

# Board of Zoning Adjustment Staff Report

November 2, 2015



<b>Case No:</b>	15DEVPLAN1138
<b>Project Name:</b>	Portland Avenue Presbyterian Church
<b>Location:</b>	3126, 3128, 3108, & 3106 Portland Avenue
<b>Owner(s):</b>	Grace Jenks, Portland Avenue Presbyterian Church
<b>Applicant:</b>	Owner
<b>Representative:</b>	Marv Blomquist, Blomquist Design Group
<b>Project Area/Size:</b>	2.54 acres
<b>Jurisdiction:</b>	Louisville Metro
<b>Council District:</b>	5 – Cheri Bryant Hamilton
<b>Case Manager:</b>	Sherie' Long, Landscape Architect

## REQUESTS

### Category 3 Development Plan

#### Waiver #1: Parking

Waiver from the Land Development Code, Section 5.5.1.A.3.a, to allow the parking to be located in front of the building adjacent to Portland Avenue.

#### Waiver #2: 3' Wall

Waiver from the Land Development Code Section 5.5.1.A.3.a to not provide the required 3' masonry, stone, or concrete wall across the front of the parking where adjacent to the street.

#### Waiver #3: East Perimeter Landscape Buffer Area (LBA)

Waiver from the Land Development Code Section 10.2.10 to eliminate the required 5' LBA along the eastern perimeter where adjacent to residential.

#### Waiver #4: LBA along Access Drive to Bank Street

Waiver from the Land Development Code Section 10.2.10 to eliminate the required 5' LBA along the access drive to Bank Street.

#### Waiver #5: LBA at rear of property adjacent to Alley

Waiver from the Land Development Code Section 10.2.10 to eliminate the required 5' LBA along the rear of the site adjacent to the alley.

#### Waiver #6: LBA along the West perimeter adjacent to the M-2 property

Waiver from the Land Development Code Section 10.2.4 to eliminate the required 5' LBA along the western perimeter where adjacent to the M-2 property.

#### Variance #1: Parking in Front Yard Setback

Variance from Land Development Code Section 5.5.1.A.3 to allow the parking to encroach into the required 15' front yard setback.

#### Variance #2: Side Yard

Variance from Land Development Code Section 5.2.2 & Table 5.2.2 to allow the drive aisle to encroach into the 5' side yard.

Location	Requirement	Request	Variance
Variance #1: Front Yard Setback	15'	10'	5'
Variance #2: Side Yard Setback	5'	0'	5'

**CASE SUMMARY/BACKGROUND/SITE CONTEXT**

This Category 3 Development proposes removal of a great portion of the existing pavement to allow for the reconfiguration of an existing parking lot. The Portland Avenue Presbyterian Church renovated the former Kroger building to accommodate their congregation several years ago. This project is a continuation to improve this site located between Portland Avenue and Banks Street. The removal of the pavement creates large areas of green space allowing for the tree planting and incorporation of green infrastructure to control stormwater runoff. However, several waivers and variances are necessary to allow this existing development site to be reconfigured to improve the overall condition and enhance the neighborhood.

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

The site is zoned C-2 in the Traditional Neighborhood (TN) Form District. It is surrounded by a mix of uses; single and multi-family, commercial, industrial warehouse, institutional, and vacant properties zoned UN, C-1, C-2, and M-2 in the Traditional Neighborhood (TN) Form District.

	Land Use	Zoning	Form District
<b>Subject Property</b>			
<b>Existing</b>	Church	C-2	TN
<b>Proposed</b>	Church	C-2	TN
<b>Surrounding Properties</b>			
<b>North</b>	Multi-family and Single Family Residential/Commercial/Institutional	UN/C-1	TN
<b>East</b>	Single Family Residential/Vacant	C-2/C-1/UN	TN
<b>South</b>	Multi-family and Single Family Residential	UN	TN
<b>West</b>	Commercial Retail/industrial Warehouse/Vacant	C-2/M-2/UN	TN

**PREVIOUS and CURRENT CASES ON SITE**

No previous cases.

**INTERESTED PARTY COMMENTS**

No inquiries have been received.

