

Docket No. 17ZONE1039

Zone change from R-4 to C-1 to allow a “Crossroads IGA” neighborhood grocery with gas pumps and small restaurant with drive-thru on property located at 6101 Fegenbush Lane



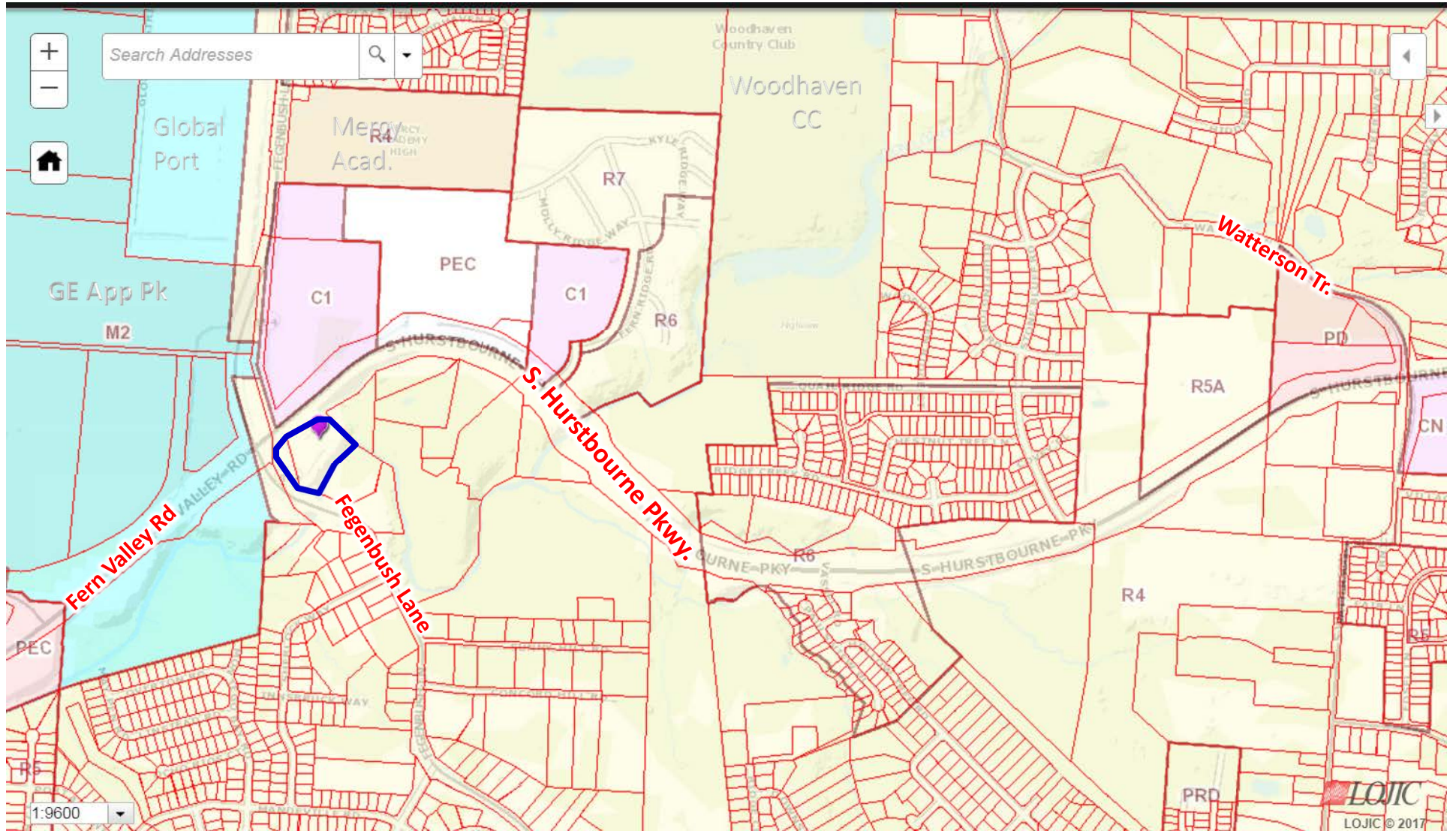
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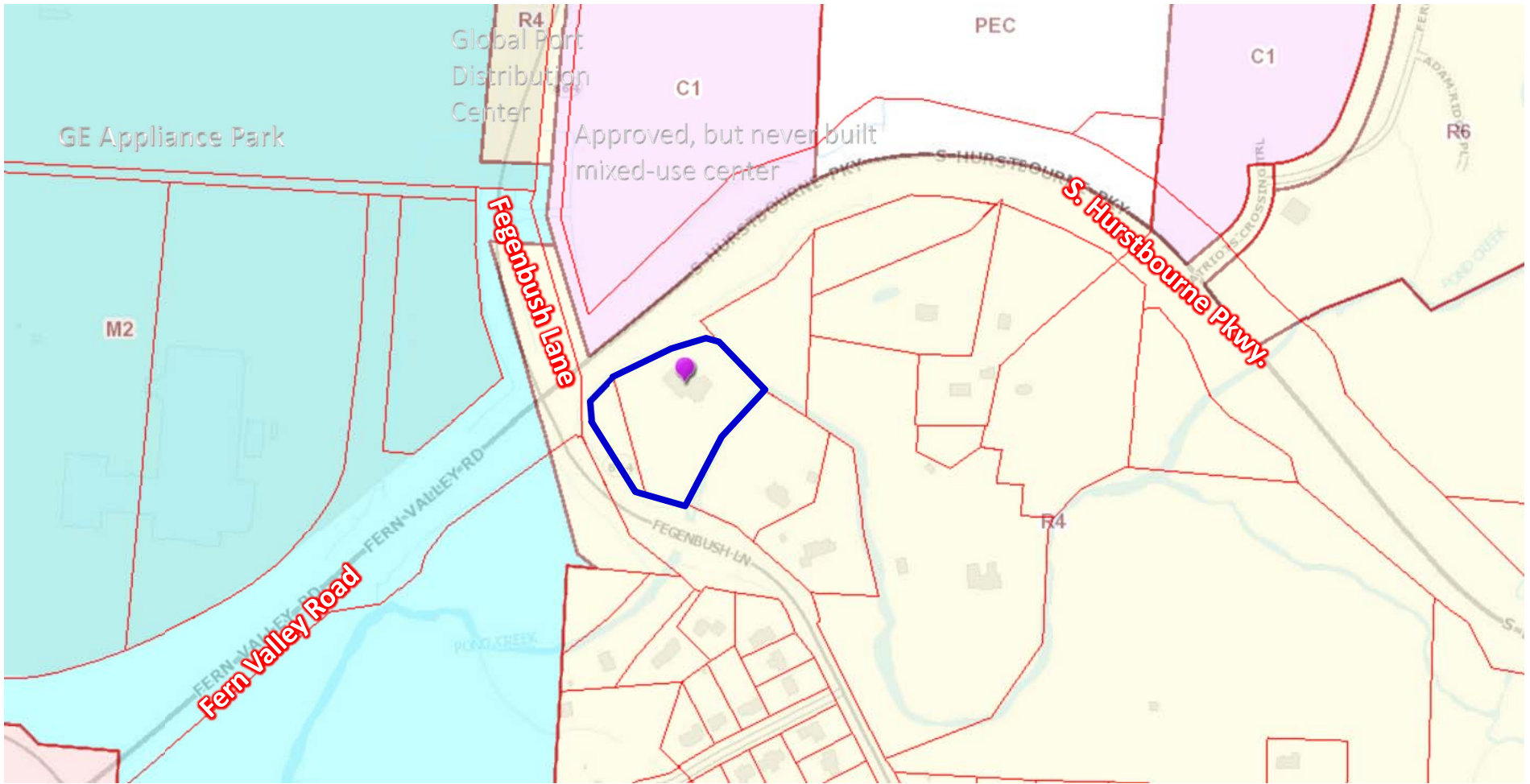
1. LOJIC Zoning Map
2. Aerial photographs of the site and surrounding area
3. Ground level photographs of the site and surrounding area
4. Neighborhood Meeting notice list map, letter to neighbors inviting them to the meeting and summary of meeting
5. Development Plan
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8. Proposed findings of fact pertaining to compliance with the Comprehensive Plan, Variance and Waiver criteria

