

**Board of Zoning Adjustment  
Staff Report**  
June 15, 2015



<b>Case No:</b>	15Variance1019
<b>Project Name:</b>	Taco Bell
<b>Location:</b>	1805 South Brook Street
<b>Owner(s):</b>	Louisville/Jefferson County Metro Government
<b>Applicant:</b>	Adam Macke, GPD Group
<b>Representative:</b>	Adam Macke, GPD Group
<b>Project Area/Size:</b>	1.09 acres
<b>Jurisdiction:</b>	Louisville Metro
<b>Council District:</b>	6 – David James
<b>Case Manager:</b>	Sherie' Long, Landscape Architect

**REQUEST**

**Variance: Setback**

Variance from the Land Development Code, Section 5.3.5.C.3.a, to allow a new building and menu board to encroach into the street side setback along East Bloom Street.

Location	Requirement	Request	Variance
<b>Street Side setback (north)</b>	25 feet	16.5 feet	8.5 feet

**Waiver #1: Parking Location**

Waiver of the Land Development Code Section 5.5.2.C.2.a, to allow parking in the front and side setbacks.

**Waiver #2: Ordering Station/Menu Board and Dumpster**

Waiver of the Land Development Code Section 5.5.5A.1 and 10.2.6, to allow the ordering station/menu board and dumpster to be located in the setbacks; and visible from the street and proposed residential use.

**Waiver #3: Outdoor Seating**

Waiver of Land Development Code Section 5.5.5.A.1, to allow the outdoor seating area in the front setback, and to not provide the required 5' buffer planting between the outdoor seating area and the proposed residential to the south.

**Waiver #4: Building Design - Entrance**

Waiver of Land Development Code section 5.5.2.A.1, to not provide the required entrance on the north façade facing East Bloom Street; and section 5.6.1.C.1, to not provide the required 50% of the wall surface in clear glass and doors.

**Waiver #5: Interior Tree Planting**

Waiver of Land Development Code Section 10.2.13, to not provide one of the required interior trees.

**Waiver #6: VUA LBA Landscape Buffer Encroachment**

Waiver of Land Development Code Section 10.2.6, to reduce the 10' VUA LBA along East Bloom Street to 3.3'.

**Waiver #7: VUA LBA Landscape Buffer Encroachment**

Waiver of Land Development Code Section 10.2.10, to reduce the 5' VUA LBA to 2.3' and to eliminate the screening and planting along the southern perimeter.

**CASE SUMMARY/BACKGROUND/SITE CONTEXT**

The applicant is proposing to construct a new 3,045 square foot Taco Bell with a drive-thru on the corner of South Brook Street and East Bloom Street. The existing lots along the east side of South Brook Street, between East Bloom, Cardinal Blvd, East Brandeis Avenue and the railroad right-of-way, are all a part of a new development for student housing. All the existing structures are to be removed including the existing Taco Bell at 1817 South Brook Street. A new corner lot is being created by minor plat to allow the relocation of the existing Taco Bell. Outdoor seating will also be provided along the front and side of the new building. A parking waiver is required to allow a reduction of the required parking which will be reviewed by Development Review Committee in July. The applicant is proposing to provide the required street perimeter and tree canopy planting requirements. However, the applicant is requesting elimination of one (1) interior tree; and also the elimination of the required screening and tree planting along the southern perimeter adjacent to the future student housing. In addition to the variance and waiver requests a Category 2B Development Plan is also required to be approved for this proposed development.

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

The site is zoned EZ-1 in the Campus (C) Form District. It is surrounded to the north by commercial and manufacturing properties; to the east by the railroad right-of-way, commercial and manufacturing properties; to the south by future student housing; and to the west by the Manuel High School campus. These surrounding properties are zoned EZ-1 and TNZD in the Campus (C) Form District.

	Land Use	Zoning	Form District
<b>Subject Property</b>			
<b>Existing</b>	Commercial/ Institutional	EZ-1	Campus
<b>Proposed</b>	Restaurant	EZ-1	Campus
<b>Surrounding Properties</b>			
<b>North</b>	Commercial & Manufacturing	EZ-1	Campus
<b>South</b>	Commercial & Restaurant (Future student housing)	EZ-1	Campus
<b>East</b>	Railroad Right-of-way, Commercial & Manufacturing	EZ-1	Campus
<b>West</b>	Institutional (Manuel High School)	TNZD	Campus

**PREVIOUS and CURRENT CASES ON SITE**

Case # **2-22-15** - Category 2B Development Plan – Pending  
**15Minorplat1075** – Minor plat to eliminate the existing property lines and create two new lots.  
 The Taco Bell lot and the residential/student housing lot. – Pending

**INTERESTED PARTY COMMENTS**

No interested party inquiries were received.

