

Board of Zoning Adjustment

Staff Report

June 1, 2022



Case No:	22-VARIANCE-0051
Project Name:	Hurstbourne Pointe
Location:	8308 Watterson Trail
Owner(s):	Hurstbourne Point LLC
Applicant:	Hurstbourne Point LLC
Jurisdiction:	Louisville Metro
Council District:	26 – Brent Ackerson
Case Manager:	Dante St. Germain, AICP, Planner II

REQUEST

- **Variance** from Section 5.3.2.C.2.a to allow a principal structure to exceed the maximum allowed front yard setback along Stillmeadow Drive (required 275', requested 367.1', variance of 92.1')

CASE SUMMARY

The subject site is located on Watterson Trail at the intersection with Hurstbourne Pointe Drive and Wattbourne Lane, and consists of one parcel which is partially developed with roadways but no buildings at this time. The applicant proposes to construct a new 48-unit multi-family development. The front yard of the site is located to the east along Stillmeadow Drive, and the street side yard is located along Watterson Trail. The site is located in the Suburban Marketplace Corridor Form District, which permits a maximum front yard and street side yard setback of 275 feet from the property line. This requirement is met along the Watterson Trail frontage, but the nearest building to the Stillmeadow Drive property line is located 367.1 feet back. The applicant therefore requests a variance for the Stillmeadow Drive setback.

The site was rezoned under docket 9-29-88 from R-4 to OR-3, as part of a larger zoning change. Minor changes to the general plan binding elements were made from time to time, and general plan binding elements are in effect from this docket. No changes to the general plan binding elements are proposed with this development. This site, along with an adjacent site to the west, was proposed for 80 apartment units in 2006, under the general docket 9-29-88. The adjacent site was later developed with non-residential uses. The subject site was proposed to be developed with 48 multi-family units under docket 16865, in 2011. Some infrastructure was placed in accordance with this plan, but the buildings were not constructed. The current proposal has the same number of units and a similar layout to what was proposed under 16865.

The Revised Detailed District Development Plan for the site was reviewed by the Development Review Committee of the Planning Commission on June 1, 2022. The DRC approved the site plan contingent upon the applicant receiving the required variance from the Board of Zoning Adjustment.

STAFF FINDING

Staff finds that the variance is adequately justified and meets the standard of review.

TECHNICAL REVIEW

MSD and Transportation Planning have provided preliminary approval of the proposal.

INTERESTED PARTY COMMENTS

No interested party comments have been received by staff.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCE FROM SECTION 5.3.2.C.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 the structure must be constructed to comply with all building codes, including fire codes.

- (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 tree canopy between the structure and Stillmeadow Drive will be preserved.

- (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 the structure is set back in order to allow the preservation of Woodland Preservation Area.

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 the land in the generally vicinity or the same zone as the property is irregular in shape.

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 proposed location of the structure is required to preserve Woodland Preservation Area.

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 started construction and is requesting the variance.

REQUIRED ACTIONS:

- **APPROVE** or **DENY** the **Variance**

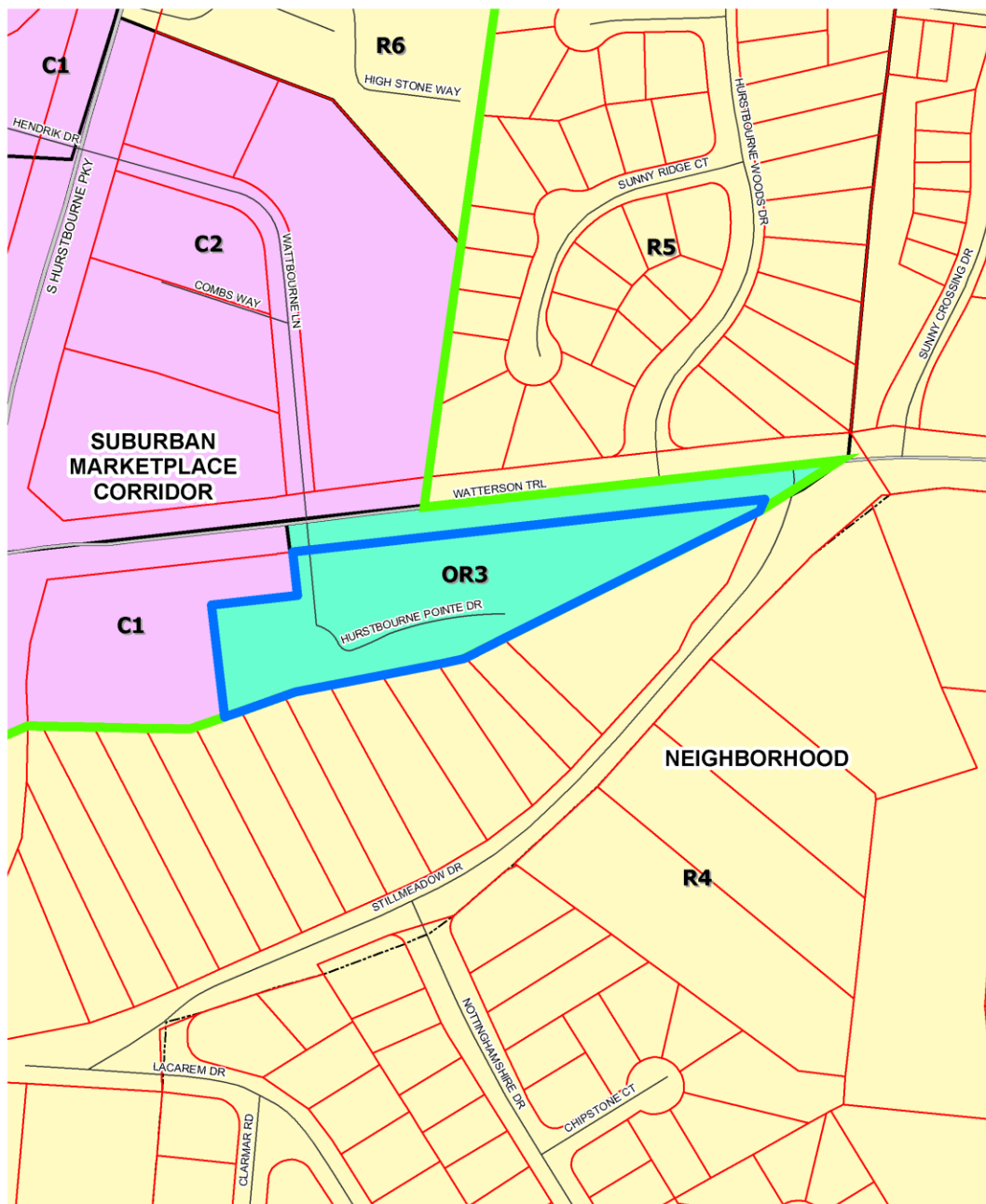
NOTIFICATION

Date	Purpose of Notice	Recipients
06/09/2022	Hearing before BOZA	1 st tier adjoining property owners and current residents Registered Neighborhood Groups in Council District 26
06/10/2022	Hearing before BOZA	Notice posted on property

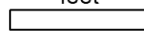
ATTACHMENTS

1. Zoning Map
2. Aerial Photograph
3. Existing General Plan Binding Elements
4. Approved Detailed Plan Binding Elements

1. Zoning Map



8303 Watterson Trail
feet



230

Map Created: 5/24/2022

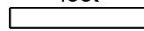


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2. Aerial Photograph



8303 Watterson Trail
feet



Map Created: 5/24/2022



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3. Existing General Plan Binding Elements

1. The development shall not exceed the following:
 - a) R-6 Apartment District 1,164 dwelling units (a density of 17.17 dwelling units per acre; 1,164 dwelling units on 67.81 acres)
 - b) OR-3 Office District 896,900 square feet
 - c) C-2 Commercial District 631,481 square feet

The following uses, although permitted generally in the C-2 Commercial District, are prohibited uses within the C-2 areas of Stony Brook South: adult entertainment, automobile repair garages, bookbinding facilities, dance halls, kennels, monument sales, plumbing and heating shops, sign painting, skating rinks, taverns, theaters, used car sales areas unless in connection with a new car sales dealership, advertising signs (billboards), with the exception of the property located at 4601 Wattbourne Lane, where kennels are not prohibited. The remainder of the C-2 Commercial uses (being those that are not also specifically listed in the C-1 district) shall be allowed in the C-2 areas of Stony Brook South, but only to the extent of one-third of the allowable commercial square footage allowed above ($1/3 \times 631,481 = 210,494$ square feet).

2. Detailed district development plans shall be submitted for each site or phase of the development. Each plan shall be subject to additional binding elements. The additional binding elements may relate, but not be limited, to the following items:
 - a) Screening, buffering, landscaping.
 - b) Points of access.
 - c) Density, floor area, size and height of buildings.
 - d) Land uses.
 - e) Signs.
3. Uses on tracts having their sole access from Hurstbourne Parkway shall not receive certificates of occupancy until Hurstbourne Parkway is dedicated to public use, substantially under construction, and the occupancy is approved by the Department of Public Works.
4. Signs shall be constructed only as shown on the approved sign guidelines submitted by developer. Advertising signs (billboards) shall be prohibited.
5. Building heights may be no higher than that shown on the approved General District Development Plan.
6. The western side of Lot 6 shall contain a buffer transition area 40 feet in width which shall contain a berm at least 6 feet in height and landscaping as approved by the Commission staff. This 40 foot buffer transition area shall remain in the R-4 district. Structures on Lot 6 shall be no more than one story, not to exceed 35 feet in height.
7. The eastern side of Lot 15 shall contain a 40 foot buffer transition area which shall contain a berm at least 6 feet in height. Landscaping shall be installed according to a plan approved by the Commission staff, which landscaping shall be located, as far as reasonably possible, to shield the view of office buildings from the location of houses in Springlake Farms Subdivision. No building shall be located closer to the east property line of Lot 15 than 190 feet. Structures on Lot 15 shall be no more than three stories, not to exceed 40 feet in height.

