

Board of Zoning Adjustment Staff Report

May 7, 2018



Case No:	18CUP1043
Project Name:	Sam Swope Care Center
Location:	330 Masonic Home Drive
Owner(s):	Masonic Homes of KY, Inc.
Applicant:	Masonic Homes of KY, Inc.
Representative(s):	Dinsmore & Shohl, LLP – Clifford Ashburner
Jurisdiction:	Louisville Metro
Council District:	9 – Bill Hollander
Case Manager:	Joel P. Dock, Planner II

REQUEST(S)

- **Variance** of Land Development Code (LDC), section 5.3.5.C.3.a to allow for to be located within the 20' non-residential to residential setback
- **Modified Conditional Use Permit** to allow for revisions and an expansion to the existing approved modified conditional use permit of docket 10164

CASE SUMMARY

The existing nursing home facility known as the Sam Swope Care Center is requesting a minimal parking expansion to serve the campus and their facility. A larger campus parking and circulation master plan (18DEVPLAN1027/18CUP1033) has been requested, but due to timing constraints for this area the proposed project is being pursued separately.

STAFF FINDING

The variances and modified conditional use permit appear to be adequately justified and meet the standard of review based on staff analysis in the staff report. The Masonic Homes property is an integrated development with mixed-uses, shared parking facilities, internal drives, and open space. No hazards or nuisance appear to result from these requests, and the public health, safety, and welfare does not appear to be adversely impacted.

TECHNICAL REVIEW

Associated Cases

- 10164 & 10911: Modified CUP and RDDDP for 136 bed nursing home facility
- 18DEVPLAN1058: RDDDP to be heard at DRC May 9, 2018.
- 18DEVPLAN1027/18CUP1033: Campus parking and circulation master plan
- A full listing of cases on the Masonic Homes property is provided as *Attachment 4*.

There is no minimum requirement for non-residential side yard setbacks in the Campus form district, except where adjacent to a residential use or zoning district, in which case a minimum side setback of

20 feet shall be maintained. Because the parking facilities are expanding a bit beyond the property lines the setback and variance is applicable on each side of the property line.

In case 10164 the Board took action on a modified conditional use permit on the subject site without revising or adopting the existing *Conditions of Approval* that were placed upon the development plan under docket B-65-88. Staff is asking that the existing conditions be updated to more current language or be removed entirely to allow the binding elements of this Plan Certain campus development to control.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCE

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

STAFF: The requested variances will not adversely affect public health safety or welfare as the Masonic Homes property is an integrated development with mixed-uses, shared parking facilities, internal drives, and open space. The adjacent use is an assisted living nursing facility with a similar parking layout which is consistent with the overall development of the Masonic Homes property.

- (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 as the Masonic Homes property is an integrated development with site design and building design that is consistent with the character of the development, immediately surrounding properties, and within the general vicinity.

- (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 as the encroachments will not result in any adverse impact on vehicular and pedestrian movement.

- (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 as parking facilities are being provided to accommodate the needs of the integrated campus.

ADDITIONAL CONSIDERATIONS:

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

STAFF: The requested variance arises from special circumstances which do not generally apply to land in the general vicinity or the same zone as the parking is needed to cross the property line at this location.

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 reasonable use of the land as sufficient parking must be provided to accommodate the use and the parking is shared in common between the campus.

3. The circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought.

STAFF: 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 as appropriate relief is being requested from the Board of zoning Adjustment.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR MODIFIED CONDITIONAL USE PERMIT

1. Is the proposal consistent with the applicable policies of the Comprehensive Plan?

STAFF: The proposed modification of the conditional use for parking facilities is in keeping with applicable policies of the Comprehensive Plan and with those findings of the Board of Zoning Adjustment in granting the conditional use permit on February 20, 2008.

2. Is the proposal compatible with surrounding land uses and the general character of the area including such factors as height, bulk, scale, intensity, traffic, noise, odor, drainage, dust, lighting, appearance, etc?

STAFF: The proposal is compatible with surrounding land uses and the general character of the area as the Masonic Homes property is an integrated development with site design and building design that is consistent with the character of the development, immediately surrounding properties, and within the general vicinity

3. Are necessary public facilities (both on-site and off-site), such as transportation, sanitation, water, sewer, drainage, emergency services, education, recreation, etc. adequate to serve the proposed use?

