

Board of Zoning Adjustment Staff Report

February 19, 2018



Case No:	17DEVPLAN1229
Project Name:	Blue Iguana Carwash
Location:	6014 and 6018 Bardstown Road
Owner(s):	William M. Friel – ABG Properties LLC.
Applicant:	Mike Matthews – Blue Iguana Carwash
Representative(s):	Sarah Beth Sammons – Land Design & Development Inc.
Project Area/Size:	1.24 acres (total for both parcels)
Parcel ID:	0638-0035-0000 (1.2 acres) and 0638-0055-0000 (.04 acres)
Zoning:	C-1
Form:	Town Center
Jurisdiction:	Louisville Metro
Council District:	22 – Robin Engel
Case Manager:	Ross Allen – Planner I

REQUEST(S)

- **Approval of a VARIANCE:** from LDC 5.2.4.C.3.a to allow the proposed structure to exceed the 15 ft. maximum front setback along the Bardstown Road property line by approximately 96 feet for a total of 111 feet from the property line (shown as the proposed dedication of right of way line on the development plan).

Location	Requirement	Request	Variance
Maximum Front Setback	15 ft.	111 ft. (from proposed line of dedicated right of way)	96 ft.

- **Approval of a WAIVER:** from LDC Section 5.5.1.A.3.a. to allow the parking lot location to be located in the front of the proposed structure as found between the primary structure and Bardstown Road frontage.

CASE SUMMARY/BACKGROUND

The subject site is two parcels located along the western side of Bardstown Road south of Fern Creek Baptist Church and north of Crown Trophy as located within southeastern Jefferson County. The subject site has a transition zone along the western property line with an R-4 zoned parcel within a Neighborhood Form District. The proposal site is located on two C-1 zoned parcels within a Town Center Form District (Traditional). The applicant is intending to demolish an approximately 2,592 sf. (parcel ID: 0638-0055-0000) 1 story office building and an approximately 5,077 sf. existing car wash structure on the adjoining northern parcel (parcel ID: 0638-0035-0000). The applicant is proposing to consolidate the two parcels, dedicate right of way along the entire frontage of Bardstown Road, and construct a 5,600 sf. automated Car Wash with a vehicular use area of 24,074 sf. The proposal will have two vehicular access points from a “dedicated general roadway” (deed book 2904, page 10) north of the site and one vehicular access point from Bardstown Road. The proposal shows three queuing lanes accessed from the “dedicated general roadway” (deed book 2904, page 10), north of the site along the western property line, having a depth of six car spaces leading to a canopy prior to entering the automated carwash. Vehicles after exiting the canopy will drive around a narrowed entrance (three lanes to

one lane width) in a U-turn to enter the automated car wash. The proposal also includes 23 vehicular parking spaces which may also be used as vacuum stalls for customers, including one space for ADA parking accessibility. The proposal list 6,747 sf. of existing trees to preserved (approximately 13% of the site) many of the existing trees are found along the Bardstown Road frontage and will require the applicant to plant 5%, as required by Table 10.1.1 in LDC 10.1.4. Eighteen percent of the subject site will have tree canopy with 2,880 sf of new type A trees to be planted. The applicant will provide a 25 foot LBA along the western property line for new tree plantings, and will have a five foot VUA LBA along the northern, southern, and eastern property line for plantings. The applicant with the exception of the request for a variance and waiver has met all other review items of the Land Development Code.

Related Cases:

- Case No. B-226-03W – Approved on Jan. 20, 2004 by the Louisville Metro BOZA. Applicant had requested a variance to exceed the required maximum setback of 15 feet by the farthest point being 87.9 feet from the property line. Conditions were placed on the approval and are as follows:
 1. A reciprocal access and crossover easement agreement in a form acceptable to legal counsel shall be created between the adjoining property owners and recorded. A copy of the recorded instrument shall be submitted to the Division of Planning and Design Services; transmittal of approved plans to the office responsible for permit issuance will occur only after receipt of said instrument.
 2. The rear Landscape Buffer Area shall be labeled on the plan.
 3. A 15 foot Landscape buffer Area shall be labeled in the front along Bardstown road.
 Concerning condition #1, please see attachments on pages 9 of the staff report.

