

Board of Zoning Adjustment

Staff Report

October 15, 2018



Case No:	18DEVPLAN1001
Project Name:	Dixie Highway Variances and Waivers
Location:	3611 Dixie Highway
Owner/Applicant:	Amrinderjit Singh
Representative:	Chris Brown, BTM Engineering Inc.
Jurisdiction:	City of Shively
Council District:	3 – Mary C. Woolridge
Case Manager:	Zach Schwager, Planner I

REQUESTS

- **Variances:**

1. **Variance** from City of Shively Land Development Code section 5.2.3.D.3.d to allow a reduction in the required 15 ft. rear yard setback to five ft.
2. **Variance** from City of Shively Land Development Code section 5.2.3.D.3.b to allow dumpster and pavement to encroach into the required five ft. side yard setback.
3. **Variance** from City of Shively Land Development Code section 5.5.1.A.2 to allow the proposed building to exceed the required zero ft. corner setback.

- **Waivers:**

1. **Waiver** from City of Shively Land Development Code section 5.5.1.A.5 to allow a gas canopy and drive aisles to be located between the street and primary structure.
2. **Waiver** from City of Shively Land Development Code section 5.5.1.A.3.a to allow parking to be in front of the proposed building along Dixie Highway and Luken Drive.
3. **Waiver** from City of Shively Land Development Code section 10.2.4 to reduce the required rear landscape buffer area from 15 ft. to five ft. and eliminate the required plantings in the existing 15 ft. sanitary sewer and drainage easement along the rear of the proposed building.
4. **Waiver** from City of Shively Land Development Code section 10.2.4.B to allow overlap of required landscape buffer area and utility easements by more than 50%.
5. **Waiver** from City of Shively Land Development Code section 10.2.9 to omit the required five ft. vehicular use area landscape buffer area along the south property line adjacent to residential use and along the north property line between the vehicular use area and a roadway (Luken Drive).

CASE SUMMARY/BACKGROUND

The subject property is in the City of Shively. There is an existing vacant one-story structure and gas canopy that are proposed to be demolished to build a new convenience store/gas station and gas canopy. The parking will be located on the north side of the proposed building on Luken Drive and as pump spaces under the proposed gas canopy in between the building and Dixie Highway. The applicant therefore requests five waivers from the City of Shively Land Development Code (LDC). The first waiver is to allow the gas canopy and drive aisles to be located between the principal structure and Dixie Highway. The second waiver is to allow parking to be in front of the proposed building along Dixie Highway and Luken Drive. The third waiver is to reduce the required rear landscape buffer area (LBA) from 15 ft. to five ft. and eliminate the required plantings in the existing 15 ft. sanitary sewer and drainage easement along the rear of the proposed building. The fourth waiver is to allow overlap of required LBA and utility easements by more than 50%. The fifth waiver is to omit the required five ft. vehicular use area (VUA) LBA along the south property line adjacent to residential use and along the

north property line between the VUA and a roadway (Luken Drive). The applicant also requests three variances from the City of Shively LDC. The first variance is to allow a reduction in the required 15 ft. rear yard setback to five ft. The second variance is to allow dumpster and pavement to encroach into the required five ft. side yard setback. The third variance is to allow the proposed building to exceed the required zero ft. corner setback.

STAFF FINDING

The applicant requests three variances and five waivers, and staff finds that the variances and waivers 1, 2, and 4 are adequately justified and meet the standard of review. Staff is requesting an eight ft. privacy fence along the south and east property lines in order to screen the proposed gas station/convenience store from the adjacent residential uses. This fence shall meet the requirements of chapter 10 and section 4.4.3 of the City of Shively LDC.

TECHNICAL REVIEW

The plan has received preliminary approval from all applicable agencies.

INTERESTED PARTY COMMENTS

No interested party comments have been received by staff.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCE FROM SECTION 5.2.3.D.3.d (1)

- (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 structure will be constructed to comply with all building codes, including fire codes.

- (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 there are other corner commercial lots in the vicinity that are designed in the same manner.

- (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 as the proposed use is the same as the previous use and is permitted within the existing zoning district.