Tab 1

LOJIC Zoning Maps







Tab 2

Aerial photograph of the site and surrounding area







Tab 3

Ground level photographs of the site
and surrounding area





View of Fegenbush Lane intersection at Fern Valley/S. Hurstbourne Parkway looking south. Site is to the left (east).



View of site from curb cut at S. Hurstbourne Parkway looking southwest towards Fegenbush Lane.



View of S. Hurstbourne Parkway from existing curb cut to site





View of site from curb cut at S. Hurstbourne Parkway



View of Fegenbush Lane, looking north towards Fern Valley/S. Hurstbourne intersection. Site is to the right (east).



View of Fegenbush Lane, looking north towards Fern Valley/S. Hurstbourne intersection. Site is to the right (east).

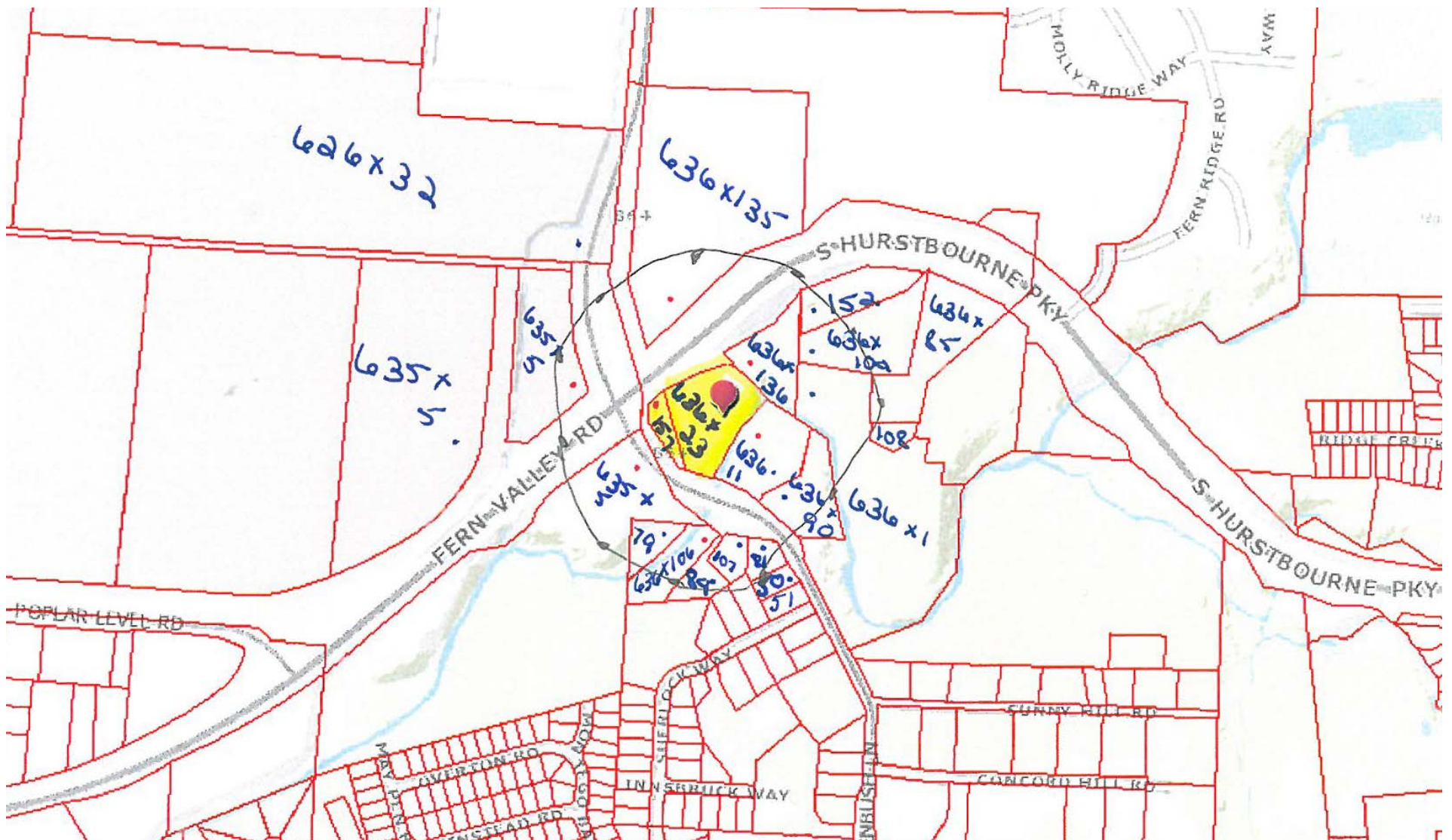


View S. Hurstbourne Parkway looking northeast. Site is to the right (east).

Tab 4

Neighborhood Meeting notice list map, letter to neighbors inviting them to the meeting and summary of meeting

Adjoining property owner notice list map wherein 21 neighbors were invited to the neighborhood meeting and the subsequent LD&T and Planning Commission public hearing.



BARDENWERPER, TALBOTT & ROBERTS, PLLC

ATTORNEYS AT LAW

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William B. Bardenwerper
Direct dial: 426-0388, ext. 135
Email: WBB@BARDLAW.NET

August 23, 2017

Dear Neighbor,

RE: Proposed zone change from R-4 to C-1 to allow a "Crossroads IGA" neighborhood grocery with gas pumps and small restaurant with drive-thru on approximately 3.86 acres located at the southeast corner of the S. Hurstbourne Pkwy and Fegenbush Lane intersection at 6101 Fegenbush Lane

We are writing to invite you to a meeting we have scheduled to present neighbors with our plan to allow a Crossroads IGA neighborhood grocery with fuel pumps and a restaurant with drive-thru where an existing church is currently located as above. The style and design of this grocery will be the same as proposed and built at other locations in town.

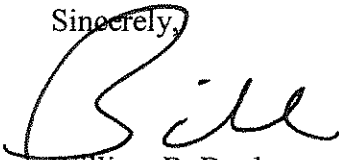
Accordingly, we have filed a plan for pre-application review on Monday, August 14th with the Division of Planning and Design Services (DPDS) that has been assigned case manager, **Joel Dock** and case number **17ZONE1039**. We would like to show and explain to neighbors this plan so that we might hear what thoughts, issues and perhaps even concerns you may have.

In that regard, a meeting will be held on **Wednesday, September 6th at 7:00 p.m.** at the **Central Government Center** located at **7201 Outer Loop**.

If you cannot attend the meeting but have questions or concerns, please call either of us at 426-6688 or the land planning and engineering firm representative Brian Shirley at (270) 780-9445.

We look forward to seeing you.

Sincerely,



William B. Bardenwerper
John Talbott

cc: Hon. Barbara Shanklin, Councilwoman, District 2
Joel Dock, case manager with Division of Planning & Design Services
Brian Shirley, engineer and land planner with Arnold Consulting Engineering
Tim Rich, JR Food Stores, Inc.

