

# Board of Zoning Adjustment

## Staff Report

July 24, 2023



<b>Case No:</b>	23-CUP-0075
<b>Project Name:</b>	Proposed Crematorium
<b>Location:</b>	2727 S 3 <sup>rd</sup> Street
<b>Owner(s):</b>	White & Sons Louisville, INC.
<b>Applicant:</b>	Dinsmore & Shohl, LLP.
<b>Jurisdiction:</b>	Louisville Metro
<b>Council District:</b>	15 – Jennifer Chappell
<b>Case Manager:</b>	Molly Clark, Planner II

### REQUEST(S)

- **Conditional Use Permit** from section 4.2.59 of the Land Development Code for a proposed Crematorium (23-CUP-0075)
- **Variance** from section 5.5.1.A.2 to exceed the maximum setback of 5 feet for corner lots by 77 feet (23-VARIANCE-0033)
- **Waiver** from section 10.2. of the Land Development Code to allow existing parking to encroach into the required VUA/LBA along M street. (23-WAIVER-0044)

### CASE SUMMARY

The subject site is zoned C-1 Commercial in the Traditional Neighborhood Form District. The property is located on .083 acres and has an existing funeral home. The applicant is proposing to construct a 1740 square foot addition and have the site primarily function as a crematorium as well as provide embalming services. This site is also plan certain under case number 9-14-84 and this proposal is related to a revised detailed district development plan under 23-DDP-0027 that is scheduled to go to DRC on Wednesday August 2<sup>nd</sup>, 2023.

### STAFF FINDING

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 established in the LDC for a Conditional Use Permit.

Staff finds that the waiver and variance are adequately justified and meet the standards of review. The applicant is meeting standard A of the conditional use permit but will need relief from standard B regarding the 200-foot setback from any residential property.

### TECHNICAL REVIEW...

Transportation Planning and MSD have preliminarily approved the proposal.

### INTERESTED PARTY COMMENTS

The applicant held a neighborhood meeting on the property on February 7, 2023 and 8 people attended.

**STANDARD OF REVIEW AND STAFF ANALYSIS FOR CONDITIONAL USE PERMIT from 4.2.59 for a crematorium:**

4.2.59 Crematories

Crematories may be allowed in any non-residential district, or as an accessory use to a cemetery within a residential district upon the granting of a Conditional Use Permit and compliance with the following requirements:

A. The site shall be reviewed by the Air Pollution Control Board (APCD), and a permit shall be obtained in conformance with APCD requirements.

STAFF: According to the applicant crematorium technology has advanced to where they are “fully automated, scrubbed regularly and any smoke goes under the crematory” as well as no longer “needs an air permit in Kentucky as there is no odor or smoke.” The applicant also cited that there are 2 other crematoriums in NULU neighborhood, another traditional neighborhood area. IN Addition, APCD as part of interagency review was notified of this case and did not have any issues with the application.

B. The crematory operation shall be a minimum of 200 feet from property containing a residential use, or greater distance as required by the board.

STAFF: The applicant will need relief from this section. The applicant is closer than 200 feet to another residential use. The applicant justifications can be found in the conditional use permit letter of explanation. Based on current technology for cremation and the fact that no emissions will take place from the site, staff recommends granting relief to this standard.

**STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCE FROM SECTION 5.5.1.A.2 (Corner Lot):**

(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, because the structure must be constructed to comply with all applicable building codes and the Land Development Code, except where relief is requested.

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

STAFF: The proposed addition will not alter the essential character of the general vicinity as there is an existing funeral home on the lot that has existed in the neighborhood for over 30 years. The addition will be located next to the existing funeral home.

(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 because the structure must 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 will not allow an unreasonable circumvention of the zoning regulations as this site has an existing funeral home and the proposed addition will be located right next to the existing building. Locating the proposed addition at the corner would disrupt the existing parking lot and ingress/egress of the site.

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 generally apply to the land in the generally vicinity as this lot has had an existing funeral home on the site for over 30 years and locating the addition on the corner would disrupt the ingress and egress of the existing parking lot.

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 as the current configuration of the land and buildings only allows the applicant to build a detached structure on the corner without a variance. The addition will be built with the existing funeral home on 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 as the applicant has not begun construction.

**STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER 2 from 10.2.10 to eliminate the 10ft VUA/LBA along M Street (23-Waiver-0044):**

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

STAFF: The waiver will not adversely affect adjacent property owners since the subject site has had an existing funeral home for over 30 years. The site is also primarily surrounded by commercial, manufacturing, and mixed use properties. The applicant is still providing landscaping in other areas of the site.

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

STAFF: Community Form Goal 1, Policy 4 calls for the proposal to ensure new development and redevelopment are compatible with the scale and site design of nearby existing development and with the desired pattern of development within the Form District. Quality design and building materials should be promoted to enhance compatibility of development and redevelopment projects.

- (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 applicant has a parking area that has existed with the funeral home for over 30 years. The applicant is also providing a sidewalk with the VUA/LBA area along M Street which encroaches into the landscape buffer area.

