

Board of Zoning Adjustment

Staff Report

February 15th, 2021



Case No:	20-VARIANCE-0166 & 20-WAIVER-0132
Project Name:	Heine Brothers Bardstown Road Variance & Waivers
Location:	7701 & 7703 Bardstown Rd
Owner(s):	Newton Enterprises, LLC
Applicant:	Emily Estes, Luckett & Farley
Jurisdiction:	Louisville Metro
Council District:	22 – Robin Engel
Case Manager:	Rachel Mandell, Planner I

REQUESTS:

- **Variance** from Land Development Code Table 5.3.2 to allow a proposed drive thru lane to encroach into the required side yard setback.

Location	Requirement	Request	Variance
Side Yard	15ft	5ft	10ft

- **Waiver** from 10.2.4 to not provide the 25ft landscape buffer area between a commercial use and residentially zoned property.
- **Waiver** from 10.3.5.A.7 to allow vehicular use area to encroach into the required parkway buffer area.

CASE SUMMARY/BACKGROUND

The subject site is zoned C-1 Commercial in the Neighborhood Form District. The lot is currently used as an auto service store. The applicant is proposing to demolish the existing structure and construct a 720 SF drive-thru coffee shop with no indoor dining. The property owner will be leasing land from the church bordering the rear property line as shown on the site plan.

The adjoining Northwestern property is zoned R-4 and is currently vacant. A 25ft landscape buffer area is required between a commercial use and a residential use. The majority of lots on the same block face are used commercially but the future use of the vacant lot is unknown. The residential zoning prompts the 25ft landscape buffer area and 15ft setback.

The portion of Bardstown Road fronting the subject site is a designated parkway. Development along the parkway is subject to a parkway buffer. No vehicular use areas are permitted to be located in a parkway buffer, excluding necessary drive ways. The waiver would allow for the vehicular use area to encroach into the parkway buffer, but the applicant will still be responsible for the required plantings.

STAFF FINDINGS

Staff finds that the requested variance to encroach into the required side yard setback meets standards of review a, b and d, but may not meet standard c.

Staff finds that the requested waiver to not provide the 25ft landscape buffer area meets the standard of review. The applicant will be required to still provide the required trees or pay the fee in lieu.

Staff finds that the requested waiver to encroach into the parkway buffer area meets standard of review c, but does not meet standards a, b and d. The proposed drive-thru concept requires a circular traffic pattern around the property, and the site is limited to one curb cut from Bardstown Road per KYTC. A necessary driveway is perpendicular to the property line and allows vehicles to access the site. The limited depth of the lot does not permit for a driveway that is perpendicular to the property line while also accommodating the circular traffic flow desired by the developer.

Based upon the information in the staff report, and the testimony and evidence provided at the public hearing, the Board of Zoning Adjustment must determine if the proposal meets the standards for granting a variance established in the Land Development Code from Table 5.3.2 to allow a drive-thru lane to encroach into the required side yard setback, a waiver from 10.2.4 to not provide the 25ft landscape buffer area between a commercial use and residentially zoned property, and a waiver from 10.3.5.A.7 to allow vehicular use area to encroach into the required parkway buffer area.

TECHNICAL REVIEW

The waiver is associated with a proposal that does not meet the threshold for a Category 2B Review.

INTERESTED PARTY COMMENTS

Staff was contacted by the Floyds Fork Environmental Association in opposition of the landscape waivers.

RELATED CASES

None.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCE FROM TABLE 5.3.2

- (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. By locating the drive-thru lane and queuing spaces within the setback, the site can accommodate the drive-thru concept while still providing the required off street parking and screening requirements.

- (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 as the site is primarily surrounded by commercial uses which generally do not require a side yard setback.

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

STAFF: The requested variance may cause a hazard or nuisance to the public. Currently, the adjacent residential lot is vacant, and the variance would not be impacting an existing use. However, if the adjoining lot were to be developed as permitted in the R-4 zoning district, the drive thru lane could be considered a nuisance. The development proposal must comply with all

building codes, including fire codes, and will also require a landscape plan prior to the issuance of building permits.

