

Staff Report

REQUEST ON THE BEHALF OF BJS ENTERPRISES (EARL MAY GARDEN CENTER) FOR SITE DEVELOPMENT PLAN REVIEW TEXT AMENDMENTS

October 10, 2017

BACKGROUND:

City Council received a letter from Jeff Harris on May 26, 2017 concerning the parking lot redevelopment of the Earl May store located at 1601 S. Kellogg Avenue. The reconstructed parking lot was approximately 26,000 square feet. In the fall of 2016, staff identified that the reconstruction of the Earl May parking lot was underway and the contractor was notified that the project required a Minor Site Development Plan approval and was subject to storm water management requirements of Chapter 5b of the Ames Municipal Code. **The work was essentially complete by the time of the notification by staff of the violation. The parking is in use at this time, despite the lack of an approved Minor Site Development Plan and compliance with parking lot and landscape design requirements.**

The property owner representatives disputed the Site Development Plan requirement with staff, but eventually prepared a Minor Site Development Plan and submitted it in February 2017 without a storm water management plan. **At that time it was noted by staff that a storm water management plan was required for the redevelopment of more than 10,000 square feet of impervious surface and that the setback of the reconstructed parking lot did not meet landscape planter requirements of the Zoning Ordinance. As a result, the plan could not be approved by staff. The applicant indicated they would not make the changes and would seek changes to the standards in support of their completed project as being consistent with the 1998 site plan that was approved for a prior addition to the building.** (See page 2, paragraph 1 of the attached letter).

The Zoning Enforcement Officer has not issued a municipal infraction for the work as we await a determination regarding the request to amend the relevant development standards. The issues of storm water compliance are addressed by the Public Works Department under a separate staff report and this report includes only a discussion of zoning standards.

SITE DEVELOPMENT PLAN REVIEW REQUIREMENTS:

The Zoning Ordinance requires that both the use of property and improvements to property comply with zoning standards. The Zoning Enforcement Officer (Building Official) is charged with ensuring compliance through the issuance of a Building/Zoning Permit. Section 29.1501 creates the process and standards for

review of Building/Zoning permits. **Additionally, the Zoning Ordinance includes requirements specifically for site improvements, parking reconstruction, and the review of Site Development Plan prior to approval of a building/zoning permit.**

In this instance, the relevant issues are that development or reconstruction of a parking lot triggers Site Development Plan review by the Planning Director.

ZONING APPLICATION REQUIREMENTS:

General Development standards for parking lots in Section 29.403 1. (f)¹

*(f) Surface Parking Lot Landscaping Plan. **No surface parking lot of 16 or more spaces shall be constructed, enlarged or reconstructed (excluding repaving) until a Parking Lot Landscape Plan for that surface parking lot has been approved by the Department of Planning and Housing.** The area surrounding and within the parking lot devoted to landscaping shall be equal to or greater than 10% of the gross area of the paved surface measured from the back of the curb. This measurement excludes stem-type, ingress and egress driveways, leading to the parking lot.*

(ii) Surface parking lot landscape plans shall be prepared and submitted in accordance with these provisions and the provisions contained in Section 29.1502(3), "Minor Site Development Plan."

Additionally, the Minor Site Development Plan requirements of 29.1502 indicate a site plan is required for all improvements to properties with the following exceptions:

(2) General Requirements for Site Plan Review.

(a) Issuance of Permits. All Site Development Plans shall be submitted, reviewed and approved prior to the issuance of a Building/Zoning Permit for the development or redevelopment of any lot, tract or parcel of land in any of the Zones.

(b) Exceptions. No Site Development Plan shall be required for the development or redevelopment of a single-family dwelling or a two-family dwelling in any Zone, or for a project that meets the following conditions:

(i) The development or redevelopment does not require the provision of any additional parking spaces;

(ii) The development or redevelopment does not increase the rate of storm water runoff as determined by the City Public Works Department; and

(iii) The development or redevelopment does not exceed 150 square feet of area, as calculated from the exterior dimension of the structure.

The applicant originally argued their project was maintenance and not subject to the City's requirements. **While maintenance of a parking lot, such as**

¹ Text cited from Article IV of Chapter 29 prior to recent landscape ordinance update for consistency with prior communications with the property owner representatives.

patching or mill and overlay, are exempt, the full reconstruction of a parking lot is not exempt per the language of the ordinance stated above.

