

Board of Zoning Adjustment Staff Report

April 30, 2018



Case No:	17DEVPLAN1241
Project Name:	2905 Fern Valley Road
Location:	2905 Fern Valley Road
Owner(s):	Samir Shah – KAC Enterprises Inc.
Applicant:	Mike Evans – PE, PLS
Representative(s):	Nicholas Pregliasco – Bardenwarper, Talbott, and Roberts PLLC.
Project Area/Size:	3.27 acres (142,598.073 square feet)
Jurisdiction:	Louisville Metro
Council District:	21 – Vitalis Lanshima
Case Manager:	Ross Allen – Planner I

REQUEST(S)

- Request Approval of a **Variance #1** from LDC 5.3.4.D.3.a to allow encroachment of the covered area for the existing canopy to encroach into the 25 ft. front setback by approximately 4 feet along the Fern Valley Road and being a public easement for newly dedicated right of way as shown on the Category 2B development plan as tract #1.

Location	Requirement	Request	Variance
Front Setback	25 ft.	21 ft. (from proposed line of dedicated right of way tract 1)	4 ft.

- Request of Approval of a **Variance #2** from LDC 4.8.3.D/4.8.4 to allow the proposed 4 story hotel, existing hotel on tract #2, and VUA to encroach into the middle and outer Type B protected waterway buffer zones by approximately 75 feet with a total area of the encroachment of the impervious surface being approximately 34,336 sf. (excluding the existing two story hotel on proposed tract #2) for proposed tracts #2 and #3.

Location	Requirement	Request	Variance
Stream Side Setback (middle and inner buffer zones)	100 ft.	75 ft. (from the edge closest to the stream middle buffer zone)	75 ft.

- Request of Approval of a **Waiver** from LDC 10.2.4.A to not provide a 35 foot LBA with 1.5 planting density requirement with an 8 foot screen along the northern property line for a length of 1138.5 ft. as facing R-5 zoned parcels in a Neighborhood Form District for proposed tracts #2 and #3.

CASE SUMMARY/BACKGROUND

The subject site is located east of the Interstate 65 and Fern Valley Interchange on a parcel of approximately 3.27 acres in an EZ-1 zoning district within a Suburban Workplace Form District. The existing site has two previously constructed buildings of 20,756 sf. and 17,933 sf. respectively and will be adding a third proposed building with a foot print of 10,802 sf. and a total square footage of 38,280 sf. for the proposed 4 story structure at the rear of the parcel abutting Greasy Ditch with R-5 zoned residential lots north of Greasy Ditch in a Neighborhood Form District. Overall, the applicant is changing the building height from 5 stories (Case No. 16DEVPLAN1108) to 4 stories or 45 feet maximum height as permitted by LDC 5.7.1 transition zone standards (Neighborhood to Suburban Workplace). The applicant is requesting the same waiver as was previously approved on April 3, 2017 but since the proposed hotel is increasing the footprint in the middle and outer buffer zones from 7,656 sf. to 10,802 sf with an increase in the overall encroachment of the middle and outer buffer zones of the proposed structure and Vehicular Use Area (VUA) from 30,303 sf. to approximately 34,336 sf. As a result the development plan is to come before BOZA for both the variance from LDC 4.8.3.D and waiver. The new proposal also includes alteration to the vehicular use area (VUA) and the Interior Landscape Areas (ILA's). Overall, the vehicular use area (VUA) square footage has slightly changed from the previous case, 16DEVPLAN1108. The applicant is attempting to use a parking credit per LDC 9.1.3.F.1 which states that "A ten (10) percent reduction in the minimum required number of spaces shall apply to any development within 200 feet of a designated transit route" and is found to be applicable. An existing crossover agreement between adjacent parcels to the east and west sides of the subject site closest to Fern Valley Road. The applicant is proposing to submit for a minor plat requesting that the one parcel be divided into three parcels after the approval of the development plan before BOZA today, shown as "Note #20" on the development plan. Additionally, the applicant is requesting that Planning Commission legal counsel review the crossover access easements between proposed parcels and adjacent parcels be after preliminary approval, shown as "note #21" on the development plan. The subject site is located within the Floodplain Ordinance Review so MSD will have jurisdiction in determining if the proposal meets the requirements as set forth by that ordinance. Last, the subject site is also within the FEMA 100 yr. 1% annual chance Floodplain as determined by MSD-LOJIC.

