

# Board of Zoning Adjustment Staff Report

May 1, 2017



|                          |                                           |
|--------------------------|-------------------------------------------|
| <b>Case No:</b>          | 17DEVPLAN1031                             |
| <b>Request:</b>          | Variance and Landscape Waiver             |
| <b>Project Name:</b>     | FMC PleasureRidge Park                    |
| <b>Location:</b>         | 1715 Gagel Avenue                         |
| <b>Zoning:</b>           | C-2                                       |
| <b>Form District:</b>    | Suburban Marketplace Corridor             |
| <b>Area:</b>             | 1.396 acres                               |
| <b>Owner:</b>            | Kupco LLC.                                |
| <b>Applicant:</b>        | Brett May – AGE Engineering Services Inc. |
| <b>Representative:</b>   | Brett May – AGE Engineering Services Inc. |
| <b>Jurisdiction:</b>     | Louisville Metro                          |
| <b>Council District:</b> | 3 – Mary C. Woolridge                     |
| <b>Case Manager:</b>     | Ross Allen, Planner I                     |

## REQUEST

- **Variance #1:** from the Land Development Code (Shivley, KY LDC 2006) Section 5.3.2.C.2 to allow parking and maneuvering area in the 25 foot front setback for approximately 150 feet in length along Gagel Avenue.

| Location            | Requirement | Request | Variance |
|---------------------|-------------|---------|----------|
| Front property line | 25 ft.      | 6 ft.   | 19 ft.   |

- **Variance #2:** from the Land Development Code (Shivley, KY LDC 2006) Section 5.3.2.C.2 to allow a drive lane in the 25 foot rear setback for approximately 133 feet in length along the rear property line.

| Location           | Requirement | Request | Variance |
|--------------------|-------------|---------|----------|
| Rear property line | 25 ft.      | 14 ft.  | 11 ft.   |

- **Waiver:** from the Land Development Code (Shivley, KY LDC 2006) Section 10.2.9 to decrease the width of the 10 foot VUA Landscape Buffer Area to 4 feet in width along the Gagel Ave. frontage for approximately 91 feet.

## CASE SUMMARY/BACKGROUND/SITE CONTEXT

The applicant is proposing to construct a Medical Office (Dialysis Clinic) having 5,212 square feet and 18 feet in height with an attached 784 sf. canopy at the building's main entrance on an vacant 1.39 acre C-2 zoned parcel within the Suburban Marketplace Form District. The proposed structure will be bounded by a 5 foot wide sidewalk on all sides and have two entrances at the rear; one for deliveries and the second as a staff entrance. The proposal includes a 26,515 sf. vehicular use area (VUA) containing 24 parking spaces, 13 spaces

southwest of the proposed structure and 11 parking spaces including three ADA spaces found to the southeast of the proposed structure. The ingress/egress to the proposed Medical Office will be off of Gagel Ave. being 30 feet wide. Upon entering the proposed subject site the building has a vehicle maneuvering area that continues around the proposed structure with a cross access to a vacant C-2 zoned lot to the northwest of the subject site. The development plan indicates the applicant is exceeding the required 7.5% interior landscape area (ILA) with a proposed 2,361 sf.

The subject site is currently a vacant parcel of land bounded by a C-2 zoned parcel to the Northwest that is a Taco Bell with a greenspace to the rear of the parcel, to the northeast by a C-2 zoned parcel with multiple commercial tenants and an unimproved right of way running perpendicular to Gagel Ave. A Transition zone (Neighborhood to Suburban Marketplace Corridor) runs along the unimproved right of way (abutting on the eastern property line of the subject site) where the R-5 zoned parcels of the Atterberry Court Subdivision are found. Another transition zone (Neighborhood to Suburban Marketplace Corridor) lies along the centerline of Gagel Ave. containing two R-6 zoned parcels on the southern side of Gagel Ave.

