

**Board of Zoning Adjustment
Staff Report**
August 17, 2015



Case No:	15Variance1015
Project Name:	Sethi Station
Location:	2124 West Market Street
Owner(s):	Meena Sethi
Applicant:	Owner
Representative:	John Miller, Miller Wihry, MWGLLC
Project Area/Size:	0.54 acres
Jurisdiction:	Louisville Metro
Council District:	4 – David Tandy
Case Manager:	Sherie' Long, Landscape Architect
(Continued from August 3, 2015)	

REQUEST

Variance #1: Setback (corner)

Variance from the Land Development Code, Section 5.5.1.A.1.a, to allow the building to not be at the corner and exceed the maximum 25' setback.

Location	Requirement	Request	Variance
Front setback (corner)	25'	131.25'	106.25'

Variance #2: Street Side Yard Setback (South 22nd Street)

Variance from the Land Development Code, Section 5.7.1.B, to allow the building to encroach into the street side transition zone setback.

Location	Requirement	Request	Variance
Street Side Yard Setback (S. 22 nd Street)	15'	5'	10'

Waiver #1: Parking Location

Waiver of the Land Development Code Section 5.5.1.A.3.a and 5.9.2.C.4. to allow parking in front of the building.

Waiver #2: Gas Pump Canopy

Waiver of the Land Development Code Section 5.5.1.A.5, to allow the gas pump canopy to be located between the building and the street.

Waiver #3: Building Facade

Waiver of Land Development Code Section 5.6.1.C.1, to not provide 50% glass along the west (South 22nd Street) building façade.

Waiver #4: Transition Zone Requirements

Waiver of Land Development Code Section 5.6.1.A.1 & 5.6.1.C.1, to not provide the transition zone required architectural animation to the building façade or the 15' Landscape Buffer Area (LBA) along Congress Street.

Waiver #5: 3' Wall

Waiver of Land Development Code Section 5.5.1.A.3.a, to not provide a 3' wall between the vehicle use area and the adjacent streets.

Waiver #6: Building Encroachment

Waiver of Land Development Code Section 5.7.1.B.2, to allow the building to encroach into the 15' LBA and Type C Yard of the transition zone along the Congress Street perimeter.

Waiver #7: LBA Encroachment

Waiver of Land Development Code Section 10.2.10, to allow the proposed sidewalk and bike parking area to encroach into the required eastern perimeter LBA.

Waiver #8: Interior Landscape Buffer Area (ILA)

Waiver of Land Development Code Section 10.2.12, to not provide Interior Landscape Area (ILA).

CASE SUMMARY/BACKGROUND/SITE CONTEXT

Case was continued from August 3, 2015 hearing to allow the applicant time to revise the plan. As of Tuesday August 11, 2015, the applicant had not provided revisions.

The applicant is proposing to construct a new 5,545 sf building, 3,566 sf convenience store and two rental retail spaces: one 1,057sf and the other 922sf; along with gas pumps and overhead canopy. This corner property on the south side of West Market Street and the east side of South 22nd Street is in the Lower West Market Historic District and the Russell Neighborhood. The existing structure on this C-1 zoned parcel in the Traditional Marketplace Corridor (TMC) form district will be removed to allow for the new building and gas canopy to be constructed.

Since this site is located in a traditional form district, the proposed building is required to be located at the corner of the property close to both intersecting streets. This site is also in a transition zone between more intense commercial uses and less intense residential uses. Because this parcel is a transition area the street setback along 22nd is required to be the same as the adjacent residential property to the south. The applicant's layout does not comply with either the front or street side setback requirements therefore, a variance is necessary. In addition, several waivers are also required allow the proposed layout.

LAND USE/ZONING DISTRICT/FORM DISTRICT TABLE

The site is zoned C-1 in the Traditional Marketplace Corridor (TMC) Form District. It is surrounded by single and multi-family residential, commercial retail, daycare, office and vacant properties zoned C-1, C-2, R-6, OR-2, and M-1 in the Traditional Marketplace Corridor (TMC) and Traditional Neighborhood (TN) Form Districts.

	Land Use	Zoning	Form District
Subject Property			
Existing	Vacant/Commercial	C-1	TMC
Proposed	Commercial Retail and Gas Station/ Convenience Store	C-1	TMC
Surrounding Properties			
North	Commercial, Daycare, Office, Multi-family, & Single family Residential	C-1, C-2, OR-2	TMC
South	Vacant residential, Commercial, Manufacturing, & Single family	R-6, M-1	TN
East	Multi-family	C-1	TMC
West	Commercial retail	C-1	TMC

PREVIOUS and CURRENT CASES ON SITE

There are no previous cases.

INTERESTED PARTY COMMENTS

There have not been any inquiries or comments received.

APPLICABLE PLANS AND POLICIES

Cornerstone 2020
Land Development Code

STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCE

Variance #1: Setback (corner)

Variance from the Land Development Code, Section 5.5.1.A.1.a, to allow the building to not be at the corner and exceed the maximum 25' setback.

- (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 since safe pedestrian access is provided from the public rights-of-way to the building entrance.

