

Development Review Committee

Staff Report

April 20, 2022



Case No:	22-DDP-0006/22/WAIVER-003822-WAIVER-0048
Project Name:	Fegenbush Ln Convenience Store
Location:	6101 Fegenbush Ln
Owner(s):	Jay Chehar Maa LLC
Applicant:	Jay Chehar Maa LLC
Jurisdiction:	Louisville Metro
Council District:	2 – Barbara Shanklin
Case Manager:	Jay Lockett, AICP, Planner II

REQUEST(S)

- **Waiver** of Land Development Code section 10.2.5 to permit encroachment into the 30-foot Parkway Buffer.
- **Sidewalk Waiver** to not construct the portion of sidewalk south of the Fegenbush Ln entrance.
- **Revised Detailed District Development Plan** with revisions to Binding Elements

CASE SUMMARY/BACKGROUND

The applicant is proposing to construct mixed commercial development including a gas station, restaurant and retail space. The subject site is zoned C-1 in the Suburban Workplace form district and contains approximately 3.85 acres. The site is located at the intersection of Fegenbush Ln and S Hurstbourne Pkwy near the Highview area of Louisville Metro. Fern Creek runs along the rear of the site, which is currently vacant and formerly contained a church.

STAFF FINDING

The requests are adequately justified and meet the standards of review. The development is similar to the plan approved under 17ZONE1039, and the waivers are the minimum necessary to provide relief to the applicant.

TECHNICAL REVIEW

There are no outstanding technical issues associated with this request.

INTERESTED PARTY COMMENTS

Staff has received no comments from interested parties concerning this request.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER OF SECTION 10.3.5

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

STAFF: The waiver will not adversely affect adjacent property owners as the applicant will provide all required plantings and screening within the buffer area.

- (b) The waiver will not violate specific guidelines of Plan 2040; and

STAFF: The waiver will not violate specific guidelines of Plan 2040 as the applicant will provide adequate screening and buffering.

- (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 as the encroachment is minimal and all required screening and planting will be provided.

- (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 create an unnecessary hardship on the applicant, as the irregular shape and size of the S Hurstbourne Pkwy right-of-way create the conditions for the encroachment rather than actions of the applicant.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR Sidewalk Waiver

- a. The waiver will not adversely affect adjacent property owners; and,

STAFF: The waiver will not adversely affect adjacent property owners, as no sidewalks exist south of the site and the topography and guardrail along Fegenbush Ln make construction difficult.

- b. Granting of the waiver will result in a development in compliance with the Comprehensive Plan and the overall intent of this Land Development Code; and

STAFF: The waiver will not violate the comprehensive plan, as Mobility Goal 1, Policy 1.4 states that sidewalks should be provided along the streets of all developments. Mobility Goal 3 Policy 11.7 states that the impact of development and redevelopment should be mitigated by providing on-site or off-site sidewalks. Livability Goal 1 Policy 35 states that critical connections should be built or maintained in the pedestrian network. The applicant is constructing sidewalks all around the site, except for the limited area of waiver requested.

- c. The applicant cannot reasonably comply with one of the listed methods of compliance (section 6.2.6.C); and

STAFF: The applicant could not reasonably comply with one of the methods listed in 6.2.6.C for the portion of sidewalk requested to be waived. The site complies with all requirements for sidewalk construction around the rest of the site.

- d. 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 regulations would create an unnecessary hardship on the applicant, as the area south of their proposed entrance on Fegenbush Ln has significant barriers to construction due to existing grade and guardrail along the roadway.

- e. There are site constraints that make sidewalk construction impracticable or sidewalks do not exist in the area and there is not a likelihood for sidewalks to be constructed in the future, except for areas where sidewalks are recommended within a Planning Commission or legislatively adopted plan recommending sidewalk construction.

STAFF: There are site constraints to construction in the area of the waiver request. The applicant will construct sidewalks around the rest of the development site.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR RDDDP and AMENDMENT TO BINDING ELEMENTS

- (a) The conservation of natural resources on the property proposed for development, including: trees and other living vegetation, steep slopes, water courses, flood plains, soils, air quality, scenic views, and historic sites;

STAFF: The applicant will provide the full required buffer for the protected waterway, including tree preservation.

- (b) The provisions for safe and efficient vehicular and pedestrian transportation both within the development and the community;

STAFF: Provisions for safe and efficient vehicular and pedestrian transportation within and around the development and the community has been provided, and Metro Public Works has approved the preliminary development plan.

- (c) The provision of sufficient open space (scenic and recreational) to meet the needs of the proposed development;

STAFF: There are no open space requirements pertinent to the current proposal.

- (d) The provision of adequate drainage facilities on the subject site in order to prevent drainage problems from occurring on the subject site or within the community;

STAFF: The Metropolitan Sewer District has approved the preliminary development plan and will ensure the provision of adequate drainage facilities on the subject site in order to prevent drainage problems from occurring on the subject site or within the community.

