

Development Review Committee

Staff Report

December 19, 2018



Case No:	18DEVPLAN1162
Project Name:	Hardee's with Drive thru
Location:	11201 Oscar Road
Owner(s):	RE NO ONE, LLC
Applicant:	Guggenheim Development Services
Jurisdiction:	Louisville Metro
Council District:	17 – Glen Stuckel
Case Manager:	Lacey Gabbard, AICP, Planner I

REQUESTS:

1. **Waiver** of Section 10.2.10 to allow existing parking areas to encroach into required LBAs and to allow the proposed dumpster enclosure to encroach into the LBA
2. **Waiver** of Section 10.2.11 to eliminate LBA, screening and tree requirements along Chamberlain Lane
3. **Revised Development Plan** with **Binding Element Amendments**

CASE SUMMARY/BACKGROUND

The applicant is proposing to build a Hardee's restaurant with a drive-thru. The site is currently a Backyard Burgers, and is located in the Maplebrook retail center, near of the intersection of Westport Road and Chamberlain Lane and the intersection of Westport Road and the Gene Snyder Freeway.

STAFF FINDINGS

The development plan meets the standard of review.

Waiver #1 is adequately justified and meets the standards of review. Waiver #2 is adequately justified because most of the plantings are provided, however, the 3 foot screen is not fully provided and the gaps could be filled in. It is recommended that the Development Review Committee discuss whether or not the screening should be filled in.

TECHNICAL REVIEW

Public Works and MSD have provided preliminary approval.

INTERESTED PARTY COMMENTS

Staff has received no comment from interested parties concerning this request.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER FROM CHAPTER 10.2.10 TO ALLOW EXISTING PARKING AREAS TO ENCROACH INTO REQUIRED LBAs AND TO ALLOW THE PROPOSED DUMPSTER ENCLOSURE TO ENCROACH INTO THE LBA:

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

STAFF: The waiver will not adversely affect adjacent property owners since the parking lot and curb are already existing and the configuration will not change substantially. The dumpster will be appropriately screened per LDC section 5.5.2.B.2.

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

STAFF: The waiver will not violate Guideline 3, Compatibility, of Cornerstone 2020, which calls for the protection of roadway corridors and public areas from visual intrusions, for mitigation of parking areas so as not to negatively impact nearby residents and pedestrians, and for screening and buffering of parking areas adjacent to streets. The waiver will not violate Guideline 13, Landscape Character, which calls for the protection of parkways through standards for buffers, landscape treatment, lighting and signs. The purpose of vehicle use area landscape buffer areas is to improve the appearance of vehicular use areas and property abutting public rights-of way. The parking lot is already in place and the dumpster will be appropriately screened, so the streetscape or and general appearance of the site will not be worsened. The dumpster itself does not appear to encroach into the LBA, but the enclosure structure does. The enclosure structure provides screening for the dumpster.

- (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 landscaping and parking areas are already in place. The dumpster is appropriately located on the site and the encroachment into the LBA is minimal.

- (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 regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant. The parking lot is already in place and the dumpster encroachment is minimal.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER FROM CHAPTER 10.2.11 TO ELIMINATE LBA, SCREENING AND TREE REQUIREMENTS ALONG CHAMBERLAIN LANE:

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

STAFF: The waiver will not adversely affect adjacent property owners since the parking lot is existing, however the screening provided exists in the right-of-way and does not meet current landscape requirements.

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

STAFF: The waiver will violate Guideline 3, Compatibility, of Cornerstone 2020, which calls for the protection of roadway corridors and public areas from visual intrusions, for mitigation of parking areas so as not to negatively impact nearby residents and pedestrians, and for screening and buffering of parking areas adjacent to streets. The waiver will not violate Guideline 13, Landscape Character, which calls for the protection of parkways through standards for buffers, landscape treatment, lighting and signs. Chamberlain Lane is not a parkway or a scenic roadway. The purpose of vehicle use area landscape buffer areas is to improve the appearance of vehicular use areas and property abutting public rights-of way. While the buffer along Chamberlain Lane is required due to the existing location of the parking lot, the landscaping that is currently in place exists in the right-of-way. The gaps in the screening could be filled in order to mitigate the waiver request.