STAFF FINDING / RECOMMENDATION

- Staff recommends approval of the **VARIANCE:** from LDC 5.2.4.C.3.a to allow the proposed structure to exceed the 15 ft. maximum front setback along the Bardstown Road property line by approximately 96 feet for a total of 111 feet from the property line (shown as the proposed dedication of right of way line on the development plan).
- Staff recommends approval of the **WAIVER:** from LDC Section 5.5.1.A.3.a. to allow the parking lot location to be located in the front of the proposed structure as found between the primary structure and Bardstown Road frontage.

LAND USE/ZONING DISTRICT/FORM DISTRICT TABLE

	Land Use	Zoning	Form District
<i>Subject Property</i>			
Existing	Commercial	C-1	Town Center
Proposed	Commercial	C-1	Town Center
<i>Surrounding Properties</i>			
North	Public and Semi-Public - access to Fern Creek H.S. parking/ Commercial	R-4/C-1	Neighborhood/Town Center
South	Commercial	C-1	Town Center
East	Single Family Residential/Vacant /Commercial	R-5/C-1	Neighborhood/Town Center
West	Public and Semi-Public - Fern Creek H.S. parking	R-4	Neighborhood

STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCE: from LDC 5.2.4.C.3.a to allow the proposed structure to exceed the 15 ft. maximum front setback along the Bardstown Road property line by approximately 96 feet for a total of 111 feet from the property line (shown as the proposed dedication of right of way line on the development plan).

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

STAFF: The requested variance will not adversely affect public health safety or welfare since the proposed variance will allow the building to be set back 111 feet at its farthest point (from the proposed right of way dedication along Bardstown Road frontage). The proposed setback of the building is similar to the setback of the existing building on the property, and will allow for an improved vehicle use area (VUA) at the front of the property. The improved vehicle use area will include a renovated curb cut along Bardstown Road that will improve public access to the property.

- (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 as the proposed car wash matches the current use of the property, and is consistent with the property's approved C-1 commercial zoning. The car wash is also appropriate for the property's location along a major arterial road with numerous other commercial and automobile-oriented uses in the vicinity.

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

STAFF: The variance will not cause a hazard or nuisance to the public. The variance will permit the proposed building to be located a safe distance from Bardstown Rd. and will permit vehicles and pedestrians safe access to the proposed building and car wash. Applicant's proposal includes an improved VUA at the front of the property, and new pedestrian sidewalks connecting to Bardstown Road. The renovated curb cut along Bardstown Road will also improve public access and traffic flow into and out of the property.

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

STAFF: The variance will not allow an unreasonable circumvention of the requirements of the zoning regulations. The variance will allow the applicant to preserve and improve a neighborhood serving commercial use at an appropriate location. The proposed 111 foot setback of the building is similar to the 87.9 foot setback of the existing building (previous case no. B-226-03W) on the property and is consistent with the property's use as a car wash.

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 arises from special circumstances that do not generally apply to land in the vicinity of the project. The variance is the result of the proposed right of way dedication and need to accommodate buffer areas at the front of the property facing Bardstown Road.

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 regulations would create an unnecessary hardship because it would force the applicant to locate the building closer to Bardstown Road, creating a maneuvering issue along that side of the site. A reduction in the size of the VUA will cause congestion and reduce accessibility from Bardstown Road. The proposed variance will ameliorate these issues.

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 taken by the applicant subsequent to the adoption of the zoning ordinance but are, instead, the result of the applicant's proposal to improve the VUA and parking lot at the front of the property. The variance will permit the applicant to set the proposed building back far enough to permit a larger VUA and parking area, and also to accommodate and renovate curb cut and access point along Bardstown Road.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER: from LDC Section 5.5.1.A.3.a. to allow the parking lot location to be located in the front of the proposed structure as found between the primary structure and Bardstown Road frontage.