- (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 regulations would deprive the applicant of the reasonable use of the land because it would prevent the applicant from constructing an adequate pedestrian connection from the street to the entrance of the building.

**REQUIRED ACTIONS:**

- **APPROVE** or **DENY** the **CONDITIONAL USE PERMIT** for a **CREMATORIUM** with **PROPOSED CONDITIONS OF APPROVAL** (23-CUP-0075)
- **APPROVE** or **DENY** the **VARIANCE** from section 5.5.1.A.2 to exceed the maximum setback of 5 feet for corner lots by 77 feet (23-VARIANCE-0033)
- **APPROVE** or **DENY** the **WAIVER** from section 10.2. of the Land Development Code to allow the existing parking to encroach into the required VUA/LBA along M street. (23-WAIVER-0044)

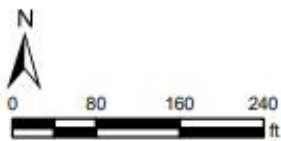
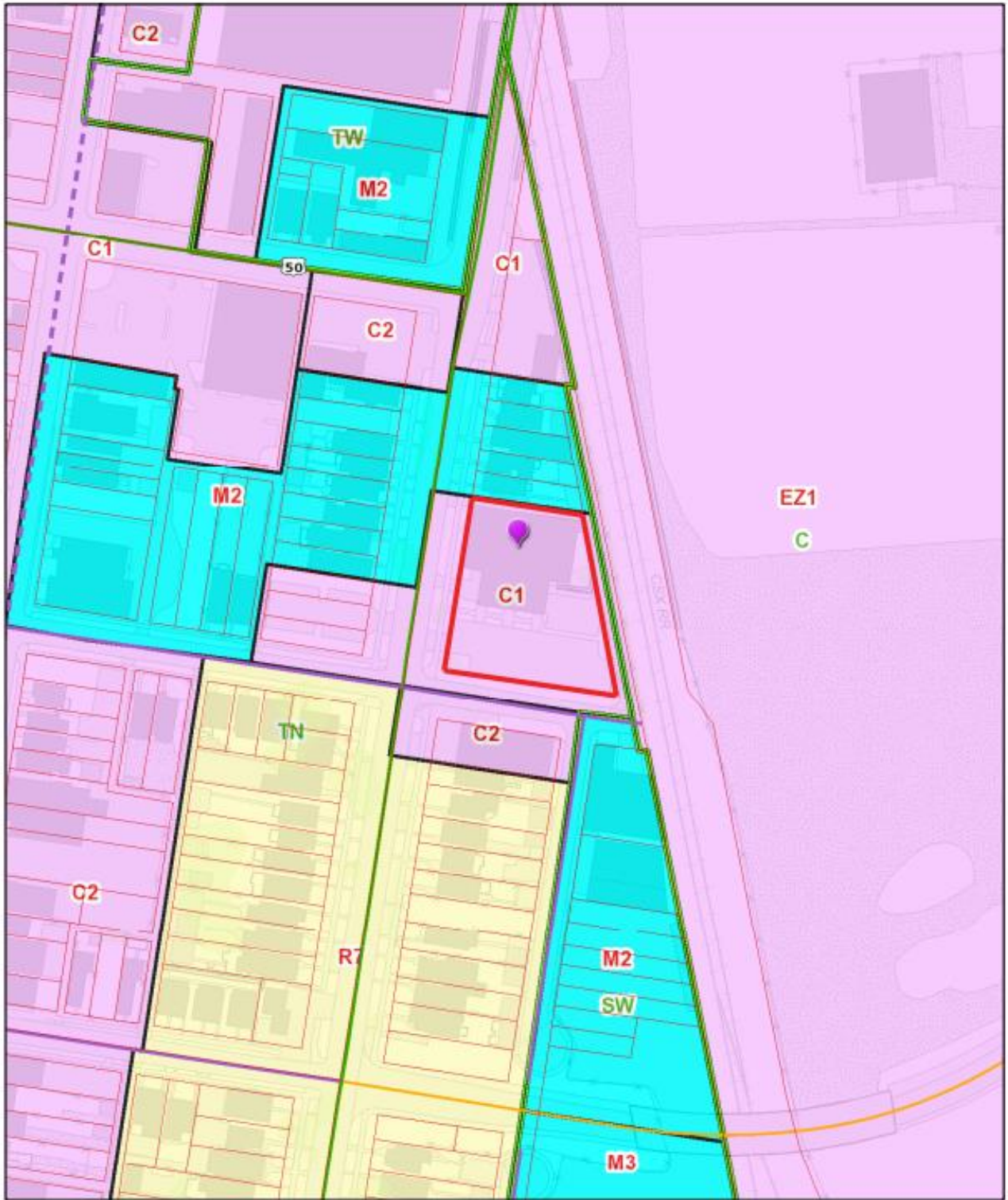
**NOTIFICATION**