**APPLICABLE PLANS AND POLICIES**

Cornerstone 2020  
 Land Development Code

## STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCE

### Variance: Setback

Variance from the Land Development Code, Section 5.3.5.C.3.a, to allow a new building and menu board to encroach into the street side setback along East Bloom Street.

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

STAFF: The variance will not adversely affect the public health, safety or welfare because the location of the building and menu board will not interfere or impede traffic.

- (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 because the perimeter planting will be provided to buffer and enhance the street side yard of the property which will reduce the impact of the location of the building, drive-thru lane, and menu board and overall improve the existing condition along East Bloom Street.

- (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 because the proposed perimeter plantings including trees and shrub hedge will reduce the impact of the building and drive-thru being so close to the street and pedestrian sidewalk.

- (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 because this is a corner lot. Corner lots are required to provide large setbacks along both street frontages which reduce the buildable area of the lot. However, the applicant has utilized the limited area of this site. The layout of the site provides access to the drive-thru and parking in a safe and reasonable configuration.

### 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 because the lot is a corner lot with large setbacks along both street frontages which reduce the buildable area of the site. The proposed use, restaurant with drive-thru, is restricted by the requirement to have sufficient stackable area for the drive-thru and be located on the site to provide safe and adequate traffic flow. This requirement limits the configuration and layout.

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 and deprive the applicant of the use of the land. Locating the building outside the setbacks would not allow for adequate vehicular and pedestrian circulation.

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. The width of this 'created' lot has been shaped by the redevelopment of the entire block.

## STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER

### Waiver #1: Parking Location

Waiver of the Land Development Code Section 5.5.2.C.2.a, to allow parking in the front and side setbacks.

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

STAFF: The waiver will not adversely affect adjacent property owners since the parking is located away front of the building and the street frontage. Instead the parking is located between the building and the adjacent property to the south. Due to the lot width and the setback requirements, the buildable area is very limited to allow for building, parking and drive-thru. However, the location of the parking is in the best location for the development.

(b) The waiver will violate specific guidelines of Cornerstone 2020.

STAFF: Guideline 2, policy 15 states to encourage the design, quantity and location of parking in activity centers to balance safety, traffic, transit, pedestrian, environmental and aesthetic considerations. Guideline 3, policy 1 states to ensure 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 3, policy 23 states that setbacks, lot dimensions and building heights should be compatible with those of nearby developments that meet form district guidelines. Guideline 7, policy 3 states to evaluate developments for their ability to promote mass transit and pedestrian use, encourage higher density mixed use developments that reduce the need for multiple automobile trips as a means of achieving air quality standards and providing transportation choices. 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 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. The applicant has provided the parking in the best location for this lot. The parking is located between the building and the adjacent property which reduces the impact on the two adjacent streets, plus side parking lots are preferred. The waiver is compatible and does 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

STAFF: The extent of waiver of the regulation is the minimum necessary to afford relief to the applicant since the parking is located to the side of the building, which is preferred, and only 1.5 spaces encroach into the front setback.

(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 to compensate for non-compliance with the requirements to be waived. However, considering the lot width the location of the parking to the side of the proposed building is the best configuration. If the applicant were required to meet the provisions of the regulation it would deprive the applicant of a

reasonable use of the land and create an unnecessary hardship. The applicant would not be able to construct the proposed restaurant at this location.

## STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER

### Waiver #2: Ordering Station/Menu Board and Dumpster

Waiver of the Land Development Code Section 5.5.5A.1 and 10.2.6, to allow the ordering station/menu board and dumpster to be located in the setbacks; and visible from the street and proposed residential use.

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

STAFF: The waiver will not adversely affect adjacent property owners because the menu board is located adjacent to the street and will be screened by new plantings, including trees and a hedge, which will reduce the impact of the menu board in the setback. The location of the dumpster will not adversely affect adjacent property owners because it is located at the rear of the property and will be screened with an 8 feet wooden structure which reduces the impact on the adjacent properties.

(b) The waiver will violate specific guidelines of Cornerstone 2020.

STAFF: Guideline 2, policy A.4: encourages that proposed development is compact and results in an efficient land use pattern and cost-effective infrastructure investment. Guideline 3, policy 1, states that 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 3, policy 23 states that setbacks, lot dimensions and building heights should be compatible with those of nearby developments that meet form district guidelines. The waiver is compatible with the established pattern of development in scale and design of the vicinity. The proposed menu board and dumpster are being screened with plantings or a wooden structure to lessen the impact of their location in the setbacks. The waiver is compatible and does 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

STAFF: The extent of waiver of the regulation is the minimum necessary to afford relief to the applicant since the impact of the location of both the menu board and dumpster are being reduced by plantings, (trees and shrubs) or the wooden fencing.

