

**Board of Zoning Adjustment  
Staff Report**  
July 20, 2015



|                           |                                        |
|---------------------------|----------------------------------------|
| <b>Case No:</b>           | 14Devplan1180                          |
| <b>Project Name:</b>      | Leroy Avenue Townhomes                 |
| <b>Location:</b>          | 1719, 1721, & 1723 Leroy Avenue        |
| <b>Owner(s):</b>          | Edwin R. Montgomery, Trust C           |
| <b>Applicant:</b>         | Edwin R. Montgomery, Trust C           |
| <b>Representative:</b>    | Marv Blomquist, Blomquist Design Group |
| <b>Project Area/Size:</b> | 1.09 acres                             |
| <b>Jurisdiction:</b>      | City of Shively                        |
| <b>Council District:</b>  | 3 – Mary Woolridge                     |
| <b>Case Manager:</b>      | Sherie' Long, Landscape Architect      |

**REQUEST**

**Category 3 Development Plan**

**Variance #1: Parking Drive Aisle in Front and Side Yard Setbacks**

Variance from the Land Development Code, Section 5.2.5.C.2 and Table 5.2.2, to allow the parking areas and drive aisles to encroach into the required front and side yards.

| Location                   | Requirement | Request | Variance |
|----------------------------|-------------|---------|----------|
| Front Yard Setback (south) | 25 feet     | 8 feet  | 17 feet  |
| Side Yard Setback (west)   | 3 feet      | 0 feet  | 3 feet   |

**Variance #2: Private Yard**

Variance from the Land Development Code, Section 5.4.1.D.2 to allow a reduction in the required private yard.

| Location     | Requirement  | Request       | Variance      |
|--------------|--------------|---------------|---------------|
| Private Yard | 30% 14,220sf | 13.9% 6,595sf | 16.1% 7,625sf |

**Waiver #1: Entrance**

Waiver from Land development Code Section 5.4.1.C.1 to not provide an entrance oriented to the primary street.

**Waiver #2: Landscape Buffer (west)**

Waiver of Land Development Code, Section 10.2.4.A, to eliminate the required landscape buffer area (LBA) along the west perimeter of the site to allow parking and drive aisle.

**Waiver #3: Open Space Width**

Waiver from the Land Development Code, Section, 5.11.4.A, and 10.5.4.A.4, to allow the open space to be less than the minimum 30 feet width.

**CASE SUMMARY/BACKGROUND/SITE CONTEXT**

The applicant is proposing to construct 18 townhouse units, in three building, along with associated parking on the north side of Leroy Avenue. The applicant states “economic and housing needs in the area have indicated

a desire for townhomes". This Category 3 Development is zoned R-6 in the Traditional Workplace Form District. Three existing residential lots, totaling 1.09 acres, will be consolidated to accommodate the proposed development. A court yard design is being utilized; the unit entrances are all facing into the court yard area. Open space and private yard area are being provided at the rear of the site. An existing alley to the west of the site will be widened for access to the parking areas. Sidewalks are being provided throughout the site and along the street frontage. Perimeter landscape plantings and tree canopy requirements are being met.

### LAND USE/ZONING DISTRICT/FORM DISTRICT TABLE

The site is zoned R-6 in the Traditional Workplace (TW) Form District. It is surrounded to the north by residential properties; to the east by residential and commercial properties; to the south by commercial properties; and to the west by the commercial properties. These surrounding properties are zoned R-6, C2, and C-1 in the Traditional Workplace, Traditional Marketplace, and Town Center Form Districts.

|                                      | Land Use                   | Zoning | Form District |
|--------------------------------------|----------------------------|--------|---------------|
| <b><i>Subject Property</i></b>       |                            |        |               |
| <b>Existing</b>                      | Single family residential  | R-6    | TW            |
| <b>Proposed</b>                      | Multi-family residential   | R-6    | TW            |
| <b><i>Surrounding Properties</i></b> |                            |        |               |
| <b>North</b>                         | Single family residential  | R-6    | TW            |
| <b>South</b>                         | Commercial & Restaurant    | C-2    | TC            |
| <b>East</b>                          | Single family & Restaurant | C-2    | TC            |
| <b>West</b>                          | Commercial & Daycare       | C-1    | TMC           |

### PREVIOUS and CURRENT CASES ON SITE

None

### INTERESTED PARTY COMMENTS

One interested party came in to review the file.