**APPLICABLE PLANS AND POLICIES**

Cornerstone 2020  
 Land Development Code  
 Portland Neighborhood Plan

## STANDARD OF REVIEW AND STAFF ANALYSIS FOR CATEGORY 3 DEVELOPMENT PLAN

- a. The conservation of natural resources on the property proposed for development, including: trees and other living vegetation, steep slopes, water courses, flood plains, soils, air quality, scenic views, and historic sites;

STAFF: The proposal conserves and reuses an existing building on the subject site (former Kroger). The existing parking lot pavement is being removed and the parking lot is being reconfigured to create additional green space to eliminate storm water runoff, improvement the appearance, and enhance the streetscape. Plus additional trees are to be planted to reduce the heating of the pavement.

- b. The provisions for safe and efficient vehicular and pedestrian transportation both within the development and the community;

STAFF: Provisions for safe and efficient vehicular and pedestrian transportation are provided within the development along with connections to the surrounding community; plus Transportation Planning has approved the preliminary development plan.

- c. The provision of sufficient open space (scenic and recreational) to meet the needs of the proposed development;

STAFF: The proposal does provide open space within the development by eliminating existing pavement; plus adding additional tree canopy.

- d. The provision of adequate drainage facilities on the subject site in order to prevent drainage problems from occurring on the subject site or within the community;

STAFF: The Metropolitan Sewer District has approved the preliminary development plan and will ensure the provisions of adequate drainage facilities on the subject site in order to prevent drainage problems from occurring on the subject site or within the community.

- e. The compatibility of the overall site design (location of buildings, parking lots, screening, landscaping) and land use or uses with the existing and projected future development of the area;

STAFF: The overall site design and land uses are compatible with the existing and future development of the area. The Portland Neighborhood Plan recommends “adding attractive efficient design for streetscapes and parking”. Landscape buffering and screening will be provided to screen the parking area from adjacent properties and roadways with the exception of the waiver requests.

- f. Conformance of the development plan with the Comprehensive Plan and Land Development Code. Development plans shall be evaluated for conformance with the non-residential and mixed-use intent of the form districts and comprehensive plan.

STAFF: The development plan conforms to applicable guidelines and policies of the Comprehensive Plan and to requirements of the Land Development Code with the exception of the waivers and variances being requested.

## STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVERS

### Waiver #1: Parking

Waiver from the Land Development Code, Section 5.5.1.A.3.a, to allow the parking to be located in front of the building adjacent to Portland Avenue.

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

STAFF: The waiver will not adversely affect adjacent property owners since the existing parking lot is located in front of the building. The proposal will reduce the amount of the pavement and add both, screen planting and tree planting, in front of the proposed spaces which will reduce the impact.

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

STAFF: Guideline 2, policy 15 states to encourage the design, quantity and location of parking in activity centers to balance safety, traffic, transit, pedestrian, environmental and aesthetic considerations. Guideline 3, policy 1 states to ensure 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. Guideline 3, policy 23 states that setbacks, lot dimensions and building heights should be compatible with those of nearby developments that meet form district guidelines. Guideline 7, policy 3 states to evaluate developments for their ability to promote mass transit and pedestrian use. Encourage higher density mixed use developments that reduce the need for multiple automobile trips as a means of achieving air quality standards and providing transportation choices. Guideline 9, policy 1 states that new development and redevelopment should provide, where appropriate, for the movement of pedestrians, bicyclists and transit users with location of retail and office uses, especially in the Traditional Neighborhood, Village, Marketplace Corridor, Traditional Workplace Form Districts close to the roadway to minimize the distance pedestrians and transit users have to travel. The purpose of the requirement is to promote mass transit and pedestrian use and reduce vehicle trips in and around the site, and to reduce the distance pedestrians and transit users have to travel. The waiver does not violate specific guidelines and policies of Cornerstone 2020. The location of the parking is an existing condition. The reduction of the pavement along with the addition of green space and plantings improve and enhance the condition.

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

STAFF: The extent of waiver of the regulation is the minimum necessary to afford relief to the applicant since green space, screen plantings, and additional tree plantings are to be provided between the building and the street to lessen the impact of the parking in front of the building.

- (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). The proposal reduces the pavement and provides additional green space.