(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 to compensate for non-compliance with the requirements to be waived. 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 since the requirements cannot be met due to the configuration requirements of the order point (menu board) to the drive-thru operation and the limited area of the site which can support the dumpster and still allow access for emptying.

## STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER

### Waiver #3: Outdoor Seating

Waiver of Land Development Code Section 5.5.5.A.1, to allow the outdoor seating area in the front setback, and to not provide the required 5' buffer planting between the outdoor seating area and the proposed residential to the south.

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

STAFF: The waiver will not adversely affect adjacent property owners. The proposed location of the outdoor seating is in keeping with the Campus Form and encourages pedestrian traffic in the area. A low wall, which separates the outdoor seating area from the drive thru and street, is being provided around the seating located in front of the building. The outdoor seating along the side of the building is separated from the adjacent property by the drive lane and parking spaces.

- (b) The waiver will violate specific guidelines of Cornerstone 2020.

STAFF: Guideline 3, policy A.21 encourages that the proposal provides appropriate transitions between uses that are substantially different in scale and intensity or density of development such as landscaped buffer yards, vegetative berms, compatible building design and materials, height restrictions, or setback requirements. Since the proposed parking spaces and drive lane are located between the outdoor seating area and the adjacent property there is some what a transition between the uses. Plus the applicant is providing a low wall around the perimeter of the seating area in the front of the building which helps provides screening. Therefore, the waiver request does not violate the Cornerstone 2020 guidelines.

- (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 the location of the outdoor seating will encourage pedestrian traffic and is located away from the adjacent 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 incorporated other design measures that exceed the minimums of the district to compensate for non-compliance with the requirements to be waived. The applicant is providing a low wall to separate the outdoor seating from the street. Plus the applicant has located the outdoor seating away from the adjacent property line. Plus if the applicant must apply the provisions of the regulation it would deprive the applicant of the reasonable use of the land or create an unnecessary hardship because the outdoor seating area would not be permitted as proposed.

## STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER

### Waiver #4: Building Design - Entrance

Waiver of Land Development Code section 5.5.2.A.1, to not provide the required entrance on the north façade facing East Bloom Street; and section 5.6.1.C.1, to not provide the required 50% of the wall surface in clear glass and doors.

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

STAFF: The waiver will not adversely affect adjacent property owners since the applicant is providing entrances from the parking lot and the front of the building facing South Brook. To provide an entrance

on the East Bloom Street facade would require pedestrians to cross the drive-thru traffic lane which could be unsafe and dangerous. The design of the interior kitchen and equipment does not allow the required 50% of the wall surface to be clear glass; however, not providing the clear glass will not affect the adjacent property owners.

- (b) The waiver will violate specific guidelines of Cornerstone 2020.

STAFF: Guideline 3, policy 1 and 2 calls for the 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. The type of building materials may be considered as a mitigation measure and may also be considered in circumstances specified in the Land Development Code. When assessing compatibility, it is appropriate to consider the choice of building materials in the following circumstances: (1) projects involving residential infill (2) projects involving non-residential uses; and (3) when specified in the Land Development Code. The proposal is for a non-residential use. The Land Development Code provides building design standards for non-residential and mixed use buildings. The purpose of the regulation is to provide visual interest and a human scale that are representative of the form district through the use of windows, columns, pilasters, piers, variation of material, entrances, storefront windows, and other animating features along no less than..... The applicant is providing building materials and animation of the façade which mitigate the request to not provide an entrance on the façade facing East Bloom Street. The applicant is providing trees and shrub plantings along the perimeter of the East Bloom Street façade to mitigate the lack of clear glass and doors. Therefore, the waivers will not violate specific guidelines or policies 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 the applicant is providing adequate access to the facility for both pedestrian and vehicular customers.

- (d) Either:  
(i) The applicant has not 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 to compensate for non-compliance with the requirements to be waived. With exception of the other waiver requests, only the minimum requirements are being met. The strict application of the provisions of the regulation would however create an unnecessary hardship on the applicant since the kitchen and other equipment have limited the location of the clear glass and doors. Plus requiring an entrance along this façade will be unsafe and dangerous for pedestrian customers who would be required to cross the drive-thru lane.

## STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER

### Waiver #5: Interior Tree Planting

Waiver of Land Development Code Section 10.2.13, to not provide one of the required interior trees.

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

STAFF: The waiver will not adversely affect adjacent property owners since the interior landscape planting proposed meets the square footage requirements. Plus the street perimeter tree planting will

be provided and the tree canopy requirements are also being providing while allowing for adequate circulation for vehicular and pedestrian traffic.

