Board of Zoning Adjustment
Staff Report
February 6, 2017

Case No:	16VARIANCE1093
Request:	Variance to allow a proposed Bojangles' parking lot to encroach into the Stream side buffer of Big Run Creek, a Blueline stream.
Project Name:	Bojangles'
Location:	7304, 7318, and 7318 ½ Dixie Highway
Area:	1.3189 combined acres
Zoning:	M-2 (Industrial)
Form District:	Suburban Marketplace Corridor
Owner:	Barnie and Susan Elder
Applicant:	Claude Clark – Bojangles' Restaurants Inc.
Representative:	Ann Richard – Land Development and Design Inc.
Jurisdiction:	Louisville Metro
Council District:	12 – Rick Blackwell
Case Manager:	Ross Allen, Planner I

REQUEST

- **Variance:** variance from the Land Development Code section 4.8.4.B to allow a proposed Bojangles' Restaurant parking lot to encroach approximately 1,724 sf. into the Big Run Creek (Blueline Stream) 50' foot middle buffer and to encroach 3,768 sf. into the 25 foot outer buffer for a combined total of 5,492 sf into the stream side buffer of Big Run Creek as found in the northwestern edge of the parcel.

Location	Requirement Area/Linear Encroachment	Request Area/Linear Encroachment	Variance Area/Linear Encroachment
Middle Stream Side Buffer (50' width)	**0 sf. / 0ft.**	**1,724 sf. / 41.5 ft. (max. encroachment into the stream side buffer)**	**1,724 sf. / 41.5 ft.**
Outer Stream Side Buffer (25' width)	**0 sf. / 0 ft.**	**3,768 sf. / 25 ft. (max. encroachment into the stream side buffer)**	**3,768 sf. / 25 ft.**
Total Stream Buffer Encroachment	**0 sf. / 0 ft.**	**5,492 sf. / 66.5 ft.**	**5,492 sf. / 66.5 ft.**

CASE SUMMARY/BACKGROUND/SITE CONTEXT

The applicant is proposing to construct a 3,900 sf. Bojangles' Restaurant with a drive thru, and a 33,786 sf. vehicular use area (VUA) within an M-2 zoning district in a Suburban Marketplace Corridor located at 7304, 7318, and 7318 ½ Dixie Highway. Per LDC section 4.3.22 permits restaurants within an M-2 industrial district provided the applicant submits a phase I environmental assessment, which the applicant submitted with the application. The proposal would require the demolition of an existing 2 story brick building and a 1 story brick building. Previously, both properties were commercial uses, one, 7304 Dixie Hwy., being a chiropractor's office and the adjacent parcel, 7318 and 7318 ½, being a dry cleaners. The two parcels would need to be

consolidated, shown on the development plan as "Z" lines perpendicular to Dixie Highway and others at the rear or northwestern edge of the property line horizontal to Dixie Hwy.

The proposed structure, Bojangles' Restaurant, will be one story, 25 feet tall (shown on the elevations as 24' 2") and will have a building area/footprint of 3,900 sf. The exterior of the building will have an orange colored metal canopy, red brick façade on the lower portion, and greyish/brown stone façade along the upper portion. The required parking, based upon the square footage and intended use of the structure, for the restaurant. Parking as provided will create impervious surface of 33,786 sf on the site with 44, two spaces being handicapped parking, parking spaces provided as required for a Restaurant with a drive thru. A ten percent reduction in parking was allowed since the subject site is located on TARC route no. 18.

Signage on the property will require the reuse of the existing business identification sign pole, located on the 7304 Dixie Highway property, will be retained and retrofitted with the Bojangles' Logo. The sign height and area are complaint with LDC Chapter 8 Sign Regulations. Existing business signs located at 7318 and 7318 ½ will be removed. Tree calculations indicate that currently 10% of the site, 5,650 sf., has existing trees. The subject site will need to plant 20%, 10,592 sf., of the total site as required by LDC Chapter 10 as a result of preserving no existing trees on site.

