

Development Review Committee

Staff Report

September 18, 2019



Case No:	19-DDP-0043
Project Name:	First Watch Middletown
Location:	12913 Shelbyville Road
Owner(s):	John Paselsky, OHP Middletown KY LLC
Applicant:	Petey Cunningham, Holland Development LLC
Jurisdiction:	Middletown
Council District:	19 – Anthony Piagentini
Case Manager:	Lacey Gabbard, AICP, Planner I

REQUESTS:

1. **Waiver** of Land Development Code section 10.2 to allow the proposed dumpster enclosure to be located within the 25 foot landscape buffer area along the west property line (19-WAIVER-0043)
2. **Revised Detailed District Development Plan**

CASE SUMMARY/BACKGROUND

There is a previously approved plan for this site, 18DEVPLAN1200, for a 4,332 square foot First Watch restaurant. Middletown has requested the dumpster location be moved, which resulted in a revised plan and a variance and waiver request. The subject site is zoned C-1 and C-2 and is located in the Suburban Marketplace Corridor form district.

There is a related case, 19-VARIANCE-0035, to allow the proposed dumpster to be located within the 25 foot required setback area along the west property line, which will be heard by the Board of Zoning Adjustment on October 21, 2019 or sooner, if an earlier date becomes available. The Development Review Committee does not act on this variance request.

Previous cases:

- 9-82-78: Change in zoning from R-4 Residential and C-1 Commercial to C-2 Commercial.
- 9-16-88: Change in zoning from OR-3 Office/Residential and R-4 Residential Single Family to C-1 Commercial for an Applebee's restaurant.
- 18DEVPLAN1200: Revised Detailed District Development Plan to build a 4,332 square foot First Watch Restaurant.

STAFF FINDINGS

The requests are adequately justified and meet the standard of review.

TECHNICAL REVIEW

Public Works and MSD have provided preliminary approval.

INTERESTED PARTY COMMENTS

Staff has received no comments from interested parties concerning this proposal.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER OF LAND DEVELOPMENT CODE SECTION 10.2 TO ALLOW THE PROPOSED DUMPSTER ENCLOSURE TO BE LOCATED WITHIN THE 25 FOOT LANDSCAPE BUFFER AREA ALONG THE WEST PROPERTY LINE (19-WAIVER-0043)

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

STAFF: The waiver will not adversely affect adjacent property owners since the property to the west of the subject site is zoned R-4 single family residential but, according to PVA, the parcel is owned by Louisville Gas & Electric and the use is Utility Industrial. The adjoining parcels on the north side of Shelbyville Road are all internal to the Middletown Station development. The properties on the south side of Shelbyville Road are zoned OR-3 Office-Residential or C-1 Commercial and are screened from the dumpster by Shelbyville Road and the 25 foot scenic corridor buffer located on the subject site.

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

STAFF: Land Use & Development Goal 1, Policy 10 calls for mitigation of the impacts caused when incompatible developments unavoidably occur adjacent to one another. Buffers should be used between uses that are substantially different in intensity or density. Buffers should be variable in design and may include landscaping, vegetative berms and/or walls and should address issues such as outdoor lighting, lights from automobiles, illuminated signs, loud noise, odors, smoke, automobile exhaust or other noxious smells, dust and dirt, litter, junk, outdoor storage, and visual nuisances. Land Use & Development Goal 1, Policy 9 ensures an appropriate transition between uses that are substantially different in scale and intensity or density of development. The transition may be achieved through methods such as landscaped buffer yards, vegetative berms, compatible building design and materials, height restrictions and setback requirements.

The applicant is requesting a waiver to allow the proposed dumpster to encroach into the 25 foot LBA on the west side of the property by less than 10 feet. The parcel immediately to the west of the subject site, while zoned R-4 Residential, is used as Utility Industrial and owned by Louisville Gas & Electric. The two uses are not incompatible since the subject site was previously developed as an Applebee's restaurant and there are no known complaints regarding the use of the neighboring site. Additionally, the uses do not appear to be substantially different in intensity or density. The proposed plan indicates that all required LBA plantings will be provided.

- (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 proposes to provide all required plantings and only encroach

into the LBA by less than 10 feet on the eastern property line. Additionally, Middletown has requested the dumpster be relocated to the proposed location.

- (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 since the applicant proposes to provide all required plantings, and Middletown has requested that the dumpster be relocated.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR RDDDP

- (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. The proposed plan does not substantially alter the site or its natural resources.