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

STAFF: Guideline 13, Policy 5 calls for standards to ensure the creation and/or preservation of tree canopy as a valuable community resource. The purpose of interior landscape areas is to break up large impervious areas and allow for a greater distribution of tree canopy coverage. The applicant is providing two of the required interior trees and the required trees along the street perimeters. Plus the applicant is exceeding the tree canopy requirement of 20% site coverage. Therefore, the waiver will not violate the 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

STAFF: The extent of waiver of the regulation is the minimum necessary to afford relief to the applicant since the applicant is providing two of the three interior trees, all the street perimeter trees, and exceeds the tree canopy cover.

- (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 to compensate for non-compliance with the requirements to be waived. However, to provide the third interior tree would impede vehicle circulation on the site which would deprive the applicant of the reasonable use of the land or create an unnecessary hardship.

## STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER

### Waiver #6: VUA LBA Landscape Buffer Encroachment

Waiver of Land Development Code Section 10.2.6, to reduce the 10' VUA LBA along East Bloom Street to 3.3'.

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

STAFF: The waiver will not adversely affect adjacent property owners since the applicant is providing the required plantings in the reduced buffer area.

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

STAFF: Guideline 3, policy 9 of Cornerstone 2020 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. 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 air borne and water borne pollutants. Since the applicant will be providing the required plantings in the reduced buffer area the guidelines and policies of Cornerstone 2020 are not being violated.

- (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 the applicant will be providing the required plantings in the reduced buffer area.

- (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 to compensate for non-compliance with the requirements to be waived. However, 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.

## STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER

### Waiver #7: VUA LBA Landscape Buffer Encroachment

Waiver of Land Development Code Section 10.2.10, to reduce the 5' VUA LBA to 2.3' and to eliminate the screening and planting along the southern perimeter.

- (a) The waiver will adversely affect adjacent property owners; and

STAFF: The waiver will adversely affect adjacent property owners since the required proposed parking will not be screened to reduce the impact on the adjacent property. There will be no screening of the headlights or screening to reduce noise therefore the adjacent property will be affected.

- (b) The waiver will violate specific guidelines of Cornerstone 2020.

STAFF: Guideline 3, policy 9 of Cornerstone 2020 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. 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 air borne and water borne

pollutants. Since there will not be any screening or buffering provided between the parking and the adjacent property this waiver request violates all the above guidelines and policies of Cornerstone 2020.

- (c) The extent of the waiver of the regulation is not the minimum necessary to afford relief to the applicant

STAFF: The extent of waiver of the regulation is not the minimum necessary to afford relief to the applicant since a low fence or wall could be provided to screen and buffer the parking lot from the adjacent property.

- (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 to compensate for non-compliance with the requirements to be waived. The strict application of the provisions of the regulation would not deprive the applicant of the reasonable use of the land or create an unnecessary hardship on the applicant since the regulations and neighborhood plan requirements can be met.

### TECHNICAL REVIEW

The applicant should resubmit an updated development plan addressing the following technical review items:

1. Add the boundary calls for the perimeter property lines to the plan. Show the property lines as solid lines.
2. Add the adjacent property owner information to all perimeter properties; include the address, deed book & page, form district, and zoning.
3. Label the railroad right-of-way along the rear of the property.
4. Add the right-of-way widths to the streets.
5. Show and label the dimension from the street centerline to the property line.
6. Show drainage flow arrows on the plan. Show the locations of catch basins and inlets.
7. Show and label the contours.
8. Show and label utility easements.
9. Show and label easement for existing tower if it is to remain.
10. Clearly identify the new building and site elements on the plan. Including the menu board, dumpster, outdoor seating, etc.
11. Show the existing building and label as being removed.
12. Provide the square footage of the outdoor seating area.
13. Correct the parking calculations to show the outdoor seating area parking requirements.
14. Add the Floor Area Ratio (FAR) to the site data.
15. Along the East Bloom frontage: Add a dimension from the building to the property line; and add a dimension from the menu board to the property line.
16. Add an over-all dimension from the property line to the South Brook Street face of the building.
17. Show and label the 20' setback along the rear property line.
18. Add a typical parking module with dimensions for parking spaces, aisles and accessible spaces.
19. Show and label the ILA areas on the plan. List the square footage of each on the plan clearly.
20. Label the grass median in the South Brook Street right-of-way.
21. Add a note to the plan addressing repair of existing sidewalks.
22. Clearly show a pedestrian connection from East Bloom Street as well as South Brook Street.

23. Add a note to the plan addressing the driving aisle connecting to the adjacent property to the south. Provide a crossover agreement for this proposed access.
24. Add this note to the plan: All work within the right-of-way will require construction plans, permit, and bond.
25. Replacement sidewalks along East Bloom Street should be 9' wide.
26. Applicant shall address the MSD water quality and stormwater management requirements and comments provided.
27. 75% of the length of the façade facing East Bloom Street shall be animated with building façade features as listed in the Land Development Code.

