Required

Approved Denied Tabled

Motion: Cook

Second: Cabe

Vote: 6-1-1 (Honchell voted 'no' and Hoskins recused.)

Date: June 11, 2012

FINDINGS:

City of Fayetteville Unified Development Code 178.04

(C) *VariANCES.* Outdoor Vendors may request a variance from the Planning Commission to operate for an extended period of time, not to exceed twelve consecutive months, in the same location subject to the following standards:

(1) A vendor may request a variance from the 90 day location requirement to operate for an extended period of time. The maximum time period that the Planning Commission may grant this variance is limited to no more than twelve consecutive months.

Finding: The applicant is requesting a variance to operate for a total of 180 days, or six months, well below the maximum.

(2) The applicant shall comply with the notification requirements of section 157.05 of the Unified Development Code.

Finding: The applicant has notified all adjacent property owners and posted a public notice sign in compliance with section 157.05 of the UDC.

(3) A variance may be granted by the Planning Commission when the following findings have been met:

(a) The applicant has established that the operation of the outdoor mobile vendor will be compatible with and not detrimental to nearby properties, will not adversely affect nearby businesses, will foster an aesthetically appealing streetscape and will not create or worsen a dangerous traffic condition.

Finding: The snowcone stand does not create or worsen a dangerous traffic condition as it has operated safely in this parking lot for several years. This snowcone stand does not improve the aesthetics of the streetscape, in staff's opinion.

There is a permanent ice cream shop across College Avenue from the proposed snowcone stand. This shop is addressed at 3155 College Avenue and is approximately 410 feet north of the snowcone stand. In staff's opinion, granting the requested variance to operate the snowcone stand for six months from March 29-September 25 may adversely affect the ice cream shop which is a permanent brick-and-mortar business. The development of the building at 3155 College Avenue was required to meet many development regulations of the City including greenspace, landscaping, architectural design standards, building code, and permanent utilities. A temporary business such as the snowcone stand would directly compete with the ice cream shop and is not required to meet permanent development standards and is therefore theoretically able to offer a substantially lower price for their products than a similar brick-and-mortar business. Both the ice cream shop and snow cone stand are primarily seasonal.

According to the International Dairy Foods Association June is the highest production month of the year for ice cream. Production for ice cream remains strong through August to satisfy summer demand and production declines through the end of the year (1). The snowcone stand can operate under a temporary permit for a period of up to 90 days by right. However, to operate for six months for two years in a row establishes this as a semi-permanent business, without having to meet the standard development requirements. This results in an unequal playing field and could adversely affect a nearby business. It should be noted that this applicant has been in this location for several years in a row, including almost six months during 2011.

- (b) That the outdoor mobile vendors' presence for an extended period of time at one location will not create an unfair advantage over similar and nearby permanent businesses.

Finding: See Finding 3.a. above. The presence of this outdoor mobile vendor for an extended period of time in this one location will create an unfair advantage over similar and nearby permanent businesses, including an ice cream shop approximately 410 feet away from this location.

Fayetteville Unified Development Code
178.04 Outdoor Mobile Vendors Located On Private Property

- (A) *Purpose.* This section's purpose is to facilitate and control the ability of outdoor vendors to temporarily operate on private property while ensuring such use is compatible with and not detrimental to nearby properties, does not adversely affect nearby businesses, fosters an aesthetically appealing streetscape, and does not create or worsen a dangerous traffic condition.
- (B) *Requirements.* Outdoor Mobile Vendors located on private property shall meet the following requirements and submittals prior to approval:
- (1) Permit Application. Each application for a permit to conduct an Outdoor Mobile Vendor business shall be accompanied by a \$50 permit review and processing fee.
 - (2) Application for a permit to conduct an Outdoor Mobile Vendor business shall include the following items in a format acceptable to the Zoning and Development Administrator:
 - (a) Name, address and contact information.
 - (b) Type of items sold or services rendered. A change in product or service will require a new permit to be issued.
 - (c) A valid copy of all necessary permits required by State and County health authorities.
 - (d) Proof of application for remittance of HMR tax to the City of Fayetteville.
 - (e) Means to be used in conducting business including but not limited to a description of any mobile device to be used for transport or to display approved items or services.
 - (f) A detailed site plan and written description illustrating the type, location, and dimensions of the mobile vendor business including parking.
 - (g) Written authorization, signed by the property owner or legal representative of record, stating that the transient merchant business is permitted to operate on the subject property.
 - (3) The permit issued shall not be transferable in any manner.
 - (4) The permit is valid for one mobile vendor location only.
 - (5) The proposed use must be a permitted use-by-right within the underlying zoning district in order to be permitted.
 - (6) An Outdoor Mobile Vendor business may be approved by the Planning Division after making the following determinations:
 - (a) All of the requirements of 178.04(B)(2) have been met.
 - (b) The applicant has established that the operation of the outdoor mobile vendor will be compatible with and not detrimental to nearby properties, will not adversely affect nearby businesses, will foster an aesthetically appealing streetscape and will not create or worsen a dangerous traffic condition.
 - (7) Outdoor mobile vendors are allowed on a temporary basis (90 days), by nature of their temporary occupancy, in one location over a one-year (twelve month) timeframe. Outdoor mobile vendors may move to a different location at least one half mile from the original location after this 90-day period has expired. However, a new Outdoor Mobile Vendor Application will have to be reviewed and approved