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

STAFF: The requested variance will alter the essential character of the general vicinity since the site is located in a Traditional Form District that requires non-residential structures to be constructed close to the street with parking to the side and rear. There are a few properties in the vicinity that were constructed prior to the adoption of the regulation. However, the variance could create a precedence that will allow for the continuance of developments providing parking between the building and street.

- (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 since safe pedestrian access is provided from the public rights-of-way to the building entrance and since safe vehicular maneuvering has been provided.

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

STAFF: The requested variance will allow an unreasonable circumvention of the zoning regulation since the proposed development can be built on the site while complying with the setback requirement. There are no physical site restrictions preventing compliance with the setback requirement.

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 not arise from special circumstances that do not generally apply to land in the general vicinity or the same zone. There has been no other similar variance in the general vicinity to allow a new non-residential building to be setback away from a street corner with

parking between the building and the street. There are no physical site restrictions preventing compliance with the setback requirement.

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 not deprive the applicant of reasonable use of the land or create an unnecessary hardship on the applicant since the proposed development can be built on the site while complying with the setback requirement.

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

STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCE

Variance #2: Street Side Yard Setback (South 22nd Street)

Variance from the Land Development Code, Section 5.7.1.B, to allow the building to encroach into the street side transition zone setback.

- (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 since safe pedestrian access is provided from the public rights-of-way to the building entrance.

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

STAFF: The requested variance will not alter the essential character of the general vicinity since the site is located in a Traditional Neighborhood form district that requires non-residential structures to be constructed close to the street. However, the transition zone setback requirement of 15 feet applies to the proposed location of the building. If the building were constructed at the corner as required by the LDC this variance request would not be needed.

- (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 since safe pedestrian access is provided from the public rights-of-way to the building entrance and since safe vehicular maneuvering has been provided.

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

STAFF: The requested variance will allow an unreasonable circumvention of the zoning regulation since the proposed development can be built on the site while complying with the setback requirement. There are no physical site restrictions preventing compliance with the setback requirement.

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 arises from special circumstances because this site is located adjacent to a Traditional Neighborhood form district, the transition zone residential setback requirements apply to this site. Since the building is located within the transition zone the 15 foot setback applies to the location of the building. However, if the building were built at the corner this variance would not be necessary...

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 not deprive the applicant of reasonable use of the land or create an unnecessary hardship on the applicant since the proposed development can be built on the site while complying with the setback requirement.

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

STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER

Waiver #1: Parking Location

Waiver of the Land Development Code Section 5.5.1.A.3.a and 5.9.2.C.4. to allow parking in front of the building.

- (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.

- (b) The waiver will not violate specific guidelines of Cornerstone 2020.

STAFF: Guideline 2, policy 15 states to encourage the design, quantity and location of parking in activity centers to balance safety, traffic, transit, pedestrian, environmental and aesthetic considerations. Guideline 3, policy 1 states to ensure compatibility of all new development and redevelopment with the scale and site design of nearby existing development and with the pattern of development within the form district. Guideline 3, policy 23 states that setbacks, lot dimensions and building heights should be compatible with those of nearby developments that meet form district guidelines. Guideline 7, policy 3 states to evaluate developments for their ability to promote mass transit and pedestrian use, encourage higher density mixed use developments that reduce the need for multiple automobile trips as a means of achieving air quality standards and providing transportation choices. Guideline 9, policy 1 states that new development and redevelopment should provide, where appropriate, for the movement of pedestrians, bicyclists and transit users with location of retail and office uses, especially in the Traditional Neighborhood, Village, Marketplace Corridor, Traditional Workplace Form Districts close to the roadway to minimize the distance pedestrians and transit users have to travel. The purpose of the requirement is to promote mass transit and pedestrian use and reduce vehicle trips in and around the site, and to reduce the distance pedestrians and transit users have to travel. The waivers are not compatible with the pattern of development within the form district, and there do not appear to be physical restraints preventing compliance with the regulations to be waived. Therefore, the waivers will violate specific guidelines and policies of Cornerstone 2020.

- (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 not the minimum necessary to afford relief to the applicant since there are no physical restraints 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 applicant has not incorporated other design measures that exceed the minimums of the district to compensate for non-compliance with the requirements to be waived. The strict application of the provisions of the regulation would not deprive the applicant of the reasonable use of the land or create an unnecessary hardship on the applicant since the proposed development can be built on the site while complying with the requirements requested to be waived.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER

Waiver #2: Gas Pump Canopy

Waiver of the Land Development Code Section 5.5.1.A.5, to allow the gas pump canopy to be located between the building and the street.

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

STAFF: The requested waiver will not adversely affect adjacent property owners since safe pedestrian access is provided from the public rights-of-way to the building entrance and since safe vehicular maneuvering has been provided.

(b) The waiver will not violate specific guidelines of Cornerstone 2020.

