

Board of Zoning Adjustment

Staff Report

July 30, 2018



Case No:	18VARIANCE1058
Project Name:	Big Bar Variance Modification
Location:	1202 Bardstown Road
Owner(s):	Chris Cook Holdings LLC
Applicant:	Kevin Bryan
Jurisdiction:	Louisville Metro
Council District:	8 – Brandon Coan
Case Manager:	Dante St. Germain, Planner I

REQUEST

- **Modification of a Variance** to allow relief from conditions of approval related to construction which is no longer proposed.

CASE SUMMARY/BACKGROUND

The subject property is located in the Tyler Park neighborhood, and is currently developed with a one-story commercial structure, operated as a bar. The applicant proposes to expand the existing structure and encroach into the rear yard setback. A variance was granted on May 7, 2018 for the proposed encroachment, under case number 18VARIANCE1035. Three conditions of approval were attached to the granted variance:

1. There will be an emergency egress only for the door at the rear of the property.
2. There shall be a gate installed at the top of the steps which shall only be opened from the inside.
3. Construction of the steps will be poured concrete.

These conditions were related to a proposed emergency egress door and stair to be constructed at the rear of the property. The stair was to lead to the rear yard of the neighboring property. The rear yard of the neighboring property is above grade with a retaining wall, and a second set of steps was to be constructed into the retaining wall to lead patrons down to grade.

This plan required that the neighboring property grant an easement for the use of the Big Bar patrons in the event of an emergency. The neighboring property owner has declined to grant the easement. Therefore, no stairs at the rear of the structure are now proposed, and the steps to be constructed into the retaining wall are also no longer proposed. Because the conditions of approval are now both moot and impossible to fulfill, the applicant requests relief from the three conditions.

STAFF FINDING

Staff finds that the requested variance modification is adequately justified and meets the standard of review.

TECHNICAL REVIEW

- No technical review was undertaken.

INTERESTED PARTY COMMENTS

Staff received a phone call from an unidentified caller requesting details about the variance modification. The caller did not express support or opposition. Staff also received an email from neighbor Rick Sweeney. The email is attached to this staff report as Attachment #5.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR MODIFICATION OF VARIANCE

- (a) The requested variance will not adversely affect the public health, safety or welfare.

STAFF: The requested variance modification will not adversely affect the public health, safety or welfare as the requested relief is needed due to changes to the proposed site plan, such that the construction which required the conditions of approval is no longer proposed to occur.

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

STAFF: The requested variance modification will not alter the essential character of the general vicinity as the changes to the plan have received Bardstown Road/Baxter Avenue Corridor Review Overlay District approval.

- (c) The requested variance will not cause a hazard or nuisance to the public.

STAFF: The requested variance modification will not cause a hazard or nuisance to the public as the changed plan will be constructed to comply with all building codes.

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

STAFF: The requested variance modification will not allow an unreasonable circumvention of the zoning regulations as the plan has been changed such that the existing conditions of approval are not possible to fulfill.

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 modification arises from special circumstances which do not generally apply to land in the general vicinity or the same zone because the original plan can no longer be followed.

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 may deprive the applicant of the reasonable use of the land or create an unnecessary hardship on the applicant by requiring the

applicant to construct doors and stairs without an easement on the property affected, which would not be possible for the applicant to do.

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 as the applicant is requesting the variance modification and has not begun construction.

