

BOARD OF ZONING ADJUSTMENT MINUTES
May 2, 2022

PUBLIC HEARING

CASE NUMBER 22-VARIANCE-0029

Request:	Variance to exceed the 5' maximum corner lot setback, with Waivers to allow parking and circulation in front of the structure, to not provide a customer entrance towards New Cut Rd, to not provide cross-connection to adjacent commercial properties and to encroach into a required landscape buffer area.
Project Name:	New Cut Liquors
Location:	5389 New Cut Rd
Owner:	Gajmukh LLC
Applicant:	Gajmukh LLC
Representative:	Miller/Wihry
Jurisdiction:	Louisville Metro
Council District:	21 – Nicole George
Case Manager:	Jay Lockett, AICP, Planner II

The staff report prepared for this case was incorporated into the record. The Board members received this report in advance of the hearing, and this report was available to any interested party prior to the public hearing. (The staff report is part of the case file maintained at Planning and Design Services offices, 444 South 5th Street.)

An audio/visual recording of the Board of Zoning Adjustment hearing related to this case is available on the Planning & Design Services website, or you may contact the Customer Service staff to view the recording or to obtain a copy.

Agency testimony:

02:49:53 Jay Lockett presented the case and showed a Powerpoint presentation (see staff report and recording for detailed presentation).

The following spoke in favor of the request:

John Miller, 1387 S. 4th Street, Louisville, KY 40208

Summary of testimony of those in favor:

02:55:54 John Miller spoke in favor of the request and showed a Powerpoint presentation. Mr. Miller responded to questions from the Board Members (see recording for detailed presentation).

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The following spoke in opposition of the request:

Councilwoman Nicole George, 601 W. Jefferson St., Louisville, KY 40202

Ann Ramser, 307 E. Kenwood Drive, Louisville, KY 40214

Maureen Welch, 7101 Venetian Way, Louisville, KY 40214

Councilwoman Amy Holton-Stewart, 601 W. Jefferson St., Louisville, KY 40202

Summary of testimony of those in opposition:

03:10:14 Councilwoman Nicole George spoke in opposition of the request. Councilwoman George stated the neighbors matter, and while she appreciates that the owner needs a drive-through, she feels certain that the neighbors do not. Councilwoman George stated she takes issue with Mr. Miller's comments about the Comp Plan being out of step as it relates to the area, and she is in opposition to the variance and the four waivers. Councilwoman George stated that she finds Mr. Miller's comments about how fundamental the drive-through would have been to the previous owner disingenuous, and she thinks anyone who is familiar with the area and the site would also find that to be disingenuous, so she thinks it's important to note for the record in terms of the importance of a drive-through to the site (see recording for detailed presentation).

03:12:23 Ann Ramser spoke in opposition of the request. Ms. Ramser stated as you can see from the pictures that were provided, the property owner is not currently taking care of the property. Ms. Ramser stated the property has been cited and that is a concern. Ms. Ramser stated the liquor license has not been approved, the ABC denied the liquor license and the property owner has appealed that. Ms. Ramser stated the reasons for the variance and waiver applications are all based on the ability to have the drive-through window. Ms. Ramser stated Mr. Miller implies it is a requirement for this business to survive, however Kenwood Liquors does not have a drive-through window and as far as she knows they have been operating without any issues. Ms. Ramser stated the Land Development Code doesn't apply equally across Metro Louisville and we need to make sure it's always applied equally. Ms. Ramser stated having a street address of New Cut Road with no entrance on New Cut Road concerns her greatly. Ms. Ramser discussed accessibility, safety issues and setbacks (see recording for detailed presentation).

03:20:05 Councilwoman George asked Mr. Luckett if, in the review of the case, there was another site along the New Cut corridor that had the potential intensity of use directed both entrance and exit to the local road? Mr. Luckett stated he didn't specifically analyze other sites for that situation (see recording for detailed presentation).

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03:21:10 Maureen Welch spoke in opposition of the request. Ms. Welch stated she was pleased that the owners planned to demolish the existing structure and start from scratch. Ms. Welch stated reasons that the variance and waivers should be denied (see recording for detailed presentation).

03:28:00 Councilwoman Amy Holton-Stewart spoke in opposition of the request. Councilwoman Holton-Stewart stated she wanted to support Councilwoman George's position against this proposal, since this is so close to her district, for the integrity of this neighborhood (see recording for detailed presentation).

REBUTTAL:

03:29:18 Mr. Miller spoke in rebuttal. Mr. Miller stated he doesn't think all the criticisms are valid. Mr. Miller stated they are not given the choice of where to put the vehicular access to the site. Mr. Miller stated a lot of these decisions are made on the technical level by the appropriate staff people. Mr. Miller stated in order to have a viable commercial site here they need the drive-through and he doesn't think that's a particularly unusual situation. Mr. Miller responded to questions from the Board Members (see recording for detailed presentation).

03:33:22 Board Members' deliberation

03:41:51 On a motion by Member Ford, seconded by Member Bond, the following resolution, based upon the testimony heard today, was adopted:

Variance from Land Development Code Section 5.5.1.A.2 to exceed the 5-foot maximum setback from Woodmore Ave. by up to 47 feet as shown on the proposed development plan:

WHEREAS, the Louisville Metro Board of Zoning Adjustment finds that the requested variance will adversely affect the public health, safety, or welfare; now, therefore be it

RESOLVED, the Louisville Metro Board of Zoning Adjustment in Case Number 22-Variance-0029 does hereby **DENY** Variance from Land Development Code Section 5.5.1.A.2 to exceed the 5-foot maximum setback from Woodmore Ave. by up to 47 feet as shown on the proposed development plan.

