

**Development Review Committee**  
**Staff Report**  
August 19, 2015



|                   |                                                                                                                               |
|-------------------|-------------------------------------------------------------------------------------------------------------------------------|
| Case No:          | 15WAIVER1026                                                                                                                  |
| Request:          | Waivers from the Land Development Code for building design, landscape, and to allow a LED sign within 300 feet of residential |
| Project Name:     | Thornton's Expansion                                                                                                          |
| Location:         | 4136 Cane Run Road                                                                                                            |
| Owner:            | Bill Chapman, Thornton's, Inc.                                                                                                |
| Applicant:        | Jode Ballard, Thornton's, Inc.                                                                                                |
| Representative:   | Joe Watson, American Engineers, Inc                                                                                           |
| Jurisdiction:     | Louisville Metro                                                                                                              |
| Council District: | 1 – Jessica Green                                                                                                             |
| Case Manager:     | Sherie' Long, Landscape Architect                                                                                             |

**REQUESTS**

**Waiver#1: Façade Design – Clear Windows and Doors**

Waiver of Land Development Code (LDC) Section 5.6.1.C.1 to not provide 50% clear windows and doors on the facades facing Farnsley Road, Adventure Road; and Cane Run Road.

**Waiver#2: Landscape Buffer Encroachment**

Waiver of Land Development Code Section 5.7.1.B.3 and 10.2.10, to allow the building and pavement to encroach into the landscape area.

**Waiver #3: LED Signage**

Waiver of Land Development Code Section 8.2.1.D.6, to allow an LED sign to be closer than 300' to a residential zoning district.

**CASE SUMMARY/BACKGROUND/SITE CONTEXT**

The applicant, Thornton's, is in the process of expanding the current building, and updating the facades and signage. The subject site located on the west side of Cane Run Road, east side of Adventure Road, north side of Farnsley Road, and the south side of Trappers/Davy Crockett Trail is zoned C-2 in the Suburban Marketplace Corridor (SMC). This site is surrounded on three sides by residential properties and the fourth side is a vacant commercial lot.

The proposed façade improvements meet the 60% animation requirement, but do not meet the 50% clear window and door requirements on three sides of the building. Tree plantings and a shrub hedge are being provided between the right-of-way and the building façade along Cane Run Road to compensate for the lack of clear glass. In addition, along both the Cane Road and Adventure Road façades spandrel glass panels are being provided to also compensate for the lack of clear glass.

A waiver to allow the encroachment of the building and pavement into the landscape buffer is required for the buffer along Cane Run Road and Farnsely Road. The required additional perimeter trees are being provided along with a continuous screen planting to fulfill the planting requirements for this perimeter even with the encroachment of the building and pavement.

In updating the signage, the applicant is requesting to be allowed to have a LED sign closer than 300' to a residential zoning district. The proposal is to replace the current pole sign with a new +/-70sf business identification & gas price sign along with an additional 21.5sf LED sign. The new LED sign will be located approximately 181' from the nearest home. The LED Sign will be capable of dimming after dark and the message is proposed to remain constant for 20 seconds – no flashing, blinking, scrolling, etc.

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

|                               | Land Use                                            | Zoning      | Form District |
|-------------------------------|-----------------------------------------------------|-------------|---------------|
| <b>Subject Property</b>       |                                                     |             |               |
| <b>Existing</b>               | Gas Station                                         | C-2         | SMC           |
| <b>Proposed</b>               | N/A                                                 | N/A         | N/A           |
| <b>Surrounding Properties</b> |                                                     |             |               |
| <b>North</b>                  | Commercial/ Manufactured homes/ Single family homes | C-2/R-6     | SMC           |
| <b>South</b>                  | Single family homes                                 | C-1/R-4     | SMC/N         |
| <b>East</b>                   | Commercial/ Single family homes                     | C-2/R-4     | SMC/N         |
| <b>West</b>                   | Manufactured homes/ Single family homes             | C-2/R-6/R-4 | SMC/N         |

#### PREVIOUS CASES ON SITE

- B-14-85 –** An application for an appeal of a Notice of Violation concerning the operation and expansion of a mobile home park without a Conditional Use Permit. Board of Zoning Adjustment denied appeal on March 18, 1985.
- B-76-86 –** Application for a Condition Use Permit (CUP) for a mobile home park on property at 4136 Cane Run Road in the R-6 Apartment and C-2 Commercial Districts. Board of Zoning Adjustment approved CUP on December 1, 1986. On May 7, 1990, the Board of Zoning Adjustment authorized the deletion of a portion of the site which was zoned C-2 from the existing CUP to allow for the sale of the property for the construction of a gas station.
- B-182-86 –** Variance to permit existing mobile homes to encroach into the required side yards. Board of Zoning Adjustment approved variances with Conditions on December 1, 1986.
- L-52-90 -** Landscape plan for new gas station. Approved 1990.