- (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 not the minimum necessary to afford relief to the applicant because hedges may be planted. The site currently provides most of the plantings, however, the 3 foot screen is not fully provided and the gaps could be filled in.

- (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 has incorporated other design measures within the right-of-way that generally meet the minimum of the district and compensate for non-compliance. However, the existing gaps in the 3 foot screen could be filled in.

REQUIRED ACTIONS:

- **APPROVE** or **DENY** the **Waivers**
- **APPROVE** or **DENY** the Binding Element Amendments on **CONDITION** that the General Plan Binding Elements be amended

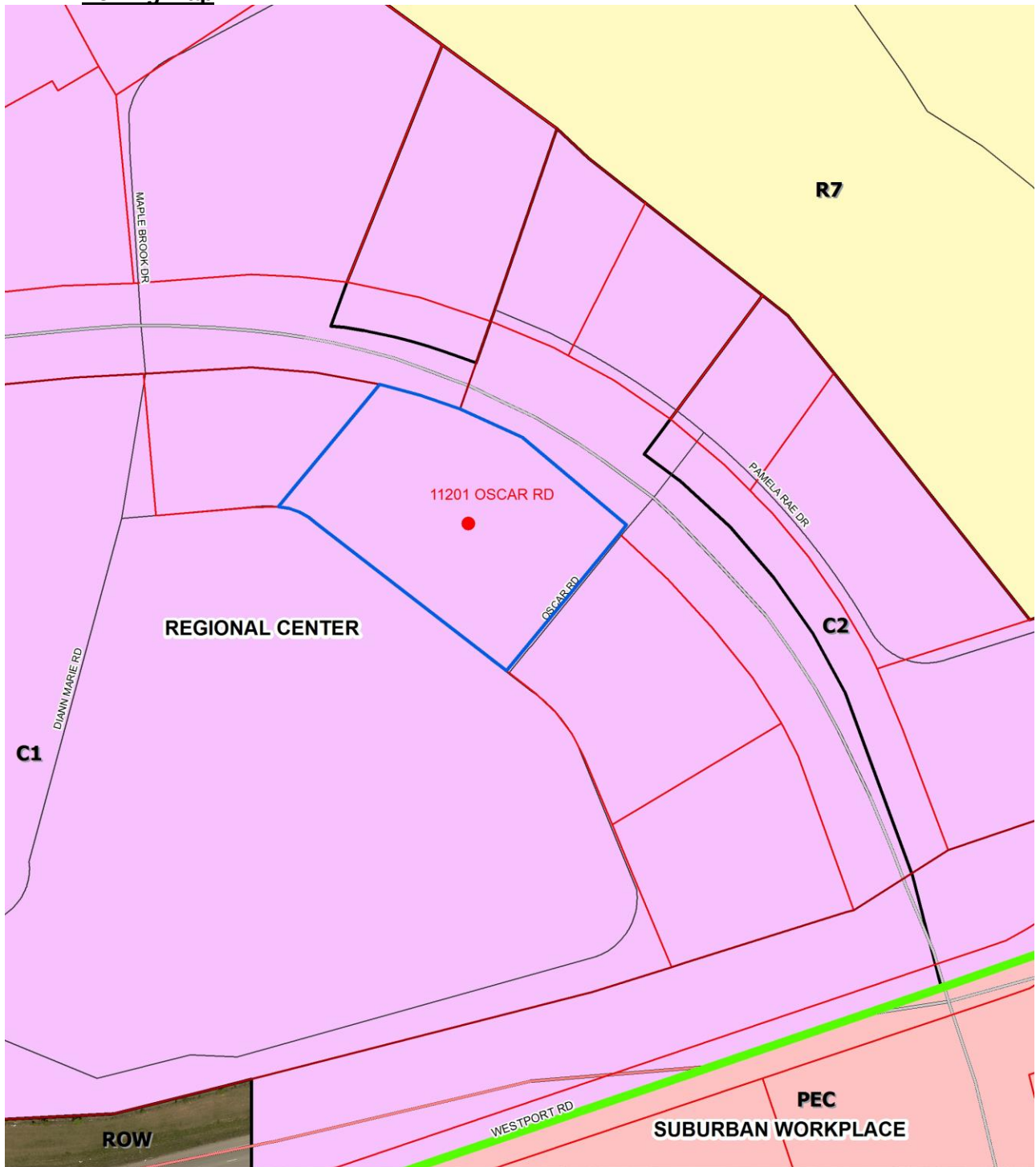
NOTIFICATION

Date	Purpose of Notice	Recipients
12-19-18	Hearing before DRC	1 st tier adjoining property owners Speakers at Planning Commission public hearing Registered Neighborhood Groups in Council District 17

ATTACHMENTS

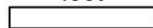
1. Zoning Map
2. Aerial Photograph
3. Existing General Plan Binding Elements
4. Existing Site Binding Elements
5. Proposed Site Binding Elements

1. **Zoning Map**



18DEVPLAN1162

feet



125



Copyright (c) 2017, LOUISVILLE AND JEFFERSON
COUNTY METROPOLITAN SEWER DISTRICT (MSD),
LOUISVILLE WATER COMPANY (LWC),
LOUISVILLE METRO GOVERNMENT and
JEFFERSON COUNTY PROPERTY VALUATION
ADMINISTRATOR (PVA). All Rights Reserved.

2. Aerial Photograph



18DEVPLAN1162

feet



125



Copyright (c) 2017, LOUISVILLE AND JEFFERSON COUNTY METROPOLITAN SEWER DISTRICT (MSD), LOUISVILLE WATER COMPANY (LWC), LOUISVILLE METRO GOVERNMENT and JEFFERSON COUNTY PROPERTY VALUATION ADMINISTRATOR (PVA). All Rights Reserved.

3. Existing General 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. Any changes/additions/alterations of any binding element(s) shall be submitted to the Planning Commission for review and approval; any changes/additions/alterations not so referred shall not be valid.
