

Louisville Metro Board of Zoning Adjustment Staff Report

October 5, 2015



Case No:	15DEVPLAN1134
Request:	Category 3 Plan, Waiver and Variances
Project Name:	Mercy Site Apartments
Location:	1170 & 1172 East Broadway
Owner:	The Academy of Our Lady of Mercy and Ventas Ralty Limited Partnership
Applicant:	Edwards Communities Development Company, LLC
Representative:	Bardenwerper, Talbott & Roberts, PLLC and Gresham Smith & Partners
Jurisdiction:	Louisville Metro
Council District:	4 – David Tandy
Case Manager:	Brian Davis, AICP, Planning Supervisor

REQUESTS

- Category 3 Plan to construct a 136,125 sf apartment building containing 194 dwelling units.
- Variance #1: Variance requested from Section 5.2.2, Table 5.2.2 to allow the building height of 60 feet (four stories).

Location	Requirement	Requested	Variance
Property Structure	45 feet	60 feet	15 feet

- Variance #2: Variance requested from Section 5.2.3.D.3.b to reduce the side yard requirement from 5 feet to 0 feet for the existing medical office building on Lot 1.

Location	Requirement	Requested	Variance
Eastern Property Line of Lot 1	5 feet	0 feet	5 feet

- Variance #3: Variance requested from Section 5.2.3.D.3.c.ii to reduce the rear yard requirement from 5 feet to 0 feet for the existing office medical office building on Lot 1.

Location	Requirement	Requested	Variance
Southern Property Line of Lot 1	5 feet	0 feet	5 feet

- Variance #4: Variance requested from Section 5.4.1.E.2 to reduce the rear yard requirement from 5 feet to 1.5 feet for the existing parking garage on Lot 2.

Location	Requirement	Requested	Variance
Southern Property Line of Lot 2	5 feet	1.5 feet	3.5 feet

- Variance #5: Variance requested from Section 5.2.2, Table 5.2.2 to reduce the front yard requirement from 15 feet to 0 feet.

Location	Requirement	Requested	Variance
Northern Property Line of Lots 1 and 2	15 feet minimum, 25 feet maximum	0 feet	15 feet

- Waiver #1: Waiver requested from Section 5.4.1 for the four basic components of lot or building site.

CASE SUMMARY/BACKGROUND/SITE CONTEXT

Existing Zoning District: OR-3
 Existing Form District: Traditional Marketplace Corridor
 Existing Use: Medical Office and School
 Proposed Use: Medical Office and Apartments

The applicant is proposing the redevelop the existing site, which contains the former Mercy Academy as well as a medical office and parking structure. The medical office is a four story structure containing approximately 21,352 square feet. The building will remain as is and will be placed on a new lot (lot 2). The parking structure is four stories as well and contains 378 parking spaces. It will be a part of Lot 1 with the proposed apartment building.

All of the existing structures associated with the former school use will be removed. The applicant is proposing to construct a four story apartment building. The proposed building area is approximately 197,898 square feet and will consist of 194 dwelling units. The apartments will consist of 22 studio/efficiency units, 123 one bedroom units, and 49 two bedroom units. There will be fifty parking spaces located on the first floor and access from Mercy Way, which runs along the rear of the property and functions like an alley. The design also includes two interior courtyard spaces, one approximately 10,300 square feet and the other approximately 10,989 square feet.

The site is located within the Highlands National Register District. According to Urban Design staff, the structure does not contribute to the historic character of the district. The wording nomination application is as follows: "The Academy of Our Lady of Mercy is also located on East Broadway. It is a large complex with a fine limestone facade, Italianate residence at the core. Unfortunately, the residence is obscured by a new building and is therefore a non-contributing complex."

LAND USE/ZONING DISTRICT/FORM DISTRICT TABLE

	Land Use	Zoning	Form District
<i>Subject Property</i>			
Existing	School/Medical Office	OR-3	Traditional Marketplace Corridor
Proposed	Apartments/Medical Office	OR-3	Traditional Marketplace Corridor
<i>Surrounding Properties</i>			
North	Single Family	OR-3	Traditional Marketplace Corridor
South	Medical Office/Hospital	OR-3	Traditional Neighborhood
East	Single Family	OR-3	Traditional Marketplace Corridor
West	Office	OR-3	Traditional Marketplace Corridor

PREVIOUS/ADDITIONAL CASES ON SITE

- B-137-87: An application for variances from the Zoning district Regulations to permit a proposed free-standing sign to exceed the maximum allowed height and encroach into the required front yard. This proposal was approved by the Louisville Board of Zoning Adjustment on August 17, 1987.
- B-156-98: An application for a variance from the Zoning district Regulations to allow a proposed structure to encroach into the side yard. This proposal was approved by the Louisville Board of Zoning Adjustment on July 20, 1998.
- B-14260-10: An application for a variance from the Land Development Code to allow a reduction in the rear yard setback. This request was approved by the Board of Zoning Adjustment on June 7, 2010.
- 12650: Appeal to determine use listing within the LDC for a homeless shelter.
- 13CUP1012: Conditional Use Permit to allow a rehabilitation home in an OR-3 zoning district with 69 beds for rehabilitative medicine and 36 beds for detox. The proposal was approved by the Louisville Metro Board of Zoning Adjustment on February 3, 2014.