If an approved site development plan for the construction of the parking lot was already on file with the City, an application for reconstruction could follow an approved site development plan and not recreate the application materials. In the case of Earl May, the original development of the site predated City site development plan requirements and the scope of the 1998 Minor Development Site Plan approval was for a change to the building and display adjacent to the building. It did not address the nonconforming parking or landscaping requirements along SE 16th Street and South Kellogg and cannot be utilized for their proposal to reconstruct the parking lot without conforming to zoning requirements.

Earl May representatives are requesting that the City Council initiate a text amendment to exempt parking lot reconstruction from City review (see paragraph 1 page 2 of the letter). It's presumed that such an amendment would then relieve them of having to remedy their non-conforming parking lot improvements and the lack of landscaping.

STAFF COMMENTS:

In the case of the Earl May site, there are two issues affected by the request for a Zoning Ordinance text amendment. However, the City Council must first resolve the applicant's companion request to change the storm water requirements of Chapter 5b.

1. The first issue is a general issue of city-wide applicability concerning whether there should be a development plan application requirement for redevelopment of an area in excess of 150 square feet.

As shown above, redevelopment of more than 150 square feet, whether a net increase or not, has required review of a Site Development Plan since the adoption of the current Zoning Ordinance in 2000. If City Council is interested in changing the threshold, it could initiate a text amendment and consider options changing the standards for submitting a Site Development Plan. **However, it should be emphasized that changing this threshold could lead to a number of site improvements that are not permitted and, therefore, not inspected; thus leading to violations of requirements. This could then result in after the fact code enforcement activities that are difficult for property owners and staff to work with due to the time and cost of correcting errors.**

2. The second issue after resolving the application requirement is specific to the Earl May and pertains to the lack of conformance to zoning standards for landscaping and parking design.

Once a site development plan application was submitted, staff could not approve as it did not meet City requirements. The site is currently non-conforming for its parking lot and landscaping improvements. Remedying non-conforming situations is a case-by-case review as specified in the Zoning Ordinance. Article III (Section 29.307 (5)) specifies that improvements to a site are required to remove "Other Non-Conformities" as practicable. In practice, the "as practicable" approach has been the most flexible means of trying to improve sites without being prescriptive. **In situations where an applicant is dissatisfied with a staff determination on applying this standard they would have appeal rights.**

In the case of Earl May, had the Minor Site Development Plan been properly filed it would have been evident that the landscaping planter could have been incorporated along Kellogg with no substantial impact to the amount of parking provided on the site and bring the site closer to conformance with the zoning standards as is required by Article III. By not submitting the required application, it thwarted the intent of the Zoning Ordinance to make site improvements when reconstructing non-conforming site features.

Zoning Ordinances address non-conformities to balance continued use of older properties and to treat similar properties equitably to new sites. The intent is if the standard is appropriate and valuable as applied to new development, at least to some extent older properties should also meet the same expectations as property owner make reinvestments in their sites. The goal is to bring properties throughout the community into compliance over time while maintain practicable use of the site.

The applicant has not specifically asked for changes to the "Other Non-Conformity" section of the ordinance, but instead has requested that the project for reconstructing a parking lot not be subject to City review. If it is exempt from review, furthering the objectives of the Zoning Ordinance would be impossible to administer.

It should be noted that Earl May could appeal a final decision by the staff requiring the landscaping on the site if the City Council does not grant the request to consider a text amendment for site development plan review of parking lot reconstruction.

May 25, 2017

Mayor and City Council
City of Ames
515 Clark Avenue
Ames, Iowa 50010

Honorable Mayor and Council,

I am writing on behalf of our client BJS Enterprises, property owner at 1601 South Kellogg Ave, the site of the Earl May Garden Center. The building exterior was recently improved and a part of that project was the replacement of exterior paving that was severely deteriorated. The existing site plan was approved by the City of Ames in June of 1998, a copy of which is attached.

The construction project was reviewed by the Building Inspections Department and it was determined no building permit was required for the work as it was cosmetic in nature and did not affect life safety elements. During the process of construction our office was contacted by the Planning and Housing Department and notified the department had determined the work being performed required a Site Development Plan be submitted and approved.

City of Ames Municipal Code Sections 29.1501 and 29.1502 refer to the issuance of Building and Zoning permits and the requirement for a Site Development Plan Review prior to issuance of these permits. As our project did not require a Building Permit we feel the requirement for a Site Development Plan Review is invalid. Section 29.1502(2)(b) lists several additional exceptions to the requirement for a Site Development Plan Review. These include that no additional parking is required, no increase of storm run-off is created, and the development does not exceed 150 square feet of area. In this case Planning staff interpreted the 150 square foot exception to apply to paving area and sited this as the determining factor in our need to submit a Site Development Plan. Using this interpretation any paving maintenance work in Ames exceeding 150 square feet would trigger the requirement for a full Site Development Plan review. This is an unrealistic requirement that would place an overwhelming burden on property owners and the Planning Department staff to review countless plan submissions. An area of 150 square feet is less than the size of a single parking stall and these types of maintenance projects are performed innumerable in a community the size of Ames.



