

**TOPGOLF USA LOUISVILLE, LLC**

**STATEMENT OF COMPLIANCE  
7900 Shelbyville Road**

**CASE NO. 18ZONE1014**

**RECEIVED**  
JUN 07 2018  
PLANNING &  
DESIGN SERVICES

**INTRODUCTION**

The applicant, Topgolf USA Louisville, LLC, proposes to redevelop and revitalize the southern half of the Oxmoor Center Mall property at 7900 Shelbyville Road by constructing a Topgolf, a multi-story driving range/restaurant concept. The subject property is the site of the former Sears department store, which is currently vacant and is proposed to be removed. The proposal will revitalize the currently vacant property, bring an exciting and family-friendly entertainment option to the region, drive economic growth in the existing Regional Center, and bring the southern half of the Oxmoor Center Mall into compliance with current design standards, including improved landscaping, tree canopy, and parking lot lighting.

The subject property is currently zoned C-1 Commercial and C-2 Commercial, and the proposal is to re-zone 22.47 acres to solely C-2 Commercial. The 22.47 acres the applicant proposes to re-zone to C-2 Commercial is the U-shaped area at the southern end of the Oxmoor Center Mall site surrounding the former Sears store that is currently used as a parking lot. The area to be re-zoned does not include the current Sears store itself, which is already zoned C-2 Commercial, and which is proposed to be removed and redeveloped into the proposed three-story driving range structure. The area proposed to be re-zoned is currently used as parking and is proposed to retain that primary use, but will also encompass a portion of the proposed four-acre driving range outfield, which is the reason for the requested zoning change.

**GUIDELINE 1 - COMMUNITY FORM**

The proposed redevelopment complies with the Intent and Policies of Guideline 1 – Community Form. The subject property is located in the Regional Center Form District, which is an ideal fit for the applicant’s proposed use. The proposed C-2 Commercial zoning is appropriate for a Regional Center, which is intended to contain a mixture of high intensity commercial uses including regional shopping and entertainment facilities. The subject property is connected to the existing Oxmoor Center Mall, which contains shopping, restaurant, and entertainment uses. The subject property is surrounded by commercial uses to the north across Shelbyville Road, to the northeast across Christian Way, and to the northwest across Oxmoor Lane. The subject property is surrounded by multi-family and undeveloped properties to the south, southeast, and southwest, all of which are zoned for future commercial and multi-family development.

The subject property is in an area benefitted by regional connectivity and transportation infrastructure. Oxmoor Center Mall sits directly on Shelbyville Road, a major arterial, and is served by Interstate 264 less than a quarter of a mile to the west. The subject property is connected to Shelbyville Road by divided four-lane roads to the west and east, Oxmoor Lane and

18 ZONE 1014

Christian Way, respectively. The subject property is also served by TARC. The proposal will also enhance the appearance and cohesion of the Oxmoor Center Mall property as a whole by bringing the southern half of the Oxmoor Center Mall into compliance with current design standards, including improved landscaping, tree canopy, and parking lot lighting.

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### **GUIDELINE 2 - CENTERS**

The proposed redevelopment complies with the Intent and Policies of Guideline 2 - Centers. The proposed redevelopment will leverage and enhance the existing activity center at the Oxmoor Center Mall site, which is consistent with the Cornerstone 2020 Comprehensive Plan goal of promoting efficient land use and investment in existing infrastructure. The proposed redevelopment will utilize the existing parking and transportation infrastructure at the Oxmoor Center Mall site, and add a diversity of uses to the site that is sorely needed.

### **GUIDELINE 3 - COMPATIBILITY**

The proposed redevelopment complies with the Intent and Policies of Guideline 3 - Compatibility. Simply put, the subject property is the best location for the proposed redevelopment in our community. The subject property is connected to the existing Oxmoor Center Mall, which contains regional-scale shopping, restaurant, and entertainment uses that are complementary to the proposed use. The subject property is surrounded by other similar commercial uses, including offices, retail stores, car dealerships, shopping centers, and restaurants. The subject property is surrounded by the undeveloped properties to the south, southeast, and southwest, which are all zoned for future commercial, office and multi-family development. The subject property is well-served by existing transportation infrastructure, with easy access to Interstate 264 to the west via Shelbyville Road, and access to Shelbyville Road via both Oxmoor Lane and Christian Way.