Neighborhood Meeting Summary

A neighborhood meeting was held on Wednesday, September 6, 2017 at 7:00 pm at the Central Government Center located at 7201 Outer Loop. Those in attendance included the applicant's attorneys, Bill Bardenwerper and John Talbott with Bardenwerper Talbot & Roberts; the applicant's corporate representatives Tim Rich and Andrew Webb with Houchen's Industries; and the applicant's land planner/engineer, Brian Shirley with Arnold Consulting.

Mr. Bardenwerper explained the location, site, area development, infrastructure and land conditions via PowerPoint presentation. The PowerPoint presentation also included a colored-up site plan and proposed building elevations. They also showed what the interior of the store is proposed to look like.

Mr. Shirley explained the site plan, especially access and storm water management details.

Mr. Rich and Mr. Webb explained store operations.

Questions concerned the following: (a) compatibility with the remaining residences to the east of this site; (b) the potential challenges of access along a busy Fegenbush Lane; (c) storm water management especially in light of supposed issues involving Fern Creek; and (d) building design especially along the long blank façade apparently visible from Fegenbush Lane.

As to (a), the applicant's representatives said that the distance separation between uses plus the focus of this grocery and gas station toward Fegenbush Lane (which is to the west) instead of in the direction of the nearby residences, plus the design of the facility, and perhaps limited hours of operation should mitigate all negative impacts.

As to (b), the applicant's representatives agreed to work with public transportation agencies on assuring safe ingress and egress.

As to (c), the applicant's representatives agreed to work with MSD on a storm water plan that appropriately protects nearby residents.

As to (d), the applicant's representatives agreed to work on this particular side elevation to improve aesthetics from Fegenbush Lane.

Respectfully submitted,

William B. Bardenwerper

Tab 5

Development Plan



Tab 6

Building Elevations and Interior
Views





BEFORE



AFTER



BEFORE



AFTER





1 EXTERIOR BUILDING COLOR ELEVATION - GROCERY ENTRANCE
1/8" = 1'-0"



2 EXTERIOR BUILDING COLOR ELEVATION - DRIVE-THRU
1/8" = 1'-0"





4 EXTERIOR BUILDING COLOR ELEVATION - SERVICE / LOADING
1/8" = 1'-0"



3 EXTERIOR BUILDING COLOR ELEVATION - GAS ENTRANCE
1/8" = 1'-0"

Typical Grocery Section Featuring Fresh Produce



Fresh Fruits, Vegetables, and Meat





Frozen Food Department



Dairy Department



Breakfast and Deli Meats



Standard Grocery Offerings



Coffee Area



Tab 7

Statement of Compliance filed with the original zone change application with all applicable Guidelines and Policies of the Cornerstone 2020 Comprehensive Plan, Variance and Waiver Justification

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STATEMENT OF COMPLIANCE WITH ALL APPLICABLE GUIDELINES AND POLICIES OF THE CORNERSTONE 2020 COMPREHENSIVE PLAN

Applicant: JR Food Stores, Inc.

Owner: Byron R., Michael B., William C. and Mary J. Pendleton

Location: 6201 Fegenbush Lane

Proposed Use: Neighborhood grocery, fuel pumps and restaurant

Engineers, Land Planners and
Landscape Architects: Arnold Consulting Engineering Service, Inc.

Request: Zone Change from R-4 to C-1

SUMMARY STATEMENT

The combination grocery and gas concept proposed for this location, Crossroads IGA, is still a relatively new one which is a modern day version of the corner grocery store. The grocery offers fresh produce and meats to a greater extent than a convenience store and at grocery store prices. The combination grocery and gas station also involves a Which Wich sandwich restaurant with drive-thru.

GUIDELINE 1 – COMMUNITY FORM

The application complies with the Suburban Workplace Form District as it is located at the intersection of major (Fern Valley Road/S. Hurstbourne Parkway) and minor (Fegenbush Lane) arterials. Major industry is located catty-corner across Fegenbush Lane and Fern Valley Road, while properties located along Hurstbourne Parkway are zoned for high intensity retail and high density residential use. A catholic girls school is located a short distance in a northerly direction down Fegenbush Lane. This is a high traffic location that will assure a lot of drive-by business going to and from nearby workplaces, other retail, schools and residential communities.

GUIDELINE 2 – CENTERS

The application complies with the Intents and applicable Policies 1, 2, 3, 4, 5, 7, 8, 9, 11, 13, 14 and 15 of this Guideline as follows.

This site was most recently used for a church. With the addition of grocery and gas goods and services in close proximity to major workplaces and residential communities, this small grocery/gas station/restaurant, located at it is at a busy intersection will accommodate the regular daily shopping and service needs of workers and resident in the area.

As an “activity center”, it is appropriately located at the intersection of a major and minor arterial street and is designed to be of intensity, density, size and mix of uses appropriate for a small neighborhood center. Everything within this small center is compact, and it includes three uses: a grocery, a small restaurant and a fuel station. They share parking and work off the same utility infrastructure.

GUIDELINE 3 – COMPATIBILITY

The application complies with the Intents and applicable Policies 1, 2, 4, 5, 6, 7, 8, 9, 12, 20, 21, 22, 23, 24 and 28 of this Guideline as follows.