#### INTERESTED PARTY COMMENTS

Staff has not received any inquiries from interested parties.

#### APPLICABLE PLANS AND POLICIES

Cornerstone 2020  
Land Development Code

## STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER

### Waiver#1: Façade Design – Clear Windows and Doors

Waiver of Land Development Code (LDC) Section 5.6.1.C.1 to not provide 50% clear windows and doors on the facades facing Farnsley Road, Adventure Road; and Cane Run Road.

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

STAFF: The requested waiver will not adversely affect adjacent property owners since the applicant is providing tree and shrub planting, spandrel glass panels, and 60% animation of the facades to mitigate the request and compensate for the lack of clear glass.

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

STAFF: Guideline 3, policy 1 and 2 calls for the compatibility of all new development and redevelopment with the scale and site design of nearby existing development and with the pattern of development within the form district. The type of building materials may be considered as a mitigation measure and may also be considered in circumstances specified in the Land Development Code. When assessing compatibility, it is appropriate to consider the choice of building materials in the following circumstances: (1) projects involving residential infill (2) projects involving non-residential uses; and (3) when specified in the Land Development Code. The proposal is for a non-residential use. The Land Development Code provides building design standards for non-residential and mixed use buildings. The purpose of the regulation is to provide visual interest and a human scale that are representative of the form district through the use of windows, columns, pilasters, piers, variation of material, entrances, storefront windows, and other animating features along no less than 60% of the facade. The waiver does not violate the comprehensive plan since the applicant has incorporated landscape plantings and spandrel glass panels to compensate for the lack of clear glass. Plus the applicant is also providing the required 60% animation features on the facades.

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

STAFF: The extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant since 60% of the façade faces are being animated with architectural features and variation of materials. Plus additional tree and shrub plantings are also being provided along with spandrel glass panels to compensate for the request.

- (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 applicant is providing design measures, spandrel glass panels, tree and shrub plantings, to compensate for the non-compliance with the requirements to be waived. Plus the façade design does meet the 60% animation requirement.

## STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER

### Waiver#2: Landscape Buffer Encroachment

Waiver of Land Development Code Section 5.7.1.B.3 and 10.2.10, to allow the building and pavement to encroach into the landscape area.

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

STAFF: The waiver will adversely affect adjacent property because the applicant is providing the required plantings in the reduce buffer area.

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

STAFF: Guideline 3, policy 9 of Cornerstone 2020 calls for the protection of the character of residential areas, roadway corridors and public spaces from visual intrusions and mitigate when appropriate. Guideline 3, policies 21 and 22 calls for appropriate transitions between uses that are substantially different in scale and intensity or density, and to mitigate the impact caused when incompatible developments occur adjacent to one another through the use of landscaped buffer yards, vegetative berms and setback requirements to 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. Guideline 3, policy 24 states that parking, loading and delivery areas located adjacent to residential areas should be designed to minimize the impacts from noise, lights and other potential impacts, and that parking and circulation areas adjacent to streets should be screened or buffered. Guideline 13, policy 4 calls for ensuring appropriate landscape design standards for different land uses within urbanized, suburban, and rural areas. Guideline 13, Policy 6 calls for screening and buffering to mitigate adjacent incompatible uses. The intent of landscape buffer areas is to create suitable transitions where varying forms of development adjoin, to minimize the negative impacts resulting from adjoining incompatible land uses, to decrease storm water runoff volumes and velocities associated with impervious surfaces, and to filter air borne and water borne pollutants. The applicant is providing the all the required plantings in the reduced landscape buffer, therefore the waiver request does not violate the comprehensive plan guidelines or policies.

- (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 is providing the required plantings in the reduced buffer.

- (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: Strict application of the provisions of the regulation will deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant because the building addition and additional parking spaces could not be provided. However, the applicant is providing the required plantings in the reduced buffer to meet the minimum requirements.

## **STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER**

### **Waiver #3: LED Signage**

Waiver of Land Development Code Section 8.2.1.D.6, to allow an LED sign to be closer than 300' to a residential zoning district.

