

**Board of Zoning Adjustment  
Staff Report**  
October 2, 2017



<b>Case No:</b>	17DEVPLAN1084
<b>Request:</b>	Category 2B with variances and waivers.
<b>Project Name:</b>	Cat2B 3122 Dixie
<b>Location:</b>	3122 Dixie Highway
<b>Area:</b>	0.60 acres
<b>Owner:</b>	Ahmed Albakri
<b>Applicant:</b>	Bill Schroll – Schroll Land Surveying LLC.
<b>Representative:</b>	Bill Schroll – Schroll Land Surveying LLC.
<b>Jurisdiction:</b>	City of Shively
<b>Council District:</b>	3 – Mary Woolridge
<b>Case Manager:</b>	Ross Allen, Planner I Steve Hendrix, Planning Supervisor

**REQUESTS**

**Variance #1:** from the LDC (City of Shively) Section 5.5.1.A.2 to allow the proposed addition to be 6 feet 2 inches beyond the Gillette Avenue setback.

Location	Requirement	Request	Variance
Gillette Avenue	5 feet	11 feet, 2 inches	6 feet, 2 inches

**Variance #2:** from the LDC (City of Shively) Section 5.5.1.A.2 to allow the existing building and proposals to be 84 feet beyond the Dixie Highway setback

Location	Requirement	Request	Variance
Dixie Highway	5 feet	89 feet	84 feet

**Waiver #1:** from the LDC (City of Shively) Section 5.5.1.A.3.a to allow the parking to be permitted in the front, (east) of the proposed additions to the existing building.

**Waiver #2:** from the LDC (City of Shively) Section 5.5.1.A.3.a to provide a 50 foot long, 3 foot tall masonry wall along Gillette Avenue and Dixie Highway, instead of 89 feet along Gillette Avenue and 125 feet along Dixie Highway.

**Waiver #3** from the LDC (City of Shively) Section 5.8.1.B not to provide a sidewalk along Gillette Ave. for an approximate distance of 184 feet.

## **CASE SUMMARY/BACKGROUND**

The 0.60 acre site is located at the northwestern corner of Gillette Avenue and Dixie Highway within a C-2 zoning district and Traditional Marketplace Corridor Form District. A 2,979 square foot convenience store is located on the property. The proposal includes a 2,160 square foot laundromat on the southern side and a 2,340 square foot grocery (first floor) and a 507 square foot office on the second floor. The grocery will have fresh fruits and vegetables and include a deli.

A Parking Waiver for the reduction of 6 parking spaces, (29 to 23), was approved on September 21, 2017 by the Planning Commission.

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

	Land Use	Zoning	Form District
<b><i>Subject Property</i></b>			
<b>Existing</b>	Convenience Store	C-2	Traditional Marketplace Corridor
<b>Proposed</b>	Convenience Store, Grocery, Laundromat	C-2	TMC
<b><i>Surrounding Properties</i></b>			
<b>North</b>	Vacant Parcel, Apartments	C-2	TMC
<b>South</b>	Offices, Apartments	C-2	TMC
<b>East</b>	Car Rental, Apartments	C-1/EZ-1	TMC
<b>West</b>	Vacant Parcel/Wooded Area	C-2, R-7	TMC

## **STAFF FINDING / RECOMMENDATION**

**Variance #1:** from the LDC, City of Shively, Section 5.5.1.A.2 to allow one of the additions to be built 6 feet 2 inches beyond the Gillette Avenue setback. The variance seems justifiable due to the location of the existing convenience store.

**Variance #2:** from the LDC, City of Shively, Section 5.5.1.A.3.a to allow the proposed northern addition and existing convenience store to be 84 feet beyond the Dixie Highway setback. The variance seems appropriate due to the placement of the existing convenience store.

**Waiver #1:** from the LDC, City of Shively, Section 5.5.1.A.3.a. to allow parking in the front of the businesses. The waiver is justifiable due to the existing location of the convenience store, the placement of the additions and the pedestrian/vehicular flow pattern.

**Waiver #2:** from the LDC, City of Shively, Section 5.5.1.A.3.a to allow a portion of a masonry wall to be installed along Gillette Avenue and Dixie Highway. The waiver seems justifiable since the walls will establish the corner and provide a screen to some of the parking lot.

**Waiver #3** from LDC, City of Shively, Section 5.8.1.B not to provide a sidewalk along Gillette Avenue for an approximate distance of 175 feet. The sidewalk waiver does seem justifiable, since across Gillette Avenue it is all pavement. Although a sidewalk is not defined on the south side of Gillette Avenue, there is room for pedestrians, thus eliminating the need for more concrete on the north side of Gillette Avenue.

## **TECHNICAL REVIEW**

None

## **INTERESTED PARTY COMMENTS**

No comments were received from concerned citizens.

