

Board of Zoning Adjustment Staff Report

May 19th, 2014



Case No:	14VARIANCE1030
Request:	Variance to allow a proposed raised seating area for a restaurant to encroach into the required side yard and associated landscape waivers
Project Name:	Mellow Mushroom
Location:	41023-1025 Bardstown Road
Owner:	Addyworld LLC
Applicant:	Andy Blieden
Representative:	Sabak, Wilson & Lingo, Inc.
Jurisdiction:	Louisville
Council District:	8 – Tom Owen
Case Manager:	Christopher Brown, Planner II

REQUEST

- Variance #1: A variance from Chapter 5.2.3.D.3.b of the Land Development Code to allow the raised seating area to encroach 1.25' into the required 6' side yard to the south east adjacent to the residential use
- Waiver #1: A landscape waiver from Chapter 10.2.10 of the Land Development Code to allow the raised seating area to encroach less than 1' into the required 5' VUA LBA between the proposed drive aisle and adjacent 1st floor residential use to the south east
- Waiver #2: A landscape waiver from Chapter 10.2.11 to not provide the required VUA LBA buffer trees between the proposed drive aisle and adjacent 1st floor residential use to the south east

Variations

Location	Requirement	Request	Variance
South East Property Line	6'	4.75'	1.25'

CASE SUMMARY/BACKGROUND/SITE CONTEXT

Existing Zoning District: C-2
 Existing Form District: TMC, Traditional Marketplace Corridor
 Existing Use: Vacant
 Proposed Use: Restaurant
 Minimum Parking Spaces Required: 18
 Maximum Parking Spaces Allowed: 56
 Parking Spaces Proposed: 15
 Plan Certain Docket #: None

The applicant is proposing to construct a 6,400 SF, two story restaurant on the vacant site along Bardstown Road. The proposed restaurant will contain a second story, 627 SF outdoor dining area along the south east portion of the property. The raised outdoor dining area will be located approximately 4.75' from the southeast property perimeter adjacent to a mixed commercial and residential use. Due to the residential nature of the adjacent property, a 6' side yard setback is required. The applicant is requesting to encroach 1.25' into the side

yard setback. A 5' VUA LBA is required along the same property perimeter. The raised outdoor dining area is proposed to encroach less than 1' into the landscape buffer. Due to the proximity issues along the property perimeter, the applicant is requesting to not provide the required tree plantings. The applicant will mitigate this request with a combination of arborvitae hedge plantings and fencing. The combination of the screening at ground level and a green screen wall incorporated into the outdoor dining area will provide sufficient buffering and screening for the adjacent residential use. There is an associated parking waiver for the site under case 14PARK1000 that has been noticed to be approved at staff level since it is less than 5 spaces.

LAND USE/ZONING DISTRICT/FORM DISTRICT TABLE

	Land Use	Zoning	Form District
Subject Property			
Existing	Vacant	C-2	TMC
Proposed	Restaurant	C-2	TMC
Surrounding Properties			
North	Wild N' Wooly Video	C-2	TMC
South	Mixed Commercial & Residential	C-2	TMC
East	Mixed Residential	R-6 R-5B	TN
West	KFC 11	C-2	TMC

PREVIOUS CASES ON SITE

14BROD1005: Bardstown Review Overlay Committee approved the proposed restaurant and its associated design.

INTERESTED PARTY COMMENTS

No interested party comments have been received by staff.

APPLICABLE PLANS AND POLICIES

Cornerstone 2020
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 requested variance will not adversely affect the public health, safety or welfare since the access and sidewalk entry to the adjacent residential use will not be affected by the proposed encroachment of the raised deck.

(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 it will follow a pattern of varying side yard setbacks throughout the corridor with most of the properties being at a 0' side yard setback.

- (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 proper access to the adjacent residential use will not be impeded by the proposal.

- (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 size and shape of the lot existed prior to the zoning regulations and led to the proposed location of the outdoor dining area.

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 or the same zone since the lot is a longer, narrower lot leading to the minimal encroachment of the proposed second story deck.

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 or create an unnecessary hardship on the applicant by requiring removal of portions of the second story deck minimizing the space needed to fit the dining area.

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 size and shape of the lot existed prior to the zoning regulation.

**STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVERS
(Buffer and Tree Plantings)**

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

STAFF: The waiver will not adversely affect adjacent property owners since screening and screen plantings will be provided to create a green screen along the southeast property perimeter with sufficient buffering area remaining between the adjacent uses.

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

STAFF: The waiver will not violate guideline 3, Compatibility, of Cornerstone 2020, which calls for the protection of roadway corridors and public areas from visual intrusions, for mitigation of parking areas so as not to negatively impact nearby residents and pedestrians, and for parking areas adjacent to streets to be screened and buffered. The waiver will not violate guideline 13, Landscape Character, which calls for the protection of parkways through standards for buffers, landscape treatment, lighting and signs. The purpose of vehicle use area landscape buffer areas is to improve the appearance of vehicular use areas and property abutting public rights-of way and residential uses. Sufficient buffering area will remain to mitigate the location of the drive aisle. Screening will be provided to also protect the

adjacent residential use from visual intrusions associated with the proposed commercial restaurant use and its vehicular use area.

