

# Board of Zoning Adjustment Staff Report

June 6, 2016



<b>Case No:</b>	<b>16DEVPLAN1021</b>
<b>Request:</b>	<b>Proposed 1 story 4,810 sf. Subway/Commercial</b>
<b>Location:</b>	<b>7506 Preston Highway</b>
<b>Area:</b>	<b>.54 acres</b>
<b>Existing Use:</b>	<b>Parking</b>
<b>Proposed Use:</b>	<b>Mixed Commercial</b>
<b>Owner:</b>	<b>Charlotte M. Walford – CJP Properties</b>
<b>Applicant:</b>	<b>Ishwer Patel Lakshmi LLC.</b>
<b>Representative:</b>	<b>John Miller – Miller/Whiry MWGLLC</b>
<b>Jurisdiction:</b>	<b>Louisville Metro</b>
<b>Council District:</b>	<b>13 – Vicki Aubrey Welch</b>
<b>Case Manager:</b>	<b>Ross Allen, Planner I</b>

## REQUEST

- Variance: from LDC section 5.3.2.C.2.b to provide a 25' ft. rear yard setback when a non-residential use abuts a residential zone and to allow vehicular parking and maneuvering in the rear yard setback.

### Variance

Location	Requirement	Request	Variance
Rear Yard Setback	25' ft.	0' ft.	25' ft.

- Waiver #1: from LDC section 5.7.1.B.3.a for the property perimeter buffer yard required in Chapter 10, table 10.2.3, to not provide the screening density requirements.
- Waiver #2: from LDC section 10.2.10 to provide a 10' ft. Vehicular Use Landscape Buffer Area along the street frontage.
- Waiver #3: from LDC section 10.2.4 to provide a 25' ft. Buffer Yard and required plantings in the rear of the property.

## CASE SUMMARY/BACKGROUND/SITE CONTEXT

The subject site is a parking lot located between 7502 Preston Highway and 7504 Preston Highway within Louisville Metro. The applicant is proposing to construct a 4,810 sf. one-story mixed commercial structure with three units with a height of 27.5' ft. feet in a C-1 zoning district within a Suburban Market Place Corridor on a parcel of approximately .54 acres or 23,447 sf. The proposed property will have three units, one of which will be a 2,200 sf. subway with a drive-thru and two other units each having 1,305 sf. for retail uses.

**LAND USE/ZONING DISTRICT/FORM DISTRICT TABLE**

	<b>Land Use</b>	<b>Zoning</b>	<b>Form District</b>
<b><i>Subject Property</i></b>			
<b>Existing</b>	Vacant Parking lot-Commercial	C-1	Suburban Market Place Corridor
<b>Proposed</b>	Mixed Commercial	C-1	Suburban Market Place Corridor
<b><i>Surrounding Properties</i></b>			
<b>North</b>	Commercial Restaurant – Barry’s Cheesesteaks & More	C-1	Suburban Market Place Corridor
<b>South</b>	Commercial Restaurant – Bootleg Barbeque	C-1	Suburban Market Place Corridor
<b>East</b>	Commercial Restaurant – Pizza Hut	C-2	Suburban Market Place Corridor
<b>West</b>	Vacant Land – Commercial	R-5	Neighborhood

**PREVIOUS CASES ON SITE**

No known related zoning cases or enforcement actions associated with the subject property.

**INTERESTED PARTY COMMENTS**

No interested party comments have been received to date.

**APPLICABLE PLANS AND POLICIES**

Cornerstone 2020  
Land Development Code

**STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCE from LDC section 5.3.2.C.2.B for vehicular parking and maneuvering area in the 25’ foot setback along the rear (western).**

- (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 rear of the property abuts a vacant R-5 zoned parcel.

- (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 rear of the property abuts an R-5 zoned parcel which is vacant.

- (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 applicants have proposed a rain garden to the rear of the proposed parking to alleviate issues of water run-off.

- (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 zoning for the proposed development is within a C-1 zoning district which allows for the commercial retail use and the adjacent R-5 zoned parcel to the rear is vacant which poses no adverse effect upon residences in the general vicinity.

