

Planning Commission

Staff Report

March 19, 2015



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| Case No: | 17822 |
| Request: | District Development Plan with Waivers and Variances |
| Project Name: | Willow Grande |
| Location: | 1418 and 1426 Willow Avenue; also TB 77A Lot 58 |
| Owner: | Willow Grande LLC |
| Applicant: | Willow Grande LLC |
| Representative: | Frost Brown Todd LLC |
| Jurisdiction: | Louisville Metro |
| Council District: | 8-Tom Owen |
| Case Manager: | Julia Williams, AICP, Planner II |

REQUEST

- **Variances:**
 1. Variance from 5.4.1.B.3.a to permit the front setback to be 70 feet instead of being between 33' and 37' (which are the two nearest residential structures (1430 Willow and 2023 Eastern Parkway)); 33' variance.
 2. Variance from 5.4.1.B.3.a to permit the encroachment of parking within the required front yard setback.
 3. Variance from 5.4.1.C.6.a.i to permit a building height of 201.67' instead of the required 37'; 164.67' variance.
 4. Variance from 5.4.1.C.6.b to permit a 15' street side yard instead of the required 25' street side yard; 10' variance.
 5. Variance from 5.4.1.D.2 to permit 10% private yard instead of the required 30%; 20% variance.

- **Waivers:**
 1. Waiver from 10.2.4 to permit the encroachment of an existing structure and proposed pool/patio into the required 15' LBA.
 2. Waiver from 5.4.1.C.3 to permit a front loaded garage.
 3. Waiver from 5.8.1.A.1 to not use the alley for access to the site.
 4. Waiver from 5.9.2.C.4 to permit traffic and circulation in front of the building.
 5. Waiver from 5.4.1.B.1.e to permit parking in the public realm.
 6. Waiver from 5.4.1.E.3 to not provide access to parking from the accessory structure/use area.
 7. Waiver from 5.4.1.G.3 to permit parking between the front façade of the structure and the primary street.

- **District Development plan**

CASE SUMMARY/BACKGROUND/SITE CONTEXT

Existing Zoning District: R-8A
 Proposed Zoning District: R-8A
 Existing Form District: TN
 Existing Use: Apartments
 Proposed Use: Condominiums
 Minimum Parking Spaces Required: 36
 Maximum Parking Spaces Allowed: 60
 Parking Spaces Proposed: 55

The development plan involves 3 lots; two of the lots have an apartment building on them while the other is a single family home. The development plan proposes 24 condominium units on 0.88 acres within a 15 story 201.67' tall building.

An 11 story condominium building is located across Baringer Avenue from the subject site and an R-6 apartment complex is located across Willow Avenue north of the site. The rest of the surrounding properties are approximately all 3 story single family residential. Cherokee Park is located nearby as well.

LAND USE/ZONING DISTRICT/FORM DISTRICT TABLE

| | Land Use | Zoning | Form District |
|-------------------------------|--|---------------|--------------------------|
| Subject Property | | | |
| Existing | Multi-family Residential | R-8A | Traditional Neighborhood |
| Proposed | Multi-family Residential | R-8A | Traditional Neighborhood |
| Surrounding Properties | | | |
| North | Multi-Family Residential/Single Family Residential | R-6/R-5B | Traditional Neighborhood |
| South | Single Family Residential | R-5B/R-7 | Traditional Neighborhood |
| East | Single Family Residential | R-5B | Traditional Neighborhood |
| West | Multi-family Residential | R-8A | Traditional Neighborhood |

PREVIOUS CASES ON SITE

- 17822 Metro Council approved a change in zoning from R-7 to R-8A on 8/8/13.
- 9-19-89 Cherokee Triangle Area-Wide Rezoning approved 9/26/89 (Site was zoned R-7 from R-8A)
- Cherokee Triangle Architectural Review Committee (Case No. 10953) A Certificate of Appropriateness was issued for the previous 17 story building but is currently in litigation.

INTERESTED PARTY COMMENTS

Please follow the link to a website with letters of support and opposition to the proposal:
<https://louisville.legistar.com/Calendar.aspx>

APPLICABLE PLANS AND POLICIES

- Cornerstone 2020
- Land Development Code
- Cherokee Triangle Neighborhood Plan April 1989: The issue raised in the Neighborhood Plan was that “high density apartment zoning allows division of residences into numerous small apartments”. The recommendation includes “continue neighborhood efforts to monitor compliance with density and parking requirements” and “seek rezoning to a less permissive classification for block faces of former single family homes that would be substantially conforming in a less permissive zoning district.”

STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCE #1

Variance from 5.4.1.B.3.a to permit the front setback to be 70 feet instead of being between 33' and 37' (which are the two nearest residential structures (1430 Willow and 2023 Eastern Parkway)); 33' variance.

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

STAFF: The setback will not affect the public health, safety, or welfare.

(b) The requested variance will not alter the essential character of the general vicinity.

STAFF: The variance will alter the character of the vicinity as the established setbacks for the nearest residential structures is between 33' and 37' the additional setback is not characteristic of the overall neighborhood.

(c) The requested variance will not cause a hazard or nuisance to the public.

STAFF: Having the building setback 70' does not allow enough room for alley access and therefore the applicant is utilizing a curb cut which creates a pedestrian/vehicle hazard whereas alley access to parking provides only one point of conflict instead of the two that are existing and will continue to occur with the granting of the variance.

(d) The requested variance will not allow an unreasonable circumvention of the zoning regulations.

STAFF: The variance allows for the high density structure to be placed closer to the lower density residential and is not in keeping with the established setbacks of the existing residential in the area.

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 variance is not a special circumstance as the infill standards would be required for any development in the area regardless of zone.

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 building could be altered to meet the setback requirements of the district. The existing structure appears to meet the standards providing evidence that a structure could be built to meet the setbacks.

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 applicant was made aware of the regulations when submitting the plans and decided to proceed with the current request.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCE #2

Variance from 5.4.1.B.3.a to permit the encroachment of parking within the required front yard setback.