STAFF: Necessary public facilities appear to be present to accommodate multiple modes of transportation, adequate drainage and run-off, emergency services, and the general health and welfare of the community.

4. Does the proposal comply with the following specific standards required to obtain the conditional use permit requested?

4.2.38 Nursing Homes and Homes for the Infirm or Aged

Nursing Homes and Homes for the Infirm or Aged may be permitted in any district upon the granting of a Conditional Use Permit and compliance with the listed requirements.

A. All buildings shall be located at least 30 feet from any property line.

B. One sign, not to exceed 60 square feet and six feet in height, may be placed at each of the major entrances, except in districts where larger signs are allowed.

C. The Board of Zoning Adjustments shall add any restrictions to mitigate nuisances or adverse effects.

STAFF: The modification to the approved conditional use permit is in keeping with those findings of the Board of Zoning Adjustment in granting the conditional use permit on February 20, 2018. The proposed modification does not involve the construction on any new building; therefore, relief from item 'A' is not necessary.

REQUIRED ACTIONS

- **APPROVE** or **DENY** the **Variance** of Land Development Code (LDC), section 5.3.5.C.3.a to allow for to be located within the 20' non-residential to residential setback
- **APPROVE** or **DENY** the **Modified Conditional Use Permit** to allow for revisions and an expansion to the existing approved conditional use permit of docket 10164

