

Board of Zoning Adjustment Staff Report

February 15, 2016



Case No:	15VARIANCE1087
Project Name:	4319 Barbour Lane
Location:	4319 Barbour Lane
Owner(s):	CFA Sunnyview, LLC.
Applicant(s):	CFA Sunnyview, LLC.
Representative(s):	BlueStone Engineers, PLLC.
Project Area/Size:	2.35 Acres
Existing Zoning District:	R-4, Single-Family Residential
Existing Form District:	N, Neighborhood
Jurisdiction:	Louisville Metro
Council District:	16 – Kelly Downard
Case Manager:	Joel P. Dock, Planner I

REQUEST

- **Variance** from section 4.8 and Table 4.8.1 of the Land Development Code (LDC) to allow the construction of a private access easement in the Protected Waterway Buffer of Little Goose Creek.

CASE SUMMARY

The applicant proposes to construct a 30' private access easement with a finished pavement width of 18' in the 100' Protected Waterway Buffer of Little Goose Creek. The purpose of this drive is to serve five single-family lots proposed on minor subdivision case 15MINORPLAT1166. Little Goose Creek is a Perennial or Solid Blue-Line stream tributary of the Goose Creek ecosystem and watershed that begins Southeast of Westport Rd. and meanders Northwest until reaching Goose Creek and flowing into the Ohio River. The buffer of a perennial stream is established from the Top-of-Bank; the point on a stream bank at which the presence and action of surface water is so continuous as to leave a distinctive mark. Chapter 4, Section 8.6 prohibits structures or impervious surface in excess of 100 SF to be located in the buffer of a protected waterway (Solid Blue-Line/Perennial stream), unless a variance is granted. Additionally, Section 8.6.J of this chapter allows for roads, bridges, trails, and utilities to cross protected waterways if the crossing is the minimum necessary for installation, access, and maintenance; any disturbance required for installation is restored; the number of crossings is the minimum to provide adequate access; and the crossing is perpendicular to the stream or buffer. In this case, the easement is parallel to the stream and buffer; therefore, a variance is being requested to allow the construction of the private access easement and drive in the Protected Waterway Buffer of Little Goose Creek for the purpose of serving five proposed residential building lots.

LAND USE/ZONING DISTRICT/FORM DISTRICT TABLE

	Land Use	Zoning	Form District
Subject Property			
Existing	Single-Family Residential	R-4	N
Proposed	Single-Family Residential	R-4	N
Surrounding Properties			
North	Single-Family/ Open Space	R-4	N
South	Single-Family/ Open Space	R-4	N
East	Single-Family/ Open Space	R-4	N
West	Single-Family/ Open Space	R-4	N

PREVIOUS CASES ON SITE

15MINORPLAT1166: Minor Subdivision Plat to create 5 tracts from 1 tract on 2.35 acres of vacant land.

INTERESTED PARTY COMMENTS

Staff received a general inquiry from Chip Hayward, Attorney for Greenspring Subdivision, regarding the subdivision of the land, record plat of adjoining subdivisions, and notification for public hearing. Staff spoke with Keene Taylor of the Wolfspring Subdivision about the subdivision request and notification requirements.

APPLICABLE PLANS AND POLICIES

Cornerstone 2020
Land Development Code (revised December 2015)

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 as the proposed encroachment into the buffer appears to be the minimum necessary to provide access to the proposed lots that are outside the buffer area, while reusing the existing grade of a previous roadway. The Board should, however, note that the purpose and intent of protecting these waterways is outlined in LDC 4.8.1. Applicable parts of this section can be summarized as follows: development should be located, where possible, in areas that do not have severe environmental limitations, natural areas should be protected, and features surrounding buffer areas shall be designed to guide future development adjacent to protected waterways; water pollution, including sediment and other pollutants in surface runoff, should be minimized to promote bank stabilization and protect riparian wetlands and their wildlife habitats; and generally to promote land use policies which will maintain or improve water quality levels. In considering the purpose and intent of protected waterway buffers and the long-term impact of development within, and surrounding, these buffers it is hard to convincingly state that the granting of this variance will not adversely affect the public health, safety, or welfare. Using the existing grade would eliminate the need to excavate and disturb land just beyond the buffer to provide access to these lots which fall outside the buffer, however.

(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 as the subject site is surrounded by R-4, single-family residential lots in the Suburban Neighborhood form district.

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

STAFF: The requested variance will not cause a direct hazard or nuisance to the public because the easement will serve single-family residential lots. The long term environmental impact of altering the vegetation and run-off flowing into the stream within the limits of the buffer may have substantial negative impacts on the stability of this watershed, ecosystem, and water-quality, however. LDC 4.8.6.J requires that any land disturbance and/or removal of vegetation within the buffer be restored.