Related Cases:

MP-17401-12: Minor plat creating three lots from one. The case was never recorded in the Deed room and became invalid as of April 12, 2014. There is only one tract on the subject site currently at the time of approval.

16DEVPLAN1108 – A previously approved variance from LDC 4.8.3.D to allow, at its closest point, a proposed 5 story hotel and vehicular use area to encroach into the streamside, middle and outer buffer zones of a type B protected waterway by approximately 89 linear feet (maximum) with a total area of 59,721 sf. of impervious surface. There was also a waiver from LDC section 10.2.4.A, table 10.2.3 to not provide the 35 foot Landscape Buffer area with the 1.5 planting density multiplier and 8 ft. screen along the rear (north) property line for a length of approximately 1138.5 ft. Both the variance and waiver were approved at the BOZA hearing on April 3, 2017.

STAFF FINDING / RECOMMENDATION

Approve the requested **VARIANCE #1:** from LDC 5.3.4.D.3.a to allow encroachment of the covered area for the existing canopy to encroach into the 25 ft. front setback by approximately 4 feet along the Fern Valley Road and being a public easement for newly dedicated right of way as shown on the Category 2B development plan as tract #1. The dedication of right away as found along Fern Valley Road is being dedicated by the applicant in an effort to provide a bus stop/shelter.

Deny the requested **VARIANCE #2:** from LDC 4.8.3.D since the applicant has increased the impervious surface within the Type B protected waterway Streamside Buffer Zones but has having “accomplished sufficient preliminary grading to ensure that the applicant has met the floodplain regulations of the Metropolitan Sewer District (MSD)” as indicated in the applicant's letter of intent.

Deny the **WAIVER** of LDC 10.2.4.A, table 10.2.3 to not provide the 35 ft. LBA with a 1.5 planting density and 8 ft. screen along the rear (north) property line for a length of approximately 1138.5 ft. on condition that the applicant meets the design criteria as established in LDC 5.6.1.B, C, and D as referenced from LDC 5.7.1.B.3.b.

Condition of Approval: A cross access and parking agreement will need to be reviewed by Planning Commission Legal Counsel and recorded prior to the issuance of building permits for proposed tracts 1, tract 2, and tract 3 as shown on the development plan dated Feb. 7, 2018 at the submission of a minor subdivision plat.

LAND USE/ZONING DISTRICT/FORM DISTRICT TABLE

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

TECHNICAL REVIEW

The previously approved variance from LDC 4.8.3.D/4.8.4 allowed encroachment of the 5 story structure of 45 feet in height with a footprint of 7,656 sf. (gross floor area = 38,280 sf.) with encroachment of vehicular use area within the streamside middle and outer Type B protected waterway buffer zones while the current proposal increases the building footprint to 10,802 sf. (gross floor area = 43,208 sf.) while decreasing the height from 5 stories to 4 stories. The proposed building and VUA remain within the Type B Protected Waterway streamside buffer zone (middle and outer) and increase the overall encroachment in to the middle and outer buffer zones by approximately 4,033 sf. for both proposed tracts #2 and #3 as shown on the development plan.

INTERESTED PARTY COMMENTS

Staff has not received any comments from interested parties.

APPLICABLE PLANS AND POLICIES

Land Development Code (LDC August 2017a)
 Comprehensive Plan (Cornerstone 2020)

STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCE #1 from LDC section 5.3.4.D.3.a to allow encroachment of the covered area for the existing canopy to encroach into the 25 ft. front setback by approximately 4 feet along the Fern Valley Road and resulting from the newly dedicated right of way as shown on the Category 2B development plan as tract #1.

- (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 applicant is dedicating right of way along the Fern Valley Rd. frontage which results in the existing canopy on proposed tract 1.

- (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 because the existing canopy was present prior to the dedication of right of way along Fern Valley Rd. and is not being altered in any way.