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

STAFF: The proposed waivers will not adversely affect adjacent property owners because the proposed setback of the car wash and front location of the parking lot match the current configuration of the property. The 6104 Bardstown Road property is currently used as a car wash, and the proposed waivers will permit the applicant to continue that use and make a substantial investment to update and expand the car wash.

- (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. The waivers are compatible with the pattern of development within the form district, and there does not appear to be physical restraints preventing compliance with the regulations to be waived. The two properties that will be redeveloped, 6014 and 6018 Bardstown Rd., are both zoned C-1 commercial and are located along a major arterial road, meaning they are appropriate for use as a car wash. Therefore, the requested waivers will not 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 the proposed waivers of the regulations is the minimum necessary to afford relief to the applicant. The waivers will allow the applicant to maintain the current configuration of the property, including the current setback of the car wash and front location of the parking lot. This configuration is necessary for the car wash because it allows vehicles to ingress and egress from the property and parking lot without interfering with vehicles accessing the car wash.

- (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 regulations would deprive the applicant of the reasonable use of the land and would create an unnecessary hardship on the applicant. Strict application of the setback and parking location regulations would require the applicant to locate the car wash within 15' of Bardstown Road, which is not compatible with the space needed for vehicles to access the car wash. Strict application of the regulations would also require the applicant to reconfigure proposed parking spaces and a proposed vehicle access point to Bardstown Road. The proposed waivers ameliorate these issues.

TECHNICAL REVIEW

Both MSD and Transportation Planning have stamped the development plan for preliminary approval. The County Attorney's Office issued an e-mail as related the deed and access issue listed as condition of approval #1 in the Louisville Metro BOZA minutes for Jan. 20, 2004 for Case No. B-226-03W. Please see attachment on page XX of the staff report.

INTERESTED PARTY COMMENTS

No formal comments have been received by interested parties.

APPLICABLE PLANS AND POLICIES

Land Development Code (LDC August 2017a)
Comprehensive Plan (Cornerstone 2020)

REQUIRED ACTIONS

- **Approve/Deny VARIANCE:** from LDC 5.2.4.C.3.a to allow the proposed structure to exceed the 15 ft. maximum front setback along the Bardstown Road property line by approximately 96 feet for a total of 111 feet from the property line (shown as the proposed dedication of right of way line on the development plan).
- **Approve/Deny WAIVER:** from LDC Section 5.5.1.A.3.a. to allow the parking lot location to be located in the front of the proposed structure as found between the primary structure and Bardstown Road frontage.