### **Waiver #2: 3' Wall**

Waiver from the Land Development Code Section 5.5.1.A.3.a to not provide the required 3' masonry, stone, or concrete wall across the front of the parking where adjacent to the street.

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

STAFF: The waiver will not adversely affect adjacent property owners since screen plantings will be provided along the parking lot adjacent to the street which will reduce the impact of the parking lot on adjacent residential properties.

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

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 purpose of the wall is to improve the appearance of vehicular use areas, reduce the impact of the parking area on the adjacent residential property and other property abutting public rights-of way while extending the building façade along the street frontage. The applicant, in place of the required wall, is providing a 3' screening planting along with additional tree planting; therefore the waiver request does not violate the comprehensive plan.

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

STAFF: The extent of waiver of the regulation is the minimum necessary to afford relief to the applicant since a 3' screen planting along with tree plantings will be provided between the street and the 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 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). The proposal provides 3' planting as an alternative to the require 3' wall to screen the view of the parking. Plus the proposal reduces the amount of existing pavement and adds additional green space.

### **Waiver #3: East Perimeter Landscape Buffer Area (LBA)**

Waiver from the Land Development Code Section 10.2.10 to eliminate the required 5' LBA along the eastern perimeter where adjacent to residential.

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

STAFF: The waiver will adversely affect adjacent property owners since no screening or tree planting is being proposed.

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

STAFF: Guideline 3, policy 9 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. 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 waiver will violate the comprehensive plan since no buffer plantings are being incorporated along the eastern perimeter to reduce the impact of the parking lot on the adjacent residential property.

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

STAFF: The extent of waiver of the regulation is not the minimum necessary to afford relief to the applicant since no buffer is being provided along the eastern perimeter.

- (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 to compensate for non-compliance with the requirements to be waived. The strict application of the provisions of the regulation would not deprive the applicant of the reasonable use of the land or create an unnecessary hardship on the applicant since the proposed development can be built on the site while complying with the requirements requested to be waived.

**Waiver #4: LBA along Access Drive to Bank Street**

Waiver from the Land Development Code Section 10.2.10 to eliminate the required 5' LBA along the access drive to Bank Street and the rear of the site adjacent to the alley.

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

STAFF: The waiver will not adversely affect adjacent property owners since the access drive is existing.

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

STAFF: Guideline 3, policy 9 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. 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 location and required width of the pavement necessary for a safe access does not allow room for the required 5' buffer areas along the perimeters and at the rear of the property. The waiver will violate the

comprehensive plan guidelines; but the access road pavement width and location are an existing condition. The access pavement width is necessary for safe access to the site.

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

STAFF: The extent of waiver of the regulation is the minimum necessary to afford relief to the applicant since the access drive pavement location is an existing condition.

- (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. If the provision of the regulation were provided the existing access drive would not be wide enough to accommodate traffic therefore creating a hardship.

**Waiver #5: LBA at rear of property adjacent to Alley**

Waiver from the Land Development Code Section 10.2.10 to eliminate the required 5' LBA along the rear of the site adjacent to the alley.

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

STAFF: The waiver will not adversely affect adjacent property owners since the pavement is existing.

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

STAFF: Guideline 3, policy 9 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. 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 waiver will violate the comprehensive plan guidelines since the proposal does not provide the buffer.

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

STAFF: The extent of waiver of the regulation is not the minimum necessary to afford relief to the applicant since the parking could be modified to allow for additional green space and tree plantings to reduce the impact of the parking.

- (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 (a net beneficial effect). The applicant could modify the parking configuration at the rear of the building to allow for additional green scape and tree planting which could provide a net benefit.

**Waiver #6: LBA along the West perimeter adjacent to the M-2 property**

Waiver from the Land Development Code Section 10.2.4 to eliminate the required 5' LBA along the western perimeter where adjacent to the M-2 property.

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

STAFF: The waiver will not adversely affect adjacent property owners since the abutting property is a more intense use.

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

STAFF: Guideline 3, policy 9 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. 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 waiver will violate the comprehensive plan since no buffer planting is being provided to reduce the impact of the abutting allowed uses.

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

STAFF: The extent of waiver of the regulation is not the minimum necessary to afford relief to the applicant since a request to allow an encroachment of the proposed pavement could have been sought instead of eliminate of the entire requirement.