## **APPLICABLE PLANS AND POLICIES**

Land Development Code (City of Shively)  
Comprehensive Plan (Cornerstone 2020)

### **STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCE #1: from the LDC (City of Shively,) Section 5.5.1.A.2 to allow the proposed addition to be 6 feet, 2 inches beyond the Gillette Avenue right of way.**

- (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 sight distance concerns are not affected .

- (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 there is existing commercial land use on the subject property.

- (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 sight distance along Gillette Avenue will remain basically the same.

- (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 the Traditional Marketplace Corridor Form District design elements require the buildings to be placed zero to five feet from the right of way, the variance allows the applicant to modify the existing building at its present location.

### **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 due to the location of the existing convenience store, being on a corner and within a Traditional Marketplace Corridor Form District.

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 the design of the proposed modifications might not be feasible with the existing convenience store location.

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 regulations, since the convenience store is existing and the applicant is requesting modifications.

**STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCE #2: from the LDC (City of Shively,) Section 5.5.1.A.2 to allow the proposed addition and existing convenience store to be 84 feet beyond the Dixie Highway 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 sight distance concerns will not change.

- (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 existing convenience store has been at this location for approximately 10 years.

- (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 parking access will remain the same along Dixie Highway.

- (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 the majority of commercial uses along Dixie Highway have similar setbacks.

**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 due to the location of the existing convenience store and being on a corner lot within a Traditional Marketplace Corridor Form District.

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 the design of the modifications might not be feasible with the existing convenience store location.

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 regulations, since modifications are proposed for the existing convenience store.

**STANDARD OF REVIEW AND STAFF ANALYSIS FOR A WAIVER #1 LDC Section 5.5.5.A. 3.a, to allow the parking to be allowed in front of the businesses.**

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

STAFF: The waiver will not adversely affect adjacent property owners, since there is a vacant parcel to the north, Gillette Avenue will provide a buffer from the apartments to the south and Dixie Highway will provide a separation from the car rental business and apartment house to the east.

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

STAFF: The waiver Guideline 3, Policy 1 states to ensure compatibility of all new development and redevelopment with the scale and site design of nearly existing development and with the pattern of development within the form district. The existing structure and additions will be in character with the surrounding areas based upon setbacks of adjacent properties in the general vicinity

- (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 existing parking and the proposed parking are basically the same in design, with the elimination of parking along the Gillette Avenue side.

- (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 create an unnecessary hardship on the applicant, due to the location of the existing convenience store and being able to make modifications.

**STANDARD OF REVIEW AND STAFF ANALYSIS FOR A WAIVER to allow a portion of a masonry wall be located adjacent to the Gillette Avenue and Dixie Highway rights of way.**

The site plan shows a 3 foot masonry wall extending along both Dixie Highway and Gillette Avenue for a length of 50 feet from the corner.

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

STAFF: The waiver will not adversely affect adjacent property owners, since most of the apartment units across Gillette Avenue will be facing the side of the proposed laundromat. Parking will also be

more than 100 feet from the apartment house that is across Dixie Highway that has a C-1 zoning classification.

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

STAFF: The waiver will not violate specific guidelines of Cornerstone 2020, since Guideline 2, Policy 15 states to encourage the design, quantity and location of parking in activity centers to balance safety, traffic, pedestrian, environmental and aesthetic considerations. The wall establishes the corner, encloses most of the parking and at the same time balances safety and pedestrian considerations.

- (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 provide some relief to the applicant, since a wall will extend from the corner 50 feet along Gillette Avenue and Dixie Highway, but at the same time defining that corner.

- (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 create an unnecessary hardship on the applicant due to cost factor.

**STANDARD OF REVIEW AND STAFF ANALYSIS FOR SIDEWALK WAIVER of section 5.8.1.B. to not provide a sidewalk along Gillette Avenue for an approximate distance of approximately 175 feet:**

1. How does the proposed waiver conform to the Comprehensive Plan and the intent of the Land Development Code?

STAFF: The waiver does not violate the intent of the Land Development Code. The applicant intends to provide safe pedestrian access from the Dixie Highway to the entrance. During the field inspection it was noticed that extensive pavement exists along the south side of Gillette Avenue, opposite of the proposed development that would provide ample room for pedestrians.

2. Why is compliance with the regulations not appropriate, and will granting of the waiver result in a development more in keeping with the Comprehensive Plan and the overall intent of the Land Development Code?

STAFF: Guideline 7, Policy 1 states that developments should be evaluated for their impact on the street and roadway system and to ensure that those who propose new developments bear or reasonably share in the costs of the public facilities and services made necessary by development. Guideline 9, Policy 1 states that new development should provide for the movement of pedestrians, bicyclists and transit users with sidewalks along the streets of all developments where appropriate. As noted above, pavement exists across the Gillette Avenue right of way for pedestrians, bicyclists, and transit users.

