

# Development Review Committee

## Staff Report

October 5, 2022



<b>Case No:</b>	22-DDP-0062
<b>Project Name:</b>	Culvers Proposed Drive-thru Restaurant
<b>Location:</b>	10601 Fischer Park Drive
<b>Owner(s):</b>	JR Real Estate, LLC
<b>Applicant:</b>	Land Design & Development, INC
<b>Jurisdiction:</b>	Louisville Metro
<b>Council District:</b>	17 – Markus Winkler
<b>Case Manager:</b>	Molly Clark, Planner II

### REQUEST(S)

- Waivers:
  1. Waiver from section 5.9.2.B.ii of the Land Development Code to not provide a pedestrian connection from the Westport Road right-of-way to the proposed entrance, (22-WAIVER-0170)
  2. Waiver from section 10.2.4 to reduce the VUA/LBA Buffer (22-WAIVER-0172)
- Revised Detailed District Development plan with binding elements

### CASE SUMMARY/BACKGROUND

The subject site is zoned C-2 Commercial in the Regional Center Form District. The applicant is proposing two drive-thru restaurants on 1.81 acres. The proposed Culver's drive thru restaurant will be 4,130 SF while the other drive-thru restaurant will be 2,750 SF. The site currently has the old building that used to house the Old Chicago restaurant, which is proposed to be demolished.

This site is plan certain under case number 09-06-89 . The original plan was for Old Chicago Pizza and was revised under case number 15233 for a small addition.

### STAFF FINDING

Staff finds that the plan is in order, adequately justified and meet the standards of review.

### TECHNICAL REVIEW

Transportation Planning and MSD have preliminarily approved the proposal.

### INTERESTED PARTY COMMENTS

Staff has not received any interested party comments.

**STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER & 5.9.2.A.1.b.i. to not provide pedestrian connection from the adjacent public rights-of-way through off-street parking area to not-residential building entrances (22-WAIVER-0106):**

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

STAFF: The waiver will not adversely affect adjacent property owners since the applicant because there are environmental constraints such as steep slopes that make the connection difficult. The applicant is still providing pedestrian connection to Fischer Park Drive, an adjacent private road.

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

STAFF: Community Form Goal 1, Policy 12 calls to ensure that parking, loading and delivery is adequate and convenient for motorists and does not negatively impact nearby residents or pedestrians. This waiver would allow safer pedestrian access to the entrance. Community Form Goal 2, Policy 7 calls to encourage activity centers to include a mixture of compatible land uses in order to reduce traffic congestion by requiring fewer trips, support and enhance alternative modes of travel, and encourage vitality and a sense of place. Community Form Goal 2, Policy 14 calls to encourage adjacent development sites to share entrance and parking facilities in order to reduce the number of curb cuts and the amount of surface parking. Community Form Goal 2, Policy 16 calls to encourage activity centers to be easily accessible by bicycle, car, transit, and for pedestrians and people with disabilities. Mobility Goal 3, Policies 1-5, 9, 12, 17, 18, 20 call to provide transportation services and facilities to promote and accommodate growth and change in activity centers through improved access management. Provide walking and bicycling opportunities to enable activity centers to minimize single-occupant vehicle travel. Encourage a mix of complementary neighborhood serving businesses and services in neighborhood and village centers to encourage short trips easily made by walking or bicycling.

- (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 because there are environmental constraints such as steep slopes that make the connection difficult.

- (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 create an unnecessary hardship on the applicant because there are environmental constraints such as steep slopes that make the connection difficult.

**STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER of section 10.2.4. to allow the reduction of the required VUA/LBA buffer from 15 ft to 10 ft (22-WAIVER-0097):**

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

STAFF: The waiver will not adversely affect adjacent property owners since the applicant is still going to provide all the required plantings.

(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. This site, although located in the Town Center Form District, is surround primarily by development that are designed according to the Suburban Form District standards. Community Form Goal 1, Policy 6 calls to discourage non-residential expansion into existing residential areas unless applicant can demonstrate that any adverse impact on residential uses will be mitigated. Evaluation of impacts may include, but not be limited to, displacement of residents, loss of affordable housing units, traffic, parking, signs, lighting, noise, odor, and stormwater. Appropriate transitions from non-residential to residential uses should depend on the pattern of development of the Form District and may include natural vegetative buffers, landscaping or the use of higher density residential between lower density residential and/or non-residential. This site is being proposed next to another hotel and will be surround by other commercial developments without displacing any current residents. Community Form Goal 1, Policy 20 calls to mitigate adverse visual intrusions when there are impacts to residential areas, roadway corridors, and public spaces. This site is not adjacent to existing residential uses and will still be providing all the required plantings in all landscape buffer areas.

(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 going to provide all the required plantings. The buffer is being reduced due to the applicant reusing the existing park which is allows for only 10 feet of buffer area width..

(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 create an unnecessary hardship on the applicant because the applicant is still providing all the required plantings.

