

Planning Commission

Staff Report

March 16, 2023



Case No:	22-CAT2-0049
Project Name:	The Bernheim
Location:	1600 Bernheim Ln
Owner(s):	Bernheim Partners, LLC.
Applicant:	Bernheim Partners, LLC.
Jurisdiction:	Shively
Council District:	3 – Kumar Rashad
Case Manager:	John Michael Lawler, Planner I

REQUEST(S)

- Amend the 200-foot setback adjacent to residential properties not zoned EZ-1;
- Waivers
 1. Waiver of Section 5.5.1.A.3 of the Shively Code to allow parking in-front of the principal structure (22-WAIVER-0214);
 2. Waiver of Section 10.2.4.A of the Shively Code to allow an existing structure to encroach into the 50' LBA by 30' (23-WAIVER-0015);
 3. Waiver of Section 10.2.11 of the Shively Code to exceed the maximum distance of 120' between interior landscape areas (23-WAIVER-0016);

CASE SUMMARY/BACKGROUND

The applicant is proposing to occupy an existing vacant rickhouse for the purpose of storing and aging bourbon. The subject site is zoned EZ-1 in the Traditional Workplace form district. The structure with proposed bourbon storage is set back approximately 105-110 feet from residential properties along McCloskey Ave. It is the middle of three buildings on the site. The applicant previously requested the same amendment to the 200-foot setback for both of the northernmost rickhouses under Docket # 21-CAT3-0015. This request was denied by the Planning Commission during the November 4, 2021 meeting. The main concerns were mitigation of potential fire emergencies and spill control in the event of a collapse. The current request is only asking for bourbon storage in the middle structure. The northernmost structure will be used for office space, a private club and event space, and for the warehousing of low-hazard goods. The southernmost structure will be used for office space and warehousing of low-hazard goods. In addition to the request for the amendment of the 200-foot setback for the bourbon storage use, the applicant is requesting several waivers on the site. Parking would be provided in-front of the structure, which requires a waiver. There is also a request to allow for greater separation of the interior landscaping areas in the parking lot than is allowed in the Shively Code. The southernmost building will encroach into the required LBA by 30 feet requiring a waiver for plan approval. Access to the site is provided from Bernheim Ln. There is an LG&E transformer on its own lot that splits the frontage of the subject site. Industrial uses are present to the south and east of the subject site, with residential properties present to the north, west, and southeast along Bernheim Ln, McCloskey Ave, and Harold Ave.

STAFF FINDING

Per Shively Land Development Code section 2.6.1, uses permitted in the C-2 and M-1 are permitted within 200-feet of residential properties not zoned EZ-1. Storage and aging of distilled spirits is an M-2 use. The Planning Commission must determine whether the 200-foot setback should be amended to allow the proposed use.

TECHNICAL REVIEW

The aging and storage of bourbon is known to emit ethanol into the air, which contributes to accelerated growth of a natural fungus known as *baudoinia compniacensis*. Common names for the fungus include “whiskey fungus” or “The Angels’ Share.” While the fungus is not known to have direct negative health impacts, it does cause unsightly black fungus to grow on properties in and near bourbon storage facilities.

The applicant had previously agreed to provide planting and screening along the residential properties as an offset to potential negative impacts from the proposed use. They also previously offered to implement a pressure washing program for neighboring properties within 800 feet.

MSD and Transportation have preliminarily approved the development plan.

INTERESTED PARTY COMMENTS

None received.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER of section 5.9.2.A.1.b.1. to allow the parking lot to be located in front of the building (22-WAIVER-0214):

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

STAFF: The waiver will not adversely affect adjacent property owners since safe pedestrian access is provided from the public rights-of-way to the building entrance that will have a public-facing use. The site is also limited in where parking can be located due to the location of the existing structures that are being adapted or reused.

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

STAFF: Community Form Goal 1, Policy 4 calls for the proposal to ensure new development and redevelopment are compatible with the scale and site design of nearby existing development and with the desired pattern of development within the Form District. Quality design and building materials should be promoted to enhance compatibility of development and redevelopment projects. Community Form Goal 1, Policy 12 calls for the proposal to Design parking, loading and delivery areas located adjacent to residential areas to minimize adverse impacts from noise, lights, and other potential impacts. Ensure that parking, loading and delivery is adequate and convenient for motorists and does not negatively impact nearby residents or pedestrians. Parking and circulation areas adjacent to the street shall be screened or buffered. Use landscaping, trees, walls, colonnades or other design features to fill gaps along the street and sidewalk created by surface parking lots. Encourage the placement of parking lots and garage doors behind or beside the building rather than facing the street. The use of alleys for access to parking lots is encouraged, especially in Downtown Louisville, Urban Center Neighborhoods, Traditional Neighborhoods and Traditional Marketplace Corridors. Encourage

elimination or reduction of parking minimums in areas readily accessible to transit routes. Community Form Goal 2, Policy 11 calls for ensuring appropriate placement, design and scale of centers in Traditional Neighborhood, Neighborhood and Village Form Districts to ensure compatibility with nearby residences. Community Form Goal 2, Policy 15 calls for parking in activity centers should reflect the area's associated Form District standards to balance safety, traffic, transit, pedestrian, environmental and aesthetic considerations. VUA LBAs will be provided to screen the parking from the roadway and adjacent properties.