(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 the proposed easement and drive is intended to serve five single-family residential lots and homes that will not fall within the protected waterway buffer.

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 variance does not arise from special circumstances which do not generally apply to land in the general vicinity or the same zone as any property abutting Little Goose Creek is subject to the protected waterway buffer standards established by Chapter 4, Section 8 of the LDC.

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 deprive the applicant of the reasonable use of the land or create an unnecessary hardship as the proposed lots and future homes would be outside of the protected waterway buffer and the easement is the minimum necessary encroachment to provide access.

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.

ADDITIONAL CONSIDERATIONS FOR PROTECTED WATERWAY BUFFER VARIANCE (4.8.4.B):

- (a) The variance is necessary because the requirements of this section represent an extreme hardship such that minimal or no reasonable economic use of the land is available without reducing the width of the required Buffer Area.

STAFF: The variance is necessary because the requirements of this section represent an extreme hardship such that minimal or no reasonable economic use of the land is available without reducing the width of the required Buffer Area as the drive is intended to serve single-family residential homes that do not fall within the protected waterway.

- (b) The size, shape, or topography of the property, as of March 1, 2003, is such that it is not possible to construct a single family detached dwelling without encroaching into the required Buffer Area.

STAFF: The size, shape, or topography of the property, as of March 1, 2003, is such that it is not possible to construct a single family detached dwelling without the private access easement and pavement encroaching into the required Buffer Area.

- (c) Encroachment into the required Buffer Area shall be limited to the minimum necessary to accommodate the proposed use.

STAFF: Encroachment into the required Buffer Area has been limited to the minimum necessary to accommodate the proposed use as the encroachment into the buffer appears to be the minimum necessary to provide access to the proposed lots that are outside the buffer area, while reusing the existing grade of a previous roadway.

- (d) The Applicant shall commit, to the satisfaction of the County, to mitigation measures that substantially offset any potential adverse impacts of the proposed encroachment during site preparation, construction, and post-construction.

STAFF: The Applicant will commit, to the satisfaction of the County or as requested by the BOZA, to mitigation measures that substantially offset any potential adverse impacts of the proposed encroachment during site preparation, construction, and post-construction.

- (e). Approval of the variance will not result in a reduction in water quality.

STAFF: The long term impact of altering the vegetation and run-off flowing into the stream within the limits of the buffer may have substantial negative impacts on the stability of this ecosystem and water-quality; subsequently, having an impact on the quality of the Ohio River.

TECHNICAL REVIEW

The approval of case 15MINORPLAT1166 is contingent upon the granting or denial of this variance request.

Chapter 4, Section 8.6 prohibits structures or impervious surface in excess of 100 SF to be located in the buffer of a protected waterway (Solid Blue-Line/Perennial stream), unless a variance is granted. Additionally, Section 8.6.J of this chapter allows for roads, bridges, trails, and utilities to cross protected waterways if the crossing is the minimum necessary for installation, access, and maintenance; any disturbance required for installation is restored; the number of crossings is the minimum to provide adequate access; and the crossing is perpendicular to the stream or buffer. In this case, the easement is parallel to the stream and buffer.

A site visit was conducted on 1/29/2016 by PDS staff. Site photos appeared to indicate that the existing drive shown on the variance plan was in fact non-existent. Staff reached out to the applicant for clarification. The applicant stated that due to a lack of maintenance the road has been over-taken by grass. The site inspection also revealed steep slopes not previously noted by staff, as well as a small stream running into Little Goose Creek that is preserved by an MSD Sanitary Sewer and Drainage Easement. Steep slopes on site were confirmed on LOJIC to be in-excess of 20% slope. This requires that a geotechnical survey report is completed prior to any land disturbing activity, see LDC 4.7.4.A.2. Due to the impact that construction on these steep slopes may have on the protected waterway staff would recommend that the submission of a geotechnical report in accordance with LDC 4.7.4.A.2 be placed as a Condition of Approval on this variance request. Adding this condition would be at the Board's discretion in accordance with LDC 4.8.4.B.d, also found in the Standard of Review and Staff Analysis (last item of page 3 of the Staff Report). The applicant has been notified of this requirement and stated that the owner will coordinate the report.