On behalf of our client and other property owners in Ames we would request that council consider a text amendment to clarify this interpretation and create a realistic expectation for when a full Site Development Plan review is required.

Regardless of our objection to the staff request we did submit a site plan for review. The property owner has incurred fees for a property survey, plan preparation and submission fees approaching \$5,000 to submit this plan. As a result of this submission the property owner is being asked to remove a 5'-0" wide portion of new pavement in order to provide a landscape buffer on the east side of the property. This pavement existed before the project and is clearly shown on the approved Site Plan from 1998. We consider this project to be property maintenance and the owner should be able to replace paving for maintenance purposes that are part of an earlier approved Site Plan. The owner uses this paving area as merchandise display and has already given up parking stalls and merchandise area to bring the size of the parking stalls and drives into conformance with current standards. Asking them to give up more area to create a landscape buffer in a Highway Oriented Commercial zone to screen the very merchandise they are trying to sell is pointless.

Secondly, as a part of this Site Development Plan review, we are being told the replacement of the existing paving requires enforcement of the Post Construction Stormwater Management requirements of Chapter 5B. We take exception to this interpretation and have argued our point with the Public Works department with the only response being that they have interpreted this consistently. Chapter 5B clearly states "City stormwater requirements apply to any new development, **redevelopment disturbing 1 acre or more of land**, or to any development disturbing less than said acreage of land if the amount of impervious cover **created** exceeds 10,000 square feet." The accompanying definitions in 5B are also clear with the descriptions of "development" vs. "re-development". I would argue that the project under consideration is maintenance and not "development or re-development", but in a worst case could be considered re-development. The requirement for re-development is clearly stated as 1 acre or more of land disturbance. This project encompasses roughly 26,000 square feet, therefore less than 1 acre and should not be subject to the requirements of Chapter 5B. I would further argue that no impervious cover has been **created** with this project as it was all existing before the project and the quantity of paving has decreased from the approved site plan as a result of this project.



In addition, a neighboring property owner less than 400' away completed a similarly sized concrete paving project within the last calendar year without any interaction with the Planning Department and did not comply to either the landscape screening or storm water ordinances. When I contacted this property owner the response was that the project was maintenance and did not require a DRC review. As these requirements are not being enforced consistently it is easy to see why our client is reluctant to comply with the requests of the Planning staff.

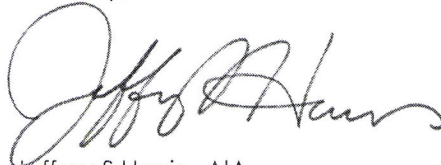
I am currently working with other property owners in Ames who are considering paving maintenance work in excess of 10,000 square feet and are currently putting projects "on hold" based on staff's interpretation of this section of code. This interpretation is leading to a continued deterioration of private infrastructure and a reluctance of property owners to take on these types of projects due to the greatly increased cost of meeting this section of code. A clarification needs to be made to the application of this code section to maintenance work as opposed to new development and re-development of property.

Again, on behalf of our client and other property owners in Ames we would request that council consider a text amendment to clarify this interpretation and create a clear expectation for when conformance to Chapter 5B is required.

If you have any questions please feel free to call.

Thank you.