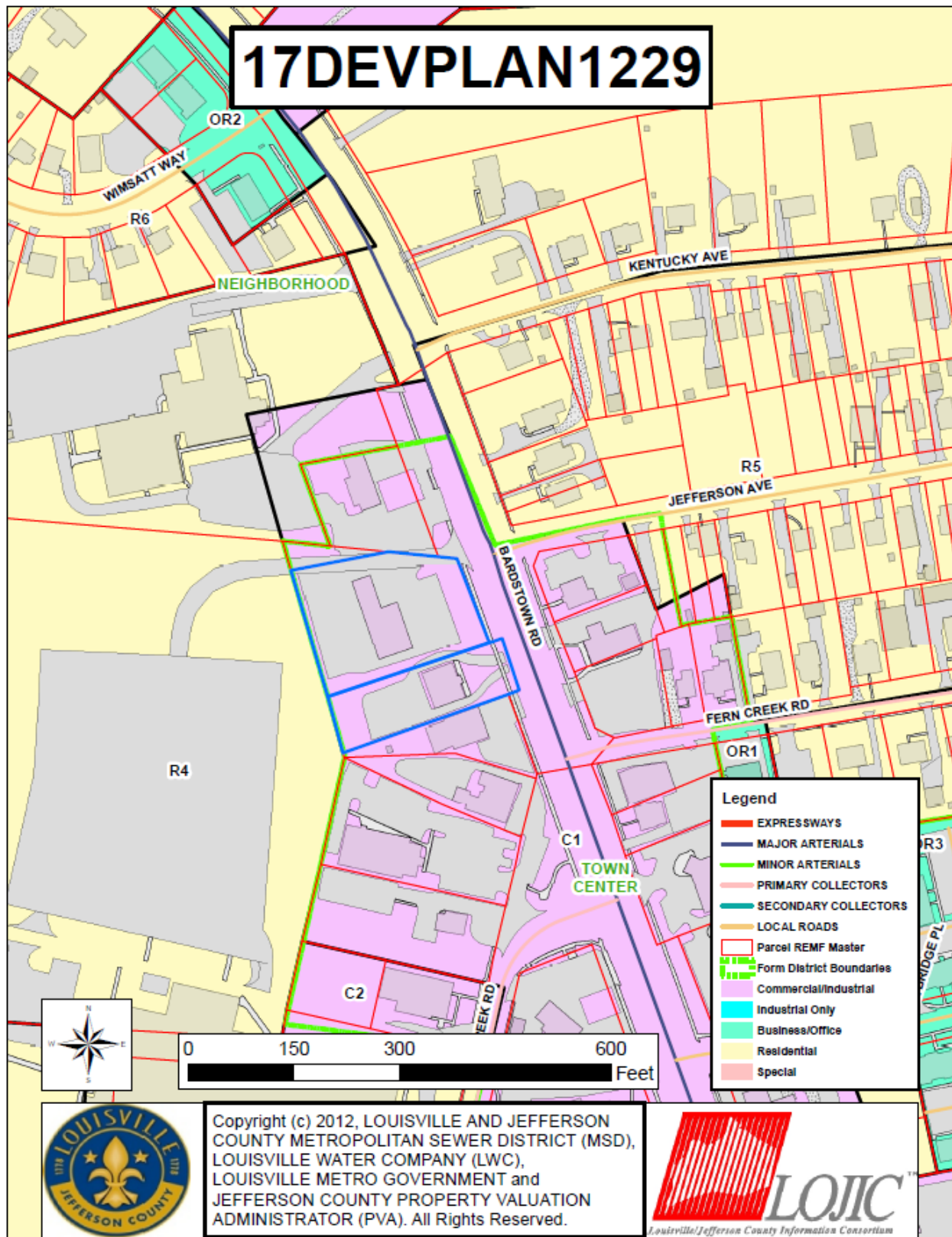
NOTIFICATION

Date	Purpose of Notice	Recipients
February 19, 2018	Hearing before BOZA	1 st tier adjoining property owners Subscribers of Council District 22 Notification of Development Proposals
February 2, 2018	Sign Posting	Subject Site as located 6014 and 6018 Bardstown Rd.

