

Board of Zoning Adjustment

Staff Report

April 1, 2019



Case No:	19VARIANCE1003
Project Name:	Goodfellas Pizza
Location:	1242, 1244, 1246, 1248, 1250 E Broadway and 708 Baxter Ave
Owner(s):	Kennie and Patricia Combs
Applicant:	Long Construction Management
Jurisdiction:	Louisville Metro
Council District:	8 – Brandon Coan
Case Manager:	Jay Lockett, AICP, Planner I

REQUEST(S)

- **Variances**
 1. Variance of Land Development Code section 5.5.1.A.2 to allow a structure to exceed the 5' maximum setback for a non-residential structure on a corner lot in in the Traditional Marketplace Corridor form district by up to 159' as shown on the development plan.
 2. Variance of Land Development Code section 5.2.3.D.3.d.i. to allow a dumpster enclosure and parking to encroach into the 15' rear yard setback up to 15' as shown on the development plan.
- **Waiver**
 1. Waiver of Land Development Code section 5.5.1.A.3.a to permit parking to be located in front of the structure within the Traditional Marketplace Corridor form district.
 2. Waiver of Land Development Code section 10.2.4 to eliminate the 15 foot Property Perimeter Landscape Buffer area adjacent to the OR-3 zoned property to the west.

CASE SUMMARY/BACKGROUND

The applicant is proposing to demolish a vacant gas station and renovate a historic structure at the rear of the subject site for a restaurant. The site is located at the SW corner of Baxter Ave and Broadway in the Highlands neighborhood. It is zoned C-2, and is in the Traditional Marketplace Corridor form district, as well as within the Bardstown Road Overlay District. There are two variance requests and two waivers associated with the category 2-B development plan currently being reviewed under docket 18DEVPLAN1214.

STAFF FINDING

The requests are adequately justified and meet the standards of review.

TECHNICAL REVIEW

The Planning Commission recommended that Louisville Metro Council approve of the closure of a portion of public alley associated with the project under docket 18STREETS1025 at the 2-21-19 Planning Commission hearing.

The Bardstown Road Overlay Review Committee has approved the project under docket 18BROD1014 with several conditions that are being incorporated into the final design of the site.

Transportation planning staff has requested that the dumpster be angled to facilitate collection with the existing dimensions and circulation pattern of the alleys. They have otherwise indicated the plan meets the standards for approval.

INTERESTED PARTY COMMENTS

The case was heard before the Board of Zoning Adjustment on March 4, 2019 and concerns were raised that the variance and waiver to allow parking in front of the structure would allow for a circumvention of the form district standards.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCE 1

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

STAFF: The request will not adversely affect the public health, safety or welfare as all building codes and safety regulations will be met on the subject site.

- (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 it will facilitate the renovation of a historic structure and the Bardstown Road Overlay Review Committee will ensure the site is developed in keeping with the character of the area.

- (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, and will actually facilitate the removal of an existing nuisance in the form of an abandoned gas station.

- (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, as the structure and associated setback are already existing conditions.

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 which do not generally apply to land in the general vicinity, as the historic structure is set back behind the existing gas station.

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 the reasonable use of the land, as the existing structure could likely not be used in any productive fashion without the variance.

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 the result of actions of the applicant taken subsequent to the adoption of the regulation from which relief is sought, as the variance request is triggered by the proposal to close a portion of alley and consolidate several lots onto a unified site.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCE 2

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

STAFF: The request will not adversely affect the public health, safety or welfare as all building codes and safety regulations will be met on the subject site.

- (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 commercial properties in the area generally have dumpsters located near the alley similar to this proposal.

- (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 dumpster will be screened from view as required by the land development code.

- (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, as the dumpster will still be screened from view and the location has been selected in conference with Louisville Metro Solid Waste to facilitate collection.

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.

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 provision of the zoning regulations would create an unnecessary hardship on the applicant, as they would likely need to remove required parking spaces in order to locate the dumpster elsewhere.

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 regulations from which relief is sought.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER 1

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

STAFF: The waiver will not adversely affect adjacent property owners, as the site has historically had parking and vehicle circulation in the front of structures.

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

STAFF: The waiver will not violate specific guidelines of Plan 2040. Land Use and Development Goal 2 policy 9 encourages the rehabilitation of buildings for commercial use. Land Use and Development Goal 4 policy 1 encourages the preservation of buildings that have historic or architectural value. Land Use and Development Goal 1 policy 3 encourages high intensity or high traffic generating uses to be located near major roadways. The waiver will allow for the redevelopment of a historic structure into a restaurant that will serve both the neighborhood and the larger community. The site is well served by a pedestrian network and transit, and is located at the intersection of two major arterial roadways. The applicant is proposing walls and landscaping to establish a defined property perimeter at the sidewalk and to mitigate the visual impact of the parking area. The proposed plan utilizes a corner entry plaza as well as outdoor seating and amenities to bring the use towards the street to encourage pedestrian-scale development.

