

# Board of Zoning Adjustment

## Staff Report

February 20, 2023



<b>Case No:</b>	22-WAIVER-0114 and 23-VARIANCE-0014
<b>Project Name:</b>	Bardstown Road Waiver and Variance
<b>Location:</b>	1331 Bardstown Road
<b>Owner:</b>	BFG Revocable Land Trust
<b>Applicant:</b>	Charles Podgursky – C.R.P & Associates, INC.
<b>Jurisdiction:</b>	Louisville Metro
<b>Council District:</b>	8 – Cassie Armstrong
<b>Case Manager:</b>	Molly Clark, Planner II

### REQUESTS:

**Waiver** from Land Development Code Section 10.2.10.A to not provide the required 5 ft LBA between any lot containing a VUA and a non-residentially zoned lot with a first floor residential use. (22-WAIVER-0114)

**Variations** to allow an addition to encroach into the 6 ft side yard setback by 2.8 ft for proposed buildings constructed adjacent to an existing building which has a window. (23-VARIANCE-0014)

Location	Requirement	Request	Variance
Side Yard	6 feet	2.8 feet	3.2 feet

### CASE SUMMARY/BACKGROUND

The subject property is zoned C-2 Commercial and is in the Traditional Marketplace Corridor Form District. It is in the Bardstown Road/Baxter Avenue Review Overlay District in the Highlands Neighborhood. The property currently has a one-story commercial structure and parking in the rear. The applicant is proposing to construct an addition that will encroach into the required side yard setback.

The Bardstown Road/Baxter Avenue Review Overlay District (BROD) approved the proposed additions under case number 22-OVERLAY-0021 on November 29, 2022. Planning & Design Staff does not have any recommended conditions.

### STAFF FINDINGS

Staff finds that the requested variance and waiver are adequately justified and meet the standards of review.

Based upon the information in the staff report, and 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 variance and waiver established in Land Development Code.

### TECHNICAL REVIEW

The applicant is required to obtain a building permit and the proposed addition or structure may require alterations to the proposed building plans in order to meet building code requirements.

### INTERESTED PARTY COMMENTS

No interested party comments have been received by staff.

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

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

STAFF: The waiver will not adversely affect adjacent property owners as there are a variety of land uses in the general vicinity. The applicant is not making any significant changes to the existing parking in the rear along the alley.

- (b) The waiver will not violate specific guidelines of Plan 2040; and

STAFF: Community Form Goal 1, Policies 9 and 10 of Plan 2040 call to ensure an appropriate transition between uses that are substantially different in scale and intensity or density of development. The transition may be achieved through methods such as landscaped buffer yards, vegetative berms, compatible building design and materials, height restrictions and setback requirements and the impacts caused when incompatible developments unavoidably occur adjacent to one another. Community Form Goal 1, Policy 12 states design parking, loading and delivery areas located adjacent to residential areas to minimize adverse impacts from noise, lights, and other potential impacts. Ensure that parking, loading and delivery is adequate and convenient for motorists and does not negatively impact nearby residents or pedestrians. The applicant is not making any significant changes to the existing parking in the rear along the alley. The lot is very narrow and does not allow for enough room for a landscape buffer. The area where the buffers are required are along other parking spaces of the adjacent uses.

- (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 as they are applying for the waiver to bring the existing site conditions into compliance. The lot is very narrow and does not allow for enough room for a landscape buffer. The area where the buffers are required are along other parking spaces of the adjacent 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 provision would deprive the applicant of the reasonable use of the land because the property is not large enough to install the required landscaping. The lot is very narrow and does not allow for enough room for a landscape buffer. The area where the buffers are required are along other parking spaces of the adjacent uses.

**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 variance will not adversely affect the public health, safety or welfare, because the structure must be constructed to comply with all building codes, including fire codes.

- (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 as The Bardstown Road/Baxter Avenue Overlay District approved the addition.

- (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 structure must be constructed to comply with all building codes.

- (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 as the proposed addition will still allow space between the proposed addition and the residential structure next door.

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 arise from special circumstances which do not generally apply to the land in the generally vicinity or the same zone as the property is very narrow in width and creates restriction in where an addition can be built.