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

STAFF: The extent of waiver of the regulation is the minimum necessary to afford relief to the applicant because there are existing buildings and limited available open space on the site preventing compliance with the regulations to be waived.

- (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 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 because the layout of the existing site necessitates the parking being placed at the front of the lot.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER of section 10.2.4.A to allow an existing structure to encroach into the 50' LBA by 30' (23-WAVIER-0015):

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

STAFF: The waiver will not adversely affect adjacent property owners since the structure is already built and will not be permitted to have more intense uses such as bourbon storage. The applicant is also still providing all the required plantings and landscaping for the site.

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

STAFF: Community Form Goal 1, Policy 4 calls for the proposal to ensure new development and redevelopment are compatible with the scale and site design of nearby existing development and with the desired pattern of development within the Form District. Quality design and building materials should be promoted to enhance compatibility of development and redevelopment projects. Community Form Goal 1, Policy 9 calls to ensure an appropriate transition between uses that are substantially different in scale and intensity or density of development. The transition may be achieved through methods such as landscaped buffer yards, vegetative berms, compatible building design and materials, height restrictions and setback requirements. Community Form Goal 1, Policy 12 calls for the proposal to Design parking, loading and delivery areas located adjacent to residential areas to minimize adverse impacts from noise, lights, and other potential impacts. Ensure that parking, loading and delivery is adequate and convenient for motorists and does not negatively impact nearby residents or pedestrians. Parking and circulation areas adjacent to the street shall be screened or buffered. Use landscaping, trees, walls, colonnades or other design features to fill gaps along the street and sidewalk created by surface parking lots. Encourage the placement of parking lots and

garage doors behind or beside the building rather than facing the street. The use of alleys for access to parking lots is encouraged, especially in Downtown Louisville, Urban Center Neighborhoods, Traditional Neighborhoods and Traditional Marketplace Corridors. Encourage elimination or reduction of parking minimums in areas readily accessible to transit routes. The development is allowing for the adaptive reuse of two of the structures, and the applicant is providing the necessary landscaping and buffering to mitigate the difference in scale and intensity of uses.

- (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 since the building is already present on the site.

- (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 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 since the structure is already present on-site. The reuse of the structure is a permitted use for the site, and required plantings to mitigate the proximity of the structure to the adjacent residential properties will be provided.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR LANDSCAPE WAIVER of section 10.2.12 to allow more than 120 feet between Interior Landscape Areas, a total of 162 feet, as shown on the plan (23-WAIVER-0016):

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

STAFF: The waiver will not adversely affect adjacent property owners since the applicant is still providing more ILA than is required by the code. The additional space between ILAs allows for the necessary parking to be provided on a lot that is physically constrained by pre-existing structures that limit the area where parking can be provided.

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

STAFF: Community Form Goal 1, Policy 4 calls for the proposal to ensure new development and redevelopment are compatible with the scale and site design of nearby existing development and with the desired pattern of development within the Form District. Quality design and building materials should be promoted to enhance compatibility of development and redevelopment projects. Community Form Goal 1, Policy 12 calls for the proposal to Design parking, loading and delivery areas located adjacent to residential areas to minimize adverse impacts from noise, lights, and other potential impacts. Ensure that parking, loading and delivery is adequate and convenient for motorists and does not negatively impact nearby residents or pedestrians. Parking and circulation areas adjacent to the street shall be screened or buffered. Use landscaping, trees, walls, colonnades or other design features to fill gaps along the street and sidewalk created by surface parking lots. Encourage the placement of parking lots and garage doors behind or beside the building rather than facing the street. The use of alleys for

access to parking lots is encouraged, especially in Downtown Louisville, Urban Center Neighborhoods, Traditional Neighborhoods and Traditional Marketplace Corridors. Encourage elimination or reduction of parking minimums in areas readily accessible to transit routes. The applicant will provide more than the required ILA, while also meeting all the requirements for VUA LBAs on the site, mitigating the parking near the front of the site and providing green spaces that break up the large parking area.

