

Board of Zoning Adjustment Staff Report

April 21, 2014



Case No:	14VARIANCE1023
Request:	Variations to allow parking/maneuvering, a dumpster, and a small building to encroach into the required setbacks and being in the City of Lyndon (CONTINUED FROM APRIL 7, 2014)
Project Name:	McDonald's Ormsby Station
Location:	9901 Ormsby Station Rd.
Owner:	Marshall Realty Company
Applicant:	American Engineers, Inc.
Representative:	American Engineers, Inc.
Jurisdiction:	City of Lyndon
Council District:	18 – Marilyn Parker
Case Manager:	David B. Wagner – Planner II

REQUEST

1. Variance to reduce the setback along Ormsby Station Road from 25' to 15' for the vehicular use area (VUA) encroachment per Land Development Code (LDC), Section 5.3.5.C.3.a.
2. Variance to reduce the setback along Ormsby Park Place from 25' to 0' for the dumpster, small building, and VUA encroachments per LDC, Section 5.3.5.C.3.a.

Variations

Location	Requirement	Request	Variance
1. Street Side Yard (Ormsby Station Rd.)	25'	15'	10'
2. Street Side Yard (Ormsby Park Pl.)	25'	0'	25'

CASE SUMMARY/BACKGROUND/SITE CONTEXT

This request is a joint proposal that goes along with a Revised Detailed District Development Plan (#14DEVPLAN1007) which will be heard by the Land Development and Transportation Committee (LD&T) on May 8, 2014. The proposal is for the expansion of the existing McDonald's and patio area and the creation of a dual drive-thru. The building will be expanded from 3,192 SF to 4,320 SF and the patio will be 475 SF. Additional parking spaces were added to meet the minimum parking spaces requirement of 38 spaces.

At the April 7, 2014 meeting, the Board expressed concerns about the location of the new parking spaces at the southeast corner of the site along Ormsby Station Road. The concern was that vehicles turning right into the parking lot from the road may not see cars backing out of the new parking spaces. The applicant worked with staff and moved the two parking spaces. One space will be located at the northwest corner of the site and the other located at the northeast corner of the site.

LAND USE/ZONING DISTRICT/FORM DISTRICT TABLE

	Land Use	Zoning	Form District
Subject Property			
Existing	Restaurant	C-1	Campus
Proposed	N/A	N/A	N/A
Surrounding Properties			
North	Office	PRO	Campus
South	Restaurant	C-1	Campus
East	Bank	C-1	Campus
West	Hotel	C-1	Campus

PREVIOUS CASES ON SITE

- 9-106-97/10-13-97: General District and Preliminary Major Subdivision Plan for the Forest Green development
- 9-106-97: Detailed District Development Plan for the McDonald's
- Plat Book 45, Page 73: Forest Green, Section 3

INTERESTED PARTY COMMENTS

Staff has not received any inquiries from interested parties.

APPLICABLE PLANS AND POLICIES

Land Development Code

STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCES

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

STAFF: The granting of the variances will not affect the public health, safety or welfare because the encroachments by the VUA, dumpster, and small building along Ormsby Station Road and Ormsby Park Place already exist and have not had an adverse effect over the years.

- (b) The requested variance will not alter the essential character of the general vicinity.

STAFF: The granting of the variances will not alter the essential character of the general vicinity because the encroachments already exist and there have been no concerns or issues.

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

STAFF: The variances will not cause a hazard or nuisance to the public. There are already existing encroachments and the variances will actually allow the new parking spaces to be added, providing adequate parking for the site.

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

STAFF: The variances will not allow an unreasonable circumvention of the zoning regulations as the surrounding lots are all commercial or office uses and the proposal will actually bring the site into better compliance with the existing zoning regulations which have vastly changed since the current development plan's approval in 1999.

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 variances arise from special circumstances which do not generally apply to land in the general vicinity or the same zone because this lot is a corner lot that is bordered by three streets. The adjacent streets create much greater setbacks since they are considered to be street side yard setbacks instead of side yard setbacks.

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 regulation would deprive the applicant of the reasonable use of the land as this lot has been a McDonald's for some years and the variances allow the site to come into compliance with the current zoning regulations.

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: This circumstance arises from the zoning regulations greatly changing since the current development plan was approved and not by the action of the applicant.

TECHNICAL REVIEW

- Except for the Variance requests, the proposal complies with the requirements of the LDC.

STAFF CONCLUSIONS

The proposal allows the development to comply with the current zoning regulations and to continue to be used as a fast food restaurant. There are existing encroachments due to the changes in the zoning regulations and the site is surrounded by commercial and office uses. This proposal will not affect any nearby residential uses.

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 a Variance established in the Land Development Code.