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

STAFF: The waiver will adversely affect adjacent property owners because the nearest home is approximately 181' from the location of the new LED sign. Also the LED sign is visible from both of the nearest homes across the street and closest homes in the manufactured home park abutting the site. .

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

STAFF: The waiver will violate the Comprehensive Plan because the proposed LED sign is within a close proximity to the surrounding homes. The applicant has not provided any additional plantings or screening to reduce the impact on these surrounding homes.

- (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 not the minimum necessary to afford relief to the applicant. The impact of the LED signage is not being mitigated by providing screening or plantings to diminish the negative impact on the adjacent residential property.

- (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: No other design measures have been incorporated that exceed the minimum to compensate for non-compliance with the requirements to be waived. The strict application of the provisions of the regulation would not deprive the applicant of a reasonable use of the land or create an unnecessary hardship on the applicant. There is currently adequate signage being provided.

### TECHNICAL REVIEW

The landscape plan (Case # L-52-90) has been requested from archives. There is a possibility the site is out of compliance with the previously approved landscape plan from 1990.

### STAFF CONCLUSIONS

Staff analysis in the standard of review section of the staff report indicates the proposed Waiver from the 50% clear windows and doors; and the Waiver to allow an encroachment of the pavement and building into the buffer; are justified as requested.

The request for LED signage within 300' of the adjacent residential property is not supported. However, additional tree and shrub plantings could be provided to mitigate the impact of the LED signage on the adjacent homes.

Based upon the information in the staff report, the testimony and evidence provided at the public meeting, the Development Review Committee must determine if the proposal meets the standards for granting Waivers as established in the Land Development Code.

### Required Action

Based upon the information in the staff report, the testimony and evidence provided at the public meeting, the Development Review Committee must **APPROVE** or **DENY** the Waivers listed in the staff report.

