

Board of Zoning Adjustment
Staff Report
January 13, 2014



Case No:	13variance1058
Project Name:	Raising Cane's
Location:	9409 Cedarlook Drive
Owner(s):	Bardstown 4801 LLC
Applicant:	CRM Companies
Representative(s):	The Robert's Group
Project Area/Size:	0.899 acres
Existing Zoning District:	C-1
Existing Form District:	Neighborhood
Jurisdiction:	Louisville Metro
Council District:	22- Robin Engel
Case Manager:	Julia Williams, Planner II

REQUEST

- Variance to reduce a 15 foot side yard to 5 feet along the north property line.

Location	Requirement	Request	Variance
North Property Line	15'	5'	10'

CASE SUMMARY/BACKGROUND/SITE CONTEXT

The site consists of an existing 4,315 square foot structure previously used as a medical office building with a paved parking lot. The eastern half of the site is undeveloped and was the proposed site for a general office building that was never constructed.

The proposal is for a 3,030 square foot restaurant with 27 proposed parking spaces. Access to the site is from Cedarlook Drive.

The western border of the site is located along the outer boundary of a floodplain. To the north of the site is an R-4 zoned utility **office in the Town Center Form District. To the west of the site is a C-2 zoned shopping center. To the south and east of the site are R-6 zoned residential properties.**

LAND USE/ZONING DISTRICT/FORM DISTRICT TABLE

	Land Use	Zoning	Form District
Subject Property			
Existing	Office	C-1	Neighborhood
Proposed	Restaurant	C-1	Neighborhood
Surrounding Properties			
North	Utility Office	R-4	Town Center
South	Residential	R-6	Neighborhood
East	Residential	R-6	Neighborhood
West	Commercial	C-2	Town Center

PREVIOUS CASES ON SITE

11944- Change in zoning from OR-3 to C-1. Approved by the Metro Council on August 13, 2009. A variance that permitted the encroachment of parking and a dumpster was granted by the Planning Commission under this case as well.

9-42-91- Change in zoning from R-6 to OR-3. Approved by the Planning Commission on November 7, 1991.

INTERESTED PARTY COMMENTS

- “We are losing a lot of greenspace in this area. Trees are being removed and dying in the vicinity, etc. If there are reductions in side yards, there should be some compensation of adding trees and vegetation that can add green and help with the heat island effect and help with the HOT SPOT of poor air quality near this site as well as the flooding of this major intersection (that occurred in 1997 when a woman and her daughter were stranded in an automobile in the middle of Bardstown Road - rescued by a Commissioner's aide).”
Teena Halbig
- “For the record, I'm opposed to any reduction in yard space. It's important to have as much yard space as possible for runoff and improved appearance.”
Suzy Peers

APPLICABLE PLANS AND POLICIES

- Cornerstone 2020
- Land Development Code

STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCES

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

STAFF: The reduction in side yard will not affect the public because the adjacent site is also a non-residential use to which the public has limited access.

(b) The requested variance will not alter the essential character of the general vicinity.

STAFF: The character of the area will not be affected because non-residential uses typically do not have setbacks when adjacent to other non-residential uses.

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

STAFF: The reduction in side yard will not affect the public because side yards are not common between two non-residential uses.

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

STAFF: The variance is not a unreasonable request as there is typically no side yard requirement between two non-residential uses.

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 arises from the zoning of the adjacent site not the use. Typically, the use and zone are coordinated but because the adjacent use is a utility it is permitted in any zone.

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 would deprive the applicant of full use of the site for their facility. Other similar uses when adjacent to other non-residential uses would not have to provide a side yard setback.

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: Under a previous case for the site a variance was granted for the encroachments into the same side yard. Variances were granted under that circumstance and the applicant was aware of the regulation, the regulation is a circumstance that would not apply to all uses when two non-residential uses are located adjacent to one another.

TECHNICAL REVIEW

All technical review comments have been addressed.

STAFF CONCLUSIONS

Side yard setbacks are not typically required between two non-residential uses as evident throughout this area and across Bardstown Road within the shopping center located there.

