

# Board of Zoning Adjustment Staff Report

December 18, 2017



<b>Case No:</b>	17DEVPLAN1199
<b>Project Name:</b>	East Kentucky Lofts
<b>Location:</b>	938 East Kentucky Street and 913 East St. Catherine St.
<b>Owner(s):</b>	John Gonder and Ruthanne Wolfe
<b>Applicant:</b>	Ryan Lykins
<b>Representative(s):</b>	Missy Legel – Civil Design Inc.
<b>Project Area/Size:</b>	EZ-1 – 13,009 sf. (Parcel ID: 022H00680000); R-6 – 7,460 sf. (Parcel ID: 022H00470000)
<b>Jurisdiction:</b>	Louisville Metro
<b>Council District:</b>	4 – Barbara Sexton Smith
<b>Case Manager:</b>	Ross Allen – Planner I

## REQUEST(S)

- **Variance #1:** from LDC Section 5.2.2.C.2, table 5.2.2 to allow a proposed fourth floor addition on an EZ-1 zoned parcel to exceed the maximum building height of 45 feet or three stories by approximately 20 feet.

Location	Requirement	Request	Variance
Height (4 <sup>th</sup> Floor Addition) with Water Tower Removed	45 ft. or Three Stories	65.4 ft.	20.4 ft.

- **Variance #2:** from LDC Section 5.2.2.C.2, table 5.2.2 to allow a proposed fourth floor addition on an EZ-1 zoned parcel to encroach 15 feet into the minimum front yard (along East Kentucky Street) setback.

Location	Requirement	Request	Variance
Minimum Front Setback (4 <sup>th</sup> Floor Addition)	15 ft.	0 ft.	15 ft.

- **Variance #3:** from LDC Section 5.2.2.C.2, table 5.2.2 to allow a proposed fourth floor addition on an EZ-1 zoned parcel to encroach 9.28 feet into the minimum side yard setback along the eastern property line and to allow the proposed parking to encroach 10 ft. into the western side yard setback.

Location	Requirement	Request	Variance
Minimum Side Yard Setback (4 <sup>th</sup> Floor Addition Western Side)	10 ft.	0 ft.	10 ft.
Minimum Side Yard Setback (4 <sup>th</sup> Floor Addition Eastern Side)	10 ft.	.72 ft.	9.28 ft.

- **Variance #4:** from LDC Section 5.2.2.C.2, table 5.2.2 for an EZ-1 zoned parcel to allow two 9' x 18' parking spaces and concrete ramp to encroach 15 feet into the minimum 15 foot rear yard setback adjacent to the 15' wide alley.

Location	Requirement	Request	Variance
Minimum Front Setback (4 <sup>th</sup> Floor Addition)	15 ft.	0 ft.	15 ft.

- **Waiver #1:** from LDC Section 10.2.10, table 10.2.6 to not provide the required 5 foot VUA LBA along the rear of the EZ-1 Zoned parcel adjacent to the 15 ft. wide alley.

## **CASE SUMMARY/BACKGROUND**

The subject site is located near the intersection of Louisville & Nashville Railroad Co./Steve Magre Alley and East Kentucky Street being in the Germantown Neighborhood. The subject site is east of the Shelby Park Neighborhood and southeast of the Smoketown/Jackson Neighborhood. The development site is actually two parcels, the northern parcel is zoned EZ-1 while the southern parcel is zoned R-6. The site is bounded on the west by the Louisville & Nashville Railroad Co. tracks, east by R-6 multifamily zoned parcel and EZ-1 zoned parcel, north by East Kentucky Street, and south by East St. Catherine St.

The EZ-1 zoned parcel, as addressed at 938 East Kentucky Street, sharing a common wall with 942 East Kentucky Street, is an existing three story concrete block vacant warehouse with a water tower atop the building which exceeds the current zoning regulations height requirements within a Traditional Neighborhood Form District. The R-6 zoned parcel, addressed as 913 East St. Catherine Street, is an existing ingress/egress for the rear of the properties as located at 938 and 942 East Kentucky Street and traversing the 15 foot wide alley found to the rear of the EZ-1 zoned parcel.

The applicant is proposing to convert an existing 34,422 sf., 57 foot high warehouse building into residential lofts. The project will expand the first floor to match the second and third floor exterior walls. The owner intends to add a fourth floor onto the existing building that will include 4 penthouse lofts. The proposed conversion and addition will add 9,639 sf. to the existing 34,422 sf. for a total of 44,061 sf.. The proposed fourth floor addition will add approximately 8.4 feet more height atop of the current 57 feet for a total height of 65.4 feet in height. The water tower will be removed so that the overall building height will be 65.4 feet, including the fourth floor addition.