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

STAFF: Parking in the front yard setback introduces a safety conflict with pedestrians leaving the structure with the vehicles parked in the setback and with vehicles coming/going from the garage.

(b) The requested variance will not alter the essential character of the general vicinity.

STAFF: The variance will alter the character of the area as the established vehicular access to properties in the area is from an alley with no parking or vehicle access from the front of the property.

(c) The requested variance will not cause a hazard or nuisance to the public.

STAFF: Parking in the front yard setback introduces a safety conflict with pedestrians leaving the structure with the vehicles parked in the setback and with vehicles coming/going from the garage.

(d) The requested variance will not allow an unreasonable circumvention of the zoning regulations.

STAFF: The variance is unreasonable because there is an alley available for vehicular access to the site that does not interfere with the established front yard setbacks of the area.

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: There is not a special circumstance regarding the variance that would not apply to all new development in the area.

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: Not permitting parking in the front yard setback would not deprive the applicant of reasonable use of the land as the building could be constructed elsewhere on the site and parking areas could be accessed from the existing alley.

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 applicant was made aware of the regulations when submitting the plans and decided to proceed with the current request.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCE #3

Variance from 5.4.1.C.6.a.i to permit a building height of 201.67' instead of the required 37'; 164.67' variance.

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

STAFF: The proposed building height will not adversely affect public health, safety, or welfare.

(b) The requested variance will not alter the essential character of the general vicinity.

STAFF: The established character of the residential in the area is 2 and 3 story homes. A 201.67 foot structure only fits with the two other high rises in the area and not the overall established building height in the neighborhood.

(c) The requested variance will not cause a hazard or nuisance to the public.

STAFF: The variance would be a nuisance to the public by disrupting the current view shed to Cherokee Park and other residences from the surrounding roadways.

(d) The requested variance will not allow an unreasonable circumvention of the zoning regulations.

STAFF: The variance is unreasonable because a structure could be constructed within the requirements of the current regulations that would not alter the character of the area.

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 variance is not a special circumstance as a structure could be constructed within the requirements of the regulations.

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: A building within the height requirements of the district could be constructed on the site.

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 applicant was made aware of the regulations when submitting the plans and decided to proceed with the current request.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCE #4

Variance from 5.4.1.C.6.b to permit a 15' street side yard instead of the required 25' street side yard; 10' variance.

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

STAFF: The setback will not affect the public health, safety, or welfare.

(b) The requested variance will not alter the essential character of the general vicinity.

STAFF: The established setback along Baringer is around 25 feet as indicated by the closest adjacent property across the alley (2026 Baringer Ave.). Allowing the structure to be located 15' from the right of way alters the established setbacks in the area.

(c) The requested variance will not cause a hazard or nuisance to the public.

STAFF: The variance will not cause a hazard or public nuisance.

(d) The requested variance will not allow an unreasonable circumvention of the zoning regulations.

STAFF: The variance is unreasonable because the structure could be built at the 25' setback line and stay within the character and established setbacks of the block face.

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 variance is not a special circumstance and would apply to any new development in the district.

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: Complying with the regulations would not be a hardship to the applicant as a building could be placed on the lot in compliance with the regulations.

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 applicant was made aware of the regulations when submitting the plans and decided to proceed with the current request.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCE #5

Variance from 5.4.1.D.2 to permit 10% private yard instead of the required 30%; 20% variance.

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

STAFF: The percentage of private yard will not affect the public health, safety, or welfare.

(b) The requested variance will not alter the essential character of the general vicinity.

STAFF: Not providing a 30% private yard will alter the character of the area as the established residential lots in the area have similar sized private yards in relation to the size of the structures on the lots.

(c) The requested variance will not cause a hazard or nuisance to the public.

STAFF: The variance will not affect the public or cause a hazard.

(d) The requested variance will not allow an unreasonable circumvention of the zoning regulations.

STAFF: The proposal is an unreasonable request as the building could be moved further toward Willow to achieve the 30% private yard area.

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: There is not a special circumstance for the variance that would not apply to any residential request in the area.

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: Providing the 30% private yard would not be a hardship on the applicant as the building would still be able to be constructed elsewhere on the lot while meeting all the setback and form district requirements.

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 applicant was made aware of the regulations when submitting the plans and decided to proceed with the current request.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER #1

Waiver from 10.2.4 to permit the encroachment of an existing structure and proposed pool/patio into the required 15' LBA.

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

STAFF: The proposed encroachments into the 15' LBA will not adversely affect adjacent property owners because the house that encroaches is existing and the pool will be surrounded by a brick wall. The landscape requirements will still be met.

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

STAFF: The waiver will not violate guidelines of Cornerstone 2020 as the planting and screening requirements will still be met. The building that is encroaching is existing and the pool area does not present a significant encroachment because the screening and planting requirements can still be fully met along the property line.

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

STAFF: Permitting the encroachment of the existing structure allows the applicant to utilize the building as an amenity to the site. The pool could be moved to a different location on the site to not encroach into the 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: The existing structure is being preserved and is a contributing structure in the Cherokee Triangle National Register district removing the historic structure to provide the buffer would be a hardship on the applicant. The pool encroachment being moved outside the buffer would not be unreasonable or a hardship because there is enough private yard to accommodate a pool.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER #2

Waiver from 5.4.1.C.3 to permit a front loaded garage.

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

STAFF: The waiver will affect adjacent property owners because all the other properties along the block face utilize the existing alley for vehicular access to the site or to their garages. Also having a driveway leading to a garage in front of the structure disrupts the existing sidewalk and movement of pedestrians in the right of way.

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

STAFF: The waiver does not comply with Cornerstone 2020 compatibility guidelines as the front-loading garage and having access in front of the structure is inconsistent with the established access in the area. Front loaded garages are not the prevalent in the area or neighborhood.

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

STAFF: The garage and access to it could be designed to be located off the existing alley instead of creating a new access point in the front of the primary structure.

(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 has not incorporated other design measures that exceed the requirements as the building and site layout could be redesigned to have the garage located at the rear of the structure and off the alley. The land could be reasonably used with a rear facing garage and access off the alley to meet the requirements of the district.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER #3

Waiver from 5.8.1.A.1 to not use the alley for access to the site.

