

# Board of Zoning Adjustment

## Staff Report

August 2, 2021



<b>Case No:</b>	21-CAT3-0004/21-VARIANCE-0039/21-WAIVER-0048/21-WAIVER-0058
<b>Project Name:</b>	1391 Dixie Hwy
<b>Location:</b>	1391 Dixie Hwy
<b>Owner(s):</b>	DH QOZB, LLC
<b>Applicant:</b>	DH QOZB, LLC
<b>Jurisdiction:</b>	Louisville Metro
<b>Council District:</b>	6 – David James
<b>Case Manager:</b>	Jay Lockett, AICP, Planner I

### REQUEST(S)

- **Variance** (21-VARIANCE-0039) of Land Development Code section 5.2.5.C.3.a to exceed the maximum 25-foot front setback by up to 975 feet as shown on the development plan.
- **Waivers**
  1. (21-WAIVER-0048) Waiver of Land Development Code section 10.2.10 to eliminate the 10-foot Vehicle Use Area Landscape Buffer Area adjacent to the unimproved alley in the southwest corner of the site.
  2. (21-WAIVER-0058) Waiver of Land Development Code section 5.9.2.C.4 to permit parking and circulation in front of the building within the Traditional Workplace form district.
- **Category 3 Development Plan** with approval of Outdoor Amenity Area design.

### CASE SUMMARY/BACKGROUND

The applicant is proposing to construct a 434,000 SF industrial warehouse with accessory office and associated parking. The subject site is approximately 27.9 acres and is zoned EZ-1 in the Traditional Workplace form district. The site is located along Dixie Highway in Western Louisville Metro and is surrounded by residential properties to the north with industrial uses to the south and east. The subject site has historically been used for a variety of heavy industrial uses dating back to the late 19<sup>th</sup> century, including a cooperage and lumber mill, as well as the Black Leaf pesticide company and other chemical manufacturers until the 1950s.

### STAFF FINDING

The variance and waiver requests are adequately justified and meet the standards of review. The variance is reasonable based on the relatively narrow frontage of the lot. The siting of the structure is consistent with the historic development pattern of the site. The applicant will provide enhanced screening along the drive lane to provide additional protection for residential properties from noise associated with truck traffic in and out of the site. The waiver for the Landscape Buffer Area is reasonable, as it faces an undeveloped alley, railroad tracks and other industrial uses that do not need screening from this use. The applicant will provide all other planting and screening around the subject

site. The waiver to allow parking in front of the structure is adequately justified and the parking area will be screened from adjacent residential properties. The Category 3 development plan is in order and the outdoor amenity areas appear to be compliant with the Land Development Code based on information provided on the development plan.

## **TECHNICAL REVIEW**

The site has a history of significant contamination, including adverse impacts on adjacent residential properties and is subject to site management by the Kentucky Environmental Protection Agency. All construction plans must be in accordance with the approved site management plan dated November 2020 and must be approved by the Kentucky Division of Waste Management prior to MSD construction plan approval.

A number of houses fronting along Wilson Ave have historically crossed a portion of the subject site to access their garages. The applicant has agreed to provide an access easement to facilitate continued legal access of these property owners.

## **INTERESTED PARTY COMMENTS**

Staff received a phone call from Denise Richardson of 1612 Wilson Ave. She expressed concerns that this development would continue a historical pattern of environmental injustice and racism with respect to industrial land uses adjacent to a majority black residential neighborhood. She felt that neighbors of the subject site had never been adequately compensated for historic injustices and contamination of their properties due to negligent industrial users.

## **STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCE**

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

STAFF: The variance will not adversely affect the public health, safety or welfare. While heavy truck traffic adjacent to residential properties has a potential to negatively impact residents, the applicant has agreed to provide enhanced screening and landscaping to buffer the drive lane near residences.

- (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 development is consistent with similar industrial development in the area.

- (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 as the applicant will adequately buffer and screen adjacent to residential properties.

- (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 the proposed development is consistent with other development in the same zone.

#### **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, as the frontage of the site is relatively narrow compared to the rear of the site where the structure is proposed.

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, as the front of the site is much narrower than the rear.

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 no development has occurred.

#### **STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER 1**

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

STAFF: The waiver will not adversely affect adjacent property owners, as the buffer faces an unimproved alley, railroad and industrial development. All other screening and buffering will be provided around the subject site.

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

STAFF: The waiver will not violate specific guidelines of the Comprehensive Plan. All required buffering and screening will still be provided adjacent to residential properties and public roads except adjacent to this undeveloped alley.

- (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 all other buffering and screening will be provided on the subject site.

- (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 would create an unnecessary hardship on the applicant, as this portion of the site faces unimproved right-of-way and other industrial development which does not need screening from this use.

