

Board of Zoning Adjustment Staff Report

July 11, 2016



Case No:	16VARIANCE1033
Request:	Proposed cooling unit to encroach into the rear yard setback.
Project Name:	4810 Dixie Highway
Location:	4810 Dixie Highway
Owner:	Edwin Montgomery – Montgomery Commercial Properties
Applicant:	Marv Blomquist – Blomquist Design Group LLC.
Representative:	Marv Blomquist – Blomquist Design Group LLC.
Jurisdiction:	Louisville Metro
Council District:	12 – Rick Blackwell
Case Manager:	Ross Allen, Planner I

REQUEST

- Variance from the Land Development Code section 5.4.2.C.3.a to allow a proposed cooling unit to encroach into the 25' ft. required rear yard setback.

Location	Requirement	Request	Variance
Rear Yard Setback	25' ft.	16' ft.	9' ft.

- Waiver from LDC section 10.2.4 to allow the cooling unit to encroach into the required Landscape Buffer Area.

CASE SUMMARY/BACKGROUND/SITE CONTEXT

The applicant is moving an existing cooling unit from a Prospect, KY store to the new business site located at 4810 Dixie Highway. The existing cooling unit concrete pad as proposed is approximately 25' ft. in length by 8.5' ft. in depth for a total footprint of 212.5 sf. on a parcel of land zoned C-2 in a Suburban Marketplace Corridor located along Dixie Highway. The applicant is moving a cooling unit to the rear of the commercial building located at 4810 Dixie Highway along with his business and has requested that the property owner allow his business to place the cooler at the rear of the property attached to the structure. The cooling unit will be used for the refrigeration of various food related items from the business. The proposed cooling unit is within an MSD Sanitary Sewer easement. As a result of the encroachment the applicant has requested and received an encroachment permit from MSD to be within three feet of the sewer line.

The applicant's building is a commercial retail strip, one of which will be leased to the Homemade Ice Cream & Pie Kitchen LLC. The building is located at the corner of Dixie Highway and Kingsford Drive. The rear of the structure has a 25' ft. rear yard and abuts a Neighborhood Form District consisting of R-5 zoned residential single family dwellings and is screened by an eight foot chain link fence with screening strips.

LAND USE/ZONING DISTRICT/FORM DISTRICT TABLE

	Land Use	Zoning	Form District
Subject Property			
Existing	Commercial	C-2	Suburban Marketplace Corridor
Proposed	Commercial	C-2	Suburban Marketplace Corridor
Surrounding Properties			
North	Commercial	C-1	Suburban Marketplace Corridor
South	Commercial	C-2	Suburban Marketplace Corridor
East	Commercial	C-1	Suburban Marketplace Corridor
West	Residential Single Family	R-5	Neighborhood

PREVIOUS CASES ON SITE

Variance Case No. 10829 – the case was regarding the encroachment of a structure into the 25’ ft. street side yard setback located at 4800 Dixie Highway.

INTERESTED PARTY COMMENTS

No comments were received from concerned citizens.

APPLICABLE PLANS AND POLICIES

Land Development Code
Comprehensive Plan

STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCES

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

STAFF: The requested variance will adversely affect the public health, safety or welfare since the concrete cooler pad would be 16 feet from the closest residential property line and attached to the rear of the existing building. The cooler pad would be screened by existing trees along the rear property line and an 8 feet proposed screen by the applicant. Last the cooling unit would not be accessible from the outside, only from inside the ice cream parlor.

- (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 requested cooler pad would be screened from the rear neighbors by existing trees and an 8 ft. screen as proposed by the applicant.

- (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 cooling unit would only be accessible from inside the tenants leased space and is not accessible from outside of the building.

- (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 since the requested cooling pad and cooler would be located at the rear of the building and would be properly screened. The entire building has a setback that conforms to the required rear yard setback.

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 arise from special circumstances which do not generally apply to land in the general vicinity or the same zone since the requested cooling pad and cooler are proposed for an ice cream parlor and the parcel is zoned allowing such as land use within this zoning type.

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 since the potential loss of a lease to the property owner resulting in the ice cream parlor not being able to locate in the suggested space at the subject property.

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 since the requested variance is for the specific use by an ice cream parlor.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER of section 10.2.4. to allow a concrete cooling pad to encroach into the required rear yard LBA:

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

STAFF: The waiver will not adversely affect adjacent property owners since the requested cooler unit will be screened from rear neighbors by the existing tree line and an 8 ft. screen as proposed by the applicant.