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

STAFF: The waiver will affect adjacent property owners because all the other properties along the block face utilize the existing alley for vehicular access to the site. Having access to the site in front of the structure disrupts the existing sidewalk and movement of pedestrians in the right of way

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

STAFF: The waiver does not comply with Cornerstone 2020 compatibility guidelines as having access in front of the structure is inconsistent with the established access in the area.

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

STAFF: The site and structure could be redesigned to accommodate alley access.

(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 has not incorporated other design measures that exceed the requirements as the site layout could be redesigned to have alley access. The land could be reasonably used with access off the alley to meet the requirements of the district.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER #4
Waiver from 5.9.2.C.4 to permit traffic and circulation in front of the building.

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

STAFF: The waiver will adversely affect adjacent property owners because having the traffic and circulation located in front of the structure instead of utilizing the alley access creates an unnecessary and additional pedestrian/vehicle conflict point that interrupts the existing sidewalk along Baringer.

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

STAFF: The waiver violates the centers guidelines because utilizing the existing alley at the rear of the site would reduce curb cuts along Baringer which would be consistent with the other properties along Baringer as none of those adjacent properties have curb cuts and utilize the alley for access. Traffic and circulation not being located behind the structure also does not balance safety, traffic, pedestrian, and aesthetic concerns. The compatibility guidelines are also not being met as having parking in front of the structure is inconsistent with the access established in the area. Open space guidelines are not being met as the open space on the plan does not meet the needs of the community as it introduces a pedestrian safety issue by having the parking in front of the building and diminishes the public realm of the site to parking. Having parking and drive lanes in the public realm is not consistent with the pattern of development when there is alley access.

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

STAFF: The existing alley could be utilized for access to parking if the site were to be redesigned. The alley is there to provide rear access to lots which is common in the traditional form districts.

(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: Compliance with the LDC would not deprive the applicant of reasonable use of the land as the alley is available for the purpose of vehicular access to the rear of sites. The site could be redesigned to comply with the LDC as there are no other design measures indicated on the plan that exceed the minimums of the district.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER #5

Waiver from 5.4.1.B.1.e to permit parking in the public realm.

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

STAFF: The waiver will adversely affect adjacent property owners because having the parking located in front of the structure creates an unnecessary and additional pedestrian/vehicle conflict point that interrupts the existing sidewalk along Baringer.

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

STAFF: The waiver violates the centers, compatibility, and open space guidelines because parking not being located behind the structure also does not balance safety, traffic, pedestrian, and aesthetic concerns. The compatibility guidelines are also not being met as having parking in front of the structure is inconsistent with the access established in the area. Open space guidelines are not being met as the open space on the plan does not meet the needs of the community as it introduces a pedestrian safety issue by having the parking in front of the building and diminishes the public realm of the site to parking. Having parking and drive lanes in the public realm is not consistent with the pattern of development when there is alley access.

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

STAFF: The alley is there to provide rear access to lots in this area and throughout the neighborhood. There are no topographical or environmental concerns that would make access from the alley infeasible. Parking on the site could be redesigned to meet LDC requirements also the parking in the front of the building is not necessary due to available on street parking along Baringer.

(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: Compliance with the LDC would not deprive the applicant of reasonable use of the land as the alley is available for the purpose of vehicular access to the rear of sites. The site could be redesigned to comply with the LDC as there are no other design measures indicated on the plan that exceed the minimums of the district. On street parking is available along Baringer to provide parking for visitors.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER #6

Waiver from 5.4.1.E.3 to not provide access to parking from the accessory structure/use area.

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

STAFF: The waiver will adversely affect adjacent property owners because having the access to parking located in front of the structure creates an unnecessary and additional pedestrian/vehicle conflict point that interrupts the existing sidewalk along Baringer.

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

STAFF: The waiver violates the centers, compatibility and open space guidelines because not accessing the parking from the accessory use area does not balance safety, traffic, pedestrian, and aesthetic concerns. The compatibility guidelines are also not being met as having parking in front of the structure is inconsistent with the access established in the area. Open space guidelines are not being met as the open space on the plan does not meet the needs of the community as it introduces a pedestrian safety issue by having the parking in front of the building and diminishes the public realm of the site to parking. Having parking and drive lanes in the public realm is not consistent with the pattern of development when there is alley access. Alley access is established throughout the neighborhood for the main access to the accessory use areas.

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

STAFF: There are no known environmental or topographical concerns with providing access to parking from the accessory use area. The applicant could redesign the site so that the building meets the setback requirements which would allow for more room in the rear of the site to meet the access and private yard requirements.

(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: Compliance with the LDC would not deprive the applicant of reasonable use of the land as the alley is available for the purpose of vehicular access to the rear of sites. The site could be redesigned to comply with the LDC as there are no other design measures indicated on the plan that exceed the minimums of the district. On street parking is available along Baringer to provide parking for visitors.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER #7

Waiver from 5.4.1.G.3 to permit parking between the front façade of the structure and the primary street.

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

STAFF: The waiver will adversely affect adjacent property owners because having the parking located in front of the structure creates an unnecessary and additional pedestrian/vehicle conflict point that interrupts the existing sidewalk along Baringer.

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

STAFF: The waiver violates the centers, compatibility and open space guidelines because parking not being located behind the structure also does not balance safety, traffic, pedestrian, and aesthetic concerns. The compatibility guidelines are also not being met as having parking in front of the structure is inconsistent with the access established in the area. Open space guidelines are not being met as the open space on the plan does not meet the needs of the community as it introduces a pedestrian safety issue by having the parking in front of the building and diminishes the public realm of the site to parking. Having parking and drive lanes in the public realm is not consistent with the pattern of development when there is alley access.

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

STAFF: The alley is there to provide rear access to lots in this area and throughout the neighborhood. There are no topographical or environmental concerns that would make access from the alley infeasible. Parking on the site could be redesigned to meet LDC requirements also the parking in the front of the building is not necessary due to available on street parking along Baringer.