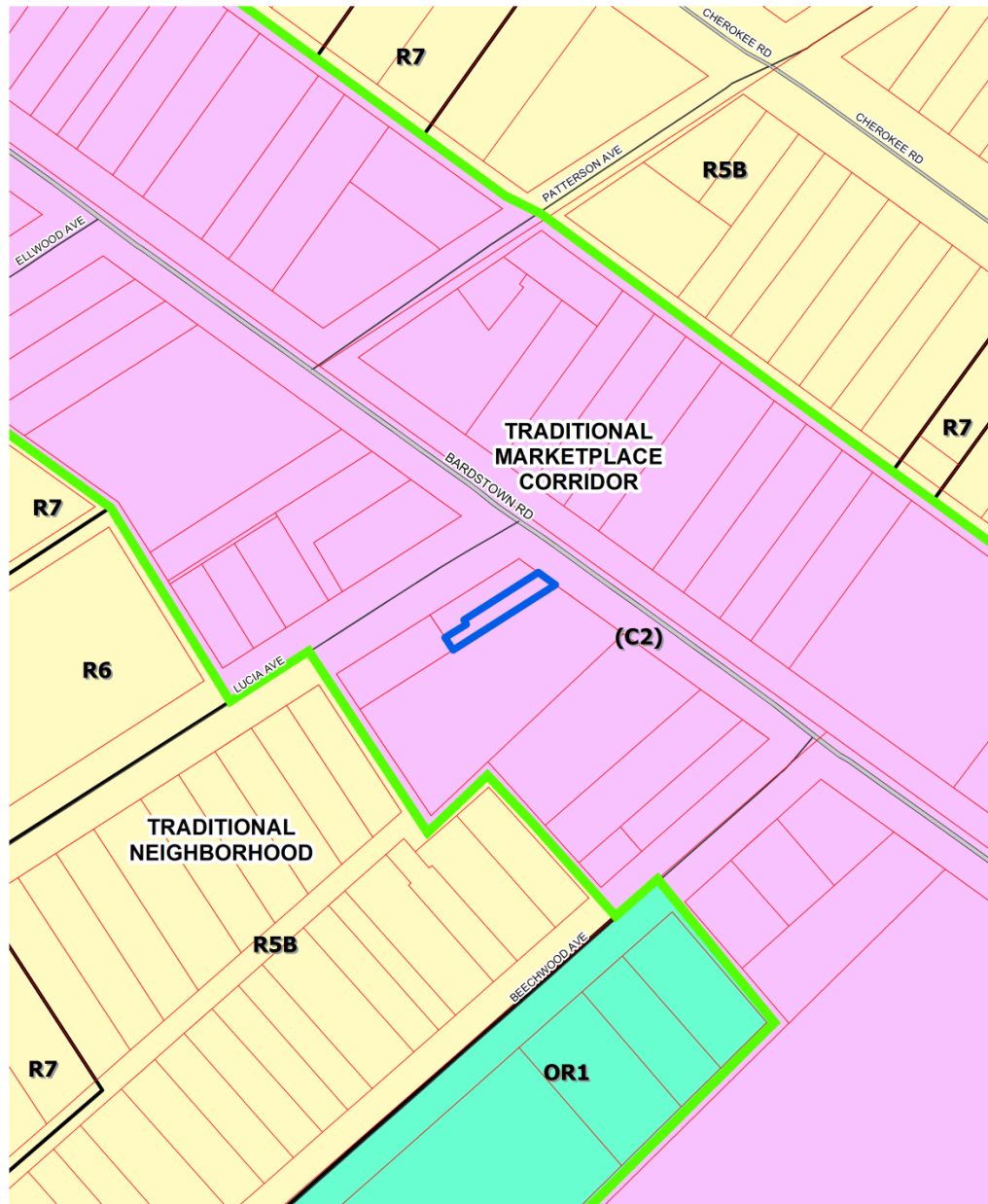
NOTIFICATION

Date	Purpose of Notice	Recipients
07/11/2018	Hearing before BOZA	1 st tier adjoining property owners Registered Neighborhood Groups in Council District 8
07/13/2018	Hearing before BOZA	Notice posted on property