The project proposal will have a total of 25 residential units. The 9,720.79 sf. basement will have 15 parking spaces. The first, second and third floors will have 7 units each and the fourth floor will have four units with patios. The R-6 zoned parcel as found along East St. Catherine St. (913 East Saint Catherine St.) will be as it has been an existing ingress/egress easement allowing access to the rear of the buildings as located along East Kentucky Street.

The applicant is proposing 15 parking spaces interior to the structure, 4 on street parking spaces, and 2 parking spaces in the rear of the EZ-1 zoned parcel for a total of 21 parking spaces. The proposal would require a minimum of 1.5 spaces per dwelling unit and a maximum of 2.5 spaces per dwelling unit resulting in a minimum of 38 spaces and a maximum of 63 spaces for the proposed multi-family residential use. However, using parking reductions such as TARC stop in close proximity, National Register rehabilitation, and underground parking design the parking requirements have been met.

The applicant is not increasing the building footprint thus per LDC Section 10.1.2.B are not required to meet landscaping requirements. However, existing street trees are located along the East Kentucky Street frontage and are included in the rear of the EZ-1 zoned parcel where two parking spaces are provided as well as six trees and a sidewalk along the R-6 zoned ingress/egress rear parcel with frontage along East Saint Catherine Street.

## **STAFF FINDING / RECOMMENDATION**

Staff recommends approval of all variances and the associated waiver. The structure pre-dates both zoning regulations and land development code. In order for the applicant or owner to rehabilitate and/or reuse/repurpose the structure variances for the side and rear yard setbacks are justifiable since the proposal will build out to the existing footprint. The height variance is not in excess of what is currently on the site, an 87 foot tall water tower which would make the total height of the structure (building and tower) 144 feet tall, well in

excess of what the current Land Development Code allows, 45 feet or three stories. Last, the waiver to allow the two parking spaces as proposed in the rear of the structure is required for the applicant to meet reduced parking requirements will applicable parking reductions. If the waiver is not approved then the applicant would be required to obtain a parking waiver. The parking in the rear of the structure is within the general character of the existing alleyway and the 5 ft. VUA LBA and/or associated screening would eliminate the two spaces which the applicant is compensating by providing trees in and around the two spaces as shown on the preliminarily approved development plan.

**Approve/Deny Variance #1:** from LDC Section 5.2.2.C.2, table 5.2.2 to allow a proposed fourth floor addition on an EZ-1 zoned parcel to exceed the maximum building height of 45 feet or three stories by approximately 20 feet.

**Approve/Deny Variance #2:** from LDC Section 5.2.2.C.2, table 5.2.2 to allow a proposed fourth floor addition on an EZ-1 zoned parcel to encroach 15 feet into the minimum front yard setback.

**Approve/Deny Variance #3:** from LDC Section 5.2.2.C.2, table 5.2.2 to allow a proposed fourth floor addition on an EZ-1 zoned parcel to encroach 9.28 feet into the minimum side yard setback along the eastern property line and to allow the proposed parking to encroach 10 ft. into the western side yard setback

**Approve/Deny Variance #4:** from LDC Section 5.2.2.C.2, table 5.2.2 for an EZ-1 zoned parcel to allow two 9' x 18' parking spaces and concrete ramp to encroach 15 feet into the minimum 15 foot rear yard setback adjacent to the 15' wide alley

**Approve/Deny Waiver #1:** from LDC Section 10.2.10, table 10.2.6 to not provide the required 5 foot VUA LBA along the rear of the EZ-1 Zoned parcel adjacent to the 15 ft. wide alley.

**LAND USE/ZONING DISTRICT/FORM DISTRICT TABLE**

	Land Use	Zoning	Form District
<b><i>Subject Property</i></b>			
<b>Existing</b>	Vacant - Warehouse	EZ-1/R-6	Traditional Neighborhood
<b>Proposed</b>	Multifamily Dwellings	EZ-1/R-6	Traditional Neighborhood
<b><i>Surrounding Properties</i></b>			
<b>North</b>	Industrial	EZ-1	Traditional Neighborhood
<b>South</b>	Commercial/ Single Family Residential	R-6	Traditional Neighborhood
<b>East</b>	Industrial	EZ-1	Traditional Neighborhood
<b>West</b>	Louisville Nashville Railroad Company ROW	ROW	Traditional Neighborhood

## **TECHNICAL REVIEW**

The Transit Authority of River City commented stating “The nearest transit stop for Route 43 – connecting Portland, Downtown, Germantown, and Outer Loop is located on Logan Street at Kentucky Street.”

