

# Board of Zoning Adjustment Staff Report

May 1, 2017



<b>Case No:</b>	16DEVPLAN1218
<b>Request:</b>	Two variances from LDC Section 5.5.1.A.2 to not build to the corner and two general waivers and a sidewalk waiver.
<b>Project Name:</b>	LMSML Studio Shop
<b>Location:</b>	255 Cabel Street
<b>Area:</b>	0.4193 acres OR 18,264.71 sf.
<b>Zoning:</b>	M-3
<b>Form District:</b>	Traditional Neighborhood
<b>Owner:</b>	Steven Lund – SML Development
<b>Applicant:</b>	Steven Lund – SML Development
<b>Representative:</b>	Lindsey Stoughton – LMS Design
<b>Jurisdiction:</b>	Louisville Mero
<b>Council District:</b>	4 – Barbara Sexton-Smith
<b>Case Manager:</b>	Ross Allen – Planner I

### REQUEST

- **Variance #1:** from LDC Section 5.5.1.A.2 to allow the building to be constructed more than 5 ft. away from the right-of-way line along Adams Street.

Location	Requirement	Request	Variance
• Adams Street (Corner Lot)	5 ft.	9 ft. 1 ¾ in.	4 ft. 1 ¾ in.

- **Variance #2:** from LDC Section 5.5.1.A.2 to allow the building to be constructed more than 5 ft. away from the right-of-way line along Cabel Street.

Location	Requirement	Request	Variance
• Cabel Street (Corner Lot)	5 ft.	16 ft. 3 in.	11 ft. 3 in.

- **Waiver #1:** from LDC Section 5.5.1.A.1.a to not provide the principal building entrance facing Adams or Cabel Street nor having an entrance located at the corner.
- **Waiver #2:** from LDC Section 5.8.1.B to not provide a sidewalk along Cabel Street for an approximate length of 178 feet.
- **Waiver #3:** from LDC Section 5.9.2.A.1.b.i to not provide a pedestrian access from the public right of way through the off-street parking area to the building entrance.

**CASE SUMMARY/BACKGROUND/SITE CONTEXT**

The applicant is proposing to construct a Contractor’s Shop and office in a 4,990 sf. (footprint or 5,973.5 sf. gfa) building with a proposed height of 23 feet. The building will have a contractor’s shop (carpentry/woodworking) and office on a vacant parcel located in an M-3 zoned parcel within a Traditional Neighborhood Form District. The proposed building will have the contractor’s shop parallel to Cabel Street while the Contractor’s Wood Shop and accessory office will dissect the northern corner of the contractor’s shop which is parallel to Adams Street. The Contractor’s wood shop will have three 12 x 14 bay doors facing (east) interior to the Vehicular Use Area (VUA) of approximately 4,463 sf. (VUA). The VUA has a 24 ft. wide entrance off of Adams Street and contains two parking spaces, one being ADA complaint. The subject site will have a total impervious surface area (Building and VUA) of approximately 9,038 sf. or 49% of the total site. The subject site is bounded by an Interstate-64 ramp to the north, an unimproved alley right of way on the eastern and southern sides, and an EZ-1 zoned commercial land use to the west off Cabel Street.

**LAND USE/ZONING DISTRICT/FORM DISTRICT TABLE**

	<b>Land Use</b>	<b>Zoning</b>	<b>Form District</b>
<b>Subject Property</b>			
<b>Existing</b>	Vacant	M-3	Traditional Neighborhood
<b>Proposed</b>	Industrial	M-3	Traditional Neighborhood
<b>Surrounding Properties</b>			
<b>North</b>	I-64 Ramp (Interstate Right of Way)	ROW	N/A
<b>South</b>	ROW/Commercial/Vacant	M-2	Traditional Neighborhood
<b>East</b>	ROW/Vacant	M-2	Traditional Neighborhood
<b>West</b>	Commercial	EZ-1	Traditional Neighborhood

**PREVIOUS CASES ON SITE**

- None

**INTERESTED PARTY COMMENTS**

- None

**APPLICABLE PLANS AND POLICIES**

- Cornerstone 2020
- Land Development Code

**STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCE #1: from Section 5.5.1.A.2. to allow the building to be constructed at a distance of 16’ 3” from the right-of-way line along Cabel Street:**

- (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 since the placement of the building further back than the required five foot setback allows more visibility for vehicles travelling along Cabel Street towards Adams Street.

- (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 other buildings in the area and across the street (west) are not built to the standard for a corner, being a five foot setback from each public right of way along each street for a corner lot. Many properties in the area are vacant or parcels that have buildings have larger setbacks from the public right of way than the requirements allow.