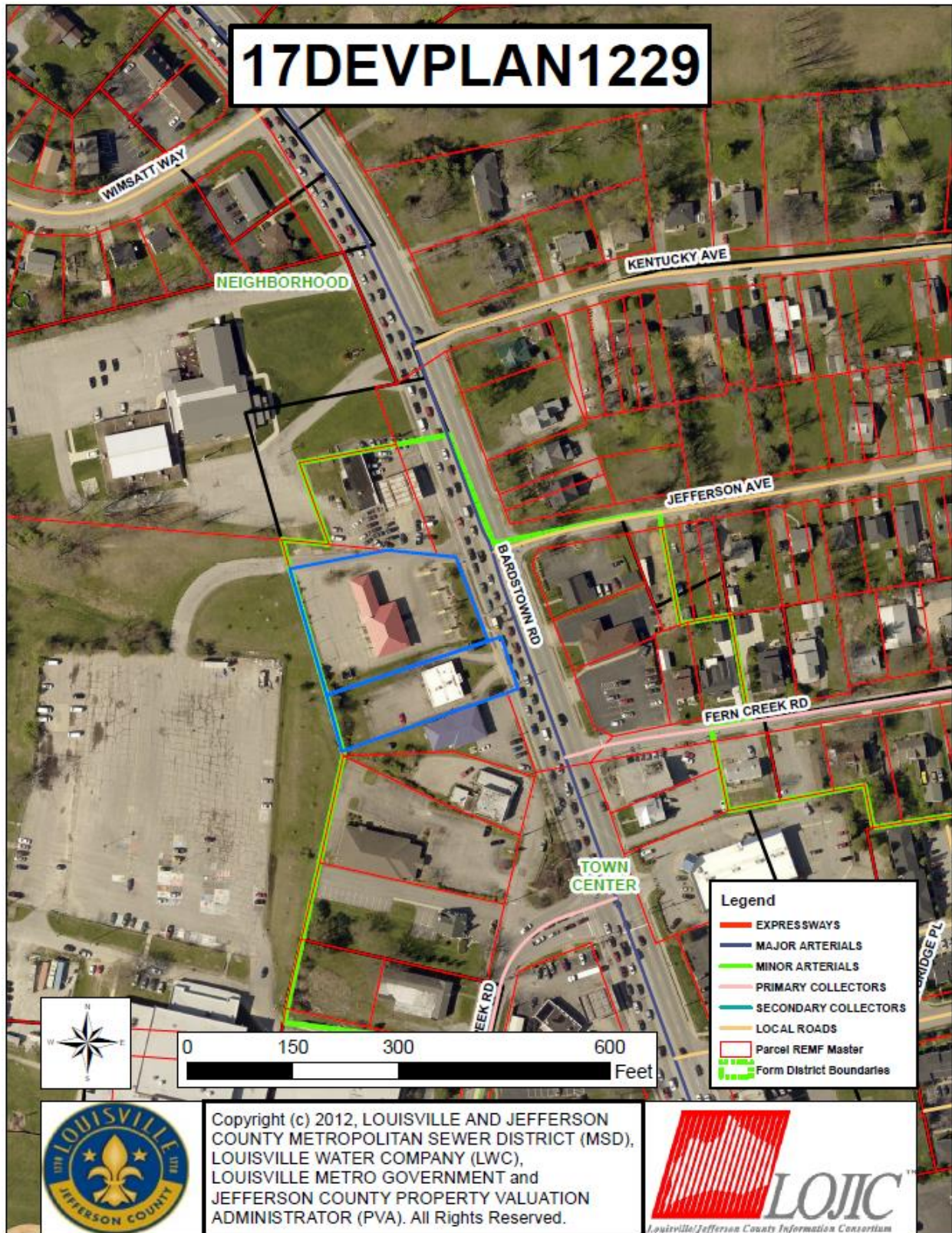
ATTACHMENTS

1. Zoning Map
2. Aerial Photograph
3. Meeting Minutes of the Louisville Metro BOZA – Jan 20, 2004
4. Attorney's Letters concerning the access/crossover easement from Bardstown Rd. to the parking for Fern Creek H.S. (deed book 2904 page 10)
5. Letter from the County Attorney's Office for existing access/crossover agreement (deed book 2904 page 10)

1. Zoning Map



2. Aerial Photograph



3. **Meeting Minutes of the Louisville Metro BOZA – Jan 20, 2004**

**MINUTES OF THE MEETING
OF THE
LOUISVILLE METRO BOARD OF ZONING ADJUSTMENT
JANUARY 20, 2004**

DOCKET NO. B-226-03W

The conditions are as follows:

1. A reciprocal access and crossover easement agreement in a form acceptable to legal counsel shall be created between the adjoining property owners and recorded. A copy of the recorded instrument shall be submitted to the Division of Planning and Design Services; transmittal of approved plans to the office responsible for permit issuance will occur only after receipt of said instrument.
2. The rear Landscape Buffer Area shall be labeled on the plan.
3. A 15-foot Landscape Buffer Area shall be labeled in the front along Bardstown Road.

