

# Case # 15Appeal008



## Louisville Metro Board of Zoning Adjustment Public Hearing

Brian Mabry, AICP, Planning Coordinator  
January 11, 2016

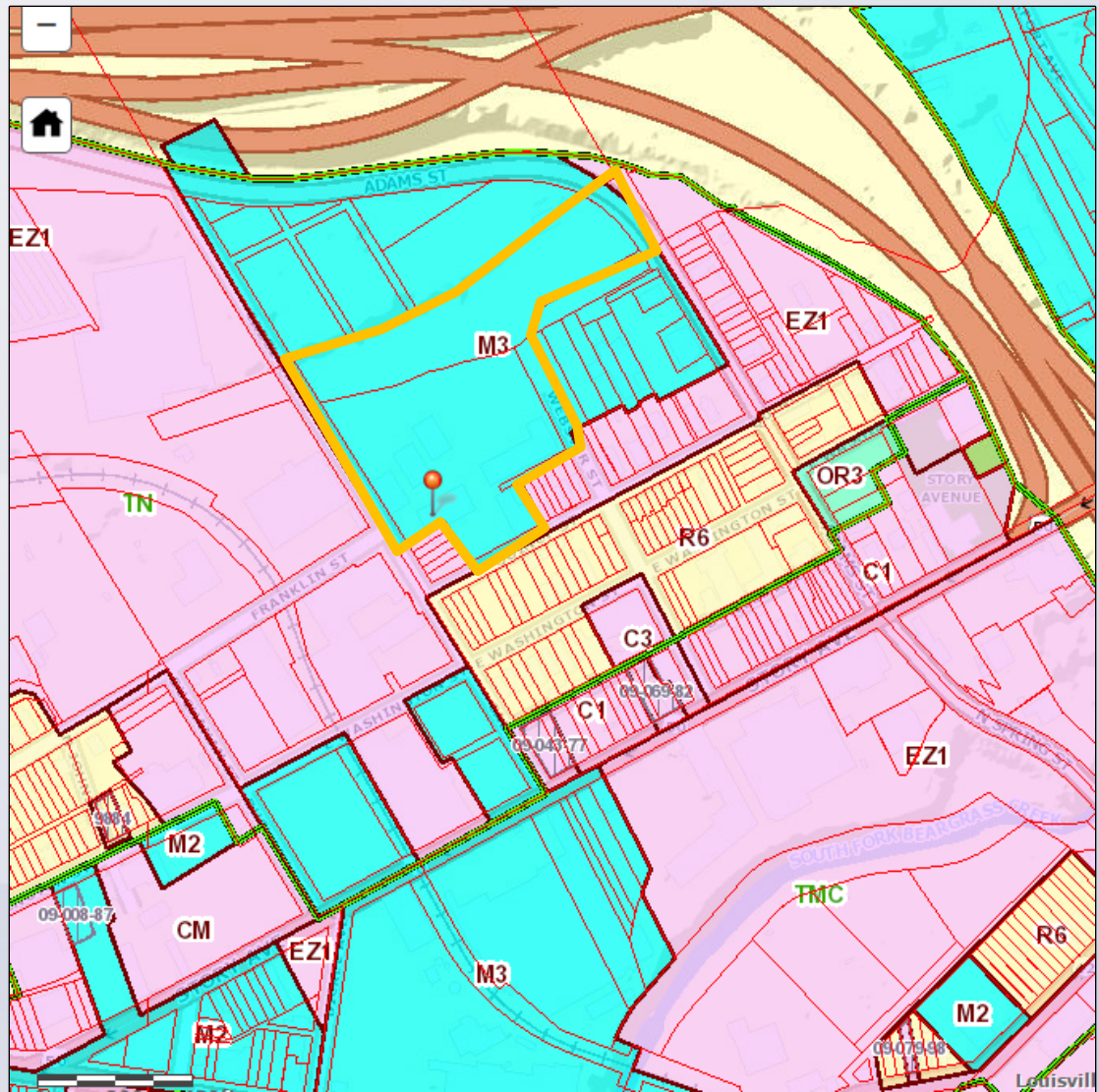
# Request

- Appeal of a written interpretation which states that operating hour restrictions in Land Development Code Section 4.1.6 only apply to portions of the subject property within 100 feet of a residential use or zoning district.