- (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 the additional space allows for more green space along the roadway.

- (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 regulation since the proposal, as shown on the site plan, is built to the standards for an M-3 zoned parcel within a Traditional Neighborhood Form District (minimum and maximum setbacks). The site plan shows that the situation of the building on the parcel stays with the intent of building to the corner along both streets.

#### 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 that do not generally apply to land in the general vicinity or the same zone since the topography of the site, especially at the corner of Adams and Cabel Street, has significant change in elevation. The street is approximately 15 ft. below the grade as found interior to the property. The elevation at street level is approximately 446 feet and increases to approximately 461 feet in a distance of 15 feet (interior to the site), this is found along both Cabel Street and Adams Street.

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 or create an unnecessary hardship on the applicant since the topography would require a greater expense to the applicant if required to build to the five foot setback and the height elevation as required by MSD. Additionally, to meet the LDC requirements would result in the removal of large well established trees and it is the intent of the applicant to preserve as many trees and green space as possible.

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 design, placement, and orientation of the building was based primarily on the site and surrounding neighborhood.

**STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCE #2: from Section 5.5.1.A.2. to allow the building to be constructed at a distance of 9' 2" from the right-of-way line along Adams Street:**

- (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 greater setback allows better visibility for vehicles approaching Cabel Street from Adams Street.

- (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 other buildings in the area and across the street (west) are not built to the standard for a corner, being a five foot setback from each public right of way along each street for a corner lot. Many properties in the area are vacant or parcels that have buildings that have larger setbacks from the public right of way than the requirements allow.

- (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 the additional space allows for more green space along the roadway.

- (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 regulation since the proposal, as shown on the site plan, is built to the standards for an M-3 zoned parcel within a Traditional Neighborhood Form District (minimum and maximum setbacks). The site plan shows that the situation of the building on the parcel stays with the intent of building to the corner along both streets.

**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 that do not generally apply to land in the general vicinity or the same zone since the topography of the site, especially at the corner of Adams and Cabel Street, has significant change in elevation. The street is approximately 15 ft. below the grade as found interior to the property. The elevation at street level is approximately 446 feet and increases to approximately 461 feet in a distance of 15 feet (interior to the site), this is found along both Cabel Street and Adams Street.

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 or create an unnecessary hardship on the applicant since the topography would require a greater expense to the applicant if required to build to the five foot setback and the height elevation as required by MSD. Additionally, to meet the LDC requirements would result in the removal of large well established trees and it is the intent of the applicant to preserve as many trees and green space as possible.

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 design, placement, and orientation of the building were based primarily on the site and surrounding neighborhood.

**STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER #1: from Section 5.5.1.A.1.a to not provide a building entrance facing either the primary or the secondary street on the corner:**

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

STAFF: The waiver will not adversely affect adjacent property owners since many surrounding properties do not have building entrances that face the street frontages. The area of town is subject to dumping, homeless people squatting, and minor theft therefore a perimeter fence is preferred by most property owners.

- (b) The waiver will not violate specific guidelines of Cornerstone 2020.

STAFF: Guideline 3, Policy 1 requires 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 waiver will not violate the comprehensive plan since directly across Adams Street is the Interstate and the need for an entrance off Adams Street or Cabel Street would be inappropriate. The elevation change (approx. greater than 10 feet) from street level would require an extensive amount of hardscape and loss of established trees. Reducing the amount of sidewalk and hardscape (not building the pedestrian access) is more in keeping with the focus on natural areas and environment.

- (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 topography of the site from street level is steep and being within a flood zone, MSD is requiring the building to be at a higher elevation than adjacent roads and sidewalks. The building is approximately 12 feet above the road and a pedestrian access would require a ramp length of 1,728 ft. or 21 steps up to the building entrance. The cost for this pedestrian access is grossly out of budget and is not a design component desired by the property owner; there is no on-street parking, the interstate is directly across the street, and common theft problems all being factors in not providing the access from either frontage to the building entrance.

- (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: A building entrance on the corner or the frontage streets would require a pedestrian access that will create an unnecessary hardship on the client and deny reasonable use of the land. The severity of the topography from the road/sidewalk elevation up to the site elevation makes the construction of a pedestrian access extremely difficult and expensive. The overall design plan will incorporate an extensive planting/landscaping scheme to improve the green space along the frontage streets.

**STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER #2: of Section  
5.8.1.B. to not provide a sidewalk along Cabel Street:**

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

STAFF: The waiver will not adversely affect adjacent property owners since the site is located in an underdeveloped part of Louisville. The application/requirement of sidewalks and street entrances that are in the Traditional Neighborhood form district are not common in this area. The subject site is vacant parcel zoned M-3, an I-64 ramp is to the north and adjacent land uses include a junkyard and truck loading facility. Across Cabel Street is a large warehouse and no sidewalks are not on either the western or eastern sides of the street. The applicant has a frontage along Cabel Street for an approximate length of 178 feet and the sidewalk if added would dead end.