- (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 since the site is constrained by where parking can be located. The applicant will still provide the necessary ILA square footage and provide all VUA LBAs on the site.

- (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 exceed the minimum of the district and compensate for non-compliance with the requirements to be waived by providing more than the required ILA area.

REQUIRED ACTIONS:

- **APPROVE** or **DENY** the request to modify the 200-foot EZ-1 setback standards adjacent to residential properties not zoned EZ-1.
- **Recommend APPROVAL** or **DENIAL** of the Waivers to the City of Shively.

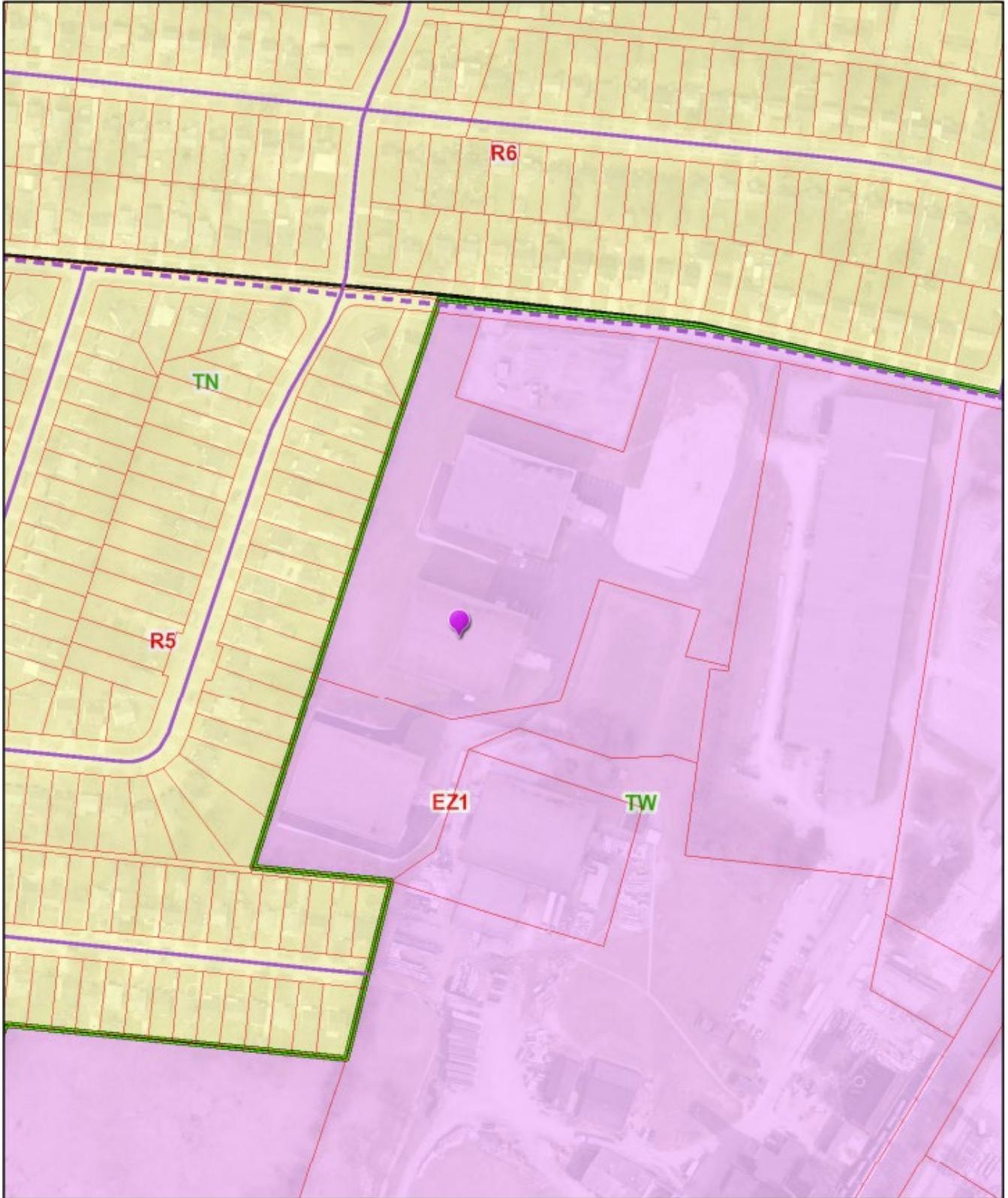
NOTIFICATION

Date	Purpose of Notice	Recipients
3/2/2023	Hearing before Planning Commission	1 st tier adjoining property owners Owners of residential properties not zoned EZ-1 within 200' of the subject site Registered Neighborhood Groups in Council District 3 Previous speakers before Planning Commission for 21-CAT3-0015