Date	Purpose of Notice	Recipients
7/7/23	Hearing before BOZA	1 <sup>st</sup> and 2 <sup>nd</sup> tier adjoining property owners and current residents Registered Neighborhood Groups in Council District__
2/7/23	Neighborhood Meeting	1 <sup>st</sup> and 2 <sup>nd</sup> tier adjoining property owners and current residents Registered Neighborhood Groups in Council District__
7/12/23	Hearing before BOZA	Sign Posting on property

**ATTACHMENTS**

1. Zoning Map
2. Aerial Photograph
3. Site Photos
4. Proposed Plan
5. Proposed Conditions of Approval

1. **Zoning Map**



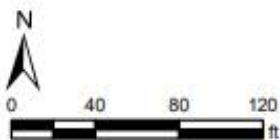
Tuesday, July 18, 2023 | 12:31:28 PM



LOJIC © 2023

This map is not a legal document and should only be used for general reference and identification

2. Aerial Photograph



Tuesday, July 18, 2023 | 12:30:18 PM



LOJIC © 2023

This map is not a legal document and should only be used for general reference and identification

3. Site Photos

Subject Property



**Surrounding Properties:**

To the left of the site on 3<sup>rd</sup> Street:



Across the street





# 4. Proposed Plan

**PROJECT SUMMARY**

**EXISTING ZONING**  
 PD-1 (PLANNED DEVELOPMENT)  
 PD-1 (PLANNED DEVELOPMENT)  
 PD-1 (PLANNED DEVELOPMENT)

**EXISTING USE**  
 RESIDENTIAL SINGLE-FAMILY  
 RESIDENTIAL SINGLE-FAMILY  
 RESIDENTIAL SINGLE-FAMILY

**TOTAL EX. BUILDING AREA**  
 15,000 SF  
 15,000 SF  
 15,000 SF

**PROPOSED BUILDING FOOTPRINT**  
 15,000 SF  
 15,000 SF  
 15,000 SF

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 15,000 SF  
 15,000 SF  
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**O.D. WHITE & SONS**

108 DOWNTOWN LOUISVILLE, KY 40202  
 WWW.MILESTONEDESIGN.COM

**Milestone design group**

**LEGEND**

- EX. CONTOUR
- EX. RIE HEIGHT
- EX. METRO ELECTRIC
- EX. ASPHALT
- EX. CONCRETE
- EX. GRAVEL
- EX. SAND/GRASS TRACK
- TO BE REMOVED
- PARKING COUNT
- METRO PARKING SIGN

**INCREASED INTERFERING SURFACE**  
 & INCREASE IN INTERFERING SURFACE = 0.5'

**PARKING SUMMARY**

**SEASONS**  
 MIN. (DETERMINED BY PLANNING DIRECTOR)  
 MAX. (DETERMINED BY PLANNING DIRECTOR)

**STANDING SPACES (BERNINO)**  
 29 SPACES  
 29 SPACES  
 29 SPACES

**TOTAL PROVIDED**  
 87 SPACES

**GENERAL NOTES**

- (SEE) DEPTH DIRECTION OF STORM WATER FLOW FOR SCHEMATIC APPROVED ONLY.
- ALL TO NOT CAUSE MECHANICAL SHORT CIRCUIT FROM LANDSCAPE TO ELECTRICAL SYSTEMS OR EQUIPMENT. PROVIDE PROTECTIVE MEASURES TO PREVENT SHORT CIRCUIT TO ELECTRICAL SYSTEMS OR EQUIPMENT. PROVIDE PROTECTIVE MEASURES TO PREVENT SHORT CIRCUIT TO ELECTRICAL SYSTEMS OR EQUIPMENT.
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**MSD NOTES**

1. THIS PROJECT LIES WITHIN THE CITY LIMITS OF LOUISVILLE.
2. THE DEVELOPMENT SHALL BE IN ACCORDANCE WITH THE LOUISVILLE METRO PLANNING AND DESIGN SERVICES.
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12. ALL ROADWAY AND ENTRANCE INTERSECTIONS SHALL MEET THE METRO STANDARDS FOR LANDSCAPE AS SET BY METRO PUBLIC WORKS DEPARTMENT.
13. EXISTING CONCRETE ACCESS AND CURB CUT TO BE REPAIRED AND CURB TO BE RESTORED.

**FLOOD NOTE**

THIS PLAN, SPECIFICATION IS RESTRICTED TO A REVIEW OF THE FLOOD HAZARD IN THE LOCAL JURISDICTION OF THE CITY OF LOUISVILLE. THE PROPERTY SHOWN HEREIN IS NOT IN A 100 YEAR FLOOD HAZARD ZONE. SEE THE ATTACHED FLOOD HAZARD MAP FOR FURTHER INFORMATION.

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23-CUP-0075

Planning & Design

Received Apr. 11, 2023

**5. Proposed Conditions of Approval**

1. The site shall be developed in strict compliance with the approved development plan (including all notes thereon). No further development shall occur on the site without prior review and approval by the Board.

2. The Conditional Use Permit shall be "exercised" as described in KRS 100.237 within two years of the Board's vote on this case. If the Conditional Use Permit is not so exercised, the site shall not be used for a crematorium until further review and approval by the Board.