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 a established in the Land Development Code.

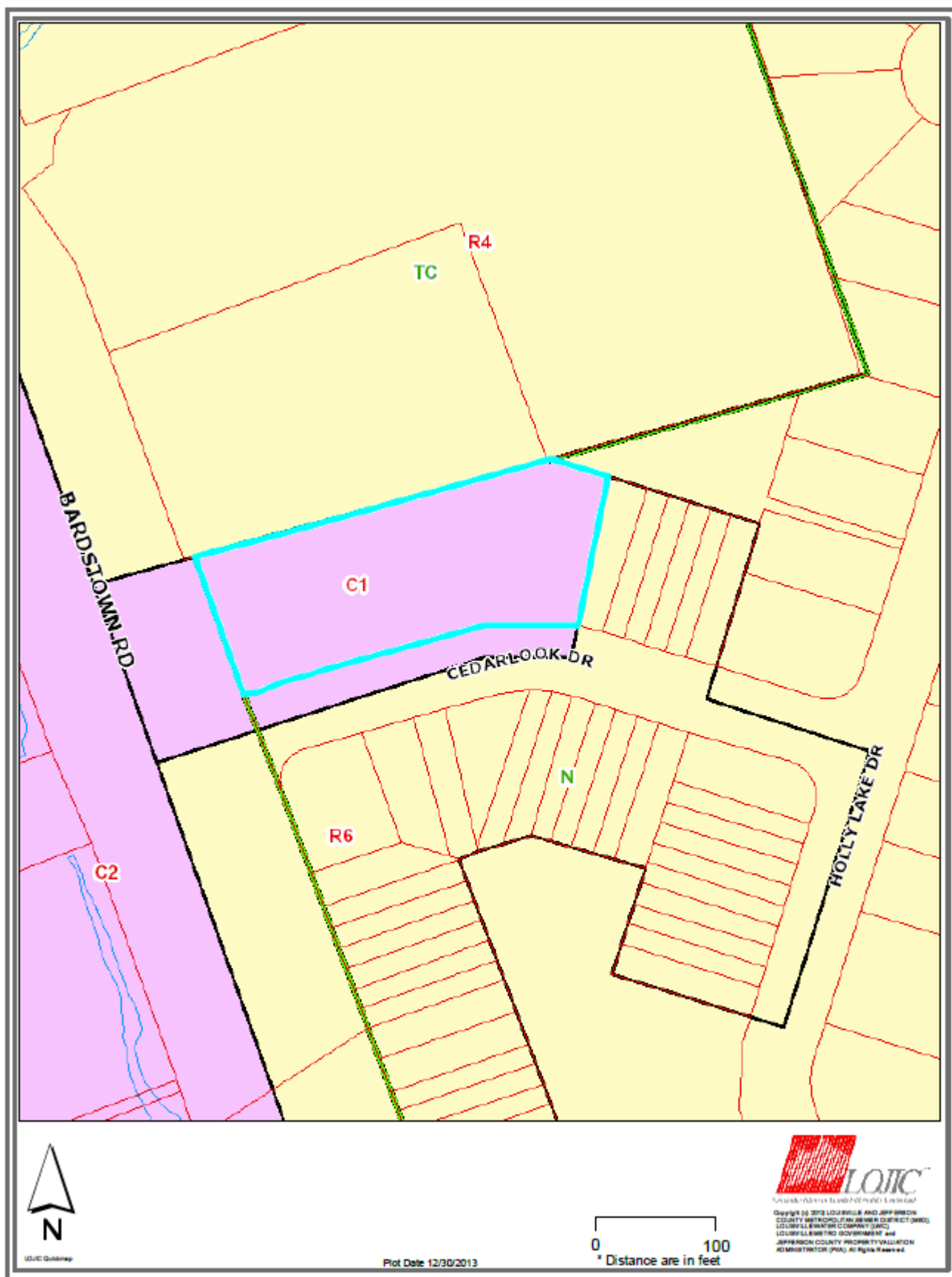
NOTIFICATION

Date	Purpose of Notice	Recipients
12/26/13	Hearing before BOZA 1/13/14	1 st and 2 nd tier adjoining property owners Subscribers of Council District 22 Notification of Development Proposals
12/31/13	Hearing before BOZA	Sign Posting on property

