

Louisville Metro Board of Zoning Adjustments Staff Report

June 15, 2015



Case No:	15VARIANCE1021 / 15DEVPLAN1050
Request:	Category 3 Plan, Waivers and Variances
Project Name:	Kroger L-785 – 4915 Dixie Highway
Location:	4915 Dixie Highway
Owner:	Dixie Associates
Applicant:	The Kroger Company
Representative:	Heritage Engineering LLC
Jurisdiction:	Louisville Metro
Council District:	3 – Mary Woolridge
Case Manager:	Brian Davis, AICP, Planning Supervisor

REQUESTS

- Category 3 Plan
- Variance #1: Variance requested from Section 5.3.1.B.5, Table 5.3.2 of the Land Development Code to reduce the 50-foot non-residential to residential (no loading) setback to 5 feet to allow the proposed building to be placed within 45 feet of the existing property line and the proposed parking to be placed within 5 feet of the existing property line.

Location	Requirement	Requested	Variance
Southern Property Line	50 feet	5 feet	45 feet

- Variance #2: Variance requested from Section 5.3.1.B.5, Table 5.3.2 of the Land Development Code to reduce the 75-foot non-residential to residential (with loading) setback to 25 feet to allow the proposed vehicle use area to be placed within 25 feet of the existing property line.

Location	Requirement	Requested	Variance
Eastern Property Line	75 feet	25 feet	50 feet

- Variance #3: Variance requested from Section 5.3.2.C.2.a of the Land Development Code to allow the proposed building to have a maximum setback of 540 feet.

Location	Requirement	Requested	Variance
Western Property Line (along Dixie Highway)	275 feet	540 feet	265 feet

- Waiver #1: Waiver requested from Section 10.2.4.A and 10.2.10 of the Land Development Code to reduce the 35 foot property perimeter landscape buffer and 15 foot vehicle use area landscape buffer to 5 feet.
- Waiver #2: Waiver requested from Section 5.5.2.B.1.a of the Land Development Code to waive the parking lot connection to the south.

CASE SUMMARY/BACKGROUND/SITE CONTEXT

Existing Zoning District: C-1/C-2

Existing Form District: Suburban Marketplace Corridor
 Existing/Proposed Use: Retail/Retail

The applicant is proposing to demolish the existing vacant retail department store (former K-Mart, approximately 106,171 square feet) and an auto parts store (7,610 square feet) and construct a new 123,180 square foot grocery store. The site development also proposes a fueling station, a TARC Park-n-Ride area as well as redesigned parking areas with new internal landscape areas.

The property is located within the Dixie Highway Corridor Master Plan study area. This plan was sponsored by Council members Rick Blackwell, Mary Woolridge and David Yates and brought citizens, City staff and businesses together to collaborate in creating a vision and a plan that represents the desired long-term vision for Dixie Highway from Oak Street to the Gene Snyder Freeway.

LAND USE/ZONING DISTRICT/FORM DISTRICT TABLE

	Land Use	Zoning	Form District
<i>Subject Property</i>			
Existing	Retail	C-1/C-2	SMC
Proposed	Retail	C-1/C-2	SMC
<i>Surrounding Properties</i>			
North	Commercial/Residential	C-2/R-4/R-7	SMC/N
South	Commercial/Residential	C-2/R-7	SMC/N
East	Residential	R-4/R-7	N
West	Commercial	C-2	SMC

PREVIOUS CASES ON SITE

15WAIVER1007: The Development Review Committee approved a waiver of Section 10.2.4.B to allow an existing sanitary sewer and drainage easement to encroach 100% into the required 15' Landscape Buffer Area (LBA) along the Dixie Highway frontage for a proposed outlot for a proposed restaurant (May 6, 2015).

INTERESTED PARTY COMMENTS

No interested party comments have been received by staff.

APPLICABLE PLANS AND POLICIES

Cornerstone 2020
 Land Development Code
 Dixie Highway Corridor Master Plan (2013)

**STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCE #1:
 Variance from Section 5.3.1.B.5, Table 5.3.2 of the Land Development Code
 to reduce the 50-foot non-residential to residential (no loading) setback to 5
 feet**

(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 because the proposed construction is similar to the existing conditions and will allow the applicant to utilize existing parking along the southern property line.