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

STAFF: Guideline 3, policy 9 of Cornerstone 2020 calls for the protection of the character of residential areas, roadway corridors and public spaces from visual intrusions and mitigate when appropriate. Guideline 3, policies 21 and 22 calls for appropriate transitions between uses that are substantially different in scale and intensity or density, and to mitigate the impact caused when incompatible developments occur adjacent to one another through the use of landscaped buffer yards, vegetative

berms and setback requirements to address issues such as outdoor lighting, lights from automobiles, illuminated signs, loud noise, odors, smoke, automobile exhaust or other noxious smells, dust and dirt, litter, junk, outdoor storage, and visual nuisances. Guideline 3, policy 24 states that parking, loading and delivery areas located adjacent to residential areas should be designed to minimize the impacts from noise, lights and other potential impacts, and that parking and circulation areas adjacent to streets should be screened or buffered. Guideline 13, policy 4 calls for ensuring appropriate landscape design standards for different land uses within urbanized, suburban, and rural areas. Guideline 13, Policy 6 calls for screening and buffering to mitigate adjacent incompatible uses. The intent of landscape buffer areas is to create suitable transitions where varying forms of development adjoin, to minimize the negative impacts resulting from adjoining incompatible land uses, to decrease storm water runoff volumes and velocities associated with impervious surfaces, and to filter air borne and water borne pollutants. The proposed cooling unit and concrete pad will be screened by the existing trees found to the rear of the property and is only accessible from inside the building. Furthermore, there is an eight foot chain link fence with screening strips which is in the rear abutting the residential properties.

(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 since the applicant is requesting a reduced LBA for the ice cream parlor cooler and has proposed screening in order to mitigate potential visual impact to adjacent residential properties.

(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 denial of the waiver would result in the loss of business to the landlord and the potential impact of business brought to the area and other surrounding businesses could be negatively impacted.

TECHNICAL REVIEW

- No technical review undertaken.

STAFF CONCLUSIONS

- 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 variance established in the Land Development Code from section 5.4.2.C.3.a to allow a proposed cooling unit to encroach into the 25' ft. required rear yard setback and a landscape waiver from LDC section 10.2.4 to allow the cooling unit to encroach into the required Landscape Buffer Area.

