

Board of Zoning Adjustment Staff Report

April 7, 2014



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| Case No: | 14VARIANCE1019 |
| Project Name: | Stor All Fairdale |
| Location: | 6300 Commerce Park Court |
| Owner: | Stor All Fairdale, LLC |
| Applicant: | Steve Womack |
| Representative: | Weber & Rose, PSC and Power of Design |
| Project Area/Size: | 8.23 acres |
| Existing Zoning District: | C-M, Commercial Manufacturing |
| Existing Form District: | N, Neighborhood |
| Jurisdictions: | Louisville Metro |
| Council Districts: | 13 – Vicki Aubrey Welch |
| Case Manager: | Matthew R. Doyle, Planner I |

REQUEST

- Variance from section 4.8.3.C of the Land Development Code to allow the proposed structures and pavement to encroach a maximum of 55 feet into the stream buffer area

CASE SUMMARY/BACKGROUND/SITE CONTEXT

The subject site is located immediately south of the Gene Snyder Freeway and just north of New Cut Road.

The applicant is proposing a mini-storage warehouse development. It would consist of 8 buildings and an office. One of the buildings would be unenclosed, covered parking for recreational vehicles. The storage buildings would be enclosed in a security fence.

The development is adjacent to a USGS perennial blue-line stream as shown on LOJIC. The stream has been channelized since the general plan was approved in 1999. Nevertheless, the LDC requires a 'Type B' buffer of 100 feet comprised of a streamside, middle, and outer zone. As shown on the plan, the development would encroach no more than 55' into the buffer. This requires the applicant to obtain a variance from section 4.8.3.C of the LDC.

LOJIC also shows the presence of hydric soils on a substantial portion of the site. The LDC states that hydric soils are a preliminary indicator of wetlands. A letter from the Army Corps of Engineers is in the file of the general plan. It states that the area is not a regulated wetland and does not require a permit from the Corps.

The general plan from 1999 showed a large floodplain mitigation area on the subject site. MSD confirmed that significant floodplain mitigation has been undertaken since the general plan was approved. Part of that work was channelizing the stream. Today, only portions of the site lie in the 100-year floodplain as shown on the proposed development plan.

The applicant is providing the 50' Gene Snyder Freeway buffer as shown on the plan. A Woodland Protection Area (WPA) approved on the general plan is also delineated within this buffer. The applicant would meet with Planning Commission staff and Metro's Arborist to confirm selective pruning and removal of understory brush and/or trees, as well as installing any additional plantings. This would take place prior to approval of the tree preservation and landscape plan.

LAND USE/ZONING DISTRICT/FORM DISTRICT TABLE

| | Land Use | Zoning | Form District |
|-------------------------------|-------------------------|--------|---------------|
| Subject Property | | | |
| Existing | Vacant | C-M | N |
| Proposed | Mini-storage warehouses | C-M | N |
| Surrounding Properties | | | |
| North | Gene Snyder Freeway | N/A | N/A |
| South | Vacant | C-M | N |
| East | Warehouse | C-M | N |
| West | Hotel | C-M | N |

PREVIOUS CASES ON SITE

9-42-99: A change in zoning from R-4 single family residential to R-5A Multi-family Residential and C-M Commercial Manufacturing and approval of the General/Detailed District Development Plan. Detailed District Development Plans for New Cut Commerce Park have been approved for a Value Place Hotel, Speedway gas station, and Prologis Warehouse and Distribution Center. Revised Detailed District Development Plans have been approved for New Cut Condominiums.

INTERESTED PARTY COMMENTS

Staff has not received any interest in this case.

APPLICABLE PLANS AND POLICIES

Cornerstone 2020
Land Development Code

STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCE from section 4.8.3.C to allow the proposed structures and pavement to encroach a maximum of 55 feet into the stream buffer area

- (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 MSD has approved the preliminary development plan and will ensure that the subject site meets the wastewater/stormwater discharge regulations for reduced stormwater based pollution from entering the stream.

- (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 proposal is compatible with the development in the area.