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 Suburban Market Place corridor along Preston Highway has compatible and similar uses to what the applicant is proposing to develop.

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 since the 25 foot setback, which abuts a vacant R-5 zoned parcel, would result in a parking decrease. The setback is to mitigate the visual impact of different development types upon residential uses which is not the case since the parcel is vacant.

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 applicant has not undertaken any construction.

**STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER #1: from LDC section 5.7.1.B.3.a to not provide the screening density requirements in the 200 foot transition zone buffer between the Suburban Neighborhood Form District and the Suburban Market Place Corridor Form District at the rear of the property.**

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

STAFF: The waiver will not adversely affect adjacent property owners since the general vicinity is a mixture of commercial and residential uses. The required planting would result in a screening that lies between the rear of the property and a vacant R-5 zoned lot where no residential property resides.

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

STAFF: Guideline 3, policy 1 and 2 calls for the compatibility of all new development and redevelopment with the scale and site design of nearby existing development and with the pattern of development within the form district. The type of building materials may be considered as a mitigation measure and may also be considered in circumstances specified in the Land Development Code. When assessing compatibility, it is appropriate to consider the choice of building materials in the following circumstances: (1) projects involving residential infill (2) projects involving non-residential uses; and (3) when specified in the Land Development Code. The proposal is for a non-residential use. The Land Development Code provides building design standards for non-residential and mixed use buildings. The purpose of the regulation is to provide visual interest and a human scale that are representative of the form district through the use of windows, columns, pilasters, piers, variation of

material, entrances, storefront windows, and other animating features along no less than 60% of the horizontal length. The applicant is proposing a frontage that meets the 60% with use of windows.

- (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 placement of the proposed commercial retail is situated along Preston Highway in a Suburban Marketplace Corridor Form District, the rear of the property has a parcel zoned R-5 with no residential structures which would be accessed only through the applicant's property.

- (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 since the proposed screening requirement is intended for screening from residentially used land while the rear of the property is zoned R-5 it does not have any residences located on the property.

**STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER #2: from LDC section 10.2.10 to provide a 10' ft. Vehicular Use Landscape Buffer Area along the street frontage.**

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

STAFF: The waiver will not adversely affect adjacent property owners since Pizza Hut, Southern Comfort Spas and La Loma, in the general vicinity of Preston Highway do provide a vehicular landscape buffer areas along the Preston Highway frontage.

- (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. The general vicinity of the Preston Highway corridor does have properties that provide the buffers however, other properties have not either provided the vehicular buffer areas or predate current regulations.

- (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 proposed space along the frontage could allow for landscaping. Instead the applicant has proposed to provide a large concrete curb which would not allow for landscaping in the vehicular landscape buffer area and create an impervious surface equal to the existing parking lot.

- (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 not deprive the applicant of the reasonable use of the land since the proposed LBA of 10 feet is to have a large curb cut which leads to a sidewalk in the right-of-way. The applicant could provide screening and landscaping to deter the impact of both the vehicular use area and decrease run-off from the impervious surface.

**STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER #3: of section 10.2.4. to provide the required 25' ft. Landscape Buffer Area along the rear of the property:**

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

STAFF: The waiver will not adversely affect adjacent property owners since the rear of the property abuts a vacant R-5 zoned property which has no residences.

(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 applicant has proposed a rain garden in the rear of the property in a 15' ft. drainage easement to decrease storm water run-off.

(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 proposed development abuts a vacant parcel of R-5 zoned property which has no residences.

(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 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) as shown on the development plan the applicant is proposing to have a rain garden along the rear of the property in a 15' ft. drainage easement.

## TECHNICAL REVIEW

- No technical review was performed for the subject site.

## 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 the General Waiver, Landscape Waivers, and Variance as established in the Land Development Code.

