

# Board of Zoning Adjustment Staff Report

June 6, 2016



<b>Case No:</b>	<b>16DEVPLAN1022/16VARIANCE1016</b>
<b>Request:</b>	<b>Proposed 4,000 sf. Contractor's Shop</b>
<b>Project Name:</b>	<b>Albany Ave. Building Project</b>
<b>Location:</b>	<b>1635 Albany Ave.</b>
<b>Area:</b>	<b>.32830 acres</b>
<b>Owner:</b>	<b>Casabella Proppoerties LLC.</b>
<b>Applicant:</b>	<b>Bill Schroll – Schroll Land Surveying LLC.</b>
<b>Representative:</b>	<b>Bill Schroll – Schroll Land Surveying LLC.</b>
<b>Jurisdiction:</b>	<b>Louisville Metro</b>
<b>Council District:</b>	<b>3 – Mary Woolridge</b>
<b>Case Manager:</b>	<b>Ross Allen, Planner I</b>

### REQUEST

- Variance: from LDC section 5.3.2.C.2.B to allow parking and maneuvering area into the 25 ft. setback along the west property line.

#### Variance

Location	Requirement	Request	Variance
<b>Western Side of Property</b>	25' ft.	0' ft.	25' ft.

- Waiver #1: from LDC section 5.5.2.A.1 to have an entrance with glazing, display windows or windows affording views into the business which face the street serving the development.
- Waiver #2: from LDC section 5.6.1.B.1.a to have animating features along less than 60% of their horizontal length on the ground floor level of the primary façade of the principal customer entrance.
- Waiver #3: from LDC section 5.7.1.B.3.a to not provide the property perimeter buffer yard between the R-5 Suburban Neighborhood Form District and the Suburban Market Place Corridor Form District.
- Waiver #4: from LDC section 5.9.2.A.1.b to provide a clearly defined safe pedestrian access from the public right of way through the off-street parking area to the non-residential building entrance.
- Landscape Waiver #5: from LDC section 10.2.11 to provide a 6 foot continuous screen along the northern and western property lines for a Vehicular Use Area (VUA) adjacent to a residential use.
- Sidewalk Waiver#6: from LDC section 5.8.1.B to not provide sidewalks in the abutting right of way to serve the entrance of the development site.

**CASE SUMMARY/BACKGROUND/SITE CONTEXT**

The subject site is located at 1635 Albany Ave. within Louisville Metro. The applicant is proposing to construct a 4,000 sf. Contractor’s shop with a height of 16 feet in a M-2 zoning district within a Suburban Market Place Corridor on a parcel of approximately .32380 acres or 14,300 sf. Along the northern property line the subject site abuts a vacant parcel and two residential uses. Along the western property line the subject property abuts two residential uses and two vacant parcels. To the south the Form district transitions from a Suburban Market Place Corridor to a Neighborhood Form district with residential land uses in a R-5 zoning district. Along the western property line of the subject site sits a vacant parcel in an M-2 zoning District within the Suburban Market Place Corridor Form District. The applicant is intending to use the proposed structure for office and storage space for the maintenance of various rental properties.

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

	<b>Land Use</b>	<b>Zoning</b>	<b>Form District</b>
<b><i>Subject Property</i></b>			
<b>Existing</b>	Vacant	M-2	Suburban Market Place Corridor
<b>Proposed</b>	Contractor’s shop	M-2	Suburban Market Place Corridor
<b><i>Surrounding Properties</i></b>			
<b>North</b>	Vacant/Single Family Dwellings	M-2	Suburban Market Place Corridor
<b>South</b>	Single Family Dwellings	R-5	Neighborhood
<b>East</b>	Vacant	M-2	Suburban Market Place Corridor
<b>West</b>	Vacant/Single Family Dwellings	M-2	Suburban Market Place Corridor

**PREVIOUS CASES ON SITE**

No known related zoning cases or enforcement actions associated with the subject property.

**INTERESTED PARTY COMMENTS**

Two letters were received from adjacent property owners, Robin Hines located at 4731 Walnut Grove Avenue, and Stephanie Parker located at 4727 Walnut Grove Ave., both in support of the applicant, Casabella Properties LLC, to not provide fencing or any type of “green space” between the applicant’s property and the residential home owner’s property. Both letters were dated 1/15/2016 and received on 3/24/2016.