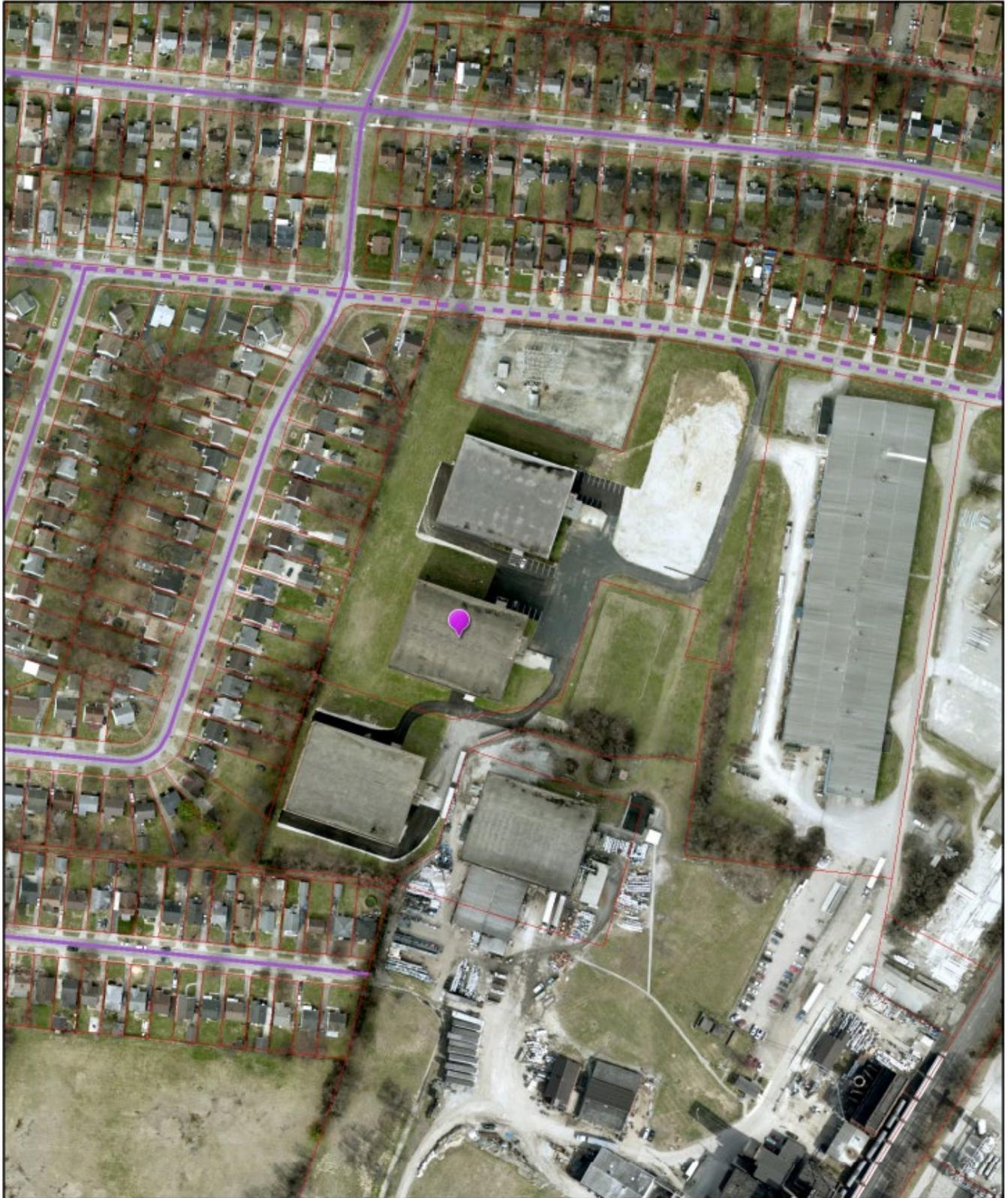
ATTACHMENTS

1. Zoning Map
2. Aerial Photograph
3. Proposed Conditions of Approval

1. Zoning Map



2. Aerial Photograph



3. Proposed Conditions of Approval

1. The aging and storage of distilled spirits shall only be permitted in buildings A and B as shown on the plan. No other M-2 or higher use is permitted without further authorization of the Planning Commission.
2. Prior to requesting a Certificate of Occupancy, the applicant shall submit and have approved a landscape plan with a 50-foot buffer along the entire length of the property line that borders the residential properties to the west of the site. The buffer shall include at least 19 type A or type B trees and an 8-foot continuous screen. Final location and type of trees shall be determined on the approved landscape plan. All required plantings must be installed within 6 months of receiving a certificate of occupancy and maintained in perpetuity.