

Nustreams, LLC

Case No. 15ZONE1039

10/12/2015

Statement of Compliance

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Introduction:

Nustreams, LLC proposes to rezone the properties at 4524, 4526 and 4528 from R-4 Single Family Residential to OR-3 Office Residential and C-1 Commercial in order to construct a single retail building (7,250 square feet) and 6 medical office buildings totalling 39,700 square feet. The "L-shaped" subject property is surrounded by properties owned by More Than Conquerors Christian Church on three sides and single family residential properties to the west and south. The subject property has frontage on Cane Run Road near its intersection with Clarinet Drive. The subject property is located in the Neighborhood Form District.

Guideline 1-Community Form

The subject property is located in the Neighborhood "Form District. The Neighborhood Form District may contain "neighborhood centers with a mixture of uses such as offices, retail shops, restaurants and services." These centers should be at an appropriate scale for the surrounding neighborhood. The proposed development contains retail and office buildings, with a two-story maximum height and 50' setbacks adjacent to the existing homes in the area. The property to the south is the site of a church, and there is a fire station across Cane Run Road. The adjacent property to the north is zoned C-2 Commercial. This mini-center of activity is an appropriate location for a low impact, neighborhood serving development like the one proposed.

Guideline 2 Centers

The proposed development complies with the intent and applicable policies of Guideline 2. The subject property is in an older, redeveloping residential area along Cane Run Road. The area was formerly removed from the city and made up of several smaller agricultural properties. Over time, many of these properties have been divided into subdivisions or redeveloped. The subject property is no longer appropriate for single family residential use, and the proposed development is appropriate in both location and scale.

Guideline 3 Compatibility

The proposed development complies with the intent and applicable policies of Guideline 3. The proposed development includes retail along Cane Run Road, and office between the proposed retail building and the residences to the rear of the site. The applicant is proposing 50' setbacks with landscaping along all of the residential boundaries of the subject property. The proposed buildings are two-story, a scale that is appropriate for sites near residences. There should be limited traffic using the

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site, and all of the traffic will enter and exit from Cane Run Road. The applicant will comply with lighting requirements of the Land Development Code on the buildings and in the parking areas.

Guidelines 4 Open Space and 5 Natural Areas and Scenic and Historic Resources

The proposed development complies with the intent and applicable policies of these Guidelines. The proposed development is providing significant setbacks and detention adjacent to the residentially used properties that border it. The proposal also includes open space surrounding the office buildings. The subject property contains no documented historic or scenic resources.

Guideline 6 Marketplace

The proposed development complies with the intent and applicable policies of Guideline 6. The proposed development is on Cane Run Road, a major arterial and is adjacent to other uses that create a small activity center in this area of Cane Run Road. The proposed development contains uses that will not adversely impact surrounding residential uses.

Guideline 7 Circulation

The proposed development complies with the intent and applicable policies of Guideline 7. The proposed development includes adequate parking and right of way dedication as required along Cane Run Road. There is no opportunity for access to adjoining properties at this time, so no connections are being proposed. The applicant is providing sidewalks throughout the project to connect to sidewalks on Cane Run Road.

Guideline 9 Bicycle, Pedestrian and Transit

The proposed development complies with the intent and applicable policies of Guideline 9. The proposed development includes sidewalks to connect to the sidewalks along Cane Run Road and will provide bicycle parking as required by the Land Development Code.

Guideline 10 Flooding and Stormwater and Guideline 11 Water Quality

The proposed development complies with the intent and applicable policies of these Guidelines. The proposed development is partially impacted by the floodplain. The proposed development includes the grading of the site to comply with the ordinance and to ensure that the buildings are kept compliant (1' above base flood elevation). The proposed development also includes a large detention/infiltration basin to handle stormwater from the new buildings and parking areas.

Guideline 13 Landscape Character

The proposed development complies with the intent and applicable policies of Guideline 12. The proposed development includes large setbacks near existing residences and will include landscaping along all of the property lines as required by the Land Development Code.