As set forth above, this is a small workplace and residential serving center. It will have the look and feel of similar Crossroads IGA stores already built around Louisville and Oldham County. Elevation renderings are included in the neighborhood meeting PowerPoint presentation accompanying this application, although changes have been requested by Councilman Peden that the applicant is attempting to address. Odors will be contained within the building, especially given that the type restaurant will be a sandwich-type restaurant. Noise will not be a late evening/over night factor given that this store, except for the fuel pumps, will likely be closed during those hours. Lighting will follow restrictions of the Land Development Code (LDC) and thus be directed down and away from nearby residential properties, with a 90 degree cut-off at property lines. Transitions to adjoining properties to the north and east will be well screened and buffered in accordance with LDC requirements and in consultation with adjoining property owners. Parking will be shared. Loading and delivery will be located and/or screened so as to minimize impacts on any nearby residentially occupied properties. Signage will be in conformance with the LDC.

GUIDELINE 6 – ECONOMIC GROWTH AND SUSTAINABILITY

The application complies with the Intents and applicable Policies 2, 3, 5, 6 and 11 of this Guideline as follows.

This proposed combination of three compatible uses constitutes a high quality, workplace/neighborhood/high traffic arterial serving center. It is located in the midst of intense workplace and residential populations along the referenced arterial highways.

GUIDELINES 7, 8 AND 9 – CIRCULATION; TRANSPORTATION FACILITY DESIGN; AND BICYCLE, PEDESTRIAN AND TRANSIT

The application complies with the Intents and applicable Policies 1, 2, 4, 6, 9, 10, 11, 12, 13, 14, 15, 16 and 18 of Guideline 7; Policies 1, 4, 5, 7, 9, 10 and 11 of Guideline 8; and Policies 1, 2, 3 and 4 of Guideline 9 as follows.

The design of this small center, together with its points of access, take into account the standards promulgated by KTC and Metro Transportation Planning and Public Works. The latter will be required to review the detailed district development plan (DDDP) submitted with this application prior to time of LD&T and Planning Commission public reviews, or this application will not be publicly heard. That review and preliminary stamp of approval will assure that Transportation

Planning and Public Works standards for corner clearances, access, connectivity, internal circulation and parking minimums are all satisfied. Additional right-of-way will be dedicated if required.

GUIDELINE 10 - FLOODING AND STORMWATER

The application complies with the Intents and applicable Policies 1, 3, 4, 6, 7, 10 and 11 of this Guideline as follows.

Small detention basins distributed at points on the DDDP, in compliance with MSD's standards for storm water management will assure post-development peak rates of runoff will not exceed pre-development conditions. MSD will be required to review the storm water management plan and give its preliminary stamp of approval to the DDDP prior to docketing for LD&T and Planning Commission public reviews.

GUIDELINE 11 – WATER QUALITY

The application complies with the Intents and applicable Policies 3, 5 and 8 of this Guideline as follows.

MSD has promulgated both soil erosion/sedimentation control regulations and even newer ones with respect to water quality. Construction plans for this center will require compliance with these regulations prior to obtaining building permits.

GUIDELINE 12 – AIR QUALITY

The application complies with the Intents and applicable Policies 2, 4, 7 and 8 of this Guideline as follows.

By locating this small workplace/neighborhood/high-traffic arterial serving center in close proximity to those uses and populations will reduced vehicle miles traveled.

GUIDELINE 13 – LANDSCAPE CHARACTER

The application complies with the Intents and applicable Policies 1, 2, 4, 5 and 6 of this Guideline as follows.

Compliance with this Guideline is achieved by virtue of compliance with LDC requirements. But as stated above, landscaping, screening and buffering will exceed LDC requirements, as promised neighbors at the neighborhood meeting.

* * *

For all the reasons listed above, the application complies with the listed and all other relevant and applicable Guidelines and Policies of the Cornerstone 2020 Comprehensive Plan and should be approved.

Variance Justification:

In order to justify approval of any variance, the Board of Zoning Adjustment considers the following criteria. Please answer all of the following items. Use additional sheets if needed. A response of yes, no, or N/A is not acceptable.

Variance of: Section 4.8.3 to allow the proposed drive and parking to encroach into the 25 ft outer zone of the stream buffer.

1. The variance will not adversely affect the public health, safety or welfare because but the encroachment is minor, the vast majority of the stream setback is observed, and some additional setback is provided in areas other than this encroachment.
2. The variance will not alter the essential character of the general vicinity for the reasons stated in #1 above.
3. The variance will not cause a hazard or a nuisance to the public because the stream is protected in other ways as well through compliance with MSD's soil erosion and sediment control plus water quality ordinances.
4. The variance will not allow an unreasonable circumvention of the requirements of the zoning regulations because only the absolute minimum amount of encroachment necessary to allow this development is requested.

Additional consideration:

1. The Variance arises from special circumstances, which do not generally apply to land in the general vicinity because the site shape and relationship of the stream to the site necessitate this variance if this site is to be reasonably developed as reasonably planned. It is important to point out that the variance being requested will encroach into the buffer area less than the current existing condition of the driveway there now.
2. Strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create unnecessary hardship because the building, few number of pumps and restaurant with drive-thru otherwise would not fit on this site.
3. The circumstances are not the result of actions of the applicant taken subsequent to the adoption of the regulation but rather are mostly the result of land conditions.