- (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 location of the principal structure will provide buffering from the proposed gas canopy and drive aisles to the abutting residential property to the east.

ADDITIONAL CONSIDERATIONS:

1. The requested variance does not arise from special circumstances which do not generally apply to land in the general vicinity or the same zone.

STAFF: The requested variance does arise from special circumstances which do not generally apply to land in the general vicinity or the same zone as even though the property is entirely paved the parking spaces on Luken Drive need to be pushed back in order for the drive aisles to be wide enough and in order to meet minimum parking requirements.

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 create an unnecessary hardship on the applicant by requiring them to apply for a parking waiver.

3. 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.

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 as the applicant is requesting the variance and has not begun construction.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCE FROM SECTION 5.2.3.D.3.b (2)

- (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 dumpster will be screened in accordance with chapter 10 and section 5.5.1.A.4.a of the City of Shively LDC.

- (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 there are many dumpsters on this corridor and this one will be screened in accordance with chapter 10 and section 5.5.1.A.4.a of the City of Shively LDC.

- (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 as the proposed location of the dumpster and concrete pad will be screened in accordance with chapter 10 and section 5.5.1.A.4.a of the City of Shively LDC.

- (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 location of the dumpster is unobtrusive.

ADDITIONAL CONSIDERATIONS:

1. The requested variance does not arise 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 which do generally apply to land in the general vicinity as the property is entirely paved and the dumpster could be located elsewhere on the property. However, due to the location of the parking spaces and easement this is the best alternative location.

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 create an unnecessary hardship on the applicant as this is the only alternative location for the dumpster.

3. 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.

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 as the applicant is requesting the variance and has not begun construction.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCE FROM SECTION 5.5.1.A.2 (3)

- (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 structure will be constructed to comply with all building codes, including fire codes.

- (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 there are other corner commercial properties in the area where the building is setback from the corner. The City of Shively LDC and the Dixie Highway Corridor Master Plan require the building to be near or at the street(s). However, if the building was placed at the street the gas canopy would need to be placed closer to the residential property to the east. The proposed location of the building will act as a buffer for the canopy.

- (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 as the proposed location of the building is in the southeast corner of the property.

- (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 location of the building will act as a buffer for the gas canopy and drive aisles for the adjacent residential property.

ADDITIONAL CONSIDERATIONS:

1. The requested variance does not arise 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 which do generally apply to land in the general vicinity or the same zone as the property is completely paved like other properties in the area and the building could be put closer to the street. However, if the building was placed at the street the gas canopy would need to be placed closer to the residential property to the east. The proposed location of the building will act as a buffer for the canopy and drive aisles.

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 create an unnecessary hardship on the applicant by preventing the applicant from constructing a new garage.

3. 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.

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 as the applicant is requesting the variance and has not begun construction.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER OF SECTION 5.5.1.A.5 (1)

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

STAFF: The waiver will not adversely affect adjacent property owners because if the building was placed at the street the gas canopy would need to be placed closer to the residential property to the east. The proposed location of the building will act as a buffer for the canopy and drive aisles.

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

STAFF: Guideline 2, Policy 15 encourages the design, quantity and location of parking in activity centers to balance safety, traffic, transit, pedestrian, environmental and aesthetic considerations. Guideline 3, Policy 1 ensures 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 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. Safe pedestrian access is provided through the proposed sidewalk along Dixie Highway and Luken Drive, as well as striped pedestrian access across the parking area on Luken Drive and in front of the proposed building. The waiver is compatible with the pattern of development within the form district, and therefore appears to be compliant with the regulation to be waived. Therefore, the waiver 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; and

STAFF: The extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant as the proposed location of the gas canopy and drive aisles is the only other option than placing them behind the building. The proposed location of the building will act as a buffer for the canopy and drive aisles.

- (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 because there is not a better option for placement of the gas canopy and drive aisles.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER OF SECTION 5.5.1.A.3.a (2)

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

STAFF: The waiver will not adversely affect adjacent property owners as the proposed parking between the building and Dixie Highway and Luken Drive are in locations that will help buffer them from adjacent residential uses.