- (b) The waiver will not violate specific guidelines of Cornerstone 2020.

STAFF: Guideline 7, Policy 1 states that developments should be evaluated for their impact on the street and roadway system and to ensure that those who propose new developments bear or reasonably share in the costs of the public facilities and services made necessary by development. Guideline 9, Policy 1 states that new development should provide for the movement of pedestrians, bicyclists and transit users with sidewalks along the streets of all developments where appropriate. The Land Development Code intends to create a defining character/conformity to the different neighborhoods and make logical use of built vs. open space in regards to the environment, vehicular, and pedestrian circulation. Adding a small, dead end, section of sidewalk along Cabel Street where no other sidewalks exist and street parking is not provided will result in the nonfunctional use of land. The land would be put to better use as a green space with street landscaping.

- (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 adjacent property owners on Cabel Street do not have sidewalks. The small section of property facing Cabel Street would be an odd, small, dead end section of sidewalk. At most, the removal of trees along the street frontage (required to install sidewalk) would have a negative impact on adjacent property owners. The trees help shield the properties from the view and sound of the interstate. This waiver will not affect the adjacent property owner's along Adams Street.

- (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 would create an unnecessary hardship on the applicant since the topography and elevation changes on the site, as well as large well established trees along the street will cause this to be a difficult and very expensive sidewalk to construct. The construction would require extensive amounts of soil to be moved (potentially killing all of the trees along the street and many of the large established trees would need to be removed). It is the applicant's desire to preserve as many large trees and as much green space as possible especially since the interstate is directly across the street. The financial hardship of this component would more than likely put the project on hold and ultimately cause the owner to reconsider the entire project.

**STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER #3: of Section  
5.9.2.A.1.b.i to not provide a pedestrian access from the public right of way to the  
primary building entrance:**

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

STAFF: The waiver will not adversely affect adjacent property owners because none of the adjacent property owners have a pedestrian access from neither Adams Street nor Cabel Street up to the building entrance and most properties are fenced. This area of town is subject to illegal dumping, homeless people squatting, and minor theft therefore a perimeter fence and no pedestrian access from the public right of way is preferred by most property owners.

- (b) The waiver will not violate specific guidelines of Cornerstone 2020; and

STAFF: The waiver will not violate specific guidelines of Cornerstone 2020. Reducing the amount of hardscape and preserving existing trees (not building the pedestrian access) is more in keeping with the Comprehensive Plan's focus on natural areas and environment by reducing site water runoff and reducing the urban heat island effect.

- (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 because the site topography is challenging and in a flood zone, MSD is requiring the applicant to build at a higher elevation, not at the elevation of the road and sidewalks. The pedestrian access would require a ramp length of 1,728 ft. or 21 steps. The cost for this feature is grossly out of budget and is not a design component desired by the property owner (since there is no on street parking and common theft problems in this area of town). The extensive cost of this pedestrian access would likely cause the owner to cancel the project in its totality.

- (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 would create an unnecessary hardship on the applicant because the pedestrian access will create unnecessary hardship on the applicant. The severity of the elevation change from sidewalk/street elevation up to the subject site makes construction of a pedestrian access extremely difficult and expensive resulting in the removal of large established trees. The overall design will incorporate an extensive planting/landscape scheme to improve the green space in this area.

**TECHNICAL REVIEW**

Transportation Planning's statement regarding the sidewalk waiver: This location is not on a TARC route. The site is a corner lot with sidewalks on Adams St as well as Cabel St, though for Cabel the closest sidewalks are 500' south. Trees and bushes are within the right-of-way of sidewalk placement. Please see e-mail attachment from Tammy Markert on 4/6/2017.

**STAFF CONCLUSIONS**

The proposed variances and waivers appear to be adequately justified based on staff analysis as determined in the staff report. Based upon the information in the staff report, the testimony and evidence provided at the public meeting, the Board of Zoning Adjustment must determine if the proposal meets the standards for the required actions.

**REQUIRED ACTION**

- **APPROVE** or **DENY** the variance #1 of LDC Section 5.5.1.A.2 for Adams Street
- **APPROVE** or **DENY** the variance #2 of LDC Section 5.5.1.A.2 for Cabel Street
- **APPROVE** or **DENY** the general waiver #1 of LDC Section 5.5.1.A.1.a
- **APPROVE** or **DENY** the sidewalk waiver #2 of LDC Section 5.8.1.B along Cabel Street
- **APPROVE** or **DENY** the general waiver #3 of LDC Section 5.9.2.A.1.b.i
- **Condition of Approval:** Deed of consolidation for the two parcels prior to construction approval.