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NOTE: Vice Chair Buttorff left the meeting at approximately 4:00 p.m.

The vote was as follows:

Yes: Members Bond, Ford, Vozos, and Chair Howard

Absent: Member Leanhart, and Vice Chair Buttorff

03:44:41 On a motion by Member Ford, seconded by Member Bond, the following resolution, based upon the Standard of Review and Staff Analysis, and the testimony heard today, was adopted:

Waiver from Land Development Code Section 5.7.1.B.3 and Table 10.2.2 to encroach up to 11 feet into the required 15-foot property perimeter buffer adjacent to the residential development (22-WAIVER-0029):

WHEREAS, the Louisville Metro Board of Zoning Adjustment finds that the waiver will adversely affect adjacent property owners and residents. The buffering proposed is not adequate to provide reasonable transition between incompatible uses. The residents of the apartment community are likely to experience noise and other nuisances due to drive-thru queuing being so close to their dwellings, and

WHEREAS, the Board further finds that the waiver will violate the Comprehensive Plan. Community Form Goal 1 Policy 18 requires that we mitigate adverse impacts of noise from proposed development on existing communities. Community form Goal 1 Policy 10 requires that we mitigate the impacts caused when incompatible developments unavoidably occur adjacent to one another. Buffers should be used between uses that are substantially different in intensity or density. The buffer proposed is not adequate to mitigate adverse impacts on the apartment community adjacent to the site, and

WHEREAS, the Board further finds that the extent of the waiver of the regulation is not the minimum necessary to afford relief to the applicant since they could remove the drive-thru and remove the encroachment upon their neighbors, and

WHEREAS, the Board further finds that the strict application of the provisions of the regulation would not deprive the applicant of reasonable use of the land as the applicant could remove the drive-thru and redesign the site according to Land Development Code requirements; and

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Waiver from Land Development Code Sections 5.5.1.A.3 and 5.9.2.A.1.b to not provide cross-connection to adjacent commercial properties (22-WAIVER-0051):

WHEREAS, the Louisville Metro Board of Zoning Adjustment finds that the waiver will adversely affect adjacent property owners. Cross connectivity is valuable for commercial uses within the Neighborhood Form district to allow customers to visit multiple establishments with reduced turns to and from major roadways, and

WHEREAS, the Board further finds that the waiver will violate the Comprehensive Plan. Community form Goal 1 Policy 17 requires that we mitigate adverse impacts of traffic from proposed development on nearby existing communities. Community form Goal 2 Policy 6 states that we should encourage a more compact development pattern in activity centers that result in efficient land use and cost-effective infrastructure investment. Mobility Goal 3 Policy 5 states that we should evaluate developments for their impact on the transportation net-work (including the street, pedestrian, transit, freight movement and bike facilities and services) and air quality. The proposed drive-thru and required buffer make it impossible for the applicant to provide functional cross-connectivity with future commercial development in the area. The applicant could provide this if the drive-thru was removed, and

WHEREAS, the Board further finds that the extent of the waiver of the regulation is not the minimum necessary to afford relief to the applicant since they could remove the drive-thru and provide the required connectivity, and

WHEREAS, the Board further finds that the strict application of the provisions of the regulation would not deprive the applicant of reasonable use of the land as the applicant could remove the drive-thru and redesign the site according to Land Development Code requirements; now, therefore be it

RESOLVED, the Louisville Metro Board of Zoning Adjustment in Case Number 22-VARIANCE-0029 (22-WAIVER-0029/22-WAIVER-0051) does hereby **DENY** Waiver from Land Development Code Section 5.7.1.B.3 and Table 10.2.2 to encroach up to 11 feet into the required 15-foot property perimeter buffer adjacent to the residential development and Waiver from Land Development Code Sections 5.5.1.A.3 and 5.9.2.A.1.b to not provide cross-connection to adjacent commercial properties.

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The vote was as follows:

Yes: Members Bond, Ford, Vozos, and Chair Howard

Absent: Member Leanhart, and Vice Chair Buttorff

03:46:26 On a motion by Member Ford, seconded by Member Vozos, the following resolution, based upon the testimony heard today, was adopted:

Waiver from Land Development Code Section 5.5.1.A.1.B to not provide a customer entrance facing New Cut Rd (22-WAIVER-0028):

WHEREAS, the Louisville Metro Board of Zoning Adjustment finds that the strict application of the provisions of the regulation would not deprive the applicant of reasonable use of the land as the applicant could remove the drive-thru and redesign the site according to Land Development Code requirements; and

Waiver from Land Development Code Sections 5.5.1.A.3 and 5.9.2.C.2 to permit parking and circulation in front of the building (22-WAIVER-0054):

WHEREAS, the Louisville Metro Board of Zoning Adjustment finds that the strict application of the provisions of the regulation would not deprive the applicant of reasonable use of the land as the applicant could remove the drive-thru and redesign the site according to Land Development Code requirements; now, therefore be it

RESOLVED, the Louisville Metro Board of Zoning Adjustment in Case Number 22-VARIANCE-0029 (22-WAIVER-0028/22-WAIVER-0055) does hereby **DENY** Waiver from Land Development Code Section 5.5.1.A.1.B to not provide a customer entrance facing New Cut Rd and Waiver from Land Development Code Sections 5.5.1.A.3 and 5.9.2.C.2 to permit parking and circulation in front of the building.

The vote was as follows:

Yes: Members Bond, Ford, Vozos, and Chair Howard

Absent: Member Leanhart, and Vice Chair Buttorff