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

STAFF: Guideline 2, Policy 15 encourages the design, quantity and location of parking in activity centers to balance safety, traffic, transit, pedestrian, environmental and aesthetic considerations. Guideline 3, Policy 1 ensures 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 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. Safe pedestrian access is provided through the proposed sidewalk along Dixie Highway and Luken Drive, as well as striped pedestrian access across the parking area on Luken Drive and in front of the proposed building. The waiver is compatible with the pattern of development within the form district, and therefore appears to be compliant with the regulation to be waived. Therefore, the waiver 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; and

STAFF: The extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant as the proposed location of parking along Dixie Highway and Luken Drive is the only other option than placing them behind the building. The proposed location of the building will act as a buffer for the parking areas.

- (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 may deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant by not providing any parking on the property and requiring a parking waiver.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER OF SECTION 10.2.4 (3)

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

STAFF: The waiver will adversely affect adjacent property owners as the gas canopy, drive aisles, and parking areas will be partially buffered by the location of the proposed building, but additional screening will need to be provided along the rear property line.

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

STAFF: Guideline 3, Policy 9 of Cornerstone 2020 calls for protection of the character of residential areas, roadway corridors and public spaces from visual intrusions and mitigation when appropriate. Guideline 3, Policies 21 and 22 call for appropriate transitions between uses that are substantially different in scale and intensity or density, and mitigation of 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 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 airborne and waterborne pollutants. The applicant is still providing a reduced buffer area as well as utilizing the building as a form of buffer between parking and driving areas. The waiver is compatible with the pattern of development within the form district, however, additional screening needs to be provided for the rear property line.

- (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 not the minimum necessary to afford relief to the applicant as the applicant needs to provide additional screening along the rear property line.

- (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 and the strict application of the provisions of the regulation would not deprive the applicant of the reasonable use of the land or would not create an unnecessary hardship on the applicant as they could provide a new privacy fence along the eastern property line for additional screening to the adjacent residential use.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER OF SECTION 10.2.4.B (4)

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

STAFF: The waiver will not adversely affect adjacent property owners as the applicant is providing a reduced LBA over an existing easement on the rear of the property.

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

STAFF: Guideline 3, Policy 9 calls for protection of the character of residential areas, roadway corridors and public spaces from visual intrusions and mitigation when appropriate. Guideline 3, Policies 21 and 22 call 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 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 airborne and waterborne pollutants. The applicant is still providing a reduced buffer area as well as utilizing the building as a form of buffer between parking and driving areas. The waiver is compatible with the pattern of development within the form district, and therefore appears to be compliant with the regulation to be waived. Therefore, the waiver 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; and

STAFF: The extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant as the reduced buffer area is located on an existing easement.

- (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 reducing the proposed LBA needed for the adjacent residential use.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER OF SECTION 10.2.9 (5)

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

STAFF: The waiver will adversely affect adjacent property owners as the only existing screening for the existing residential use from the VUA is a chain link fence. Additional screening is needed for the proposed dumpster encroachment, gas canopy, and drive aisles/parking.

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

STAFF: Guideline 3, Policy 9 calls for protection of the character of residential areas, roadway corridors and public spaces from visual intrusions and mitigation when appropriate. Guideline 3, Policies 21 and 22 call 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 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 airborne and waterborne pollutants. The lack of screening along the southern property line will negatively impact nearby residents to the south.

- (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 not the minimum necessary to afford relief to the applicant as the canopy, parking, and drive aisles are only screened by an existing chain link fence.

- (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 and the strict application of the provisions of the regulation would not deprive the applicant of the reasonable use of the land or would not create an unnecessary hardship on the applicant as they could provide a new privacy fence along the southern property line for additional screening to the adjacent residential use.