 - a. Prior to the development of each site or phase of this project, the applicant, developer, or property owner shall obtain approval of a detailed district development plan from the Planning Commission. Each plan shall be in adequate detail and subject to additional binding elements. The additional binding elements may relate, but not be limited, to the following items:
 - a. screening, buffering, landscaping, tree preservation
 - b. density, floor area, size, and height of buildings
 - c. points of access and site layout with respect to on-site circulation
 - d. land uses
 - e. signage
 - f. loading berths
 - g. parking
 - h. sidewalks
 - i. site design elements relating to alternative transportation modes
 - j. outdoor lighting
 - k. minor subdivision plat approval
 - l. air pollution
 - m. the timing of construction to coincide with the availability of flood protection measures, municipal sewer and water service, and adequate fire protection
 - n. dumpsters
2. A detailed construction plan showing existing and proposed construction in Chamberlain Lane and Westport Road, and including a 20 scale drawing of their intersection, will be submitted to and approved by the Jefferson County Department of Public Works and the Kentucky Department of Transportation prior to the commencement of any construction. These improvements will be in conformance with the approved General District Development Plan, Preliminary Subdivision Plan Docket No. 10-48-88, and Traffic Impact Analysis study, and will be completed prior to the issuance of any certificate of occupancy.
3. Direct access is prohibited to any lot from Westport Road with the exception of the entrance 400 feet east of Chamberlain Lane center line to center line. The access shall be right-in right-out only, as approved by the Jefferson County Department of Public Works and Transportation.
4. There shall be no direct access to Chamberlain Lane for the out parcels except out lot #2 and service roads as shown on the approved development plan.