INTERESTED PARTY COMMENTS

No interested party comments have been received by staff.

APPLICABLE PLANS AND POLICIES

Cornerstone 2020
Land Development Code

STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCE #1: Variance requested from Section 5.2.2, Table 5.2.2 to allow the building height of 60 feet (four stories).

(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 height is an aesthetic issue.

(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 because the proposed height of the apartments is in keeping with the existing medical office on Lot 2 and the existing parking garage on the site.

(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 request is aesthetic in nature.

(d) The requested variance will not allow an unreasonable circumvention of the zoning regulations.

STAFF: The applicant states in their justification that the variance will not allow an unreasonable circumvention of the requirements of the zoning regulations because this height variance is a very modest one, mostly reflecting the fact of higher ceilings in newer as opposed to in older buildings.

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 applicant states the variance arises from special circumstances, which do not generally apply to land in the general vicinity because the adjoining medical office building and parking garage are nearly the same height or higher and because of higher ceilings in modern day buildings.

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 regulation would create unnecessary hardship because it would have to decrease floor heights in the building or eliminate a story, making the project impractical or financially infeasible.

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 regulation.

**STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCE #2:
Variance requested from Section 5.2.3.D.3.b to reduce the side yard
requirement from 5 feet to 0 feet for the existing medical office building on
Lot 1.**

(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 variance is internal to the overall development, having no impact on any other adjoining properties.

(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 because the variance is internal to the overall development and is similar to the existing setback between buildings on the sites.

(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 variance is internal to the overall development and adequate space is provided between the existing medical office and the proposed apartment structure.

(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 because there is no impact to adjoining properties because the variance is internal to the development.

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 variance request is internal to the development and will not have an impact on adjoining properties.

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 because disallowing the variance would render the project impractical.

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 regulation.

**STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCE #3:
Variance requested from Section 5.2.3.D.3.c.ii to reduce the rear yard
requirement from 5 feet to 0 feet for the existing office medical office
building on Lot 1.**

(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 variance is internal to the overall development, having no impact on any other adjoining properties.

(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 because the variance is internal to the overall development and is similar to the existing setback between buildings on the sites.

(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 variance is internal to the overall development and is an existing situation simply being caused by the need to subdivide the medical office from the rest of the site.

(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 because there is no impact to adjoining properties because the variance is internal to the development.

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 variance request is internal to the development and will not have an impact on adjoining properties.

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 because disallowing the variance would render the project impractical.

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 regulation.

**STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCE #4:
Variance requested from Section 5.4.1.E.2 to reduce the rear yard
requirement from 5 feet to 1.5 feet for the existing parking garage on Lot 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 because this is an existing condition for which the applicant is simply seeking official relief from the existing regulation.

(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 because this is an existing condition.

(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 existing structure does not interfere with use of Mercy Way.

(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 because it is an existing condition that predates the current regulations.

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 garage is an existing structure and this is an existing condition.

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 because reconstruction of the garage would cause a financial hardship on the applicant.

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 predate the existing setback requirement.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCE #5:
Variance requested from Section 5.2.2, Table 5.2.2 to reduce the front yard
requirement from 15 feet to 0 feet.

(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 proposed location of the structure relative to the supposed front setback is not a public health, safety or welfare issue but rather an aesthetic one that is fully addressed in the plans and building elevations submitted with this overall application.

(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 because the existing structures being replaced with the proposed apartment building have a similar setback and many structures along this portion of Broadway are built at or near the front property line.

(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 proposed structure will not interfere with the sidewalk, road or other right-of-way improvements.

(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 because the site was designed as if it complied with the mixed use site design standards, which presumably this would be but for the lot lines around the office building.

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 applicant states the development is a great improvement over the vacant hodge-podge of buildings that have been constructed on this site over the decades which do not meet the form requirements for the Form District.

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 because the applicant would be unable to construct its apartment community in a sensible manner that it has already designed based on its understanding and belief that the mixed use site design standards should apply instead.

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 regulation but rather are a result of a late DPDS staff interpretation that the mixed use design standards of Section 5.5.1 do not apply but rather do the residential design standards of Section 5.4.1.

**STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER #1:
Waiver requested from Section 5.4.1 for the four basic components of lot or
building site.**

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

STAFF: The waiver will not adversely affect adjacent property owners the existing development does not meet these standards and the general character is different than that of a traditional residential pattern.

- (b) The waiver will not violate specific guidelines of Cornerstone 2020; and

STAFF: The waiver will not violate Cornerstone 2020 for several reasons. The proposed development satisfies Guideline 3 Policies 1 (Compatibility), 2 (Consideration of Building Materials), 3 (Residential Compatibility), 10 (Variety of Housing Types), 11 (Higher Density in Appropriate Areas), 24 (Minimize Impacts of Parking, Loading and Delivery), in terms of use and design of the project.