# Zoning/Form Districts

- Subject: M-3, TN
- North: M-3, TN
- South: EZ-1, R-6, TN
- East: M-3, TN
- West: EZ-1, TN







64

EZ1

M3

TN

QUINCY ST

ADAMS ST

OR3

ADAMS ST

ADAMS ST

R6

E WASHINGTON ST

C1

C3

BOWLES AVE

GADEL ST

TMS 50



# Background

- Pursuant to KRS, BOZA hears appeals of an official interpretation of an administrative official.
- This appeal generally asserts that the interpretation contradicts the text of LDC Section 4.1.6, and that the operating hour restrictions of that Section apply to the entirety of Swift's Cabel Street property, rather than to the area of the site within 100 feet of a residential use or zoning district.

# Section 4.1.6

## 4.1.6 Operating Hours

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The following operating hour restrictions shall apply to all uses that are within 100 feet of any property that is zoned residential, any solely residential use or any mixed use development that contains residential uses as measured from the closest property line of the proposed use. The most current version of the Louisville Metro Noise Ordinance shall also apply to all activities listed below.

- A. Collection of Garbage and Recyclables - No garbage or recyclables collection services shall be conducted between the hours of 10:00 p.m. and 6:00 a.m.
- B. Loading Operations - No loading or unloading operations shall be conducted between the hours of 10:00 p.m. and 7:00 a.m. This restriction shall also be applicable to the idling of any heavy or medium trucks on the site for the purpose of conducting loading or unloading operations regardless of whether said activities have already occurred or are scheduled to occur in the future.
- C. Exterior Construction Activity - No exterior construction activity shall be conducted between the hours of 9:00 p.m. and 7:00 a.m.

# Director's Interpretation of 4.1.6

- Attachment 3 in Packet
- From Emily Liu to Jonathan Baker
- The code sets the limits of operating hours only for the area of the subject property within 100 feet of the property lines that adjoin residential uses or zones

**3. Written Interpretation (From Emily Liu on March 4, 2014, and from Brian Mabry, as applied to 14CUP1003, on September 30, 2015)**

**From:** [Liu, Emily](#)  
**To:** [Baker, Jonathan](#)  
**Cc:** [Brown, Christopher](#); [Hill, Michael](#)  
**Subject:** Operating Hours  
**Date:** Tuesday, March 04, 2014 6:34:07 PM

Jon, I reviewed this section with several of our staff members. We feel the code is intended to set the limits of operating hours only for the area of the subject property (say FedEx project) within 100 feet of their property line that adjoins residential use or zones.