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 as the proposed addition is in the only possible location on 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 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 has not started construction and is requesting the variance.

**REQUIRED ACTIONS**

- **APPROVE** or **DENY** the **WAIVER** from section 5.2.3.D.3.a to allow a second story addition to encroach into the 6 ft side yard setback by 2.8 ft for proposed buildings constructed adjacent to an existing building which has a window (22-WAIVER-0114).
- **APPROVE** or **DENY** the **VARIANCE** from section 5.2.3.D.3.a to allow a second story addition to encroach into the 6 ft side yard setback by 2.8 ft for proposed buildings constructed adjacent to an existing building which has a window (23-VARIANCE-0014)

**VARIANCE PLAN REQUIREMENT**

In accordance with LDC Section 11.5B.1.C (Requirement to Follow Approved Plan), a variance shall be approved only on the basis of the plan approved by the Board and shall be valid only for the location and area shown on the approved plan. All construction and operations must be conducted in accordance with the approved plan and conditions attached to the variance.

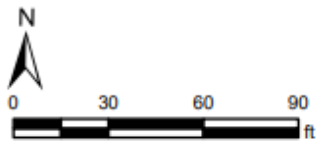
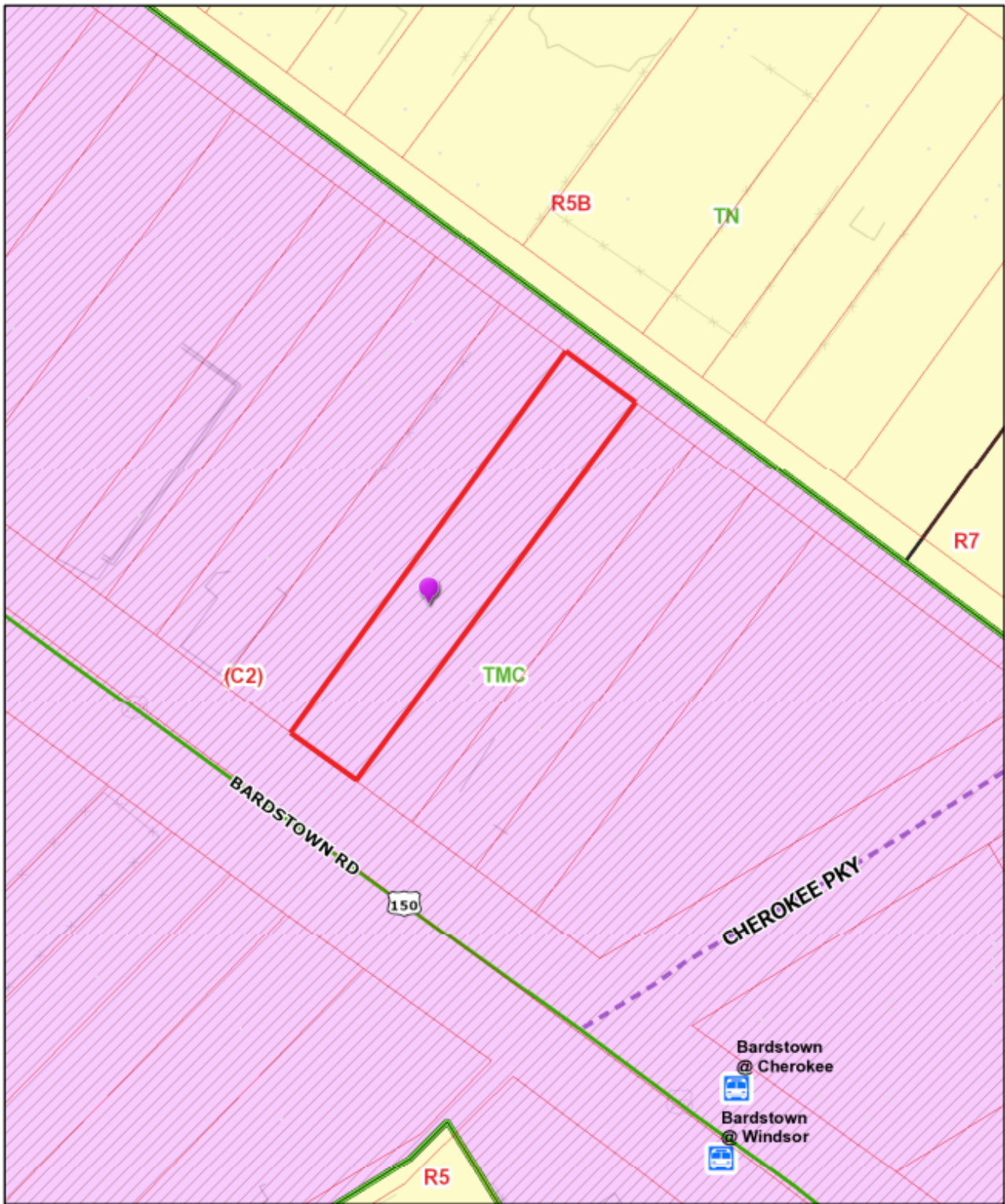
**NOTIFICATION**