General Waiver Justification:

In order to justify approval of any waiver, the Planning Commission or Board of Zoning Adjustment considers four criteria. Please answer all of the following questions. Use additional sheets if needed. A response of yes, no, or N/A is not acceptable.

Waiver of: Section 5.6.1.C.1 to allow less than 50% clear glazing on the Fegenbush Lane and South Hurstbourne Parkway street facades

A. The waiver will not adversely affect adjacent property owners because this a design issue that does not have to do with issues of impact on adjoining properties. Moreover, aesthetics of this site and building are also not negatively impacted by this waiver.

B. The waiver will not violate the Comprehensive Plan for all the reasons set forth in the Detailed Statement of Compliance with all applicable Guidelines and Policies of the Cornerstone 2020 Comprehensive Plan filed with the original rezoning application.

C. The extent of waiver of the regulation is the minimum necessary to afford relief to the applicant because the building otherwise remains aesthetically attractive, although this is a minor waiver for some building facades so as not to adversely impact internal store operations.

D. The strict application of the provisions of the regulation would deprive the applicant of a reasonable use of the land or would create an unnecessary hardship on the applicant because the applicant would have to design its building in a manner that significantly affect internal store operations particularly as respects shelf space and display of merchandise.

General Waiver Justification:

In order to justify approval of any waiver, the Planning Commission or Board of Zoning Adjustment considers four criteria. Please answer all of the following questions. Use additional sheets if needed. A response of yes, no, or N/A is not acceptable.

Waiver of: Section 5.9.2.A.1.b to omit the pedestrian connection to Fegenbush Lane

Explanation of Waiver:

1. The waiver will not adversely affect adjacent property owners because few people look to access a gas station on foot, and there are natural vehicle-pedestrian conflicts that cannot be overcome. Further the waiver will not adversely affect adjacent property owners because a different design of access and circulation (which would result from moving of the canopy and convenience store structures) would cause hazards and nuisances to the traveling public and customers, thus negatively impacting adjacent property owners with bad transportation design.
2. The waiver will not violate the Comprehensive Plan for all the reasons set forth in the Detailed Statement of Compliance with all applicable Guidelines and Policies of the Cornerstone 2020 Comprehensive Plan filed with the rezoning application.
3. The extent of waiver of the regulation is the minimum necessary to afford relief to the applicant because, as stated above this is the only layout that works, and, also as set forth above this plan results in greater LDC compliance than current conditions.
4. 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 because the site could not otherwise be developed.

General Waiver Justification:

In order to justify approval of any waiver, the Planning Commission or Board of Zoning Adjustment considers four criteria. Please answer all of the following questions. Use additional sheets if needed. A response of yes, no, or N/A is not acceptable.

Waiver of: Section 5.8.1.B to omit the sidewalk

Explanation of Waiver:

1. The waiver will not adversely affect adjacent property owners because there aren't sidewalks along the frontages on either side of this subdivision for this sidewalk to connect. Moreover, the area of the requested waiver consists of considerably steep slopes going toward the bridge, which are conditions created by the land, not created by the development.
2. The waiver will not violate the Comprehensive Plan for all the reasons set forth in the Detailed Statement of Compliance with all applicable Guidelines and Policies of the Cornerstone 2020 Comprehensive Plan filed with the original rezoning application.
3. The extent of waiver of the regulation is the minimum necessary to afford relief to the applicant because this is the only place that the sidewalk waiver is being request.
4. 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 because building a sidewalk in this location, considering the fact that the geography with steep slopes would make building this sidewalk almost impossible to safely build and certainly detrimental to the development.

Tab 8

Proposed findings of fact pertaining to compliance with the Comprehensive Plan, Variance and Waiver criteria

BARDENWERPER, TALBOTT & ROBERTS, PLLC

ATTORNEYS AT LAW

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PROPOSED FINDINGS OF FACT REGARDING COMPLIANCE WITH ALL APPLICABLE GUIDELINES AND POLICIES OF THE CORNERSTONE 2020 COMPREHENSIVE PLAN

Applicant: JR Food Stores, Inc.

Owner: Byron R., Michael B., William C. and Mary J. Pendleton

Location: 6201 Fegenbush Lane

Proposed Use: Neighborhood grocery, fuel pumps and restaurant

Engineers, Land Planners and Landscape Architects: Arnold Consulting Engineering Service, Inc.

Request: Zone Change from R-4 to C-1

The Louisville Metro Planning Commission, having heard testimony before its Land Development & Transportation Committee, in the Public Hearing held on March 29, 2018 and having reviewed evidence presented by the applicant and the staff's analysis of the application, make the following findings:

SUMMARY STATEMENT

WHEREAS, Houchens is the largest employee-owned company in the United States; it owns and operates various enterprises, and included among them are several hundred grocery stores; the grocery concept proposed for this location is a relatively new one in that it will contain a small grocery with product (including fresh produce and meats) at grocery, not convenience, store prices along with an Ace Hardware store and combination fast casual restaurant with drive-thru; the store will be of an upscale design tailor-made for this particular neighborhood; and