- (c) The extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant; and

STAFF: The applicant has reduced the number of required parking spaces as low as possible utilizing discounts applicable in the Land Development Code, and has located as much parking as possible behind the structure as is practicable per the site constraints. The existing setback of the structure makes some amount of parking necessary to be located in front of the structure.

- (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, as the historic structure would likely need to be demolished and a new structure built at the street in order to construct a similar development with all parking in the rear as required by the code.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER 2

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

STAFF: The waiver will not adversely affect adjacent property owners, as the area of the required buffer has an existing access easement that serves as a connection to the alleys for several properties in the area.

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

STAFF: The waiver will not violate specific guidelines of Plan 2040. Land Use and Development Goal 1 policy 9 calls for appropriate transitions between uses that are substantially different in scale and intensity or density of development. Land Use and Development Goal 1 policy 17 calls for the mitigation of the adverse impact of traffic on existing communities. Land Use and Development Goal 1 policy 3 encourages high intensity or high traffic generating uses to be located near major roadways. The waiver will allow for the continued access for properties that depend on the alleys for access. An existing fence will provide the required screening between the uses and the applicant will meet all other planting and screening requirements on the subject site.

- (c) The extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant; and

STAFF: The access easement in the location of the required buffer is needed to provide continued access to this site and other sites with access off of the alley system. There is an existing privacy fence along the property lines that provides the required 6 foot continuous screen.

- (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 create an unnecessary hardship on the applicant, as the location of the access easement is as far back from the intersection as is possible, and moving it to accommodate a landscape buffer would either create an unsafe conflict with that intersection or limit access for other properties.

REQUIRED ACTIONS:

- **APPROVE** or **DENY** the **Variances**
- **APPROVE** or **DENY** the **Waivers**