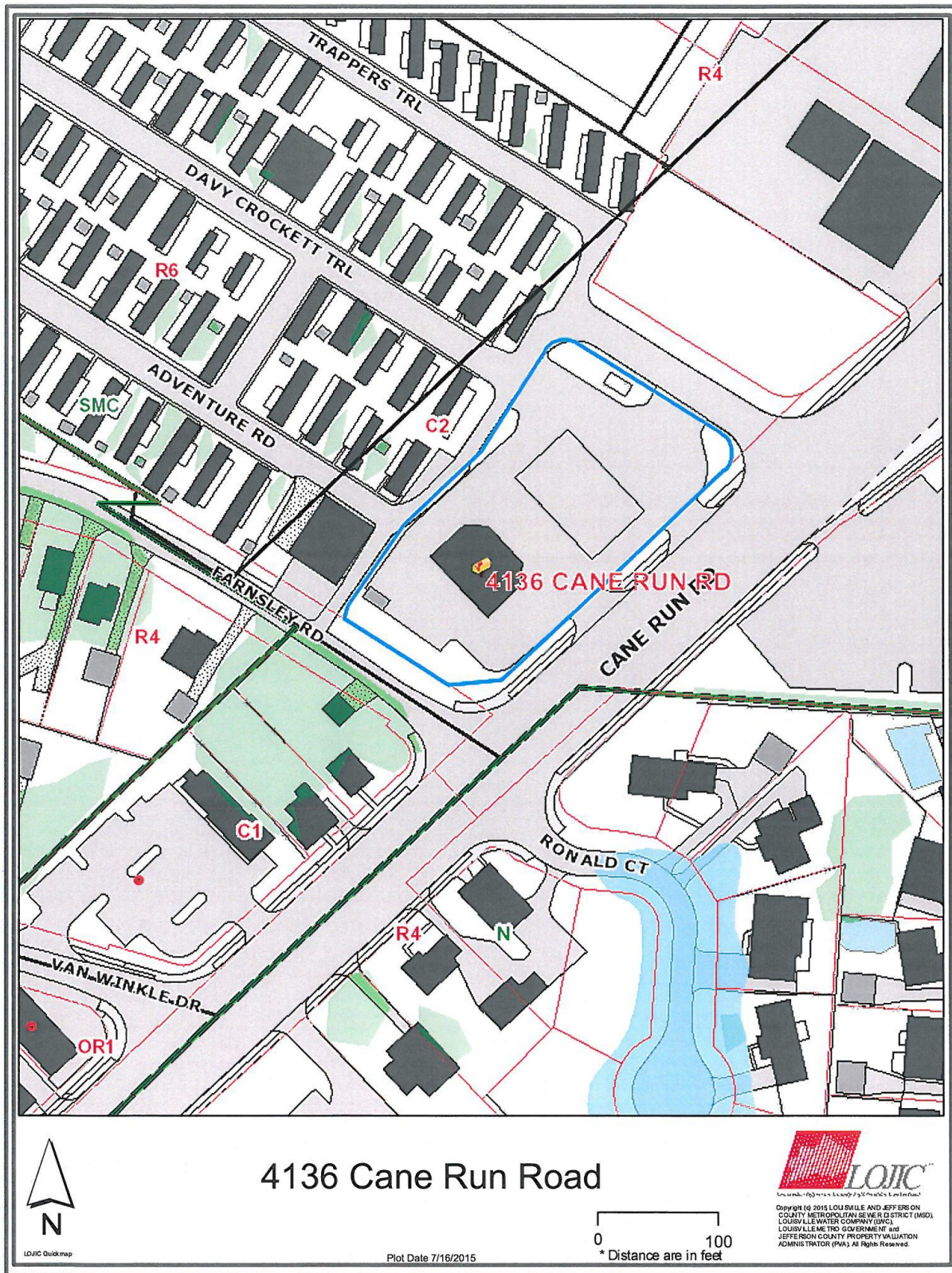
### NOTIFICATION

| Date       | Purpose of Notice         | Recipients                                                               |
|------------|---------------------------|--------------------------------------------------------------------------|
| 08/03/2015 | Public Hearing before DRC | 1 <sup>st</sup> tier adjoining property owners                           |
| 07/30/2015 | Public Hearing before DRC | Subscribers to Council District 14 Notification of Development Proposals |