#### LAND USE/ZONING DISTRICT/FORM DISTRICT TABLE

|                               | Land Use                           | Zoning  | Form District                                  |
|-------------------------------|------------------------------------|---------|------------------------------------------------|
| <b>Subject Property</b>       |                                    |         |                                                |
| <b>Existing</b>               | Vacant                             | C-2     | Suburban Marketplace Corridor                  |
| <b>Proposed</b>               | Commercial                         | C-2     | Suburban Marketplace Corridor                  |
| <b>Surrounding Properties</b> |                                    |         |                                                |
| <b>North</b>                  | Commercial                         | C-2     | Suburban Marketplace Corridor                  |
| <b>South</b>                  | Residential Multifamily            | R-6     | Neighborhood                                   |
| <b>East</b>                   | Residential Single Family          | R-5     | Neighborhood                                   |
| <b>West</b>                   | Commercial/Residential Multifamily | C-2/R-6 | Suburban Marketplace Corridor/<br>Neighborhood |

#### PREVIOUS CASES ON SITE

16MINORPLAT1075: Minor plat to move a lot line to create a new tract on 3.3 acres in a C-2 zoning district. Staff Approved on 6/29/2016.

11956: Category 2B development plan to allow the construction of three 3 – story apartment buildings with 66 units and associated parking.  
Included  
a waiver to reduce the landscape buffer along Gagel Ave. from 15 feet to 5-12 feet. Approved on Jan. 7, 2009. Development was never built.

#### INTERESTED PARTY COMMENTS

No comments were received from concerned citizens.

#### APPLICABLE PLANS AND POLICIES

Land Development Code (Shively, KY 2006: last updates as of 2008)  
Comprehensive Plan (Cornerstone 2020)

**STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCE #1 from LDC (Shively, KY 2006) Section 5.3.2.C.2 to allow parking and maneuvering area in the 25 foot front setback for approximately 150 feet in length along Gagel Avenue.**

- (a) The requested variance will not adversely affect the public health, safety or welfare.

STAFF: The requested variance will not adversely affect the public health, safety or welfare because the area of the variance request in the front of the lot will be used for passenger car parking of dialysis patients. The front parking lot does not cover the entire lot and there will be green space between the front of the parking lot and the sidewalk. The land use directly across the street is a large multi car parking lot for a multi-family housing complex. There will remain on the east side of the lot a large green area that will be used as a detention basin. This basin will be large and shallow and will provide a significant front yard area.

- (b) The requested variance will not alter the essential character of the general vicinity.

STAFF: The requested variance will not alter the essential character of the general vicinity because the front of the lot will have a large green area used as a very shallow detention basin at the east end of the lot. This is the end that abuts the residential development. Across the street from the front yard is a large parking lot for a multifamily complex. There will be a green area between the front parking lot and the sidewalk. In the rear the property adjoins a lot used as a detention basin so there is little activity in the area. There will be a green buffer between the two properties and a natural screening hedge can be planted to further buffer the residential area.

- (c) The requested variance will not cause a hazard or nuisance to the public.

STAFF: The requested variance will not cause a hazard or nuisance to the public because the intended use for this property is a dialysis clinic. The number of vehicles entering and leaving the property each day is minor. Cars parked on the front parking lot will not hinder visibility along Gagel Avenue.

- (d) The requested variance will not allow an unreasonable circumvention of the zoning regulations.

STAFF: The requested variance will not allow an unreasonable circumvention of the zoning regulations because the intent of the transitional yard is to transition into a residential setting. The goals of the regulations are to prevent a concrete jungle and heavy traffic flow next to someone's yard where their kids may be playing. In this situation the site design is such that a large very shallow detention basin exists on the east end of the lot. This is the end of the lot that abuts the residential zone. The detention basin along with a natural drain (wet weather stream) creates an ideal buffer. This particular site does have considerable green space, and the applicant has not created an unusually high number of parking spaces.

**ADDITIONAL CONSIDERATIONS:**

1. The requested variance does not arise from special circumstances which do generally apply to land in the general vicinity or the same zone.