REQUIRED ACTIONS:

- **APPROVE** or **DENY** the **Variances** and recommend **APPROVAL** or **DENIAL** of the **Waivers** to the **City of Shively**

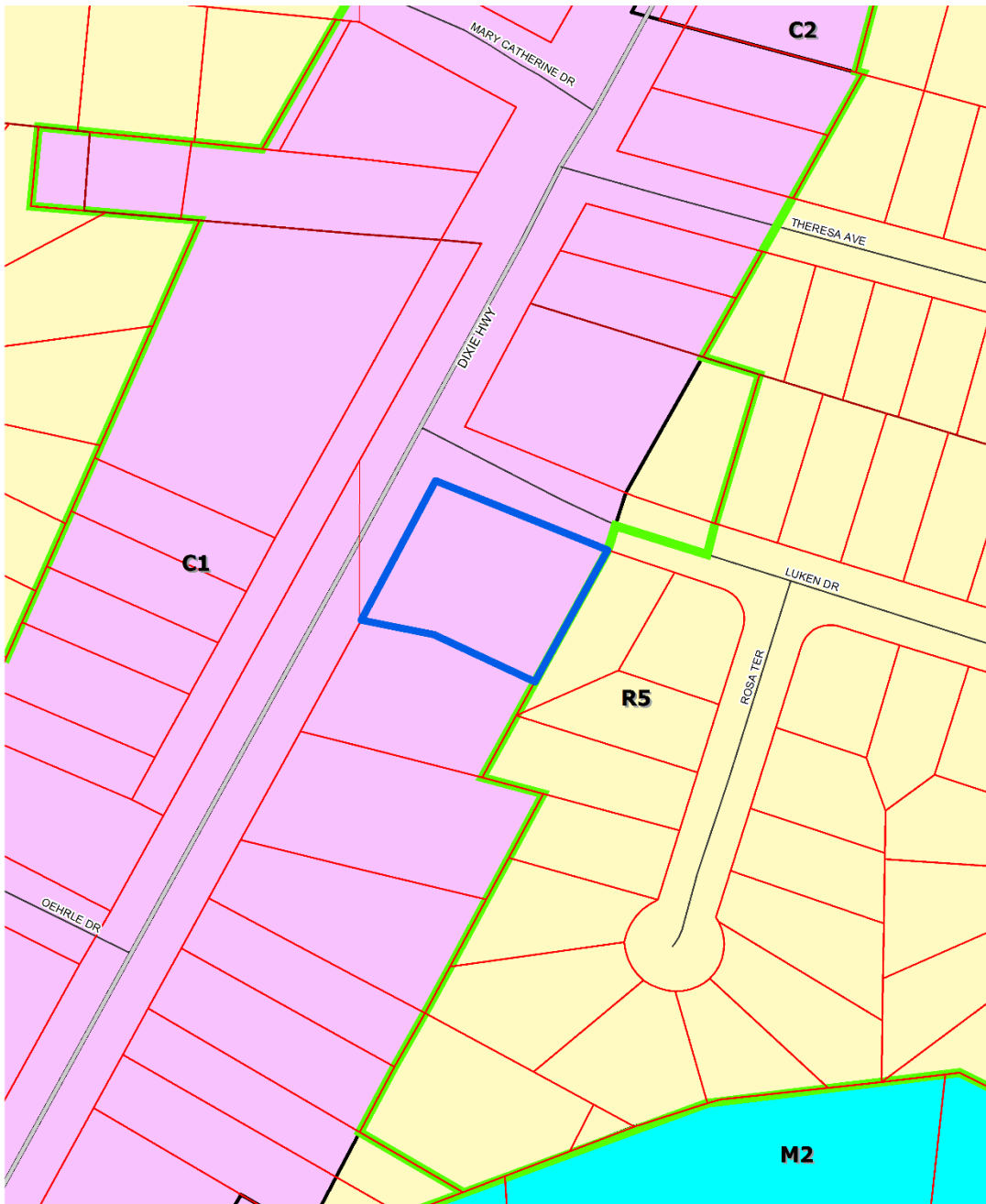
NOTIFICATION

Date	Purpose of Notice	Recipients
09/28/2018	Hearing before BOZA	1 st tier adjoining property owners Registered Neighborhood Groups in Council District 3
09/28/2018	Hearing before BOZA	Notice posted on property

ATTACHMENTS

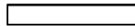
1. Zoning Map
2. Aerial Photograph
3. Site Plan
4. Elevations
5. Site Photos