by the Planning Division for a new location.

- (8) Outdoor mobile vendors shall be in compliance with parking lot requirements for any existing and the proposed business. The number of required parking spaces is determined by the use and size of the proposed transient merchant business, and by the use and size of the existing business. Parking spaces on the property where the outdoor mobile vendor is located shall be paved and striped in order to be utilized. The use of parking for an out door mobile vendor may not reduce the number of spaces necessary for other uses occurring on the property. An adequate number of parking spaces for the existing businesses and the outdoor mobile vendor must be provided onsite. The location of the outdoor mobile vendor shall not impede traffic flow or create a dangerous traffic condition, as determined by Planning Division upon review of the site plan.
- (C) *Variances.* Outdoor Vendors may request a variance from the Planning Commission to operate for an extended period of time, not to exceed twelve consecutive months, in the same location subject to the following standards:
- (1) A vendor may request a variance from the 90 day location requirement to operate for an extended period of time. The maximum time period that the Planning Commission may grant this variance is limited to no more than twelve consecutive months.
 - (2) The applicant shall comply with the notification requirements of section 157.05 of the Unified Development Code.
 - (3) A variance may be granted by the Planning Commission when the following findings have been met:
 - (a) The applicant has established that the operation of the outdoor mobile vendor will be compatible with and not detrimental to nearby properties, will not adversely affect nearby businesses, will foster an aesthetically appealing streetscape and will not create or worsen a dangerous traffic condition.
 - (b) That the outdoor mobile vendors' presence for an extended period of time at one location will not create an unfair advantage over similar and nearby permanent businesses.
 - (4) In granting the variance, the Planning Commission may require appropriate conditions and safeguards, including semi-permanent or permanent improvements to the property to secure the substantial objectives of the ordinance.

(Ord. 5185, 10-7-08; Ord. 5425, 8-2-11; Ord. No. 5498 05-01-12)

We are requesting a variance for an Outdoor Mobile Vending permit to extend for longer than 90 days. The request would grant us an additional 90 days in our current location of 3078 N College.

We are submitting this request because the shaved ice season in Fayetteville lasts anywhere from 5-7 months, depending upon the weather that year. We have a loyal following of repeat customers that are pushing for us to stay longer than 90 days.

Just as stated in our Outdoor Mobile Permit:

This mobile vending unit is a portable building on skids to be used for selling shaved ice. We will use 2 parking spaces; one to place the building and another for order/seating. The area of the parking lot we will be located in is relatively unused. The setback from College Ave is 100 feet and we will be at least that distance away from the centerline of the road. The building measures 8 feet in width and 16 feet in length. We will place 1-2 tables/chairs for seating in front of the building.