(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: Compliance with the LDC would not deprive the applicant of reasonable use of the land as the alley is available for the purpose of vehicular access to the rear of sites. The site could be redesigned to comply with the LDC as there are no other design measures indicated on the plan that exceed the minimums of the district. On street parking is available along Baringer to provide parking for visitors.

STANDARD OF REVIEW FOR DEVELOPMENT PLAN

- 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 proposal has not indicated any preservation of the existing trees on the site. The established view shed along Willow is disrupted by having parking and vehicular circulation being located in front of the structure. The 200+ foot building would also disrupt current views from adjacent residential areas to the rest of the neighborhood. The proposal does include the preservation of an existing single family residence on the site that is a contributing structure to established Cherokee Triangle National Register district.

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

STAFF: The safest route for vehicles to access the site is through the existing alley. The plan indicates no vehicular access from the alley but is continuing the vehicle/pedestrian conflict by having access to parking from Baringer.

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

STAFF: The open space on the site does not meet the needs of the development as the development itself is creating vehicular/pedestrian conflicts by having parking and circulation being located in front of the building. Cherokee park is located nearby and the occupants of the building would have to contend with additional vehicular conflicts by having parking and circulation in front of the structure. Also aesthetically, the open space is not consistent with the public realm of the block face along Willow and Baringer by having the parking and circulation being located in front of the structure.

- 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: MSD has preliminarily approved the development plan.

- 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 all site design is not compatible with the existing development in the area. The waivers and variance requests attest to the incompatibility of the site design to the overall established character of the area. The only development that the site design is compatible with are the 3 other high rise developments along Willow, all other development in the area are three story apartments and residences.

- f. Conformance of the development plan with the Comprehensive Plan and Land Development Code.

STAFF: Staff finds that the proposal does not comply with Comprehensive Plan Guideline 1 because the proposal does not preserve the public realm of the site by having parking and drive lanes located between the principal structure and primary roadway (Willow Ave). The majority of building heights in the neighborhood is 3 stories; the proposed 15 story building is not consistent with the existing neighborhood.

Staff finds that the proposal does not comply with Comprehensive Plan Guideline 2 because the overall development pattern in the neighborhood is 3 story structures and the proposal is for 15 stories. The

proposal is for a residential use that does not comply with the infill standards within the block face and the consistent building heights within the neighborhood which does not encourage vitality or a sense of place.

The proposal is not designed to minimize impact on the adjacent residential along Baringer Avenue due to the scale and placement of the proposed structure. The majority of parking will be located underneath the structure but providing the parking entrance off the existing alley would reduce curb cuts. Parking is also not located behind the structure per form district requirements which does not balance safety, traffic, pedestrian and aesthetic considerations.

Staff finds that the proposal does not comply with Comprehensive Plan Guideline 3 because the proposal is not compatible with the scale of the closest residential structures as the closest residential structures are 2 and 3 stories tall and the location of the structure does not continue the existing block face. The design, having parking in front of the structure is inconsistent with the access established in the area. There is no evidence of a transition between the height of the proposed structure and the 3 story adjacent properties. Landscape buffers are not evident and setbacks are not being met. There is no evidence that indicates that the impact of the 200' structure adjacent to the 3 story structures will be mitigated. Setbacks and building heights are not compatible with the adjacent nearby developments and do not meet form district standards. The residential design standards are not being met as the height of the structure does not fall in between the heights of the two closest residential structures.

Staff finds that the proposal does not comply with Comprehensive Plan Guideline 4 because the open space on the plan does not meet the needs of the community as it introduces a pedestrian safety issue by having the parking in front of the building and diminishes the public realm of the site to parking. The private yard area does not meet the needs of the community because the size of the yard area is smaller than the minimum 30%. Having parking and drive lanes in the public realm is not consistent with the pattern of development when there is alley access.

Staff finds that the proposal does not comply with Comprehensive Plan Guideline 5 because the size and scale of the new structure is not compatible with the height, bulk, scale, and placement of the existing closest residential structures.

Staff finds that the proposal does not comply with Comprehensive Plan Guideline 7 because the proposed transportation facilities are not consistent with the access established in the area. In the traditional form alley access is preferential over new curb cuts. The proposal does not include utilization of the existing alley for access to parking. The parking in front of the structure does not support pedestrian activity and connection with the public realm area of the site as it does not support access to the surrounding land uses.

The proposal also does not comply with the Land Development Code as indicated in the standard of review for the variances, waivers, and development plan.

TECHNICAL REVIEW

- All technical review comments have been addressed.

STAFF CONCLUSIONS

The only difference between the current plan and the previous plan is the building height and gross square footage. The previous plan proposed a building height of 213.5' and the new plan proposes a building height of 201.67', a difference of 11.83'. The previous plan proposed a gross square footage of 114,238 sf and the current proposal indicates 97,874 sf for a difference of 16,364 sf.

The proposals variance and waiver requests do not comply with the infill standards of Chapter 5 of the Land Development Code. The Planning Commission should consider the non-compliance with the Comprehensive Plan, Neighborhood Plan, and Land Development Code when making a determination for the site. Relief of the waiver and variance requests have not been appropriately mitigated as indicated in the applicants justification statements.

According to the Metro Council ordinance that approved the change in zoning, Metro Council has directed the Planning Commission to provide a recommendation to the Council on the District Development Plan and to take final action on the associated requests (variances and waivers).

Based upon the information in the staff report, the testimony and evidence provided at the public hearing, the Planning Commission must determine if the proposal meets the standards for granting LDC Waivers and Variances established in the Land Development Code.