- (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 has 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:

- **Recommend APPROVAL or DENIAL of the Waiver** to the City of Middletown
- **Recommend APPROVAL or DENIAL the Revised Development Plan** to the City of Middletown

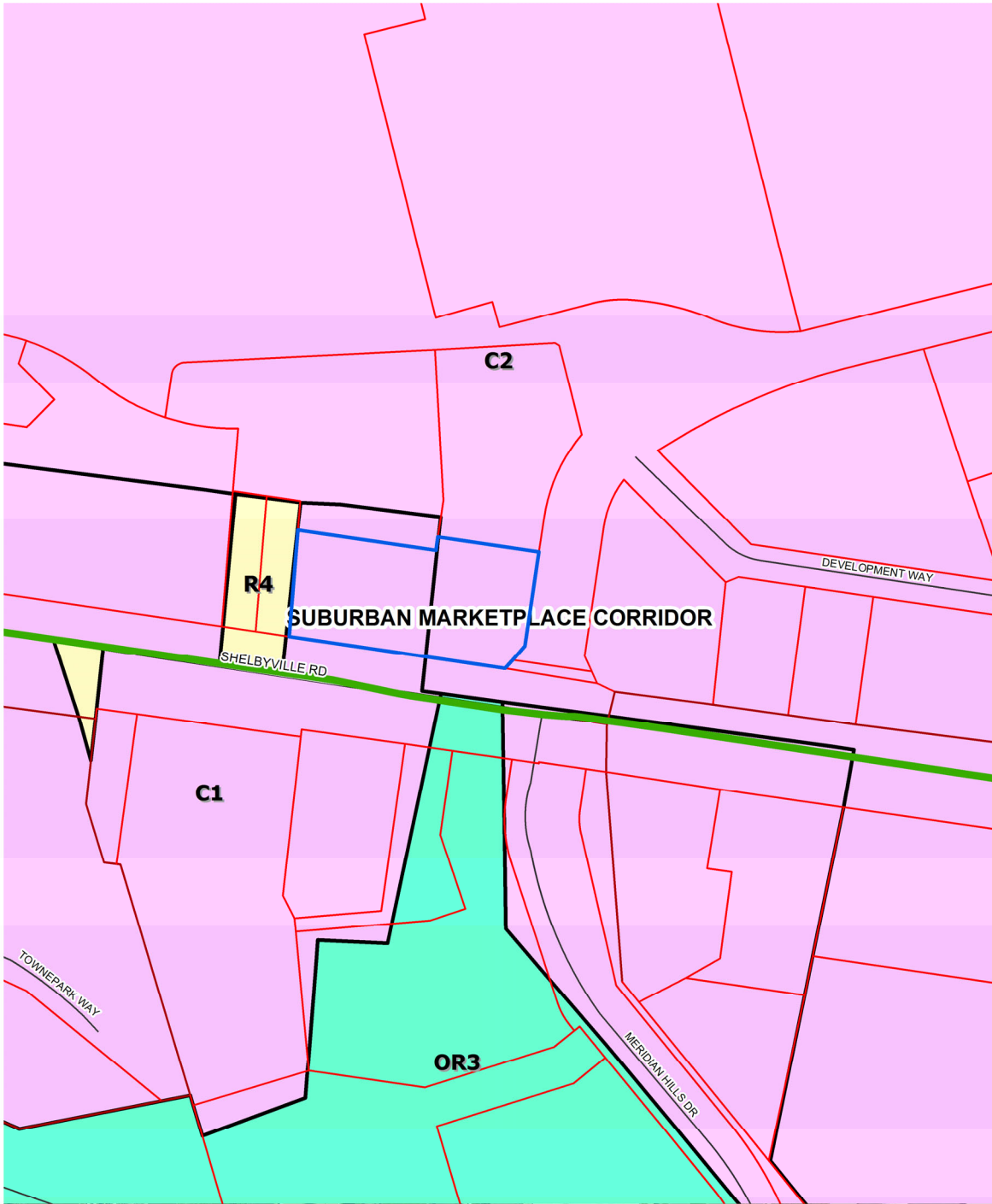
NOTIFICATION

Date	Purpose of Notice	Recipients
9-18-19	Hearing before DRC	1 st tier adjoining property owners Speakers at Planning Commission public hearing Registered Neighborhood Groups in Council District 19