On May 9, 2016 at 11:00am Mr. Hines, located at 4731 Walnut Grove Ave., called staff and stated that he would be rescinding his letter of support (on page 15 of the staff report) for the proposed project as a result of flooding that is occurring on his property do to gravel being placed on the subject site. A letter was faxed the same day by Mr. Hines and is found on pages 16-18.

**APPLICABLE PLANS AND POLICIES**

Cornerstone 2020  
Land Development Code

**STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCE from LDC  
section 5.3.2.C.2.B for vehicular parking and maneuvering area in the 25'  
foot setback along the western property line.**

- (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 the parking is private and for the contractor's use and not intended for public use.

- (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 area is a mixture of commercial, single family, and vacant lots. Similar structures and designs, like those the applicant is proposing, are present in the general vicinity.

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

STAFF: The requested variance will not cause a hazard or nuisance to the public since the parcel lies in an M-2 zoning district. The intended use as stated by the applicant is for a contractor's shop that will be used for storage of materials for various rental properties.

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

STAFF: The requested variance will not allow an unreasonable circumvention of the zoning regulations since the parcel lies in an M-2 zoning district which does permit contractor's shops.

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 does not arise from special circumstances which do not generally apply to land in the general vicinity or the same zone since the similar uses, a Plumbing Contractor's shop, is present to the East on Albany Ave. with Vehicular use directly adjacent to a residential property.

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 not deprive the applicant of the reasonable use of the land since the 25 foot setback would require the applicant to expand the parking along the western side abutting the proposed structure providing greater length and less depth.

3. The circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought.

STAFF: The circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought since the applicant has not undertaken any construction.

**STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER #1: from LDC section 5.5.2.A.1 and 5.6.1.B.1 to have an entrance with glazing, display windows or windows affording views into the business which face the street serving the development and having animated features along no less than 60% of the horizontal length on the ground floor level of the primary façade and principal customer entrance.**

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

STAFF: The waiver will not adversely affect adjacent property owners since the area is a mixture of commercial and residential properties with similar buildings to the proposed development in the general vicinity.

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

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 60% of the horizontal length. The applicant is proposing to have no windows or doors on the building facing the primary street, Albany Ave. However, the proposed development will be similar in scale, design, and materials to existing development within the general vicinity.

- (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 proposed building is for a contractor's office and storage with no public use intended for the site in an industrially zoned area with residential uses.

- (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 strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land since the intended use is for office and storage space. The applicant is incorporating landscaping along the front of the building to screen the façade of the proposed structure.

**STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER #2: from  
LDC section 5.7.1.B.3.a to not provide landscaping and screening between  
the Suburban Neighborhood Form District and the Suburban Market Place  
Corridor Form District.**

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

STAFF: The waiver will not adversely affect adjacent property owners since the general vicinity is a mixture of commercial and residential uses. The planting that would be required would result in the street frontage along the applicants parcel to be screened and would be the only parcel along Albany Avenue to have screening.

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

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 60% of the horizontal length. The applicant is proposing to have no windows or doors on the building facing the primary street, Albany Ave., and has bay doors facing the rear of two residential properties along Walnut Grove Ave. The proposed development will be similar in scale, design, and materials to existing development within the general vicinity.

- (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 provide landscaping along the western and northern property lines that fits the existing character of the general vicinity as a result of the transition zone buffer.

- (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 strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land since the proposed use is within a M-2 zoning district surrounded by vacant, commercial, and residential parcels. The transition zone would encompass approximately 80% of the applicant's parcel/s restricting use for the parcel without required landscaping.

**STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER #3: from LDC section 5.9.2.A.1.b to provide a clearly defined safe pedestrian access from the public right of way through the off-street parking area to the non-residential building entrance.**

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

STAFF: The waiver will not adversely affect adjacent property owners since there are no sidewalks provided in the public right of way in the general vicinity from which to build an extension of the sidewalk to access the front of the proposed structure. Furthermore, the proposed layout of the parcel has no front entrance which relief is sought from a previous waiver. Also, access to the proposed structure is by vehicle only and is not intended for public use.

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

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. The waiver is compatible with the pattern of development within this general vicinity. Therefore, the waiver will not violate specific guidelines and policies of Cornerstone 2020 as it pertains to the general vicinity since the area has no sidewalks in the public right of way from which to construct a pedestrian access to the entrance of the proposed structure.