Hours of Operation: 12pm-10pm

Number of Employees: 8-12

Anticipated customer flow: 20/hour during peak season

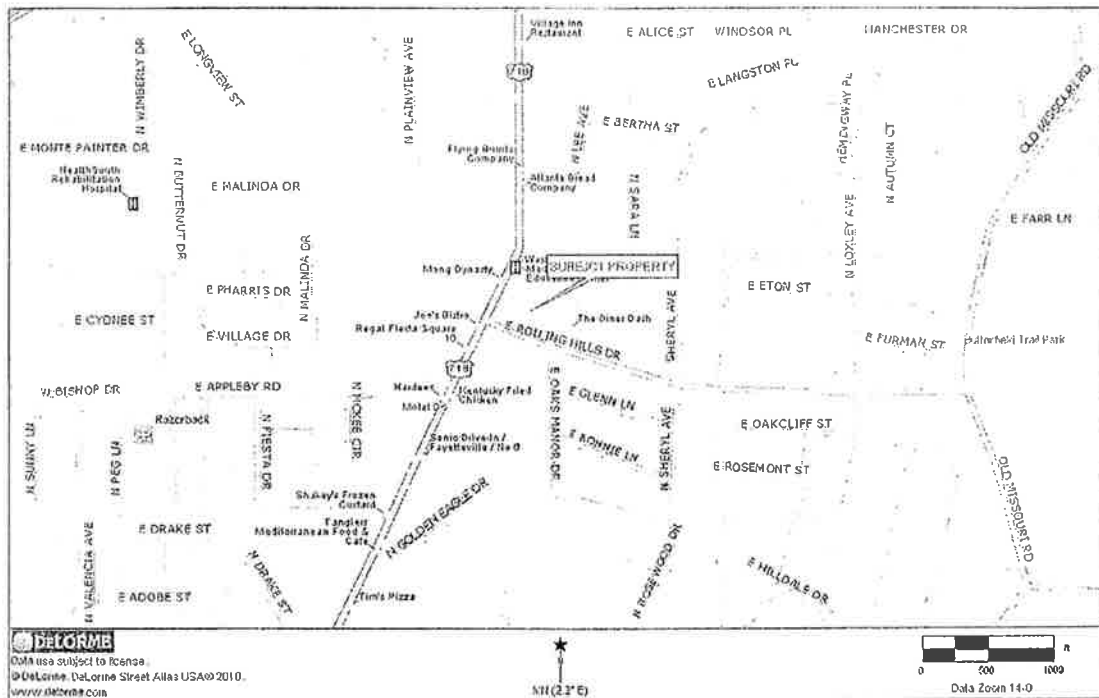
We have outside lights on our building, as well as parking lot lights. Noise will be kept to a minimum. Light music will be played for the customers. Trash is collected in a well-kept and clean trashcan and is taken out to a dumpster provided by Lessor. Traffic will not be disturbed.

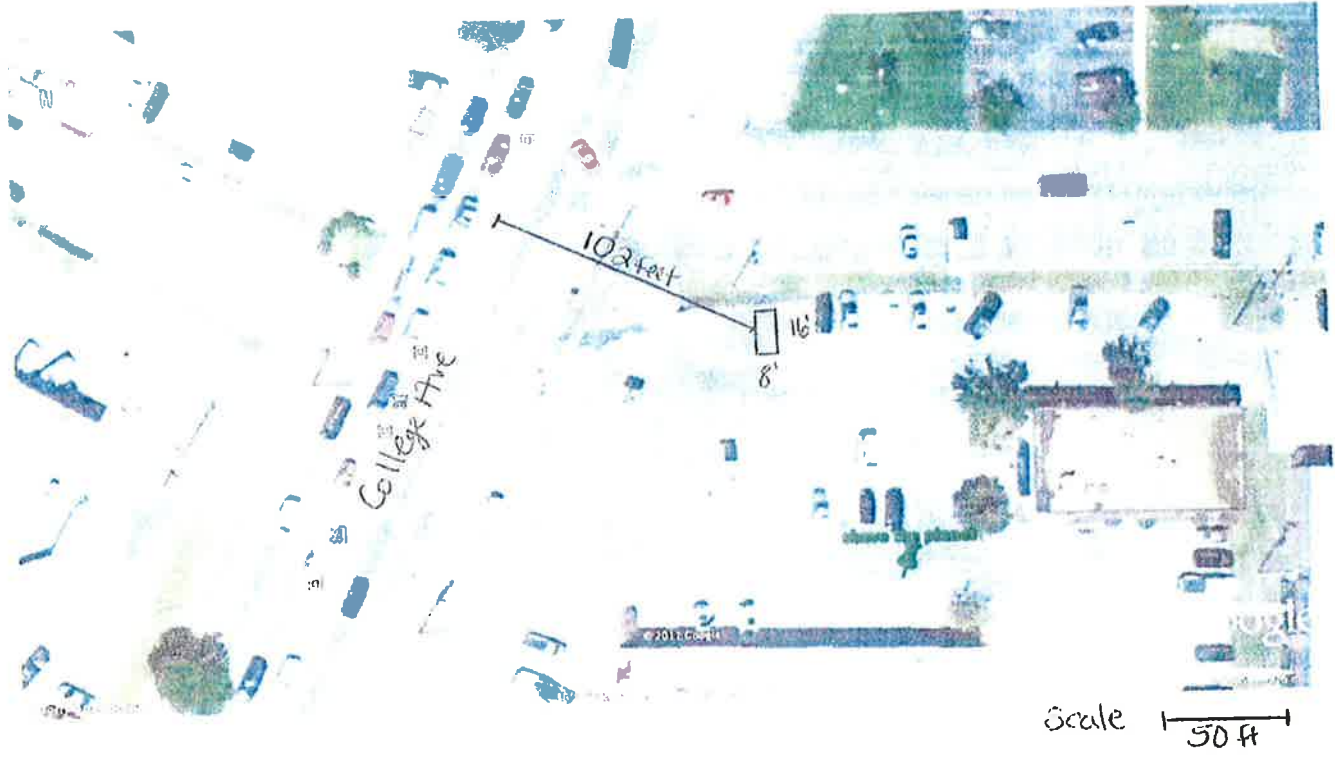
Our shaved ice stand fits in well with the surrounding neighborhood and community and provides a safe, wholesome environment for kids, teens, and families to mingle.

