

Board of Zoning Adjustment

Staff Report

April 20, 2020



Case No:	20-WAIVER-0001 & 20-VARIANCE-0012
Project Name:	Southwest Town Center Outlot
Location:	9050 Dixie Highway
Owner(s):	William Wagner, Blanding Partners, LLC
Applicant:	William Wagner, Blanding Partners, LLC
Jurisdiction:	Louisville Metro
Council District:	14 – Cindi Fowler
Case Manager:	Lacey Gabbard, AICP, Planner I

REQUEST(S)

1. **Waiver** from Land Development Code section 10.2 to allow parking to encroach into the VUA buffer (20-WAIVER-0001)
2. **Waiver** from Land Development Code section 10.2.4.B.3 to allow the landscape buffer on Dixie Highway to overlap an easement by more than 50% (20-WAIVER-0001)
3. **Variance** from Land Development Code Table 8.3.2 to allow a proposed sign to exceed the maximum height and area (20-VARIANCE-0012)

Land Use	Street Frontage	Area (S.F.)/Height (ft)
Institutional, Office, Commercial and Industrial	<450 feet	140/28

CASE SUMMARY/BACKGROUND

The subject site is zoned C-1 Commercial in the Suburban Marketplace Corridor form district, in the Pleasure Ridge Park neighborhood of Louisville Metro. It is located in a shopping center on the west side of Dixie Highway, south of the Elzie Road intersection and north of the Johnsontown Road intersection.

The applicant is proposing a new outlot in front of an existing commercial center that will include a 4,300 square foot restaurant and a 5,525 square foot retail space. The subject site was previously used as a bank and parking lot, but the bank has been demolished.

The applicant is requesting a waiver to allow parking to encroach into the 25 foot VUA buffer along Dixie Highway. The existing parking lot / impervious area along Dixie Highway appears to encroach into the VUA buffer. Additionally, the applicant is requesting a waiver to allow the same landscape buffer on Dixie Highway to overlap an easement by more than 50%. There is a variable gas and electric easement that runs along the property perimeter along Dixie Highway. The applicant is proposing to provide approximately four (4) feet of VUA buffer along Dixie Highway.

The applicant is also requesting a variance to allow a proposed sign to exceed the permitted height and area allowed in the Suburban Marketplace Corridor form district. There is an existing sign on the subject site that is located in the parking lot and must be removed in order to accommodate the proposed development. The existing sign is approximately forty (40) feet tall and has six (6) sign panels that total approximately 720 square feet. The Land Development Code restricts a new sign on

the subject site to 140 square feet and twenty-eight (28) feet tall. The purpose of the requested variance is to allow the applicant to build a new sign with the same dimensions as the existing sign and to move it to the median in the entrance to the shopping center directly to the south of the subject site.

The requested waivers and variance are associated with a Category 2B development plan under case 20-CAT2-0002. This case is staff approvable, so the Development Review Committee does not act upon this request. The waiver and variance requests were previously docketed for the March 16, 2020 Board of Zoning Adjustment hearing, but this was postponed due to COVID-19.

STAFF FINDING

The waivers and variance requests are adequately justified and meet the standards of review.

TECHNICAL REVIEW

MSD and Public Works have provided preliminary plan approvals.

INTERESTED PARTY COMMENTS

Staff has received no comments from interested parties concerning this proposal.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER OF LAND DEVELOPMENT CODE SECTION 10.2 TO ALLOW PARKING TO ENCROACH INTO THE VUA BUFFER

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

STAFF: The waiver will not adversely affect adjacent property owners, as the existing parking lot on the site encroaches into the VUA buffer on the subject site. This is an existing condition on many parcels along this portion of Dixie Highway. Additionally, the applicant proposes to provide approximately four (4) feet of VUA buffer, in addition to the green space from back of curb to the new sidewalk, between the proposed parking lot and Dixie Highway. The total green space will be approximately 8 to 9 feet.

The subject site is surrounded on the same side of the street by other commercially zoned properties. On the opposite side of Dixie Highway is a large (over 43 acre) R-4 Residential zoned property which, according to PVA, is used for agricultural purposes and has one or more dwellings. The subject site is separated from this property by the proposed buffer, Dixie Highway (which is at minimum 97 feet wide in this area) and railroad tracks.

