

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.

Waiver of Section 5.5.1.A.3.a to omit the masonry wall long the VUA areas adjacent to the street.

Explanation of Waiver:

Introduction:

The application for rezoning (20-ZONE-0082) accompanying this waiver request, the other various waivers, and the development plan were heard and approved by the Planning Commission on January 21, 2021. As a part of that rezoning hearing, issues were raised about the placement of the building away from the street, the placement of the canopy between the building and the street (as is typically seen with gas stations), and the placement of drive lanes between the maximum setback line and the street, amongst others.

In support of these waivers, the applicant agreed, in keeping with Plan 2040, the Fairdale Village Center Plan, and the Land Development Code, (1) to add robust plantings in its landscape plan exceeding the minimums, (2) to install a multi-use path in excess of the of the sidewalk requirements, and (2) to add a bench alongside the multi-use path along the Mt. Holly right of way at the front of the property.

The waivers from LDC 5.5.1.A and 5.1.12.A.2 were approved subject to the Conditional Approval of the landscape plan before the Development Review Committee in order to supply explicit details of the plantings the applicant agreed to install in excess of the required minimums. The issue of a short “knee wall” in the landscaping area was specifically discussed and rejected before the Planning Commission, with the increased plantings in lieu thereof. The applicant expressly stated that no knee wall would be installed for the reasons set forth hereinbelow, such as the extensive utility easements in the landscaping area. A review of the record makes it clear that the Planning Commission required approval before DRC of the landscaping plan in order to ensure the increased plantings were adequate without a knee wall.

1. The waiver will not adversely affect adjacent property owners because the site will remain as a gas station without any knee wall, which has not existed in the 30 plus years that the site has been operated commercially in part as a gas station; it also will not adversely affect public health, safety or welfare because this is an aesthetic code requirement mitigated by the increased vegetative plantings as set forth in the plan; in fact, the placement of the wall with the utility lines underneath could cause health and safety problems with the utilities if they were damaged

while digging the footer, building the wall, or while removing the wall if the utilities needed to be accessed in the future.

2. The waiver will not violate the Comprehensive Plan for all the reasons set forth herein in the Detailed Statement of Compliance with all applicable Guidelines and Policies of Plan 2040 Comprehensive Plan filed with the original rezoning application. As a rebuild of an as-built location, the only new 2040 Plan Guidelines and Policies of consequence are those pertaining to building design, landscaping and screening, all of which are being greatly improved as shown on the development plan and the landscape plan.

3. The extent of waiver of the regulation is the minimum necessary to afford relief to the applicant because only a portion of this site would be required to insert a knee wall where, given the circumstances of the overall site, the landscaping is greatly improved and in keeping with the overall aesthetic scheme for this mixed use activity center and the Fairdale Village Center Plan; further, the as-built condition that is being improved with a new building, added screening and landscaping does not add to non-compliance with the Land Development Code, but rather, if anything, the partial re-build and site improvements bring the plan into better compliance with the Land Development Code and the Plan 2040 Comprehensive Plan.

4. Strict application of the provisions of the regulation would deprive the applicant of a reasonable use of the land or would create an unnecessary hardship on the applicant because it would have to build a wall where it does not make common sense because of the right of way and the utility easements, and where other, better and more practical landscape devices are employed to compliment the multi-use path connecting to the Louisville Loop.