The subject site is located approximately 254 feet north of the Greenwood Rd. and Dixie Highway intersection, on the northwestern side. The applicant is providing an LBA of 15 feet along the frontage, eastern property line, with Dixie Highway, and 10 foot LBA's along the northern and southern property lines. An LBA for the rear of the property is not shown and is not required by LDC but the applicant is providing a

LAND USE/ZONING DISTRICT/FORM DISTRICT TABLE

	Land Use	**Zoning**	**Form District**
Subject Property			
Existing	Commercial	M-2	Regional Center
Proposed	Commercial	M-2	Regional Center
Surrounding Properties			
North	Residential Single Family/Commercial	R-4/C-2	Neighborhood/Suburban Marketplace Corridor
South	Commercial	C-2	Suburban Marketplace Corridor
East	Commercial	C-1/C-M	Suburban Marketplace Corridor
West	Commercial	C-1/M-2	Suburban Marketplace Corridor

PREVIOUS CASES ON SITE

No previous cases on site.

INTERESTED PARTY COMMENTS

No comments were received from concerned citizens.

APPLICABLE PLANS AND POLICIES

Land Development Code

STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCE from LDC section 4.8.4.B.3 to allow a Bojangles' Restaurant Parking lot to be located within the middle and outer stream side buffer areas/zones.

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

STAFF: The requested variance will not adversely affect public health safety or welfare since MSD has approved the best management practices for onsite storm water management prior to storm water entering the Big Run Creek. Sediment, hydrocarbons, and debris will be cleaned from the storm water entering Big Run Creek by MSD approved storm interceptors installed in the catch basins in the Bojangles' parking lot.

(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 neighboring commercially zoned properties are and have been encroaching into the 100 ft. Stream side buffer zones. The 100 ft. streamside buffer zone complies with the established commercial development pattern in the general vicinity. The existing commercial structures predate the current LDC requirements and thus section 4.8.4.B.

(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 MSD best management practices will be implemented for onsite storm water management prior to climatic occurrences and development on site.

(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 applicant is applying the best management practices as defined by MSD to provide onsite cleaning of the developments storm water run-off.

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 arises from special circumstances which that generally apply to land in the general vicinity or the same zone since the property was platted and originally commercially developed prior to the adoption of the Land Development Code's stream side buffer zone requirements. The location of the proposed development on Dixie Highway and Proximity to Big Run Creek do not provide sufficient area to continue use on site as a commercial property without encroachment into the stream side buffer.

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 deprive the applicant of reasonable use of the land since the subject site is 1.2 acres and the stream side buffer areas encompass approximately 7,520 sf. or 15% of the site. The area of land encompassed by the buffer minimizes the amount of developable area.

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: No, 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 since the proposed development is an adaptive re-use of two sites that area existing commercial land uses and both sites have large areas of impervious surface.

ADDITIONAL CRITERIA per LDC SECTION 4.8.4.B

a. The variance is necessary because the requirements of this section represent an extreme hardship such that minimal or no reasonable economic use of the land is available without reducing the width of the required Buffer Area.

STAFF: The subject site is zoned M-2 and is located in a Suburban Marketplace Corridor Form District. Adjacent to the subject site MSD has re-located big Run Creek into a concrete channel and is not located on the subject site but near to the site diminishing the amount of developable area resulting from the stream side buffer middle and outer zones.

The subject site is located approximately 254 feet north of the intersection of Greenwood Rd., a minor arterial, and Dixie Highway, a major arterial, providing a suitable location for the proposed commercial retail development and is an adaptive re-use of two developed sites. The property was platted prior to the adoption of the current Land Development Code and the inclusion of the stream side buffers zone regulations. The loss of developable land to provide for the stream side buffer was not considered when the tract was created and is considered an extreme hardship and reduces the site's developable land area resulting in the site potential and economic use or re-use . The subject site has 1.2 acres and the encroachment of the streamside buffer consumes approximately 7,520 sf. or 15% of the site area. A 10 ft. landscape buffer area (LBA) is required within the streams side buffer area and is provided as are the required landscaping. There is not sufficient land area to provide the 100 ft. stream side buffer area and the amount of parking spaces that the Bojangles' restaurant is required to have per Chapter 9 of the LDC.

b. The size, shape, or topography of the property, as of March 1, 2003, is such that it is not possible to construct a single family detached dwelling without encroaching into the required Buffer Area.