### APPLICABLE PLANS AND POLICIES

Cornerstone 2020  
Land Development Code

### STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCE

#### Variance #1: Parking Drive Aisle in Front and Side Yard Setbacks

Variance from the Land Development Code, Section 5.2.5.C.2 and Table 5.2.2, to allow the parking areas and drive aisles to encroach into the required front and side yards.

- (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 parking area is being accessed from an existing alley, as recommended by the LDC and the

comprehensive. The alley pavement will also be widened to allow for both two-way traffic and the parking spaces. Plus, only two parking spaces are encroaching into the front yard area.

- (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 parking is located and accessed from the existing alley as recommended by the LDC and the comprehensive plan. Plus, there is existing parking on the other side of the alley for the existing daycare located to the west of the site.

- (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 parking will be accessed from an existing alley which is being widened to improve the circulation and traffic flow.

- (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 LDC and the Comprehensive plan both recommend use of existing and proposed alleys to access parking.

#### **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 there is an existing alley along the perimeter which the proposed development is utilizing for access to the required parking.

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. If the provisions were applied it would be a hardship for the applicant; 23 proposed parking spaces located along the alley in the setbacks would be required to be relocated elsewhere on the site.

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 design of the parking layout has created the need for a variance.

#### **STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCE**

##### **Variance #2: Private Yard**

Variance from the Land Development Code, Section 5.4.1.D.2 to allow a reduction in the required private yard.

- (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 there is 6,595sf of open space and private yard being provided at the rear of the site for passive and active recreation. Also, the required tree canopy will be provided to enhance the development and contribute to the public health.

- (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 development layout provides open space and private yard adjacent to the existing residential property to the north and east. Plus, the open space and private yard will provide green space for residences to use for pleasure and recreation.

- (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 development is providing both open space and tree canopy on the site along with perimeter plantings to buffer the development from the adjacent less intense residential development.

- (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 development layout is providing a large area (6,959sf) of open space which serves as the private yard.

#### **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 this is a proposed multi-family development in a traditional form district, which creates the need for both open space and private yard. The development layout has provided the required 15% of the site in open space, but because of the site configuration and location the 30% private yard cannot be provided.

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. To provide the required 30% or 14,220sf of the rear of the site in private yard would create both a hardship and deprive the applicant of a reasonable use of the land because the site layout would be required to be modified and there would be a loss in number of residential units.

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 applicant's development layout has created the deficiency.

#### **STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER**

##### **Waiver #1: Entrance**

Waiver from Land development Code Section 5.4.1.C.1 to not provide an entrance oriented to the primary street.

- (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 into the court yard area from each building. The court yard area is connected to the parking lot and the sidewalk along Leroy Avenue by a network of interior sidewalks.

- (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 multi-family use. The Land Development Code provides building design standards for residential 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.

The applicant is providing building materials and animation of the façade which mitigates the request to not provide an entrance on the façade facing Leroy Street. The applicant will be providing the required street trees along the perimeter of the street façade to also mitigate the lack of these required entrances. 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 residential units by providing sidewalks internally to both the street sidewalk and the parking lot.

- (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 design layout is utilizing the court yard as the connection to all the other units, to the parking lot, and to the street sidewalk.

## STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER

### Waiver #2: Landscape Buffer (west)

Waiver of Land Development Code, Section 10.2.4.A, to eliminate the required landscape buffer area (LBA) along the west perimeter of the site to allow parking and drive aisle.

- (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 off the alley and adjacent to commercial uses. However, trees will be planted in the interior islands of the parking area along with the 3 foot' screen planting to be located between the parking spaces and Leroy Avenue.