**STAFF CONCLUSIONS**

Based upon the information in the staff report, the analysis of the standards of review does support granting the requested variance; and also do support granting the requested waivers #1 - #6. However, waiver #7 is not supported.

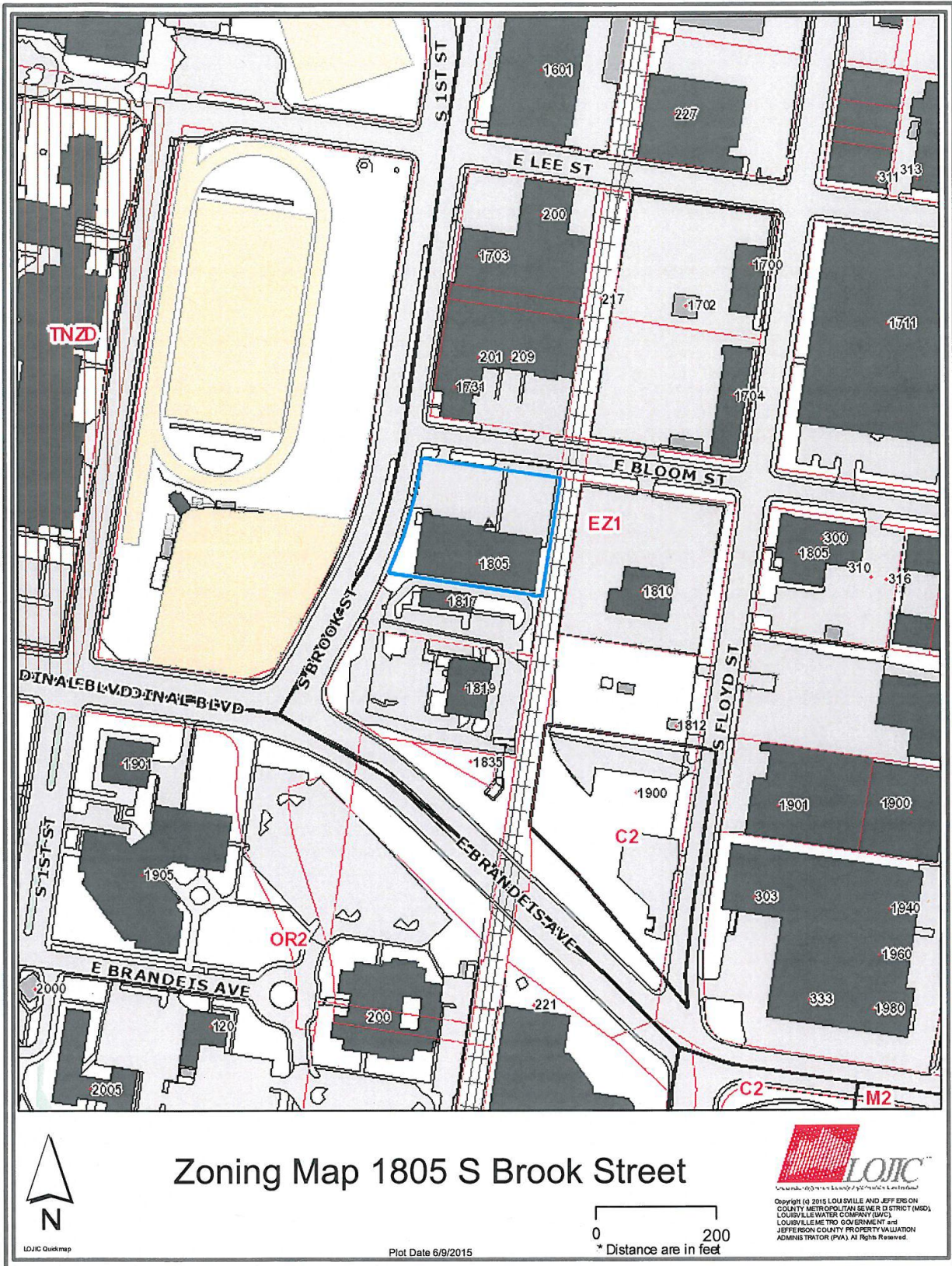
Therefore, the Board of Zoning Adjustment must determine, based on the testimony and evidence provided at the public hearing, if the proposal meets the standard for the variance established in the Land Development Code; and the waivers do not violated the comprehensive plan and also meet the standards established in the Land Development Code

**NOTIFICATION**

Date	Purpose of Notice	Recipients
05/29/2015	BOZA Hearing	Neighborhood notification recipients
06/05/2015	Sign Posting	Subject property
05/29/2015	BOZA Hearing	1 <sup>st</sup> tier adjoining property owners