Since the original design for the property was made public, the applicant has made a number of refinements to the design to address neighborhood concerns about noise, traffic, and lighting. The three-story structure and driving range outfield have been moved 200 feet to the west and closer to Interstate 264 to reduce noise and lighting impacts and enhance traffic flow. The nearest residential uses will now be more than a quarter of a mile away from the proposed redevelopment. More than 90 percent of the nearby City of Hurstbourne homes will be a half mile or farther from the subject property. The applicant has proposed to install LED lighting below the roof line of the building to reduce light impacts. The applicant has also agreed to paint the net poles around the driving range to better blend with the surroundings and reduce visual impacts.

The applicant has engaged noise, traffic, and lighting consultants to study and recommend further proposals to enhance the proposed design and ensure that residents in nearby Hurstbourne are not adversely affected. Copies of these studies are attached to this application. The sound study demonstrates that there will be no perceptible impact on residences to the east of the subject property. The lighting study demonstrates that the proposed redevelopment will both comply with the LDC's requirements regarding light trespass and improve over the existing situation.

**GUIDELINE 4 - OPEN SPACE**

**GUIDELINE 5 - NATURAL AREAS AND SCENIC AND HISTORIC RESOURCES**

The proposed redevelopment complies with the Intent and applicable Policies of Guidelines 4 - Open Space and 5 - Natural Areas and Scenic and Historic Resources. The proposed redevelopment will substantially improve the open area at the southern end of the Oxmoor Center Mall. The applicant's proposed three-story structure will be separated from the southern end of the enclosed Oxmoor Center Mall structure by new open space that will allow pedestrian access between the two sites. The southern end of the Oxmoor Center Mall is proposed to be redeveloped into two restaurants with outdoor seating facing the proposed driving range, and a third free-standing restaurant between Oxmoor Center Mall and the applicant's redevelopment that will also feature outdoor seating facing the shared pedestrian promenade. The subject property is particularly well suited for the proposed redevelopment because it has no natural, scenic, or historical resources on the subject property. Through the redevelopment of the parking area, over an acre of new green space will be created on the subject property. In addition, the applicant will plant at least 150 new trees on the subject property.

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**GUIDELINE 6 – ECONOMIC GROWTH AND SUSTAINABILITY**

The proposed redevelopment complies with the Intent and applicable Policies of Guideline 6 – Economic Growth and Sustainability. The proposed redevelopment is exactly the kind of redevelopment and revitalization project this Guideline promotes. The southern portion of Oxmoor Center Mall, formerly home to the Sears department store, has been vacant since October 2017. The proposed redevelopment will follow the national trend of revitalizing enclosed malls by adding unique entertainment uses that cannot be replicated by internet retailers. In the early 20<sup>th</sup> Century, malls were community gathering spaces clustered in downtown areas. Then, in the 1950s to 1970s, the development of large suburbs outside of city centers saw the rise of suburban enclosed malls, such as Oxmoor Center and Mall St. Matthews. The current national trend is for retail to move either online or back toward downtown city centers, and enclosed suburban malls have had to adapt by adding unique entertainment uses, such as movie theaters, large-format video arcades, and other sports entertainment facility that offer experiences that cannot be replicated on the internet. The proposed redevelopment follows this trend, and will offer the Oxmoor Center Mall site a fresh and unique regional attraction that will bring hundreds of new jobs to the area and induce further economic development in the area.

