

Board of Zoning Adjustment

Staff Report

May 2, 2022



Case No:	22-VARIANCE-0029/22-WAIVER-0028/22-WAIVER-0029/22-WAIVER-0051/22-WAIVER-0054
Project Name:	New Cut Liquors
Location:	5389 New Cut Rd
Owner(s):	Gajmukh LLC
Applicant:	Gajmukh LLC
Jurisdiction:	Louisville Metro
Council District:	21 – Nicole George
Case Manager:	Jay Lockett, AICP, Planner II

REQUEST(S)

- **Variance** from Land Development Code section 5.5.1.A.2 to exceed the 5-foot maximum setback from Woodmore Ave by up to 47 feet as shown on the proposed development plan.
- **Waivers**
 1. (22-WAIVER-0028) Land Development Code section 5.5.1.A.1.B to not provide a customer entrance facing New Cut Rd
 2. (22-WAIVER-0029) Land Development Code section 5.7.1.B.3 and Table 10.2.2 to encroach up to 11 feet into the required 15-foot property perimeter buffer adjacent to the residential development.
 3. (22-WAIVER-0051) Land Development Code sections 5.5.1.A.3 and 5.9.2.A.1.b to not provide cross-connection to adjacent commercial properties.
 4. (22-WAIVER-0054) Land Development Code sections 5.5.1.A.3 and 5.9.2.C.2 to permit parking and circulation in front of the building.

CASE SUMMARY/BACKGROUND

The applicant is proposing to demolish a vacant service station and construct a retail liquor store with a drive-thru. The subject site is approximately .413 acres and zoned C-2 in the Town Center form district. The subject site is located at the corner of New Cut Rd and Woodmore Ave near the Kenwood Hills area of Louisville Metro.

STAFF FINDING

The variance as well as the waivers to permit parking in front and to not provide an entrance towards New Cut Rd are adequately justified and meet the standards of review. Adequate screening of the parking lot will be provided, and the building location and entrances would be consistent with similar development in the area. The waivers for the cross-connectivity and the encroachment into the buffer are not adequately justified and do not meet the standards of review. The buffer proposed is not adequate to provide protection to residents in the adjacent apartment community. The applicant should consider removing the proposed drive-thru and reconsider site design in order to provide adequate transition between incompatible uses.

TECHNICAL REVIEW

The requests are associated with 21-CAT2-0040 and that plan has received preliminary approval from MSD and Transportation Planning staff.

INTERESTED PARTY COMMENTS

Area resident Ann Ramser has contacted staff to express concerns about the proposed development.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCE:

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

STAFF: The requested variances will not adversely affect public health safety or welfare since adequate buffering will be provided adjacent to neighboring homes. MSD and Transportation Planning have approved the preliminary plan and will ensure safety through the construction permitting process.

- (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 proposed development is consistent with similar developments in the area.

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

STAFF: The requested variance will not cause a hazard or nuisance to the public since adequate buffering and screening will be provided.

- (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 zoning regulations since the proposed plan is consistent with similar development in the area.

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.

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 reasonable use of the land as the applicant could remove the drive-thru and redesign the site according to Land Development Code requirements.

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

STAFF: The circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought, as the applicant is requesting relief along with a preliminary development plan.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER 1

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

STAFF: The waiver will not adversely affect adjacent property owners. All buffering and screening required by the Land Development Code will be provided.

- (b) The waiver will not violate specific guidelines of the Comprehensive Plan; and

STAFF: The waiver will not violate the Comprehensive Plan. The development will be compatible with other development in the area and the form district. Customers entering the site via New Cut Rd will still be able to easily enter the site via a proposed walk directly to the door facing Woodmore Ave.

- (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 they will still provide a required access facing Woodmore Ave as well as direct pedestrian walkway to New Cut Rd.

- (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 not deprive the applicant of reasonable use of the land as the applicant could remove the drive-thru and redesign the site according to Land Development Code requirements.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER 2

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

STAFF: The waiver will adversely affect adjacent property owners and residents. The buffering proposed is not adequate to provide reasonable transition between incompatible uses. The residents of the apartment community are likely to experience noise and other nuisances due to drive-thru queuing being so close to their dwellings.

- (b) The waiver will not violate specific guidelines of the Comprehensive Plan; and

STAFF: The waiver will violate the Comprehensive Plan. Community Form Goal 1 Policy 18 requires that we mitigate adverse impacts of noise from proposed development on existing

communities. Community form Goal 1 Policy 10 requires that we mitigate the impacts caused when incompatible developments unavoidably occur adjacent to one another. Buffers should be used between uses that are substantially different in intensity or density. The buffer proposed is not adequate to mitigate adverse impacts on the apartment community adjacent to the site.

- (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 not the minimum necessary to afford relief to the applicant since they could remove the drive-thru and remove the encroachment upon their neighbors.

- (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 not deprive the applicant of reasonable use of the land as the applicant could remove the drive-thru and redesign the site according to Land Development Code requirements.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER 3

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

STAFF: The waiver will adversely affect adjacent property owners. Cross connectivity is valuable for commercial uses within the Neighborhood Form district to allow customers to visit multiple establishments with reduced turns to and from major roadways.

- (b) The waiver will not violate specific guidelines of the Comprehensive Plan; and

STAFF: The waiver will violate the Comprehensive Plan. Community form Goal 1 Policy 17 requires that we mitigate adverse impacts of traffic from proposed development on nearby existing communities. Community form Goal 2 Policy 6 states that we should encourage a more compact development pattern in activity centers that result in efficient land use and cost-effective infrastructure investment. Mobility Goal 3 Policy 5 states that we should evaluate developments for their impact on the transportation net-work (including the street, pedestrian, transit, freight movement and bike facilities and services) and air quality. The proposed drive-thru and required buffer make it impossible for the applicant to provide functional cross-connectivity with future commercial development in the area. The applicant could provide this if the drive-thru was removed.