- (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 to compensate for non-compliance with the requirements to be waived. The strict application of the provisions of the regulation would not deprive the applicant of the reasonable use of the land or create an unnecessary hardship on the applicant since the proposed development can be built on the site while complying with the requirements requested to be waived.

## STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCES

### Variance #1: Parking in Front Yard Setback

Variance from Land Development Code Section 5.5.1.A.3 to allow the parking to encroach into the required 15' front yard setback.

- (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 parking lot in front of the building is existing.

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

STAFF: The requested variance will alter the essential character of the general vicinity since the setbacks of the other structures along the block are maintaining a more uniform distance from the street right-of-way. Plus the existing parking lot could be setback the required 15' still allowing the development to be constructed as proposed.

- (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 proposal is to improve the parking lot by employing additional green space and tree plantings.

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

STAFF: The requested variance will allow an unreasonable circumvention of the zoning regulation since the parking could be modified to not encroach into the required 15' front yard setback.

### 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 that do not generally apply to land in the general vicinity or the same zone. The proposal is to modify the existing parking configuration by removing the existing pavement and restriping the lot. The configuration of the parking lot could be adjusted 5' to accommodate the required 15' front yard setback while still allowing the same number of parking spaces.

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 not deprive the applicant of reasonable use of the land and create an unnecessary hardship on the applicant since the required setback can be met with an adjustment of the new parking configuration.

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. The applicant is seeking a variance prior to beginning construction.

**Variance #2: Side Yard**

Variance from Land Development Code Section 5.2.2 & Table 5.2.2 to allow the drive aisle to encroach into the 5' side yard.

- (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 drive is existing.

- (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 access drive aisle is existing.

- (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 access drive aisle is existing. Removing the pavement which is encroaching into the side yard would narrow the drive aisle unsafe for two-way traffic.

- (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 regulation since the access drive is existing.

**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 arise from special circumstances that do not generally apply to land in the general vicinity or the same zone. The existing access drive width is the minimum allowed for two-way traffic. To remove the pavement from the setback area would reduce the width of the drive aisle, therefore making it unsafe for two-way traffic. Also, the access is unique because it is a private access included as a part of the lot area and not public right-of-way.

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 reasonable use of the land and create an unnecessary hardship on the applicant since the existing access drive width is the minimum necessary for two-way traffic. Removing the pavement from the side yards would deprive the applicant use of the access in and out of the 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 zoning regulation from which relief is sought. This access drive is existing. Plus, the applicant is requesting a variance prior to beginning any work.

### TECHNICAL REVIEW

There are no technical review issues.

### STAFF CONCLUSIONS

The proposed improvements to the parking lot will reduce the stormwater runoff; incorporate tree canopy; and add addition screening to reduce the impact of the parking lot on the abutting properties. The standards of review are met for Category 3 Development Plan; Waivers #1, #2, and #4; and Variance #2.

However, elimination of the eastern and western LBA areas are not in keeping with the guidelines of the comprehensive plan. The 5' LBAs could be provided along both perimeters even with parking encroaching into the western perimeter. (Waivers #3 and #6)

The parking proposed along the rear of the building could also be reconfigured to use the alley pavement for maneuvering which allows plantings to be added next to the building. Also the removal of the excess pavement will enhance the area and reduce the impact of this additional parking on the residential properties adjacent to the site. (Waiver #5)

Allowing the parking to encroach into the front setback is not supported. Since the entire parking lot is being reconfigured to add additional green space and tree/shrub plantings, the parking lot configuration could be modified to remove the parking from the front setback which is more in keeping to the existing pattern of setback along the block face. (Variance #1)

Therefore, the Board of Zoning Adjustment must determine, based on the testimony and evidence provided at the public hearing, if the proposal meets the standard to grant the variance established in the Land Development Code; the waivers do not violate the comprehensive plan plus meet the standards established in the Land Development Code; and the Category 3 Development Plan meets the standards of the comprehensive plan.