**STANDARD OF REVIEW AND STAFF ANALYSIS FOR RDDDP and AMENDMENT TO BINDING ELEMENTS**

- a. The conservation of natural resources on the property proposed for development, including: trees and other living vegetation, steep slopes, water courses, flood plains, soils, air quality, scenic views, and historic sites;

STAFF: There do not appear to be any environmental constraints or historic resources on the subject site. Tree canopy requirements of the Land Development Code will be provided on the subject site.

- b. The provisions for safe and efficient vehicular and pedestrian transportation both within the development and the community;

STAFF: Provisions for safe and efficient vehicular and pedestrian transportation within and around the development and the community has been provided, and Metro Public Works and the Kentucky Transportation Cabinet have approved the preliminary development plan.

- c. The provision of sufficient open space (scenic and recreational) to meet the needs of the proposed development;

STAFF: There are no open space requirements pertinent to the current proposal. Future multi-family development proposed on the subject site will be required to meet Land Development Code requirements.

- d. The provision of adequate drainage facilities on the subject site in order to prevent drainage problems from occurring on the subject site or within the community;

STAFF: The Metropolitan Sewer District has approved the preliminary development plan and will ensure the provision of adequate drainage facilities on the subject site in order to prevent drainage problems from occurring on the subject site or within the community.

- e. The compatibility of the overall site design (location of buildings, parking lots, screening, landscaping) and land use or uses with the existing and projected future development of the area;

STAFF: The overall site design and land uses are compatible with the existing and future development of the area. Appropriate landscape buffering and screening will be provided to screen adjacent properties and roadways. Buildings and parking lots will meet all required setbacks.

- f. Conformance of the development plan with the Comprehensive Plan and Land Development Code. Revised plan certain development plans shall be evaluated for conformance with the non-residential and mixed-use intent of the form districts and comprehensive plan.

STAFF: The development plan conforms to applicable guidelines and policies of the Comprehensive Plan and to requirements of the Land Development Code.

#### **REQUIRED ACTIONS:**

- **APPROVE** or **DENY** the **Waiver** from section 5.9.2.B.ii of the Land Development Code to not provide a pedestrian connection from the Westport Road right-of-way to the proposed entrance.
- **APPROVE** or **DENY** the **Waiver** from section 10.2.4 to reduce the VUA/LBA Buffer
- **APPROVE** or **DENY** the **Revised Detailed District Development Plan with binding elements**

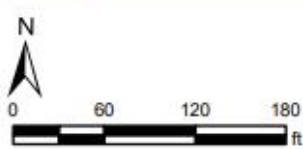
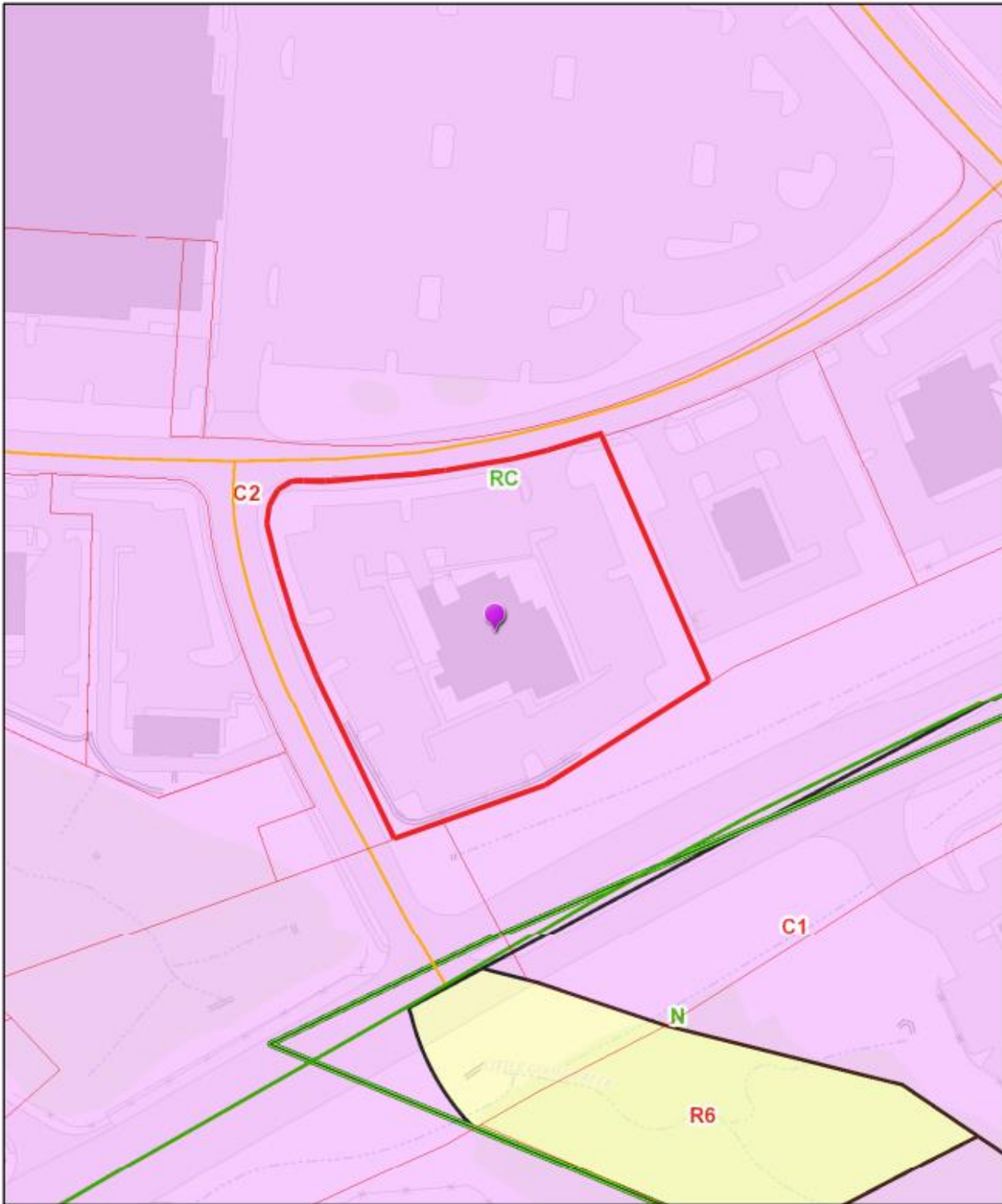
#### **NOTIFICATION**