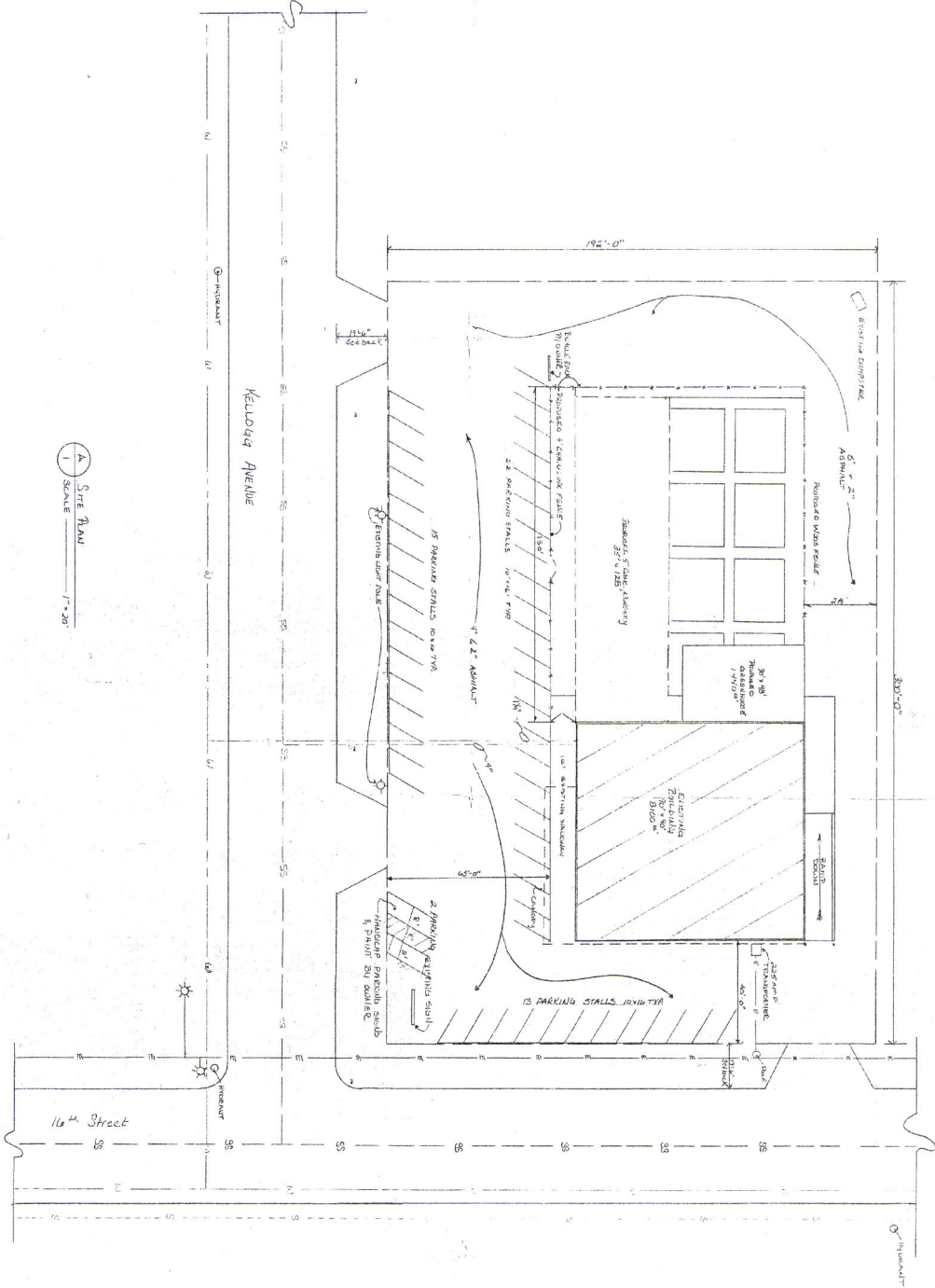
Sincerely,



Jeffrey S Harris AIA
Principal

encl.





A Site Plan
 1 SCALE 1" = 20'