- (e) The compatibility of the overall site design (location of buildings, parking lots, screening, landscaping) and land use or uses with the existing and projected future development of the area;

STAFF: The overall site design and land uses are compatible with the existing and future development of the area. Appropriate landscape buffering and screening will be provided to screen adjacent properties and roadways. Buildings and parking lots will meet all required setbacks.

- (f) Conformance of the development plan with the Comprehensive Plan and Land Development Code. Revised plan certain development plans shall be evaluated for conformance with the non-residential and mixed-use intent of the form districts and comprehensive plan.

STAFF: The development plan conforms to applicable guidelines and policies of the Comprehensive Plan and to requirements of the Land Development Code.

REQUIRED ACTIONS:

- **APPROVE** or **DENY** the **Waivers**
- **APPROVE** or **DENY** the **Revised Detailed District Development Plan**

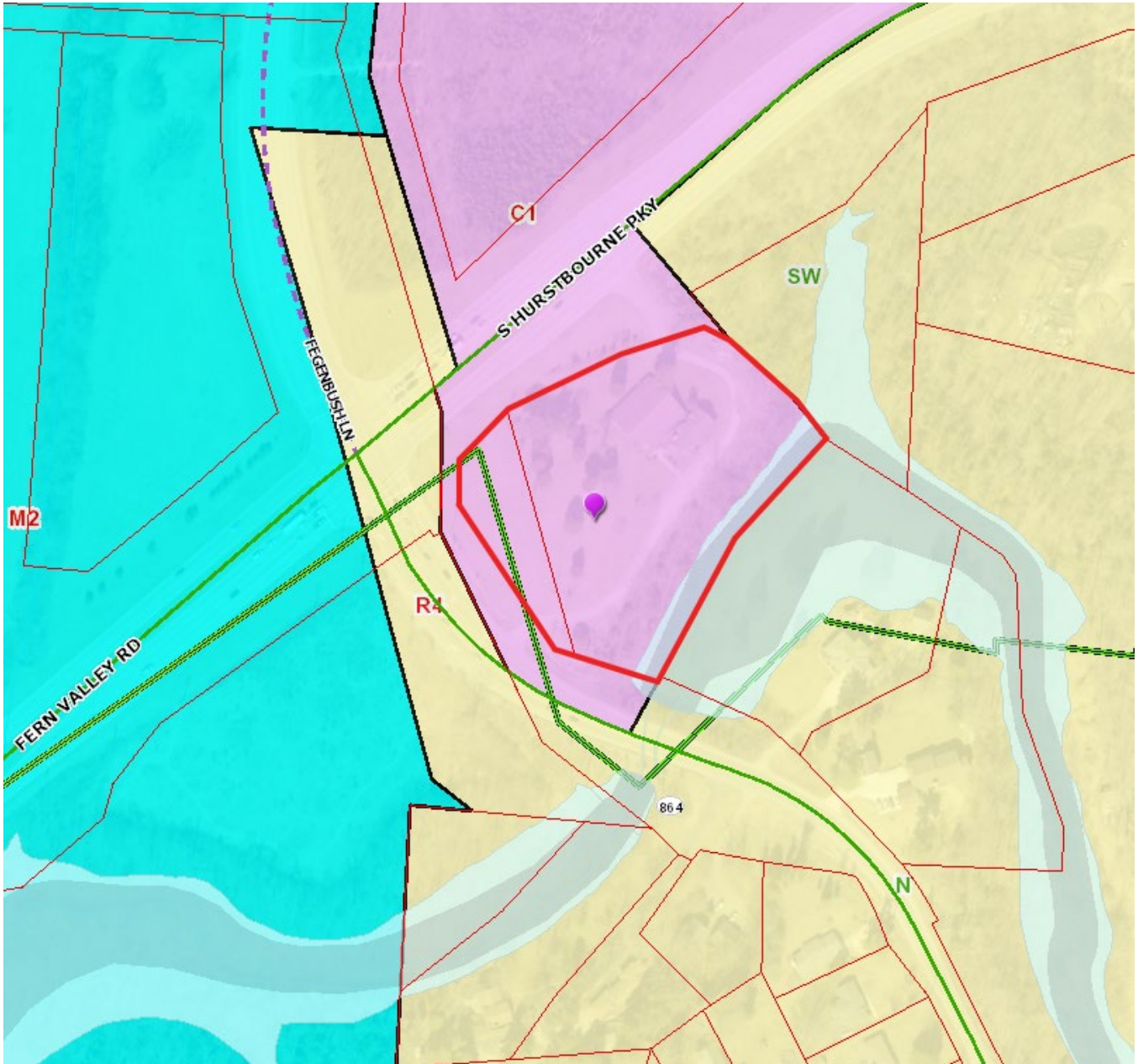
NOTIFICATION

Date	Purpose of Notice	Recipients
4-4-22	Hearing before DRC	1 st tier adjoining property owners and residents Registered Neighborhood Groups in Council District 2