(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 proposed development will be compatible with nearby businesses, implement a high standard of design both in regards to the building and the parking area, and will be enhanced with landscape plantings as required for the subject property.

(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 overall changes to the plan will improve vehicular and pedestrian circulation throughout the site.

(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 the conditions, particularly the parking, already exists so the variance allows the developer to minimize disturbance along the property boundaries and use existing parking areas.

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 parking layout along the southern property line was developed before the current regulations and the applicant wishes to utilize this area in the redesign.

2. The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or create an unnecessary hardship on the applicant.

STAFF: The strict application of the provisions of the regulation would create an unnecessary hardship on the applicant because the development could not be built as proposed and the minimum number of parking spaces would be difficult to achieve without utilizing the existing parking along the southern property boundary

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 owner is redeveloping the site utilizing the existing conditions along the southern boundary which was installed prior to these regulations.

**STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCE #2:
Variance from Section 5.3.1.B.5, Table 5.3.2 of the Land Development Code
to reduce the 75-foot non-residential to residential (with loading) setback to
25 feet**

(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 because the granting of the variance will allow for reconstruction of the vacant building into a clean and modern grocery with fuel center that will be well maintained and become an asset to the community.

(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 proposed building will be placed further away from the property line than the existing building and a 25 foot landscape buffer area will be incorporated along the eastern (rear) property line.

(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 addition will not affect adjacent residential properties to the east.

(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 the area in question was previously used for loading/unloading operations.

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 variance allows the new building to be constructed in a near identical location as the existing building

2. The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or create an unnecessary hardship on the applicant.

STAFF: The strict application of the provisions of the regulation would create an unnecessary hardship on the applicant because the proposed building could not be built as shown and would need to be modified.

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 owner is redeveloping the site utilizing the existing conditions along the eastern boundary which was installed prior to these regulations.

**STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCE #3:
Variance from Section 5.3.2.C.2.a of the Land Development Code to allow
the proposed building to have a maximum setback of 540 feet**

(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 because the proposed construction is similar, though closer, to the setback of the existing vacant retail department store.

(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 proposed grocery store is closer to the street than the existing vacant retail department store plus the fueling station will be located closer to Dixie Highway, thus eliminating the expanse of asphalt along the road and establishing development closer to the street.

(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 there are similar encroachments of this type along the corridor; however, the fuel station and proposed restaurant on the newly created outparcel provide development closer to the street. This type of infill is encouraged in the Dixie Highway Corridor Master Plan.

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 existing conditions were developed before the current regulations.

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 applicant feels this type of layout for the building and parking is the most appropriate given the existing conditions, location of the entrance along Dixie Highway, the environmental conditions which exist along the Dixie Highway frontage and the conditions on the remaining portion of the development which are not being razed.

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 applicant has yet to make any improvements to the site and the existing conditions were created prior to the adoption of these regulations.

**STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER #1:
Waiver requested from Section 10.2.4.A and 10.2.10 of the Land Development
Code to reduce the 35 foot property perimeter landscape buffer and 15 foot
vehicle use area landscape buffer to 5 feet**

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

STAFF: The waiver will not adversely affect adjacent property owners since the parking spaces along the southern property line already exist. Plus the required buffer and trees plantings are being provided.

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

STAFF: 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. The intent of landscape buffer areas is to create suitable transitions where varying forms of development adjoin and to minimize the negative impacts resulting from adjoining incompatible land uses. Even though the width of the landscape buffer area is being minimized, the applicant will be providing plantings/screening which meet the minimum required tree and shrub plantings for the perimeter buffers. Plus the tree canopy requirements are being fulfilled for the site. Therefore the waiver will not violate the comprehensive plan.

- (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 applicant is proposing to utilize the conditions which exist along the southern property line. The landscape materials will be provided within the 5-foot 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. 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 development of the site is utilizing the existing pavement to provide the required parking.

**STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER #2:
Waiver requested from Section 5.5.2.B.1.a of the Land Development Code to waive
the parking lot connection to the south.**

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

STAFF: While not providing the connection would create a slightly longer trip between residential areas and the development, the waiver will not adversely affect adjacent property owners.

