

Board of Zoning Adjustment

Staff Report

March 16th, 2015



Case No:	15DEVPLAN1009
Request:	Variance to exceed the maximum front yard setback; Land Development Code waivers; Category 3 Plan
Project Name:	City BBQ
Location:	329 Whittington Parkway
Owner:	Hoosier Que, LLC
Applicant:	Donald Feibel
Representative:	Kelli Jones
Jurisdiction:	Hurstbourne
Council District:	18 – Marilyn Parker
Case Manager:	Christopher Brown, Planner II

REQUEST

- Variance #1: Variance from Chapter 5.2.4.C.3.a of the 2006 Land Development Code to allow the proposed building to exceed the maximum 15' front yard setback
- Waiver #1: Waiver from Chapter 5.5.1.A.1.A of the 2006 Land Development Code to allow the principal building entrance to be located on the side of the building
- Waiver #2: Waiver from Chapter 10.2.4.B/10.3.5 of the 2006 Land Development Code to allow an existing easement to overlap a portion of the parkway buffer by more than 50%
- Waiver #3: Waiver from Chapter 10.2.11.B to allow more than 120' between interior landscape areas
- Category 3 Plan

Variations

Location	Requirement	Request	Variance
Front Yard Setback	15' MAX	58'	43'

CASE SUMMARY/BACKGROUND/SITE CONTEXT

Existing Zoning District: C-1
Existing Form District: Town Center
Existing Use: Vacant Bank
Proposed Use: Restaurant
Minimum Parking Spaces Required: 40
Maximum Parking Spaces Allowed: 100
Parking Spaces Proposed: 40
Plan Certain Docket #: None

The applicant is requesting to remove the existing bank structure on the site and construct a proposed 3,600 SF restaurant with a 1,400 SF outdoor patio. The outdoor dining and parkway buffer on the site lead to the building maintaining a 58' front yard setback at its furthest point. The front yard setback exceeds the 15' maximum front yard setback requirement by 43'. The building location will follow a similar pattern of the existing structure to be removed that was completed when the property followed a suburban pattern of construction with the setback and location of the entrance facing the interior parking lot. The proposed use will utilize the existing vehicular use area on the site associated with the existing structure. The applicant will be providing a total of 40 parking spaces on the site to meet the minimum requirement. The parking row on the

south side of the lot will exceed the 120' maximum distance rule for interior landscape areas in order to provide the minimum required parking. The parkway buffer will have a portion of a utility easement encroaching by more than 50% to accommodate the buffer and required circulation with parking on the site.

LAND USE/ZONING DISTRICT/FORM DISTRICT TABLE

	Land Use	Zoning	Form District
Subject Property			
Existing	Vacant Bank	C-1	TC
Proposed	Restaurant	C-1	TC
Surrounding Properties			
North	Triple AAA Offices	C-2	TC
South	Bank	C-1	TC
East	Retail	C-1	SMC
West	Shopping Center	C-2	TC

PREVIOUS CASES ON SITE

B-14330-10: Variance approved by Board of Zoning Adjustment to allow signage to exceed the parkway signage height and square footage limitations.

INTERESTED PARTY COMMENTS

No interested party comments have been received by staff.

APPLICABLE PLANS AND POLICIES

2006 Land Development Code
Cornerstone 2020

**STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCES
(Front Yard 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 the additional setback allows proper maneuvering on the site utilizing existing access and allows for the creation of the required 30' parkway buffer along Hurstbourne Parkway.

(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 it will allow the addition of the parkway buffer and berm following the pattern along South Hurstbourne Parkway with a circulation pattern similar to other uses along the corridor.

(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 the additional setback allows proper maneuvering on the site utilizing existing access and allows for the creation of the required 30' parkway buffer along Hurstbourne Parkway.

(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 since it will allow landscaping requirements to be met while maintaining the existing access and needed parking.

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 which do not generally apply to land in the general vicinity or the same zone since the general vicinity was located in a more suburban style form and the site was previously developed under those conditions.

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 on the applicant by requiring them to maintain a 15' maximum and also provide a 30' parkway buffer and berm that cannot both be met along the street frontage.

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 since the property existed in its current state prior to ownership with the extended setback.

**STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER
(Principal Entrance)**

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

STAFF: The waiver will not adversely affect adjacent property owners since it will follow a similar pattern of construction of other structures within the area and access will be provided from the street frontage to the entrance.

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

STAFF: Guideline 2, policy 12 calls to encourage large developments in activity centers to be compact, multi-purpose centers designed around a central feature such as a public square or plaza or landscaped element. Guideline 3, policy 1 new development and redevelopment with the scale and site design of nearby existing development and with the pattern of development within the form district. Since the entrance location will be similar as the existing built pattern in the vicinity, the waiver will not violate specific guidelines 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 the minimum necessary to afford relief to the applicant since it allows the proper circulation on the site for vehicular and pedestrian access.

- (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 by requiring the principal entrance along Hurstbourne Parkway setback further from the street to accommodate the required parkway buffer.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER (Utility Easement/ 120' ILA)

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

STAFF: The waiver will not adversely affect adjacent property owners since all required plantings and screening will be provided on the site.

