

**Board of Zoning Adjustment
Staff Report**
March 17, 2014



Case No:	14VARIANCE1011
Request:	Variance to allow a proposed building to exceed the maximum setback
Project Name:	McDonald's
Location:	3420 Indian Lake Dr. and 10600 Westport Rd.
Owner:	Indian Springs, LLC
Applicant:	CHOP Partners II, LLC
Representative:	Bardenwerper, Talbott & Roberts
Jurisdiction:	Louisville Metro
Council District:	17 – Glen Stuckel
Case Manager:	David B. Wagner – Planner II

REQUEST

- Variance to allow the proposed McDonald's to be 105' from the front property line instead of the maximum 80' allowed per Land Development Code (LDC) Table 5.3.2

Variances

Location	Requirement	Request	Variance
Front Yard (Maximum Allowed)	80'	105'	25'

CASE SUMMARY/BACKGROUND/SITE CONTEXT

This request is a joint proposal that goes along with a Revised Detailed District Development Plan (#13DEVPLAN1128) which will be heard by the Planning Commission on March 20, 2014. The proposal is for Lot 1 of the non-residential lots in front of Indian Springs Subdivision along Westport Rd. A McDonald's is proposed in place of the previously approved retail use. The variance proposed is to allow the restaurant to setback further than is required due to the drive-thru and driving aisle additions.

LAND USE/ZONING DISTRICT/FORM DISTRICT TABLE

	Land Use	Zoning	Form District
Subject Property			
Existing	Golf Course	C-1	Neighborhood
Proposed	Drive –Thru Restaurant	N/A	N/A
Surrounding Properties			
North	Restaurant/Retail	C-2	RC
South	Golf Course	R-4	N
East	Vacant (future Aldi's)	C-1	N
West	Vacant	R-6	N

PREVIOUS CASES ON SITE

- Docket 9-74-92/10-42-92: Re-Zoning from R-4 and R-7 to R-4, R-6, & R-7, General District Development Plan, and Preliminary Major Subdivision to create the Indian Springs Golf Community
- Case 12393: Pre-Application to re-zone the site from R-4 to C-2 expired
- Case 14627: Re-Zoning from R-4 to C-1, Variances, Revised General/Preliminary Major Subdivision, and Detailed District Development Plan to allow a grocery store and retail development
- Case 13DEVPLAN1064: Revised Detailed District Development Plan to revise the entrance on Indian Lake Drive to correspond with the proposed hotel entrance across the street

INTERESTED PARTY COMMENTS

Staff received an inquiry from Diane Gibson, an Indian Springs resident according to her email. Staff answered her general questions about the proposal.

APPLICABLE PLANS AND POLICIES

Land Development Code

STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCES

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

STAFF: The variance will not adversely affect the public health, safety or welfare because the extra setback from Westport Road is very typical of retail buildings with their requirements for parking, maneuvering, and especially when drive-thrus are involved which require that vehicles circumnavigate the building. There is a commercial center located across Westport Road, so this means that the setback will have even lesser impact where similar setbacks are found. No residential uses are located across Westport Road which would any way be adversely impacted.

- (b) The requested variance will not alter the essential character of the general vicinity.

STAFF: The variance will not alter the essential character of the general vicinity because the Aldi grocery next door mirrors this setback as do other retail uses in this area.

- (c) The requested variance will not cause a hazard or nuisance to the public.

STAFF: The variance will not cause a hazard or a nuisance to the public because this is an aesthetics regulation, not a health and safety one.

- (d) The requested variance will not allow an unreasonable circumvention of the zoning regulations.

STAFF: The variance will not allow an unreasonable circumvention of the requirements of the zoning regulations because this is a common setback issue and is indeed essential in circumstances of this kind.

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 Variance arises from special circumstances, which do not generally apply to land in the general vicinity because this is a typical setback requirement for retailers and restaurants with drive-thrus.

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 regulation would deprive the applicant of the reasonable use of the land because the requested setback allows for the drive-thru lane to be placed where it should logistically be placed and allows the driving aisle on the north side of the Aldi development to be matched and extended on the McDonald's 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 regulation but rather are a result of the location on a commercial arterial where this particular use demands this kind of parking, access and circulation.

TECHNICAL REVIEW

- The Planning Commission will hear the RDDDP and Amendment to Binding Elements request on March 20th, 2014.

STAFF CONCLUSIONS

The proposal allows for the drive-thru and driving aisle to be aligned with the Aldi development to the east. Similar variances were approved for the Aldi development along both Westport Road and Indian Lake Drive.

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.