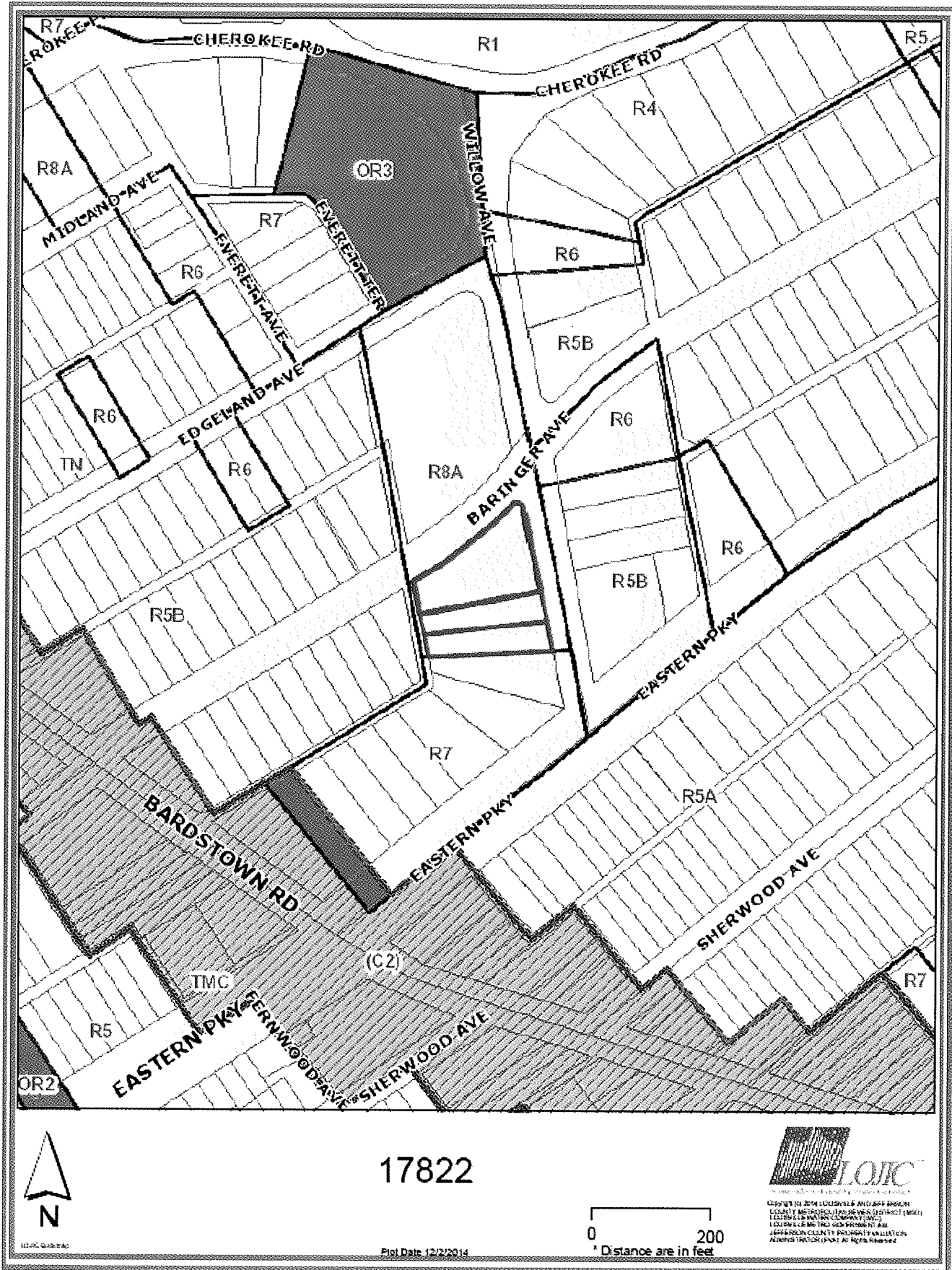
NOTIFICATION

| Date | Purpose of Notice | Recipients |
|----------|--|---|
| 1/31/13 | Hearing before LD&T on 2/14/13 | 1 st and 2 nd tier adjoining property owners Subscribers of Council District 8 Notification of Development Proposals |
| 3/1/13 | Hearing before PC on 4/4/13 Cancelled and rescheduled for 4/25/13 | 1 st and 2 nd tier adjoining property owners Subscribers of Council District 8 Notification of Development Proposals |
| 3/1/13 | Hearing before PC on 4/25/13 | Sign Posting on property |
| 4/10/13 | Hearing before PC on 4/25/13 | Legal Advertisement in the Courier-Journal |
| 11/21/14 | Hearing before LD&T on 12/11/14 | 1 st and 2 nd tier adjoining property owners Speakers at Planning Commission public hearing Subscribers of Council District 8 Notification of Development Proposals |
| 2/6/15 | Hearing before PC on 2/25/15 | 1 st and 2 nd tier adjoining property owners Speakers at Planning Commission public hearing Subscribers of Council District 8 Notification of Development Proposals |