ATTACHMENTS

1. Zoning Map
2. Aerial Photograph
3. Cornerstone 2020 Staff Checklist
4. Applicant's Justification Statement

Attachment 1: Zoning Map



Attachment 2: Aerial Photograph



Attachment 3: Cornerstone 2020 Staff Checklist

- + Exceeds Guideline
- √ Meets Guideline
- +/- More Information Needed
- NA Not Applicable

#	Cornerstone 2020 Guidelines & Policies	Cornerstone 2020 Plan Element	Plan Element or Portion of Plan Element	Finding	Comments
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Variance for reduced setback

18	Form Districts Goals C1-C4, Objectives C1.1-1.2, C2.1-2.7, C3.1-3.7, C4.1-4.7	Community Form/Land Use Guideline 3: Compatibility	A.21: The proposal provides appropriate transitions between uses that are substantially different in scale and intensity or density of development such as landscaped buffer yards, vegetative berms, compatible building design and materials, height restrictions, or setback requirements.	√	The variance is being requested along a property that is shared with a non-residential use. If the property was zoned commercial then a variance would not be necessary as there is no side yard setback requirement when commercial is adjacent to commercial. The proposed 5' setback is consistent with commercial being located adjacent to other non-residential development.
20	Form Districts Goals C1-C4, Objectives C1.1-1.2, C2.1-2.7, C3.1-3.7, C4.1-4.7	Community Form/Land Use Guideline 3: Compatibility	A.23: Setbacks, lot dimensions and building heights are compatible with those of nearby developments that meet form district standards.	√	The reduction in setback is consistent with the setbacks when non-residential is adjacent to non-residential in the NFD.

Attachment 4: Applicant's Justification Statement

1. Reasons that the granting of the variance:

a) Will not adversely affect the public health, safety or welfare.

THE ADJ. PROPERTY ZONED R-4 HAS NOT BEEN DEVELOPED AS RESIDENTIAL. AT PRESENT THE PROPERTY
HAS BEEN UTILIZED BY A SOUTH CENTRAL BELL FACILITY.

THE REMAINING ADJ. RESIDENTIAL PROPERTY'S WILL NOT BE AFFECTED.

b) Will not alter the essential character of the general vicinity.

A 5 FT. SIDE YARD SETBACK ADJ. TO THE R-4 PROPERTY WILL CONFORM TO THE PREVIOUSLY APPROVED DETAILED DEVELOPMENT PLAN
11944.

c) Will not cause a hazard or a nuisance to the public.

THE VARIANCE WILL PRESENT MINIMUM DISRUPTION TO THE ADJ. PROPERTY OWNERS AND WILL UTILIZE THE PROPERTY'S FULL
DEVELOPMENT POTENTIAL WITHOUT PUBLIC HAZARD OR NUISANCE.

d) Will not allow an unreasonable circumvention of the requirements of the zoning regulations.

THE VARIANCE WILL NOT DEPART FROM THE INTENT OF ZONING AND SETBACK ENCROACHMENT NEEDED FOR REASONABLE
EXPANSION AND USE OF THE SITE.

2. Additional consideration.

a) Whether the variance arises from special circumstances, which do not generally apply to land in the general vicinity; (Please specify/identify)

THE VARIANCE WILL ACCOMMODATE REASONABLE USE AND PUBLIC SAFETY FOR THE PATRON'S.

b) Whether 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.

THE VARIANCE IS CRUCIAL FOR REASONABLE TRAFFIC CIRCULATION.
FOR IT'S PARTON'S.

c) Whether the circumstances are the result of actions of the applicant taken subsequent to the adoption of the regulation which relief is sought.

REGULATIONS OF WHICH WE SEEK RELIEF HAVE BEEN PREVIOUSLY ADOPTED BEFORE THE REQUEST OF THIS VARIANCE.

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