- (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 proposed structure is not intended for pedestrian access from the public right of way.

- (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 strict application of the provisions of the regulation would create an unnecessary hardship on the applicant since the proposed 4000 sf. structure is for a contractor's maintenance shop with an office/storage and is not used by the general public.

**STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER #4: from  
LDC section 10.2.11 to provide a 6 foot continuous screen along the  
northern and western property lines for a Vehicular Use Area (VUA)  
adjacent to a residential use.**

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

STAFF: The waiver will not adversely affect adjacent property owners since adjoin property owners to the west have requested the 6 foot screen not be required due to security concerns and maintenance issues. The northern property line has a drainage ditch but also abuts the rear of a residence at 1628 East Rockford Lane.

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

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.

- (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 residents along the western property line have requested that the applicant not provide screening.

- (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 strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land since it currently sits vacant and is partially screened by trees along the northern property line near the drainage ditch.

**STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER of section 5.8.1.B.  
to not provide a sidewalk along Albany Ave.**

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

STAFF: The waiver will not adversely affect adjacent property owners since there are no sidewalks in the general vicinity. Furthermore, there is a small concrete drainage ditch that goes along the entire street frontage (Albany Ave.).

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

STAFF: Guideline 7, Policy 1 states that developments should be evaluated for their impact on the street and roadway system and to ensure that those who propose new developments bear or reasonably share in the costs of the public facilities and services made necessary by development. Guideline 9, Policy 1 states that new development should provide, where appropriate, for the movement of pedestrians, bicyclists and transit users with sidewalks along the streets of all developments where appropriate. The waiver will not violate Cornerstone 2020 since the general vicinity has no sidewalks and there is a small concrete drainage ditch that goes along the entire street frontage (Albany Ave.).

- (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 there are no sidewalks in the general vicinity. There is a small concrete drainage ditch that goes along the entire street frontage (Albany Ave.).

- (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 strict application of the provisions of the regulation would create an unnecessary hardship on the applicant since the proposed construction of a 4,000 sf. structure would be cost prohibitive and since the area has no existing sidewalks the requirement would have no connections to existing sidewalks in the general vicinity.



## TECHNICAL REVIEW

- No technical review was performed for the subject site.

## STAFF CONCLUSIONS

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 the Landscape Waivers, Sidewalk Waiver and Variance as established in the Land Development Code.