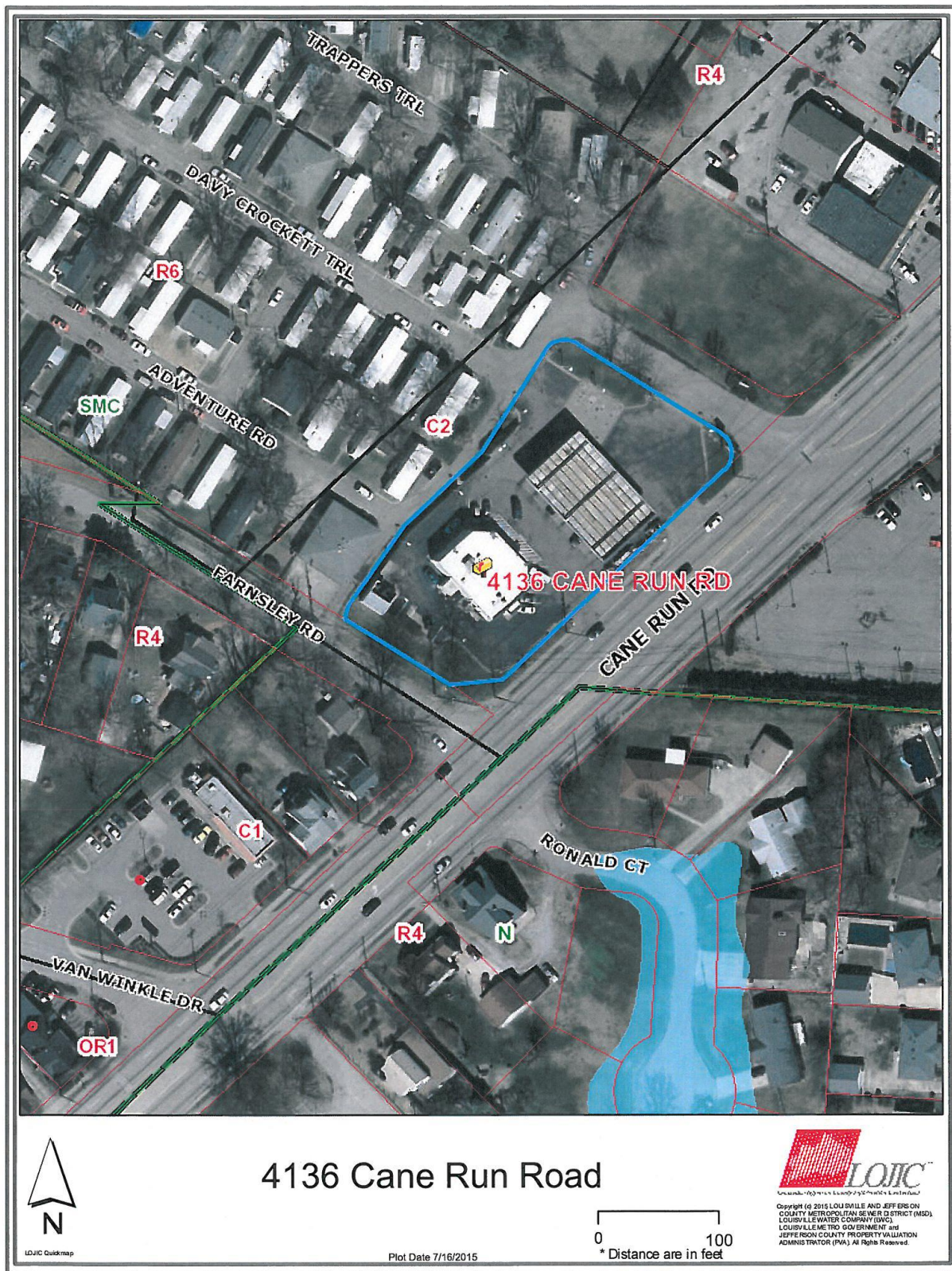
## **ATTACHMENTS**

1. Zoning Map
2. Aerial Photograph
3. Site Plan
4. Building Elevations
5. Sign Elevation
6. Applicant's Justification

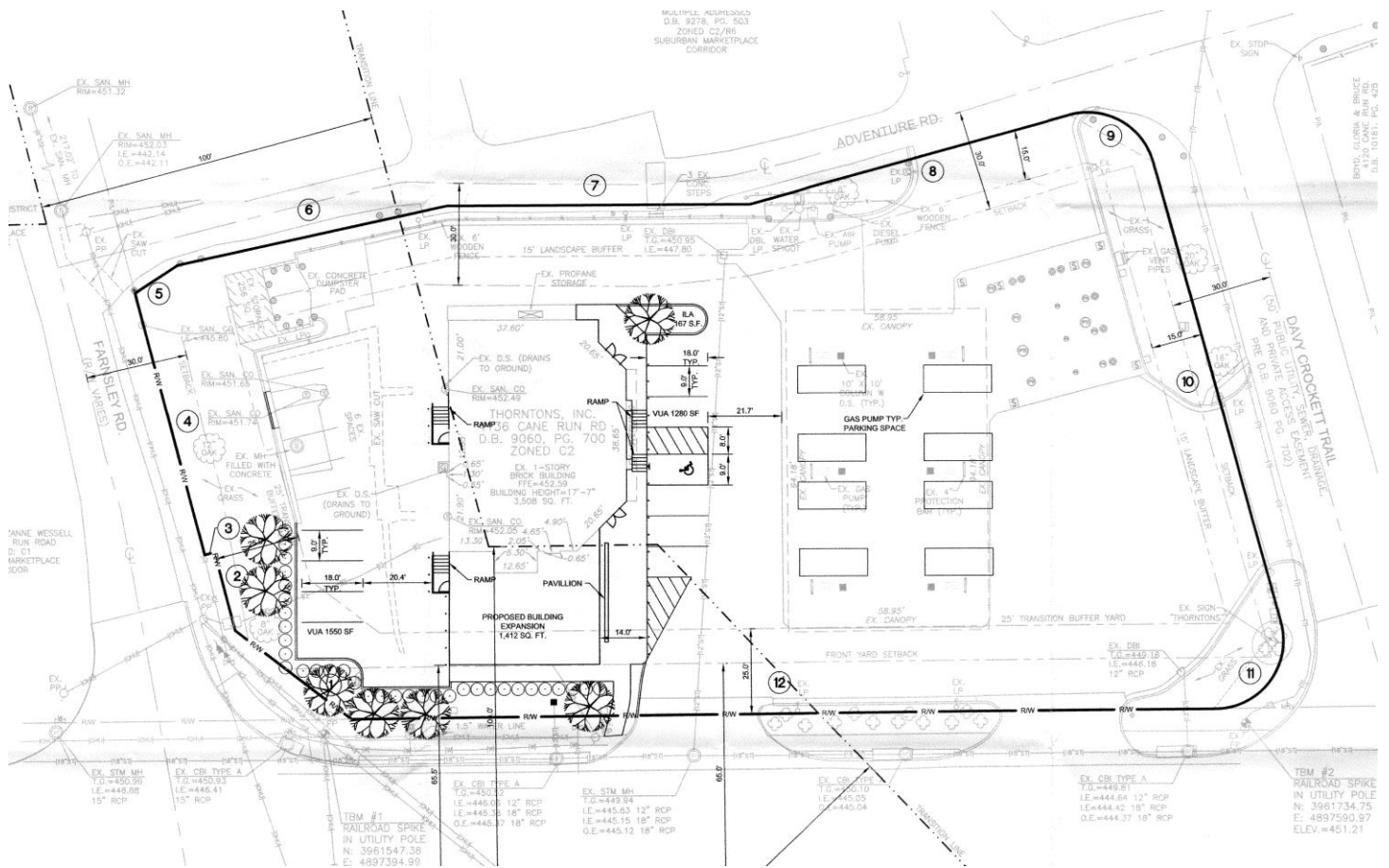