STAFF: Guideline 2, policy 15 states to encourage the design, quantity and location of parking in activity centers to balance safety, traffic, transit, pedestrian, environmental and aesthetic considerations. Guideline 3, policy 1 states to ensure compatibility of all new development and redevelopment with the scale and site design of nearby existing development and with the pattern of development within the form district. Guideline 3, policy 23 states that setbacks, lot dimensions and building heights should be compatible with those of nearby developments that meet form district guidelines. Guideline 7, policy 3 states to evaluate developments for their ability to promote mass transit and pedestrian use, encourage higher density mixed use developments that reduce the need for multiple automobile trips as a means of achieving air quality standards and providing transportation choices. Guideline 9, policy 1 states that new development and redevelopment should provide, where appropriate, for the movement of pedestrians, bicyclists and transit users with location of retail and office uses, especially in the Traditional Neighborhood, Village, Marketplace Corridor, Traditional Workplace Form Districts close to the roadway to minimize the distance pedestrians and transit users have to travel. The purpose of the requirement is to promote mass transit and pedestrian use and reduce vehicle trips in and around the site, and to reduce the distance pedestrians and transit users have to travel. The waivers are not compatible with the pattern of development within the form district, and there do not appear to be physical restraints preventing compliance with the regulations to be waived. Therefore, the waivers will violate specific guidelines and policies of Cornerstone 2020.

(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 not the minimum necessary to afford relief to the applicant since there are no physical restraints 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 applicant has not incorporated other design measures that exceed the minimums of the district to compensate for non-compliance with the requirements to be waived. The strict application of the provisions of the regulation would not deprive the applicant of the reasonable use of the land or create an unnecessary hardship on the applicant since the proposed development can be built on the site while complying with the requirements requested to be waived.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER

Waiver #3: Building Facade

Waiver of Land Development Code Section 5.6.1.C.1, to not provide 50% glass along the west (South 22nd Street) building façade.

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

STAFF: The requested waiver will not adversely affect adjacent property owners since the applicant has provided some clear glass and an entrance along with accent panels to animate and enhance the 22nd Street façade.

(b) The waiver will not violate specific guidelines of Cornerstone 2020.

STAFF: Guideline 3, policy 1 and 2 calls for the compatibility of all new development and redevelopment with the scale and site design of nearby existing development and with the pattern of development within the form district. The type of building materials may be considered as a mitigation measure and may also be considered in circumstances specified in the Land Development Code. When assessing compatibility, it is appropriate to consider the choice of building materials in the following circumstances: (1) projects involving residential infill (2) projects involving non-residential uses; and (3) when specified in the Land Development Code. The proposal is for a non-residential use. The Land Development Code provides building design standards for non-residential and mixed use buildings. The purpose of the regulation is to provide visual interest and a human scale that are representative of the form district through the use of windows, columns, pilasters, piers, variation of material, entrances, storefront windows, and other animating features along no less than 75% of the façade and 50% of the façade along the street frontage be clear windows and doors. Since the applicant has proposed animation features on the 22nd Street façade and has provided some clear glass to mitigate the waiver request, the waiver does not violate the comprehensive plan.

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

STAFF: The extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant since the applicant has provided animated features to the façade and some clear glass as mitigation for the request.

(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 to compensate for non-compliance with the requirements to be waived. 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.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER

Waiver #4: Transition Zone Requirements

Waiver of Land Development Code Section 5.6.1.A.1 & 5.6.1.C.1, to not provide the transition zone required architectural animation to the building façade or the 15' Landscape Buffer Area (LBA) along Congress Street.

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

STAFF: The waiver will not adversely affect adjacent property owners since the property nearest the rear of the building is vacant. Plus a 10' landscape area is being provided with the required planting to mitigate the lack of animating features and the 15' LBA.

- (b) The waiver will not violate specific guidelines of Cornerstone 2020.

STAFF: Guideline 3, policy 1 and 2 calls for the compatibility of all new development and redevelopment with the scale and site design of nearby existing development and with the pattern of development within the form district. The type of building materials may be considered as a mitigation measure and may also be considered in circumstances specified in the Land Development Code. When assessing compatibility, it is appropriate to consider the choice of building materials in the following circumstances: (1) projects involving residential infill (2) projects involving non-residential uses; and (3) when specified in the Land Development Code. The proposal is for a non-residential use. The Land Development Code provides building design standards for non-residential and mixed use buildings. The purpose of the regulation is to provide visual interest and a human scale that are representative of the form district through the use of windows, columns, pilasters, piers, variation of material, entrances, storefront windows, and other animating features along the façade. Since the applicant is providing 10 feet of landscape area and plantings to mitigate the lack of animation. This waiver request does not violate the comprehensive plan.

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

STAFF: The extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant since a 10 foot landscape area and plantings are being provided.

- (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 to compensate for non-compliance with the requirements to be waived.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER

Waiver #5: 3' Wall

Waiver of Land Development Code Section 5.5.1.A.3.a, to not provide a 3' wall between the vehicle use area and the adjacent streets.

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

STAFF: The waiver will not adversely affect adjacent property owners since instead of the wall landscape buffer plantings will be provided along the perimeter.

- (b) The waiver will not violate specific guidelines of Cornerstone 2020.

STAFF: The waiver will not violate guideline 3, Compatibility, of Cornerstone 2020, which calls for the protection of roadway corridors and public areas from visual intrusions, for mitigation of parking areas so as not to negatively impact nearby residents and pedestrians, and for parking areas adjacent to streets to be screened and buffered. The purpose of vehicle use area landscape buffer areas is to improve the appearance of vehicular use areas, reduce the impact of the parking area on the adjacent residential property and other property abutting public rights-of way. The applicant, in place of the required wall, is providing a 3' screening planting; therefore the waiver request does not violate the comprehensive plan.