ATTACHMENTS

1. Zoning Map
2. Aerial Photograph
3. Existing Binding Elements with proposed changes
4. Proposed Binding Elements

1. Zoning Map



2. Aerial Photograph



3. Existing Binding Elements with proposed changes

1. The development shall be in accordance with the approved district development plan, all applicable sections of the Land Development Code (LDC) and agreed upon binding elements unless amended pursuant to the Land Development Code. Any changes/additions/alterations of any binding element(s) shall be submitted to the Planning Commission or the Planning Commission's designee for review and approval; any changes/additions/alterations not so referred shall not be valid.
2. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.
3. Construction fencing shall be erected when off-site trees or tree canopy exists within 3' of a common property line. Fencing shall be in place prior to any grading or construction to protect the existing root systems from compaction. The fencing shall enclose the entire area beneath the tree canopy and shall remain in place until all construction is completed. No parking, material storage or construction activities are permitted within the protected area. Construction Fencing shall also be provided along the Limits of Disturbance as shown on the approved district development plan.
4. Before any permit (including but not limited to building, parking lot, change of use, site disturbance, alteration permit or demolition permit) is requested:
 - a. The development plan must receive full construction approval from Louisville Metro Department of Codes and Regulations Construction Permits and Transportation Planning Review and the Metropolitan Sewer District.
 - b. Encroachment permits must be obtained from the Kentucky Department of Transportation, Bureau of Highways for any work within the state right-of-way.
 - c. The property owner/developer must obtain approval of a detailed plan for screening (buffering/landscaping) as described in Chapter 10 prior to requesting a building permit. Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter
 - d. A Tree Preservation Plan in accordance with Chapter 10 of the LDC shall be reviewed and approved prior to obtaining approval for site disturbance.
 - e. A traffic study shall be submitted to Public works and KYTC for review and incorporation into the record. Any recommendations of the traffic study shall be accounted for in construction plans; including, but not limited to, restricted access to KY 864.
5. A certificate of occupancy must be received from the appropriate code enforcement department prior to occupancy of the structure or land for the proposed use. All binding elements requiring action and approval must be implemented prior to requesting issuance of the certificate of occupancy, unless specifically waived by the Planning Commission.
6. No overnight idling or idling of trucks while loading or unloading equipment shall be permitted on-site.
7. At the time of development, the following restoration standards shall be met:
 - A. Riparian vegetation shall be planted, as necessary, to stabilize the banks of a protected waterway within a Buffer Area. Where a bank is denuded of its vegetation due to erosion, slope failure or similar occurrence, appropriate vegetation shall be planted to quickly establish a vegetative cover, and then replanted with riparian vegetation to ensure the long-

term stabilization of the bank. Restoration plantings shall be selected from the MSD native species restoration specifications.

- B. Where stream bank erosion has occurred as a result of on-site development activities, riparian vegetation shall be planted to stabilize the stream bank unless MSD determines such vegetation would be inadequate to re-stabilize the bank. In instances where the MSD determines that planting of riparian vegetation is inadequate to stabilize the stream bank alternate methods of stabilization, approved by the MSD shall be utilized.
- C. Stream, stream bank, and vegetation restoration projects are allowed where the goal is to restore the protected waterway, wetlands, or Buffer Area to an ecologically healthy state, as approved by MSD.

8. Tree and Vegetation Removal.

- A. Existing, healthy trees and vegetation within the Buffer Area shall be preserved, except for those areas designated by the Limits of Disturbance on the approved district development plan. Trees and vegetation shall be restored in accordance with Binding Element #7 for all areas within the buffer that lie between impervious surfaces and the Limits of Disturbance.
- B. This provision shall not prohibit any of the following: Removal of dead or diseased trees/vegetation (provided a live root system stays intact); removal of noxious weeds; Removal of non-native trees/vegetation that threaten native species growth or reintroduction; removal of fallen trees, tree limbs, brush and similar debris that accumulate naturally in river/stream beds and that impede river/stream flow, or removal of any other tree/vegetation that is a threat to the public health or safety; Removal of trees as part of an approved plan for stream side recreation or access (e.g. pedestrian trail) or as part of an approved utility or road construction project.

9. The materials and design of proposed structures shall be substantially the same as depicted in the renderings at the **April 20, 2022 Development Review Committee Meeting** ~~3/29/18~~
~~Planning Commission public hearing of the Louisville Metro Planning Commission.~~

10. An Individual Historic Resource Survey Form shall be completed for any historic resources on the subject site. The documentation must occur prior to the issuance of a demolition permit or ground disturbance at the site. The documentation shall be submitted to Urban Design/Historic Preservation Staff upon completion.

4. Proposed Binding Elements

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