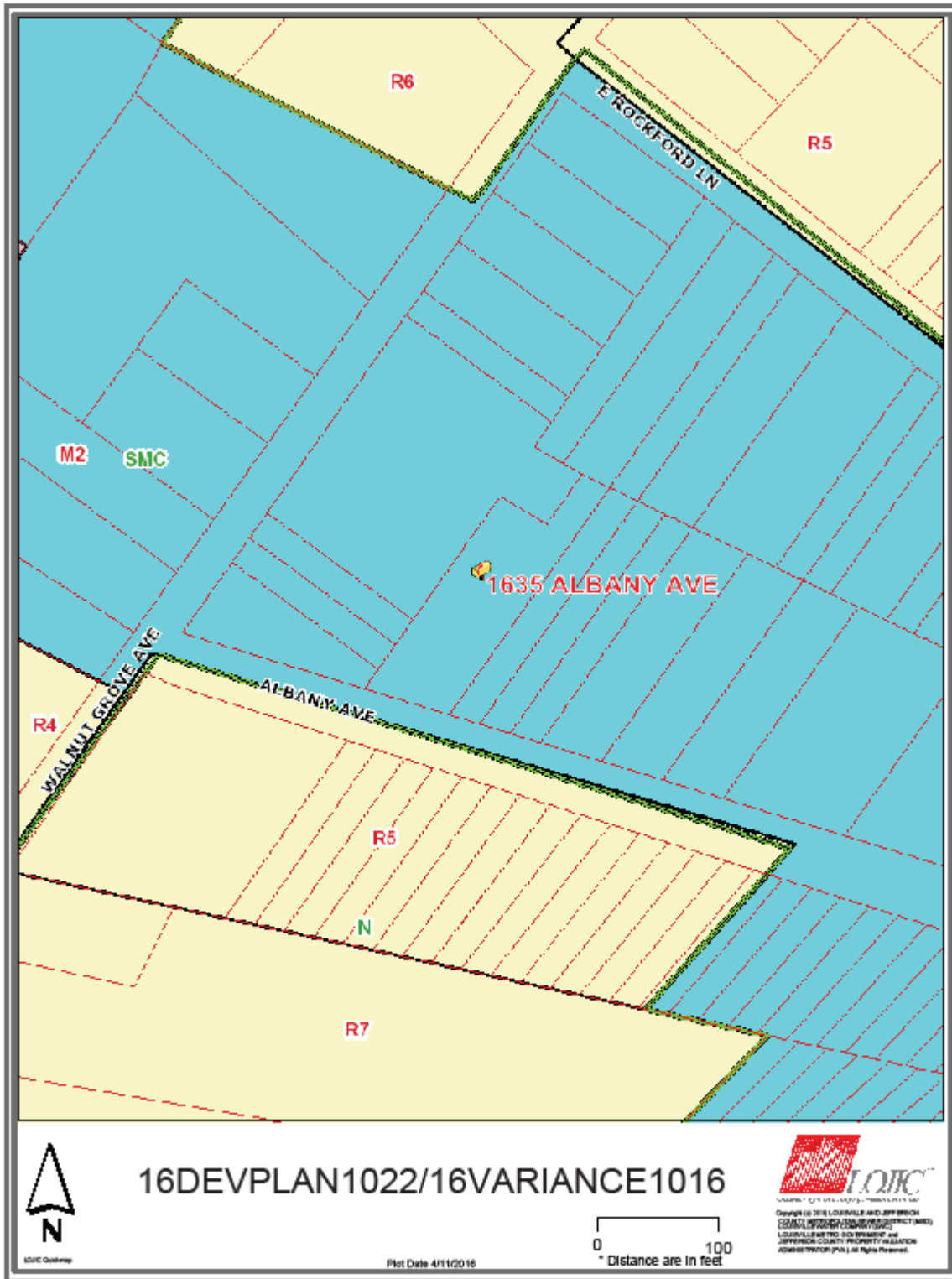
## NOTIFICATION

Date	Purpose of Notice	Recipients
May 20, 2016	Hearing before BOZA	1 <sup>st</sup> tier adjoining property owners Subscribers of Council District 3 Notification of Development Proposals
May 23, 2016	Hearing before BOZA	Sign Posting on property

## ATTACHMENTS

1. Zoning Map
2. Aerial Photograph
3. Site Plan
4. Site Inspection Report
5. Letter from Adjacent Property Owner – 4727 Walnut Grove Avenue
6. Letter from Adjacent Property Owner – 4731 Walnut Grove Avenue
7. Letter of Opposition Property Owner - 4731 Walnut Grove Avenue (May 9, 2016)

1. Zoning Map









**4. Site Inspection Report**



**Looking along the western property where a 6 foot continuous screen would be required. Applicant is requesting a waiver (variance and waiver #5).**



**Looking at the rear of the subject site where screening would be required. Notice that natural vegetation acts as a screen in the rear however, this may only be seasonal.**





Looking along the subject site frontage along Albany Ave., the applicant is requesting a waiver from having to provide a sidewalk. (Sidewalk waiver and waiver #3)



Looking from the rear of the subject site towards Albany Ave. The Transition zone waiver is the result of the homes shown directly across Albany Ave. (Waiver #2)

5. Letter from Adjacent Property Owner – 4727 Walnut Grove Avenue

1/15/2016

To Whom It May Concern:

I, Stephanie Parker, located at 4727 Walnut Grove Avenue, Louisville, KY 40216; wish to not have any privacy fencing or any type of green space between my property and Casabella's property. I would rather not have anything that I need to maintain. Casabella has been there for years and there haven't been any issues.

Thank you in advance for your time and consideration.

Sincerely,



Stephanie Parker

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MAR 24 2016  
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Andrea M. Aulis NPSAL  
my comm. expires 6/24/2018

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6. Letter from Adjacent Property Owner – 4731 Walnut Grove Avenue

1/15/2016

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To Whom It May Concern:

I, Robin Hines, located at 4731 Walnut Grove Avenue, Louisville, KY 40216; wish to not have any privacy fencing or any type of green space between my property and Casabella's property. I would rather not have anything that I need to maintain. Casabella has been there for years and there haven't been any issues.