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

STAFF: The extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant since a 3' screening planting is being provided, instead of the wall, around the perimeter to reduce the impact parking and vehicle use area.

- (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 to compensate for non-compliance with the requirements to be waived since the applicant is providing a 3' screen planting.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER

Waiver #6: Building Encroachment

Waiver of Land Development Code Section 5.7.1.B.2, to allow the building to encroach into the 15' LBA and Type C Yard of the transition zone along the Congress Street perimeter.

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

STAFF: The waiver will not adversely affect adjacent property owners since the encroachment is 5 feet of a 15 feet buffer area, which leaves a 10 feet landscape area between the residential property to the south and the proposed building.

- (b) The waiver will not violate specific guidelines of Cornerstone 2020.

STAFF: Guideline 3, policy 9 of Cornerstone 2020 calls for the protection of the character of residential areas, roadway corridors and public spaces from visual intrusions and mitigate when appropriate.

Guideline 3, policies 21 and 22 calls for appropriate transitions between uses that are substantially different in scale and intensity or density, and to mitigate the impact caused when incompatible developments occur adjacent to one another through the use of landscaped buffer yards, vegetative berms and setback requirements to address issues such as outdoor lighting, lights from automobiles, illuminated signs, loud noise, odors, smoke, automobile exhaust or other noxious smells, dust and dirt, litter, junk, outdoor storage, and visual nuisances. Guideline 3, policy 24 states that parking, loading and delivery areas located adjacent to residential areas should be designed to minimize the impacts from noise, lights and other potential impacts, and that parking and circulation areas adjacent to streets should be screened or buffered. Guideline 13, policy 4 calls for ensuring appropriate landscape design standards for different land uses within urbanized, suburban, and rural areas. Guideline 13, Policy 6 calls for screening and buffering to mitigate adjacent incompatible uses. The intent of landscape buffer areas is to create suitable transitions where varying forms of development adjoin, to minimize the negative impacts resulting from adjoining incompatible land uses, to decrease storm water runoff volumes and velocities associated with impervious surfaces, and to filter air borne and water borne pollutants. A 10 foot landscape area is being provided between the residential property to the south and the proposed development. This area will allow planting of trees and shrubs to mitigate the impact of incompatible uses therefore, the waiver request does not violate the comprehensive plan.

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

STAFF: The extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant since the required plantings will be provided in the remaining 10' landscape area.

- (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 design measures to compensate for non-compliance with the requirements to be waived by providing the required plantings in the reduced landscape buffer area.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER

Waiver #7: LBA Encroachment

Waiver of Land Development Code Section 10.2.10, to allow the proposed sidewalk and bike parking area to encroach into the required eastern perimeter LBA.

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

STAFF: The waiver will not adversely affect adjacent property owners since the required plantings will be provided along the perimeter. The encroachment into the LBA is small but necessary to allow for the bike parking facilities.

- (b) The waiver will not violate specific guidelines of Cornerstone 2020.

STAFF: Guideline 3, policy 9 of Cornerstone 2020 calls for the protection of the character of residential areas, roadway corridors and public spaces from visual intrusions and mitigate when appropriate. Guideline 3, policies 21 and 22 calls for appropriate transitions between uses that are substantially different in scale and intensity or density, and to mitigate the impact caused when incompatible developments occur adjacent to one another through the use of landscaped buffer yards, vegetative berms and setback requirements to address issues such as outdoor lighting, lights from automobiles,

illuminated signs, loud noise, odors, smoke, automobile exhaust or other noxious smells, dust and dirt, litter, junk, outdoor storage, and visual nuisances. Guideline 3, policy 24 states that parking, loading and delivery areas located adjacent to residential areas should be designed to minimize the impacts from noise, lights and other potential impacts, and that parking and circulation areas adjacent to streets should be screened or buffered. Guideline 13, policy 4 calls for ensuring appropriate landscape design standards for different land uses within urbanized, suburban, and rural areas. Guideline 13, Policy 6 calls for screening and buffering to mitigate adjacent incompatible uses. The intent of landscape buffer areas is to create suitable transitions where varying forms of development adjoin, to minimize the negative impacts resulting from adjoining incompatible land uses, to decrease storm water runoff volumes and velocities associated with impervious surfaces, and to filter air borne and water borne pollutants. There is minimum encroachment of the bike facilities into the landscape buffer area. All the required perimeter plantings, trees and shrubs, will be provided as required therefore, the waiver request does not violate the comprehensive plan.

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

STAFF: The extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant since the encroachment is minimal and all the plantings, trees and shrubs, are being provided.

- (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 design measures to compensate for non-compliance with the requirements to be waived. All the required plantings, trees and shrubs, will be provided along the perimeter.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER

Waiver #8: Interior Landscape Buffer Area (ILA)

Waiver of Land Development Code Section 10.2.12, to not provide Interior Landscape Area (ILA).

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

STAFF: The waiver will adversely affect adjacent property owners since there will be no interior plantings provided to reduce the heat or storm water runoff of the site.