**NOTIFICATION**

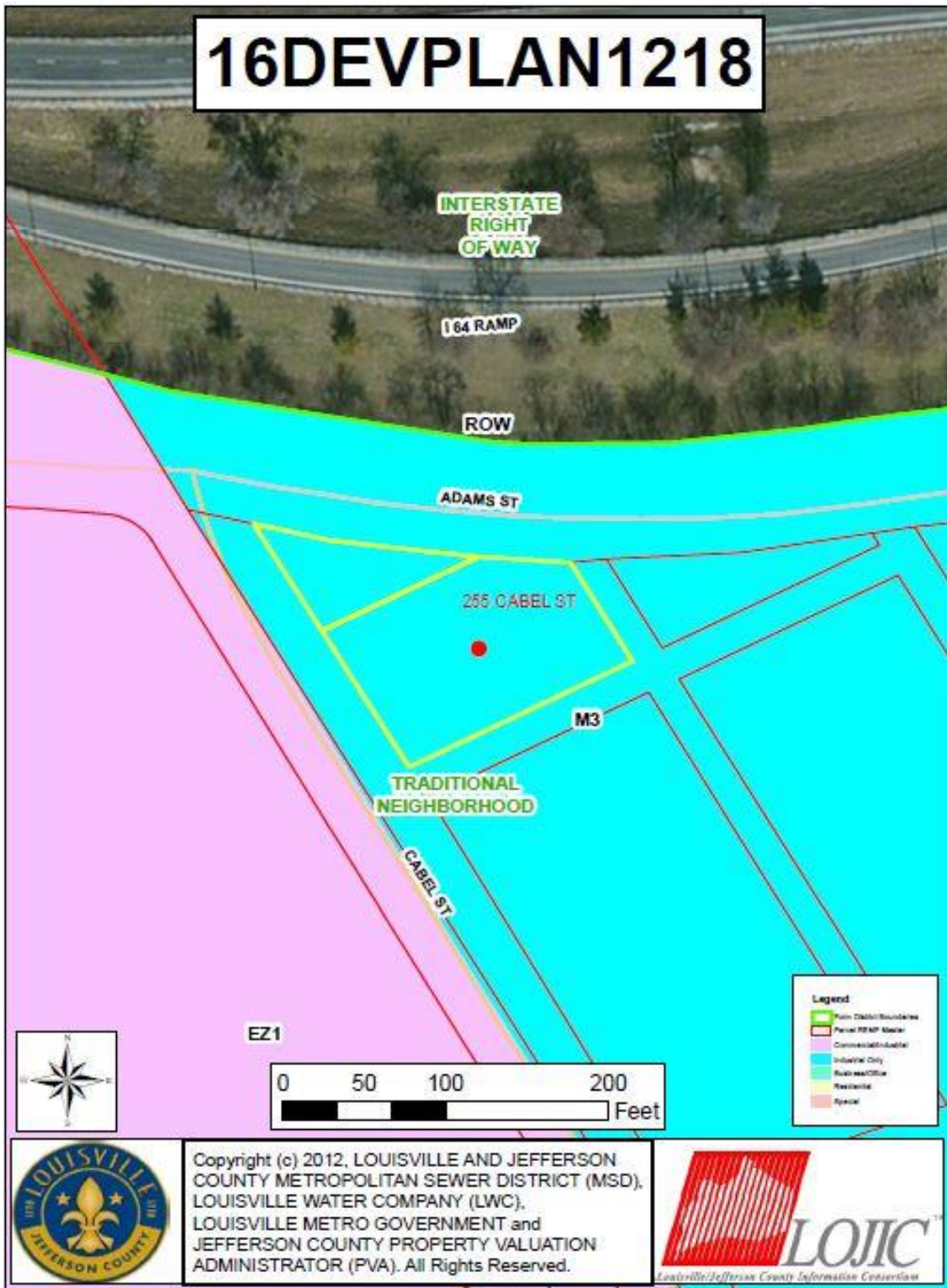
Date	Purpose of Notice	Recipients
April 14, 2017	Hearing before DRC	Notification of 1 <sup>st</sup> tier adjoining property owners Subscribers of Council District 4 Notification of Development Proposals
April 14, 2017	Sign Posting for BOZA	Sign Posting on Property

**ATTACHMENTS**

1. Zoning Map
2. Aerial Photograph



1. Zoning Map



2. Aerial Photograph