INTRODUCTION

Location:

The subject property is located on the east side of N. College Avenue just north of the intersection of N. College Avenue and Rolling Hills Drive. The subject property extends eastward to Market Avenue and South to Rolling Hills Drive.







Departmental Correspondence



www.accessfayetteville.org

LEGAL
DEPARTMENT

Kit Williams
City Attorney

Jason B. Kelley
Assistant City Attorney

TO: **Planning Commissioners**

CC: **Planning Staff**

FROM: **Kit Williams, City Attorney**

DATE: **June 1, 2012**

RE: **New amended and enacted §178.04 Outdoor Mobile Vendors
Located on Private Property: Variance request**

The City Attorney's Office and Planning Division worked together to draft and recommend amendments to the former Outdoor Mobile Vendors section. The City Council agreed with our proposed amendment and formally enacted the amended §178.04 **Outdoor Mobile Vendors Located on Private Property** by Ordinance No. 5498 (attached) passed on May 1 and effective now.

The "Purpose" section was revised to reflect the City Council's intent "to facilitate and control the ability of outdoor vendors to temporarily operate on private property while ensuring such use is compatible with and not detrimental to nearby properties, does not adversely effect nearby businesses; fosters an aesthetically appealing streetscape and does not create or worsen a dangerous traffic condition." Thus, the City Council wants to encourage outdoor mobile vendors under the right circumstances and with any necessary safeguards for nearby businesses and the public.

A 90-day Outdoor Mobile Vendor permit can be issued by Planning Staff. Lengthening this permit requires a variance approval by the Planning Commission. Variances from development requirements usually require a finding of undue hardship and unique circumstances. Planning Staff and the City Attorney's Office did not believe that was the appropriate test for merely lengthening the permit period. The City Council agreed and enacted a specific test for the Planning Commission to administer for lengthening a permit.

The City Council spelled out the specific factors that the Planning Commission should consider when determining whether or not it should grant a requested variance to extend the permit period. The last section gives the Planning Commission the power to require “appropriate conditions and safeguards” for the variance.

- “(3) A variance may be granted by the Planning Commission when the following findings have been met:
- (a) The applicant has established that the operation of the outdoor mobile vendor will be compatible with and not detrimental to nearby properties, will not adversely affect nearby businesses, will foster an aesthetically appealing streetscape and will not create or worsen a dangerous traffic condition.
 - (b) That the outdoor mobile vendors/ presence for an extended period of time at one location will not create an unfair advantage over similar and nearby permanent businesses.
- (4) In granting the variance, the Planning Commission may require appropriate conditions and safeguards including semi-permanent or permanent improvements to the property to secure the substantial objectives of the ordinance.”

Please consider everything the City Council has determined important for your decision about whether or not to approve the requested

ORDINANCE NO. 5498

AN ORDINANCE REPEALING AND REPLACING § 178.04 OUTDOOR MOBILE VENDORS LOCATED ON PRIVATE PROPERTY OF THE CODE OF FAYETTEVILLE TO PROVIDE FOR A VARIANCE PROCEDURE

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:

Section 1. That the City Council of the City of Fayetteville, Arkansas hereby repeals §178.04 Outdoor Mobile Vendors Located on Private Property of the Code of Fayetteville, and enacts a replacement §178.04 Outdoor Mobile Vendors Located on Private Property, as presented in the attached Exhibit "A", which is incorporated herein as if set out word for word.