- (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 to allow the outdoor dining area to remain as proposed with proper screening provided to mitigate the impact of not providing the required tree plantings. The tree plantings would have difficulty being provided with the location of the raised outdoor seating area that continues the street wall concept along Bardstown Road.

- (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 by preventing the location of the raised outdoor dining area that continues the street wall concept along Bardstown Road.

TECHNICAL REVIEW

- There are no technical review comments that need to be addressed.

STAFF CONCLUSIONS

The standard of review and staff analysis has been met for the requested variance and landscape waivers. Sufficient buffering and spacing will remain to allow proper access to the adjacent residential use along their existing walkway. Screening will be provided to create a landscape look and feel along the property line for the view of the adjacent residential use. 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 Landscape Waivers and a Variance as established in the Land Development Code.

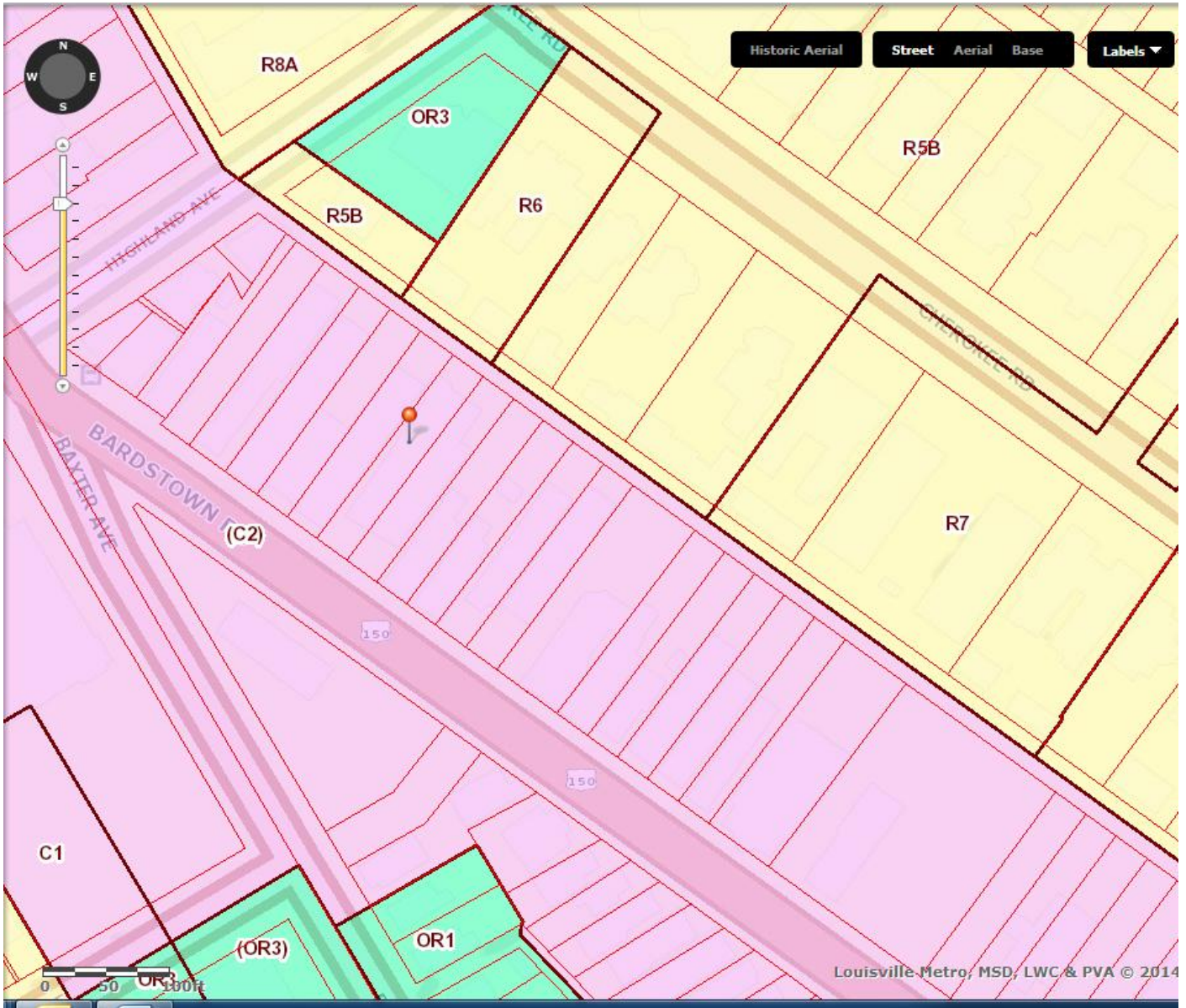
NOTIFICATION

Date	Purpose of Notice	Recipients
5/1/14	Hearing before BOZA	1 st and 2 nd tier adjoining property owners Speakers at Planning Commission public hearing Subscribers of Council District 8 Notification of Development Proposals
5/8/14	Hearing before BOZA	Sign Posting on property

ATTACHMENTS

1. Zoning Map
2. Aerial Photograph

1. Zoning Map



2. Aerial Photograph