STAFF: Not applicable since the proposed development is not a single family detached dwelling unit.

c. Encroachment into the required Buffer Area shall be limited to the minimum necessary to accommodate the proposed use.

STAFF: The proposed encroachment into the stream side buffer area is the minimum necessary to accommodate the proposed Bojangles' parking. Louisville-Jefferson County Government's Chapter 157: Floodplain Management Ordinance requires a 25 ft. Vegetative Buffer Area be provided along the side of the creek. MSD enforces the provision and protection of the 25 ft. Vegetative Buffer and will be provided, free of any encroachments.

d. The Applicant shall commit, to the satisfaction of the County, to mitigation measures that substantially offset any potential adverse impacts of the proposed encroachment during site preparation, construction, and post-construction.

STAFF: A building permit will be required prior to any land disturbance activity on site. MSD will review and approve the proposed civil construction plans prior to the issuance of a building permit by the Louisville Metro Construction review Dept. MSD will review and approve an Erosion Prevention and Sediment Control Plan (EPSC) as a part of the review of the civil construction plans. MSD's review and approval of the proposed development's storm water management system and EPSC plan will assure

that no adverse impacts shall occur as a result of the proposed development/encroachment into the stream side buffer area/zones.

e. Approval of the variance will not result in a reduction in water quality.

STAFF: The approval of the variance will not result in the reduction in water quality since the applicant is proposing to install a Storm Water Quality Unit (SWQU) at the proposed development's point of discharge. The Storm Water Quality Unit will clean the storm water of debris, oils, sediment, and hydrocarbons before the storm water enters Big run Creek. The proposed parking lot will have a curb ensuring the storm water will be diverted to the Storm Water Quality Unit prior to entering Big Run Creek.

The existing development has been discharging storm waters without any cleansing into Big Run Creek and the proposed development is amicable to providing a Storm Water Quality Unit in helping to prevent pollution and maintaining the water quality of Big Run Creek. The proposed vehicular use area (VUA) is approximately 40 ft. from the Big run Creek edge of bank, where grass is and will be retained to help further mitigate any impact of an encroachment into the 100 ft. stream side buffer area/zone. The MSD 25 ft. vegetative buffer area provides more green space that will not be encroached upon by the proposed development.

TECHNICAL REVIEW

- None

STAFF CONCLUSIONS

The variance request appears to be adequately justified and meets the standard of review. 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 standard of review for granting a variance as established in the Land Development Code from section 4.8.4.B to allow a proposed Bojangles' Restaurant parking lot to encroach into the middle stream side buffer area/zone by approximately 1,724 sf. or 41.5 linear feet and 3,768 sf. or 25 linear feet into the outer stream side buffer area/zone with a combined total encroachment of 5,492 sf. or 66.5 linear feet as found at the corner of the northwestern and northeastern property vertex.