**GUIDELINE 7 - CIRCULATION**

The proposed redevelopment complies with the Intent and applicable Policies of Guideline 7 - Circulation. The proposed redevelopment will retain the three existing direct access points to its parking lot—one directly from Oxmoor Lane to the west, one directly from Christian Way to the east, and a third access point to the south from a driveway running along the southern edge of the property that connects to Oxmoor Lane. Both Oxmoor Lane and Christian Way are divided four lane roads that connect directly to major arterial Shelbyville Road to the north, which connects to Interstate 264 less than a quarter of a mile to the west. The proposed redevelopment will also connect internally to the Oxmoor Center Mall parking lots to the north. The applicant is also conducting a traffic study in order to determine whether any roadway improvements will be necessary.

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**GUIDELINE 9 - BICYCLE, PEDESTRIAN AND TRANSIT**

The proposed redevelopment complies with the Intent and applicable Policies of Guideline 9 – Bicycle, Pedestrian and Transit. Pedestrians will be able to access the proposed redevelopment through the new south entrance of the Oxmoor Center Mall, which will be connected to the proposed redevelopment via a new pedestrian promenade that will also connect to the three proposed restaurants with outdoor seating. The proposed redevelopment also includes new pedestrian sidewalks along Christian Way that will connect the subject property to the open space to the southeast, and also improve pedestrian access from the City of Hurstbourne neighborhoods to the east. The proposal will contain bicycle parking facilities as required by the LDC. TARC bus stops are located to the north of the subject property along Shelbyville Road at the intersections with Oxmoor Lane and Christian Way, providing easy access to Oxmoor Center Mall and the proposed redevelopment.

**GUIDELINE 10 - FLOODING AND STORMWATER**

**GUIDELINE 11 - WATER QUALITY**

The proposed redevelopment complies with the Intents and applicable Policies of Guidelines 10-Flooding and Stormwater and 11-Water Quality. The proposed redevelopment will decrease the impervious area of the subject property by approximately 48,000 square feet, and will provide floodplain and drainage improvements as required by MSD.

**GUIDELINE 12 - AIR QUALITY**

The proposed redevelopment complies with the Intent and applicable Policies of Guideline 12-Air Quality. The applicant is conducting a traffic study in order to determine the potential impact on area roads from the proposed redevelopment. However, given the existing Oxmoor Center Mall and other commercial uses nearby along high-traffic Shelbyville Road, the proposed redevelopment should generate fewer trips than the retail space it is replacing. The proposed redevelopment also contains new sidewalks along Christian Way which will facilitate pedestrian access to the Oxmoor Center site from nearby residential areas.

**GUIDELINE 13 - LANDSCAPE CHARACTER**

The proposed redevelopment complies with the intent and applicable Policies of Guideline 13-Landscape Character. The proposal includes improved landscaping, tree canopy, and parking lot lighting that will improve the appearance and visual impact of the subject property. The proposed redevelopment includes over one acre of reclaimed green space within the Oxmoor Center parking lot. The applicant will provide a more detailed landscape plan before the Planning Commission public hearing on the proposed redevelopment.

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18ZONE1014**

**VARIANCE JUSTIFICATION**

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The proposed variance, which will allow the proposed redevelopment to be set back more than 275 feet from the property line along Christian Way and Oxmoor Lane, will not adversely affect the public health, safety or welfare. The proposed redevelopment will sit almost entirely within the existing footprint of the currently vacant Sears department store, which the applicant proposes to remove and redevelop into a Topgolf, a driving range/restaurant concept. The applicant proposes to reconfigure the existing parking lot that will surround the proposed redevelopment to improve traffic flow and ease of access to Christian Way and Oxmoor Lane, including creating a new dedicated driveway and sidewalk within the parking lot from the western access point at Oxmoor Lane to the facility. The proposal will bring the bulk of the southern half of the Oxmoor Center Mall into compliance with current design standards, including improved landscaping, tree canopy, and parking lot lighting.

