

**TO:** Zoning Board of Adjustment  
**FROM:** Community Development Department  
**DATE:** April 12, 2017

**RE:** CASE #BA-17-001

**APPLICABLE**

**CODE SECTIONS:** Section 15.32.040(01) Corridor Design Overlay District, Curb Cuts

**RELIEF SOUGHT:** A variance to allow two curb cuts to remain on West Broadway

**LEGAL**

**DESCRIPTION:** Lots 8-10 and Lots 21-23, Block 22, Ferry Addition.

**APPLICANT:** Omega Foods, Inc./Wendy's  
3524 West Broadway, Council Bluffs, IA 51501

**OWNER:** King Heritage, LLC – Scott King  
50 West Douglas Street, Suite 1101, Freeport, IL 61032

**REPRESENTATIVE:** King Heritage, LLC – Ken Wales  
50 West Douglas Street, Suite 1101, Freeport, IL 61032

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**BACKGROUND INFORMATION** – King Heritage, LLC. owns and operates a business located at 3524 West Broadway. The applicant is proposing renovation to the property which requires compliance with the standards set forth in the Chapter 15.32 Corridor Design Overlay of the *Municipal Code*.

*15.32.020 Establishment of a corridor design overlay. The CDO Overlay is established as part of this title. The CDO shall overlay all other zoning districts established within the boundaries as described in Section 15.32.030 following. One and two family uses are exempted from the regulations of this chapter. The requirements apply to all:*

*2. Substantial rehabilitation of or additions to commercial, industrial and multi-family structures and sites. Substantial rehabilitation shall be defined as modifications equal to 50% of the assessed value of the structure or structures on a lot, exclusive of land assessed value, in a 24-month period of time. The assessed value shall be as most recently established by the Pottawattamie County Assessor;*

Compliance with the chapter would require that one of the two existing curb cuts located on West Broadway would be removed with the renovation project. This property has less than 150 feet of frontage and would only be permitted one curb cut.

*15.32.040 Curb Cuts.*

*1. Either one two-way curb cut or two one-way curb cuts are allowed on the applicable corridor street where property has 150 feet or more of street frontage. One curb cut is allowed on the applicable corridor street where property has less than 150 feet of frontage.*

The applicant has indicated the second curb cut is necessary in order for the current drive-through configuration to work properly. Sheet AS1.1 provided by the applicant illustrates two concepts:

- 1) Drive-through lane passing on the south side of the building connecting to the east parking lot drive aisle. As presented the lane would extend beyond the property boundaries and into the public right-of-way;

- 2) Drive-through lane circulates to the north and remains inside the private property, but extends into the neighboring property to the west.

**CURRENT ZONING AND LAND USE** – The subject property and surrounding area is zoned C-2/Two Commercial District with a CDO/Corridor Design Overlay. The use of the property as a restaurant is permitted and is not at issue.

**NEIGHBORHOOD RESPONSE** – All property owners located within 200 feet are notified of requests for variances. No comments have been received.

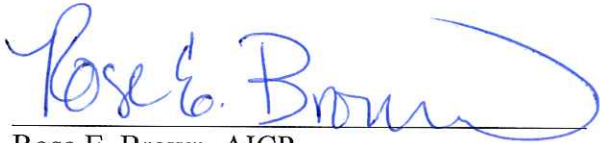
### **COMMENTS**

Evidence must be presented to demonstrate that a literal enforcement of the Ordinance will create a hardship for which relief is necessary. The Board of Adjustment shall approve a variance to grant relief when ‘unforeseen applications of this Ordinance... create particular hardships’. No variance shall be granted unless the Board of Adjustment makes findings of fact based on the standards and conditions that follow. A variance less than requested may be granted by the Board when the record supports the applicant’s right to some relief, but not to the entire relief requested. (§15.02.080 – Variances)

1. *The particular property, because of size, shape, topography or other physical conditions suffers singular disadvantage through the application of this ordinance, which does not apply to other properties in the vicinity.* The size, shape and topography of the property are typical of those within the corridor and the surrounding area. The lot is generally flat with no physical impediments.
2. *Because of such disadvantage, the owner is unable to make reasonable use of the affected property.* Compliance with the ordinance is causing a hardship for a portion of the property. Removal of the second curb cut causes difficulty for the functionality of the drive-through as currently placed within the building. The property does have a curb cut onto Avenue ‘A’. However, the site plan submitted indicates that circulating the drive-through lane to the north is not possible without improvements being made beyond the property. Moving the drive-through window to the east side of the building would allow for a through movement to Avenue ‘A’, however, the queuing distance for cars waiting in the line may impact West Broadway.
3. *The disadvantage does not exist because of conditions created by the owner or previous owners of the property.* The disadvantage is a function of the building placement in relationship to the front property line that will not accommodate the connection of the drive-through lane to the remainder of the parking lot without impacting City right-of-way or adjoining properties. Application of the current regulation is causing the hardship.
4. *Granting the variance will not confer on the applicant any special privileges that are denied by this ordinance to other properties or structures in the same district.* A special privilege will not be conferred on the applicant. The applicant has demonstrated that modification of the drive-through lane is not function and is not based on a design preference.
5. *Granting the variance will not be contrary to the public interest, will not adversely affect other property in the vicinity, and will be in harmony with the purpose and intent of this ordinance.* The variance process is to provide a narrowly circumscribed means by which relief may be granted from unforeseen applications of this ordinance that create particular hardships. The request for the above mentioned variance is the result of a hardship caused by the current regulation.