Attachment 1: Zoning Map

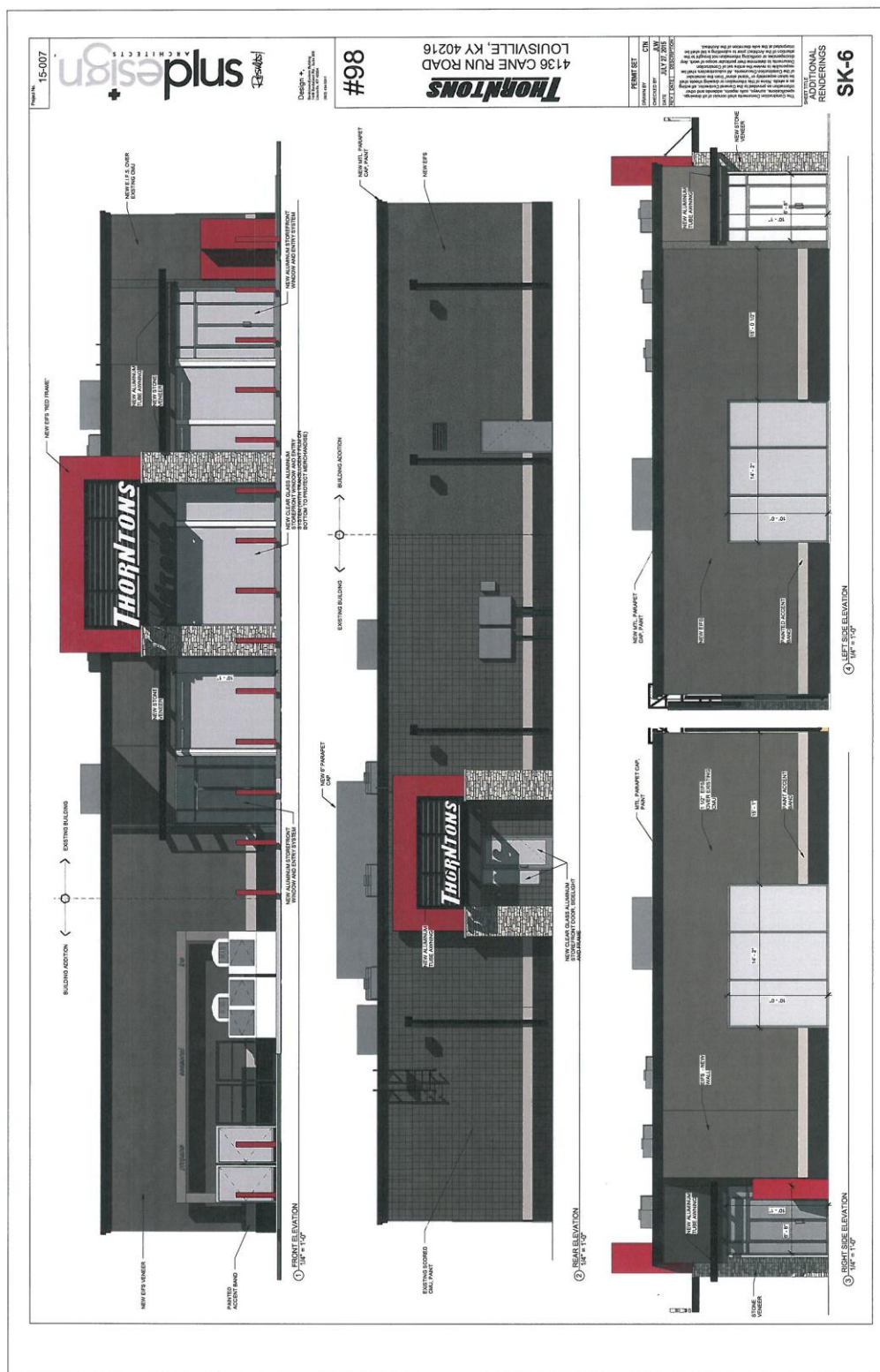


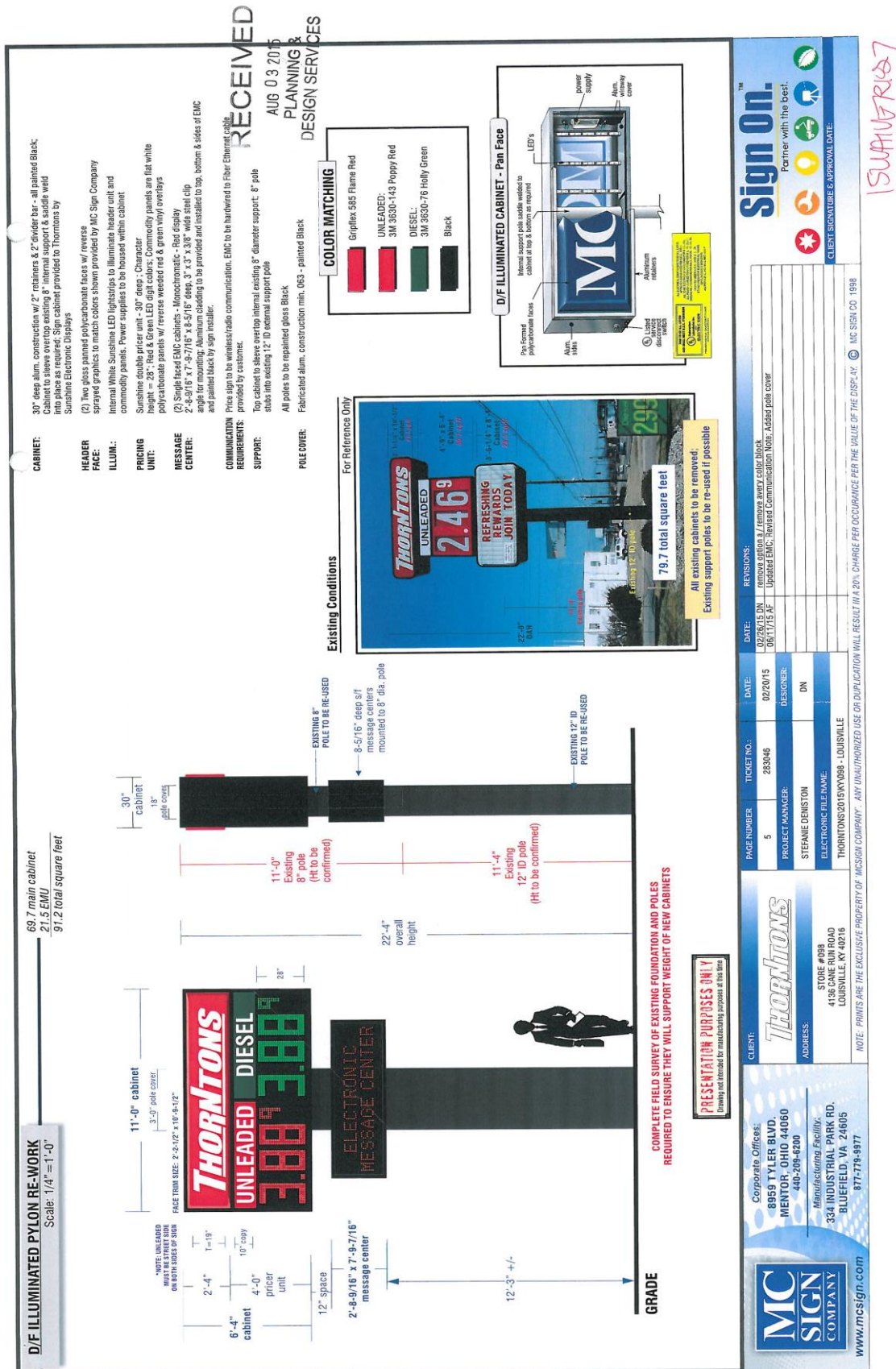
Attachment 2: Aerial Photograph



### Attachment 3: Site Plan







## Attachment 5: Applicant's Justification

50% Glass & Doors

### 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.**

#### 1. Will the waiver adversely affect adjacent property owners?

No adverse affect. In fact the new design is a significant visual improvement to the current building.