## **STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER 2**

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

STAFF: The waiver will not adversely affect adjacent property owners, as there adequate buffering and screening will be provided adjacent to residential properties and roadways around the subject site.

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

STAFF: The waiver will not violate specific guidelines of the Comprehensive Plan. Adequate screening will be provided and the parking lot will not be visible from Dixie Highway due to a combination of setback and screening.

- (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 all other site design standards of the Land Development Code will be met on the subject site except for where waiver and variance are requested.

- (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 would create an unnecessary hardship on the applicant, as it would necessitate siting the structure much closer to adjacent residential properties.

**REQUIRED ACTIONS:**

- **APPROVE** or **DENY** the **Variance**
- **APPROVE** or **DENY** the **Waivers**
- **APPROVE** or **DENY** the **Category 3 Development Plan** with outdoor amenity area design.

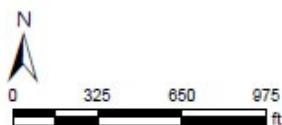
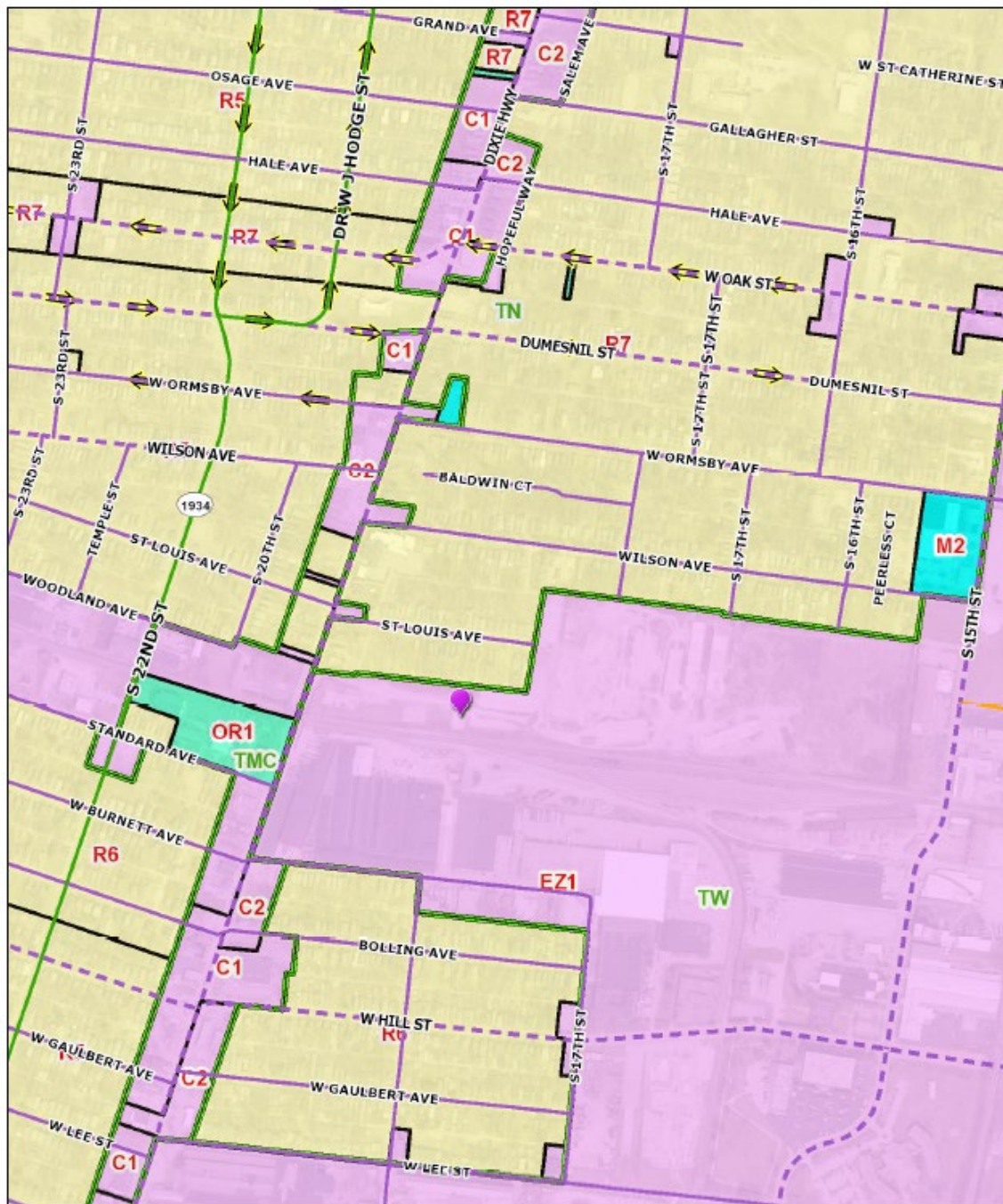
**NOTIFICATION**