(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 not be providing screening between the parking areas and the rear patios of the residential units to reduce the impact of the more intense commercial use and the parking lot the guidelines and policies of Cornerstone 2020 are 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 parking spaces encroach into the area where the required buffer plantings are required. However, plantings could be provided between the parking area and the rear of the proposed residential units to mitigate the impact of the parking and commercial use on the proposed residential and provide some screening for the patio areas.

(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 #3: Open Space Width**

Waiver from the Land Development Code, Section 5.4.1.G.1, 5.11.4.A, and 10.5.4.A.4, to allow the open space to be less than the minimum 30 feet width.

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

STAFF: The waiver will not adversely affect adjacent property owners since the required open space square footage is being provided just not at the minimum width of 30 feet. However, a large area at the rear of the property does provide a large continuous open space area for passive and active recreation.

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

STAFF: Guideline 4 policies A.2, A.3 and A.7 calls for open space to be provided to help meet the needs of the community as a component of the development and provides for the continued maintenance of that open space. Policy A.4 states that the open space design is consistent with the pattern of development in the Traditional Workplace Form District. Since the development is providing open space this waiver request does not violate the above 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 development proposal is providing the required square footage of open spaces just not at the minimum width of 30 feet in some locations.

- (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. However, along the rear of the property the open space minimum width could be achieved if the last parking space were eliminated along with the adjacent pavement. Also, the open space along the front of the property would not meet the minimum 30 requirements without relocating the buildings an additional 5 feet to the north.

### **STANDARD OF REVIEW AND STAFF ANALYSIS FOR CATEGORY 3**

- a. The conservation of natural resources on the property proposed for development, including: trees and other living vegetation, steep slopes, water courses, flood plains, soils, air quality, scenic views, and historic sites;

STAFF: The slope of the property will be maintained. Landscaping requirements will be met.

- b. The provisions for safe and efficient vehicular and pedestrian transportation both within the development and the community;

STAFF: The provisions for safe and efficient vehicular and pedestrian transportation both within the development and the community are met. Sidewalk will be constructed along Leroy Avenue and internally to the site. Plus, parking is provided off the alley.

- c. The provision of sufficient open space (scenic and recreational) to meet the needs of the proposed development;

STAFF: Open space is has been provided for passive and active recreation.

- d. The provision of adequate drainage facilities on the subject site in order to prevent drainage problems from occurring on the subject site or within the community;

STAFF: Adequate drainage facilities on the subject site have been reviewed and approved by MSD.

- e. The compatibility of the overall site design (location of buildings, parking lots, screening, landscaping) and land use or uses with the existing and projected future development of the area;

STAFF: The compatibility of the overall site design and land use follow the projected future development of the area. The proposal will be a transition between the more intense commercial uses (west and south), to the less intense single family residential uses (north and east).

- f. Conformance of the development plan with the Comprehensive Plan and Land Development Code. Revised plan certain development plans shall be evaluated for conformance with the residential use intent of the form districts and comprehensive plan.

STAFF: The development plan conforms to all Land Development Code requirements and therefore follows the guidelines of Cornerstone 2020. The proposed structure will have attractive facades with the appropriate fenestration and materials. Proposed sidewalks will be located in close proximity to the proposed structure, creating a safe environment for those visiting the site. There will be signage and lighting that will be code compliant.

### TECHNICAL REVIEW

Please add the following information to the plan prior to final approval:

1. Show and label the setbacks: Front 25', Street Side 15', Sides 3' and Rear 5'
2. Add the open space calculation to the plan.  
 $47,400\text{sf} \times 15\% = 7,110\text{sf}$  required  
9,345sf provided
3. Show and label the front yard area (2,750sf) and all of the rear yard including the LBA areas (6,595sf) as Open Space. Label the square footages.
4. Show the private yard area calculation on the plan.  
 $47,400\text{sf} \times 30\% = 14,220\text{sf}$  required  
6,595sf provided  
7,625sf (waiver requested)
5. List the waivers and variances same as the staff report.