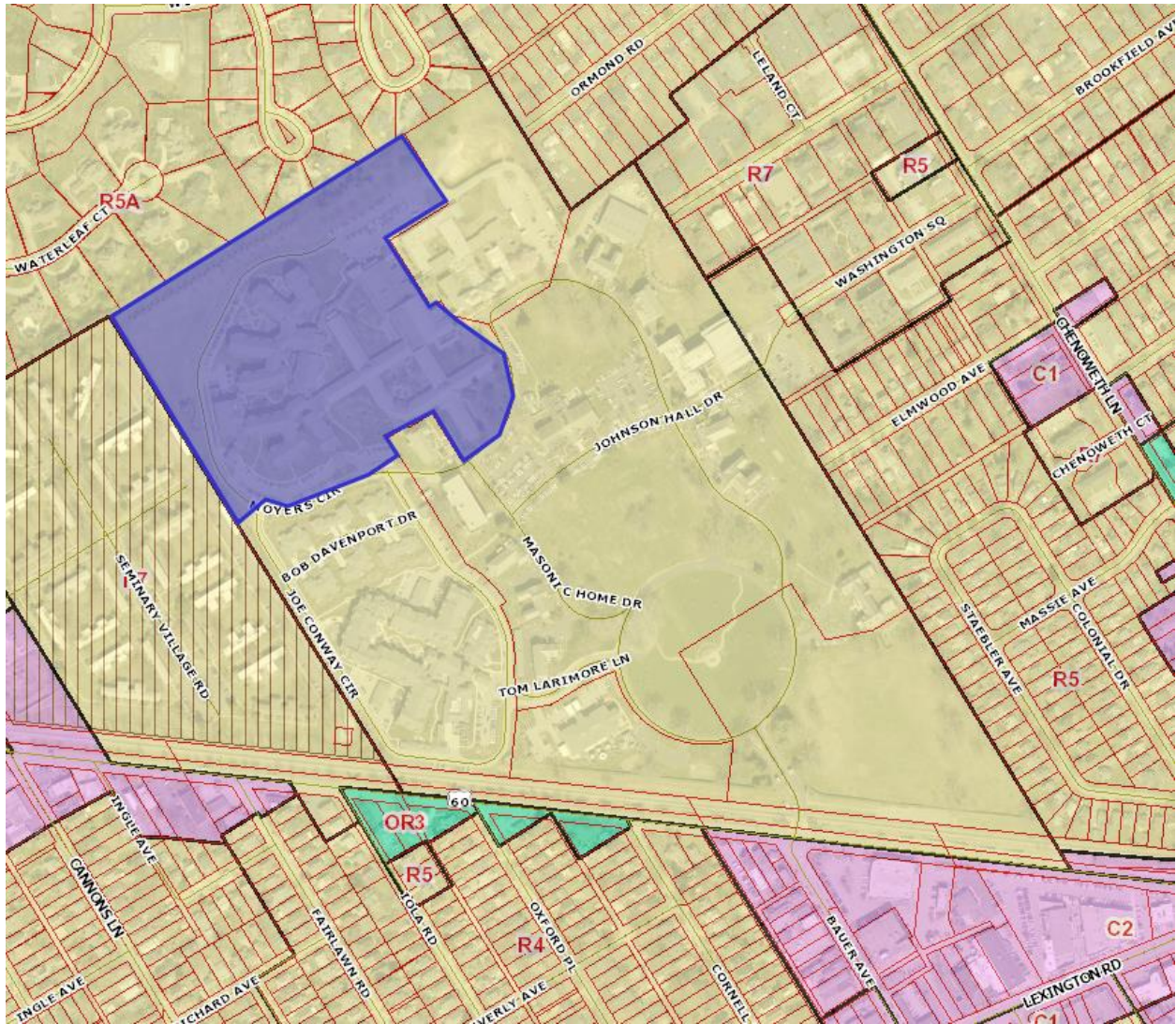
NOTIFICATION

Date	Purpose of Notice	Recipients
04/19/18	Hearing before BOZA	1 st tier adjoining property owners. Registered Neighborhood Groups in Council District 9

ATTACHMENTS

1. Zoning Map
2. Aerial Photograph
3. Existing Conditions of Approval
4. Proposed Conditions of Approval
5. Associated Cases

1. **Zoning Map**



2. Aerial Photograph



3. Existing Conditions of Approval

1. The site shall be developed in strict compliance with the approved development plan. No further development of the site shall occur without prior review and approval by the Board.
2. Evergreen plantings shall be installed to form a continuous hedge along the northeast and northwest sides of the parking lot and driveway proposed to be located to the northeast and north of the existing infirmary building. These plantings shall be included on the landscaping plans which must be submitted for review and approval under Article 12. The height of these plantings shall be determined by the staff Landscape Architect's. These plantings shall be installed regardless of any other requirements of the landscape regulations found in Article 12 and shall be installed prior to use of the parking area and shall be properly maintained at all times thereafter.
3. Any lighting of the site shall be directed downward and away from nearby residential uses.
4. In accordance with the binding elements attached to the approval of change in zoning Docket No. 9-19-83 (especially Binding Element Nos. 1, 2, 4, 6, and 11), the applicant shall obtain

approval of a revised district development plan for the site showing the development approved under this conditional use permit.

5. No building permits shall be pursued by the applicant nor be issued prior to the applicant obtaining the necessary approval of a revised district development plan through the Planning Commission as is required by the above referenced Binding Elements under change in zoning Docket No. 9-19-83.
6. The applicant shall obtain approval of a revised preliminary subdivision plan under Docket No. 10-5-83 from the Planning Commission prior to September 29, 1988, the date the current approved preliminary subdivision plan expires.

4. Proposed Conditions of Approval

- ~~1. The site shall be developed in strict compliance with the approved development plan. No further development of the site shall occur without prior review and approval by the Board.~~
- ~~2. Evergreen plantings shall be installed to form a continuous hedge along the northeast and northwest sides of the parking lot and driveway proposed to be located to the northeast and north of the existing infirmary building. These plantings shall be included on the landscaping plans which must be submitted for review and approval under Article 12. The height of these plantings shall be determined by the staff Landscape Architect's. These plantings shall be installed regardless of any other requirements of the landscape regulations found in Article 12 and shall be installed prior to use of the parking area and shall be properly maintained at all times thereafter.~~
- ~~3. Any lighting of the site shall be directed downward and away from nearby residential uses.~~
- ~~4. In accordance with the binding elements attached to the approval of change in zoning Docket No. 9-19-83 (especially Binding Element Nos. 1, 2, 4, 6, and 11), the applicant shall obtain approval of a revised district development plan for the site showing the development approved under this conditional use permit.~~
- ~~5. No building permits shall be pursued by the applicant nor be issued prior to the applicant obtaining the necessary approval of a revised district development plan through the Planning Commission as is required by the above referenced Binding Elements under change in zoning Docket No. 9-19-83.~~
- ~~6. The applicant shall obtain approval of a revised preliminary subdivision plan under Docket No. 10-5-83 from the Planning Commission prior to September 29, 1988, the date the current approved preliminary subdivision plan expires~~
- 1. The site shall be developed in strict compliance with the approved development plan (including all notes thereon). No further development shall occur on the site without prior review and approval by the Board.**
- 2. The Conditional Use Permit shall be "exercised" as described in KRS 100.237 within two years of the Board's vote on this case. If the Conditional Use Permit is not so exercised, the site shall not be used for a daycare center without further review and approval by the Board.**