- (b) The waiver will not violate specific guidelines of Cornerstone 2020.

STAFF: Guideline 13, Policy 5 calls for standards to ensure the creation and/or preservation of tree canopy as a valuable community resource. The purpose of interior landscape areas is to break up large impervious areas and allow for a greater distribution of tree canopy coverage. Since there will be no interior trees provided or interior green space the purpose of ILA will not be met, therefore the waiver violates the guidelines and policies of the comprehensive plan.

- (c) The extent of the waiver of the regulation is not the minimum necessary to afford relief to the applicant

STAFF: The extent of the waiver of the regulation is not the minimum necessary to afford relief to the applicant since interior landscape area can be provided.

- (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 not incorporated other design measures that exceed the minimums of the district to compensate for non-compliance with the requirements to be waived. The strict application of the provisions of the regulation to provide the interior landscape area would not deprive the applicant of the reasonable use of the land or create an unnecessary hardship on the applicant since interior landscape area could be provided.

TECHNICAL REVIEW

There are no technical review issues.

STAFF CONCLUSIONS

Based upon the information in the staff report, the analysis of the standards of review does not support the request to grant the variances for the building setbacks; does not support the request to grant the waivers to allow the parking in front of the building; to allow the gas canopy between the building and the street; and to not provided the interior landscape area.

However, the waiver requests to allow the encroachment of the building and bike facilities into the landscape buffer areas; to eliminate the 3' wall around the perimeter; to not provide the transition zone animation to the building façade or provide a 15' buffer yard; and to not provide the 50% clear window and doors along the 22nd Street façade are supported by the staff report and the analysis of the standards of review.

Therefore, the Board of Zoning Adjustment must determine, based on the testimony and evidence provided at the public hearing, if the proposal meets the standard for the variance established in the Land Development Code; and the waivers do not violate the comprehensive plan and also meet the standards established in the Land Development Code

NOTIFICATION

Date	Purpose of Notice	Recipients
07/16/2015	BOZA Hearing	Neighborhood notification recipients
07/17/2015	Sign Posting	Subject property
07/20/2015	BOZA Hearing	1 st tier adjoining property owners

ATTACHMENTS

1. Zoning Map
2. Aerial Photograph
3. Site Plan
4. Building Elevations and Floor Plans
5. Applicant's Justification
6. Site Photographs

Attachment 1 - Zoning Maps



R-R RURAL RES.	R-5 RES. S.FAM.	R-8A RES. M-FAM.	C-R COMM./RES.	M-1 IND.	DRO DEV. REVIEW OV.
R-E RES. EST.	RRD RES. REDEV	OR-1 OFF./RES.	C-1 COMM.	M-2 IND.	W-1 WATERFRONT
R-1 RES. S.FAM.	R-5A RES. M-FAM.	OR-2 OFF./RES.	C-2 COMM.	M-3 IND.	W-2 WATERFRONT
R-2 RES. S.FAM.	R-5B TWO-FAM.	OR-3 OFF./RES.	C-3 CBD	CRO CRO. REVIEW OV	W-3 WATERFRONT
R-3 RES. S.FAM.	R-6 RES. M-FAM.	OTF OFF./TOUR	C-M COMM. MAN.	PRO PLAN. RESEARCH	WRO WATER. REVIEW OV.
R-4 RES. S.FAM.	R-7 RES. M-FAM.	C-N NEIGH. COMM.	EZ-1 ENTERPRISE	PEC PLAN. EMP. CEN.	



Zoning District Map
 Louisville/Jefferson Metro Government
 Planning and Design
 Services

**15VAR1015
 VARIANCE**
 Scale: 1:1170 Date: 03/17/2015



Attachment 2 - Aerial Photo



R-R RURAL RES.	R-5 RES. S.FAM.	R-8A RES. M-FAM.	C-R COMM./RES.	M-1 IND.	DRO DEV. REVIEW OV.
R-E RES. EST.	RRD RES. REDEV	OR-1 OFF./RES.	C-1 COMM.	M-2 IND.	W-1 WATERFRONT
R-1 RES. S.FAM.	R-5A RES. M-FAM.	OR-2 OFF./RES.	C-2 COMM.	M-3 IND.	W-2 WATERFRONT
R-2 RES. S.FAM.	R-5B TWO-FAM.	OR-3 OFF./RES.	C-3 CBD	CRO CRO. REVIEW OV	W-3 WATERFRONT
R-3 RES. S.FAM.	R-6 RES. M-FAM.	OTF OFF./TOUR	C-M COMM. MAN.	PRO PLAN. RESEARCH	WRO WATER. REVIEW OV.
R-4 RES. S.FAM.	R-7 RES. M-FAM.	C-N NEIGH. COMM.	EZ-1 ENTERPRISE	PEC PLAN. EMP. CEN.	