- (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 MSD has approved the preliminary development plan and will ensure that the subject site meets the wastewater/stormwater discharge regulations for reduced stormwater based pollution from entering the stream.

- (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 proposed development meets or exceeds all other provisions of the LDC, and MSD has approved the preliminary development plan and will ensure that the subject site meets the wastewater/stormwater discharge regulations for reduced stormwater based pollution from entering the stream.

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/Detailed District Development Plan was approved prior to the regulation requiring a 100' stream buffer and the adjacent stream has been channelized into a paved ditch intended to be used for drainage.

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 since the General/Detailed District Development Plan was approved prior to the regulation requiring a 100' stream buffer, the adjacent stream has been channelized into a paved ditch intended to be used for drainage, and any drainage and/or runoff from the proposed development would not flow into Bee Lick Creek.

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.

ADDITIONAL FACTORS THAT MAY BE CONSIDERED

- (a) The variance is necessary because the requirements of this section represent an extreme hardship such that minimal or no reasonable economic use of the land is available without reducing the width of the required Buffer Area.
- (b) The size, shape, or topography of the property, as of March 1, 2003, is such that it is not possible to construct a single family detached dwelling without encroaching into the required Buffer Area.
- (c) Encroachment into the required Buffer Area shall be limited to the minimum necessary to accommodate the proposed use.

- (d) The Applicant shall commit, to the satisfaction of the County, to mitigation measures that substantially offset any potential adverse impacts of the proposed encroachment during site preparation, construction, and post-construction.
- (e) Approval of the variance will not result in a reduction in water quality.

STAFF: The Waterways and Wetlands Protection section of the LDC is intended: (i) to promote, preserve, and enhance the important hydrologic, biological, ecological, aesthetic, recreational, and educational functions that river and stream corridors, lakes and other critical waterways, wetlands, and their associated riparian areas provide in Jefferson County; (ii) to guide development on sites with environmental constraints consistent with the Cornerstone 2020 Comprehensive Plan; (iii) to locate development, where possible, in areas that do not have severe environmental limitations and to protect natural areas and features as a part of development planning, by designating buffer areas that will guide future development adjacent to protected waterways; (iv) to minimize water pollution, including sediment and other pollutants in surface runoff; to promote bank stabilization; to protect riparian wetlands and their wildlife habitats; (v) generally to promote land use policies which will maintain or improve water quality levels; (vi) to implement goals of the Clean Water Act.

The protected waterway on the subject site is an offshoot of Bee Lick Creek. It has been paved in order to be used for drainage. Its identification and protection as a USGS perennial blue-line stream ends behind the adjacent Prologis warehouse as shown on LOJIC. From there, the water flows through drainage facilities serving neighboring sites and communities. Any drainage and/or runoff from the proposed development would not flow into Bee Lick Creek. Protecting this offshoot of Bee Lick Creek is not the intent of the Waterways and Wetlands Protection section of the LDC as detailed in the previous paragraph.

TECHNICAL REVIEW

The applicant is requesting approval of the Detailed District Development Plan and amendments to the general plan binding elements from the Development Review Committee on April 2nd.

STAFF CONCLUSIONS

- The applicant is proposing a mini-storage warehouse development. It would consist of 8 buildings and an office.
- The development is adjacent to a USGS perennial blue-line stream as shown on LOJIC.
- The LDC requires a 'Type B' buffer of 100 feet comprised of a streamside, middle, and outer zone.
- As shown on the plan, the development would encroach no more than 55' into the buffer.
- The requested variance appears adequately justified based on staff analysis in the standard of review.

Based upon the information in the staff report, the testimony and evidence provided at the public hearing, BOZA must determine if the proposal meets the standards for granting the variance as established in the LDC.