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

STAFF: Guideline 3, policy 9 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. 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. Since the easement overlap and exceed the 120' ILA distance rule will be mitigated by providing the required buffering with screening and plantings throughout the property, the waiver will not violate specific guidelines of Cornerstone 2020.

- (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 it will allow the required parking to be met on the site while providing the required plantings.

- (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 by eliminating parking spaces that would place the property below the minimum number of required parking spaces.

TECHNICAL REVIEW

No outstanding technical review issues need to be addressed.

STAFF CONCLUSIONS

The standards of review have been met for the requested variance and waivers on the site. The variance results from conflicting requirements for maximum setback and parkway buffering along Hurstbourne Parkway. The waivers will allow the proper circulation and parking on the site. The site is providing the minimum parking and utilizing the existing access points from the rear access road. 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 standards for granting an LDC Waiver, Landscape Waivers and Variance as established in the 2006 Land Development Code.

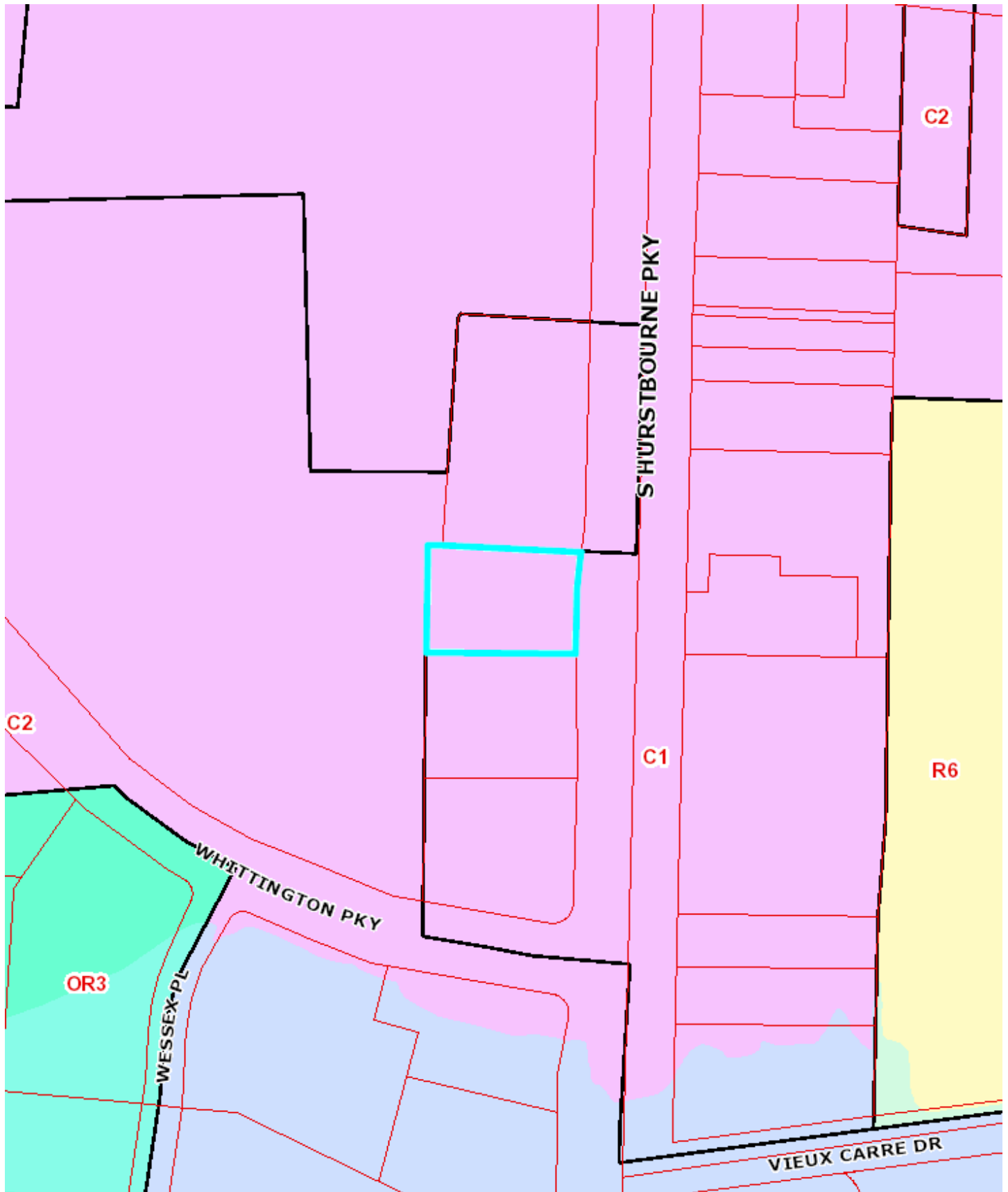
NOTIFICATION

Date	Purpose of Notice	Recipients
2/26/14	Hearing before PC / BOZA	1 st and 2 nd tier adjoining property owners Speakers at Planning Commission public hearing Subscribers of Council District 18 Notification of Development Proposals
2/27/14	Hearing before PC / BOZA	Sign Posting on property

ATTACHMENTS

1. Zoning Map
2. Aerial Photograph

1. Zoning Map



2. Aerial Photograph