- (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 is proposing a multi-family structure and continued use of the existing medical office and parking structure.

- (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 applicant is incorporating two interior courtyards to serve as private yard area for the residents of the apartments and the unique design and architecture of the development is preferred along this portion of Broadway.

TECHNICAL REVIEW

- Transportation Review and MSD have stamped this plan for approval. There are no outstanding issues with the proposed development.
- With the exception of the proposed variances and waiver, the plan meets all other requirements.

STAFF CONCLUSIONS

The standards of review have been met for the requested waiver and variances on the site. Based upon the information in the staff report, the testimony and evidence provided at the public hearing, the Board of Zoning Adjustments must determine if the proposal meets the standards for approving the variances, waiver and Category 3 plan.

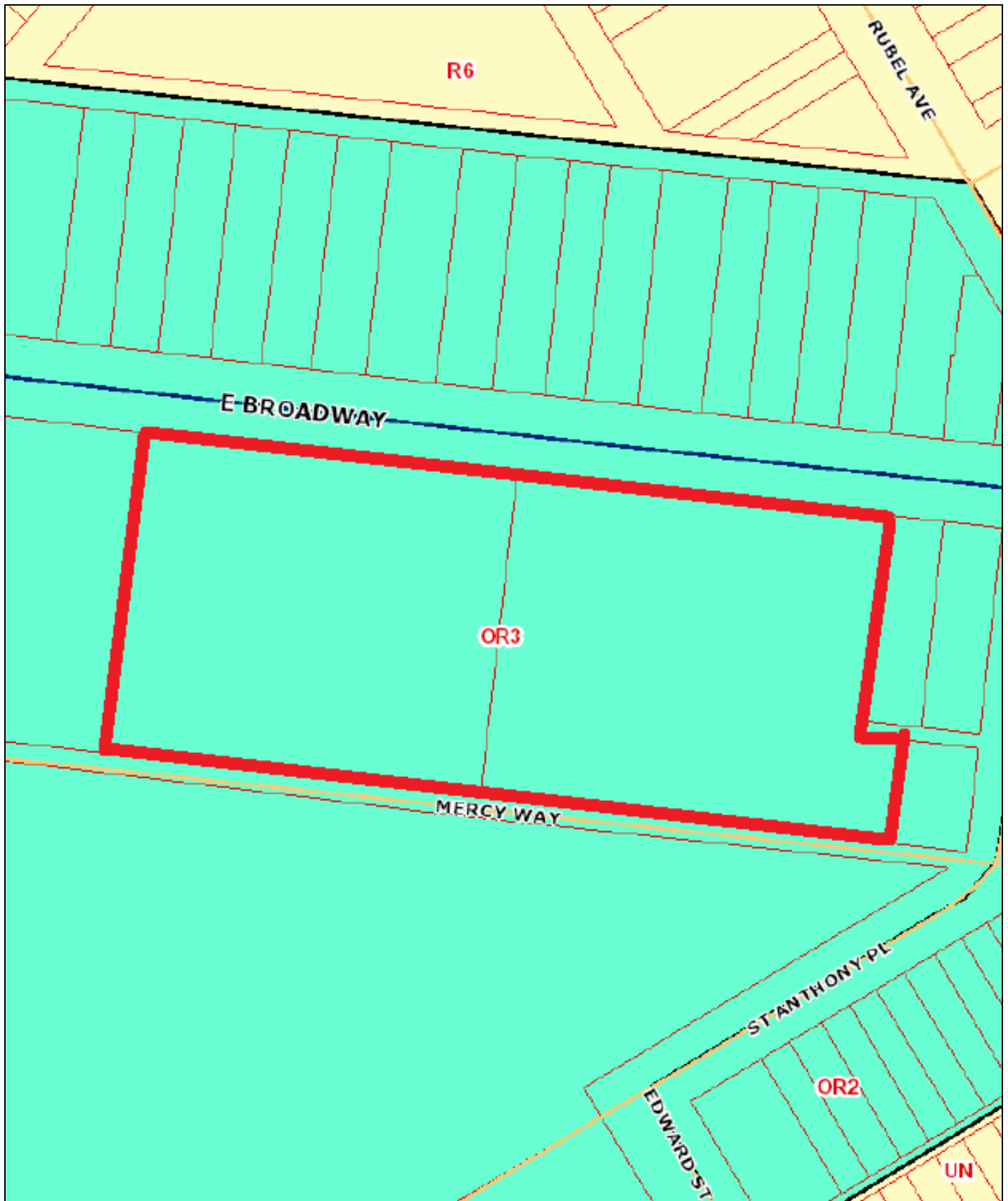
NOTIFICATION

Date	Purpose of Notice	Recipients
9/21/2015	Hearing before BOZA	1 st tier adjoining property owners Subscribers of Council District 4 Notification of Development Proposals

ATTACHMENTS

1. Zoning Map
2. Aerial Photograph

1. Zoning Map



2. Aerial Photograph