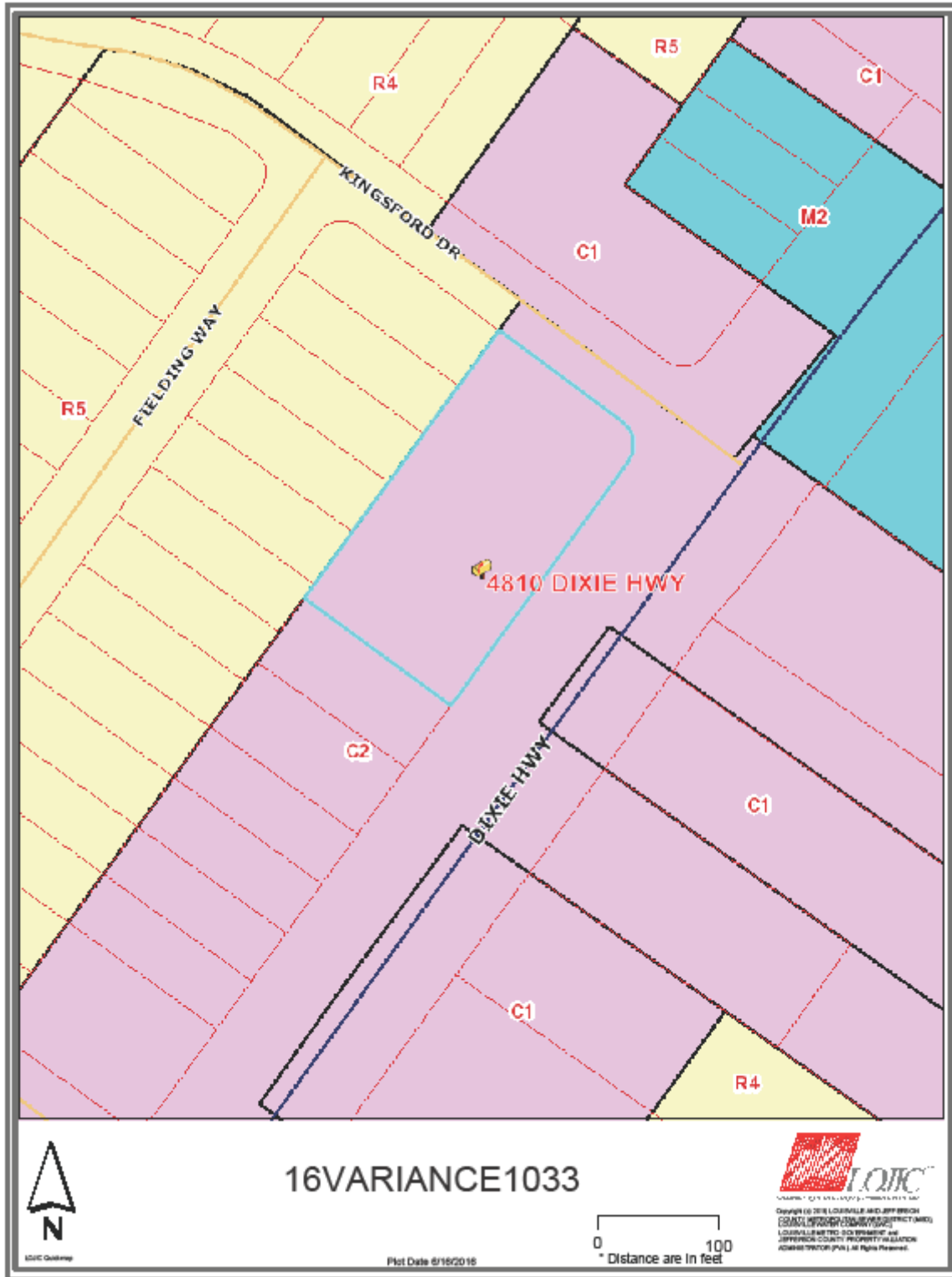
NOTIFICATION

Date	Purpose of Notice	Recipients
June 24, 2016	Hearing before BOZA	1 st tier adjoining property owners Subscribers of Council District 26 Notification of Development Proposals
June 24, 2016	Sign Posting for BOZA	Sign Posting on property

ATTACHMENTS

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

1. Zoning Map



2. Aerial Photograph



GENERAL NOTES

ALL WORK SHALL BE ACCORDING TO THE LATEST EDITIONS OF THE INTERNATIONAL BUILDING CODES, THE INTERNATIONAL MECHANICAL AND ELECTRICAL CODES, THE INTERNATIONAL PLUMBING AND MECHANICAL CODES, THE INTERNATIONAL FIRE AND ALARM CODES, THE INTERNATIONAL CODES OF THE NATIONAL FIRE PROTECTION ASSOCIATION, THE INTERNATIONAL CODES OF THE NATIONAL ELECTRICAL CONTRACTORS ASSOCIATION, THE INTERNATIONAL CODES OF THE NATIONAL ASSOCIATION OF BUILDERS, THE INTERNATIONAL CODES OF THE NATIONAL ASSOCIATION OF PROFESSIONAL ENGINEERS, THE INTERNATIONAL CODES OF THE NATIONAL ASSOCIATION OF ARCHITECTS, THE INTERNATIONAL CODES OF THE NATIONAL ASSOCIATION OF CONTRACTORS, THE INTERNATIONAL CODES OF THE NATIONAL ASSOCIATION OF GENERAL CONTRACTORS, THE INTERNATIONAL CODES OF THE NATIONAL ASSOCIATION OF HOMEOWNERS ASSOCIATIONS, THE INTERNATIONAL CODES OF THE NATIONAL ASSOCIATION OF REALTORS, THE INTERNATIONAL CODES OF THE NATIONAL ASSOCIATION OF RETAILERS, THE INTERNATIONAL CODES OF THE NATIONAL ASSOCIATION OF 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TREE PRESERVATION NOTE

CONSTRUCTION ACTIVITIES SHALL BE SCHEDULED TO AVOID THE REMOVAL OF ANY MATURE TREES. ANY TREES TO BE REMOVED SHALL BE REPLANTED WITH SIMILAR SPECIES AND SIZE TREES WITHIN SIX MONTHS OF THE DATE OF REMOVAL. ALL CONSTRUCTION SHALL BE COMPLETED WITHIN THE PERIOD OF GROWTH FOR THE REPLANTED TREES. TREE PRESERVATION SHALL BE THE RESPONSIBILITY OF THE CONTRACTOR.

EROSION PREVENTION AND SEDIMENT CONTROL

EROSION PREVENTION AND SEDIMENT CONTROL MEASURES SHALL BE INSTALLED AND MAINTAINED THROUGHOUT CONSTRUCTION. MEASURES SHALL BE REMOVED ONLY AFTER THE UNDERLYING SURFACE IS STABILIZED AND APPROVED BY THE LOCAL AUTHORITY.