Thank you in advance for your time and consideration.

Sincerely,



Robin Hines

Andria M. Davis NPSAL  
my comm. expires 6/24/2018

16 VARIANCE 1016

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7. Letter of Opposition Property Owner - 4731 Walnut Grove Avenue (May 9, 2016)



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MAY 09 2016

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Mr. Allen.

This letter is in reference to our conversation over the phone on MAY the 9th at 11:45 to 1:00. I voiced my concern then, ABOUT the CHANGE of Direction the RAIN RUN ~~off~~ had been effected. Since John Weeks the owner and (super nice guy) of the empty lot beside me and behind my neighbors (Stephanie's) property. Before Mr. Weeks started dumping gravel on his lot, and built the level higher than it was. I guess to prevent flooding of a 40ft<sup>+</sup> Shipping Container he had delivered to his property. My yard and garage, other than a 10" RAIN last year. Neither held water, nor threatened to flood my garage under a normal 1-2" RAIN storm. I dug a trench beside my ~~Drive~~ way to the storm grade owned by the MSD. That took care of all normal heavy down pours that have happened until now. Since John Weeks moved in Twenty 6 AXLE Dump Trucks with large rocks and then smaller rocks. All the rain run off floods my yard. It fills up a 6" to 8" deep 20ft<sup>+</sup> pond right up against my garage foundation. It also leaves a pond in my neighbors garden plus a second pond beside the garden. I know this because my neighbor lets me exercise my dog in her back yard. I have been exercising my dog in her yard for 4 years now. Her garden and no other part of her yard, just like no parts of my yard use to hold water after a normal RAIN.

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MAY 09 2016

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Normal to me is 1" to 2" of Rain. Now since Mr Weeks has filled in his lot with gravel my yard fills with water with a mere 1/2 to 1" of water. The pond on the side of my Garage that is Bare to Mr Weeks gravel. Fills up to 6" to 8" Very Fast. If nothing is done by Mr Weeks to change the way the water is draining off his property. My Garage is going to Flood. I have Welders, Generators, plus a ton of expensive tooling + Tools, All kinds of Fishing Equipment. I have Asked Mr. Weeks on 6 Different times to look at my Pictures of the new Pond that he HAS CAUSED by raising his lot without even considering the UNWANTED Flooding of mine and my Neighbors Property. He would

IK ABOUT I regret having to go this far to get his Attention on the problem. I spoke to Mr Weeks on SATURDAY, Derby Day, or it could have been Friday OAKS DAY. I informed him that I HAD rescinded my permission for him to forego a Privacy Fence by a Recording to Mike Wilcher of MSD grading or fencing (502-574-8692). Then I informed by phone call Mr. Mike Wilcher when he called me, early MONDAY, MAY 9th. Mike Wilcher took note of my rescinding of fence waiver. Due to no attention on Drainage Problem caused by Mr Weeks at that point I was directed to Mr. Ross Allen. I told him the extent of my flooding concerns and unwanted

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Water thread to my garage and contents.  
 This letter is to Formally Protest the  
 conditions John Weeks has caused. Without  
 any attempt on Mr Weeks part to  
 come to a common sence or even admitting  
 that his Building up with gravel his lot  
 has caused these changes. IF Mr Weeks  
 WASN'T AWARE of the Flooding and low  
 level of his lot. Why did he raise the  
 Portion of his lot that the 40ft  
 Container is setting on. He CANT Be  
 AWARE of POSSIBLE Flooding of his Storage  
 Container and then Be surpris'd that he caused  
 changes the flooding and potential Damage  
 to my garage and contents inside. Much  
 less the flooding on his own property  
 Behind the Red Container. That pond is the  
 same pond that fills up and stands in  
 my Neighbors yard. I have Pictures of  
 all these conditions. As the Kodiak Film  
 Company used to say. A picture is worth  
 A THOUSAND words. I just want Mr. Weeks  
 to put in French Drains, Drill drain holes,  
 Run the water Back to the Creek. Like  
 it use to. But Do something to prevent  
 my Garage from flooding. The same goes for  
 my Neighbors garden, since this year. She  
 and I have just put out A Big Garden on  
 Mothers Day.

Sincerely,   
 Robin Hines

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