### STAFF CONCLUSIONS

Based upon the information in the staff report, the analysis of the standards of review does support granting the requested variances and waivers.

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

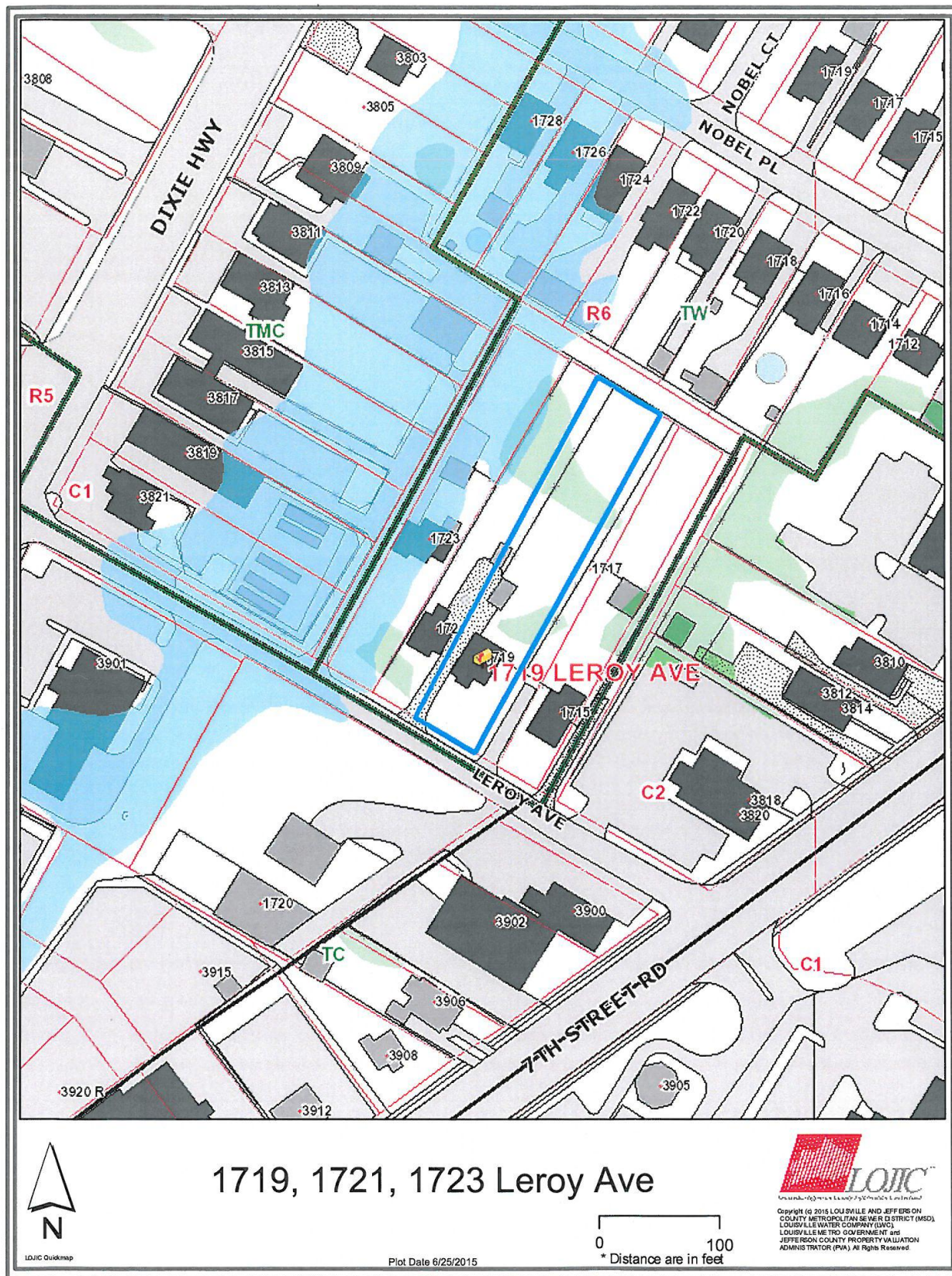
#### NOTIFICATION

| Date       | Purpose of Notice | Recipients                                     |
|------------|-------------------|------------------------------------------------|
| 06/26/2015 | BOZA Hearing      | Neighborhood notification recipients           |
| 06/29/2015 | Sign Posting      | Subject property                               |
| 07/01/2015 | BOZA Hearing      | 1 <sup>st</sup> tier adjoining property owners |