**RECOMMENDATION**

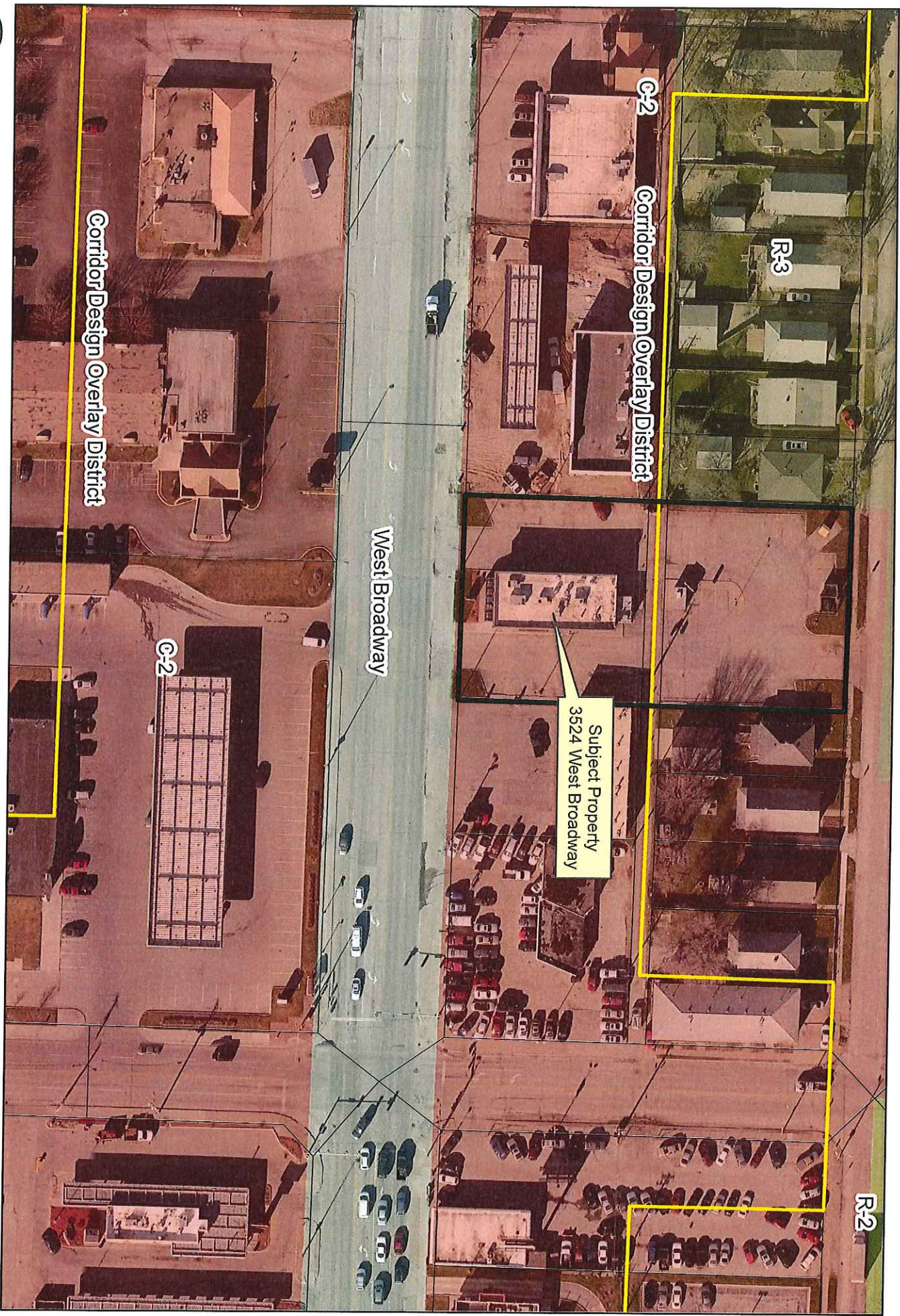
The Community Development Department recommends granting a variance from Section 15.32.040(01) Corridor Design Overlay District, Curb Cuts to allow the second curb cut to remain on West Broadway for property legally described as Lots 8-10 and Lots 21-23, Block 22, Ferry Addition for the reasons stated above.



Rose E. Brown, AICP  
Planning Coordinator

REB

CASE #BA-17-001



R-3

G-2  
Corridor Design Overlay District

Subject Property  
3524 West Broadway

West Broadway

G-2

Corridor Design Overlay District

R-2