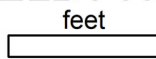
ATTACHMENTS

1. Zoning Map
2. Aerial Photograph
3. Site Plan Binding Elements

1. Zoning Map



12913 SHELBYVILLE ROAD

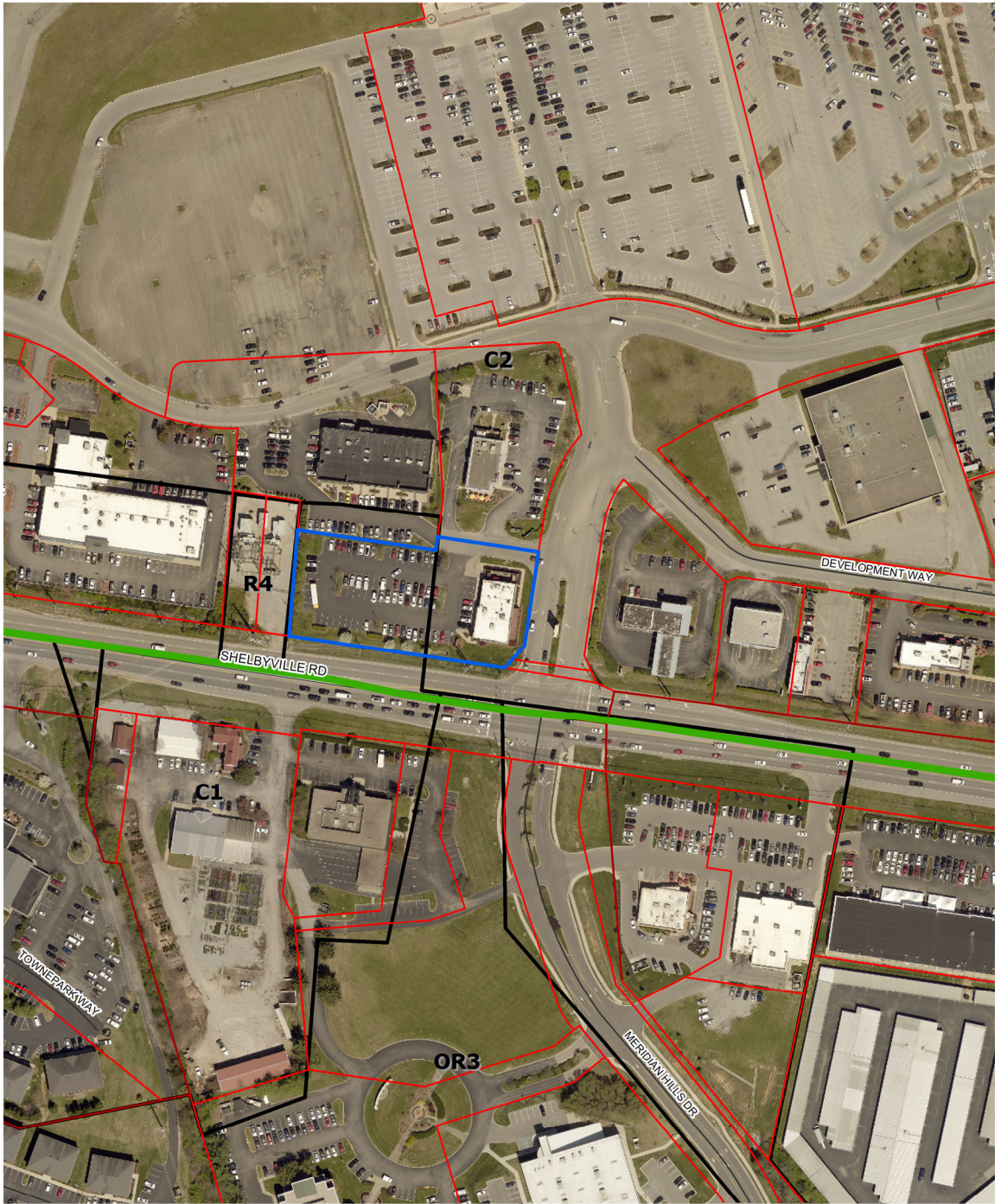


Map Created: 1/31/2019

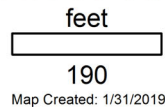


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2. Aerial Photograph



12913 SHELBYVILLE ROAD



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3. Existing Site 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 Middletown 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. The development shall be in accordance with the approved Preliminary Subdivision Plan. No further subdivision of the land into a greater number of lots than originally approved shall occur without approval of the Planning Commission.
4. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.
5. 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.
6. Before any permit (including but not limited to building, parking lot, change of use or 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. Encroachment permits must be obtained from the Kentucky Transportation Cabinet.
 - 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.
7. 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.
8. 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.
9. 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.

10. 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.