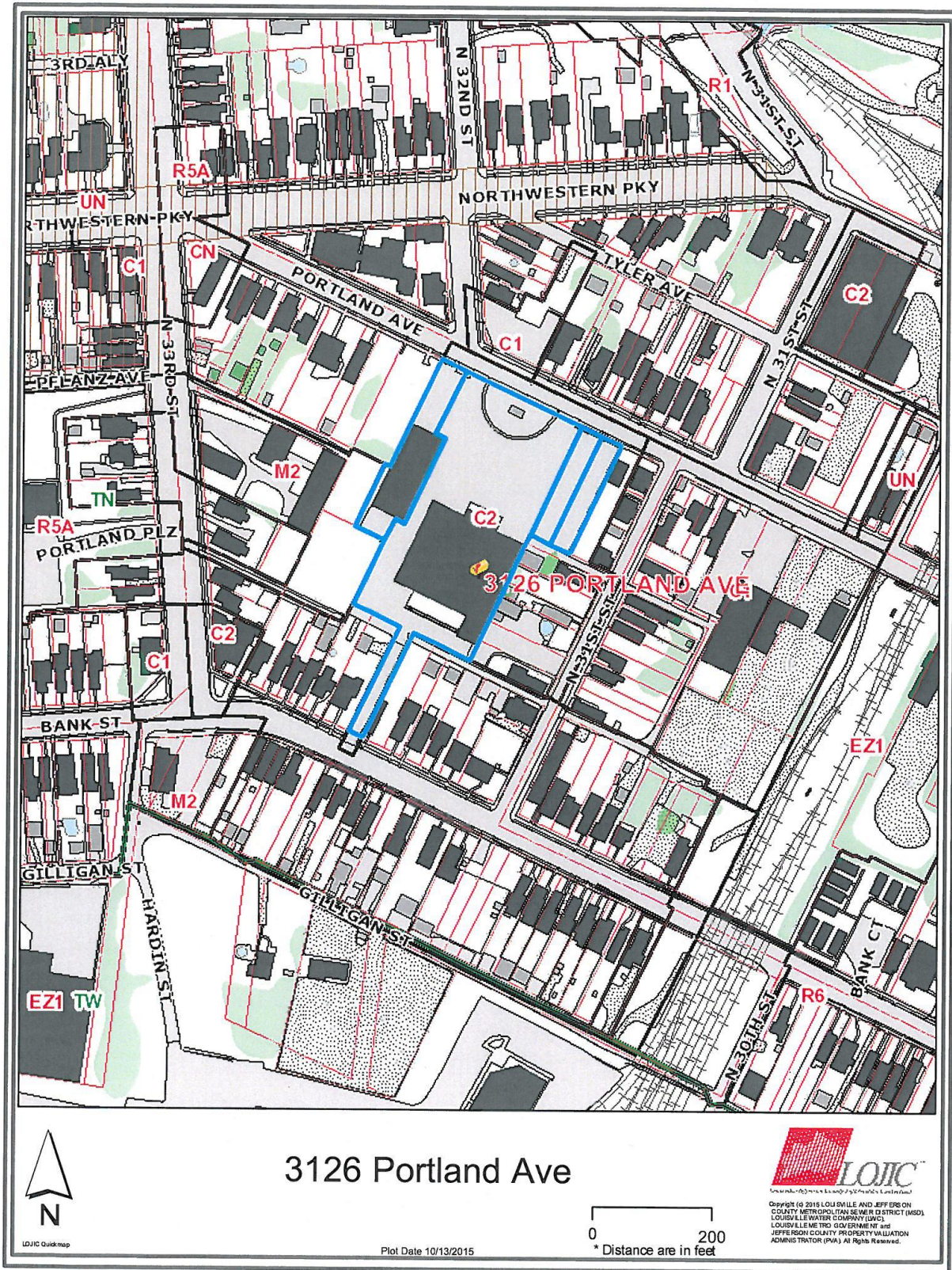
### NOTIFICATION

Date	Purpose of Notice	Recipients
10/13/2015	BOZA Hearing	Neighborhood notification recipients
10/16/2015	Sign Posting	Subject property
10/15/2015	BOZA Hearing	1 <sup>st</sup> tier adjoining property owners