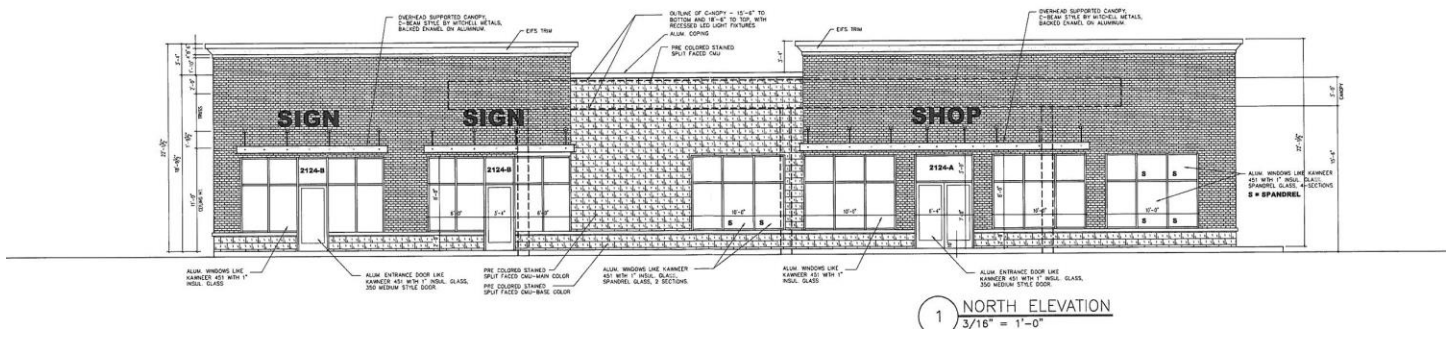
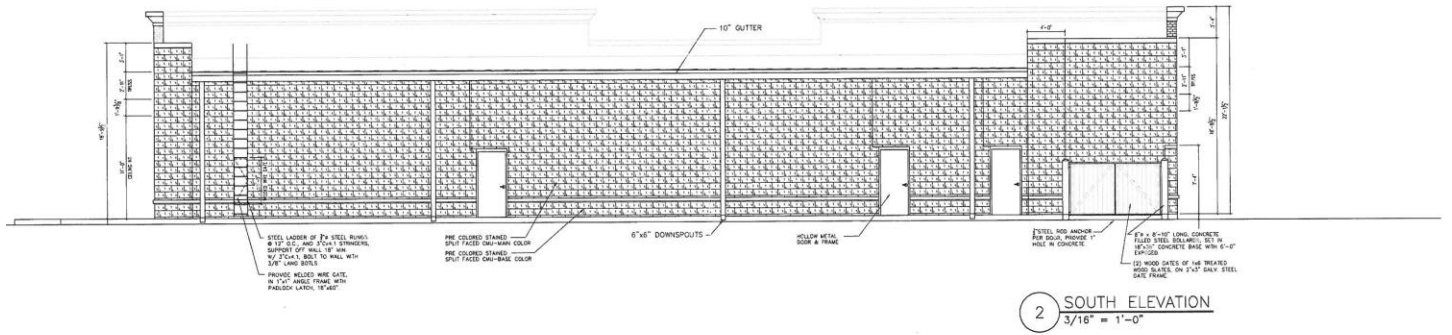
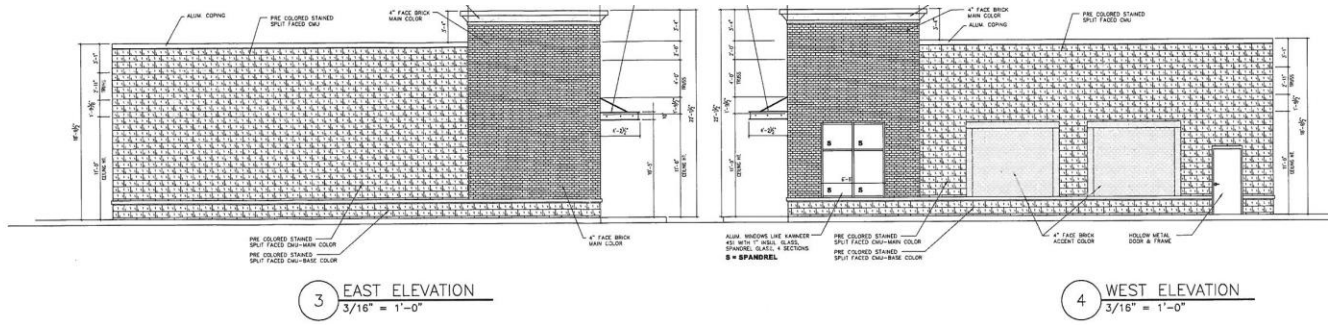