3. What impacts will granting of the waiver have on adjacent property owners?

STAFF: The granting of the waiver will not have an impact on the adjacent property owners, since there is ample space for pedestrians on the south side of Gillette Avenue.

4. Why would strict application of the provision of the regulations 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 regulations would create an unnecessary hardship for the applicant, with the additional cost of more concrete.

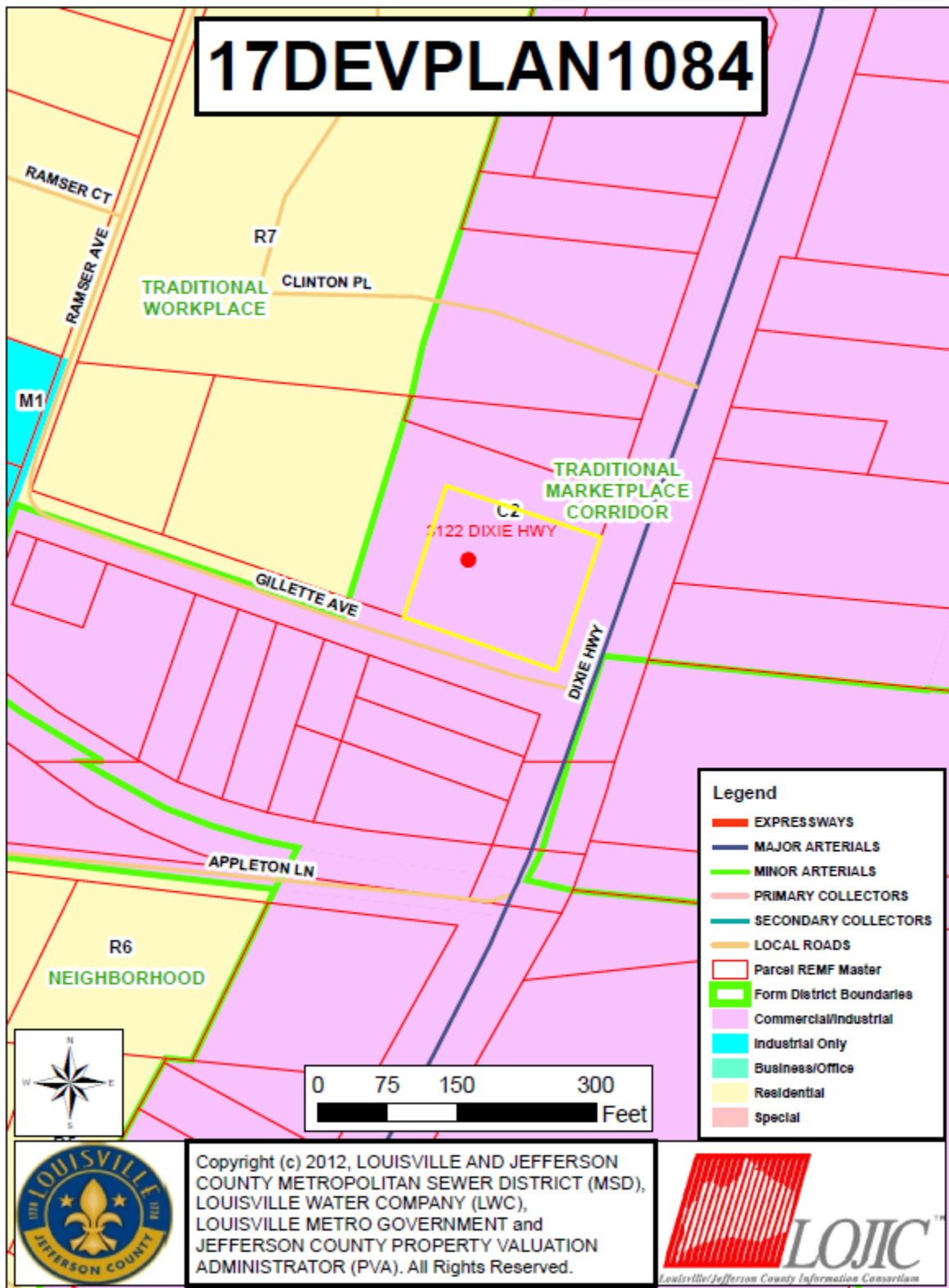
**NOTIFICATION**

Date	Purpose of Notice	Recipients
9/18/2017	Hearing before BOZA	1 <sup>st</sup> tier adjoining property owners Subscribers of Council District 3 Notification of Development Proposals
9/ 15/ 2017	Sign Posting for BOZA	Sign Posting on property

**ATTACHMENTS**

1. Zoning Map
2. Aerial Photograph

1. Zoning Map



2. Aerial Photograph