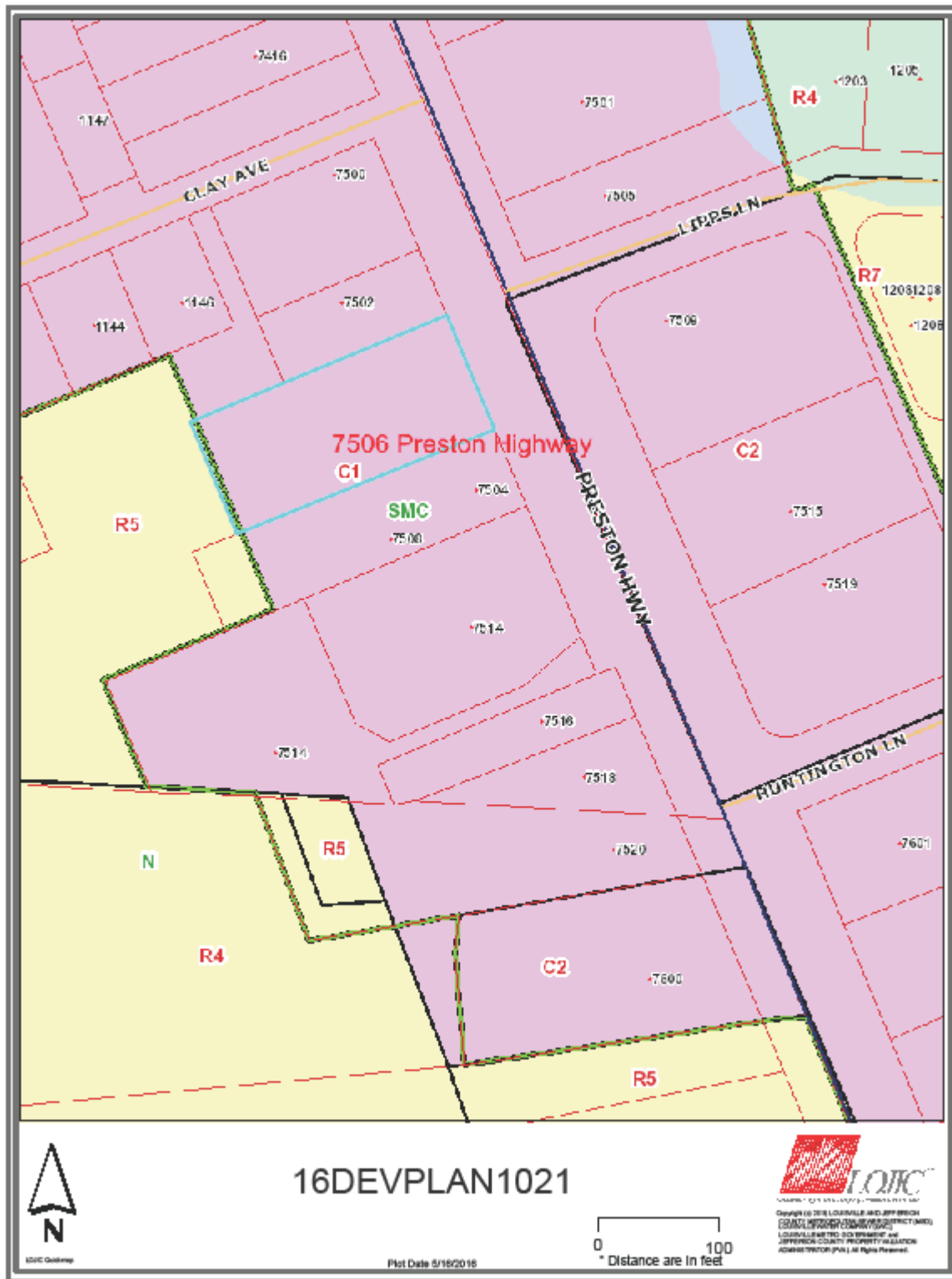
## NOTIFICATION

Date	Purpose of Notice	Recipients
May 20, 2016	Hearing before BOZA	1 <sup>st</sup> tier adjoining property owners Subscribers of Council District 13 Notification of Development Proposals
May 20, 2016	Hearing before PC / BOZA	Sign Posting on property