The variance will not alter the essential character of the general vicinity as the proposed redevelopment will sit almost entirely within the existing footprint of the Sears department store. The Sears structure is currently approximately 385 feet from the western property line along Oxmoor Lane, and 750 feet from the eastern property line along Christian Way. The proposed building will retain a similar setback from both property lines, but the end of the proposed driving range outfield will be located 275 feet from Christian Way. Previous plans proposed placing the structure 200 feet further to the south and east, but the applicant revised its plans to move the proposed structure back closer to the southern end of Oxmoor Center Mall to reduce noise and lighting impacts.

The variance will not cause a hazard or nuisance to the public. The proposed building location will allow the applicant to create a more sensitive design that will result in no light or perceptible noise trespass within the Hurstbourne neighborhood. Setting the proposed redevelopment back as close as possible to the southern edge of Oxmoor Center Mall will reduce the light and noise impacts to the surrounding area. The applicant also proposes to create a new dedicated driveway and sidewalk within the western half of the parking lot, which will improve public safety for vehicles and pedestrians access the site from the access point at Oxmoor Lane.

The variance will not allow an unreasonable circumvention of the requirements of the zoning regulations. The proposal minimizes the light and noise impacts to the surrounding area while retaining essentially the same footprint as the existing Sears structure. The variance will allow the applicant to redevelop the existing parking lot to bring it into compliance with current design standards, which will improve pedestrian and vehicle safety through new lighting and parking design.

The variance arises from special circumstances that do not generally apply to land in the vicinity of the project. The proposal is to redevelop the existing Sears department store and surrounding parking lots at the Oxmoor Center Mall into a Topgolf, a driving range/restaurant

18 ZONE 1014

concept. The Oxmoor Center Mall site is unique, and the scale of the existing mall structure and the proposed redevelopment require large parking areas. To minimize noise and light impacts, the proposed redevelopment will sit almost entirely within the existing footprint of the Sears building, which will require the redevelopment to exceed the maximum setback requirements in the Land Development Code.

The strict application of the regulations would create an unnecessary hardship because the size and parking needs of the proposed redevelopment require that it be located more than 275 feet from the east and west property lines in the existing footprint of the Sears building. Strict application of the regulations would force the applicant to move the structure closer to either the east or west property lines, which could increase light and noise impacts to surrounding areas.

The circumstances are not the result of actions taken by the applicant subsequent to the adoption of the zoning ordinance but are, instead, the result of misapplication of the maximum setback requirements to the unique Oxmoor Center Mall property. The scale of the existing mall structure and the proposed redevelopment require large parking areas, and thus variances from the maximum setback requirements. The proposed redevelopment will sit almost entirely within the footprint of the existing Sears structure, the best location for the proposed building.

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**VARIANCE JUSTIFICATION**

The proposed variance, which will allow for net poles surrounding the applicant's proposed driving range to exceed the 150' maximum accessory building height by 20', will not adversely affect the public health, safety or welfare. In fact, the proposed net poles are a key safety feature of the proposed redevelopment. The proposal is for the net poles to completely encircle the proposed Topgolf outfield on the southern portion of the Oxmoor Center Mall property. The height of the net poles ensures that golf balls do not escape the top of the netting, thus ensuring the safety of pedestrians and vehicles in the parking lot that will surround the driving range.

The variance will not alter the essential character of the general vicinity, as the net poles are consistent with the commercial character of the subject property and surrounding area. The subject property sits on the southern portion of the Oxmoor Center Mall, which sits within a highly developed commercial corridor along Shelbyville Road designated Regional Center Form District, the most intense commercial form district outside of the Central Business District. Other commercial uses, including retail stores, car dealerships, shopping centers, and restaurants border the Oxmoor Center Mall to the north across Shelbyville Road, to the northeast across Christian Way, and to the northwest across Oxmoor Lane. Undeveloped properties zoned for future multi-family and commercial development surround the subject property to the south, southeast, and southwest. The net poles will not create undue visual impacts, as buildings are allowed a maximum height of 150' within the Regional Center Form District. The nearest residential uses will be a significant distance from the proposed redevelopment and screened by an existing tree line. More than 90 percent of the nearby City of Hurstbourne homes will be a half mile or farther from the subject property.