RECEIVED
 JUN 18 1958
 OPERATIONS DIV.
 ST. LOUIS OFFICE

EARL MAY Seed & Nursery
 SHRIVER CONSTRUCTION CO.
 JEFFERSON, IOWA

APPROVED
 By *[Signature]*
 Date *[Date]*

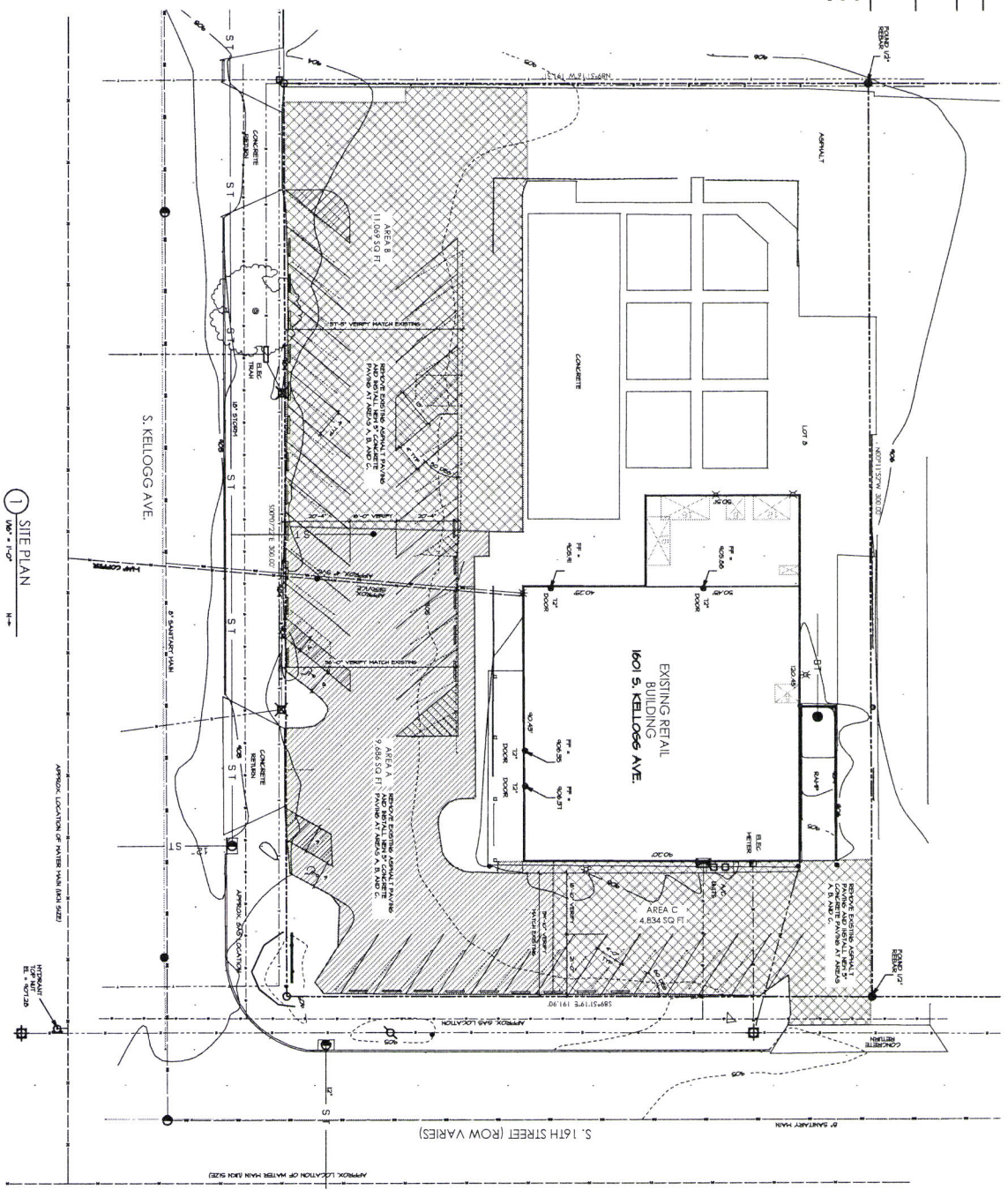


- NOTES
- A. Leland Thompson, Surveyor, 2012 1121
 - B. Ernest H. Hedges, 1914
 - C. Dwight T. ...
 - D. ...
 - E. ...
 - F. ...
 - G. ...

PROJECT ADDRESS
 1601 S. KELLOGG AVE
 OWNER/APPLICANT
 256 EASTBURY BLVD
 DESHMOISE, IA 50319

LOT/SITE
 3100 WYMAN ADDRESS
 ZONING
 BUILDING AREA/USE
 CASE NUMBER: 1601 S. KELLOGG CENTER
 TOTAL SQUARE FOOTAGE
 STORM RUNOFF

STORM RUNOFF
 TOTAL SQUARE FOOTAGE FOR EXISTING BUILDING: 16,000 SQ FT
 TOTAL SQUARE FOOTAGE FOR PROPOSED BUILDING: 16,000 SQ FT
 TOTAL SQUARE FOOTAGE FOR PROPOSED PARKING: 16,000 SQ FT
 PARKING REQUIREMENTS



1 SITE PLAN
 1/8" = 1'-0"

Roseland
 Mackay
 Haffis
 Architects PC

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 www.roselandhaffis.com

Print/Record
 DMC/10/04/16 12/27/16

Revision Record
 DMC/10/04/16 1/23/17

Consulted

PRELIMINARY ONLY
 NOT FOR CONSTRUCTION

EARTHLY GARDEN
 CENTER
 ANEKS, IOWA
 SITE PLAN

A1.0

CONCEPT DEVELOPMENT
 ARCHITECTS PC