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

STAFF: The requested variance will not cause a nuisance to the public since the canopy is a long existing condition that is not being proposed for any modification, with the only requirement for the variance being the dedication of additional right of way.

- (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 because no changes are being proposed to the existing canopy. The request of additional dedication of right of way results in the existing canopy no encroaching into the front setback along Fern Valley road. If the dedication of right of way was not requested the variance would not be needed.

ADDITIONAL CONSIDERATIONS:

1. The requested variance does not arise from special circumstances which do generally apply to land in the general vicinity or the same zone.

STAFF: The requested variance does not arise from special circumstances which do generally apply to land in the general vicinity or the same zone since the variance is to allow the existing canopy/condition to remain.

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 because denial would result in the owner needing to remove the existing canopy resulting from the dedication of right of way.

3. 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.

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 because the applicant is not proposing any changes to the canopy and the existing condition would not be required the variance if the dedication of right of way had not been requested.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCE #2 from LDC section 4.8.3.D to allow a proposed 4 story hotel and vehicular use area to encroach into the middle and outer buffer zones by approximately 75 linear feet (maximum) at its closest point and having a combined total of the proposed structure footprint and VUA of approximately 36,100 sf. of impervious surface in the middle and outer buffer zones for the proposed tracts #2 and #3.

- (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 site location is has one existing 2 story hotel, shown on tract #2, and the existing subject site prior to the proposed 4 story/45 ft. hotel had approximately 43,208 sf. of impervious surface. The proposal will result in the net loss of approximately 10,000 sf. of previous surface and MSD has previously approved 16DEVPLAN1108 when encroachment into the protected waterway buffer zones was greater than the current proposal. Reconstruction and expansion of the existing parking lot, the addition of the 4 story hotel, and a decrease in the encroachment of the protected waterway buffer zones results in the potential for better water quality and decreased runoff into Greasy Ditch. Greasy Ditch is an altered U.S. Army Corps of Engineers managed blueline (perennial) stream and the encroachment is the minimum to allow for development on the irregularly shaped parcel. MSD has preliminarily approved the development plan.

- (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 because, an existing 2 story hotel and vehicular use area on the subject site were encroaching prior to the both the previously approved development plan, Case no. 16DEVPLAN1108, and the current development plan, case no. 17DEVPLAN1241. Residential dwellings north of Greasy Ditch as well as structures on adjacent parcels to the subject site encroach into the stream side Type B Protected Waterway buffer zones but the proposed 4 story/45 tall hotel is greater in height than either existing hotel on the subject property and in closer proximity than either existing hotel.

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

STAFF: The requested variance will may cause a nuisance to the public since the hotel as proposed is 4 stories in height, 45 feet, allowed by LDC 5.7.1.B.1 in the Transition Zone Standards within a Suburban Workplace Form District, but potential noise, lighting, and noxious odors from vehicles may impact the residences that are approximately 84 feet or north of Greasy Ditch. The impervious are is increasing from what is currently on site now meaning more run-off into Greasy Ditch but MSD has preliminarily approved the development plan. Multiple nearby properties including 2805, 2809, 2815 Fern Valley Road and 815, 825, 833 Ulrich Ave., encroach into the stream side buffers zones as well as residential dwelling units north of Greasy Ditch in the Preston Park 4A subdivision. Staff is unsure if there have been any flooding issues in the general vicinity.

- (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 because other structures in the vicinity, 2805, 2809, 2815 Fern Valley Road and 815, 825, 833 Ulrich Ave., encroach into the stream side buffers zones as well as residential dwelling units north of Greasy Ditch in the Preston Park 4A subdivision. Regulations as set forth in LDC discuss regulations for the potential impacts of lighting, noise, and noxious odors in LDC 4.1.3 (Lighting), 4.1.4 (Noise), and 4.1.5 (Odor) but staff is unaware of what the future impacts are as determined by a waived landscape screen or design standards since no renderings or elevations have been submitted to date.

ADDITIONAL CONSIDERATIONS:

1. The requested variance does not arise from special circumstances which do generally apply to land in the general vicinity or the same zone.