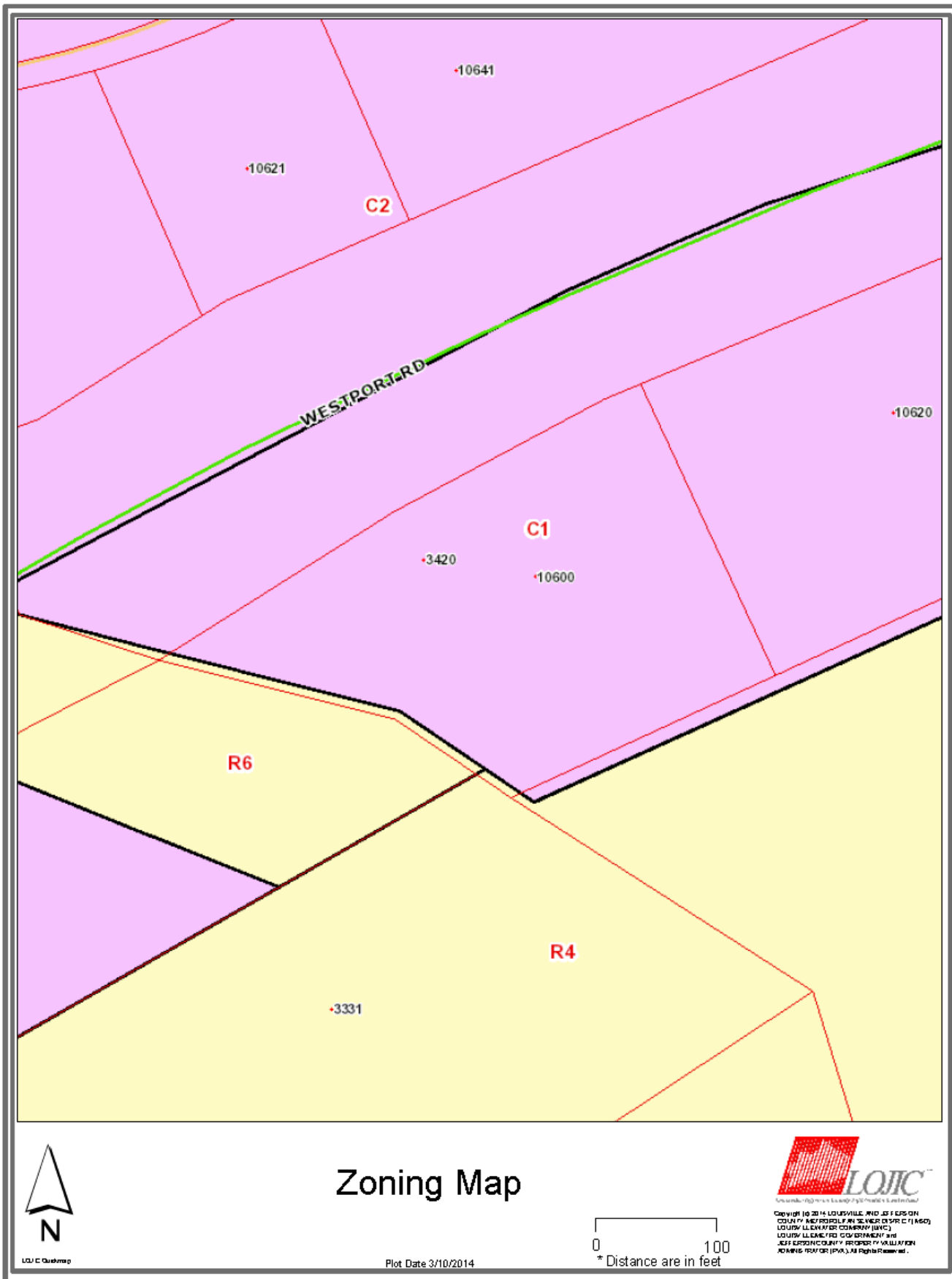
NOTIFICATION

Date	Purpose of Notice	Recipients
2/28/14	Hearing before BOZA	1 st tier adjoining property owners Subscribers to Council District 17 Notification of Development Proposals