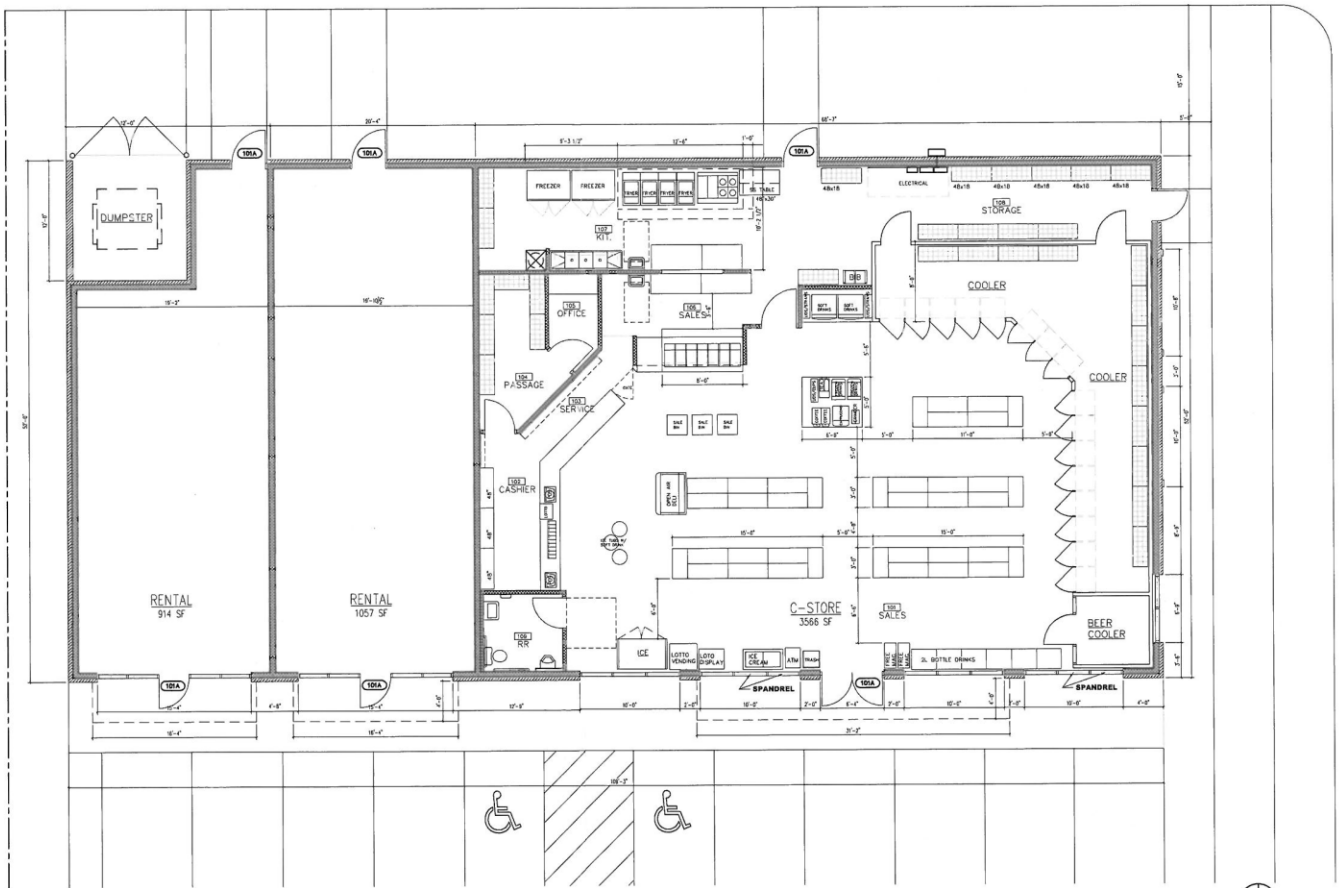
Zoning District Map
 Louisville/Jefferson Metro Government
 Planning and Design
 Services

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Attachment 4 –Building Elevations and Floor Plan





1 FLOOR PLAN
 3/16" = 1'-0"
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Attachment 5 – Applicant’s Justifications

Variances #1 and #2

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Variance Justification:

In order to justify approval of any variance, the Board of Zoning Adjustment considers the following criteria. Please answer all of the following items. Use additional sheets if needed. A response of yes, no, or N/A is not acceptable.

1. Explain how the variance will not adversely affect the public health, safety or welfare.

The layout which requires the variances is essentially the same as at every other gas mart within the metro.

2. Explain how the variance will not alter the essential character of the general vicinity.

The previous gas/mart was also sited with the pumps between the building.

3. Explain how the variance will not cause a hazard or a nuisance to the public.

The variances will not effect the public adversely, but will instead provide improved commercial services in the neighborhood.

4. Explain how the variance will not allow an unreasonable circumvention of the requirements of the zoning regulations.

The variances will not be an unreasonable circumvention of the regulations as it would be consistent with variances provided for other similar facilities.

Additional consideration:

1. Explain how the variance arises from special circumstances, which do not generally apply to land in the general vicinity (please specify/identify).

The proposed gas/mart use makes it imperative that pumps and parking both be located in front of building and in operators direct view.

2. Explain how the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create unnecessary hardship.

Without the safety afforded by layout with variances applicant would not proceed with the project.

3. Are the circumstances the result of actions of the applicant taken subsequent to the adoption of the regulation from which relief is sought?

No the requirement for operator safety and the size of the lot makes strict adherence to these regulations not feasible.

Waivers #1 and #2

General Waiver Justification:

In order to justify approval of any waiver, the Planning Commission or Board of Zoning Adjustment considers four criteria. Please answer all of the following questions. Use additional sheets if needed. **A response of yes, no, or N/A is not acceptable.**

1. Will the waiver adversely affect adjacent property owners?

No the previous gas station at this site was sited with pumps between the building and Market Street as proposed.