STAFF: The requested variance does not arise from special circumstances which do generally apply to land in the general vicinity or the same zone because when this lot was created, access from Gagel Avenue was limited to a single access point that has to

be shared with the adjoining lot to the west. This restriction required the driving lane around the building be large enough for the Mobile Treatment Vehicles, Emergency Water Treatment Vehicle, and the occasional Medical Supply delivery vehicle to circumnavigate the building. These vehicles are necessary for the lifesaving dialysis treatment. Since all of these vehicles are tractor and trailer setups an extended driving lane in the front and rear of the property is necessary. With this extended driving lane, parking must be placed in the front transitional yard. And the turning radii require the rear drive to encompass the building wide enough to encroach upon the rear transitional yard.

2. The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or 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 create an unnecessary hardship on the applicant because without the Emergency Water Filtration Truck the clinic could not operate in times of power outages. The clinics patients cannot wait for the power to come back on. They have to have the treatment on schedule. A strict application of the transitional yard would make this lot unusable for the dialysis clinic.

3. The circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought.

STAFF: No, the circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought because the regulation was adopted prior to the purchase of this site. However, this site design meets the setback requirements of the Suburban Marketplace Corridor form district barring the transitional zone classification.

**STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCE #2 from LDC (Shively, KY 2006) Section 5.3.2.C.2 to allow a drive lane in the 25 foot rear setback for approximately 133 feet in length along the rear property line.**

- (a) The requested variance will not adversely affect the public health, safety or welfare.

STAFF: The requested variance will not adversely affect the public health, safety or welfare because the area impacted by the variance requested in the rear of the lot will be used to park a mobile dialysis system on occasion. This area will also be used to park a mobile water filtration system should the electricity ever be off for an extended period. Since this area will be used as temporary parking and an occasional unload area for medical supplies there will not be a major impact to the neighbors in the rear. The adjoining land use immediately to the rear is a detention basin and does not have a lot of human activity in the area.

- (b) The requested variance will not alter the essential character of the general vicinity.

STAFF: The requested variance will not alter the essential character of the general vicinity because the rear the property adjoins a lot used as a detention basin so there is little human

activity in the area. There will be a green buffer between the two properties and a natural

screening hedge can be planted to further buffer the residential area.

- (c) The requested variance will not cause a hazard or nuisance to the public.

STAFF: The requested variance will not cause a hazard or nuisance to the public because the limited times a truck will be parked on the rear paved area will be 2 or 3 times a week. This limited use should not prevent the area of the rear variance from creating any nuisance for the adjoiners. The low traffic volume for the last commercial activity on the street is another way to transition down to a quieter area.

- (d) The requested variance will not allow an unreasonable circumvention of the zoning regulations.

STAFF: The requested variance will not allow an unreasonable circumvention of the zoning regulations because in this situation the site design is such that a large very shallow detention basin exists on the east end of the lot. This is the end of the lot that abuts the residential zone. The detention basin along with a natural drain (wet weather stream) creates an ideal buffer. This particular site will have considerable green space along the rear property line.

#### ADDITIONAL CONSIDERATIONS:

1. The requested variance does not arise from special circumstances which do generally apply to land in the general vicinity or the same zone.

STAFF: The requested variance does not arise from special circumstances which do generally apply to land in the general vicinity or the same zone because when this lot was created, access from Gagel Avenue was limited to a single access point that has to be shared with the adjoining lot to the west. This restriction required the driving lane around the building be large enough for the Mobile Treatment Vehicles, Emergency Water Treatment Vehicle, and the occasional Medical Supply delivery vehicle to circumnavigate the building. These vehicles are necessary for the lifesaving dialysis treatment. Since all of these vehicles are tractor and trailer setups an extended driving lane in the front and rear of the property is necessary. With this extended driving lane, parking must be placed in the front transitional yard. And the turning radii require the rear drive to "circle" the building wide enough to encroach upon the rear transitional yard.