<b>Date</b>	<b>Purpose of Notice</b>	<b>Recipients</b>
<b>02-02-2023</b>	Hearing before BOZA	1 <sup>st</sup> tier adjoining property owners and current residents Registered Neighborhood Groups in Council District 8
<b>02-08-2023</b>	Hearing before BOZA	Notice posted on property

**ATTACHMENTS**

1. Zoning Map
2. Aerial Photograph
3. Site Plan
4. Renderings
5. Site Photos

1. Zoning Map



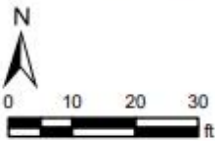
Monday, February 13, 2023 | 11:40:19 AM



LOJIC © 2023

This map is not a legal document and should only be used for general reference and identification

2. Aerial Photograph



Monday, February 13, 2023 | 11:44:00 AM

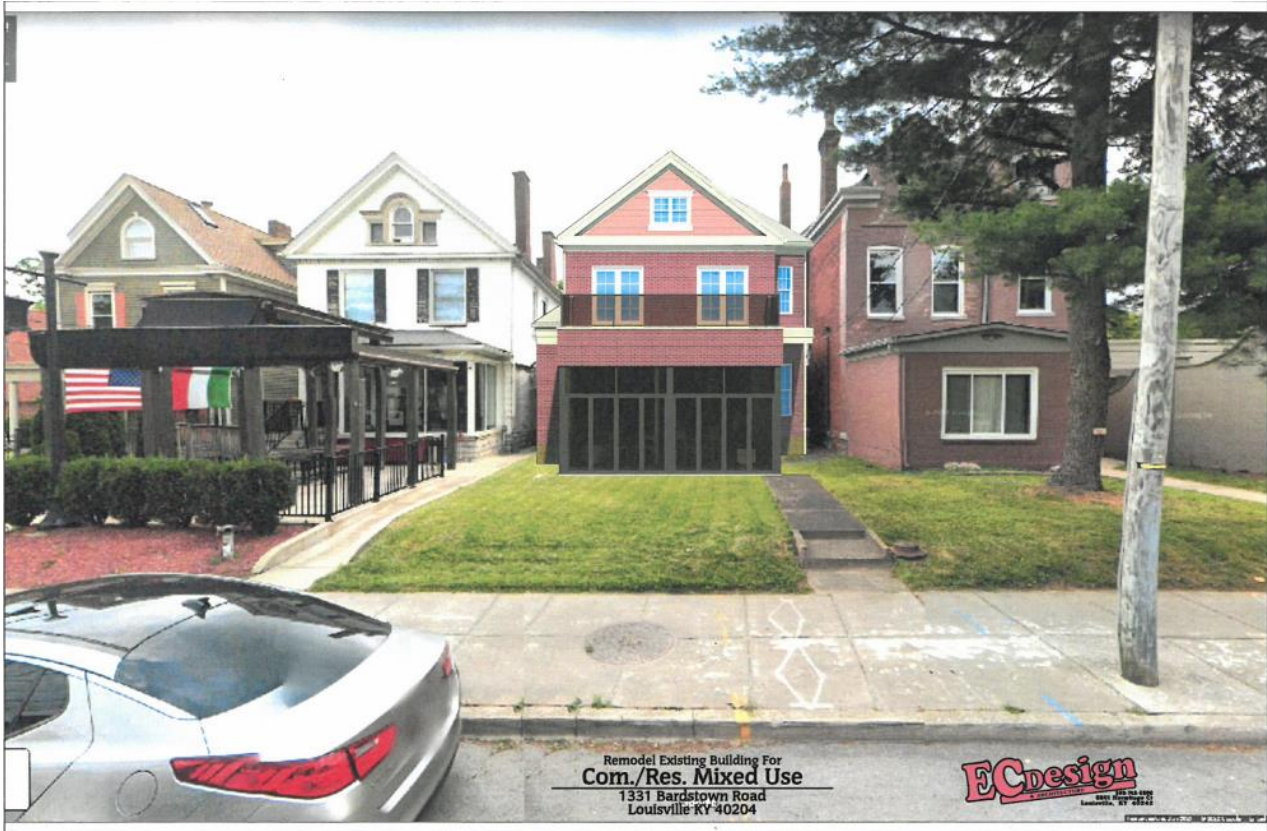
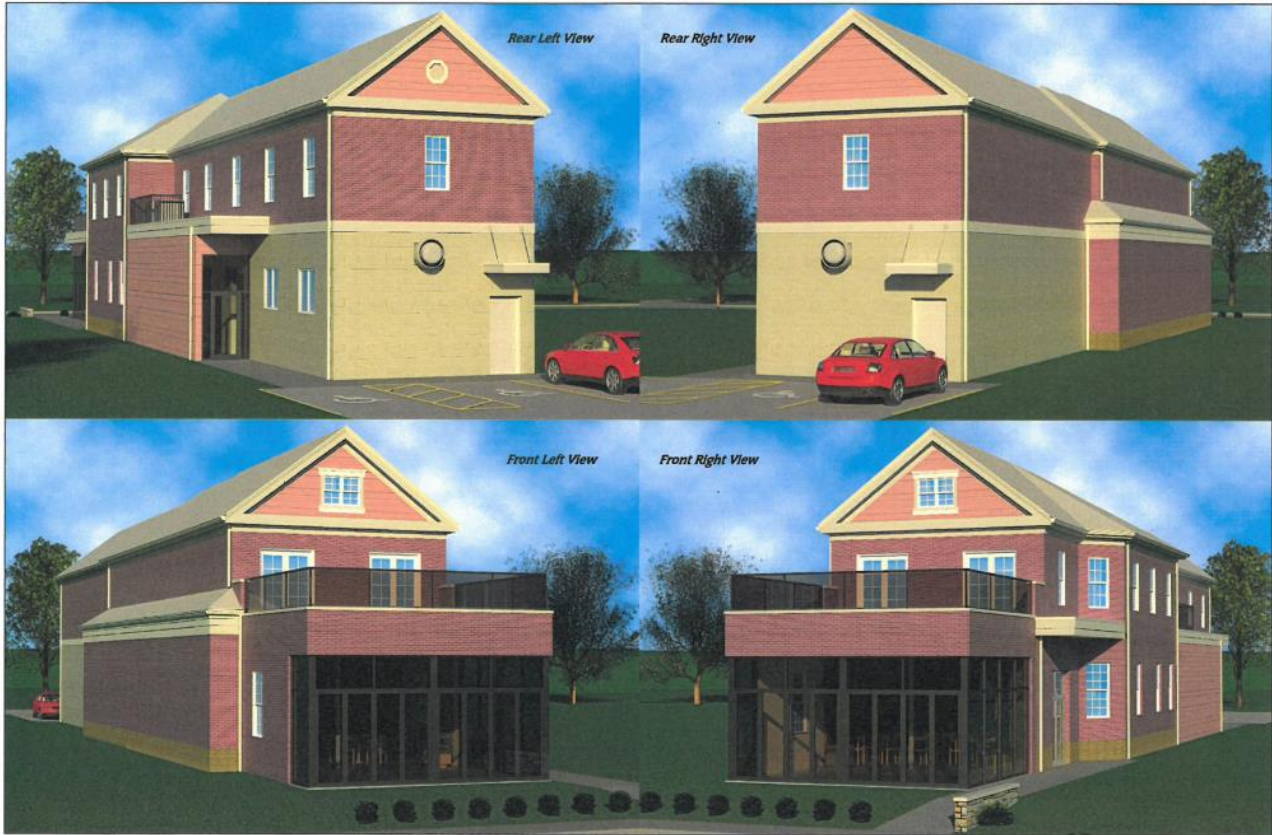


