

# Board of Zoning Adjustment Staff Report

April 3, 2017



<b>Case No:</b>	16DEVPLAN1108
<b>Request:</b>	Variance and Landscape Waiver
<b>Project Name:</b>	Best Western
<b>Location:</b>	2905 Fern Valley Road
<b>Zoning:</b>	EZ-1
<b>Form District:</b>	Suburban Workplace
<b>Area:</b>	2.946 acres
<b>Owner:</b>	KAC Enterprises LLC.
<b>Applicant:</b>	Nick Pregliasco – Bardenwerper, Talbott & Roberts PLLC.
<b>Representative:</b>	Nick Pregliasco – Bardenwerper, Talbott & Roberts PLLC.
<b>Jurisdiction:</b>	Louisville Metro
<b>Council District:</b>	21 – Dan Johnson
<b>Case Manager:</b>	Ross Allen, Planner I

## REQUEST

- **Variance:** from the Land Development Code (LDC) section 4.8.3.D to allow, at its closest point, a proposed 5 story hotel and parking area to encroach into the streamside, middle and outer buffer zones by approximately 89 linear feet (maximum) or for an area of approximately 59,721 sf. along the rear (north) property line.

Location	Requirement	Request	Variance
Rear property line	100 ft.	11 ft.	89 ft.

- **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 along the rear (north) property line for a length of approximately 1138.5 ft.

## CASE SUMMARY/BACKGROUND/SITE CONTEXT

The applicant is proposing to construct a 5 story hotel with a building footprint of 7,656 sf. and a gross floor area of 38,280 sf. with a height of 45 feet. The proposal is an addition to 2 existing hotels. The first existing structure is a 2 story hotel located perpendicular to Fern Valley Road and set back from the front property line by approximately 67 feet and having a 10,378 sf. building footprint and a gross floor area of 20,756 sf. The second structure, a 2 story hotel with a building footprint of 8,966.5 sf. and a gross floor area of 17,933 sf. is located on the triangular portion of the parcel in the north/western adjacent to Greasy Ditch, a perennial stream with a streamside buffer zone of 100 ft. total from the top/edge of the stream bank. The proposed development will add an additional 16,307 sf. of impervious surface which includes the addition and expansion of existing impervious surfaces (paved/asphalt) connecting to the two existing hotels buildings to the proposed third building, to the west/north of the triangular portion of the lot. The parking requirements have been met. The applicant is providing sufficient Interior Landscape Area (ILA), proposing 5,302 sf. throughout the site including all three structures. The rear of the property where the applicant is requesting a waiver will have a minimum 5

ft. property perimeter buffer rather than the required 35 foot with plantings as required by the LDC, needing a 1.5 density multiplier.

The subject site is bounded by an Indi's Restaurant and Dunkin' Donuts to the west, a Hardee's Restaurant and Circle K/Marathon Oil Gas Station to the east, and the United Auto Workers Union Local 862 Hall and a partially vacant Shipping Warehouse to the south, and residential single family homes in the Preston Park Section 4A subdivision north of Greasy Ditch. The rear of the property as a result of the triangular shape of the lot is also bounded by three properties off of Ulrich Ave. one being a commercial property with UNS Vapors and More, the other two being associated with Stories Auto Body Warehouse, both commercial properties.

#### LAND USE/ZONING DISTRICT/FORM DISTRICT TABLE

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

#### PREVIOUS CASES ON SITE

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

#### INTERESTED PARTY COMMENTS

No comments were received from concerned citizens.

#### APPLICABLE PLANS AND POLICIES

Comprehensive Plan (Cornerstone 2020)  
Land Development Code (Jan. 2017)

#### STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCE from LDC section 4.8.3.D to allow a proposed 5 story hotel and parking area to encroach into the streamside, middle and outer buffer zones by approximately 89 linear feet (maximum) at its closest point.

- (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 a "as-built" condition which will include the renovation of an existing 2-story hotel, reconstruction of an existing parking lot, and the addition of the 5 story hotel. 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, at its closest point, two existing hotels and parking area on the subject site encompass approximately 91,585 sf. of a total 128,327.8 sf. The proposed hotel expansion and parking area are encroaching into the stream side buffer zones as are multiple other structures adjacent to Greasy Ditch.