REQUIRED ACTIONS

- **APPROVE** or **DENY** the variance from section 4.8.3.C of the LDC to allow the proposed structures and pavement to encroach a maximum of 55 feet into the stream buffer area

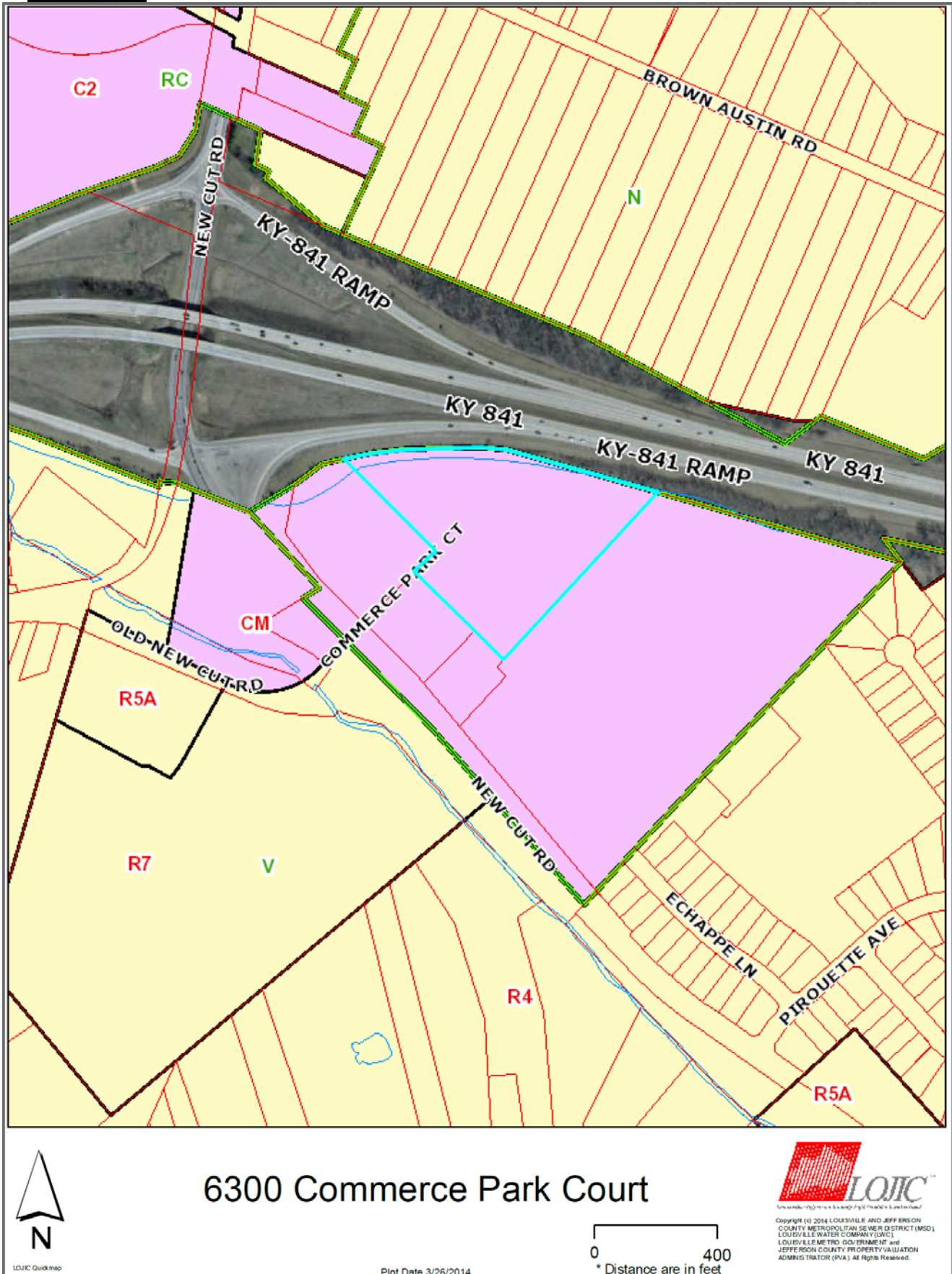
NOTIFICATION

| Date | Purpose of Notice | Recipients |
|---------|---------------------|--|
| 3/21/14 | Meeting before BOZA | 1 st tier adjoining property owners Registered neighborhood groups |
| 3/28/14 | Sign posting | Subject property owner |

ATTACHMENTS

1. Zoning Map
2. Aerial Photograph

1. Zoning Map



2. Aerial Photograph