8. If building permits are not issued within two years of the date of approval of the plan or rezoning, whichever is later, the property shall not be used in any manner unless a revised district development plan is approved or an extension is granted by the Planning Commission.
9. A certificate of occupancy must be received from the appropriate code enforcement office prior to occupancy of the structure or land for the proposed use. All binding elements must be implemented prior to requesting issuance of the certificate.
10. The above binding elements may be amended as provided for in the Zoning District Regulations.

4. Approved Detailed Plan Binding Elements

1. The development shall be in accordance with the approved district development plan and agreed upon binding elements unless amended pursuant to the Zoning District Regulations. No further development shall occur without prior approval from the Planning Commission, except for land uses permitted in the established zoning district.
2. The only freestanding sign shall be located as shown on the approved detailed district development plan. The sign shall not exceed 30 square feet in area and six feet in height. No sign, including the leading edge of the sign shall be closer than 15 feet to street-side property line. No sign shall have more than two sides.
3. No outdoor advertising signs (billboards), small free-standing (temporary) signs, pennants, balloons, or banners shall be permitted on the site.
4. There shall be no outdoor storage on the site.
5. Outdoor lighting shall be directed down and away from surrounding residential properties. Lighting fixtures shall have a 90-degree cutoff and height of the light standard shall be set so that no light source is visible offsite. The applicant shall obtain certification by a qualified expert in measurement of lighting levels prior to requesting a building permit. Prior to requesting a certificate of occupancy for the site the applicant shall obtain certification by a qualified expert in measurement of lighting levels that the development does not to exceed .5 foot candles beyond the initial lighting measurement. Initial and final lighting measurements shall be provided to DPDS staff for placement in the development plan file.
6. Before any permit (including but not limited to building, parking lot, change of use or alteration permit) is requested:
 - a. The development plan must receive full construction approval from Louisville Metro Department of Public Works and Transportation and the Metropolitan Sewer District.
 - b. The property owner/developer must obtain approval of a detailed plan for screening (buffering/landscaping) as described in Chapter 10 prior to requesting a building permit. Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter.
 - c. Encroachment permits must be obtained from the Kentucky Transportation Cabinet.
 - d. A Tree Preservation Plan in accordance with Chapter 10 of the LDC shall be reviewed and approved prior to obtaining approval for site disturbance.
 - e. A variance for the front yard setback shall be obtained from the Board of Zoning Adjustment.

7. A certificate of occupancy must be received from the appropriate code enforcement office prior to occupancy of the structure or land for the proposed use. All binding elements requiring action and approval must be implemented prior to requesting issuance of the certificate of occupancy, unless specifically waived by the Planning Commission.
8. There shall be no outdoor music (live, piped, radio or amplified), outdoor entertainment, or outdoor PA system permitted on the site.
9. The applicant, developer, or property owner shall provide copies of these binding elements to tenants, purchasers, contractors, subcontractors and other parties engaged in development of this site and shall advise them of the content of these binding elements. These binding elements shall run with the land and the owner of the property and occupant of the property shall at all times be responsible for compliance with these binding elements. At all times during development of the site, the applicant and developer, their heirs, successors; and assignees, contractors, subcontractors, and other parties engaged in development of the site, shall be responsible for compliance with these binding elements.
10. If work is required within the easements causing removal or damage of landscape materials, the property owner shall be responsible for replacement of materials according to the approved landscape plan.
11. The applicant shall provide deeds of restriction ensuring that WPAs will be permanently protected in a manner consistent with these binding elements and the approved plan. The form of the deed restrictions shall be approved by Planning Commission counsel. Deed Restrictions must be recorded prior to tree preservation approval. All plans setting out woodland preserved areas must contain the following notes:
 - a. Woodland Preserved Areas (WPAs) identified on this plan represent portions of the site on which all existing vegetation shall be permanently preserved. All clearing, grading, and fill activity in these areas must be in keeping with restrictions established at the time of development plan approval. No further clearing, grading, construction or other land disturbing activity shall take place within designated WPAs beyond pruning to improve the general health of the tree or to remove dead or declining trees that may pose a public health and safety threat. As trees are lost through natural causes new trees shall be planted in order to maintain minimum tree canopy as specified in Chapter 10, Part 1 of the LDC and as shown on the approved Tree Canopy/Landscape Plan.
 - b. The site shall be developed in accordance with the Woodland Preserved Areas delineated on the site plan and related notes. Any modification of Woodland Preserved Areas requires notification of adjoining property owners and LD&T action.
 - c. Prior to any site disturbance permit being issued and prior to any clearing, grading, or the issuance of a site disturbance permit, a site inspection shall be conducted by PDS staff to ensure proper placement of required tree protection fencing in accordance with the approved Tree Preservation Plan.
12. The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the June 1, 2022 Development Review Committee meeting.
13. The mulch path shown in the WPA to the east of the site shall be field located upon construction in order to minimize tree removal and disturbance of the underbrush.