PASSED and APPROVED this 1st day of May, 2012.

APPROVED:

ATTEST:

By: 
LIONELD JORDAN, Mayor

By: 
SONDRA E. SMITH, City Clerk/Treasurer



TITLE XV UNIFIED DEVELOPMENT CODE

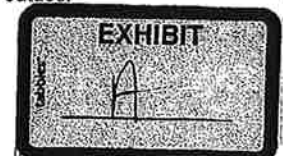
**178.04 Outdoor Mobile Vendors
Located On Private Property**

- (A) *Purpose.* This section's purpose is to facilitate and control the ability of outdoor vendors to temporarily operate on private property while ensuring such use is compatible with and not detrimental to nearby properties, does not adversely affect nearby businesses, fosters an aesthetically appealing streetscape, and does not create or worsen a dangerous traffic condition.
- (B) *Requirements.* Outdoor Mobile Vendors located on private property shall meet the following requirements and submittals prior to approval:
- (1) *Permit Application.* Each application for a permit to conduct an Outdoor Mobile Vendor business shall be accompanied by a \$50 permit review and processing fee.
 - (2) Application for a permit to conduct an Outdoor Mobile Vendor business shall include the following items in a format acceptable to the Zoning and Development Administrator:
 - (a) Name, address and contact information.
 - (b) Type of items sold or services rendered. A change in product or service will require a new permit to be issued.
 - (c) A valid copy of all necessary permits required by State and County health authorities.
 - (d) Proof of application for remittance of HMR tax to the City of Fayetteville.
 - (e) Means to be used in conducting business including but not limited to a description of any mobile device to be used for transport or to display approved items or services.
 - (f) A detailed site plan and written description illustrating the type, location, and dimensions of the mobile vendor business including parking.
 - (g) Written authorization, signed by the property owner or legal representative of record, stating

that the transient merchant business is permitted to operate on the subject property.

- (3) The permit issued shall not be transferable in any manner.
- (4) The permit is valid for one mobile vendor location only.
- (5) The proposed use must be a permitted use-by-right within the underlying zoning district in order to be permitted.
- (6) An Outdoor Mobile Vendor business may be approved by the Planning Division after making the following determinations:
 - (a) All of the requirements of 178.04(B)(2) have been met.
 - (b) The applicant has established that the operation of the outdoor mobile vendor will be compatible with and not detrimental to nearby properties, will not adversely affect nearby businesses, will foster an aesthetically appealing streetscape and will not create or worsen a dangerous traffic condition.
- (7) Outdoor mobile vendors are allowed on a temporary basis (90 days), by nature of their temporary occupancy, in one location over a one-year (twelve month) timeframe. Outdoor mobile vendors may move to a different location at least one half mile from the original location after this 90-day period has expired. However, a new Outdoor Mobile Vendor Application will have to be reviewed and approved by the Planning Division for a new location.
- (8) Outdoor mobile vendors shall be in compliance with parking lot requirements for any existing and the proposed business. The number of required parking spaces is determined by the use and size of the proposed transient merchant business, and by the use and size of the existing business. Parking spaces on the property where the outdoor mobile vendor is located shall be paved and striped in order to be utilized. The use of parking for an outdoor mobile vendor may not reduce the number of spaces necessary for other uses occurring on the property. An adequate number of parking spaces for the existing businesses and the outdoor