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

STAFF: Guideline 2, policy 13 calls to Encourage adjacent development sites to share entrance and parking facilities in order to reduce the number of curb cuts and the amount of surface parking. Guideline 7, policy 13 calls for the requirement of joint and cross access easements according to standards set forth in the Land Development Code, to reduce traffic on major thoroughfares and to reduce safety hazards. Guideline 7, policy 16 calls for the promotion of joint access and circulation systems for development sites comprised of more than one building site or lot. The purpose of the requirements to be waived are to allow similar, compatible non-residential and multi-family uses to access adjacent sites without use of the main road to reduce curb cuts, the amount of surface parking, and to reduce traffic on the main thoroughfare. The waiver will violate the guidelines of Cornerstone 2020 since not providing the connection would require vehicles making short trips to the proposed grocery to get on Dixie Highway and continue to contribute to the high traffic volumes (Kentucky

Transportation Cabinet's last count at the Dixie Highway/Upper Hunters Trace station showed an ADT of 52,530 in 2007).

- (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 connection could cause the development to fall below the required minimum parking calculation (required minimum parking is 688 spaces, currently providing 694 spaces).

- (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: Requiring the connection would not deprive the applicant of the reasonable use of the land or create an unnecessary hardship on the applicant because the proposed building can still be used as a grocery store and the connection would require only a minor change to the parking layout.

TECHNICAL REVIEW

- There are no outstanding technical issues regarding the proposed plan.

In Regards to Variance #1:

- Existing building is located approximately 60 feet from the southern property line.
- Proposed building is to be located approximately 45 feet from the southern property line.
- The location of parking spaces along the southern property line will remain unchanged (approximately five feet).

In Regards to Variance #2:

- Existing building is located approximately 50 feet (at its closest point) from the eastern (rear) property line.
- Proposed building is to be located approximately 75 feet (at its closest point) from the eastern property line.
- A 25-foot landscape buffer is being provided along the rear property line.
- Vehicle use area is not encroaching beyond its current location.

In Regards to Variance #3:

- Existing building is approximately 575 feet from Dixie Highway at its closest point, although the majority of the front façade is setback approximately 615 feet from Dixie Highway.
- The proposed building is to be located approximately 540 feet from Dixie Highway.

In Regards to Waiver #1:

- The buffer between the existing and proposed parking along the southern property line is five feet.

In Regards to Waiver #2:

- Docket Number 14487 was a Revised Detailed District Development Plan for the property located at 5105, 5107 and 5109 Dixie Highway (which abuts this property to the south). On the approved the plan, the applicant was required to identify a future access easement along the rear of the property which would connect the subject property (4915 Dixie Highway) to Bonnyville Boulevard. A note was included on the plan which states "18) Upon development or redevelopment of adjacent properties, a

unified access and circulation system shall be developed to eliminate preexisting curb cuts and provide for vehicular movement throughout adjacent sites as determined appropriate by the Department of Public Works. A cross access agreement to run with the land and in a form acceptable to the Planning Commission legal counsel shall be recorded prior to the time of construction approval for the adjacent property to be developed.”

- The access easement could potentially provide access between the proposed development and the multi-family units centered on Valiant Drive, the Oak Lawn Estates subdivision, as well as a medical office development located at 5129 Dixie Highway, potentially alleviating traffic along this stretch of Dixie Highway.
- The Dixie Highway Corridor Master Plan supports inter-parcel connectivity as a way of reducing the load on Dixie Highway, creating a more safe and efficient transportation system.

STAFF CONCLUSIONS

The Dixie Highway Corridor Master Plan calls for redevelopment/reuse of aging big box sites. This proposed development replaces a vacant big box store with a new grocery store with a fueling station. The site design improves the internal vehicular and pedestrian circulation as well as adds much needed internal landscape areas to the sea of asphalt that lies between the building and Dixie Highway. The variances are similar to or improvements upon the existing building layout.

The standards of review have been met for the requested variance and waivers on the site. Based upon the information in the staff report, the testimony and evidence provided at the public hearing, the Board of Zoning Adjustments must determine if the proposal meets the standards for approving the variances, waiver and Category 3 plan.