**ATTACHMENTS**

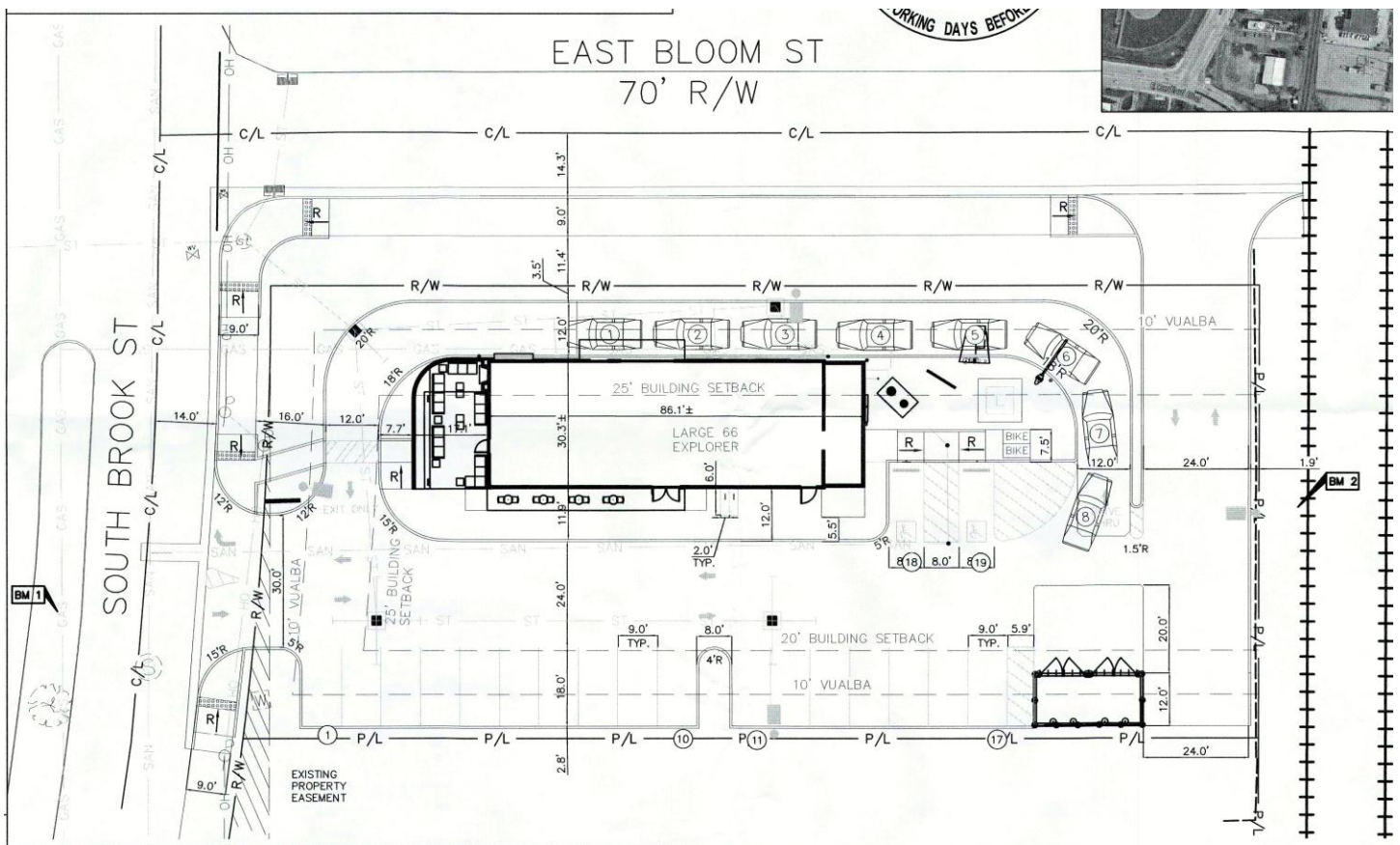
1. Zoning Map
2. Aerial Photograph
3. Site Plan
4. Building Elevations – New (Revised) and Previous
5. Applicant’s Justification
6. Site Photographs



Attachment 2 - Aerial Photo



Attachment 3 - Site Plan



# Attachment 4 –Building Elevations



ELEVATION = 1,668 SF  
 ALLOWED = 208.4 SF  
 PROPOSED = 10.1 SF

NORTH ELEVATION



ELEVATION = 665 SF  
 ALLOWED = 124.75 SF  
 PROPOSED = 20.84 SF

WEST ELEVATION

EAST ELEVATION



ELEVATION = 1,700 SF  
 ALLOWED = 210 SF  
 PROPOSED = 125.84 SF

PROPOSED = 105 SF

SOUTH ELEVATION

## Attachment 5 – Applicant’s Justifications

### Variance: Setback

Variance from the Land Development Code, Section 5.3.5.C.3.a, to allow a new building and menu board to encroach into the street side setback along East Bloom Street.