GUIDELINE 1 – COMMUNITY FORM

WHEREAS, the application complies with the Suburban Workplace Form District as it is located at the intersection of major (Fern Valley Road/S. Hurstbourne Parkway) and minor (Fegenbush Lane) arterials; major industry is located catty-corner across Fegenbush Lane and Fern Valley Road, while properties located along Hurstbourne Parkway are zoned for high intensity retail and high density residential use; a catholic girls school is located a short distance in a northerly direction down Fegenbush Lane; and this is a high traffic location that will assure a lot of drive-by business going to and from nearby workplaces, other retail, schools and residential communities; and

GUIDELINE 2 – CENTERS

WHEREAS, the application complies with the Intents and applicable Policies 1, 2, 3, 4, 5, 7, 8, 9, 11, 13, 14 and 15 of this Guideline because this site was most recently used for a church; and with the addition of grocery and gas goods and services in close proximity to major workplaces, particularly the Ford assembly plant, and residential communities, this small grocery/gas station/restaurant, located at a busy intersection will accommodate the regular daily shopping and service needs of workers and residents in the area; and

WHEREAS, as an “activity center”, it is appropriately located at the intersection of a major and minor arterial street and is designed to be of intensity, density, size and mix of uses appropriate for a small neighborhood center; everything within this small center is compact, and it includes three uses: a grocery, a small restaurant and a fuel station; and they share parking and work off the same utility infrastructure; and

GUIDELINE 3 – COMPATIBILITY

WHEREAS, the application complies with the Intents and applicable Policies 1, 2, 4, 5, 6, 7, 8, 9, 12, 20, 21, 22, 23, 24 and 28 of this Guideline because as set forth above, this is a small workplace and residential serving center; it will have the look and feel of similar Crossroads IGA stores already built around Louisville and Oldham County; elevation renderings are included in the neighborhood meeting PowerPoint presentation accompanying this application, although changes have been requested by Councilman Peden that the applicant is attempting to address; odors will be contained within the building, especially given that the type restaurant will be a sandwich-type restaurant; noise will not be a late evening/over night factor given that this store, except for the fuel pumps, will likely be closed during those hours; lighting will follow restrictions of the Land Development Code (LDC) and thus be directed down and away from nearby residential properties, with a 90 degree cut-off at property lines; transitions to adjoining properties to the north and east will be well screened and buffered in accordance with LDC requirements and in consultation with adjoining property owners; parking will be shared; loading and delivery will be located and/or screened so as to minimize impacts on any nearby residentially occupied properties; and signage will be in conformance with the LDC; and

GUIDELINE 6 – ECONOMIC GROWTH AND SUSTAINABILITY

WHEREAS, the application complies with the Intents and applicable Policies 2, 3, 5, 6 and 11 of this Guideline because this proposed combination of three compatible uses constitutes a high quality, workplace/neighborhood/high traffic arterial serving center; it is located in the midst of intense workplace and residential populations along the referenced arterial highways; and

GUIDELINES 7, 8 AND 9 – CIRCULATION; TRANSPORTATION FACILITY DESIGN; AND BICYCLE, PEDESTRIAN AND TRANSIT

WHEREAS, the application complies with the Intents and applicable Policies 1, 2, 4, 6, 9, 10, 11, 12, 13, 14, 15, 16 and 18 of Guideline 7; Policies 1, 4, 5, 7, 9, 10 and 11 of Guideline 8; and Policies 1, 2, 3 and 4 of Guideline 9 because the design of this small center, together with its points of access, take into account the standards promulgated by KTC and Metro Transportation

Planning and Public Works; and that LD&T and Planning Commission review, and preliminary stamp of approval process, assures that Transportation Planning and Public Works standards for corner clearances, access, connectivity, internal circulation and parking minimums are all satisfied; and

GUIDELINE 10 - FLOODING AND STORMWATER

WHEREAS, the application complies with the Intents and applicable Policies 1, 3, 4, 6, 7, 10 and 11 of this Guideline because small detention basins distributed at points on the DDDP, in compliance with MSD's standards for storm water management will assure post-development peak rates of runoff will not exceed pre-development conditions; and MSD will be required to review the storm water management plan and give its preliminary stamp of approval to the DDDP prior to docketing for LD&T and Planning Commission public reviews; and

GUIDELINE 11 – WATER QUALITY

WHEREAS, the application complies with the Intents and applicable Policies 3, 5 and 8 of this Guideline because MSD has promulgated both soil erosion/sedimentation control regulations and even newer ones with respect to water quality; and construction plans for this center will require compliance with these regulations prior to obtaining building permits.

GUIDELINE 12 – AIR QUALITY

WHEREAS, the application complies with the Intents and applicable Policies 2, 4, 7 and 8 of this Guideline because by locating this small workplace/neighborhood/high-traffic arterial serving center in close proximity to those uses and populations will reduced vehicle miles traveled; and

GUIDELINE 13 – LANDSCAPE CHARACTER

WHEREAS, the application complies with the Intents and applicable Policies 1, 2, 4, 5 and 6 of this Guideline because Compliance with this Guideline is achieved by virtue of compliance with LDC requirements; and as stated above, landscaping, screening and buffering will exceed LDC requirements, as promised neighbors at the neighborhood meeting.