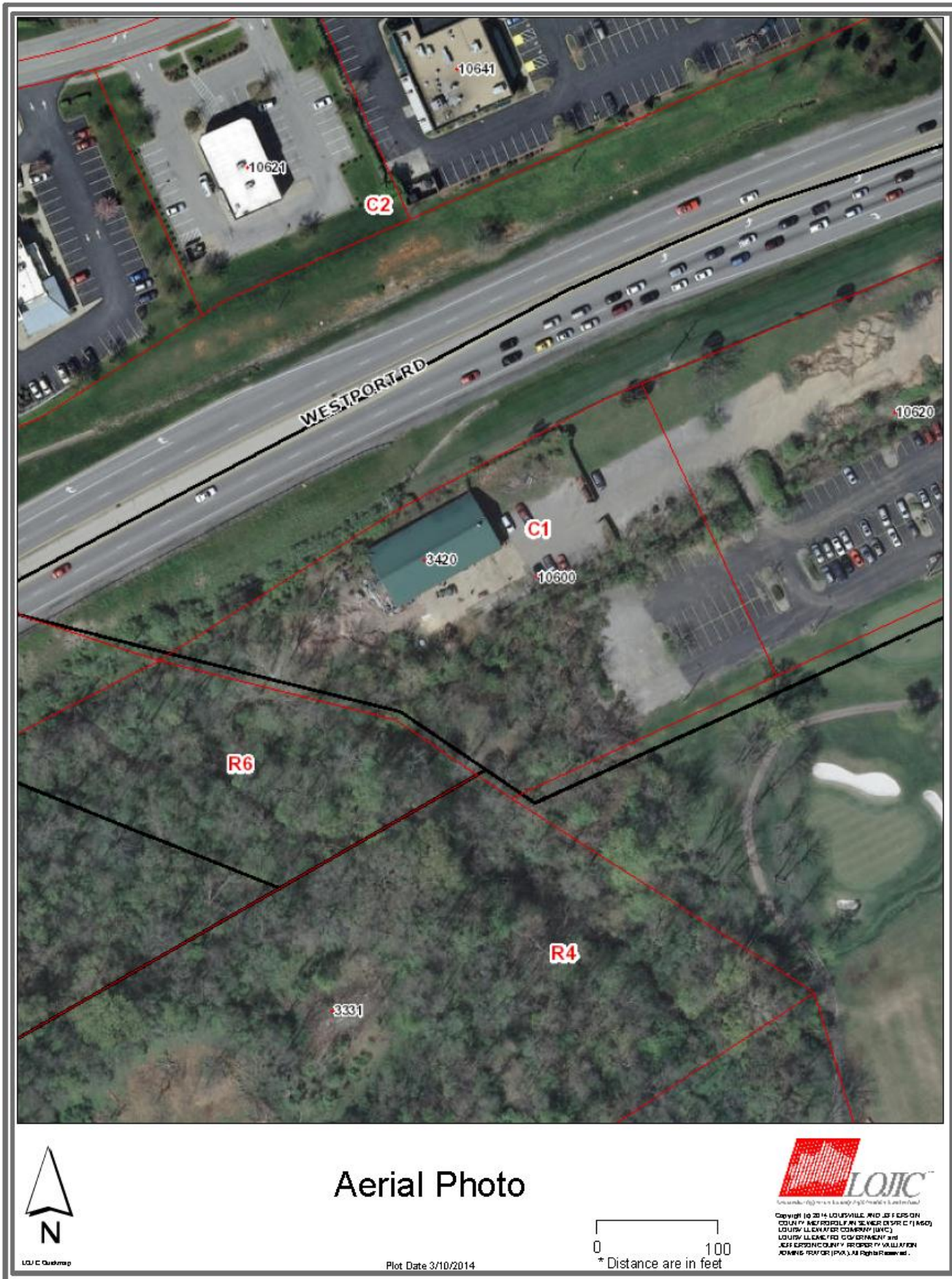
ATTACHMENTS

1. Zoning Map
2. Aerial Photograph
3. Applicant's Justification Statement

1. **Zoning Map**



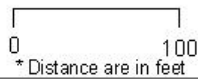
2. Aerial Photograph



LOI/C QuickMap

Aerial Photo

Plot Date 3/10/2014



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3. **Applicant's Justification Statement**

Variance Justification:

In order to justify approval of any variance, the Board of Zoning Adjustment considers the following criteria. Please answer all of the following items. Use additional sheets if needed. A response of yes, no, or N/A is not acceptable.

Variance of: Table 5.3.2 to allow the proposed McDonald's building to exceed the 80 ft. maximum setback.

1. The variance will not adversely affect the public health, safety or welfare because the extra setback from Westport Road is very typical of retail buildings with their requirements for parking, maneuvering, and especially when drive-thrus are involved which require that vehicles circumnavigate the building. There is a commercial center located across Westport Road, so this means that the setback will have even lesser impact where similar setbacks are found. No residential uses are located across Westport Road which would any way be adversely impacted.
2. The variance will not alter the essential character of the general vicinity because of the fact that the Aldi grocery next door mirrors this setback as do other retail uses in this area.
3. The variance will not cause a hazard or a nuisance to the public because this is an aesthetics regulation, not a health and safety one. Furthermore, health and safety issues would be impacted if the building were set closer to Westport Road, thus creating a true access and circulation problem.
4. The variance will not allow an unreasonable circumvention of the requirements of the zoning regulations because this is a common setback issue and is indeed essential in circumstances of this kind.

Additional consideration:

1. The Variance arises from special circumstances, which do not generally apply to land in the general vicinity because this is a typical setback requirement for retailers and restaurants with drive-thrus.
2. Strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create unnecessary hardship because it could not build the McDonald's store with drive-thru and safe and effective circulation and parking as shown.
3. The circumstances are not the result of actions of the applicant taken subsequent to the adoption of the regulation but rather are a result of the location on a commercial arterial where this particular use demands this kind of parking, access and circulation.

RECEIVED

FEB 10 2014
PLANNING &
DESIGN SERVICES

14VARIANCE1011