## ATTACHMENTS

1. Zoning Map
2. Aerial Photograph
3. Site Plan
4. Elevations
5. Site Inspection Report

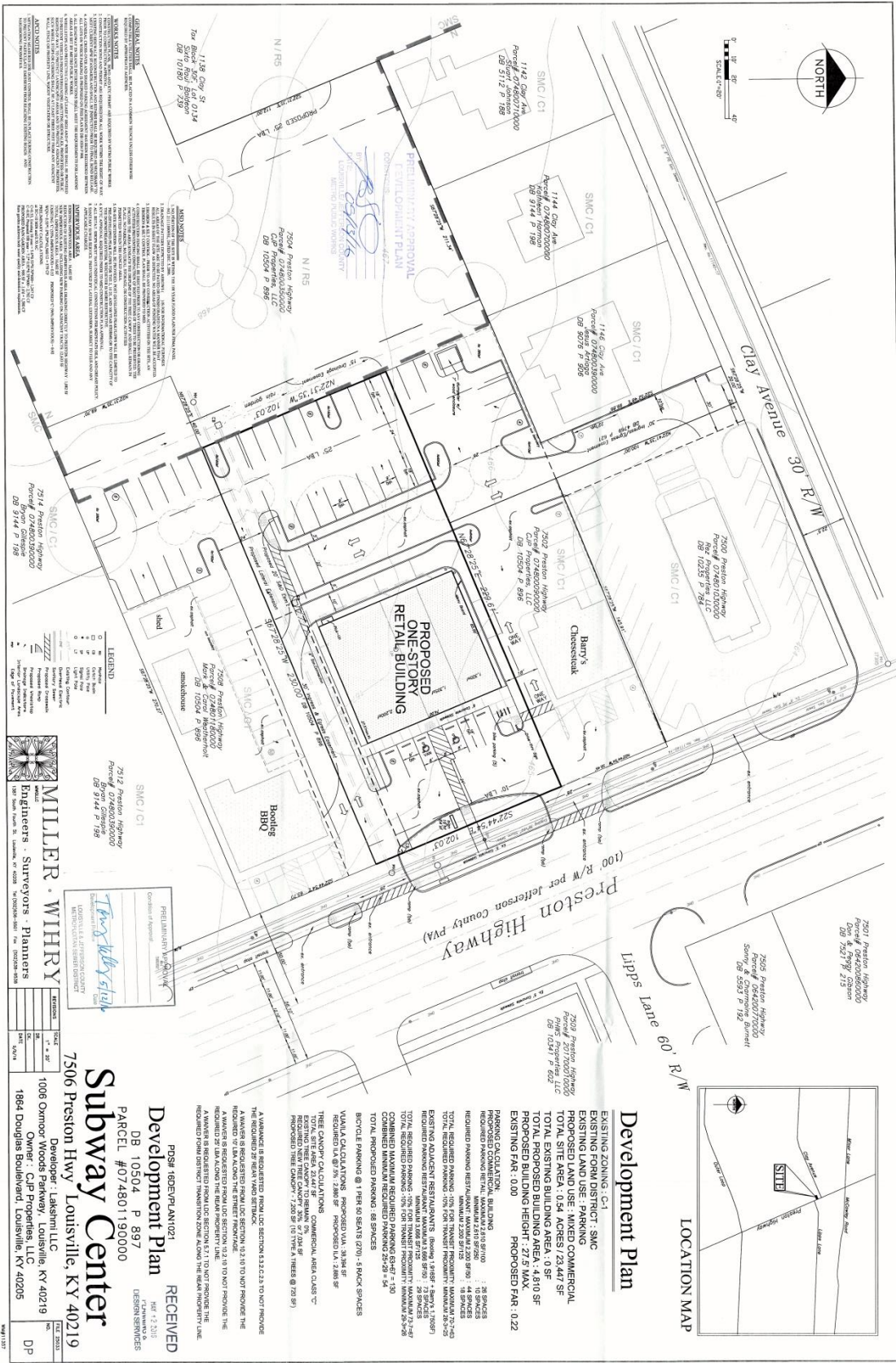
1. Zoning Map



2. Aerial Photograph

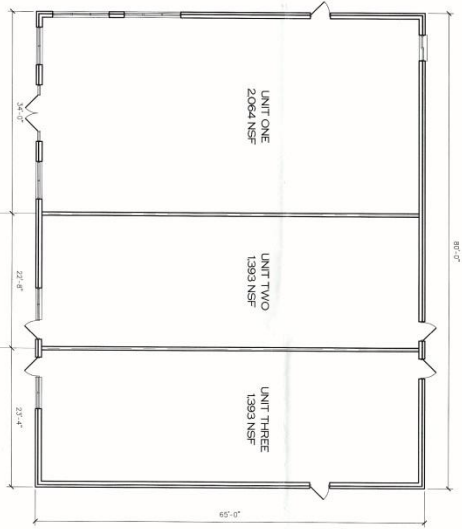




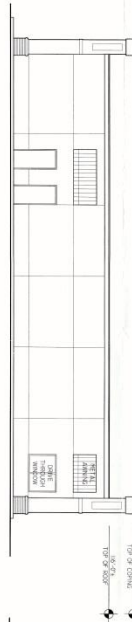


4. Elevations

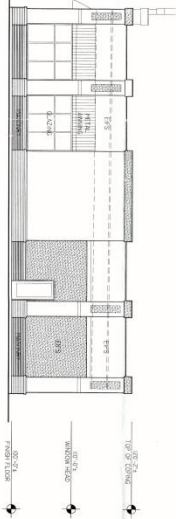
01 PRELIMINARY PLAN  
A11 SCALE 1/8" = 1'-0"



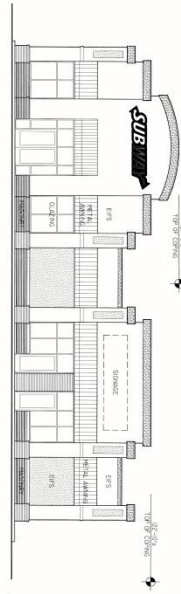
04 REAR ELEVATION  
A11 SCALE 1/8" = 1'-0"



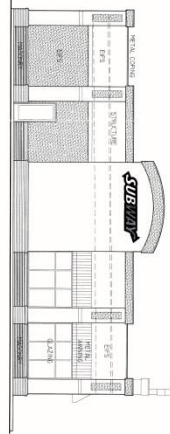
05 RIGHT ELEVATION  
A11 SCALE 1/8" = 1'-0"



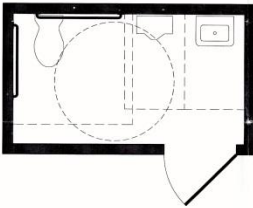
06 FRONT ELEVATION  
A11 SCALE 1/8" = 1'-0"



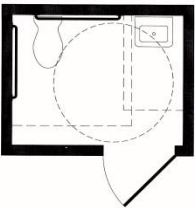
07 LEFT ELEVATION  
A11 SCALE 1/8" = 1'-0"



02 TOILET 'A'  
A11 SCALE 1/2" = 1'-0"



03 TOILET 'B'  
A11 SCALE 1/2" = 1'-0"



RECEIVED  
CRS  
PLANNING &  
DESIGN SERVICES

**PRELIMINARY**  
PLAN AND ELEVATION  
PRESTON BUILDING  
NEW MIXED USE BUILDING  
7502 PRESTON HIGHWAY -- LOUISVILLE, KY

SCALE AS NOTED  
**A11**  
25 JAN16  
PAT 0039

CR STONE  
ARCHITECT  
1108 EASTERN AVENUE, #2  
LOUISVILLE, KY 40202-17  
502.581.1000  
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CR STONE ARCHITECT, LLC  
COMMERCIAL 201.6



5. Site Inspection Report



Frontage along Preston Highway looking south. The waiver # 2 would be applicable along the street frontage as shown in the photo.



Looking along the rear of the property (towards Clay Ave.) where the 25' ft. landscape buffer along the rear of the property would need to be provided (waiver # 3). The variance to allow vehicular parking and maneuvering in the rear yard setback would also be within the area shown in the photo.



Photo showing the rear of the property (vacant land) where the zoning is zoned R-5 in a Neighborhood form district cause the applicant to request a waiver from the transition zone standards in LDC section 5.7.1.