- (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 as alternatives for the placement of the drive-thru lane have been considered.

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 does arise from special circumstances which do not generally apply to land in the general vicinity or in the same zone. The lot is adjacent to a residentially zoned property on one side, and generally a single-family residential use is not common along a major arterial.

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 reduce the usable space on the lot.

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 as the applicant is requesting the variance prior to beginning construction.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER FROM 10.2.4

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

STAFF: The waiver will not adversely affect adjacent property owners because the residentially zoned parcel prompting the landscape buffer is vacant. Additionally, the existing conditions of the site do not provide a landscape buffer area.

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

STAFF: Guideline 1, Policy 4 strives to ensure new development and redevelopment are compatible with scale and site design of nearby existing development with the desired pattern of development within the Form district. The waiver will not violate specific guidelines of Cornerstone 2040 as the proposal will allow for the redevelopment of the site in a manner that is appropriate for the form district. The waiver will not allow an unreasonable circumvention of the regulations or cause a hazard to the public.

- (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. Given the width of the lot, the waiver is needed in order to provide the space required to accommodate the drive-thru concept. Other areas of the site will provide landscaping, and the applicant must either provide the required trees in the buffer area or pay the fee in lieu.

- (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 deprive the applicant of the reasonable use of the land because the width of the lot would not accommodate the VUA necessary to have a drive-thru line if a 25ft landscape buffer area is required. The development proposal will increase the amount of landscaping that currently exists at the site.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER FROM 10.3.5.A.7

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

STAFF: The waiver may adversely affect adjacent property owners. Although the proposal improves the existing conditions of the site, allowing for vehicular use area to be located in the parkway buffer could create a backup onto Bardstown Rd, blocking access to adjacent properties. The depth of the development site is not sufficient to support the vehicle-dependent use.

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

STAFF: Guideline 2, Policy 4 of Cornerstone 2040 states to allow non-residential development within the Neighborhood Form District to occur only at locations with appropriate access and connectivity. The parkway buffer designation prohibits appropriate access due to the limitations of the depth of the lot. Policy 9 of the Mobility Goal #2 encourages the preservation of parkways to ensure a quality visual experience.

- (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. Given the shape and size of the lot, the waiver is needed in order to provide the space required to accommodate the drive-thru concept.

- (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 deprive the applicant of the specific use proposed for the site but would not deprive the applicant of the reasonable use of the land. The applicant's proposal would, however, improve the existing site conditions.

VARIANCE PLAN REQUIREMENT

In accordance with LDC Section 11.5B.1.C (Requirement to Follow Approved Plan), a variance shall be approved only on the basis of the plan approved by the Board and shall be valid only for the location and area shown on the approved plan. All construction and operations must be conducted in accordance with the approved plan and conditions attached to the variance.

REQUIRED ACTIONS

- **APPROVE** or **DENY** the Variance from Land Development Code Table 5.3.2 to allow a proposed drive thru lane to encroach into the required side yard setback.
- **APPROVE** or **DENY** the Waiver from 10.2.4 to not provide the 25ft landscape buffer area between a commercial use and residentially zoned property.
- **APPROVE** or **DENY** the Waiver from 10.3.5.A.7 to allow vehicular use area to encroach into the required parkway buffer area.