#### 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.**

The variance will allow for adequate use of the site for the proposed Taco Bell restaurant. The public health welfare and safety will not be adversely affected. The proposed building location is 37 ft from the edge of pavement along E. Bloom St.

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

The proposed Taco Bell development is in keeping with the essential character of the Campus Form District. The proposed building location fits with adjacent properties.

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

The proposed variance will allow for the adequate and efficient use of the property and will allow for required traffic flow and drive-thru services

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

The requested variance is inline with adjacent property building locations and will allow for adequate use of the property.

*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).**

Due to the the specific use and drive thru requirements of the proposed development, adequate circulation for vehicular and pedestrian traffic must be considered.

**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.**

Locating the proposed building outside the required setback would not allow for adequate vehicular and pedestrian circulation.

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

Due to the nature of the redevelopment, the proposed building location and site layout have been placed to best use the proposed property. In conjunction with the adjacent property redevelopment, the entire block will better meet the intentions of the Campus Form District.

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**Waiver #1: Parking Location**

Waiver of the Land Development Code Section 5.5.2.C.2.a, to allow parking in the front and side setbacks.

“No justification was provided by the applicant.”

**Waiver #2: Ordering Station/Menu Board and Dumpster**

Waiver of the Land Development Code Section 5.5.5A.1 and 10.2.6, to allow the ordering station/menu board and dumpster to be located in the setbacks; and visible from the street and proposed residential use.

**General Waiver Justification.**

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

**1. Will the waiver adversely affect adjacent property owners?**

This waiver will not adversely affect the adjacent property owner as it is located on along the E. Bloom St. frontage and the property across the street to the north is non-residential.

**2. Will the waiver violate the Comprehensive Plan?**

The proposed Taco Bell restaurant with drive-thru is compatible with the surrounding area and will be consistent with all other Campus Form District regulations. The location of the proposed menu-board and order point are in a necessary location for efficient customer service and traffic flow.

**3. Is extent of waiver of the regulation the minimum necessary to afford relief to the applicant?**

The proposed location of the menu-board and order point are in a essential location for Taco Bell to perform drive-thru services. Relocating the order point location will adversely affect the timing and customer service of drive-thru operations.

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**4. Has either (a) the applicant 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 would (b) the strict application of the provisions of the regulation deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant?**

Requiring that the order point and menu-board be located outside the required yard setback will place undue hardship on the operations of Taco Bell. Drive-thru service is essential for operation of Taco Bell

**Waiver #3: Outdoor Seating**

Waiver of Land Development Code Section 5.5.5.A.1, to allow the outdoor seating area in the front setback, and to not provide the required 5' buffer planting between the outdoor seating area and the proposed residential to the south.

**General Waiver Justification:**

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

**1. Will the waiver adversely affect adjacent property owners?**

The waiver will not adversely affect the adjacent property owners. The proposed outdoor seating is keeping with the CFD and will encourage pedestrian traffic in the area.

**2. Will the waiver violate the Comprehensive Plan?**

The requested waiver will allow for outdoor seating along the main road frontage and will be coherent with the intent of the CFD.

**3. Is extent of waiver of the regulation the minimum necessary to afford relief to the applicant?**

The outdoor seating is inline with the proposed main structure and allows for adequate seating for expected customers.

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**4. Has either (a) the applicant 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 would (b) the strict application of the provisions of the regulation deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant?**

Relocating the outdoor seating area or providing a 5' LBA along the south property line will adversely affect the use to the proposed property by not allowing adequate outdoor seating or parking. All available green space has been utilized for landscaping or amenities.

**Waiver #4: Building Design - Entrance**

Waiver of Land Development Code section 5.5.2.A.1, to not provide the required entrance on the north façade facing East Bloom Street; and section 5.6.1.C.1, to not provide the required 50% of the wall surface in clear glass and doors.

**General Waiver Justification:**

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

**1. Will the waiver adversely affect adjacent property owners?**

The waiver will not adversely affect the adjacent property owners. The Taco Bell restaurant will provide a main entrance at the S. Brook St. frontage and at the side entrance adjacent to the proposed parking. Similar to the pedestrian access requirement, allowing pedestrian to cross the drive-thru lane at the building location is dangerous.

**2. Will the waiver violate the Comprehensive Plan?**

The main frontage on S. Brook St. will allow for all pedestrian traffic to locate an entrance into the proposed Taco Bell.

**3. Is extent of waiver of the regulation the minimum necessary to afford relief to the applicant?**

The proposed Taco Bell provides adequate entry locations for both pedestrian and vehicular customers.