- (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 not the minimum necessary to afford relief to the applicant since they could remove the drive-thru and provide the required connectivity.

- (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 not deprive the applicant of reasonable use of the land as the applicant could remove the drive-thru and redesign the site according to Land Development Code requirements.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER 4

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

STAFF: The waiver will not adversely affect adjacent property owners. All buffering and screening required by the Land Development Code including a masonry wall along Woodmore Ave.

- (b) The waiver will not violate specific guidelines of the Comprehensive Plan; and

STAFF: The waiver will not violate the Comprehensive Plan. The development will be compatible with other development in the area and the form district. The waiver will not result in a nuisance or hazard to the public and adequate screening will be provided.

- (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 they will still provide all required screening including the masonry wall along Woodmore 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 not deprive the applicant of reasonable use of the land as the applicant could remove the drive-thru and redesign the site according to Land Development Code requirements.

REQUIRED ACTIONS:

- **APPROVE** or **DENY** the **VARIANCE**
- **APPROVE** or **DENY** the **WAIVERS**

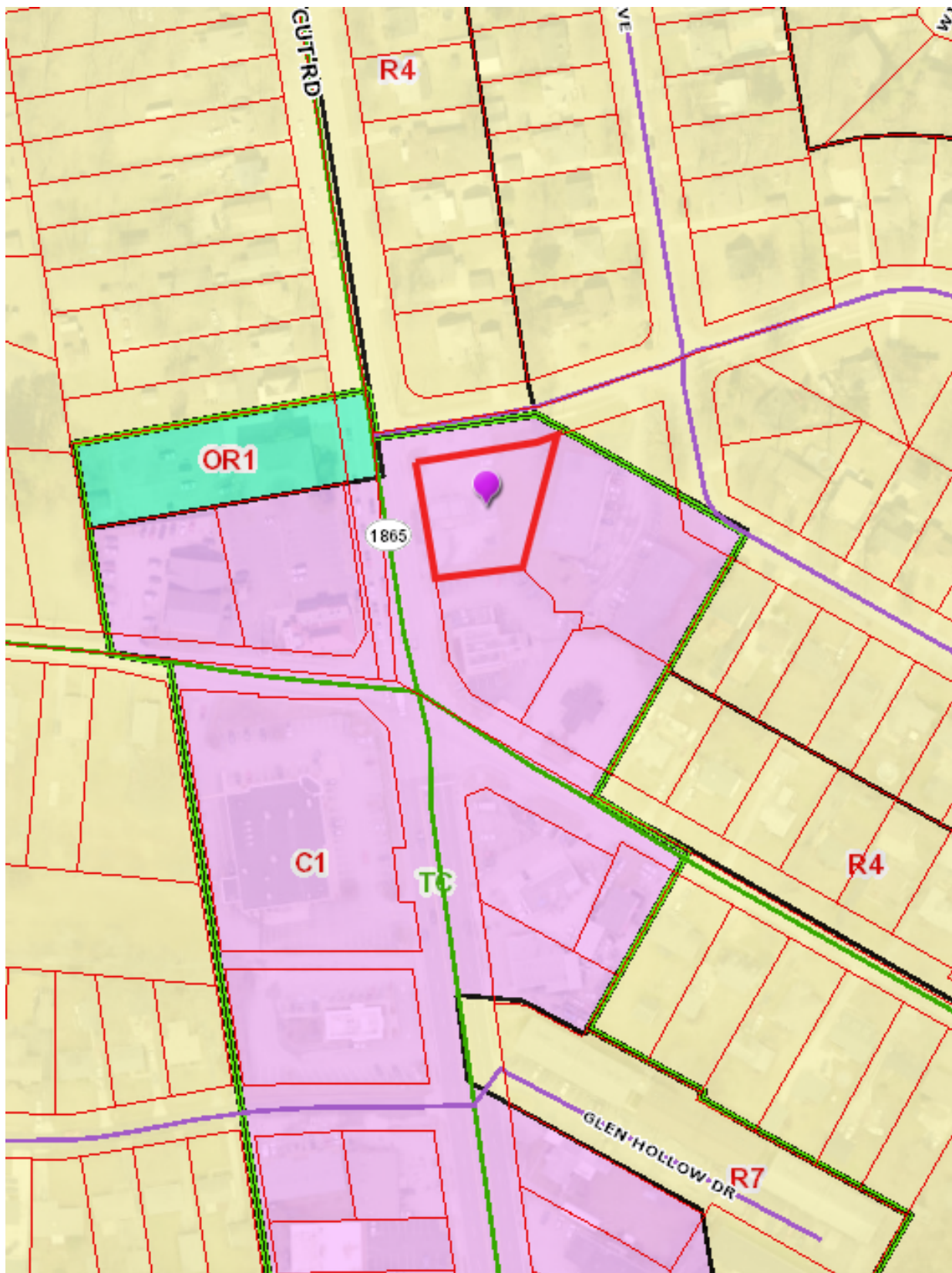
NOTIFICATION

Date	Purpose of Notice	Recipients
4-15-22	Hearing before BOZA	1 st tier adjoining property owners and residents Registered Neighborhood Groups in Council District 21

ATTACHMENTS

1. Zoning Map
2. Aerial Photograph

1. Zoning Map



2. Aerial Photograph