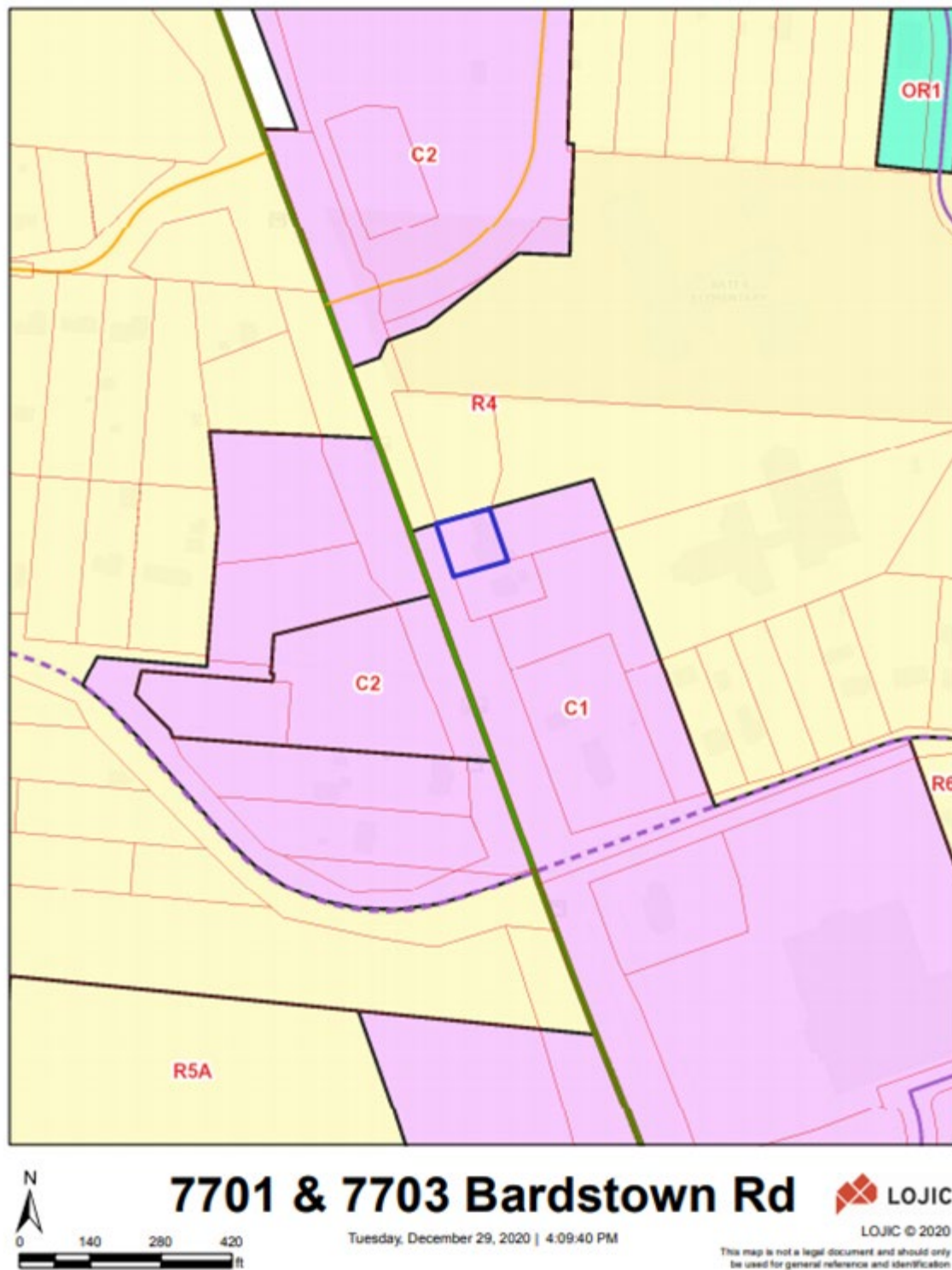
NOTIFICATION

Date	Purpose of Notice	Recipients
1-29-2021	Hearing before BOZA	1 st tier adjoining property owners Registered Neighborhood Groups in Council District 22
2-1-2021	Hearing before BOZA	Notice posted on property

ATTACHMENTS

1. Zoning Map
2. Aerial Photograph
3. Site Plan

1. Zoning Map



2. Aerial Photograph



3. Site Plan