CD178:1



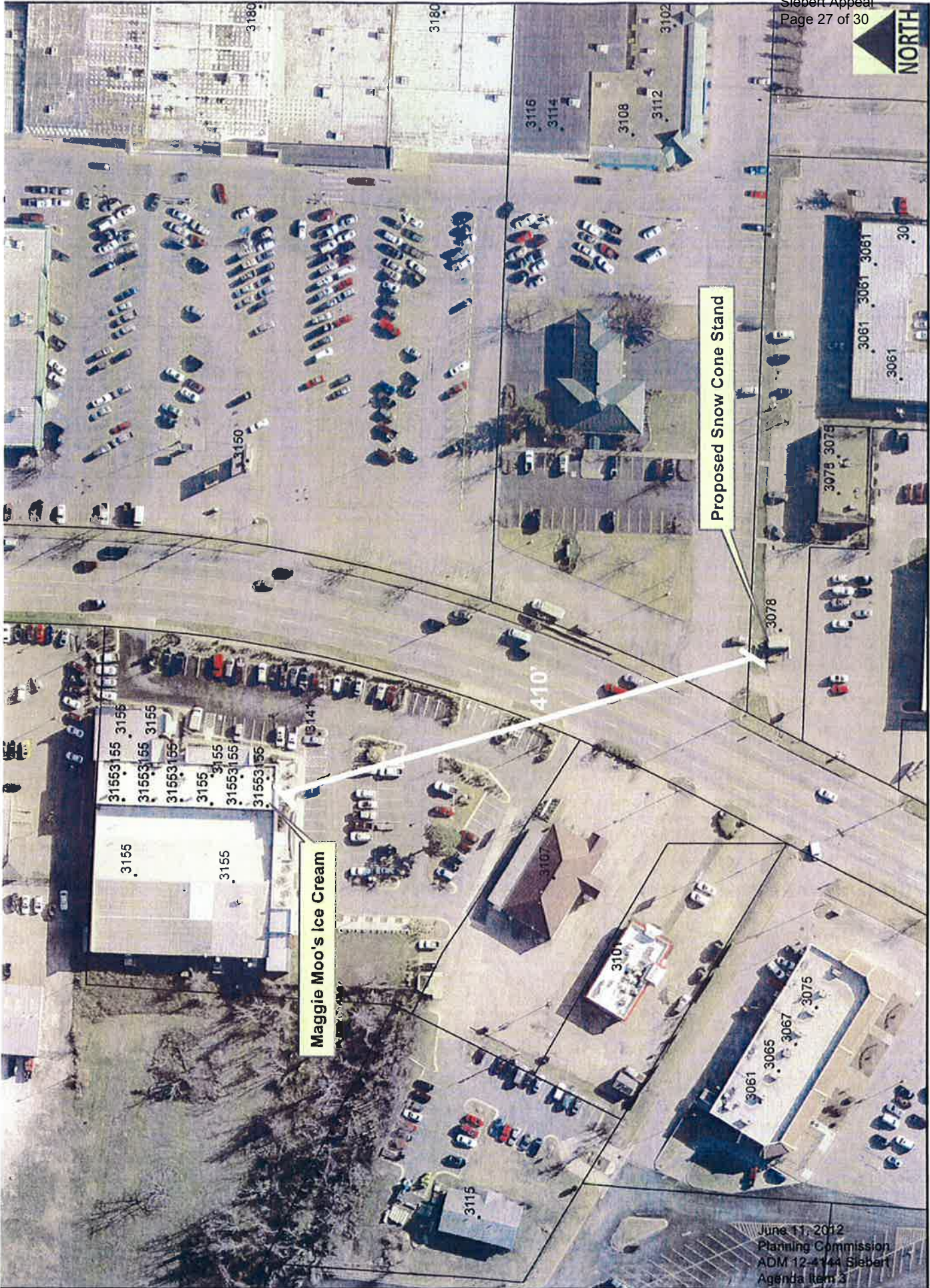
TITLE XV UNIFIED DEVELOPMENT CODE

mobile vendor must be provided onsite. The location of the outdoor mobile vendor shall not impede traffic flow or create a dangerous traffic condition, as determined by Planning Division upon review of the site plan.

- (C) *Variances.* Outdoor Vendors may request a variance from the Planning Commission to operate for an extended period of time, not to exceed twelve consecutive months, in the same location subject to the following standards:
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(Ord. 5185, 10-7-08; Ord. 5425, 8-2-11)