Date	Purpose of Notice	Recipients
9-23-22	Hearing before DRC	1 <sup>st</sup> tier adjoining property owners and current residents

**ATTACHMENTS**

1. Zoning Map
2. Aerial Photograph
3. Existing Binding Elements
4. Proposed Binding Elements

1. Zoning Map



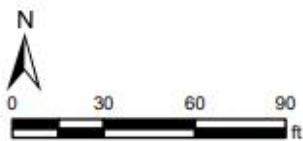
Wednesday, September 28, 2022 | 6:24:41 PM



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2. Aerial Photograph



Wednesday, September 28, 2022 | 5:57:11 PM



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**3. Existing Binding Elements (Case No. 15233)**

- ~~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. Access points shall be limited to those shown on the approved general district development plan.~~
- ~~3. Vehicular access to Westport Road shall be prohibited from this outlet.~~
- ~~4. The development shall not exceed 8,724 square feet of gross floor area~~
- ~~5. The only permitted freestanding sign shall be as shown on the approved master sign plan dated "received June 29, 1995," and shall strictly conform to all provisions of this plan. The signs shall be of monument style and shall conform to the signage concept drawings entitled "Business Monument Sign," sheet number A1.2 dated "received September 13, 1996." All freestanding signs shall be located at least five feet from any right-of-way line and shall not exceed the height or area shown. Attached signs for buildings "A" "B" "C" "D" "E" "M" and "Z" shall strictly conform to the provisions noted on this plan.~~
- ~~6. Property owners shall be responsible for planting and maintenance of landscaping along Westport Road as shown on the landscape concept plan dated September 5, 1996. This includes all plantings to be located within the right-of-way. All plantings along the Westport Road frontage shall be correctly installed by May 1, 1999 or the developer shall be responsible for completion of the installation by June 1, 1999.~~
- ~~7. Additional plantings may be required during the landscape plan review of the outlet.~~
- ~~8. No outdoor advertising signs (billboards), small free-standing (temporary) signs, pennants or banners shall be permitted on the site.~~
- ~~9. There shall be no outdoor storage on the site.~~
- ~~10. There shall be no outdoor music (live, piped, radio or amplified), outdoor entertainment, or outdoor PA system permitted on the site.~~
- ~~11. Outdoor lighting shall be directed down and away from surrounding residential properties. Lighting fixtures shall have a 90 degree cutoff so that no light source is visible off-site.~~
- ~~12. 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 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.~~~~
- ~~13. 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.~~
- ~~14. 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~~
- ~~15. The property owner/developer shall provide copies of these binding elements to tenants, contractors and other parties engaged in development of this project, and shall inform them of the content of these binding elements. Further, the property owner/developer shall require contractors to similarly notify all of their sub-contractors whose duties relate to the binding elements. The property owner/developer shall ensure their compliance with the binding elements.~~



#### **4. Proposed Binding Elements**

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 (and to the City of Lyndon, St. Matthews, Hurstbourne, or Middletown etc) for review and approval; any changes/additions/alterations not so referred shall not be valid.
2. Prior to development (includes clearing and grading) of each site or phase of this project, the applicant, developer, or property owner shall obtain approval of a detailed district development plan in accordance with Chapter 11, Part 6. Each plan shall be in adequate detail and subject to additional binding elements.
3. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.
4. 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.
5. 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) 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) A Tree Preservation Plan in accordance with Chapter 10 of the LDC shall be reviewed and approved prior to obtaining approval for site disturbance.
  - d) The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the October 5, 2022 DRC meeting. A copy of the approved rendering is available in the case file on record in the offices of the Louisville Metro Planning Commission.
6. A certificate of occupancy must be received from the appropriate code enforcement department 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.
7. There shall be no outdoor music (live, piped, radio or amplified) or outdoor entertainment or outdoor PA system permitted on the site.

8. 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.