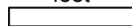
ATTACHMENTS

1. Zoning Map
2. Aerial Photograph
3. Elevation
4. Site Photos
5. Interested Party Email

1. Zoning Map



1202 Bardstown Road
feet



110

Map Created: 4/24/2018

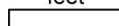


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2. Aerial Photograph



1202 Bardstown Road
feet



25

Map Created: 4/24/2018



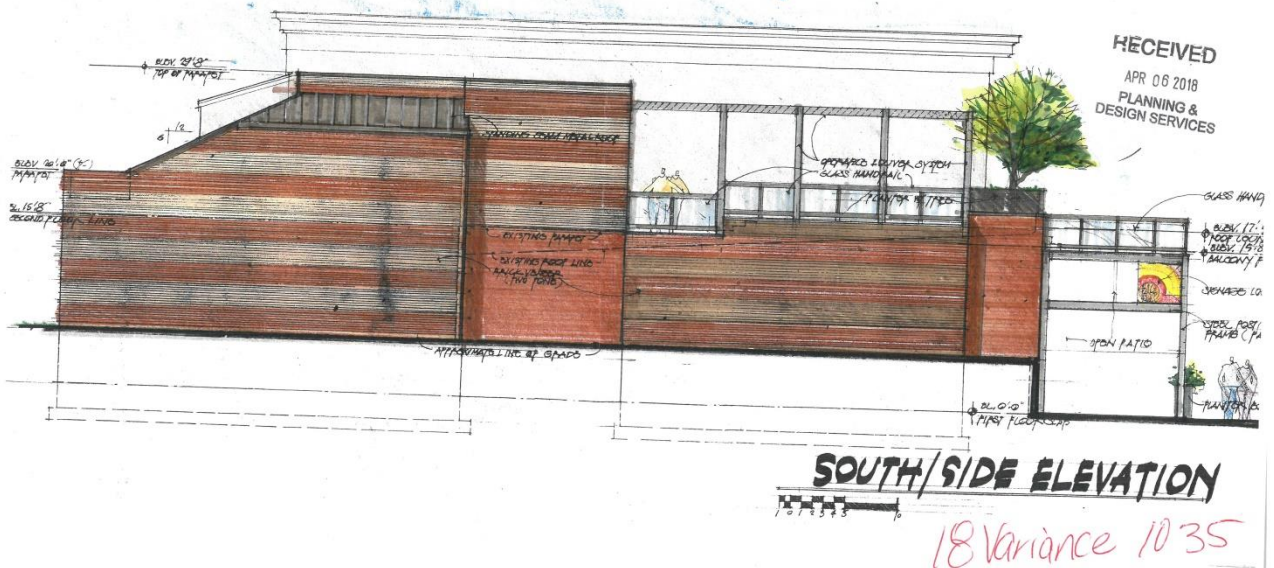
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3. Elevation



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SOUTH/SIDE ELEVATION

18 Variance 1035



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18 Variance 1035

4. Site Photos



The front of the subject property and the property to the right.



The property to the left of the subject property.



The properties across Bardstown Road.



The elevation change at the Lucia Avenue sidewalk where the steps were to be constructed. No steps are proposed here at this time.



The rear yard where the applicant originally proposed allowing emergency egress through the neighboring property.

5. Interested Party Email

St. Germain, Dante

From: Rick Sweeney <rickjsweeney@yahoo.com>
Sent: Friday, July 13, 2018 4:38 PM
To: St. Germain, Dante; Coan, Brandon
Cc: Weatherby, Jasmine
Subject: Re: is this a bait and switch ? Fw: Case No. 18VARIANCE1058 - 1202 Bardstown Rd.

Ok, thanks for the info. At least I know the particulars and will assume the neighbors will be alert enough to the situation to address whatever concerns they may have about the expansion, if they exist.

But this kind of thing makes no sense to me. A variance was approved before a necessary easement was in place? Wouldn't the correct thing to do be to postpone the decision on the variance until the easement was granted? In the case of the easement not being granted, the variance request is then presented with whatever the new solution the requesting owners propose.

I have no particular concerns about this project except it seems the process could be used in other cases to gain approval of a project that many would object to except for the conditions being met which themselves rely on some easement or other permission being granted. In this hypothetical, a variance is approved, though perhaps there was actually no intent or hope of that "other permission" being granted, but it becomes a whole lot more palatable to zoning board to pass a simple "removal of the conditions" and allow variance to remain without regard to whatever the objections may exist to the "backup plan", rather than have to approve the "backup plan" from the get go.

Removing conditions of an existing variance might fly under the radar of any that had objections, and might also be a way of zoning board members of using the backward logic that, "Hey, the variance is already approved, we're just here to determine the relevance of removing these conditions that are now moot", ignoring that the impact of the "backup plan" has any relevance to the approval of removing the conditions. In other words, a "bait and switch" that has side stepped what might have been a contentious case had the backup plan been presented originally.

Again, I'll reiterate that I don't say that that is what happened here, and don't know that there is any reason to object to the alternate plans (though for all I know there may be). But I don't like this as a template of how approval of variances are handled. It could have been a much different situation in another area, with an "alternate plan" that raised much more objection. The variance should never have been approved until all the requirements for the plan to take place were met.

Thanks for checking on it.

Rick Sweeney

On Friday, July 13, 2018, 7:16:36 AM EDT, Coan, Brandon <Brandon.Coan@louisvilleky.gov> wrote:

No further questions, Dante - thanks for the thorough explanation.