#### ATTACHMENTS

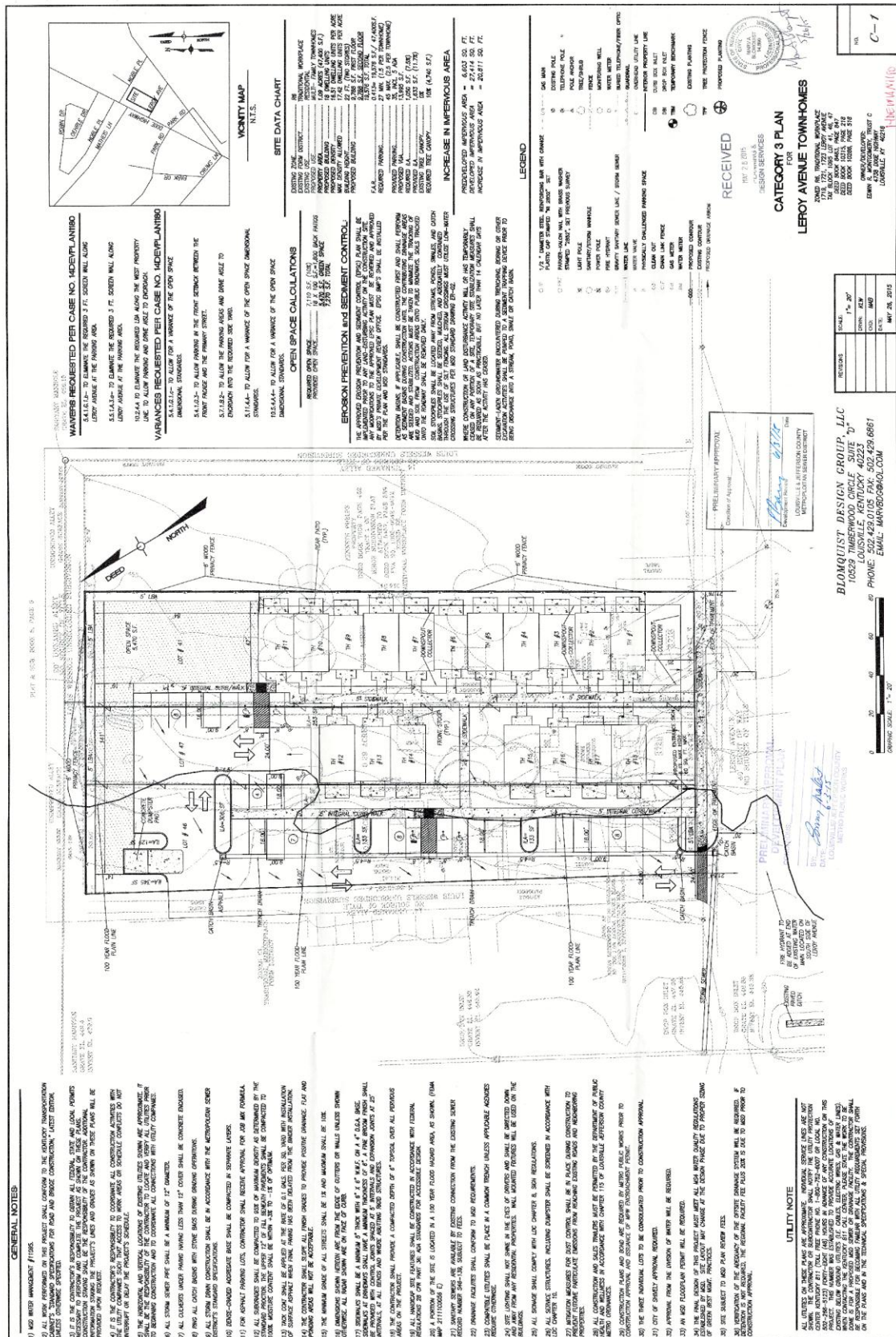
1. Zoning Map
2. Aerial Photograph
3. Site Plan
4. Building Elevations
5. Applicant's Justification
6. Site Photographs