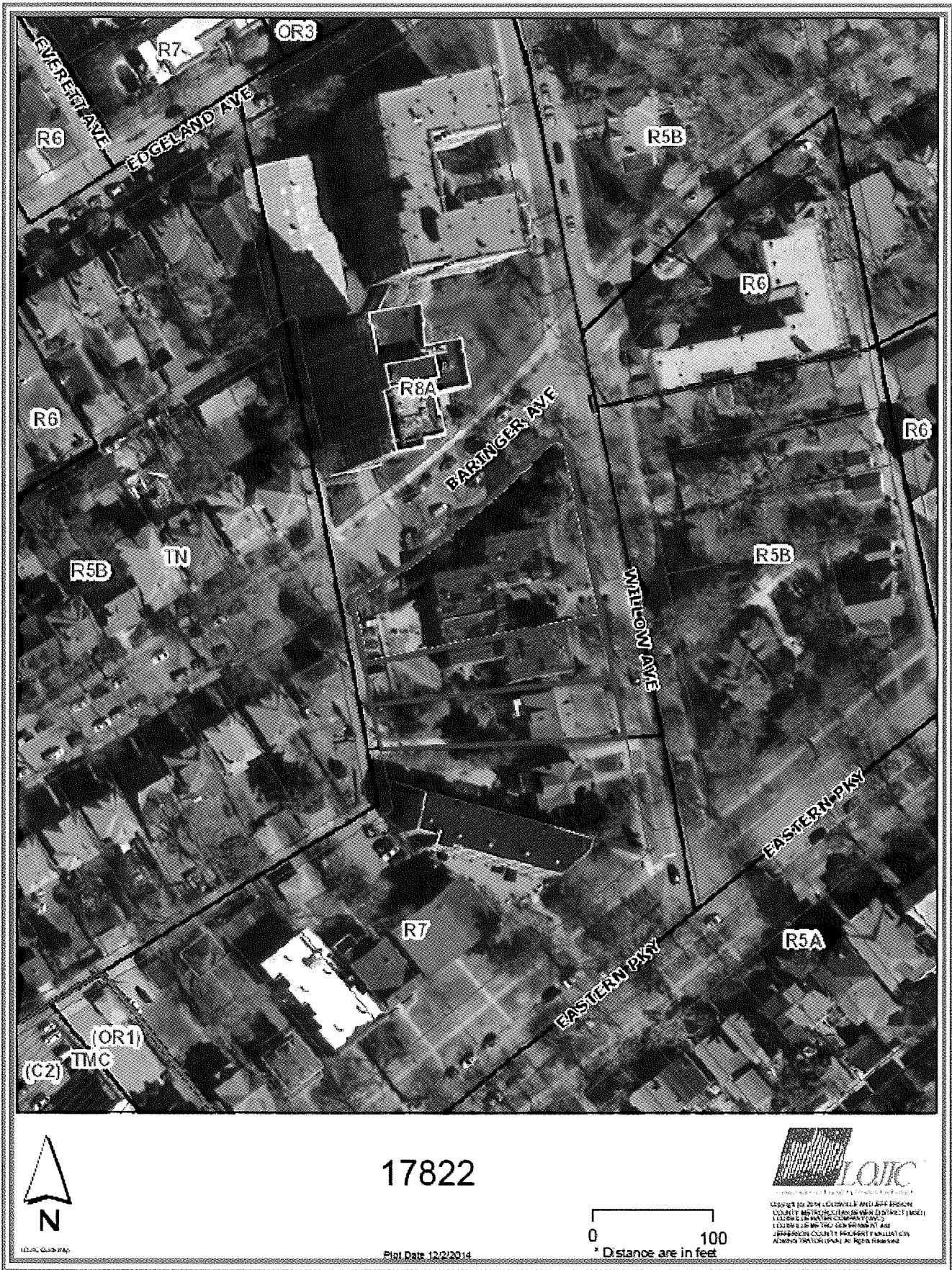
ATTACHMENTS

1. Zoning Map
2. Aerial Photograph
3. Proposed Binding Elements

1. Zoning Map



2. Aerial Photograph



3. **Proposed Binding Elements**

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. The development shall not exceed 97,874 square feet of gross floor area.
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.
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 Inspections, Permits and Licenses, Louisville Metro Public Works and the Metropolitan Sewer District.
 - b. 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.
 - c. A minor plat or legal instrument shall be recorded consolidating the property into one lot. A copy of the recorded instrument shall be submitted to the Division of Planning and Design Services; transmittal of the approved plans to the office responsible for permit issuance will occur only after receipt of said instrument.
 - 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.
5. Prior to any site disturbance permit being issued and prior to any clearing, grading or issuance of a site disturbance permit, a site inspection shall be conducted by PDS staff to ensure proper placement of required tree protection fencing in accordance with the approved Tree Preservation Plan.
6. 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.
7. The applicant, developer, or property owner shall provide copies of these binding elements to tenants, purchasers, contractors, subcontractors and other parties engaged in development of this site and shall advise them of the content of these binding elements. These binding elements shall run with the land and the owner of the property and occupant of the property shall at all times be responsible for compliance with these binding elements. At all times during development of the site, the applicant and developer, their heirs, successors; and assignees, contractors, subcontractors, and other parties engaged in development of the site, shall be responsible for compliance with these binding elements.
8. The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the February 25, 2015 Planning Commission meeting and as approved by the Cherokee Triangle Architectural Review Committee.
9. The applicant ^{shall} ~~proposes to~~ purchase lifetime memberships in the CTA for ^{unit} ~~every~~ condominium unit owner. ^{at the time of sale.}

10. There will be a condominium association formed (composed of the unit owners) that will have responsibility for the maintenance of the building as well as the common areas. Note that it is typical for the lawns, grounds and maintenance of the condominiums buildings to be managed by the very owners that reside in the development and are generally maintained to a much higher degree and standard than apartment rentals.
11. The applicant will consult with the CTA Tree Committee, the Olmstead Conservancy and other appropriate parties to develop a tree planting program with the Cherokee Triangle and will commit to contributing 100 trees to the program. In addition, the applicant will contribute \$20,000 towards an endowment fund to be established for the maintenance, landscaping and improvements to Willow Park.
Compliance will be shall be within 1 year with ~~the~~ issuance of 1st CO
12. The development will provide two parking spaces per ownership unit within the building. In addition, several visitor and overnight spaces will be provided within the structure as well. The 3 proposed parking spaces in the front of the building will be adequately screened and landscaped to avoid any perceived visual impacts.
13. The existing alley is not brick. However, the applicant is willing to work with the Department of Public Works to restore the portion of the alley that adjoins this site to its original brick status. The condominium association will maintain the grounds and provide pride of ownership in its maintenance of the surrounding area and neighborhood appearance. The residential unit parking garage will be located within the building structure and not be visible from the street as recommend by Goal 11.

on tape -> review

14. on record -> review

**Planning Commission
Staff Report**
February 25, 2015



| | |
|--------------------------|---|
| Case No: | 17822 |
| Request: | District Development Plan with Waivers and Variances |
| Project Name: | Willow Grande |
| Location: | 1418 and 1426 Willow Avenue; also TB 77A Lot 58 |
| Owner: | Willow Grande LLC |
| Applicant: | Willow Grande LLC |
| Representative: | Frost Brown Todd LLC |
| Jurisdiction: | Louisville Metro |
| Council District: | 8-Tom Owen |
| Case Manager: | Julia Williams, AICP, Planner II |

REQUEST

• **Variances:**

1. Variance from 5.4.1.B.3.a to permit the front setback to be 70 feet instead of being between 33' and 37' (which are the two nearest residential structures (1430 Willow and 2023 Eastern Parkway)); 33' variance.
2. Variance from 5.4.1.B.3.a to permit the encroachment of parking within the required front yard setback.
3. Variance from 5.4.1.C.6.a.i to permit a building height of 201.67' instead of the required 37'; 164.67' variance.
4. Variance from 5.4.1.C.6.b to permit a 15' street side yard instead of the required 25' street side yard; 10' variance.
5. ~~Variance from 5.4.1.C.6.b to permit a 16' side yard setback instead of the required 14' side yard setback; 2' variance.~~
6. Variance from 5.4.1.D.2 to permit 10% private yard instead of the required 30%; 20% variance.

