

Board of Zoning Adjustment Staff Report

June 3, 2024



Case No:	24-VARIANCE-0067
Project Name:	Super Adobe Earth Dome
Location:	3003 Dixie Highway
Owner:	Joseph Heiderscheit
Applicant:	Joseph Heiderscheit
Jurisdiction:	City of Shively
Council District:	3 – Shameka Parrish-Wright
Case Manager:	Jeremy Chesler, Planner I

REQUEST:

- **Variance** from Land Development Code (LDC), Section 5.2.3.D.3.a.i to allow a structure to encroach into the required infill front yard setback (24-VARIANCE-0067)
- **Waiver** of LDC, Section 5.5.5.A.1 to allow an accessory structure to be visible from the public street and to omit screening requirements. (24-WAIVER-0091).

Location	Requirement	Request	Variance
Infill – Front Yard Setback	96 ft.	60 ft.	36 ft.

CASE SUMMARY

The subject site is located in the City of Shively and within the C-1, Commercial zoning district and Traditional Marketplace Corridor form district. Located on the east side of Dixie Highway, between Argonne Avenue and Garey Lane, the site is currently developed with a 2 story principal structure and an accessory structure towards the rear of the property. The applicant is proposing to build a small dome-like accessory structure using a construction technique coined as “SuperAdobe” to serve individuals and families with autism spectrum disorder. The dome will be 12’ in diameter with a footprint of 113.1 SF. The applicant is proposing to build the structure in front of the principal structure, in a location that will be visible from Dixie Highway, triggering the need for the waiver. Infill regulations state the front yard setback shall fall within the range of the two nearest lots containing principal structures within the same block face. Based on the established setback of the two nearest principal structures, the required front setback would be between 96’- 100’. The proposed front setback of 60’ would require a 36’ variance.

STAFF FINDINGS

The requested variances and waivers are adequately justified for approval based on staff’s analysis contained in the standard of review.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCE

- (a) The requested variance will not adversely affect the public health, safety or welfare.

STAFF: The requested variance will not adversely affect the public health, safety or welfare because the proposed structure will not negatively impact the safe movement of pedestrians or motorists.

- (b) The requested variance will not alter the essential character of the general vicinity.

STAFF: The variance will not alter the essential character of the general vicinity. While the infill setback requirements do apply to this property, the form district standards would allow for a structure to be built within 0'-15' of the front property line, if infill did not apply. Additionally, there is an existing wheelchair entrance ramp extending from the principal structure out towards Dixie Highway, the proposed structure will not protrude beyond the terminus of the ramp.

- (c) The requested variance will not cause a hazard or nuisance to the public.

STAFF: The requested variance will not cause a hazard or nuisance to the public because it neither impedes vision clearance for motorists and pedestrians traveling along Dixie Highway. The structure will be relatively small and will not be a nuisance when viewed from the public realm. The structure will also be setback from the public right-of-way and will have a parking area located in front of it.

- (d) The requested variance will not allow an unreasonable circumvention of the zoning regulations.

STAFF: The requested variance will not allow an unreasonable circumvention of the zoning regulations as it presents no adverse impacts to public safety, does not alter the essential character of the general vicinity, and does not cause a hazard or nuisance. Infill regulations in the Traditional Marketplace Corridor allow a principal structure to be built within the range of the setbacks of the two nearest constructed properties or to be constructed at the existing right-of-way/sidewalk line. The proposed variance will be within the range of those two options.

ADDITIONAL CONSIDERATIONS:

1. The requested variance arises from special circumstances which do not generally apply to land in the general vicinity or the same zone.

STAFF: The requested variance does arise from special circumstances which do not generally apply to the land in the general vicinity or the same zone, as the site is designed in a manner that does not match the form district, with the principal structure setback substantially from the front property line and parking located in the front of the property. This smaller accessory structure will fill the void between the parking area and the principal structure.

2. The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or create an unnecessary hardship on the applicant.

STAFF: The strict application of the provisions of the regulation would create an unnecessary hardship on the applicant since the proposed structure will be accessory to the therapy provided on the site and will allow the property owner to broaden the spectrum of therapy offered.

3. The circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought.

STAFF: The circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought as the applicant has not begun construction.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER

- (a) The waiver will not adversely affect adjacent property owners; and

STAFF: The waiver to allow the proposed structure to be visible from the public street will not adversely affect adjacent property owners. The proposed accessory structure will be located between the existing off-street parking and the principal structure, adjacent to the entrance ramp. The ornamental nature of the structure will allow it to serve as a sculpture and will soften the appearance of the existing ramp, mitigating potential impacts of the parking location in front of the principal structure.

- (b) The waiver will not violate specific guidelines of Plan 2040; and

STAFF: The waiver does not violate specific guidelines of Plan 2040. Plan 2040 states that new development and redevelopment should respect the predominant rhythm, massing and spacing of existing buildings. It also states that a premium should be placed on compatibility of the scale, architectural style, and building materials of any proposed new development with nearby existing development in the corridor. The scale of the proposed accessory structure is compatible and complimentary to the existing pattern of development. Although the waiver would allow the structure to be visible from Dixie Highway, the principal structure will still be the prominent structure as viewed from the street, maintaining the consistency with the building heights of nearby principal structures. It does not adversely impact the rhythm of existing structures. The proposal is also in line with the objectives and guidelines for the Traditional Marketplace Corridor form district in Plan 2040, as it will allow the property owner to improve the therapy services offered on the property, while still using part of the structure for their residence.