The variance allows the proposed building at its farthest point to be located 87.9 feet from the front property line.

The vote was as follows:

YES: Members Howard, Rhodes, Crowder, Saunders and Anderson.

NO: No one.

NOT PRESENT FOR THIS CASE AND NOT VOTING: Member Francis.

ABSTAINING: No one.

WAIVER

In conclusion, upon further discussion of the case by the members of the Board in open business session, on a motion by Member Howard, seconded by Member Rhodes.

WHEREAS, the Board finds that the waiver will not adversely affect the adjacent property owners; that the surrounding area has a mix of office and commercial uses and an off-street parking lot for Fern Creek High School; and

WHEREAS, the Board finds that the proposal will conform to the applicable guidelines and policies of the Comprehensive Plan, since the waiver will allow

4. Attorney's Letters concerning the access/crossover easement from Bardstown Rd. to the parking for Fern Creek H.S. (deed book 2904 page 10)



Theresa Z. Senninger
Direct (502) 587-3761 Fax (502) 540-2293 E-mail tzs2@gdm.com

RECEIVED

October 14, 2004

OCT 14 2004

PLANNING &
DESIGN SERVICES

Steve Hendrix
Louisville Metro Planning & Design Services
900 Fiscal Court Building
531 Court Place

Louisville, Kentucky 40202

RE: Docket No. B-226-03W

Dear Steve:

This letter is to confirm our conversation of Tuesday, October 12, 2004, regarding one of the conditions of approval for a car wash to be located at 6014 Bardstown Road, approved under Louisville Metro Board of Zoning Adjustment Docket No. B-226-03W. As we discussed, on January 20, 2004, the Board granted a variance and waiver for the property on condition that the applicant demonstrate proof of access to the property via Jefferson Avenue.

You advised that, in order to satisfy this condition of approval, I submit such proof to Paula Wahl, of the Louisville Metro Department of Public Works. I have given Ms. Wahl a copy of the attached letter, dated October 11, 2004, from Alan O. Bryant, Senior Vice President and Area Manager of Commonwealth Land Title Insurance Company, as well as a copy of the plan and approved minutes from the January 20, 2004 hearing.

Mr. Bryant's letter states that the property at 6014 Bardstown Road has a right to use Jefferson Avenue through an easement recorded in a deed to the Board of Education of Jefferson County, Kentucky, dated July 18, 1958, and recorded at Deed Book 2904, Page 10, in the Office of the Clerk of Jefferson County. Additionally, because the property has used Jefferson Avenue over a period of 40 years as its sole means of access, a prescriptive easement for such access exists. Ms. Wahl is satisfied that this letter satisfies the condition imposed by the Board.

Please let me know if you have any questions regarding the proof of access or this letter.

Greenebaum Dell & McDonald PLLC
Main Fax www.greenebaum.com

B-226-03W



Commonwealth Land Title Insurance Company
500 W. Jefferson Street
Suite 2200, PNC Plaza (40202)
P O Box 129 (40201-0129)
Louisville, KY
phone: 502 584-0211 fax: 502 584-6518
toll free: 800 727-2584

October 11, 2004

W. Plumer Wiseman, Jr., Esq. and
Teri Barnett
Greenebaum, Doll & McDonnell
3500 National City Tower
Louisville, KY 40202

RECEIVED

OCT 14 2004

Re: 6014 Bardstown Road
Louisville, Jefferson County, Kentucky

PLANNING &
DESIGN SERVICES

Dear Buck and Teri,

It is our understanding that Mr. and Mrs. David Richard and Mr. and Mrs. Paul Clifford, or an entity to be formed, will be purchasing the captioned property and that the purchase will be financed by River Valley Financial Bank in Madison, IN.

We further understand that as agent for Commonwealth you will be issuing an owner's policy to the purchasers and a loan policy to the Bank.