1. Zoning Map



3611 Dixie Highway

feet



100

Map Created: 10/2/2018

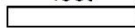


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2. Aerial Photograph



3611 Dixie Highway
feet



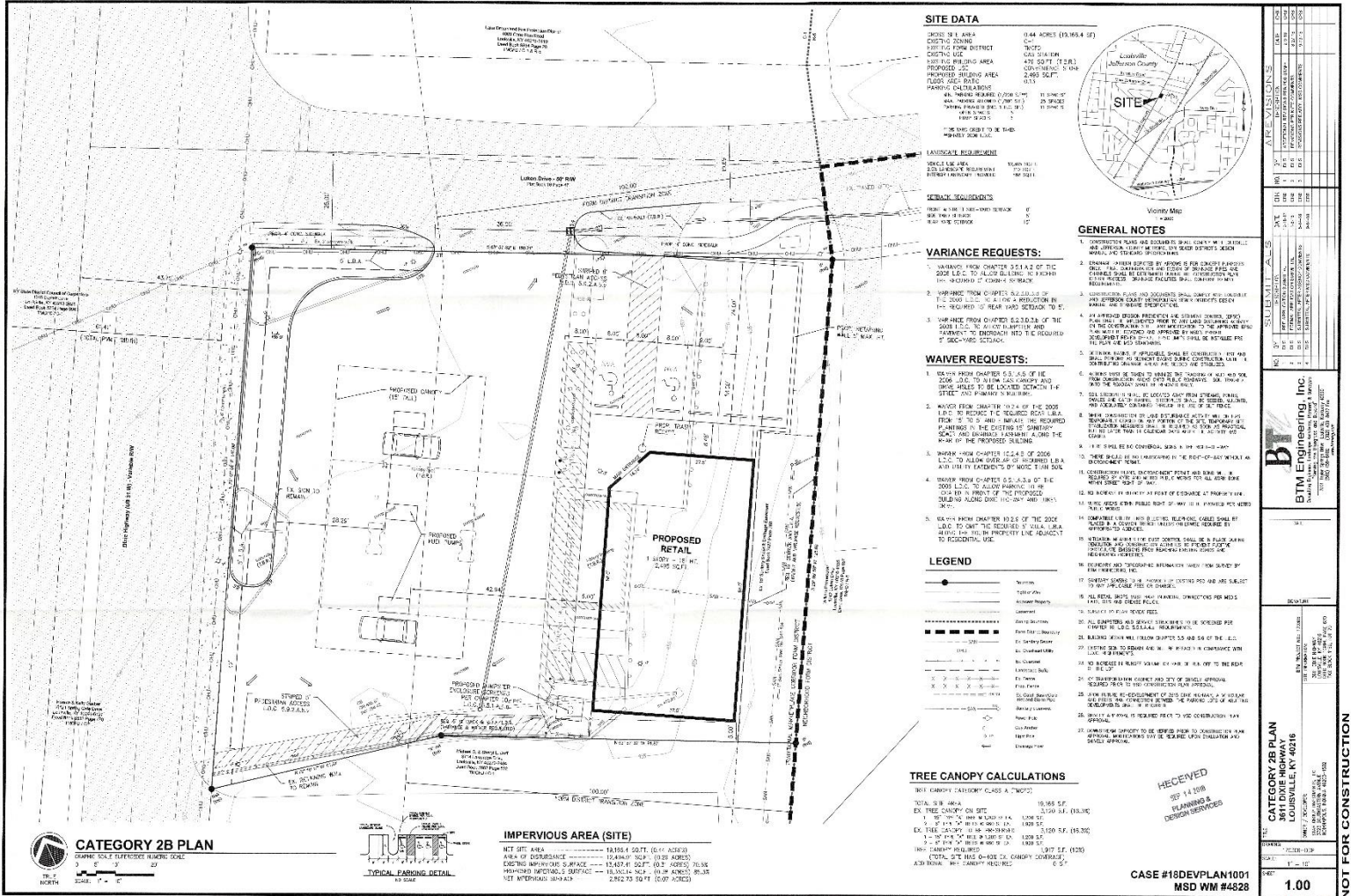
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Map Created: 10/2/2018