Brandon Coan

Metro Council District 8
(502) 574-1108

601 W. Jefferson Street
Louisville, KY 40202

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From: St. Germain, Dante
Sent: Thursday, July 12, 2018 4:53:26 PM
To: Coan, Brandon; Rick Sweeney
Cc: Weatherby, Jasmine
Subject: RE: is this a bait and switch ? Fw: Case No. 18VARIANCE1058 - 1202 Bardstown Rd.

Councilman Coan,

The original variance request was for Big Bar on Bardstown Road to expand to the rear and encroach into the rear yard. The expansion plan involves a second floor on the building. The original plan had an emergency egress door on the rear of the structure leading from the second floor down a set of stairs, to the rear yard of the wine shop next door. There was also a plan to change a retaining wall on the Lucia Avenue sidewalk to a staircase, so that people exiting the building could descend to ground level. This retaining wall is also on the wine shop property.

The plan hinged on the wine shop granting an easement for Big Bar patrons to use their rear yard in the event of an emergency. At the time of the original variance request, the easement had not yet been granted.

At the hearing of the Board of Zoning Adjustment, a representative of the property that abuts the rear of the Big Bar property raised some concerns about this plan. One concern was that patrons and others may loiter behind the wine shop, since they would have access to that space now with the stairs. Another was that the current retaining wall adjacent to the Lucia sidewalk is shared between the wine shop and the property that the speaker represented, and that changing this retaining wall into a staircase could have negative engineering effects on the neighboring property.

The Board addressed these concerns with three conditions of approval:

1. There will be an emergency egress only for the door at the rear of the property.
2. There shall be a gate installed at the top of the steps which shall only be opened from the inside.
3. Construction of the steps will be poured concrete.

Ultimately, the wine shop refused to grant an easement. The proprietor of Big Bar has reworked the plan, so that the emergency egress stairs are no longer located at the rear. The variance is still needed, but these conditions of approval are now impossible to fulfill, and the concerns of the neighboring property that spurred them are moot. Therefore, the request is now to remove the conditions of approval.

Please let me know if you have any additional questions.

Dante St. Germain

Planner I

Planning & Design Services

Department of Develop Louisville

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Louisville, KY 40202

(502) 574-4388

<https://louisvilleky.gov/government/planning-design>



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From: Coan, Brandon
Sent: Thursday, July 12, 2018 2:35 PM
To: Rick Sweeney; St. Germain, Dante
Cc: Weatherby, Jasmine
Subject: RE: is this a bait and switch ? Fw: Case No. 18VARIANCE1058 - 1202 Bardstown Rd.

Rick – Dante is the case manager for this one.

Dante – please see below; can you enlighten us as to what exactly this is all about? I'm confused, too. Thanks!

Brandon Coan

Metro Council District 8

(502) 574-1108

601 W. Jefferson Street

Louisville, KY 40202

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From: Rick Sweeney [mailto:rickjsweeney@yahoo.com]
Sent: Thursday, July 12, 2018 11:18 AM
To: Coan, Brandon
Subject: is this a bait and switch ? Fw: Case No. 18VARIANCE1058 - 1202 Bardstown Rd.

Is this a hearing to discuss removing a Variance? (hard to believe a Variance would ever be removed in this city).

Or is this a hearing to regarding an attempt to get out of some of the conditions originally required in order to get the Variance?

... that is, originally saying they were going to build such and such and agreeing to certain conditions to allow a Variance for them to build such and such, and now say we no longer want to build such and such, so we want the conditions removed, but oh, we still want the Variance, however...

Is this that kind of thing?

If it is, then I'd like to know more about it. Its worth knowing when a bait and switch goes on, because it's bad practice and only becomes the method of choice for projects in the area.

Thanks

Rick Sweeney

----- Forwarded Message -----

From: Council District 8 Notification of Development Proposals <development-notifications@public.govdelivery.com>

To: "rickjsweeney@yahoo.com" <rickjsweeney@yahoo.com>

Sent: Wednesday, July 11, 2018, 11:00:12 AM EDT

Subject: Case No. 18VARIANCE1058 - 1202 Bardstown Rd.

- [18VARIANCE1058_BOZA+Notice_07.30.18.pdf](#)

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