#### 4.1.6 Operating Hours

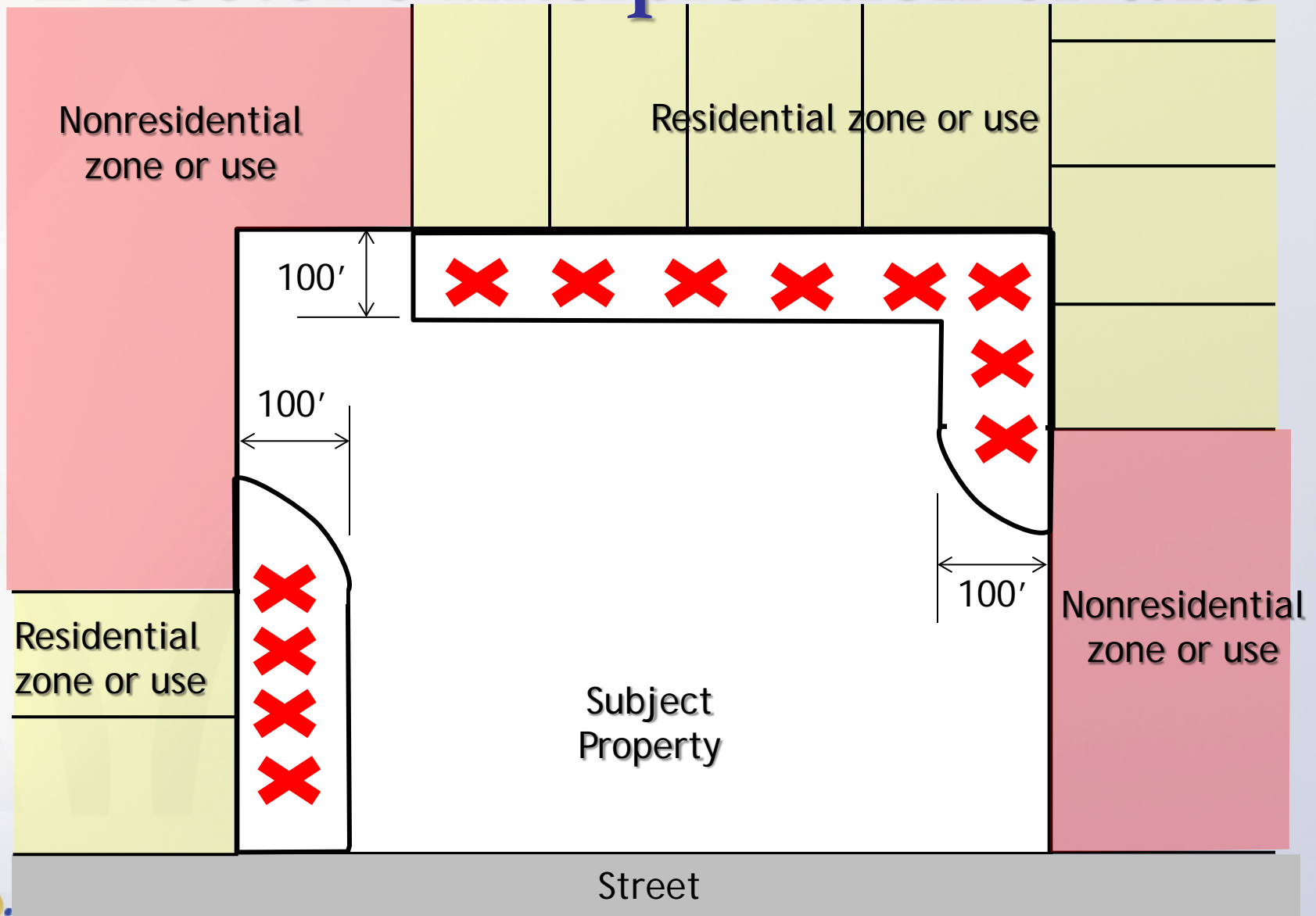
The following operating hour restrictions shall apply to all uses that are within 100 feet of any property that is zoned residential, any solely residential use or any mixed use development that contains residential uses on the ground floor as measured from the closest property line of the proposed use.

A. Collection of Garbage and Recyclables - No garbage or recyclables collection services shall be conducted between the hours of 10:00 p.m. and 7:00 a.m.

B. Loading Operations - No loading or unloading operations shall be conducted between the hours of 10:00 p.m. and 7:00 a.m. This restriction shall also be applicable to the idling of any heavy or medium trucks on the site for the purpose of conducting loading or unloading operations regardless of whether said activities have already occurred or are scheduled to occur in the future.

*Yu "Emily" Liu, AICP  
Planning Director  
Louisville Metro Planning & Design Services Division  
Department of Codes and Regulations  
444 South Fifth Street, Ste. 300  
Louisville, KY 40202-4313  
502-574-6678/502-574-8129 (F)*