STAFF: The requested variance does not arise from special circumstances which do generally apply to land in the general vicinity or the same zone since structures in the vicinity, 2805, 2809, 2815 Fern Valley Road and 815, 825, 833 Ulrich Ave., encroach into the stream side buffers zones as well as residential dwelling units north of Greasy Ditch in the Preston Park 4A subdivision. However, the height of the proposed hotel on proposed tract #3 is the tallest hotel other than the Fern Valley Hotel which is six stories as found at the intersection of Fern Valley Rd. and Holiday Towers Blvd./Airport Hotels Blvd. The Fern Valley Hotel is approximately 351 feet from R-7 multi-family residential dwellings to the north located along Bermuda Lane.

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 as stated previously other structures encroach into the stream side buffer and the applicant is willing to comply with MSD providing a 25 foot stream buffer.

3. 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.

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 but rather are the consequence of the size of this property and the already established location of building and parking.

Additional Variance Justifications – Section 4.8.4.B.1:

Variance of: Section 4.8.3.D to allow the hotel and parking areas to be constructed in the waterway buffer area (from 100 ft. to 16 ft.) In order to justify approval of any variance, the Board of Zoning Adjustment may consider the following additional criteria:

1. 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 Type B Water protection Buffer zones because the requirements of this section represent an extreme hardship such that minimal or no reasonable economic use of the land because the lot size was long ago established. Had the stream bank setback requirement been in place at the time that the lots in this area were created, they would have been significantly enlarged, but they weren't. So the proposed re-use of this property that does not encroach into the stream bank buffer zones would be impossible. Further, once the stream bank setback requirement was adopted, it effected this property far worse than some others due to the fact this man made stream was constructed with such steep walls. Therefore, in heavy rain events the width of the creek does not enlarge like it normally would with a natural creek. This resulted in the buffer area extending far further into the property than would normally be the case with a natural stream. Further, because the North bank of the creek is a couple of feet lower than the bank on the subject property, when there is a flood event, the flooding first occurs on the other side and does not flood this property.
The size, shape, or topography of the property, as of March 1, 2003, is such that it is not possible to construct any structure without encroaching into the required Waterway Type B Middle and Outer Buffer Zones.
2. Encroachment into the required Buffer Area shall be limited to the minimum necessary to accommodate the proposed use. The existing building and parking already encroach into the stream bank setback as the setback did not exist at the time of their original construction. The site has been designed so as to

limit the encroachment into the setback as much as possible, but to still allow its use as a Best Western hotel. This will be a new Best Western with their most modern concept which will result in a welcomed economic redevelopment of this property and area of Fern Valley Road.

3. 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. The construction plans must comply with MSD's soil erosion and sedimentation control ordinance now in effect and stringently enforced due to the EPA Consent Decree.
4. Approval of the variance will not result in a reduction in water quality. The current detention basin on this property is currently not functional. As a result, the applicant will install a brand new detention basin to offset any new displacement that will be fully functional and result in an improvement to the property and area. Further, the applicant shall provide floodplain compensation at a rate of 1.5 to 1 as noted on the plan, with the excess paid to MSD in the form of a \$18,503 payment for a Regional Facilities Fee. In addition, the applicant shall install water quality measures through a storm water treatment system to satisfy the MS4 requirements. Currently, the runoff from the existing encroachments on the property run off into the creek, but in the future will be properly treated by the storm water treatment system resulting in improved water quality.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER of section 10.2.4.A. to not provide the 35 foot Landscape Buffer Area with 3 Large Type A or medium type B trees per 100 lineal feet and an 8 foot screen along the rear property line for, proposed tracts #2 and #3, adjacent to Greasy Ditch and the R-5 single family residential dwellings found in the Preston Park Section 4A subdivision:

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

STAFF: The waiver will not adversely affect adjacent property owners since the proposed 4 story hotel has a 84 foot distance from the rear property lines (north of the subject site) of the residences found in the Preston Park Section 4A subdivision across Greasy Ditch, a protected waterway. However, if the landscape waiver is to be granted staff would ask that considerations for lighting impact upon the adjacent residents be considered since the proposed height is approximately 45 feet or four stories

- (b) The waiver will violate specific guidelines of Cornerstone 2020; and

STAFF: The waiver will violate several guidelines such as:

Guideline 3, Policy 9 of Cornerstone 2020 calls for protection of the character of residential areas from visual intrusions and mitigation when appropriate. The height of the proposed hotel will be approximately 45 feet, the maximum allowed height, overlooking Greasy Ditch and residents to the north in the Preston Park Subdivision Section 4A, consideration should be given to the potential for light intrusion from the 4-story/45 feet hotel overlooking the rear of the residences in the Preston Park 4A Subdivision.