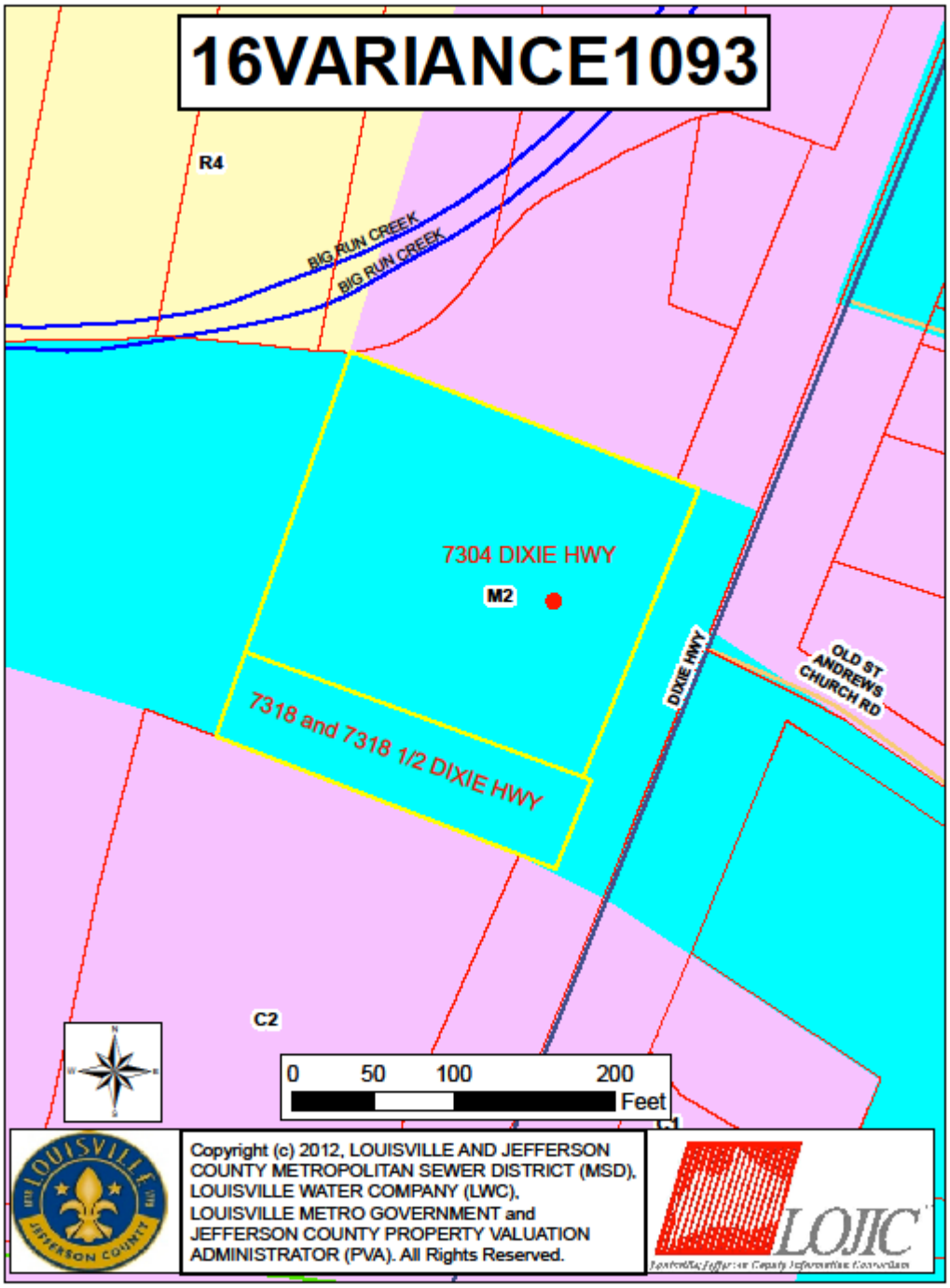
NOTIFICATION

Date	Purpose of Notice	Recipients
Jan. 9, 2016	Hearing before BOZA	1st tier adjoining property owners Subscribers of Council District 18 Notification of Development Proposals
December 22, 2016	Sign Posting for BOZA	Sign Posting on property

ATTACHMENTS

1. Zoning Map
2. Aerial Photograph

1. Zoning Map


16VARIANCE1093
R4
BIG RUN CREEK
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7304 DIXIE HWY
M2
7318 and 7318 1/2 DIXIE HWY
DIXIE HWY
OLD ST ANDREWS CHURCH RD
C2
0 50 100 200
Feet
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2. Aerial Photograph