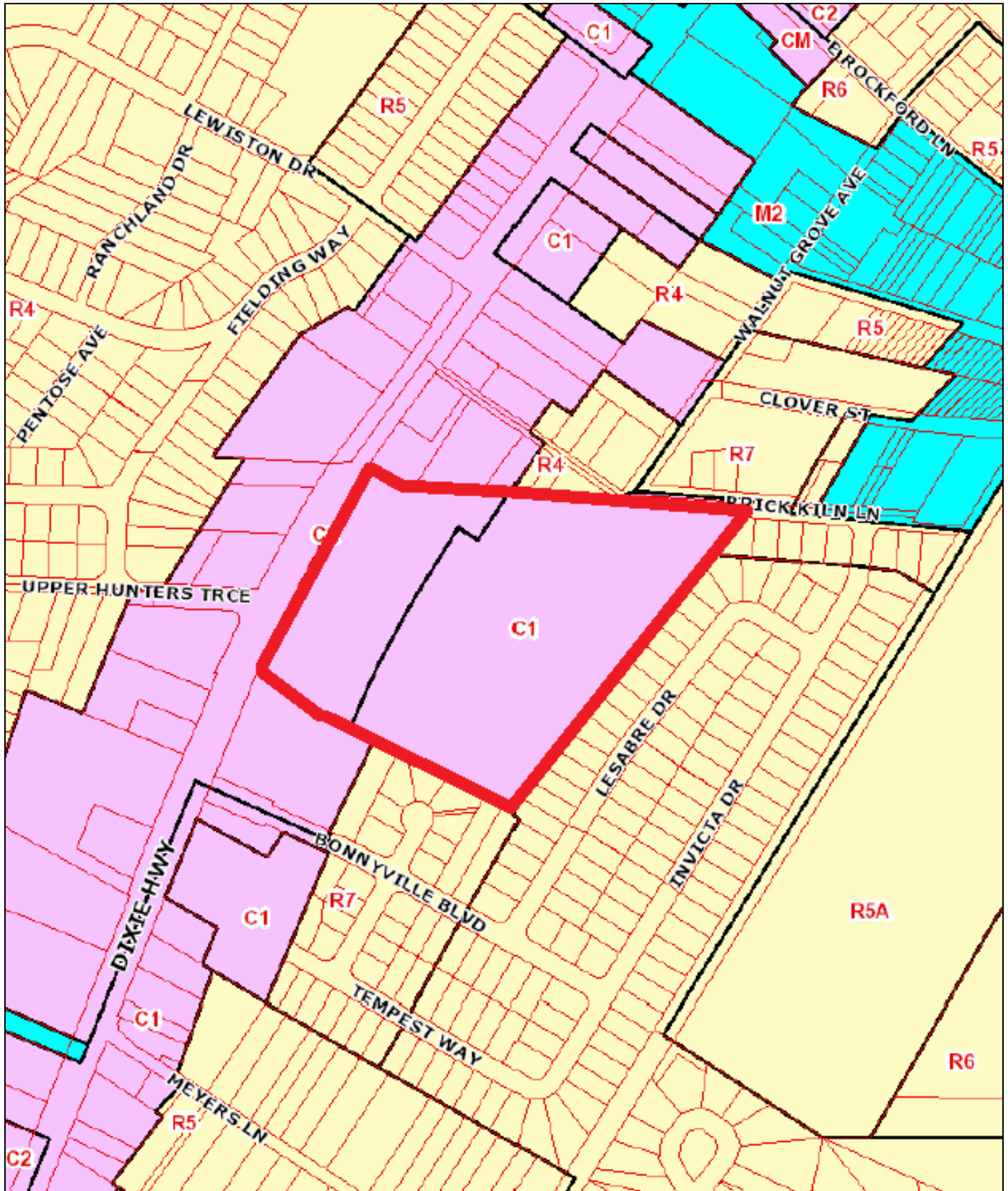
NOTIFICATION

Date	Purpose of Notice	Recipients
6/1/15	Hearing before BOZA	1 st tier adjoining property owners Subscribers of Council District 3 and 12 Notification of Development Proposals

ATTACHMENTS

1. Zoning Map
2. Aerial Photograph

1. Zoning Map



2. Aerial Photograph