CD178:2



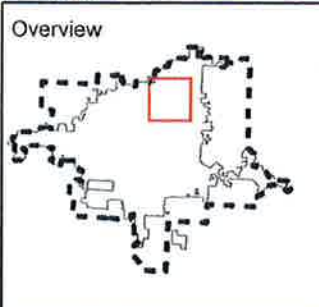
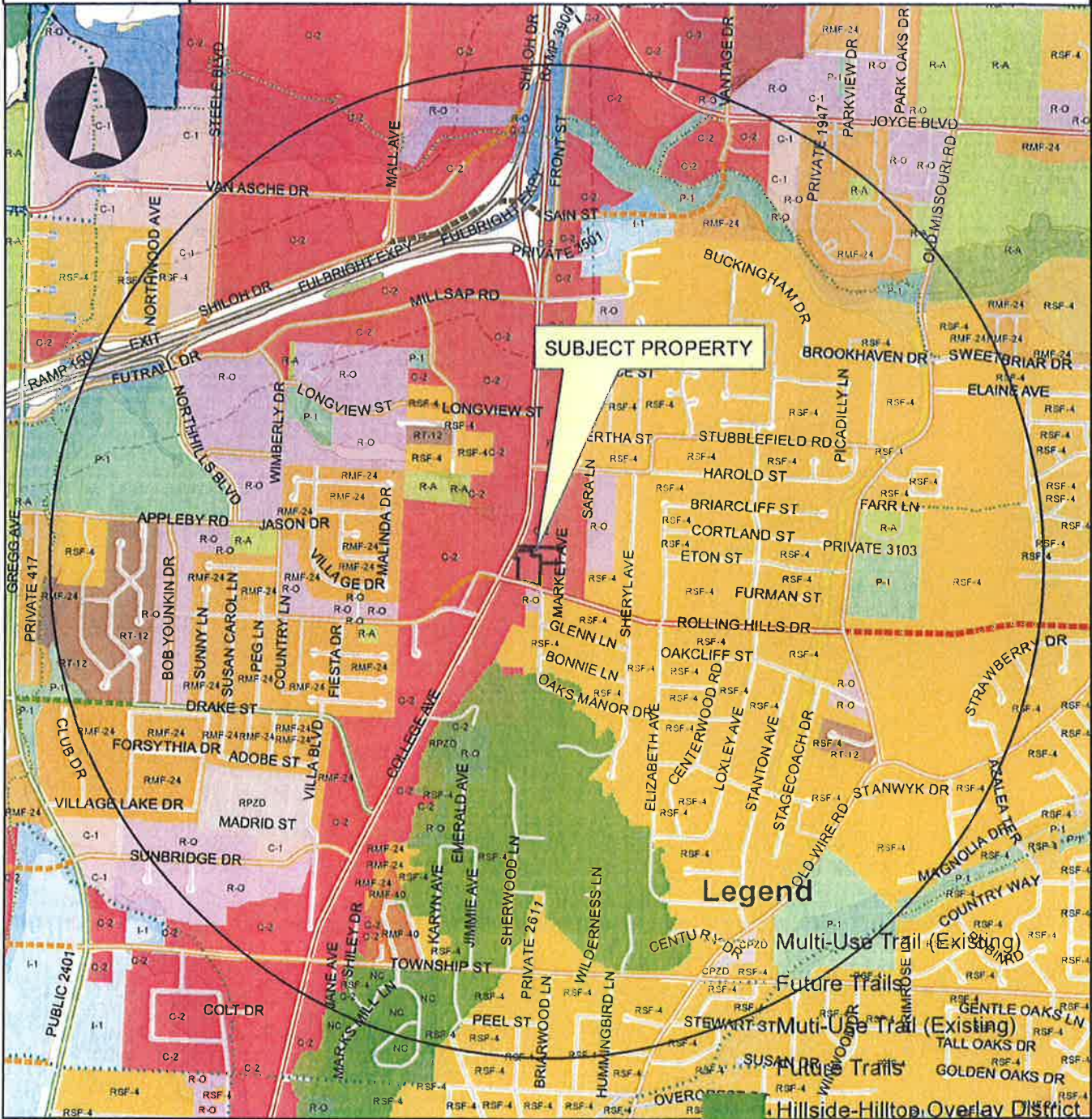
Proposed Snow Cone Stand