5. The development excluding out lots shall not exceed the following:
 - a. R-7 Residential Multi-family district – 200 dwelling units (18.18 du / acre on 11.0 acres)
OR-3 Office/Residential District – 139,200 square feet
 - b. C-1 Commercial District – 394,000 square feet
 - c. C-2 Commercial District – 15,000 square feet
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 the Jefferson County Department of Public Works and Transportation (400 Fiscal Court Building) and the Metropolitan Sewer District (700 West Liberty).
 - b. The property owner/developer must obtain approval of a detailed plan for screening (buffering/landscaping) as described in Article 12 prior to requesting a building permit. Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter.
 - c. A major subdivision plat creating the lots and roadway as shown on the approved general district development plan and preliminary subdivision plan shall be recorded prior to issuance of any building permits.
 - d. An access or crossover easement agreement in a form acceptable to the Planning Commission legal counsel shall be secured from the adjoining property owner and recorded. A copy of the recorded instrument shall be submitted to the Division of Planning and Development Services; transmittal of approved plans to the office responsible for permit issuance will occur only after receipt of said instrument.
 - e. All necessary recording fees shall be paid.
7. All primary development identification signs shall be monument signs. Each sign shall not exceed 64 square feet in area and 9 feet in height.
8. All lots located below the 100 year flood elevation shall conform to the Floodplain Regulations.
9. No outdoor advertising signs, small freestanding signs, pennants, balloons or banners shall be permitted on the site.
10. Tenants of all automobile service facilities shall submit written documentation to the Planning Commission concerning tire disposal.
11. The motel located east of Chamberlain Lane, as depicted on the General District Development Plan, shall not exceed two stories or 25 feet in height.
12. A six-foot high solid brick wall of style and design to be approved by the Shaker Farms Condominium Association, which approval shall not be unreasonably withheld, shall be constructed for a length of approximately 950 feet along the edge of the motel and office

parking areas which are situated east of Chamberlain Lane along the north property line of the Maple Brook development; location of the wall is shown on the site plan entitled Maple Brook Wall Exhibit dated July 25, 1996. Along that north property line is an approximate 15-foot landscape buffer area which shall separate the motel and office buildings from the Shaker Farms Condominium development. The wall shall be situated along the south side of that landscape buffer area. In order to soften the impact of the wall, the developer or its successor in interest shall be responsible for planting trees or shrubbery along the north side of the wall in accordance with Article 12 of the Jefferson County Development Code (the County landscape regulation). This landscape buffer area may be fully utilized by Shaker Farms Condominium owners as if this area were an extension of their yard; however, unless the parties agree otherwise, this landscape buffer area shall continue to be owned by the developers of their successors in interest. The wall shall be maintained on both the north and south sides by the developers or their successors in interest.

- a. The wall shall be constructed prior to commencement of building construction on Lots 1 or 2 as shown on the approved General District Development Plan and Preliminary Subdivision Plan. Site grading for the proposed construction and the wall may occur concurrently, however, no building construction may occur until such time as the wall is completed.

13. Free-standing signs shall be restricted as follows:

For the lot depicted on the general district development plan as motel #1, 20 feet in height and 80 square feet in area.

For the lot and building depicted on the general district development plan as motel #2, 30 feet in height and 144 square feet in area.

For the lot and building depicted on the general district development plan as restaurant #1, 20 feet in height and 80 square feet in area.

For the lot and building depicted on the general district development plan restaurant #2, 30 feet in height and 96 square feet in area.

For the lot and building depicted on the general district development plan as out parcel #4, 20 feet in height and 96 square feet in area.