### ATTACHMENTS

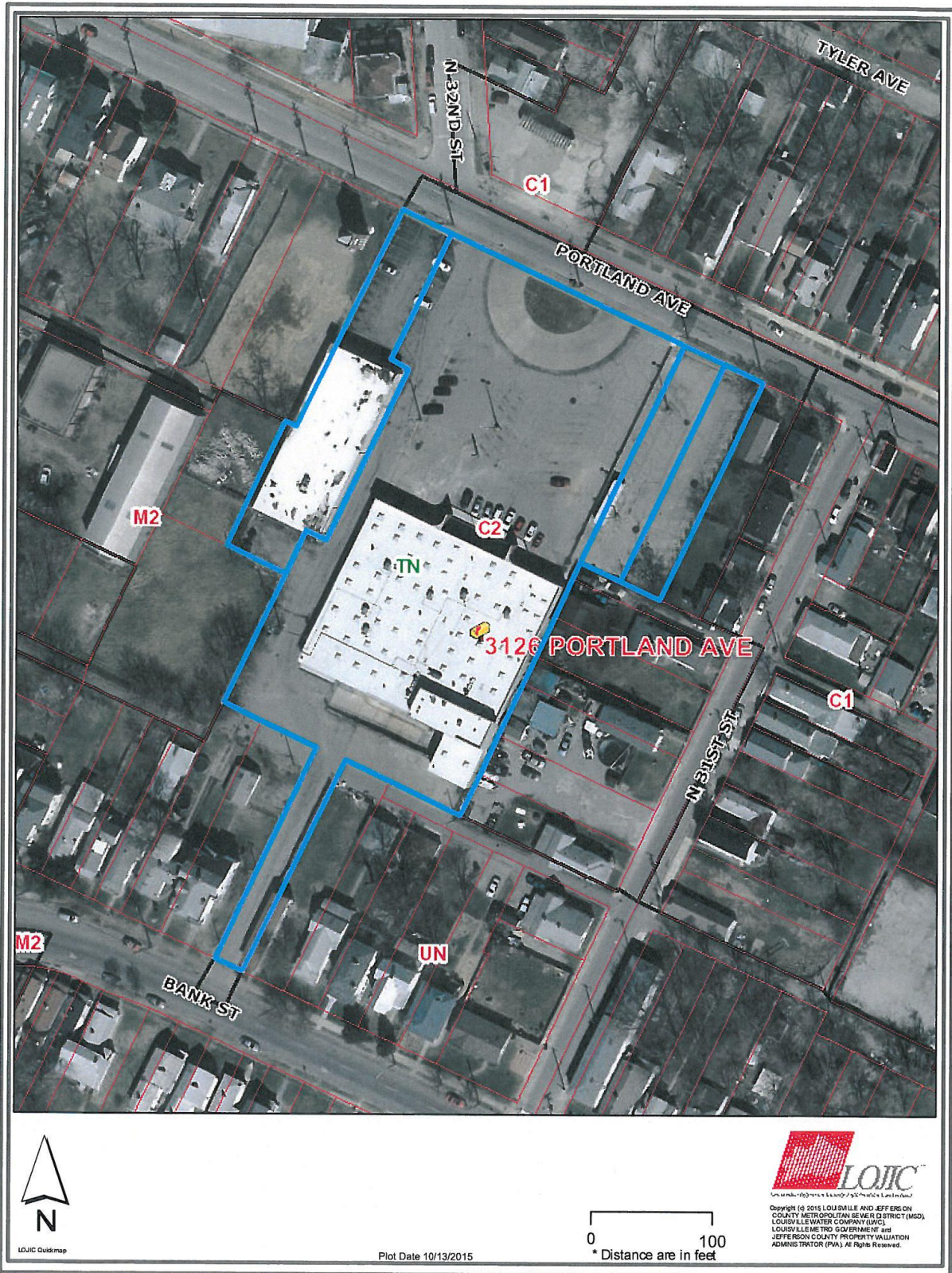
1. Zoning Map
2. Aerial Photographs
3. Site Plan
4. Applicant's Justification
5. Site Photographs