3. **Proposal is subject to full construction plans being submitted to the Department of Public Works for traffic and MSD for storm water approvals. Once those have been approved, the plan is subject to Inspections, Permits and Licenses for building/parking permits.**

5. Associated Cases

- B-11-79: CUP for Home for Infirm or Aged (approved 3/5/79).
- 9-19-83/10-5-83: Change-in-zoning from R-1 and R-5 to R-5A, multi-family residential, and Major Preliminary Subdivision Plan for Masonic Village (approved 7/21/83). The rear of the Masonic Village proposal, Lots 3-7, was later subdivided to become Mockingbird Gardens Subdivision, docket 10-39-88.
- B-65-88: CUP for Home for Infirm or Aged as an expansion to B-11-79 (approved 5/16/88).
- B-184-03: CUP for off-street parking at the dead-end of Washington Square in the City of St. Matthews (approved 12/9/03).
- 10164: Modified CUP for 136 bed nursing home facility to replace previous facility located towards the Northwest in the Masonic Homes development site (approved 2/20/08).
- 10911: RDDDP for 136 bed nursing home facility located towards the Northwest in the Masonic Homes development site and other minor modifications across the Masonic Homes site (approved 5/7/08).
- 11444: Minor Subdivision Plat of record in PB 53, PG 14 creating two tracts from one; subsequently, separating the Masonic Homes R-5A site into two sections (recorded 7/18/08).
- 12293: RDDDP for accessory building and temporary doctor's office (approved 5/7/09).
- 13106: Modified CUP for vehicle/maintenance building and temporary doctor's office (approved 12/29/09).
- 13371: CUP for proposed daycare with offices along Frankfort Avenue (approved 9/9/10).
- 14169: RDDDP for Independent Living and Cottage Units in Southwest Corner and Amendment to Binding Element 1, 4, 5, 6, and 11, with an addition of Binding Element 14 (approved 10/27/10).
- 14226: Modified CUP for proposed Independent Living and cottage units in Southwest corner of Masonic Homes Development (approved 11-16-10).
- 15987: RDDDP for proposed revisions to Independent Living and cottage units in the Southwest section of the Masonic Homes development site (approved 6/30/11).
- 16769: Sign Plan with Variance (approved 1/24/12).
- 13DEVPLAN1105: RDDDP for Independent Living in Southwest section of the Masonic Homes development site (approved 2/5/14).
- 13CUP1022: Modified CUP for Independent Living in Southwest section of the Masonic Homes development site (approved 2/24/14).
- 14MOD100: Amendment to Binding Element to allow employees and residents site access from adjacent streets to the East (denied 7/28/14).
- 15CUP1036: Modified CUP associated with this RDDDP request (approved 2/1/16)
- 15DEVPLAN1186: RDDDP for 72 unit assisted living facility (approved 2/18/16)
- 15DEVPLAN1187: RDDDP for 124 independent living units (approved 2/18/16)
- 16DEVPLAN1145: RDDDP for revisions to approved plan in 15DEVPLAN1186 (approved 8/4/16 on condition that the CUP is abandoned where it is no longer needed.
- 16VARIANCE1055: Variance associated with 16DEVPLAN1145 for building connection along Western P/L (approved 8/15/16)
- 17DEVPLAN1174: RDDDP & Waivers to be heard at DRC on 11/15/17.