INCREASE IN IMPERVIOUS AREA

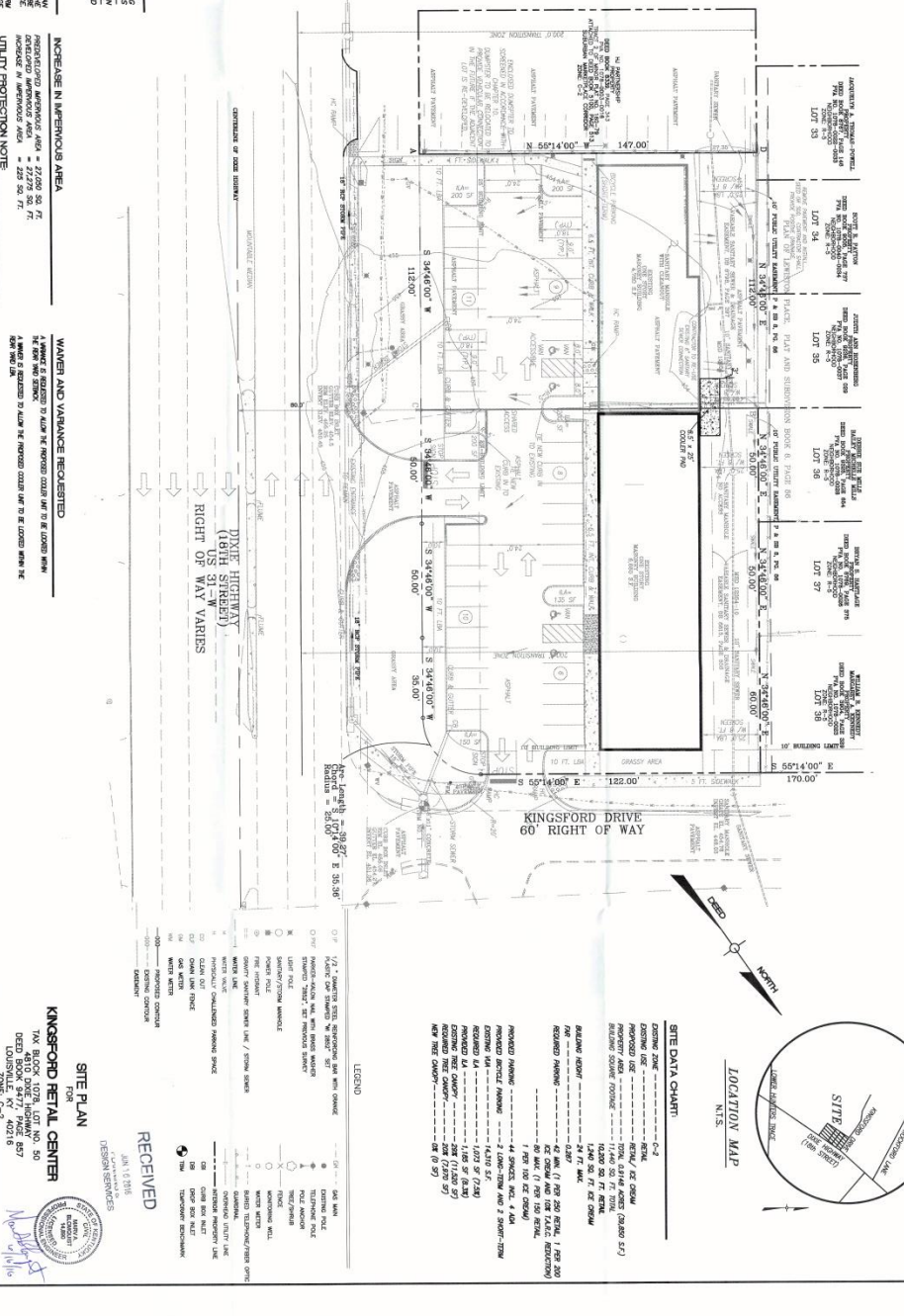
THE PROPOSED DEVELOPMENT WILL INCREASE THE IMPERVIOUS AREA BY 27,000 SQ. FT. A MEASURE SHALL BE TAKEN TO MITIGATE THE IMPACTS OF THIS INCREASE.

UTILITY PROTECTION NOTE

ALL UTILITIES SHALL BE PROTECTED DURING CONSTRUCTION. ANY DAMAGE TO UTILITIES SHALL BE REPAIRED AT THE CONTRACTOR'S EXPENSE.

WATER AND VARIANCE REQUESTED

A VARIANCE IS REQUESTED TO ALLOW THE PROPOSED DEVELOPMENT TO BE LOCATED WITHIN THE WATER RIGHT ZONE.



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 PLANNING DEPARTMENT
 4135 DINE HIGHWAY
 LOUISVILLE, KY 40216

WM #1080

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4. Site Inspection Photos



The front of the subject site located at 4810 Dixie Highway.



Approximate location of the proposed concrete cooling pad and cooler at the rear of the subject site (outlined in rectangle).



The eight foot chain link fence with screening strips and the trees for screening. A four foot unscreened chain link fence is located further North (center left of photo) at the rear of residential properties.