- (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 hotel as proposed is 5 stories in height, 45 feet as allowed by LDC within a Suburban Workplace Form District, and being adjacent to Greasy Ditch increases the impervious surface area by approximately 16,307 sf. The increase in impervious surface is unknown to Planning and Design Staff 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.

- (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.

#### 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 other structures in the vicinity, 2805, 2809, 2815 Fern Valley Road and 815, 825, 833 Ulrich Ave., encroach into the stream side buffers zones.

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 since the third structure that is to be constructed on site has not been built to date and the applicant is requesting relief from the Land Development Code.

#### ADDITIONAL CONSIDERATIONS per LDC section 4.8.4.B.1:

- a. 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 Buffer Area.

STAFF: 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 Buffer Area. Had the streamside buffer setback, from the edge of bank, 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.

- b. Encroachment into the required Buffer Area shall be limited to the minimum necessary to accommodate the proposed use.

STAFF: 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.

- c. 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.

STAFF: 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.

- d. Approval of the variance will not result in a reduction in water quality.

STAFF: 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  
adjacent to Greasy Ditch and Preston Park Section 4A subdivision:**

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

STAFF: The waiver will adversely affect adjacent property owners since the proposed five story hotel is taller than the two existing structures and screening is not present on the applicant's property providing a buffer between the Preston Park Section 4 A Subdivision.

- (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.
- 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 5 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 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 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.

- (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.

### TECHNICAL REVIEW

- The applicant is requesting a landscape waiver for plantings along the northern property line but has not provided elevations/renderings after several request by PDS staff. As a result, the design of the building will need to be assessed if the landscape waiver is granted per LDC Section 5.7.1.B.3.a and/or b.

### STAFF CONCLUSIONS

The variance request appears to be adequately justified and meets the standard of review and complying with MSD regulations concerning the Blueline Stream, Greasy Ditch. However, the waiver does not meet the standard of review per the Comprehensive Plan (Cornerstone 2020) per Guideline 3 policies 9, 21, 22, 24, and Guideline 13 policies 4 and 6. 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 standard of review for granting a variance as established in the Land Development Code (Jan. 2017) from section 4.8.3.D to allow a proposed 5 story hotel and associated parking (VUA) to encroach into the 100 foot stream side buffer of the Greasy Ditch Blueline Stream and must determine if the proposal meets the standard of review for granting a waiver from LDC 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 adjacent to Greasy Ditch and Preston Park Section 4A subdivision. The applicant will be required to apply and record a minorplat with the three proposed tracts and a dedication of right of way dedication along a 146.65 foot length parallel to Fern Valley Road, as shown on the development plan.

**Approve or Deny** Variance from LDC Section 4.8.3.D to allow the proposed 5 story hotel to be built in streamside, middle, and outer buffer zones of Greasy Ditch (Blueline Stream).

**Approve or Deny** Landscape Waiver from LDC Section 5.7.1.B.3.10.2.4.A to reduce the 35 foot Landscape buffer area in a Transition zone setback to five feet and to not provide the required 1.5 planting multiplier, 3 Large Type A or Medium type B plus an eight foot screen along the Northern property line for approximately 781 feet.

- A condition of approval is requested to allow PDS staff the opportunity to review the elevations/renderings of the proposed 5 story hotel. The proposed 5 story hotel lies in a transition zone setback from a Neighborhood to a Suburban Workplace Form District prior to transmitting the development plan for construction review staff would like an opportunity to review the elevations/renderings for requirements in LDC Section 5.6.1.B.1.a.i, ii, and iii.