Date	Purpose of Notice	Recipients
7-19-21	Hearing before BOZA	1 <sup>st</sup> tier adjoining property owners and current occupants Property owners and occupants within 250' of subject site per requirements of LDC 2.6.1 Registered Neighborhood Groups in Council District 6
7-14-21	Hearing before BOZA	Sign posted on subject site

**ATTACHMENTS**

1. Zoning Map
2. Aerial Photograph

1. Zoning Map



**21-CAT3-0004**

Thursday, July 22, 2021 | 11:13:32 AM

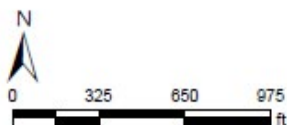
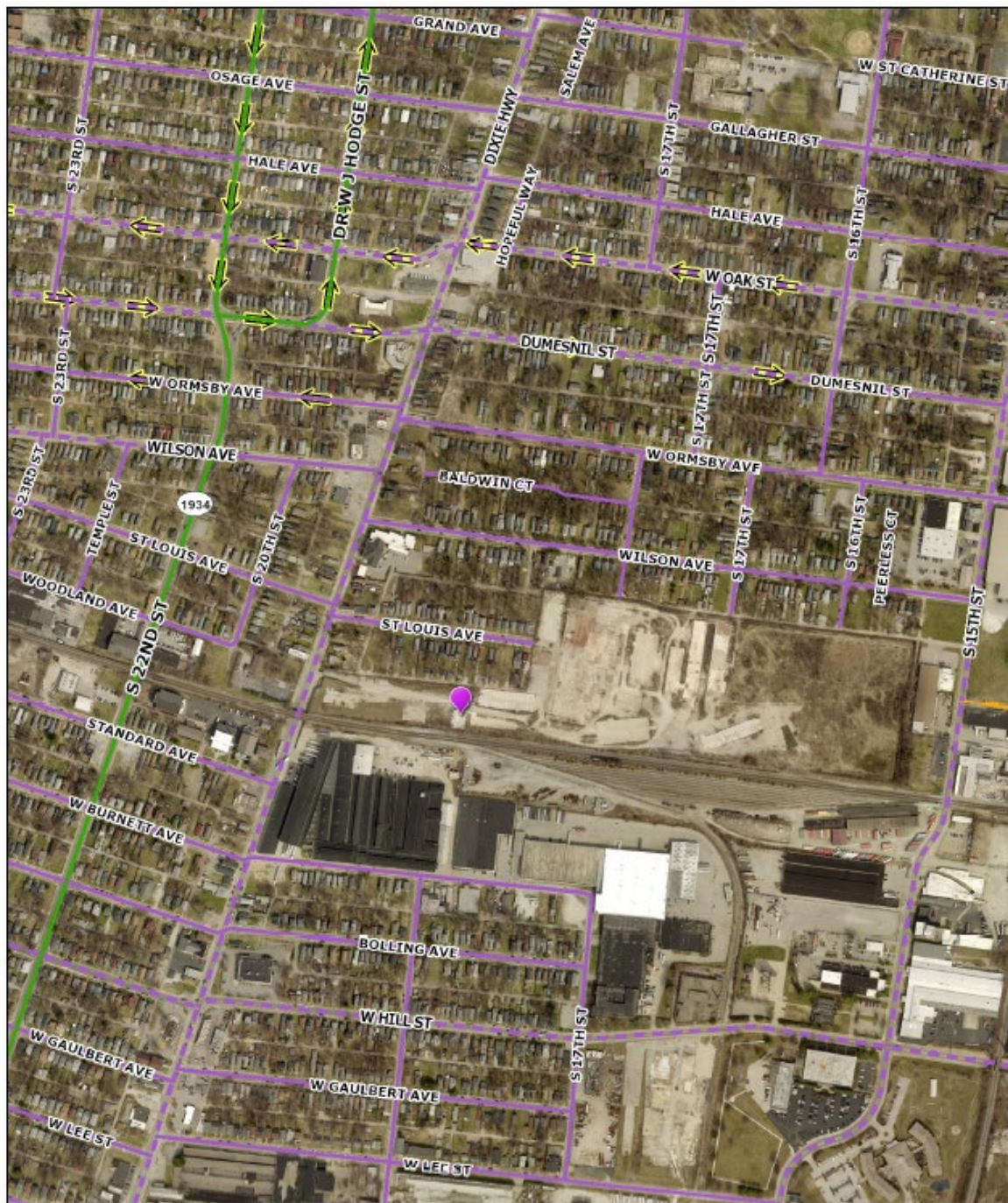


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## 2. Aerial Photograph



**21-CAT3-0004**

Thursday, July 22, 2021 | 11:11:51 AM



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