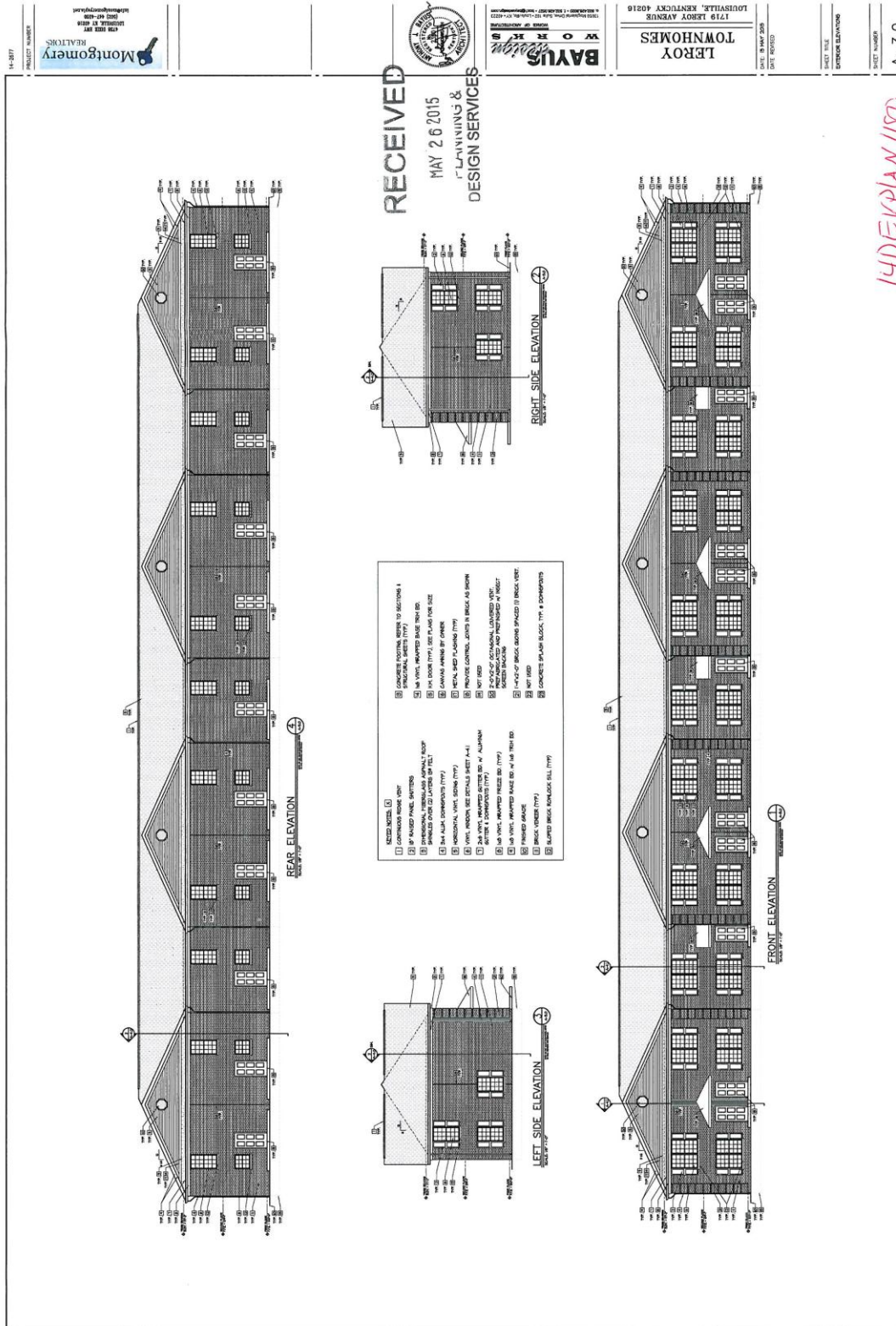
# Attachment 1 - Zoning Maps



# Attachment 2 - Aerial Photo







## Attachment 5 – Applicant's Justifications

### **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 requested setback variance allows for safe parking and pedestrian access to the apartments and safe vehicular circulation. The dimensional variance in the open space requirements allow us to provide the required square footage of open space, but just not meet the minimum dimensions.

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

The proposed development matches the setbacks from Leroy Avenue and utilizes the existing alley for access to the parking areas. The open spaces allow for recreational and private use, just not able to meet the minimum dimensions required in the Land Development Code.

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

The development maintains the established pattern of development in this area and provides safe pedestrian access to the buildings. Traffic circulation patterns also provide safe movement of vehicles thru the parking areas. The recreational open space is provided in the rear of the site.

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

The proposed development is compatible with the existing overall patterns in the general vicinity and the site is zoned properly for the proposed apartment project.

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*Additional consideration:*

PLANNING &  
DESIGN SERVICES

**1. Explain how the variance arises from special circumstances, which do not generally apply to land in the general vicinity (please specify/identify).**

The location of the existing alley and its use for a drive aisle are unique layout issues. And the size of the property allows for the required amount of open space by square footage, but not with the proper dimensional standards.

**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.**

Not allowing use of the alley as a drive aisle and parking would require loss of apartment buildings due to size of property and location of floodplain. Requiring the minimum dimensions and size of recreational open space would require loss of parking and yard.

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

The location of the alley and size of properties along with the location of the floodplain are not the result of actions taken by the owner.

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### **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?**