* * *

WHEREAS, for all the reasons explained at LD&T and the Planning Commission public hearing and also in the public hearing exhibit books on the approved detailed district development plan, this application also complies with all other applicable Guidelines and Policies of the Cornerstone 2020 Comprehensive Plan;

NOW, THEREFORE, the Louisville Metro Planning Commission hereby recommends to the Louisville Metro Council that it rezone the subject property from R-4 to C-1 and approves the Detailed District Development Plan.

Variance Findings of Fact

Variance of Section 4.8.3 to allow the proposed drive and parking to encroach into the 25 ft outer zone of the stream buffer.

WHEREAS, the variance will not adversely affect the public health, safety or welfare because the encroachment is minor, the vast majority of the stream setback is observed, and some additional setback is provided in areas other than this encroachment; and

WHEREAS, the variance will not alter the essential character of the general vicinity for the reasons stated in #1 above; and

WHEREAS, the variance will not cause a hazard or a nuisance to the public because the stream is protected in other ways as well through compliance with MSD's soil erosion and sediment control plus water quality ordinances; and

WHEREAS, the variance will not allow an unreasonable circumvention of the requirements of the zoning regulations because only the absolute minimum amount of encroachment necessary to allow this development is requested; and

WHEREAS, the variance arises from special circumstances, which do not generally apply to land in the general vicinity because the site shape, elevation changes, and relationship of the stream to the site necessitate this variance if this site is to be reasonably developed as reasonably planned; and because the variance requested will encroach into the buffer area less than the current existing condition of the driveway currently existing; and

WHEREAS, strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create unnecessary hardship because the building, few number of pumps and restaurant with drive-thru otherwise would not fit on this site; and

WHEREAS, the circumstances are not the result of actions of the applicant taken subsequent to the adoption of the regulation but rather are mostly the result of land conditions;

NOW, THEREFORE, the Louisville Metro Planning Commission hereby approves this Variance.

Waiver Findings Of Fact

Waiver of Section 5.9.2.A.1.b to omit the pedestrian connection to Fegenbush Lane.

WHEREAS, the waiver will not adversely affect adjacent property owners because few people look to access a gas station on foot, and there are natural vehicle-pedestrian conflicts that cannot be overcome; and further the waiver will not adversely affect adjacent property owners because a different design of access and circulation (which would result from moving of the canopy and convenience store structures) would cause hazards and nuisances to the traveling public and customers, thus negatively impacting adjacent property owners with bad transportation design; and

WHEREAS, the waiver will not violate the Comprehensive Plan for all the reasons set forth in the Detailed Statement of Compliance with all applicable Guidelines and Policies of the Cornerstone 2020 Comprehensive Plan filed with the rezoning application; and

WHEREAS, the extent of waiver of the regulation is the minimum necessary to afford relief to the applicant because, as stated above, this is the only layout that works, and, also as set forth above this plan results in greater LDC compliance than current conditions; and

WHEREAS, 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 because the site could not otherwise be developed;

NOW, THEREFORE, the Louisville Metro Planning Commission hereby approves this Waiver.

Waiver Findings of Fact

Waiver of Section 5.6.1.C.1 to allow less than 50% clear glazing on the Fegenbush Lane and South Hurstbourne Parkway street facades

WHEREAS, the waiver will not adversely affect adjacent property owners because this a design issue that does not have to do with issues of impact on adjoining properties; and moreover, aesthetics of this site and building are also not negatively impacted by this waiver; and

WHEREAS, the waiver will not violate the Comprehensive Plan for all the reasons set forth in the Detailed Statement of Compliance with all applicable Guidelines and Policies of the Cornerstone 2020 Comprehensive Plan filed with the original rezoning application; and

WHEREAS, the extent of waiver of the regulation is the minimum necessary to afford relief to the applicant because the building otherwise remains aesthetically attractive, although this is a minor waiver for some building facades so as not to adversely impact internal store operations; and

WHEREAS, the strict application of the provisions of the regulation would deprive the applicant of a reasonable use of the land or would create an unnecessary hardship on the applicant because the applicant would have to design its building in a manner that significantly affect internal store operations particularly as respects shelf space and display of merchandise;

NOW, THEREFORE, the Louisville Metro Planning Commission hereby approves this Waiver.

Waiver Findings of Fact

Waiver of Section 5.8.1.B to omit the sidewalk

WHEREAS, the waiver will not adversely affect adjacent property owners because there aren't sidewalks along the frontages on either side of the subdivision to which this sidewalk for this site could connect; and the area of the requested waiver consists of considerably steep slopes going toward the bridge, which are conditions created by the land, not created by the development; and

WHEREAS, the waiver will not violate the Comprehensive Plan for all the reasons set forth in the Detailed Statement of Compliance with all applicable Guidelines and Policies of the Cornerstone 2020 Comprehensive Plan filed with the original rezoning application; and

WHEREAS, the extent of waiver of the regulation is the minimum necessary to afford relief to the applicant because this is the only place that the sidewalk waiver is being request; and

WHEREAS, 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 because building a sidewalk in this location, considering the fact that the geography with steep slopes would make building this sidewalk almost impossible build, impossible to safely use, and certainly detrimental to the development;

NOW, THEREFORE, the Louisville Metro Planning Commission hereby approves this Waiver.