STAFF CONCLUSIONS

The variance request appears to be adequately justified and meets the standard of review. Staff would recommend to the Board that specific attention is given to the environmental analysis found in the Standard of Review and Staff Analysis of items (a) & (c), as well as *Additional Considerations* item (1) and *Additional Consideration for Protected Waterway Buffer* items (d) & (e). Based upon the information in the staff report, the testimony and evidence provided at the public hearing, the Board of Zoning Adjustment must determine if the proposal meets the standard for granting a variance established in the Land Development Code.

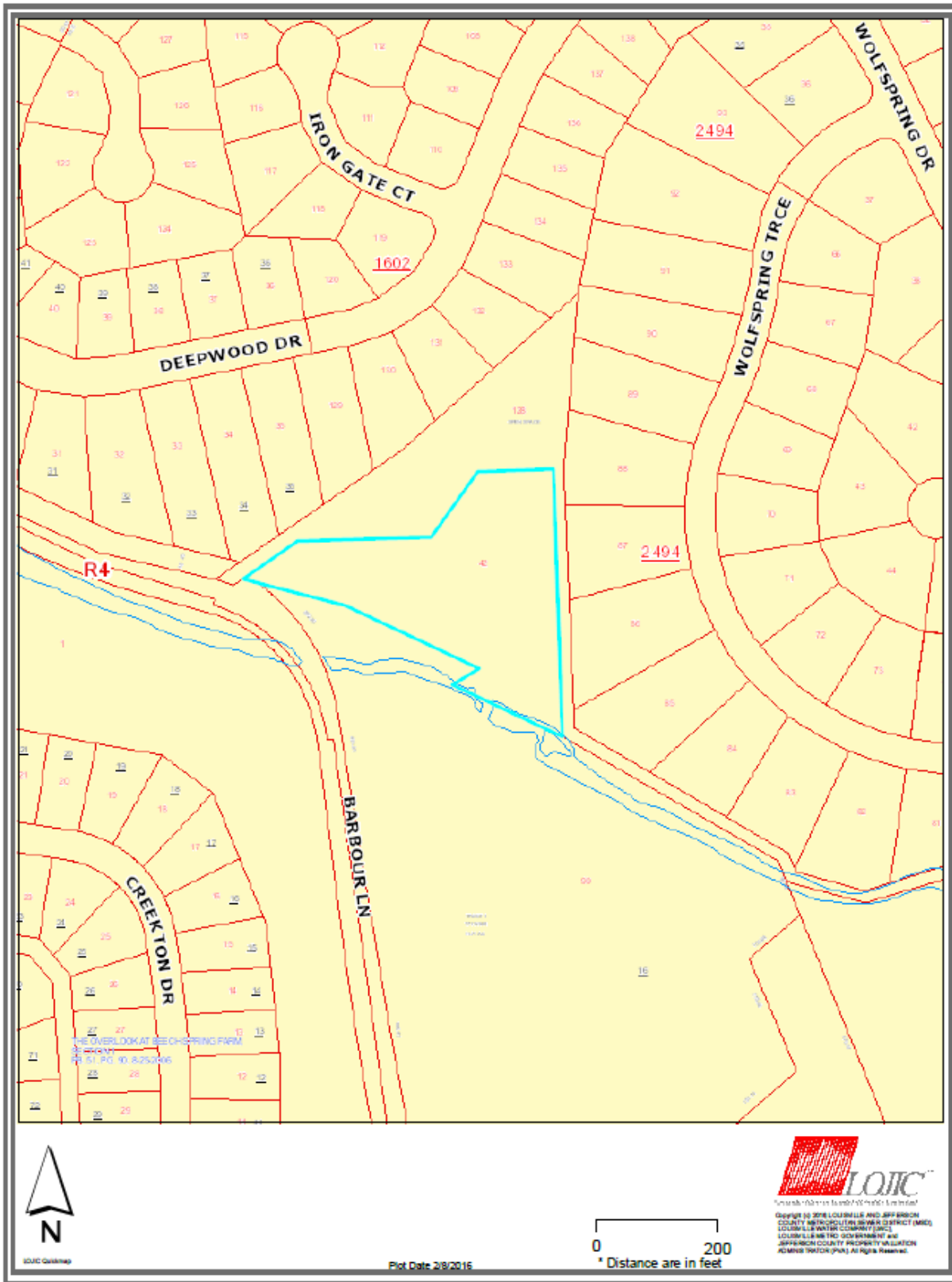
NOTIFICATION

Date	Purpose of Notice	Recipients
1/29/16	BOZA	Adjoining property owners, applicant, representative, case manager, and neighborhood groups

ATTACHMENTS

1. Zoning Map
2. Aerial Photograph
3. Protected Waterway Buffer and Streams

1. **Zoning Map**



3. Protect Waterway Buffer and Streams