MSD and Transportation Planning have both approved preliminarily.

## **INTERESTED PARTY COMMENTS**

Staff has not received any comments from interested parties.

## **APPLICABLE PLANS AND POLICIES**

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

**STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCE #1: from LDC Section 5.2.2.C.2, table 5.2.2 to allow a proposed fourth floor addition on an EZ-1 zoned parcel to exceed the maximum building height of 45 feet or three stories by approximately 20 feet.**

- (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 existing structure has a water with an overall height of 144 feet. Redevelopment of the building into residential units, will increase the integration of the structure into the existing neighborhood.

- (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 adjacent buildings exceed the height of the proposed structure and the construction on the existing roof will not be visible from the street or sidewalk.

- (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 redevelopment of this lot will convert an existing vacant building into residential dwellings which will be in line with the neighborhood and adjacent properties.

- (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 the existing structure prior to the proposal has above average floor to floor heights and the variance is to allow an additional story onto the existing building. The existing building is 57 feet tall and due to the building be constructed to the lot lines. The opportunity to increase height based on additional setback is not available.

## **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 existing building with water tower atop will be reduce the overall height of the building with the 4<sup>th</sup> floor addition.

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 reasonable use of the land or create an unnecessary hardship on the applicant since the ability to redevelop the property with residential units are required to make the project feasible.

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 since the existing building that was built in 1904 was used as a warehouse. The applicant is proposing to convert the warehouse into lofts with an additional floor that would accommodate 4 penthouse lofts with 21 other smaller dwellings.

**STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCE #2: from LDC Section 5.2.2.C.2, table 5.2.2 to allow a proposed fourth floor addition on an EZ-1 zoned parcel to encroach 15 feet into the minimum 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 public health safety or welfare since the existing 3 story warehouse building was built in the early 1900's and was built to the property line. The addition of the 4<sup>th</sup> floor is an extension of the existing building and will not adversely affect the public health, safety, or welfare.

- (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 existing building is 144 feet tall with the water tower. The removal of the water tower and the addition of the fourth floor will make the overall building height 65 feet 4 inches tall. The height reduction along with building improvements will be more in character with the general vicinity.

- (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 requested variance will help to eliminate a potential hazard or nuisance by removing the 87 foot tall water tower.

- (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 the existing building pre-dates any zoning regulations within the county and was built as most buildings were for that time up to the building line/sidewalks.

**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 existing building pre-dates any zoning regulations within the city and was built as most buildings were for that time up to the building line/sidewalks.

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 reasonable use of the land or create an unnecessary hardship on the applicant since in order to redevelop the property with residential dwelling units are required to make the project feasible. The ability to gain additional height due to increasing setback are not a possible option on the existing building which is constructed to the lot lines.

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 since this is an existing building that was originally constructed in 1904 and used as a warehouse. The applicant would like to convert the warehouse into lofts with an additional floor that would accommodate 4 penthouse lofts with patios.

**STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCE #3: from LDC Section 5.2.2.C.2, table 5.2.2 to allow a proposed fourth floor addition on an EZ-1 zoned parcel to encroach 9.28 feet into the minimum side yard setback along the eastern property line and to allow the proposed parking to encroach 10 ft. into the western side yard setback.**

- ((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 existing 3 story warehouse building was built in the early 1900's and was built to the property line. The addition of the 4<sup>th</sup> floor is an extension of the existing building and will not adversely affect the public health, safety, or welfare.

- (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 existing building is 57 feet tall and has a water tower on the roof, making the overall height 144 feet tall. The addition of the fourth floor will make the overall building height 65 feet 4 inches tall. The height reduction along with building improvements will be more in character with the general vicinity.

- (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 requested variance will help to eliminate a potential hazard or nuisance by removing the 87 foot tall water tower.

- (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 the existing building pre-dates any zoning regulations within the county and was built as most buildings were for that time up to the building line/sidewalks.

**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 existing building pre-dates any zoning regulations within the county and was built as most buildings were for that time up to the building line/sidewalks.

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 reasonable use of the land or create an unnecessary hardship on the applicant since in order to redevelop the property with residential dwelling units are required to make the project feasible. The ability to gain additional height due to increasing setback are not a possible option on the existing building which is constructed to the lot lines.

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 since this is an existing building that was originally constructed in 1904 and used as a warehouse. The applicant would like to convert the warehouse into lofts with an additional floor that would accommodate 4 penthouse lofts with patios.

**STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCE #4: from LDC Section 5.2.2.C.2, table 5.2.2 for an EZ-1 zoned parcel to allow two 9' x 18' parking spaces and concrete ramp to encroach 15 feet into the minimum 15 foot rear yard setback adjacent to the 15' wide alley.**

- (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 two parking spaces will not adversely affect the public health, safety, or welfare as they will be serving a multi-family residence that is adjacent to single family residences and has parking in the rear via alleys.

- (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 two parking spaces is predominantly residential properties that have parking in the rear of the residences with frontage along East Saint Catherine Street and the rear of the industrial building having frontage along East Kentucky Street off of the alley.

- (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 requested variance to allow 2 parking spaces to encroach into the side yard and rear setback in the predominantly residentially zoned neighborhood has parking in the rear of the residences via the alley.

- (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 the residences surrounding the building in this neighborhood have parking as located to the rear of their residences via the alley.

**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 building was and is an existing warehouse as constructed in 1904, pre-dating the regulations and having access to the rear via the alley and R-6

zoned parcel being an ingress/egress easement. The additional parking is needed since the proposed use will be multi-family dwelling units and will accommodate the residents.

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 reasonable use of the land or create an unnecessary hardship on the applicant since the site/parcel is small every effort has been taken to accommodate as many parking spaces as possible for all residents of the proposed multi-family residence. Any denial would result in hardship on the applicant resulting in the need for a parking waiver to reduce the minimum parking requirements by two spaces.

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 since the existing building was constructed in 1904 pre-dating the zoning regulations and is an integral to fulfilling the parking requirements as laid out by the Land Development Code.

**STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER from LDC Section 10.2.10, table 10.2.6 to not provide the required 5 foot VUA LBA along the rear of the EZ-1 Zoned parcel adjacent to the 15 ft. wide alley.**

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

STAFF: The waiver will not adversely affect adjacent property owners since there is currently no landscaping at the rear of the property, the applicant is proposing to plant 4 trees around the 2 parking spaces. The adjacent property, R-6 zoned ingress/egress, to the south is used for access and does not have a building, the property to the west is Railroad Right of Way.

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

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 screening and buffering of parking areas adjacent to streets. Cornerstone 2020 encourages the revitalization of neighborhoods to include higher density residential uses as located within the Traditional Neighborhood Form District.

- (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 the rear of the property will be the access to the below level parking and also the two parking spaces on the lot.

- (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 that exceed the minimums of the district and compensate for non-compliance with the requirements to be waived (net beneficial effect)



since the applicant has added four trees around the two parking spaces which is three more trees than required in the Landscape buffer area. The applicant is also proposing to plant 6 trees on the adjacent R-6 zoned parcel that is used as an ingress/egress improving the overall site conditions from and to the proposed multi-family residential building.

## **REQUIRED ACTIONS**

**Approve/Deny VARIANCE #1:** from LDC Section 5.2.2.C.2, table 5.2.2 to allow a proposed fourth floor addition on an EZ-1 zoned parcel to exceed the maximum building height of 45 feet or three stories by approximately 20 feet.

**Approve/Deny VARIANCE #2:** from LDC Section 5.2.2.C.2, table 5.2.2 to allow a proposed fourth floor addition on an EZ-1 zoned parcel to encroach 15 feet into the minimum front yard setback.

**Approve/Deny VARIANCE #3:** from LDC Section 5.2.2.C.2, table 5.2.2 to allow a proposed fourth floor addition on an EZ-1 zoned parcel to encroach 9.28 feet into the minimum side yard setback along the eastern property line and to allow the proposed parking to encroach 10 ft. into the western side yard setback.

**Approve/Deny VARIANCE #4:** from LDC Section 5.2.2.C.2, table 5.2.2 for an EZ-1 zoned parcel to allow two 9' x 18' parking spaces and concrete ramp to encroach 15 feet into the minimum 15 foot rear yard setback adjacent to the 15' wide alley.

**Approve/Deny WAIVER** from LDC Section 10.2.10, table 10.2.6 to not provide the required 5 foot VUA LBA along the rear of the EZ-1 Zoned parcel adjacent to the 15 ft. wide alley.