- (c) The extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant; and

STAFF: The extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant. While the proposed accessory structure will be located in front of the front façade of the principal structure, and will be visible from the public right-of-way, the accessory structure does not protrude beyond the existing entry ramp.

- (d) Either:
(i) The applicant has incorporated other design measures that exceed the minimums of the district and compensate for non-compliance with the requirements to be waived (net beneficial effect); OR
(ii) The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant.

STAFF: The applicant has incorporated other design measures that compensate for non-compliance with the requirements to be waived and have a net beneficial effect on the property. With the existing parking area being nonconforming to current regulations, the proposed structure will mitigate the negative impacts of the parking location.

REQUIRED ACTIONS

- **APPROVE** or **DENY** the **Variance** from Land Development Code (LDC), Section 5.2.3.D.3.a.i to allow a structure to encroach into the required infill front yard setback (24-VARIANCE-0067)
- **APPROVE** or **DENY** the **Waiver** of LDC, Section 5.5.5.A.1 to allow an accessory structure to be visible from the public street and to omit screening requirements. (24-WAIVER-0091).

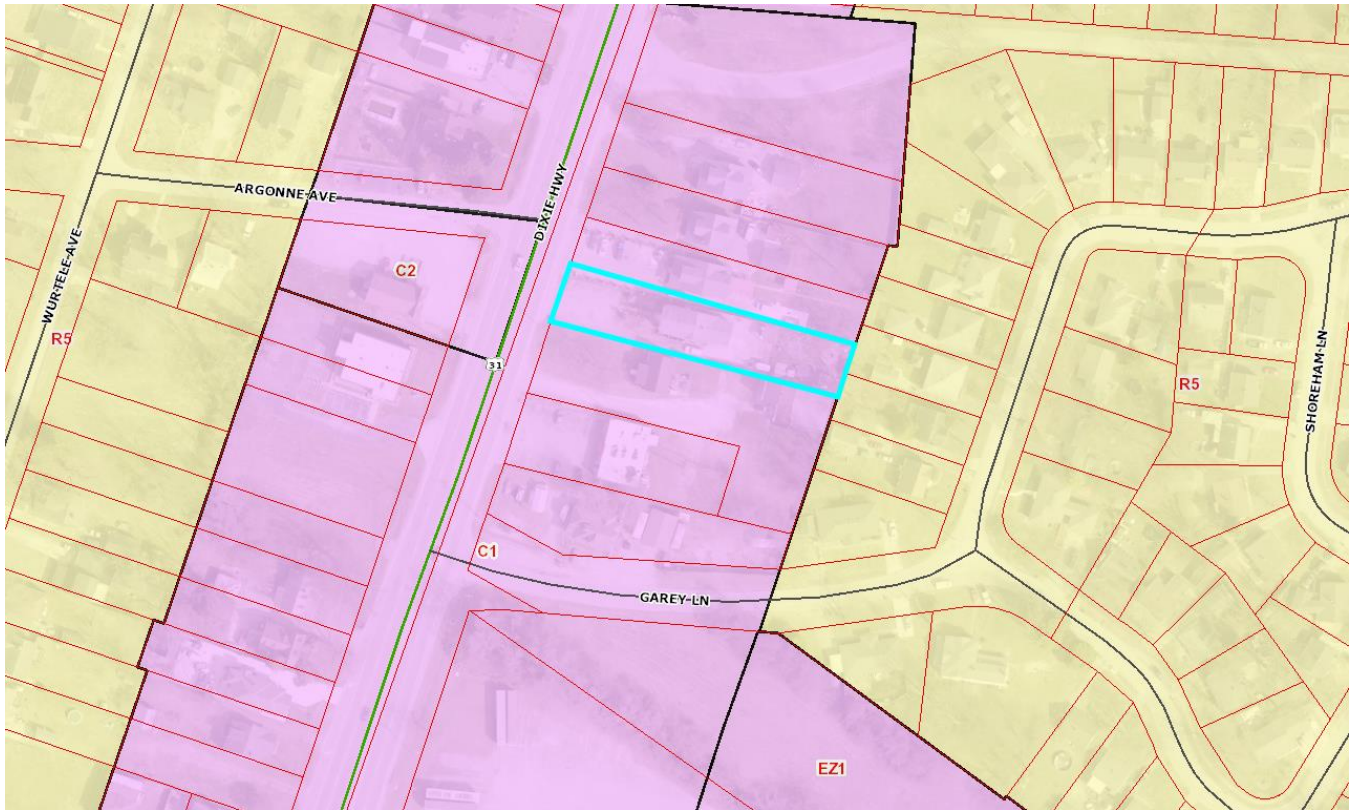
NOTIFICATION

Date	Purpose of Notice	Recipients
05/16/2024	Hearing before BOZA	1 st tier adjoining property owners
5/20/2024		Registered Neighborhood Groups in Council District 3
5/21/2024	Hearing before BOZA	Notice posted on property

ATTACHMENTS

1. Zoning Map
2. Aerial Photograph

1. Zoning Map



2. Aerial Photograph