Attachment 1 - Zoning Map

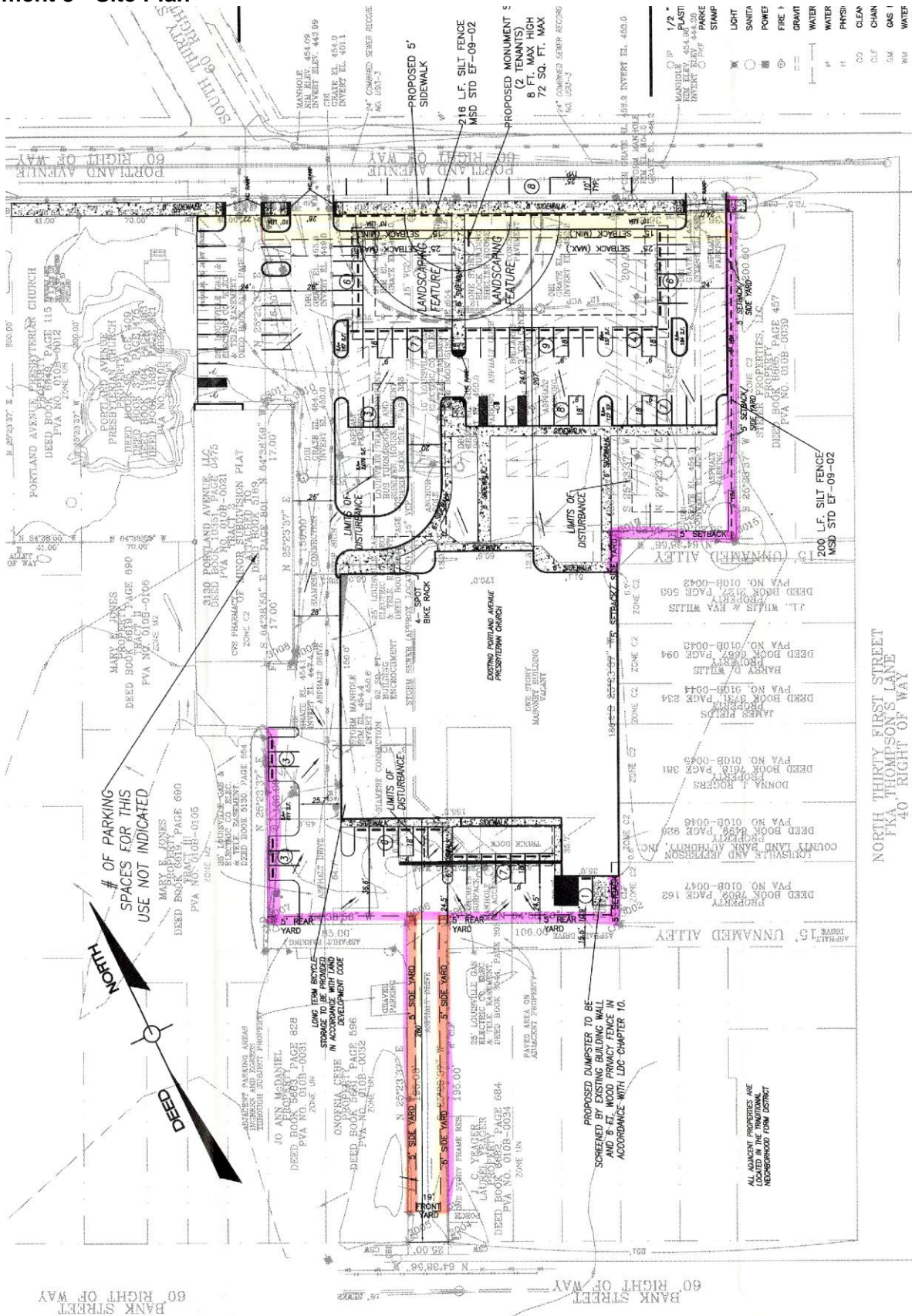


Attachment 2 - Aerial Photographs





Attachment 3 - Site Plan



## Attachment 4 – Applicant’s Justifications

### General Waiver Justification:

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

#### 1. Will the waiver adversely affect adjacent property owners?

The requested waivers are to allow the existing building and parking areas to remain in place as they have for several years. No new asphalt areas or building will be added that will require any waivers. The parking areas around the existing building have been in place for several years and will only be reconfigured and restriped and also green infrastructure added to provide better drainage control. The location of the existing alley and paved access area and their use as drive aisles/lanes are unique layout issues that existed prior to the Church purchasing the property several years ago.