Make this in PDW

• **Waivers:**

1. Waiver from 10.2.4 to permit the encroachment of an existing structure and proposed pool/patio into the required 15' LBA.
2. Waiver from 5.4.1.C.3 to permit a front loaded garage.
3. Waiver from 5.8.1.A.1 to not use the alley for access to the site.
4. Waiver from 5.9.2.C.4 to permit traffic and circulation in front of the building.
5. Waiver from 5.4.1.B.1.e to permit parking in the public realm.
6. Waiver from 5.4.1.E.3 to not provide access to parking from the accessory structure/use area.
7. Waiver from 5.4.1.G.3 to permit parking between the front façade of the structure and the primary street.

- District Development plan

CASE SUMMARY/BACKGROUND/SITE CONTEXT

Existing Zoning District: R-8A
 Proposed Zoning District: R-8A
 Existing Form District: TN
 Existing Use: Apartments
 Proposed Use: Condominiums
 Minimum Parking Spaces Required: 36
 Maximum Parking Spaces Allowed: 60
 Parking Spaces Proposed: 55

The development plan involves 3 lots; two of the lots have an apartment building on them while the other is a single family home. The development plan proposes 24 condominium units on 0.88 acres within a 15 story 201.67' tall building.

An 11 story condominium building is located across Baringer Avenue from the subject site and an R-6 apartment complex is located across Willow Avenue north of the site. The rest of the surrounding properties are approximately all 3 story single family residential. Cherokee Park is located nearby as well.

LAND USE/ZONING DISTRICT/FORM DISTRICT TABLE

| | Land Use | Zoning | Form District |
|-------------------------------|--|----------|--------------------------|
| Subject Property | | | |
| Existing | Multi-family Residential | R-8A | Traditional Neighborhood |
| Proposed | Multi-family Residential | R-8A | Traditional Neighborhood |
| Surrounding Properties | | | |
| North | Multi-Family Residential/Single Family Residential | R-6/R-5B | Traditional Neighborhood |
| South | Single Family Residential | R-5B/R-7 | Traditional Neighborhood |
| East | Single Family Residential | R-5B | Traditional Neighborhood |
| West | Multi-family Residential | R-8A | Traditional Neighborhood |

PREVIOUS CASES ON SITE

- 17822 Metro Council approved a change in zoning from R-7 to R-8A on 8/8/13.
- 9-19-89 Cherokee Triangle Area-Wide Rezoning approved 9/26/89 (Site was zoned R-7 from R-8A)
- Cherokee Triangle Architectural Review Committee (Case No. 10953) A Certificate of Appropriateness was issued for the previous 17 story building but is currently in litigation.

INTERESTED PARTY COMMENTS

Please follow the link to a website with letters of support and opposition to the proposal:
<https://louisville.legistar.com/Calendar.aspx>

APPLICABLE PLANS AND POLICIES

- Cornerstone 2020
- Land Development Code
- Cherokee Triangle Neighborhood Plan April 1989: The issue raised in the Neighborhood Plan was that "high density apartment zoning allows division of residences into numerous small apartments". The recommendation includes "continue neighborhood efforts to monitor compliance with density and parking requirements" and "seek rezoning to a less permissive classification for block faces of former single family homes that would be substantially conforming in a less permissive zoning district."

STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCE #1

Variance from 5.4.1.B.3.a to permit the front setback to be 70 feet instead of being between 33' and 37' (which are the two nearest residential structures (1430 Willow and 2023 Eastern Parkway)); 33' variance.

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

STAFF: The setback will not affect the public health, safety, or welfare.

(b) The requested variance will not alter the essential character of the general vicinity.

STAFF: The variance will alter the character of the vicinity as the established setbacks for the nearest residential structures is between 33' and 37' the additional setback is not characteristic of the overall neighborhood.

(c) The requested variance will not cause a hazard or nuisance to the public.

STAFF: Having the building setback 70' does not allow enough room for alley access and therefore the applicant is utilizing a curb cut which creates a pedestrian/vehicle hazard whereas alley access to parking provides only one point of conflict instead of the two that are existing and will continue to occur with the granting of the variance.

(d) The requested variance will not allow an unreasonable circumvention of the zoning regulations.

STAFF: The variance allows for the high density structure to be placed closer to the lower density residential and is not in keeping with the established setbacks of the existing residential in the area.

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 variance is not a special circumstance as the infill standards would be required for any development in the area regardless of zone.

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 building could be altered to meet the setback requirements of the district. The existing structure appears to meet the standards providing evidence that a structure could be built to meet the setbacks.

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 applicant was made aware of the regulations when submitting the plans and decided to proceed with the current request.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCE #2

Variance from 5.4.1.B.3.a to permit the encroachment of parking within the required front yard setback.

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

STAFF: Parking in the front yard setback introduces a safety conflict with pedestrians leaving the structure with the vehicles parked in the setback and with vehicles coming/going from the garage.

(b) The requested variance will not alter the essential character of the general vicinity.

STAFF: The variance will alter the character of the area as the established vehicular access to properties in the area is from an alley with no parking or vehicle access from the front of the property.

(c) The requested variance will not cause a hazard or nuisance to the public.

STAFF: Parking in the front yard setback introduces a safety conflict with pedestrians leaving the structure with the vehicles parked in the setback and with vehicles coming/going from the garage.

(d) The requested variance will not allow an unreasonable circumvention of the zoning regulations.