The variance will not cause a hazard or nuisance to the public. The proposed net poles are key safety features of the proposed redevelopment that are designed to ensure the safety of pedestrians and vehicles and in the parking lot that will surround the driving range. The applicant does not propose to place any lights or speakers on the net poles, minimizing visual and sound impacts, particularly at night. The applicant also proposes to paint the net poles so that they blend in with the surrounding area, further lessening the visual impact.

The variance will not allow an unreasonable circumvention of the requirements of the zoning regulations. The proposal balances the need to ensure the safety of pedestrians and vehicles in the surrounding parking lot with the compact nature of the proposed Topgolf. The 20' variance will allow for the construction of a unique, exciting, and family-friendly entertainment option on the former Sears department store site that is sorely in need of redevelopment.

18 ZONE 1014

The variance arises from special circumstances that do not generally apply to land in the vicinity of the project. The variance is the result of the need to erect net poles to ensure the safety of pedestrians and vehicles in the surrounding parking lot near the proposed Topgolf structure. Topgolf is unique to the region. The applicant is not proposing to build a structure that exceeds the height requirements, but rather to build net poles that will serve as a key safety feature for the proposed redevelopment.

The strict application of the regulations would create an unnecessary hardship because the compact nature of the proposed driving range requires taller net poles to ensure that golf balls do not escape over the top of the netting. The proposed variance will permit the applicant to bring its unique driving range/restaurant concept to the region while ensuring the safety of pedestrians and vehicles nearby.

The circumstances are not the result of actions taken by the applicant subsequent to the adoption of the zoning ordinance but are, instead, the result of misapplication of the accessory building height requirements the applicant's proposed net poles. The proposed net poles are not truly accessory buildings, but rather a safety feature of the proposed driving range. The applicant has taken steps to ensure that the poles do not have undue visual or noise impacts by agreeing not to place lights or speakers on the poles.

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VARIANCE JUSTIFICATION

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The proposed variance, which will allow the parking area of the proposed redevelopment to encroach into the 100' stream buffer, will not adversely affect the public health, safety or welfare. The applicant proposes to reconfigure the existing parking lot that will surround the proposed redevelopment to improve traffic flow and ease of access to Christian Way and Oxmoor Lane, including creating a new dedicated driveway and sidewalk within the parking lot from the western access point at Oxmoor Lane to the facility. The proposal will bring the bulk of the southern half of the Oxmoor Center Mall into compliance with current design standards, including improved landscaping, tree canopy, and parking lot lighting. The proposed redevelopment will not expand the footprint of the existing parking area or further encroach into the Beargrass Creek buffer area and will only include internal realignments of the parking area near Beargrass Creek to accommodate the new Topgolf facility.

The variance will not alter the essential character of the general vicinity as the footprint of the existing parking area will not change and will not further encroach on the buffer adjacent to Beargrass Creek. The proposed internal realignments in the parking area will allow the applicant to bring the existing parking area into compliance with current design standards and add improved landscaping, tree canopy, and parking lot lighting.

The variance will not cause a hazard or nuisance to the public. The proposed internal realignments in the parking area will improve traffic flow and ease of access to Christian Way and Oxmoor Lane, which will enhance vehicle and pedestrian safety and reduce noise impacts.

The variance will not allow an unreasonable circumvention of the requirements of the zoning regulations. The proposal will retain the same footprint as the existing parking area while allowing the applicant to make numerous design updates that will improve the safety and appearance of the parking area. These design updates will reduce the noise and lighting impacts on surrounding areas.

The variance arises from special circumstances that do not generally apply to land in the vicinity of the project. The Oxmoor Center Mall site is unique, and the scale of the existing mall structure and the proposed redevelopment require large parking areas. These parking areas have encroached on the Beargrass Creek buffer since their construction in the early 1980s, and the applicant proposes to simply upgrade the existing parking areas to bring them into compliance with current design standards.