(b) The waiver will not violate specific guidelines of The Comprehensive Plan; and

STAFF: Guideline 3, Policy 9 of Cornerstone 2020 calls for protection of the character of residential areas, roadway corridors and public spaces from visual intrusions and mitigation when appropriate. 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. 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. 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. Guideline 28, Policy 10 encourages outlot development in underutilized parking lots of existing development to promote utilization of existing infrastructure provided specific criteria for elements such as location, scale, signs, parking, lighting, and landscaping are met.

The waiver will not violate the Comprehensive Plan as the applicant proposes to provide four (4) feet of VUA buffer along Dixie Highway, in addition to the green space from back of curb to the new sidewalk. The total green space will be approximately 8 to 9 feet.

The subject site is currently a vacant parking lot. The proposed development supports the Comprehensive Plan's goal to promote outlot development in underutilized parking lots of existing development.

- (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, as there are overhead power lines along Dixie Highway that limit landscape space, and the existing parking encroaches into the VUA buffer.

- (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, as the additional ten (10) feet of VUA buffer area would decrease the usable depth of the subject site from approximately 140 feet to approximately 130 feet, which would restrict vehicle circulation and decrease the number of provided parking spaces by 33 (from 68 spaces provided to 35 spaces), which would be lower than the minimum number allowed (66 spaces).

STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER OF LAND DEVELOPMENT CODE SECTION 10.2.4.B.3 TO ALLOW THE LANDSCAPE BUFFER ON DIXIE HIGHWAY TO OVERLAP AN EASEMENT BY MORE THAN 50%

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

STAFF: The waiver will not adversely affect adjacent property owners, as it is an existing condition both on the subject site and in the vicinity of the subject site along this portion of Dixie Highway. The subject site is surrounded on the same side of the street by other commercially zoned properties. On the opposite side of Dixie Highway is a large (over 43 acre) R-4 Residential zoned property which, according to PVA, is used for agricultural purposes and has

one or more dwellings. The subject site is separated from this property by the proposed buffer, Dixie Highway (which is at minimum 97 feet wide in this area) and railroad tracks.

(b) The waiver will not violate specific guidelines of Plan 2040; and

STAFF: Guideline 3, Policy 9 calls for protection of the character of residential areas, roadway corridors and public spaces from visual intrusions and mitigation when appropriate. Guideline 3, Policies 21 and 22 call 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. Guideline 3, Policy 24 states that parking, loading and delivery areas located adjacent to residential areas should be designed to minimize 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 airborne and waterborne pollutants. Guideline 28, Policy 10 encourages outlot development in underutilized parking lots of existing development to promote utilization of existing infrastructure provided specific criteria for elements such as location, scale, signs, parking, lighting, and landscaping are met.

The waiver will not violate the Comprehensive Plan as the applicant is proposing to provide approximately four (4) feet of green space, to create a total of approximately 8-9 feet of green space from back of curb to the new sidewalk. Additionally, the subject site is surrounded on the same side of the street by commercially zoned properties internal to the shopping center, which are not incompatible with the subject site. The nearest residentially zoned property is a large parcel on the opposite side of Dixie Highway.

The subject site is currently a vacant parking lot. The proposed development supports the Comprehensive Plan's goal to promote outlot development in underutilized parking lots of existing development.

(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, as the easement is existing and the applicant proposes to provide plantings as required by the Land Development Code.

(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, as the easement is existing and the applicant proposes to provide all required plantings.

**STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCE OF LAND DEVELOPMENT
CODE SECTION 8.3.2 TO ALLOW A PROPOSED SIGN TO EXCEED THE MAXIMUM HEIGHT
AND AREA**

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

STAFF: The requested variance will not adversely affect public health safety or welfare since there are no known safety concerns associated with the sign request. Additionally, the existing sign is located in the middle of the subject site, which could arguably pose a greater safety concern than the proposed sign location in the middle of the entrance median.

- (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 proposed sign is the same size and height as the existing sign.

- (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 there are no known safety concerns associated with the sign request and there are several existing signs along Dixie Highway in the vicinity of the subject site. The location of the proposed sign is more appropriate and should improve safety along the corridor by providing a landmark that denotes an entrance into the shopping center.

- (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 zoning regulations since there is an existing sign on the subject site which is currently located in the middle of the parcel. The applicant is requesting a new sign of the same height and square footage to be placed in a more appropriate 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 since the existing sign is located in the middle of the subject site, which restricts development and could confuse drivers wishing to enter the shopping center.

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 since the proposed sign is the same height and area as the existing sign, but is proposed to be located in a more appropriate location in the entrance median. The existing sign is located in the middle of the subject site, which restricts development 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 because the sign was in place prior to the proposed development.

