

Board of Zoning Adjustment

Staff Report

September 23, 2019



Case No:	19-VARIANCE-0023 and 19-WAIVER-0029
Project Name:	New Cut Road Variance and Waiver
Location:	5868 New Cut Road
Owner(s):	ACT Development Inc.
Representative:	Derek Triplett – Land Design & Development, Inc.
Jurisdiction:	Louisville Metro
Council District:	13 – Mark Fox
Case Manager:	Zach Schwager, Planner I

REQUEST

- **Variance** from Land Development Code section 5.3.3.C.2.b to allow a parking area to encroach into the required side yard setback adjacent to a residential zoning district.
- **Waiver #1** from Land Development Code section 10.2.4 to allow pavement and proposed detention basin to encroach into the required Landscape Buffer Area (LBA).
- **Waiver #2** from Land Development Code section 10.2.12 to allow Interior Landscape Areas (ILA) to overlap the LBA.

Location	Requirement	Request	Variance
Front Yard	50 ft.	5 ft.	45 ft.

CASE SUMMARY/BACKGROUND

The subject property is located on the west side of New Cut Road north of Outer Loop. It is zoned C-1 Commercial and is in the Regional Center Form District. The applicant proposes to construct a one-story restaurant where part of the parking will encroach into the northern side yard setback and LBA. Some of the ILA for the parking will also overlap the LBA along a portion of the northern property line.

STAFF FINDING

Staff finds that the requested variance and waivers 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 a variance established in the Land Development Code from section 5.3.3.C.2.b to allow a parking area to encroach into the required side yard setback adjacent to a residential zoning district. The Board must also determine if the proposal meets the standards for granting waivers established in the Land Development Code from sections 10.2.4 to allow pavement and proposed detention basin to encroach into the required LBA and 10.2.12 to allow ILA to overlap the LBA.

Condition of Approval:

#1) The applicant shall provide a boundary survey to Planning and Design staff prior to the issuance of building permits in order to show the legal boundaries of the lot. If the survey shows a different location of the property line from the plan provided in this staff report, the applicant shall either revise the development plan or seek a modification of the variance.

TECHNICAL REVIEW

- The plan has preliminary approval from Transportation Planning, MSD, and KYTC.

INTERESTED PARTY COMMENTS

Staff received a phone call and letter from the same adjoining property owner in opposition to the requested variance and waivers.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCE FROM SECTION 5.3.3.C.2.b

- (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 as the adjoining property to the north is undeveloped and the subject property is only 120 ft. wide.

- (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 there are other commercial parking areas that encroach into residential setbacks.

- (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 as the parking is consistent with other parking in the area. The plan has also received preliminary approval from Transportation Planning and KYTC.

- (d) The requested variance will allow an unreasonable circumvention of the zoning regulations.

STAFF: The requested variance will not allow an unreasonable circumvention of the zoning regulations as the subject property is 120 ft. wide and the required setback is 50 ft.

ADDITIONAL CONSIDERATIONS:

1. The requested variance does not arise from special circumstances which do 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 land in the general vicinity or the same zone because the lot is narrow for a commercially zoned property in the Regional Center Form District.

2. 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 on the applicant.

STAFF: 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 because the property is 120 ft. wide and the required setback is 50 ft.

3. 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.

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 the variance and has not begun construction.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER OF SECTION 10.2.4

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

STAFF: The waiver will not adversely affect adjacent property owners as the parking area is adjacent to a residentially zoned property, however, this property is undeveloped and contains a significant amount of tree canopy in between the closest residentially used property.

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

STAFF: The waiver does violate specific guidelines of Plan 2040 as Plan 2040 states that Regional Centers will place emphasis on (a) encouraging infill development, (b) compact development to provide accessibility through all means of transportation, and (c) site design to provide screening of the parking lot as the site is viewed from the arterial roadway. The proposed site plan meets these guidelines as it is compact in design, provides accessibility through all means of transportation, and meets the parkway buffer requirements for New Cut Road. Also, the proposed detention basin in the LBA will help to mitigate runoff.

- (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 the adjacent property to the north currently provides a significant buffer to the residentially used property further to the north.

- (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 not 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 or create an unnecessary hardship on the applicant because the property is 120 ft. wide and the required LBA is 25 ft.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER OF SECTION 10.2.12

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

STAFF: The waiver will not adversely affect adjacent property owners as the ILA and LBA for the parking is buffered by the adjacent lot to the north.

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

STAFF: The waiver does not violate specific guidelines of Plan 2040 as Livability Goal 1 Policy 38 encourages parking lot greenspace and stormwater management standards that enhance the communitywide tree canopy and minimize surface runoff. The applicant is providing ILA that overlap with the LBA, however, they will help to mitigate runoff along with the proposed detention basin.