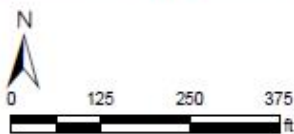
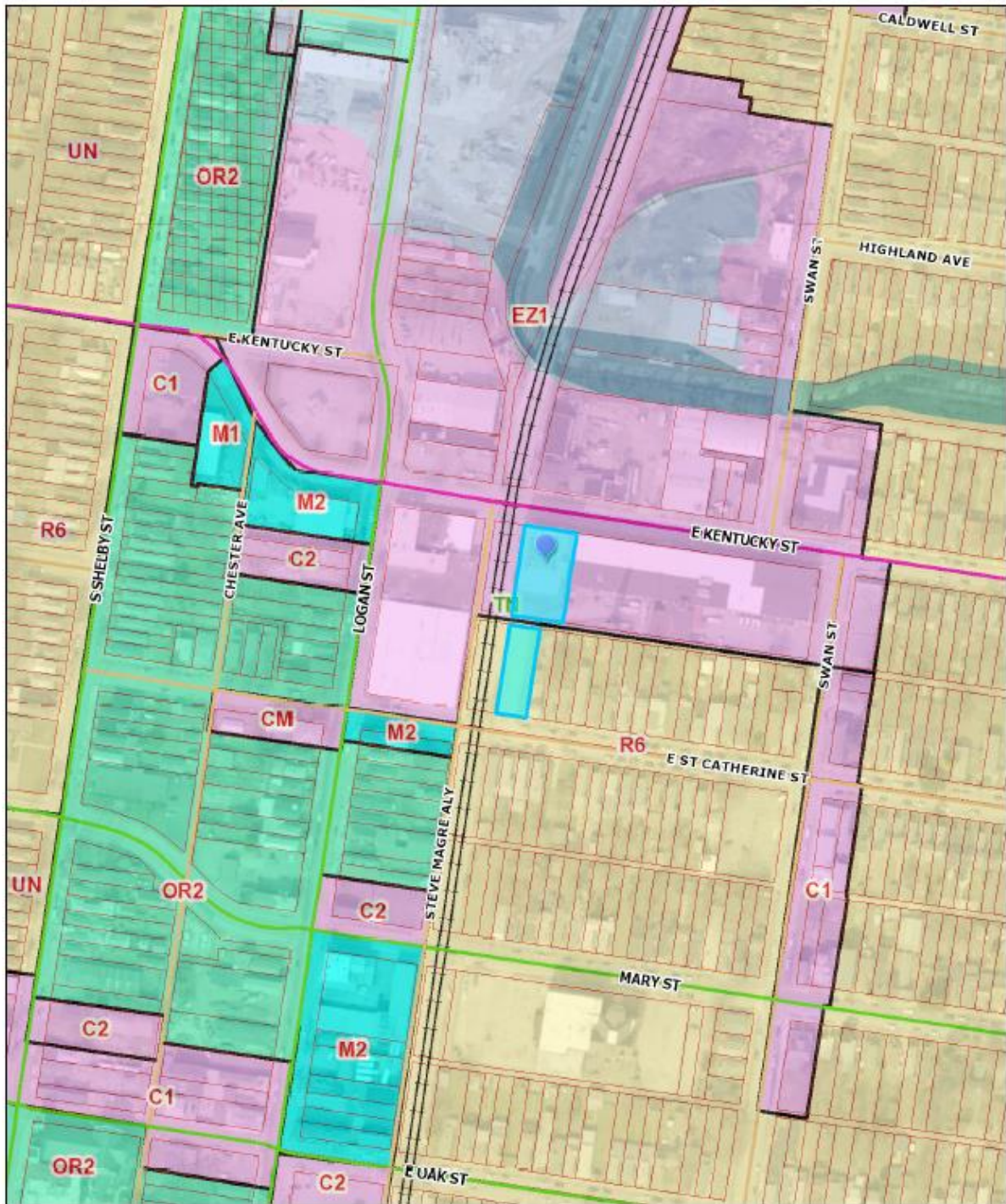
## **NOTIFICATION**

Date	Purpose of Notice	Recipients
December 18, 2017	Hearing before Board of Zoning Adjustment	1 <sup>st</sup> tier adjoining property owners Subscribers of Council District 4 Notification of Development Proposals
Dec. 1, 2017	Sign Posting	Subject Site/s

## **ATTACHMENTS**

1. Zoning Map
2. Aerial Photograph

1. Zoning Map



**17DEVPLAN1199**

Tuesday, November 28, 2017 | 11:27:42 AM

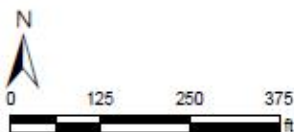


LOJIC © 2017

This map is not a legal document and should only be used for general reference and identification.



2. Aerial Photograph



**17DEVPLAN1199**

Tuesday, November 28, 2017 | 11:29:03 AM



LOJIC © 2017

This map is not a legal document and should only be used for general reference and identification.