LOJIC © 2023

This map is not a legal document and should only be used for general reference and identification

3. Site Plan





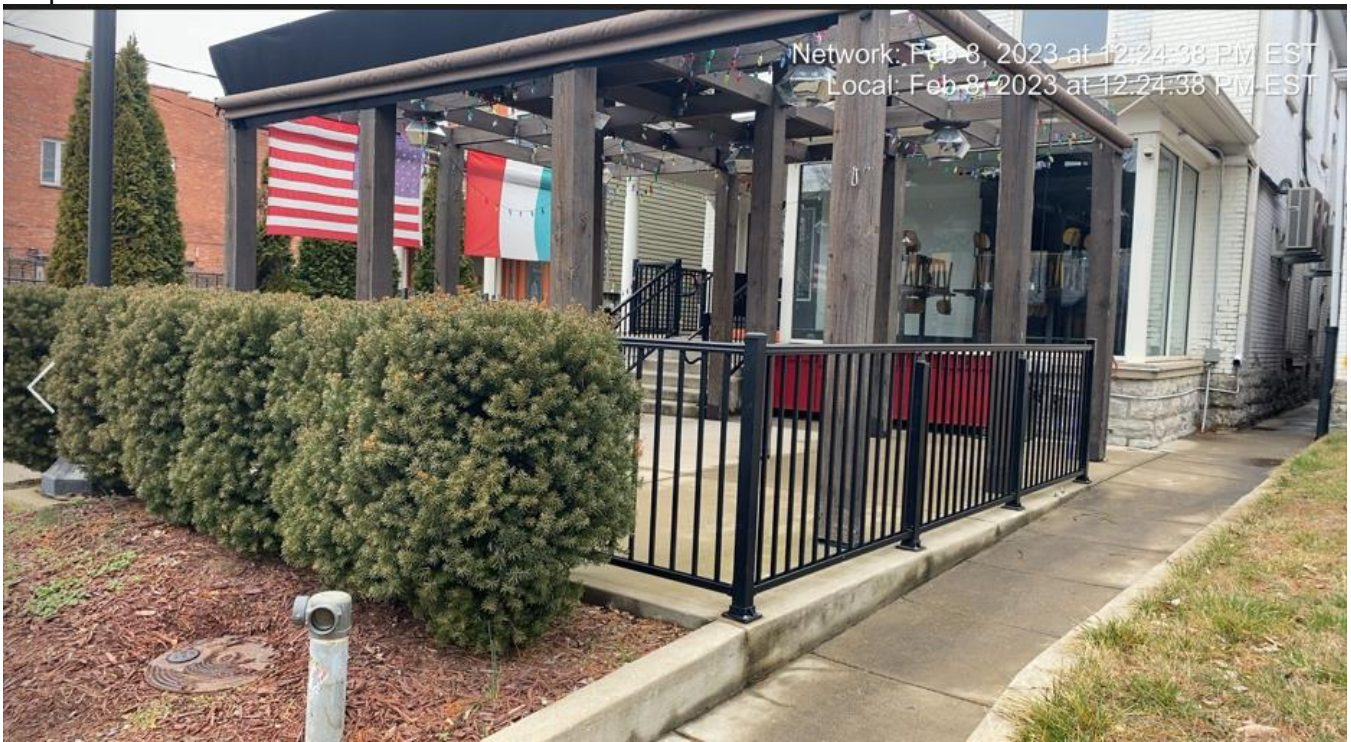




Rear of Subject Property:



Properties to the Left.



Property to the Right:



Variance Area