Section 10.2.4.A. The existing alley is being proposed as the drive aisle and end of parking spaces, which is supposed to be a VUA LBA. The adjacent property is a commercial business and large back yards. Sections 5.4.1.G.1.b and 5.5.1.A.3.a require a 3 ft. screen wall for the parking as it is along Leroy Avenue and don't allow parking in the front setback between the building façade and the primary street being Leroy Ave. That is a more Urban style issue and the land across Leroy Avenue from this site is zoned C-1 Commercial.

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

The Comprehensive Plan encourages designs that are compatible with the surrounding areas and this proposal meets that objective by maintaining the face of the buildings at near the same as the only adjacent residential house. The development pattern in the area is predominately commercial except for these three lots and the adjacent to the east.

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

The proposed development meets the other guidelines in Section 10.2.4 for LBA Requirements, provides safe pedestrian access to the site, is compatible with the surrounding pattern of development in this area and provides the required landscape plantings, except along the alley where the drive aisle and parking will encroach.

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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?**

Strict application would not allow for adequate parking on site and also prevent circulation as shown on the Plan, which is compatible with the surrounding existing development. Strict application would also reduce the number of apartments to no longer be financially feasible. The required plantings in the other LBA areas will still be installed and the eliminated LBA along the existing alley is to allow for the needed parking and drive aisles.

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**Attachment 6- Site Photos**



**1719 Leroy Avenue**



**1721 Leroy Avenue**



**1723 Leroy Avenue**



**Leroy Avenue frontage**



**Leroy Ave frontage looking west**



**Leroy Ave frontage looking east**



**Existing alley**



**Rear of 1723 Leroy Avenue. Location of the provided open space.**



**View from alley out to Leroy Area from the rear**



**Existing Daycare across alley**



**Daycare parking along the alley**



**Adjacent residential house to the east**



**Restaurant to the east**



**Restaurant and commercial to the south**



**Commercial to the south across the Leroy Avenue**



**Commercial to the south and bank to the west**