#### 2. Will the waiver violate the Comprehensive Plan?

No. Existing building doesn't have the required 50% clear glass coverage, but we have provided the minimum necessary.

#### 3. Is extent of waiver of the regulation the minimum necessary to afford relief to the applicant?

Yes, we have provided the minimum necessary for the project.

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#### 4. Has either (a) the applicant 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 would (b) the strict application of the provisions of the regulation deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant?

The front façade, with the 45 degree entrances, provides visual relief and enhancement to the side (Cane Run and Adventure) elevations. Both the Adventure façade and the Cane Run façade have spandrel storefront to further animate the elevations. This glass, combined with the glass of the 45 degree entrances visible to these elevations, satisfy the intent of the glass requirement. The "Pavilion" area that houses the propane, ice and seasonal merchandise is wrapped with a unifying tube steel frame that visually connects to the building and provides additional animation to both the front and side (Cane Run) facades. The rear elevation includes a full height parapet with scuppers to shield a ground plane view of the mechanical units - unifying this façade with the front and side facades. The rear façade also includes a clear glass entry door and sidelight providing visibility into the only public area accessible from this side of the building. An access drive along the Cane Run side has been removed to allow for more landscaping. Additionally, the rear exposure has been shielding with additional landscaping along Farnsley. With the exception of the aforementioned area inside the rear storefront entry, the interior functions adjacent to the side and rear elevations are storage, walk-in coolers and back of house areas not conducive to clear visibility into the building. We have also provided extra trees along Cane Run Rd and Adventure Drive.

50% WAIVER 1027

**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.**

**1. Will the waiver adversely affect adjacent property owners?**

No. This property is surrounded on all sides by public streets, and the pavement parking lot already extends into the 25' transition buffer yard along Cane Run Road. Thus there is considerable distance between the adjacent property owners and the improvement, so the adjacent owners will not be adversely affected.

**2. Will the waiver violate the Comprehensive Plan?**

No. The site has been used as a convenience store/gas station for many years, even before Cane Run Road was widened. This reduced the area between the parking lot pavement and Cane Run Road. The pavement was already in the 25' transition buffer yard zone along Cane Run Road. The area in the buffer zone along Farnsley Road is needed to provide an adequate number of parking spaces for the size of the site, and that is the most reasonable place to put them.

**3. Is extent of waiver of the regulation the minimum necessary to afford relief to the applicant?**

Yes, without the waiver Thorntons would not have adequate room for all the bldg. expansion and some parking spaces along Farnsley Road, which would likely make the project infeasible.

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**4. Has either (a) the applicant 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 would (b) the strict application of the provisions of the regulation deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant?**

The strict application of the provisions of the regulation would create an unnecessary hardship on Thorntons because the expansion would not be worthwhile if the building could not be extended and the extra parking spaces created. The existing paved parking lot is already in the buffer yard area.

15WAIVER1026

LED Sign

**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.**

**1. Will the waiver adversely affect adjacent property owners?**

No. The site is surrounded by public streets on all 4 sides so that distance separation provides some barrier to an LED sign. Plus there are several large trees on surrounding residential tracts which provide some protection from the proposed sign. Also this area along Cane Run road is somewhat commercial oriented, so the residents are accustomed to commercial site lights. Thus adjacent property owners should not be adversely affected.

**2. Will the waiver violate the Comprehensive Plan?**

No. The lighting is already there for the existing sign. The LED lighting just allows Thorntons to change the fuel product prices electronically from inside the building rather than someone manually changing the prices on the sign outdoors.

**3. Is extent of waiver of the regulation the minimum necessary to afford relief to the applicant?**

Yes, without the waiver Thorntons would have to rely on traditional existing lighting, meaning someone has to manually change the numbers for the prices of the fuel products which creates a small hazard and inefficient work time, compared to almost instant changing of the fuel prices electronically with a new LED sign.

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**4. Has either (a) the applicant 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 would (b) the strict application of the provisions of the regulation deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant?**

The strict application of the provisions of the regulation would create an unnecessary hardship on Thorntons because they would not be able to maximize their advertising and sale of products, which would produce less product sales and less tax money paid to governments. Another hardship for the old type of sign is some person has to manually change the numbers for the prices of the fuel products which creates a small hazard and inefficient work time, compared to almost instant changing of the fuel prices electronically with a new LED sign.

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