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**4. Has either (a) the applicant 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 would (b) the strict application of the provisions of the regulation deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant?**

Requiring an entrance along the drive-thru façade will be dangerous for pedestrian customers

**Waiver #5: Interior Tree Planting**

Waiver of Land Development Code Section 10.2.13, to not provide one of the required interior trees.

**General Waiver Justification:**

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

**1. Will the waiver adversely affect adjacent property owners?**

The waiver will not adversely affect the adjacent property owners. The proposed landscaping areas have been maximized to provide as many interior trees as possible while allowing for adequate circulation for vehicular and pedestrian traffic.

**2. Will the waiver violate the Comprehensive Plan?**

The proposed landscaping areas have been maximized to provide as many interior trees as possible while allowing for adequate circulation for vehicular and pedestrian traffic. The proposed tree canopy is greater than the required.

**3. Is extent of waiver of the regulation the minimum necessary to afford relief to the applicant?**

The proposed landscaping areas have been maximized to provide as many interior trees as possible while allowing for adequate circulation for vehicular and pedestrian traffic. Any additional trees will require removal of proposed parking or drive way and will adversely affect the operations of the proposed restaurant.

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**4. Has either (a) the applicant 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 would (b) the strict application of the provisions of the regulation deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant?**

The proposed landscaping areas have been maximized to provide as many interior trees as possible while allowing for adequate circulation for vehicular and pedestrian traffic. The proposed VUALBA on S. Brook St. is greater than required and the proposed. Any additional trees will require removal of proposed parking or drive way and will adversely affect the operations of the proposed restaurant.

**Waiver #6: VUA LBA Landscape Buffer Encroachment**

Waiver of Land Development Code Section 10.2.6, to reduce the 10' VUA LBA along East Bloom Street to 3.3'.

**General Waiver Justification.**

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

**1. Will the waiver adversely affect adjacent property owners?**

A street-side setback (VUA) of less than 10 feet will not negatively affect health or welfare of the public. The minimal setback area is intended for commercial uses (restaurants) which serve the surrounding work-live environment within the campus area by providing drive thru exposure to the street side. There are no adjacent owners affected.

**2. Will the waiver violate the Comprehensive Plan?**

The reduced setback (VUA) along E. Bloom Street will not alter the character of CFD. The restaurant with reduced setback allows a drive-thru component which serves the goal of CFD by providing campus pedestrian access to a convenient amenity and promoting pedestrian access to the restaurant.

**3. Is extent of waiver of the regulation the minimum necessary to afford relief to the applicant?**

The strict application of the required VUA would eliminate the capacity for a drive-through component which is vital to serve the immediate residents of the Campus form district. This would deprive the applicant full rights of the commercial food use permitted by CFD zoning.

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**4. Has either (a) the applicant 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 would (b) the strict application of the provisions of the regulation deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant?**

The drive thru component is a unique circumstance which does not apply in all commercial/retail uses and special consideration should be made to these facilities located along a street-side yard. The side yard allows adequate visibility and motor access to the restaurant. Strict application of the regulation would deprive the applicant of reasonable use of the property and result in unnecessary hardship.

**Waiver #7: Landscape Buffer Encroachment**

Waiver of Land Development Code Section 10.2.10, to reduce the 5' VUA LBA to 2.3' and to eliminate the screening and planting along the southern perimeter.

**General Waiver Justification:**

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

**1. Will the waiver adversely affect adjacent property owners?**

The proposed residential use will be campus housing or dormitories and the lack of require screening will not adversely affect the property.

**2. Will the waiver violate the Comprehensive Plan?**

The proposed Taco Bell restaurant site layout will allow for the merging of the adjacent residential use. Installing a buffer along the south property line will reduce access from the property to the south.

**3. Is extent of waiver of the regulation the minimum necessary to afford relief to the applicant?**

The proposed layout do not allow enough room for a hedge and the proposed use of the property to the south should allow for access across the entire property line.

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**4. Has either (a) the applicant 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 would (b) the strict application of the provisions of the regulation deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant?**

The proposed landscaping areas have been maximized to provide as much landscaping as possible while allow for access through out the site to intergrate with the surround area.

**Attachment 6- Site Photos**



**Subject site at corner of South Brook and East Bloom Streets**



**Looking from South Brook Street east into subject site**





**Looking from South Brook Street east into subject site. Existing building to be removed**



**Looking south down South Brook Street**



**Looking south from East Bloom Street into rear of subject site**



**Looking from East Bloom south into subject site**



**Looking west from East Bloom Street**



**Looking west from East Bloom Street**



**Looking west from the interior of the subject site**



**Existing Taco Bell at 1817 South Brook Street which is being replaced**



**Adjacent property to the north**



**Adjacent property to the west**



**Adjacent property to the east**



**Adjacent property to the northeast**



**Adjacent property to the north (rear parking lot)**



**Adjacent property to the south. Building to be removed.**