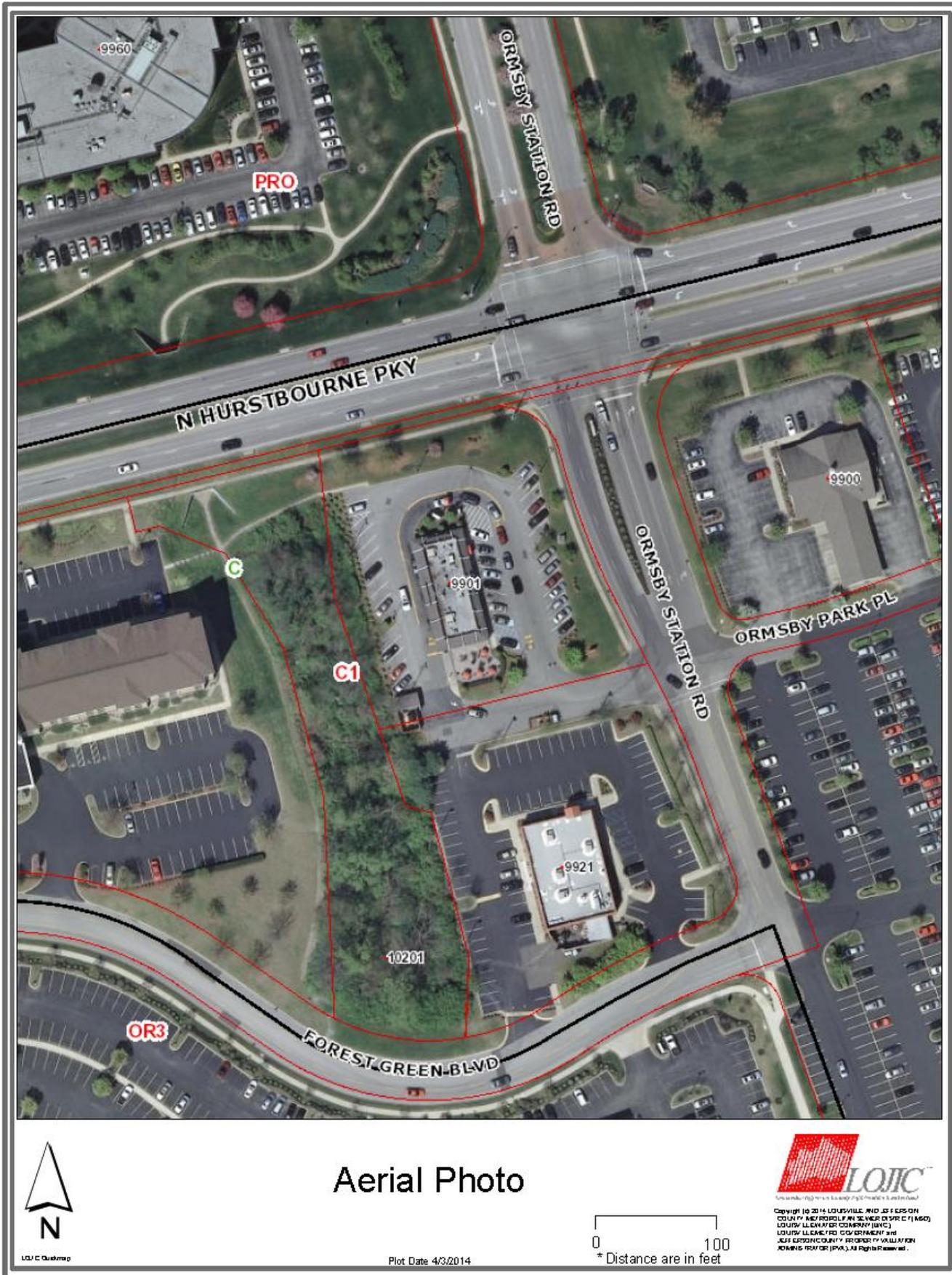
NOTIFICATION

Date	Purpose of Notice	Recipients
3/24/14	Hearing before BOZA	1 st tier adjoining property owners Subscribers to Council District 18 Notification of Development Proposals

ATTACHMENTS

1. Zoning Map
2. Aerial Photograph
3. Applicant's Justification Statement

2. Aerial Photograph



3. **Applicant's Justification Statement**

Variance Justification:

In order to justify approval of any variance, the Board of Zoning Adjustment considers the following criteria. Please answer all of the following items. Use additional sheets if needed. A response of yes, no, or N/A is not acceptable.

1. **Explain how the variance will not adversely affect the public health, safety or welfare.**

These are the existing conditions and they have not had any impact over the past 20 years.

2. **Explain how the variance will not alter the essential character of the general vicinity.**

These are the existing conditions.

3. **Explain how the variance will not cause a hazard or a nuisance to the public.**

These are the existing conditions and they have not had any impact over the past 20 years.

4. **Explain how the variance will not allow an unreasonable circumvention of the requirements of the zoning regulations.**

These are the existing conditions and have been in place for the past 20 years.

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Additional consideration:

1. **Explain how the variance arises from special circumstances, which do not generally apply to land in the general vicinity (please specify/identify).**

These are the existing conditions and have been in place for the past 20 years.

2. **Explain how the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create unnecessary hardship.**

These are the existing conditions and have been in place for the past 20 years.

3. **Are the circumstances the result of actions of the applicant taken subsequent to the adoption of the regulation from which relief is sought?**

No, these are the existing conditions and have been in place for the past 20 years.

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