REQUIRED ACTIONS

- **APPROVE** or **DENY** the **Waivers**
- **APPROVE** or **DENY** the **Variance**

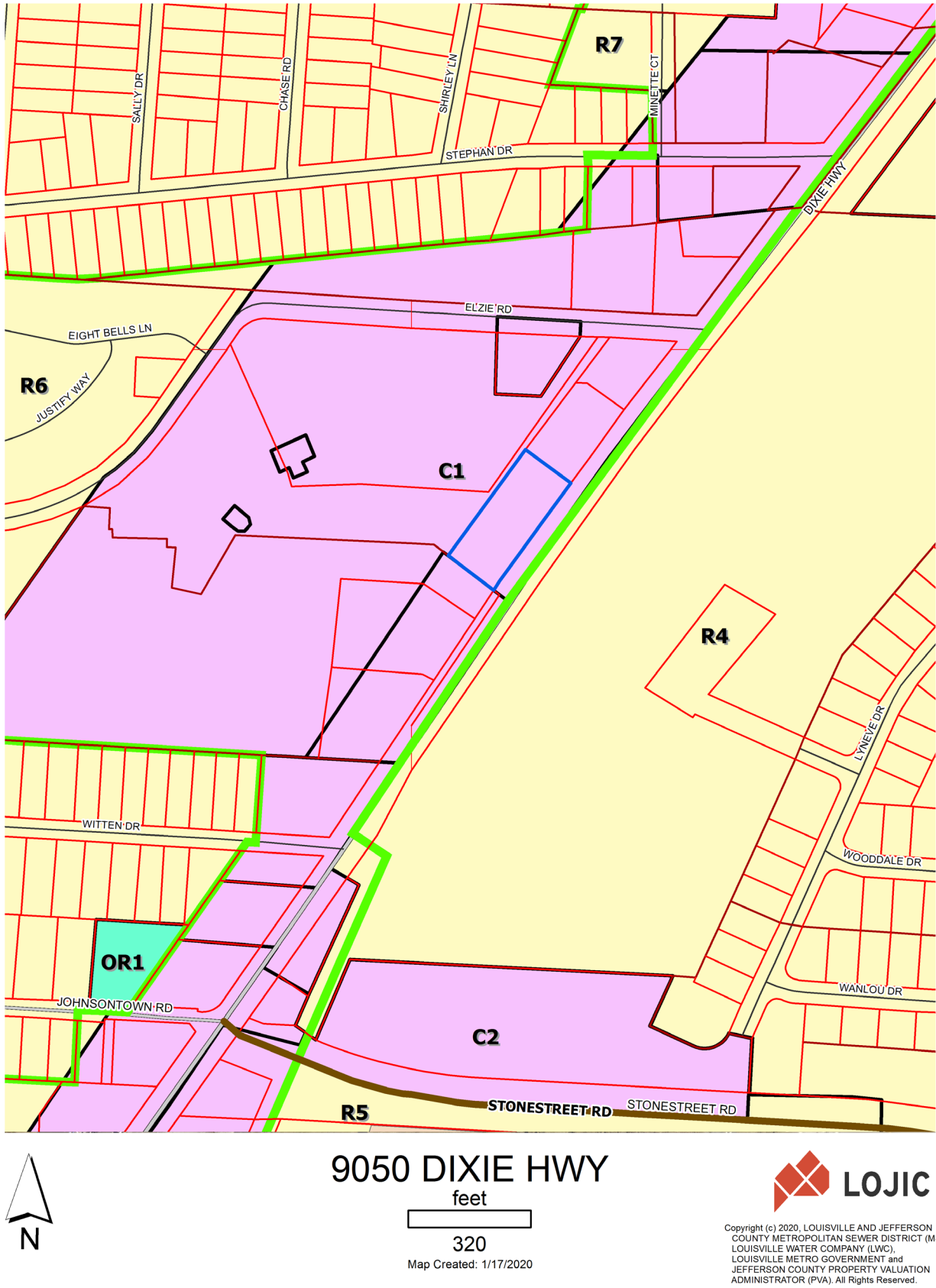
NOTIFICATION

Date	Purpose of Notice	Recipients
4-20-20	Hearing before BOZA	1 st tier adjoining property owners Registered Neighborhood Groups in Council District 14

ATTACHMENTS

1. Zoning Map
2. Aerial Photograph

1. **Zoning Map**

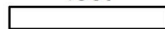


2. Aerial Photograph



9060 DIXIE HWY

feet



320

Map Created: 1/17/2020



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