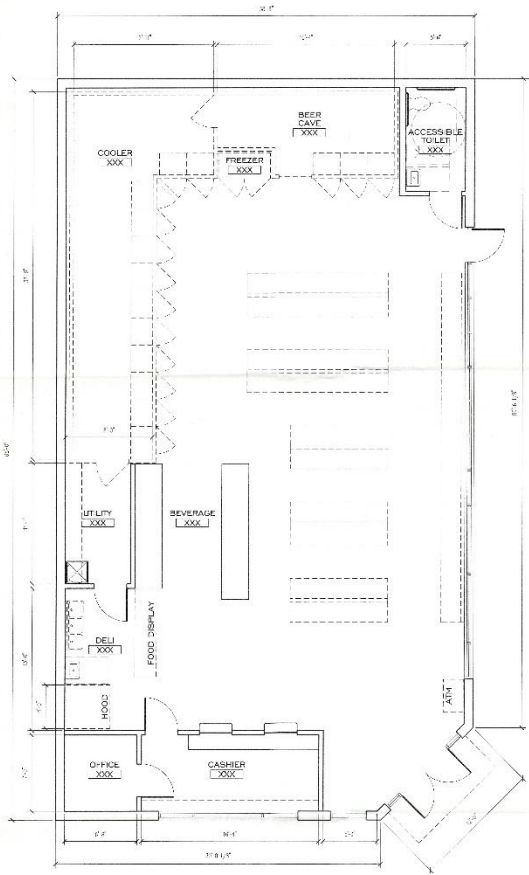
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3. Site Plan

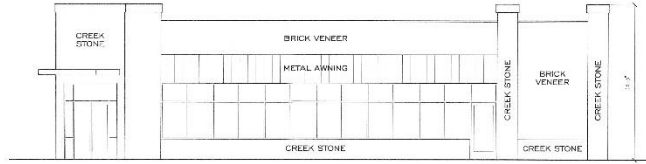


NOT FOR CONSTRUCTION

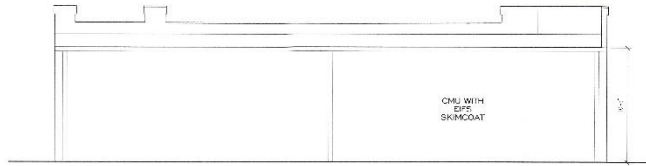
4. Elevations



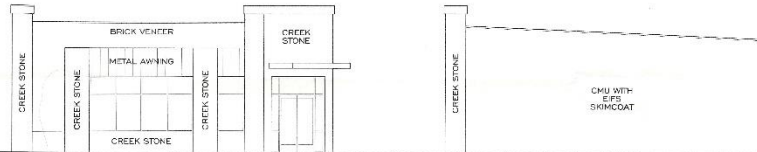
01 FLOOR PLAN
A11 SCALE 1/4" = 1'-0"



05 DIXIE ELEVATION
A11 SCALE 3/16" = 1'-0"



04 REAR ELEVATION
A11 SCALE 3/16" = 1'-0"



02 LUCAS ELEVATION
A11 SCALE 3/16" = 1'-0"

03 SIDE ELEVATION
A11 SCALE 3/16" = 1'-0"

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ARCHITECTURAL
DRAWINGS

PRELIMINARY

PRELIMINARY DRAWINGS

PRELIMINARY
PRELIMINARY DRAWINGS
GAS STATION
SINGH PETROLEUM
3611 DIXIE HIGHWAY
LOUISVILLE, KENTUCKY 40216

CRS

SCALE AS SHOWN

A11

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PLANNING & DESIGN SERVICES

18 DEVLAN 1051

5. Site Photos



Front of subject property.



Location of variance #2 and waiver #5.



Location of variance #1 and waivers #3 and #4.



Location of waiver #2 on Luken Drive.



Property across Luken Drive.



Property behind the subject property.



Properties across Dixie Highway.



Location of variance #3.



Property to the side of the subject property.



Location of waivers #1 and #2 on Dixie Highway.



BOZA notice of public hearing sign.



Area between the subject property and the property to the rear.