Guideline 3, Policies 21 and 22 call for appropriate transitions between uses that are substantially different in scale and intensity or density, and mitigation of 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. The applicant wants to minimize the landscape buffer area to five feet and has proposed no fencing or mitigation of potential light intrusion from the proposed 4 story, 45 feet tall, hotel.

Guideline 3, Policy 24 states that parking, loading and delivery areas located adjacent to residential areas should be designed to minimize impacts from noise, lights and other potential

impacts, and that parking and circulation areas adjacent to streets should be screened or buffered. The addition of vehicular use area and the hotel may cause such adverse impacts from noise, lighting, and other potential visual nuisances to residents living north of the proposed site. Last, the general character of the site and strip along Fern Valley is vastly commercial and residential zoning lies north of this commercial strip along Fern Valley with incompatible uses adjacent to one another.

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 airborne and waterborne pollutants. The applicant with a proposed hotel will have vehicles, lighting and noise as a result of the hotel which is contrary to the guidelines as found in Cornerstone 2020.

- (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 not the minimum necessary to afford relief to the applicant since the site has space for plantings along Greasy Ditch in a five foot verge which an 8 foot fence/screen is possible to mitigate potential incompatible uses between the residences and the proposed hotel. Again, incompatible uses are adjacent with a distance of approximately 84 feet to the rear of the residential properties north of the subject site where a proposed 4 story/45 ft. hotel.

- (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 applicant has not 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) and is asking for a waiver. The site does have a space on the northwestern portion of the property to allow for plantings to be provided although the plantings will not act as a buffer or screen from the adjacent neighbors as found to the north of the property in Preston Park Section 4A subdivision. The previously approved waiver by BOZA on April 3, 2017 retained an approximate distance of 5 feet where a fence/screening would be possible.

REQUIRED ACTIONS

Approve/Deny Variance #1 from LDC section 5.3.4.D.3.a to allow encroachment of the covered area for the existing canopy to encroach into the 25 ft. front setback by approximately 4 feet along the Fern Valley Road and resulting from the newly dedicated right of way as shown on the Category 2B development plan as tract #1.

Approve/Deny the Variance #2 from LDC section 4.8.3.D to allow a proposed 4 story hotel and vehicular use area to encroach into the middle and outer buffer zones by approximately 75 linear feet (maximum) at its closest point and having a total of 42,986 sf. of impervious surface in the middle and outer buffer zones.

Approve/Deny the waiver of section 10.2.4.A. to not provide the 35 foot Landscape Buffer Area with 3 Large Type A or medium type B trees per 100 lineal feet and an 8 foot screen along the rear property line for, proposed tracts #2 and #3, adjacent to Greasy Ditch and the R-5 single family residential dwellings found in the Preston Park Section 4A subdivision.

Condition of Approval: A cross access and parking agreement will need to be reviewed by Planning Commission Legal Counsel and recorded prior to the issuance of building permits for proposed tracts 1, tract 2, and tract 3 as shown on the development plan dated Feb. 7, 2018 at the submission of a minor subdivision plat.