2. The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or 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 create an unnecessary hardship on the applicant because without the Emergency Water Filtration Truck the clinic could not operate in times of power outages. The clinics patients cannot wait for the power to come back on. They have to have the treatment on schedule. A strict application of the transitional yard would make this lot unusable for the dialysis clinic.

3. The circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought.

STAFF: No, the circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought because the regulation was adopted prior to the purchase of this site. However, this site design meets the setback requirements of the Suburban Marketplace Corridor form district barring the transitional zone classification.

**STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER of the Land Development Code (Shivley, KY LDC 2006) Section 10.2.9 to reduce the width of the 10 foot VUA Landscape Buffer Area to 4 feet in width for approximately 91 foot of the Gagel Ave. frontage.**

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

STAFF: The waiver will not adversely affect adjacent property owners since the waiver is only required on the center 91 feet of the lot. Along this 91 foot section the applicant is requesting to reduce the required buffer from 10 feet to 4 feet. The applicant will still be able to place a screening buffer of shrubs to hide the parking lot from street view. On either end of the lot the applicant can plant larger trees so that the adjoining properties will not have unattractive views when looking up or down the street.

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

STAFF: No, the applicant has 4 feet of space to be able to plant a screening buffer to hide the parking lot. There is more than adequate space at each end of the lot for canopy trees to be planted. The intent is to keep the transition zone greener and more attractive just before entering the residential zones and can be accomplished by planting trees in the large undeveloped area on the northeast end of the property. 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 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 applicant is reducing the width of the VUA LBA along Gagel Ave. and is willing to provide the required plantings for screening.

- (c) The extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant; and

STAFF: Yes, the extent of the waiver of the regulations is the minimum necessary to afford relief to the applicant since the reduction of the VUA LBA from 10 feet to 4 feet in width for the 91 feet in length along Gagel Ave. will allow a large enough driving lane around the building to allow for medical Mobile Treatment Vehicles and emergency Water Purification Vehicles (should the power be off for extended periods) access to the rear of the building.

- (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 is willing to provide the required landscaping and plan meets the intent and requirements of the comprehensive plan without using the required 10 feet width with a reduction to 4 feet in width for approximately 91 feet in length. The applicant will be able to provide the VUA LBA in the 4 foot width and comply with applicable guidelines.

### TECHNICAL REVIEW

- Shively Fire Dept. asks that a second fire hydrant be added to the property. The hydrant would be a double pumper with two 4 inch outlets capable of producing at least 750 gallons per minute. Please see the attachment in your packet for the e-mail from Mr. LaFollette to staff on Wed. March 22, 2017.

### STAFF CONCLUSIONS

Both the variance and waiver request appear to be adequately justified and meet the standard of review. Based upon the information in the staff report, the testimony and evidence provided at the public hearing, the Board of Zoning Adjustment must determine if the proposal meets the standard of review for granting the following:

**Approve or Deny** Variance #1 from LDC Section 5.3.2.C.2 to allow parking and maneuvering area in the 25 foot front setback for approximately 150 feet in length along Gagel Avenue.

**Approve or Deny** Variance #2 from LDC Section 5.3.2.C.2 to allow a drive lane in the 25 foot rear setback for approximately 133 feet in length along the rear property line.

**Approve or Deny** Landscape Waiver from LDC Section 10.2.9 to reduce the width of the 10 foot VUA Landscape Buffer Area to 4 feet in width for approximately a 91 foot of the Gagel Ave. frontage.

### NOTIFICATION

| Date | Purpose of Notice | Recipients |
|------|-------------------|------------|
|------|-------------------|------------|

|                |                       |                                                                                                                           |
|----------------|-----------------------|---------------------------------------------------------------------------------------------------------------------------|
| May 1, 2017    | Hearing before BOZA   | 1 <sup>st</sup> tier adjoining property owners<br>Subscribers of Council District 3 Notification of Development Proposals |
| March 13, 2017 | Sign Posting for BOZA | Sign Posting on property                                                                                                  |

### ATTACHMENTS

1. Zoning Map
2. Aerial Photograph



**1.**



2. Aerial Photograph