The strict application of the regulations would create an unnecessary hardship because the size and parking needs of the proposed redevelopment require that the parking areas be permitting to encroach on the 100' stream buffer area. Strict application of the regulations would

18 Zone 1014

force the applicant to remove the existing parking areas and disturb currently undeveloped land to construct new parking areas nearby.

The circumstances are not the result of actions taken by the applicant subsequent to the adoption of the zoning ordinance but are, instead, the result of misapplication of the stream buffer requirements to the unique Oxmoor Center Mall property. The scale of the existing mall structure and the proposed redevelopment require large parking areas, and thus variances from the stream buffer requirement. The proposed redevelopment will not expand the footprint of the existing parking area or further encroach into the Beargrass Creek buffer area.

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**WAIVER JUSTIFICATION**

**TOPGOLF USA LOUISVILLE, LLC**

**7900 Shelbyville Road  
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The proposed waiver from the required landscape screening requirements along Christian Way and Oxmoor Lane will not adversely affect the adjacent property owners as the existing parking areas are not screened along these streets, and the applicant proposes to improve the overall appearance of the parking area by bringing the parking areas more into compliance with current design standards. The applicant proposes to improve landscaping, tree canopy, and parking lot lighting. Thus, the proposal will not result in any new unscreened parking and will allow the applicant to improve the overall appearance of the parking areas.

The proposed waiver will not violate the Comprehensive Plan. The existing parking areas are not screened along Christian Way and Oxmoor Lane, and the applicant proposes other changes to the parking areas that will improve their overall appearance and reduce traffic and light impacts. The proposed redevelopment as a whole will revitalize the currently vacant Sears property, bring an exciting and family-friendly entertainment option to the region, drive economic growth in the existing Regional Center, and bring the southern half of the Oxmoor Center Mall into compliance with current design standards.

The extent of the proposed waiver of the regulation is the minimum necessary to afford relief to the applicant. The proposed waiver will permit the applicant to retain the existing parking areas while improving their outdated appearance through new landscaping, tree canopy, and lighting.

The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land and would create an unnecessary hardship on the applicant as the applicant will not be adding any new unscreened parking and proposes to substantially improve the appearance of the existing parking areas. The existing parking areas are not screened along Christian Way and Oxmoor Lane, and the applicant proposes to improve landscaping, tree canopy, and parking lot lighting.

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September 19, 2018

Joel Dock  
Planner II  
Planning & Design Services  
Department of Develop Louisville  
*LOUISVILLE FORWARD*  
444 South Fifth Street, Suite 300  
Louisville, KY 40202

**RE: 18ZONE1014**

Dear Joel:

I am writing concerning the lighting at the proposed Topgolf location at Oxmoor Center. The proposed lights will comply with the LDC's requirements, subject to the action of the Planning Commission to approve placement of lights above 30' from grade.

As detailed in our lighting report, all of the field lights will be aimed down at the outfield of the facility, and there will be no light spill at the Oxmoor Center property line.

With regard to LDC 4.1.3.B.2.a, the fixtures will not produce glare on Christian Way, nor will they "cause direct light from the luminaire to be directed toward residential uses...on adjacent or nearby parcels." The fixtures will be aimed down at the outfield and shielded to prevent such light spill.

The fixtures will be mounted at approximately 28' and 40', under the decking of the third hitting bay floor and the roof of the building. Within the Regional Center form district, fixtures with a lumen output greater than 1800 lumens per lamp must be mounted at a height of less than 30' unless otherwise approved by the Planning Commission. The proposed fixture, the GameChanger 500, exceeds 1800 lumens, so will need to be approved by the Commission.

The proposed lighting further complies with LDC 4.1.3.B.11.ii in that the new lighting in the Oxmoor Center parking lot and within the Topgolf itself will not result in any increase in the ambient level of lighting at the property line. In fact, the redesigned lighting will reduce light spill onto Christian Way significantly.

Joel Dock  
September 19, 2018  
Page 2

Please let me know if you have any questions.

Sincerely,



Clifford H. Ashburner

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