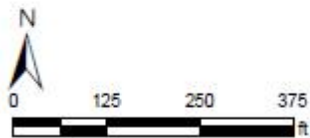
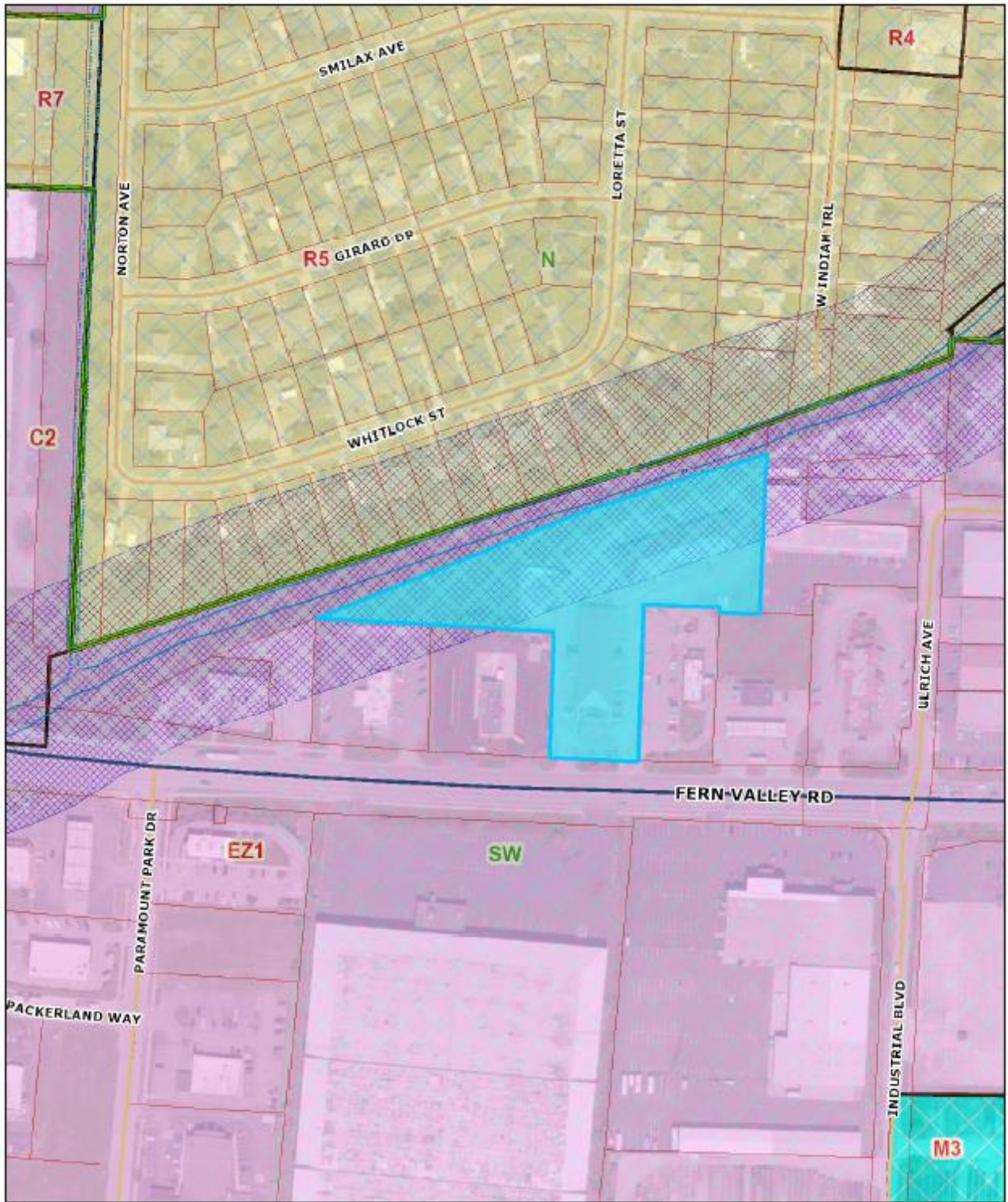
NOTIFICATION

Date	Purpose of Notice	Recipients
April 13, 2018	Posting of Variance Sign	Subject property located at 2905 Fern Valley Road
April 30, 2018	Hearing before BOZA	1 st tier adjoining property owners Subscribers of Council District 21 Notification of Development Proposals

ATTACHMENTS

1. Zoning Map
2. Aerial Photograph

1. **Zoning Map**



17DEVPLAN1241

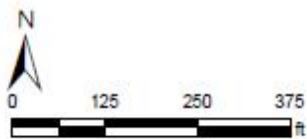
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2. Aerial Photograph



17DEVPLAN1241

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