A question has been raised about the use of a roadway leading from Fern Creek High School to Bardstown Road, which lies along the north side of the captioned property

After looking at the title, we believe that title to the roadway is owned by the Jefferson County Board of Education, but is subject to an easement in favor of the properties located on the north and south sides of the road. These easements rights are set out in a deed to the Board of Education of Jefferson County, Kentucky dated July 18, 1958, recorded in Deed Book 2904, Page 10, in the Office of the Clerk of Jefferson County, Kentucky. That deed dedicates a portion of the roadway for public use.

In addition, it appears that these properties have used this road as their sole means of ingress and egress to Bardstown Road for over 40 years and have thus acquired a prescriptive easement.

13-226-03-W

5. Letter from the County Attorney's Office for existing access/crossover agreement (deed book 2904 page 10)

Allen, Ross

From: Whitty, Paul B
Sent: Friday, February 2, 2018 9:01 AM
To: Allen, Ross
Subject: FW: Access issue--Case No. 17DEVPLAN1229

Ross
Please see below and call me with any questions. Thanks.



Paul B. Whitty
Assistant Jefferson County Attorney
Office of Mike O'Connell - Jefferson County Attorney
531 Court Place, Suite 900
Fiscal Court Building
Louisville, KY 40202
P: (502) 574-0129
F: (502) 574-4215

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From: Whitty, Paul B
Sent: Friday, February 2, 2018 8:42 AM
To: 'Ashburner, Clifford'
Subject: RE: Access issue--Case No. 17DEVPLAN1229

Cliff
You at least have a colorable claim to the access and it is not the role of staff or the PC resolve your rights. I think you can proceed at your own risk.



Paul B. Whitty
Assistant Jefferson County Attorney
Office of Mike O'Connell - Jefferson County Attorney
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From: Ashburner, Clifford [<mailto:Clifford.Ashburner@DINSMORE.COM>]
Sent: Thursday, February 1, 2018 5:09 PM
To: Whitty, Paul B
Cc: Allen, Ross
Subject: Access issue--Case No. 17DEVPLAN1229

Paul:

I'm writing as a follow up to communications I have had with Ross Allen (copied) about access to 6104 Bardstown Road. The property is served by a 40' roadway that was constructed several decades ago and serves as access to the subject property, Fern Creek High School and the property to the north. I understand that a comment in the review of a proposed redevelopment of the subject property is that an access easement needs to be worked out with JCPS regarding the 40' roadway. For the reasons below, we do not believe an access easement is necessary.

Attached are several documents, including the deed to the subject property (DB 8546, Pg 747, the "Current Deed"), a deed referencing a road at the north end of the property described (DB 1502, Pg 513, the "Hoke Deed"), the deed to JCPS for the Fern Creek school property (DB 2636, Pg 235, the "School Deed") and deeds adding property to the 40' roadway described in the preceding deeds (DB 2904, Pg 10 and DB 2904, Pg 37, the "Add-on Deeds"). All of these instruments indicate the presence of a 40 roadway, either as a boundary or as a road to which they are adding property. In fact, the two Add-on Deeds specifically refer to the 40 roadway as a "public road." Both of the Add-on Deeds further state that the "First Parties hereby grant unto the second party and dedicate unto the general public for roadway purposes the following described property:"

According to these deeds, the 40 roadway at issue was a road some time before it was acquired by JCPS. In 1952, at the time the triangular parcels were dedicated and conveyed to JCPS in the Add-on Deeds, the road's status as a public road was known and was also affirmed by JCPS through its acceptance of the Add-on Deeds.

In addition to the above instruments, the roadway has been open and used by the public since at least 1950. Also attached to this email are several photos showing that, for the last 15+ years, the roadway has provided access to the school property, the property to the north of the roadway and the subject property.

Please let me know if you have questions about any of the above. Otherwise, please let me know whether you agree with our analysis.

Best,

Cliff

Dinsmore
Clifford H. Ashburner
Partner