- (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 the subject property is 120 ft wide and does not provide much area to meet the requirements established in the Land Development Code.

- (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 or create an unnecessary hardship on the applicant because the property is 120 ft. wide and does not provide enough area to meet parking, LBA, and ILA requirements.

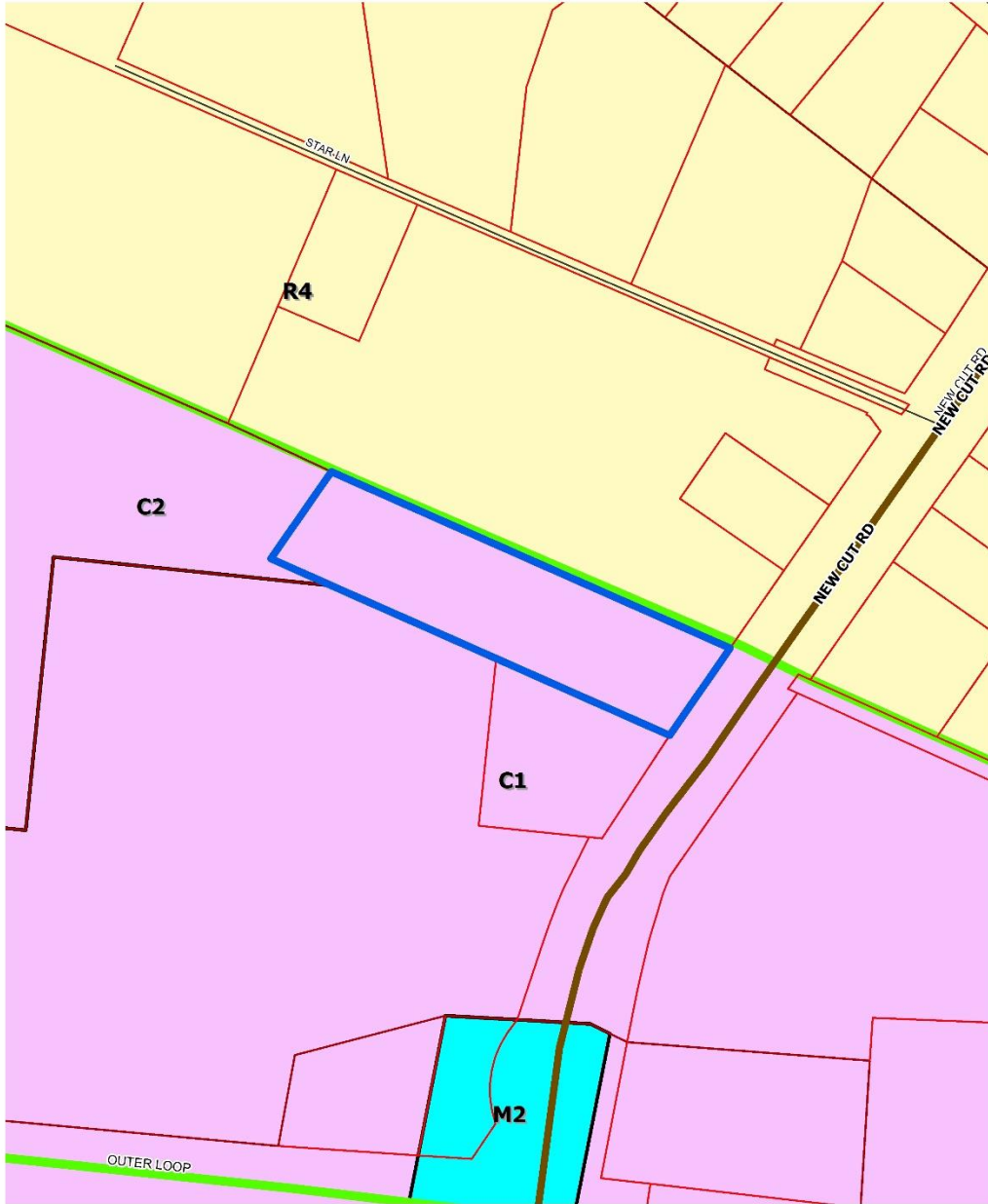
NOTIFICATION

Date	Purpose of Notice	Recipients
08/23/2019	Hearing before BOZA	1 st tier adjoining property owners Registered Neighborhood Groups in Council District 13
09/11/2019	Hearing before BOZA	Notice posted on property

ATTACHMENTS

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

1. Zoning Map



5868 New Cut Road
feet



140

Map Created: 9/18/2019

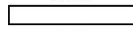


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2. Aerial Photograph



5868 New Cut Road
feet



140
Map Created: 9/18/2019



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4. Site Photos



Subject property.



Location of variance and waivers.



Adjacent property to the north.



Property across New Cut Road.



Adjacent property to the south.