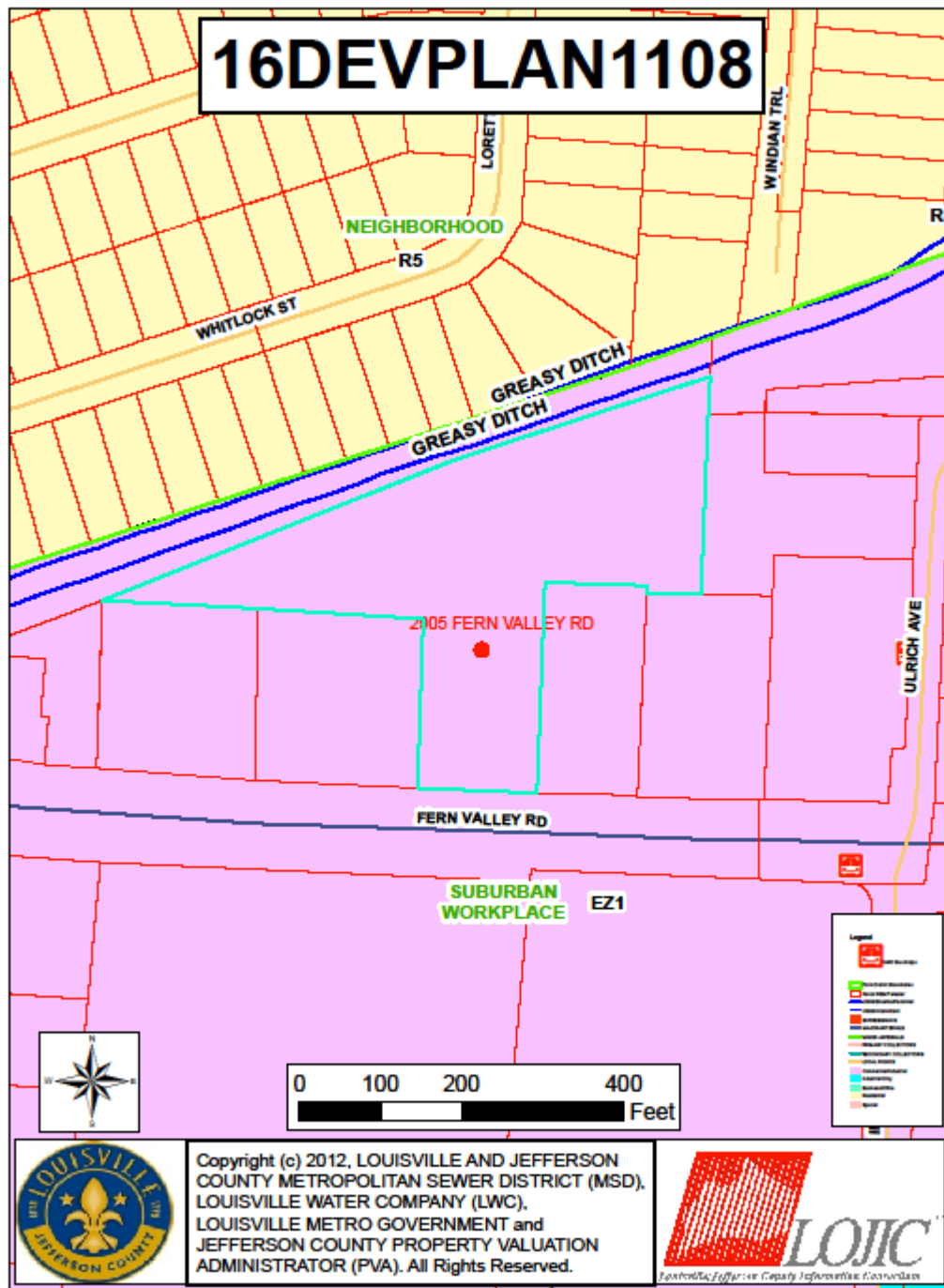
### NOTIFICATION

Date	Purpose of Notice	Recipients
April 3, 2017	Hearing before BOZA	1 <sup>st</sup> tier adjoining property owners Subscribers of Council District 21 Notification of Development Proposals
March 27, 2017	Sign Posting for BOZA	Sign Posting on property

### ATTACHMENTS

1. Zoning Map
2. Aerial Photograph

1. Zoning Map





2. Aerial Photograph