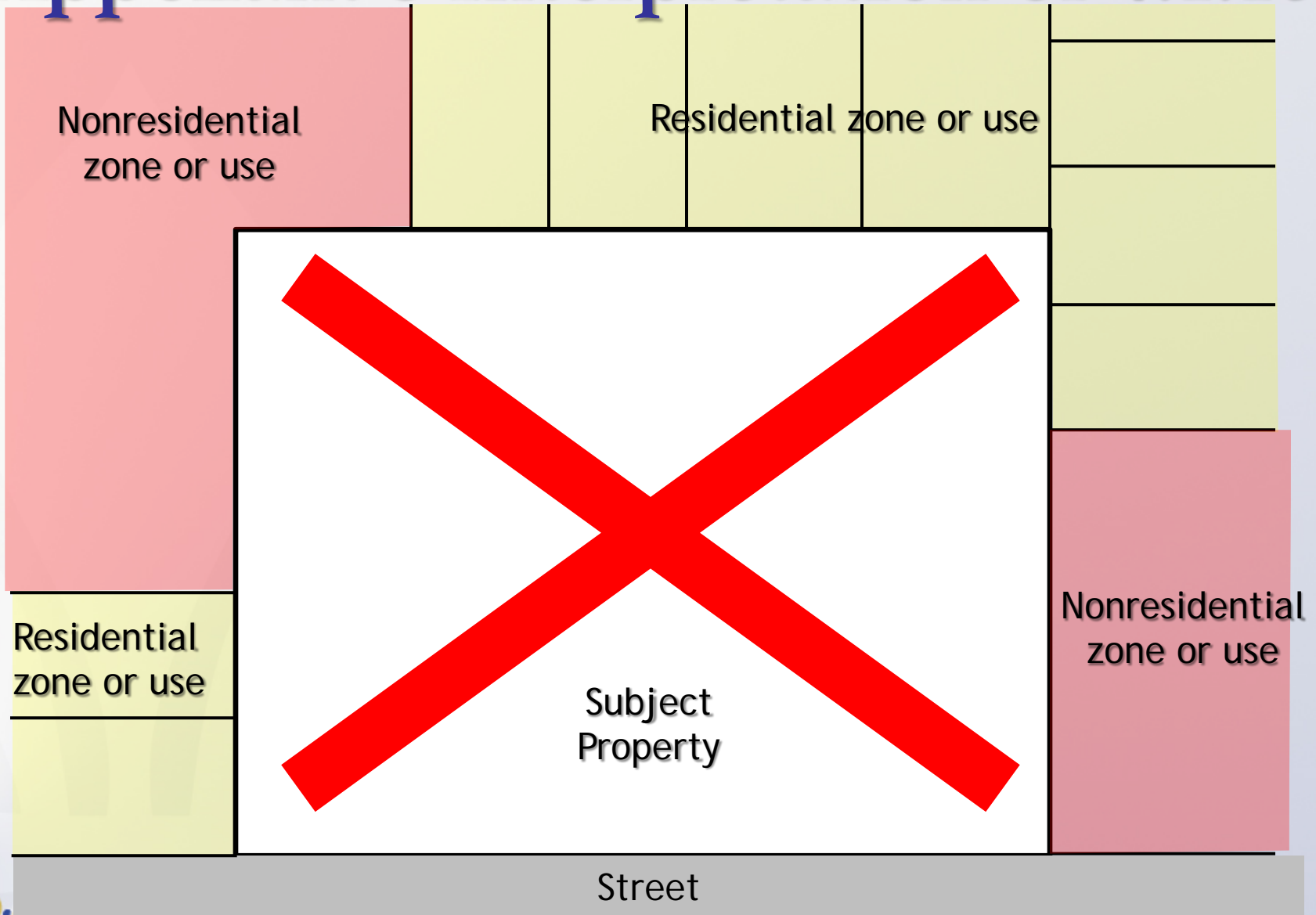
# Director's Interpretation of 4.1.6

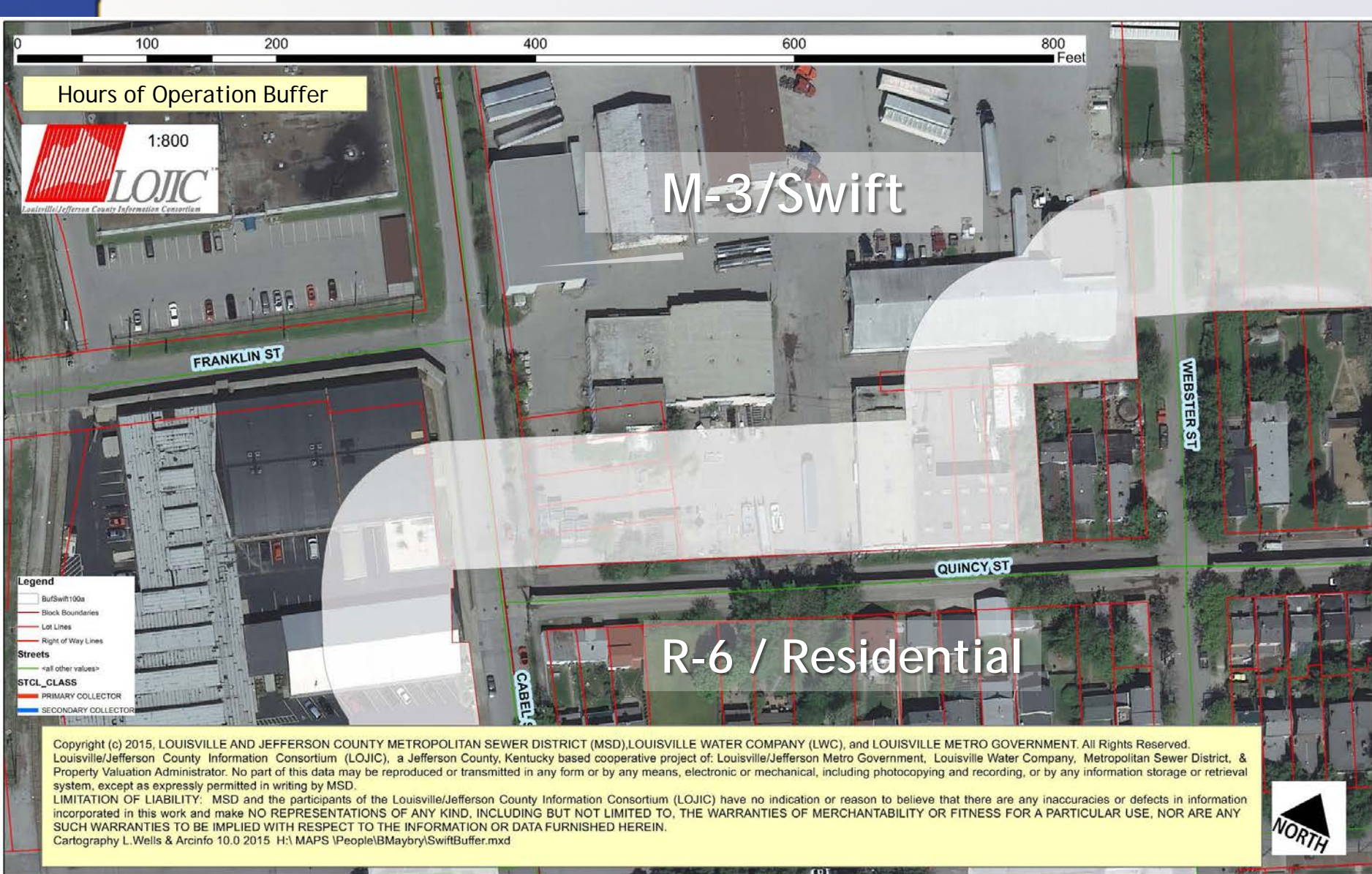


**X** = Operating Hour Restrictions Apply



# Appellant's Interpretation of 4.1.16





# Staff Responses

## Appellant's Claims

Interpretation is not valid or official because:

1. Director did not authorize a staff member to interpret the provision.
2. Interpretation does not appear on official letterhead.
3. Interpretation was not made generally available to the public.

## Staff's Response

Interpretation is valid and official because:

1. Director's testimony.
2. 100s of interps (hard copy, digital, Word, PDFs, to emails) some on letterhead and some not.
3. An interpretation not generally distributed by the government agency to potential stakeholders should not invalidate it or make it unofficial.



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# Staff Responses

## Appellant's Claims

4.1.6 is clear and plain enough to not need an interpretation

## Staff's Response

1. Staff frequently provides interpretations on provisions that range from clear to murky.
2. In case 14DEVPLAN1000, Commissioners questioned Staff on methodology of measurement and response aligns with written interpretation. Commission unanimously approved the case. See Attachment 5.



0 100 200 400 600 800 Feet

100' BUFFER AREA  
AROUND FEDEX



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PEC/Fed Ex

R4

R-4

**Legend**

- BufFedX100
- Block Boundaries
- Lot Lines
- Right of Way Lines