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VARIANCE JUSTIFICATION

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4524-4528 CANE RUN ROAD

Nustreams, LLC, the applicant, proposes to rezone the subject property from R-4 to OR Office Residential and C-1 Commercial. The applicant proposes to construct a single commercial building along Cane Run Road, a mixed use building behind that and two office buildings toward the rear of the site. The parking between the mixed use building and the office buildings is located 15' from the adjacent R-4 zoned property, necessitating this variance.

The variance will not adversely affect the public health, safety or welfare as the variance will only allow parking within the 50' setback. No buildings are proposed in this area, and the parking will be located behind a landscape buffer area that meets the requirements of the Land Development Code.

The variance will not cause a hazard or nuisance to the public as it will allow for a limited amount of parking to be located within 15' of the adjacent residential property. By contrast, a home could be within 6' of the property line (side yard setback) with no landscape buffer requirement.

The variance will not allow an unreasonable circumvention of the requirements of the zoning regulations. The applicant is attempting to create a compatible mixed use development that will include medical offices and related commercial property. The subject property is also impacted by the floodplain, necessitating the use of the land as proposed.

The variance arises from special circumstances that do not generally apply to land in the vicinity of the project. The subject property is impacted by the floodplain, and the applicant is attempting to develop it responsibly by keeping locating the parking in an area where it will disturb the floodplain the least and will also be buffered from adjacent residential properties.

The strict application of the regulations would create an unnecessary hardship on the applicant, in that it would force the applicant to provide a wide buffer where a smaller, planted buffer will achieve the same result.

The circumstances are not the result of actions taken by the applicant subsequent to the adoption of the zoning ordinance. The applicant is attempting to use the relief available in the zoning ordinance to create a better overall development that will simultaneously allow for a meaningful buffer and a smaller impact on the floodplain.

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WAIVER JUSTIFICATION

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4524-4528 CANE RUN ROAD

Waiver Request No. 1: A waiver is requested from TABLE 10.2.2 of the Land Development Code to reduce the required 15' Landscape Buffer Area to 5'.

1. The waiver request will not adversely affect adjacent property owners. As this request regards reducing and not eliminating the Landscaping Buffer Area (LBA) from 15' to 5' feet to allow for additional parking, it is not likely to harm or otherwise negatively affect adjacent property owners. The reduced buffer area is located within the development, as well.
2. The waiver request will not violate the Comprehensive Plan. The proposed development is a compact and efficient use of the subject property, and the buffer area will not affect those off-site.
3. The extent of waiver of the regulation is the minimum necessary to afford relief to the applicant. Reducing the LBA from 15' to 5' is the minimum necessary to provide required parking on the premises. Strict enforcement of the regulation would reduce available parking. The overall site design of the mixed-use project contains buffers that are typical in commercial centers. The difference here is that the applicant is seeking to reduce the intensity of the proposed development through the use of the OR zoning district and variance.
4. Strict application of the provisions of the regulation would create an unnecessary hardship on the applicant as the regulation would reduce available parking or mandate that the applicant expand the amount of commercial space on the subject property to accommodate the pharmacy.

Waiver Request No. 3: A waiver is requested from TABLE 10.2.2 to reduce the required C1/OR LBA to 5' each side of the property line, and 0' through the proposed building and parking.

1. The waiver request will not adversely affect adjacent property owners. The reducing of the LBA from 15' to 5' on each side of the property line and eliminating the requirement on the proposed building (since the proposed

property line runs through the building) will have no impact on adjacent property owners.

2. The waiver request will not violate the Comprehensive Plan. The proposed development is compact and an efficient use of available land in the area. The applicant is seeking to reduce the intensity of the overall development by limiting the amount of commercial space available.
3. The extent of waiver of the regulation is the minimum necessary to afford relief to the applicant. Reducing the LBA from 15' to 5' is the minimum necessary to provide the additional parking on the side of the building. Furthermore, elimination of the LBA requirement is requested on that portion of the proposed property line that runs through the building and parking areas. Strict enforcement of the regulation would reduce available parking and would require the applicant to provide more commercial space.
4. Strict application of the provisions of the regulation would create an unnecessary hardship on the applicant as it would require that the applicant increase the intensity of the proposed development or eliminate the pharmacy service from his proposed medical office building.

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