2. Will the waiver violate the Comprehensive Plan?

No, all gas/marts within the metro are basically laid out in this fashion.

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3. Is extent of waiver of the regulation the minimum necessary to afford relief to the applicant?

Yes the applicant would not construct the project otherwise due to safety concerns.

4. Has either (a) the applicant 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 would (b) the strict application of the provisions of the regulation deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant?

b) The applicant would not construct the project without the safety provided by having both parking and pumps in front of the store.

Waiver #3

General Waiver Justification:

A Waiver is requested from LDC Section 5.6.1.C.1 to not provide 50% glass along the west building façade.

1. Will the waiver adversely affect adjacent property owners?

No the building facade that is the subject of the waiver is adjacent to 22nd Street.

2. Will the waiver violate the Comprehensive Plan?

No the affects of the waiver will be mitigated by architectural and landscape treatments along this wall of the building.

3. Is extent of waiver of the regulation the minimum necessary to afford relief to the applicant?

Yes, because the beer coolers and storage occupy the entire west end of the building shop glass is not an option.

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4. Has either (a) the applicant 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 would (b) the strict application of the provisions of the regulation deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant?

The applicant has proposed to animate this particular façade with masonry panels in lieu of the shop glass.

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Waiver #4 and #6

General Waiver Justification:

In order to justify approval of any waiver, the Planning Commission or Board of Zoning Adjustment considers four criteria. Please answer **all** of the following questions. Use additional sheets if needed. **A response of yes, no, or N/A is not acceptable.**

1. Will the waiver adversely affect adjacent property owners?

No this waiver request abuts an alley and a grassed church parking lot across the alley.

2. Will the waiver violate the Comprehensive Plan?

No there will be a 10' landscape buffer along the alley and presumably a landscape buffer will be required per code on the other side of the alley as well.

3. Is extent of waiver of the regulation the minimum necessary to afford relief to the applicant?

Yes because it will allow for a larger area between the gas pumps and the front of the store providing for safer vehicular maneuvering.

4. Has either (a) the applicant 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 would (b) the strict application of the provisions of the regulation deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant?

The applicant is proposing a 10' landscape buffer with trees along the street and some shrubs adjacent to the building.

Waiver #5

General Waiver Justification:

A Waiver is requested from LDC Section 5.5.1.A.3.a to not provide a 3' wall along the adjacent streets.

1. Will the waiver adversely affect adjacent property owners?

No this waiver request concerns only the area along the streets.

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2. Will the waiver violate the Comprehensive Plan?

No the landscape buffers along both streets will ensure the project complies with the comprehensive plan.

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3. Is extent of waiver of the regulation the minimum necessary to afford relief to the applicant?

Yes because it will allow greater vision across the property for the station operators..

4. Has either (a) the applicant 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 would (b) the strict application of the provisions of the regulation deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant?

The applicant is proposing landscape buffer along both streets to mitigate the impact of the waiver.

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Waiver #7

General Waiver Justification:

A Waiver is requested from LDC Section 10.2.10 to allow the sidewalk and bicycle parking to encroach onto the required LBA along the eastern property line.

1. Will the waiver adversely affect adjacent property owners?

No the adjacent property owner is separated from the site by an existing chain link fence and fenceline undergrowth on the adjacent property.

2. Will the waiver violate the Comprehensive Plan?

No the landscape buffers will be in place along 93% percent of the of the subject property line.

3. Is extent of waiver of the regulation the minimum necessary to afford relief to the applicant?

Yes because it will allow for a future sidewalk connection to the adjacent property per the code.

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4. Has either (a) the applicant 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 would (b) the strict application of the provisions of the regulation deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant?

The applicant is proposing landscape buffer along 93% percent of the subject property line.

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General Waiver Justification:

A Waiver is requested from LDC Section 10.2.10 to not provide ILA within the Vehicle Use Area.

1. Will the waiver adversely affect adjacent property owners?

No the request to omit the ILA does not directly affect the adjacent neighbor..

2. Will the waiver violate the Comprehensive Plan?

No ILA is not a significant component of most c-store/gas stations in the City.

3. Is extent of waiver of the regulation the minimum necessary to afford relief to the applicant?

Yes because it is a small site (only 11 parking spaces aside from those at the pumps) there is essentially not space for landscaping interior to the parking lot.

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4. Has either (a) the applicant 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 would (b) the strict application of the provisions of the regulation deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant?

Given the size of the site it could not be used by the applicant for the intended use without the waiver.

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Attachment 6- Site Photos



Taken from the West Market Street sidewalk



Existing setback from adjacent property



Taken from NW corner of site looking west along Market Street



Taken from NW corner of site looking west toward 22nd Street



Close up of existing distance between buildings



Taken from NE corner of the site looking east along Market Street



Taken from NE corner of site looking south along 22nd Street



Taken from SW corner of site looking east along Congress Street



Taken from across Congress Street looking SW corner of the site



Taken across Congress Street looking north along 22nd Street



Taken from across Congress Street looking at SE corner of site



Taken from 22nd Street sidewalk looking east into the rear of the site and existing rear building



Taken from 22nd Street sidewalk looking SE into the rear of site at existing rear building



Taken from interior of site looking N at the existing pavement and rear of front building