**Zoning-Detailed**

**Zoning Code**

- PEC Planned Employment Center
- R4, (R4) Residential Single Family

**Streets**

- <all other values>

**STCL\_CLASS**

- PRIMARY COLLECTOR
- SECONDARY COLLECTOR

MAPLE STATION WAY

PLANTSIDE DR





# Staff Responses

## Appellant's Claims

4.1.6 applies to entire site if any portion of the site is within 100 feet of a residential zoning district, residential use, or mixed use development containing a residential use

## Staff's Response

3. 4.1.6.B states, "This restriction (applies) to the idling of any heavy or medium trucks on the site..." Staff maintains that the preamble sets the parameters for where the noise standards apply. "Site" means the specific parts of the site called out in the preamble where various uses are prohibited.

# Staff Responses

## Appellant's Claims

4.1.6 applies to entire site if any portion of the site is within 100 feet of a residential zoning district, residential use, or mixed use development containing a residential use

## Staff's Response

4. If operating hour requirements applied to entire subject site, then there would be no need to mention the 100' buffer in the regulations. The regulations would just say that the operating hour restrictions apply to sites adjacent to a residentially zoned or used property. See Attachment 6, Sec. 4.5.6.B of LDC.

# Staff Conclusion

Based upon the file of this case, this staff report, and the evidence and testimony submitted at the public hearing, BOZA must affirm or reverse, in part or in whole, the subject written interpretation.