#### 2. Will the waiver violate the Comprehensive Plan?

The Comprehensive Plan encourages designs that are compatible with the surrounding areas and this proposal meets that objective by installing a landscape buffer area with Portland Avenue and also the adjacent property to the east. The parking areas around the existing building have been in place for several years and will only be reconfigured and restriped and also green infrastructure added to provide better drainage control.

#### 3. Is extent of waiver of the regulation the minimum necessary to afford relief to the applicant?

The proposed development meets the other guidelines in Section 10.2.4 for LBA Requirements, provides safe pedestrian access to site, is compatible with the surrounding pattern of development in the area and provides the required landscape plantings along Portland Avenue and the east property line.

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PLANNING &

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#### 4. Has either (a) the applicant 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 would (b) the strict application of the provisions of the regulation deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant?

Strict application would require removal of a portion of the existing building along the east property line and a portion of existing pavement/parking areas in the rear of the site. Green infrastructure is being added as part of this project to provide better drainage control. The location of the existing alley and paved access area and their use as drive aisles/lanes are unique layout issues that existed prior to the Church purchasing the property several years ago. The required plantings in the LBA's along Portland Avenue and the east property line will still be installed and additional trees will be provided in the new grass areas along Portland Avenue as shown on the Drawings.

15DEVPLAN1138



**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.

**1. Explain how the variance will not adversely affect the public health, safety or welfare.**

The requested variance will allow the existing pavement to remain in place as it has for several years and continue to allow alley access and access to Bank Street as it currently exists. The proposed development does not add any pavement in the area of the requested variance.

**2. Explain how the variance will not alter the essential character of the general vicinity.**

The proposed development utilizes the existing alley for access to parking areas and access to Bank Street as it currently exists. The proposed development does not add any pavement in the area of the requested variance.

**3. Explain how the variance will not cause a hazard or a nuisance to the public.**

The proposed development maintains the existing on site pavement and provides safe pedestrian access to the building. Traffic circulation patterns also provide safe movement of vehicles through the parking areas.

**4. Explain how the variance will not allow an unreasonable circumvention of the requirements of the zoning regulations.**

The proposed development is compatible with the existing overall pattern in the general vicinity and the site is properly zoned for the church. The variance is for an existing condition at the rear property line and along the existing access to Bank Street.

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*Additional consideration:*

AUG 21 2015

**1. Explain how the variance arises from special circumstances, which do not generally apply to land in the general vicinity (please specify/identify).**

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The location of the existing alley and paved access area and their use as drive aisles/lanes are unique layout issues that existed prior to the Church purchasing the property several years ago. The proposed development does not add any pavement in the area of the requested variance.

**2. Explain how the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create unnecessary hardship.**

Not allowing use of the rear yard as a drive aisle and parking would result in loss of access thru the parking lot and take away the existing access to Bank Street.

**3. Are the circumstances the result of actions of the applicant taken subsequent to the adoption of the regulation from which relief is sought?**

The location of the alley and the access to Bank Street are not the result of actions taken by the Church. The location of the existing alley and paved access area and their use as drive aisles/lanes are unique layout issues that existed prior to the Church purchasing the property several years ago.

(SHEPHERD/138)

**Attachment 5 – Site Photographs**



**Existing parking lot and front of building**



**Eastern perimeter view from Portland Ave**



**Request to eliminate the required Landscape Buffer along this eastern perimeter**



**Request to eliminate the required Landscape Buffer along eastern perimeter.**



**Existing parking in front of the Building**



**Western Perimeter looking south**



**Existing Alley at rear of building. View toward N 31<sup>st</sup> Street**



**Existing access to Bank Street looking south. Location of the side yard variances.**



**Location of the parking encroaching into the rear landscape buffer areas (LBA)**



**Request to eliminate the required Landscape Buffer along eastern perimeter.**



**Location of the parking encroaching into the rear landscape buffer areas (LBA)**



**Existing access from Bank Street looking north. Location of the side yard variances**



**Western Perimeter looking north toward Portland Ave**