14. Outdoor lighting (for parking lot illumination and security) 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 off-site.
15. The following uses, although permitted generally in the C-2 Commercial District, are prohibited uses within the C-2 areas of Maple Brook, adult entertainment, book binding facilities, dance halls, kennels, monuments sales, sign painting, skating rinks, used car

sales unless in connection with a new car sales dealership, and advertising signs (billboards).

16. If a building permit is 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.
17. 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.
18. 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.
19. 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.
20. The above binding elements may be amended as provided for in the Zoning District Regulations.
21. The Chamberlain Lane frontage of Lots 4, 5, 6, 7, 8 and 13 as depicted on the major record plat of Maple Brook Section #1, shall have landscape buffer areas as follows:

<u>Lot #</u>	<u>LBA on Property</u>	<u>LBA in R.O.W.</u>
4	0	10
5	0	10
6	0	10
7	3	6
8	3	6
13	5	5

4. Existing Site Binding Elements

- ~~1. The development will be in accordance with the approved district development plan. No further development will occur without prior approval from the Planning Commission.~~
- ~~2. The development shall not exceed 6,430 square feet of gross floor area.~~
- ~~3. Before a building or alteration permit and/or a certificate of occupancy is requested:
 - ~~a) The development plan must be reapproved by the Jefferson County Department of Public Works and Transportation and the Metropolitan Sewer District.~~
 - ~~b) The size and location of any proposed sign must be approved by the Planning Commission. The Planning Commission may require that the signs be smaller than would otherwise be permitted by the Zoning District Regulations.~~
 - ~~c) The property owner/developer must obtain approval of a detailed plan for screening (buffering/landscaping) as described in Article 12 and as agreed to as of this date for the length of the road herein made part of the plan and as such Frisch's is but one part. Such plan shall be of record and the Frisch's portion thereof implemented prior to requesting a certificate of occupancy and maintained thereafter.~~~~
- ~~4. No outdoor advertising signs (billboards), small freestanding (temporary) signs, pennants or banners shall be permitted on the site.~~
- ~~5. If a building permit is not issued within one year of the date of approval of the plan, 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.~~
- ~~6. The above binding elements may be amended as provided for in the Zoning District Regulations.~~

5. Proposed Site Binding Elements

All binding elements from the approved General Development Plan are applicable to this site, in addition to the following:

1. The development shall be in accordance with the approved district development plan, all applicable sections of the Land Development Code (LDC) and agreed upon binding elements unless amended pursuant to the Land Development Code. Any changes/additions/alterations of any binding element(s) shall be submitted to the Planning Commission or the Planning Commission's designee for review and approval; any changes/additions/alterations not so referred shall not be valid.
2. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.
3. Construction fencing shall be erected when off-site trees or tree canopy exists within 3' of a common property line. Fencing shall be in place prior to any grading or construction to protect the existing root systems from compaction. The fencing shall enclose the entire area beneath the tree canopy and shall remain in place until all construction is completed. No parking, material storage or construction activities are permitted within the protected area.

4. Before any permit (including but not limited to building, parking lot, change of use, site disturbance is requested:
 - a. The development plan must receive full construction approval from Construction Review, Louisville Metro Public Works and the Metropolitan Sewer District.
 - b. A minor subdivision plat or legal instrument shall be recorded creating the lot lines as shown on the development plan. A copy of the recorded instrument shall be submitted to the Division of Planning and Design Services prior to obtaining a building permit.
 - c. 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.
 - d. A reciprocal access and crossover easement agreement in a form acceptable to the Planning Commission legal counsel shall be created between the adjoining property owners and recorded. A copy of the recorded instrument shall be submitted to the Division of Planning and Design Services.
5. If a certificate of occupancy (building permit) is not issued within one (two) year(s) 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.
6. There shall be no outdoor music (live, piped, radio or amplified) or outdoor entertainment or outdoor PA system audible beyond the property line or permitted on the site.
7. 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.
8. The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the December 19, 2018 DRC meeting.