Maggie Moo's Ice Cream

1 inch = 100 feet
0 25 50 75 100 Feet

ADM12-4144
 One Mile View

SIEBERT



Legend

- ADM12-4144
- Design Overlay District
- Planning Area
- Fayetteville

Boundary

0 0.25 0.5 1

Miles

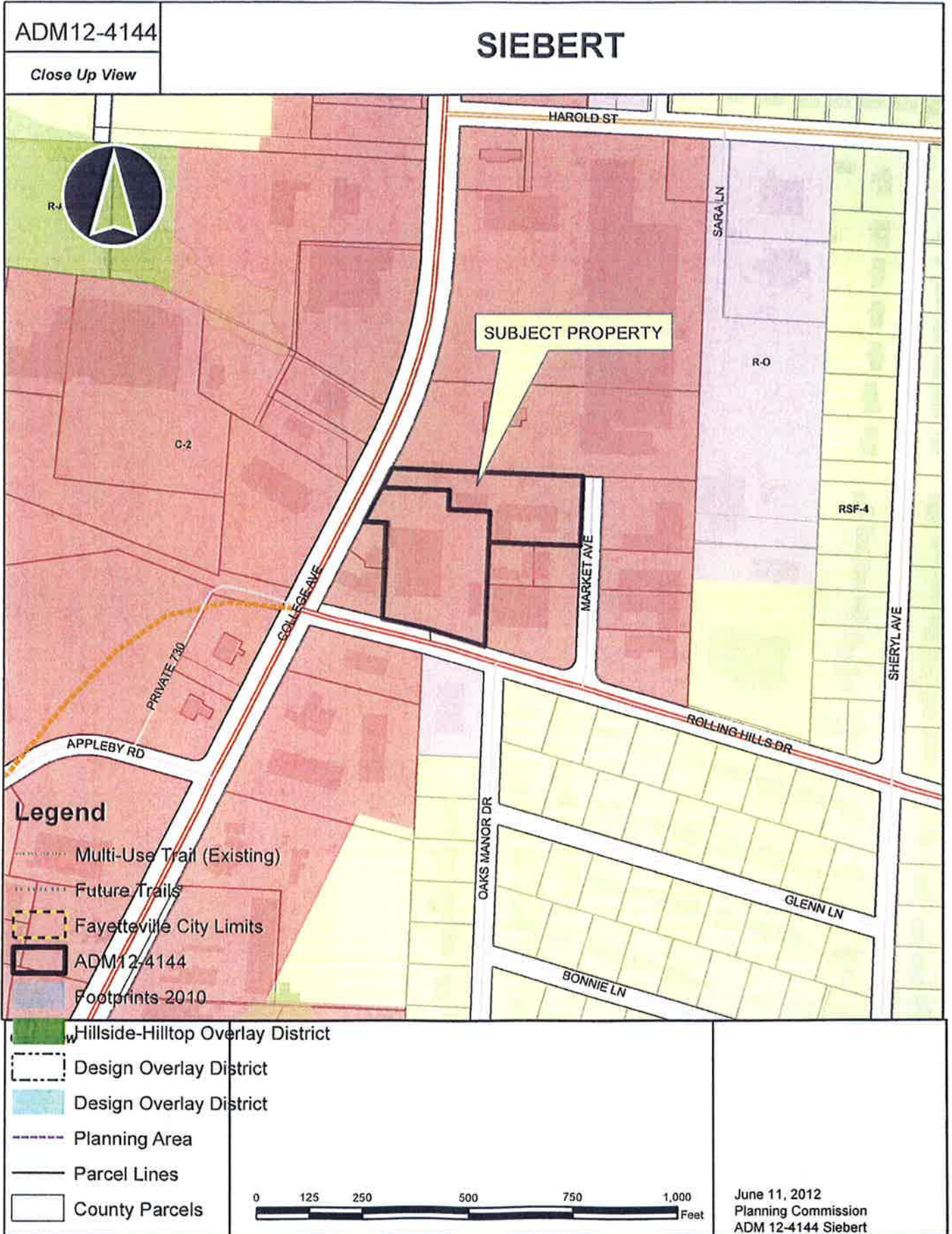
Legend

- ADM12-4144
- Design Overlay District
- Planning Area
- Fayetteville

Multi-Use Trail (Existing)

Future Trails

Hillside-Hilltop Overlay District



RESOLUTION NO. _____

**A RESOLUTION TO REVERSE THE PLANNING COMMISSION'S
DECISION TO GRANT AND THEREBY TO DENY THE VARIANCE TO
ERIC SIEBERT TO OPERATE HIS SHAVE THE PLANET BUSINESS
LONGER THAN 90 DAYS AS AN OUTDOOR MOBILE VENDOR**

WHEREAS, the Planning Commission by a 6 yes, 1 no and one abstain granted the variance to Eric Siebert to continue operating his Shave the Planet business as an outdoor mobile vendor at 3078 North College for a longer period than 90 days.

**NOW, THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE
CITY OF FAYETTEVILLE, ARKANSAS:**

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby reverses the Planning Commission's decision to grant and thereby denies the variance to Eric Siebert to operate his Shave the Planet business longer than 90 days as an outdoor mobile vendor.

PASSED and APPROVED this 3rd day of July, 2012.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

By: _____
SONDRA E. SMITH, City Clerk/Treasurer