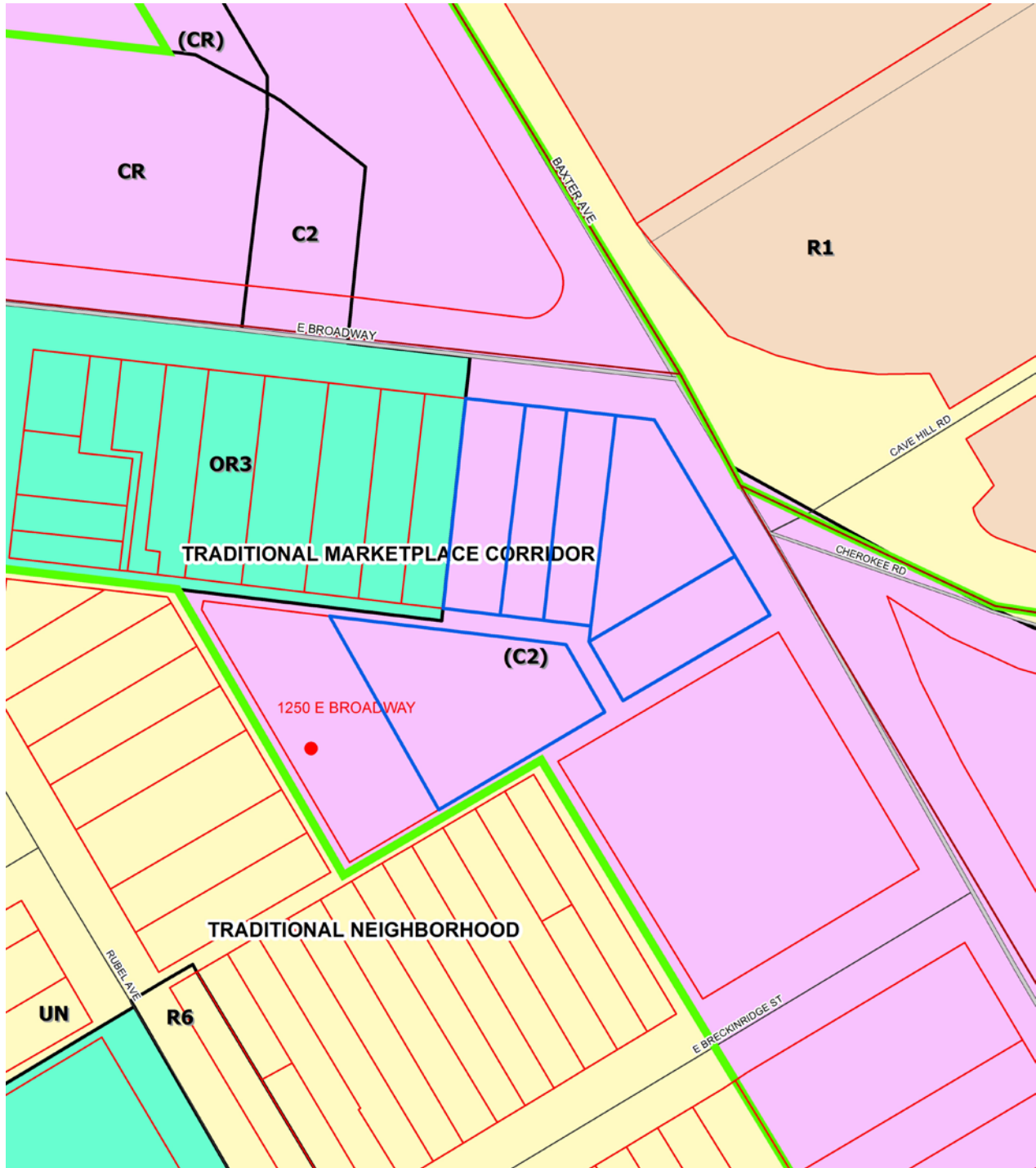
NOTIFICATION

Date	Purpose of Notice	Recipients
1-22-19	Hearing before BOZA	1 st tier adjoining property owners Registered Neighborhood Groups in Council District 8

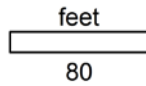
ATTACHMENTS

1. Zoning Map
2. Aerial Photograph

1. Zoning Map

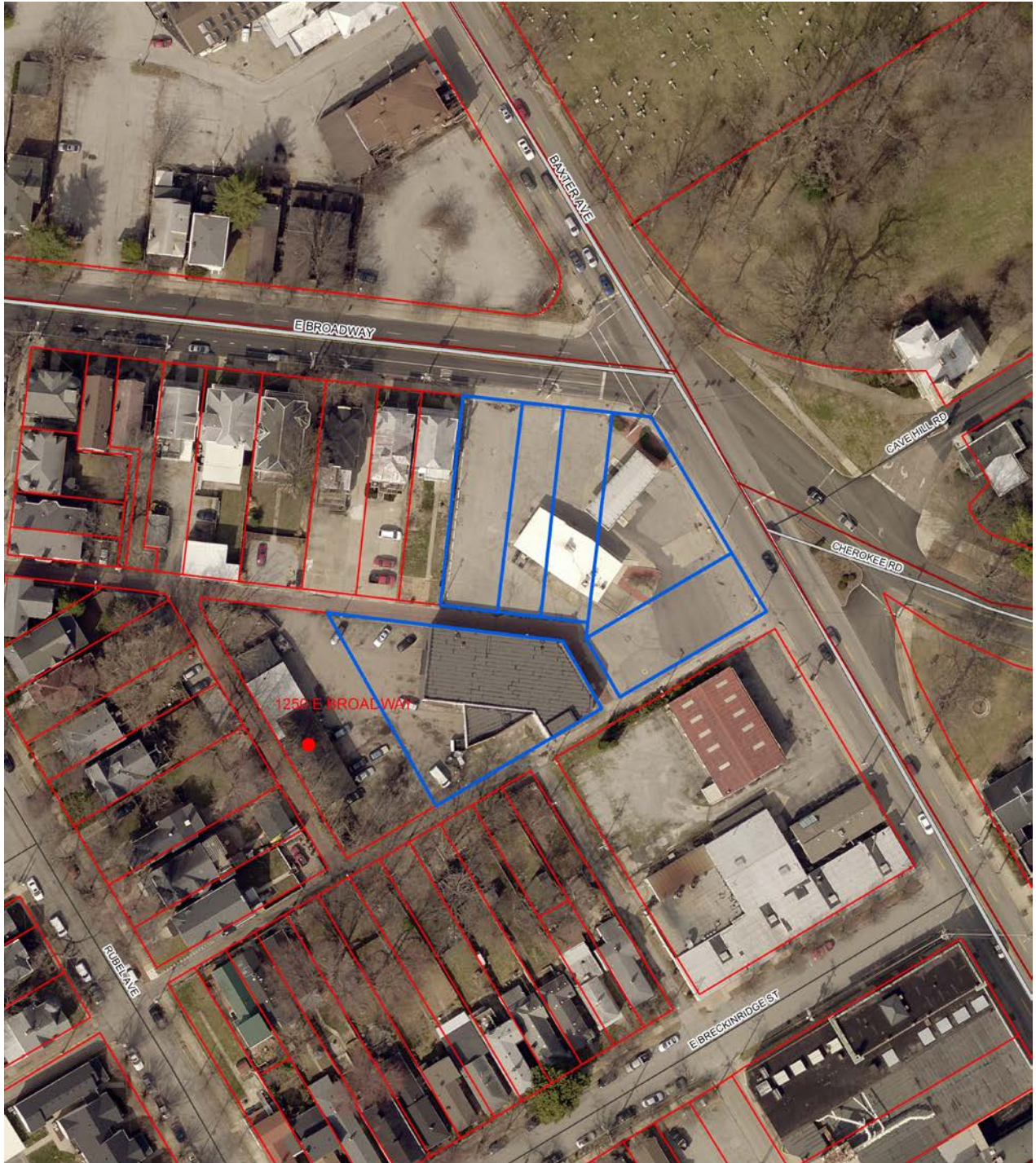


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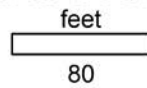


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2. Aerial Photograph



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