STAFF: The variance is unreasonable because there is an alley available for vehicular access to the site that does not interfere with the established front yard setbacks of the area.

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: There is not a special circumstance regarding the variance that would not apply to all new development in the area.

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: Not permitting parking in the front yard setback would not deprive the applicant of reasonable use of the land as the building could be constructed elsewhere on the site and parking areas could be accessed from the existing alley.

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 applicant was made aware of the regulations when submitting the plans and decided to proceed with the current request.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCE #3

Variance from 5.4.1.C.6.a.i to permit a building height of 201.67' instead of the required 37'; 164.67' variance.

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

STAFF: The proposed building height will not adversely affect public health, safety, or welfare.

(b) The requested variance will not alter the essential character of the general vicinity.

STAFF: The established character of the residential in the area is 2 and 3 story homes. A 201.67 foot structure only fits with the two other high rises in the area and not the overall established building height in the neighborhood.

(c) The requested variance will not cause a hazard or nuisance to the public.

STAFF: The variance would be a nuisance to the public by disrupting the current view shed to Cherokee Park and other residences from the surrounding roadways.

(d) The requested variance will not allow an unreasonable circumvention of the zoning regulations.

STAFF: The variance is unreasonable because a structure could be constructed within the requirements of the current regulations that would not alter the character of the area.

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 variance is not a special circumstance as a structure could be constructed within the requirements of the regulations.

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: A building within the height requirements of the district could be constructed on the site.

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 applicant was made aware of the regulations when submitting the plans and decided to proceed with the current request.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCE #4

Variance from 5.4.1.C.6.b to permit a 15' street side yard instead of the required 25' street side yard; 10' variance.

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

STAFF: The setback will not affect the public health, safety, or welfare.

(b) The requested variance will not alter the essential character of the general vicinity.

STAFF: The established setback along Baringer is around 25 feet as indicated by the closest adjacent property across the alley (2026 Baringer Ave.). Allowing the structure to be located 15' from the right of way alters the established setbacks in the area.

(c) The requested variance will not cause a hazard or nuisance to the public.

STAFF: The variance will not cause a hazard or public nuisance.

(d) The requested variance will not allow an unreasonable circumvention of the zoning regulations.

STAFF: The variance is unreasonable because the structure could be built at the 25' setback line and stay within the character and established setbacks of the block face.

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 variance is not a special circumstance and would apply to any new development in the district.

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: Complying with the regulations would not be a hardship to the applicant as a building could be placed on the lot in compliance with the regulations.

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 applicant was made aware of the regulations when submitting the plans and decided to proceed with the current request.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCE #5

Variance from 5.4.1.C.6.b to permit a 16' side yard setback instead of the required 14' side yard setback; 2' variance.

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

STAFF: The setback will not affect the public health, safety, or welfare.

(b) The requested variance will not alter the essential character of the general vicinity.

STAFF: The increased side yard setback of 2 feet will not affect the character of the area.

(c) The requested variance will not cause a hazard or nuisance to the public.

STAFF: The variance will not affect the public or cause a hazard as the setback is internal to the site and would only affect the adjacent property owner.

(d) The requested variance will not allow an unreasonable circumvention of the zoning regulations.

STAFF: Since the variance is in for the side yard, is only for 2', and will push the building slightly further away from the adjacent single family residential, the request is not unreasonable.

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 variance is not a special circumstance and would apply to any new development in the district.

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: Complying with the regulations would not be a hardship to the applicant as a building could be placed on the lot in compliance with the regulations.

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 applicant was made aware of the regulations when submitting the plans and decided to proceed with the current request.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCE #6

Variance from 5.4.1.D.2 to permit 10% private yard instead of the required 30%; 20% variance.

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

STAFF: The percentage of private yard will not affect the public health, safety, or welfare.

(b) The requested variance will not alter the essential character of the general vicinity.

STAFF: Not providing a 30% private yard will alter the character of the area as the established residential lots in the area have similar sized private yards in relation to the size of the structures on the lots.

(c) The requested variance will not cause a hazard or nuisance to the public.

STAFF: The variance will not affect the public or cause a hazard.

(d) The requested variance will not allow an unreasonable circumvention of the zoning regulations.

STAFF: The proposal is an unreasonable request as the building could be moved further toward Willow to achieve the 30% private yard area.

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: There is not a special circumstance for the variance that would not apply to any residential request in the area.

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: Providing the 30% private yard would not be a hardship on the applicant as the building would still be able to be constructed elsewhere on the lot while meeting all the setback and form district requirements.

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 applicant was made aware of the regulations when submitting the plans and decided to proceed with the current request.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER #1

Waiver from 10.2.4 to permit the encroachment of an existing structure and proposed pool/patio into the required 15' LBA.

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

STAFF: The proposed encroachments into the 15' LBA will not adversely affect adjacent property owners because the house that encroaches is existing and the pool will be surrounded by a brick wall. The landscape requirements will still be met.

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

STAFF: The waiver will not violate guidelines of Cornerstone 2020 as the planting and screening requirements will still be met. The building that is encroaching is existing and the pool area does not present a significant encroachment because the screening and planting requirements can still be fully met along the property line.

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

STAFF: Permitting the encroachment of the existing structure allows the applicant to utilize the building as an amenity to the site. The pool could be moved to a different location on the site to not encroach into the 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: The existing structure is being preserved and is a contributing structure in the Cherokee Triangle National Register district removing the historic structure to provide the buffer would be a hardship on the applicant. The pool encroachment being moved outside the buffer would not be unreasonable or a hardship because there is enough private yard to accommodate a pool.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER #2

Waiver from 5.4.1.C.3 to permit a front loaded garage.

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

STAFF: The waiver will affect adjacent property owners because all the other properties along the block face utilize the existing alley for vehicular access to the site or to their garages. Also having a driveway leading to a garage in front of the structure disrupts the existing sidewalk and movement of pedestrians in the right of way.

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

STAFF: The waiver does not comply with Cornerstone 2020 compatibility guidelines as the front-loading garage and having access in front of the structure is inconsistent with the established access in the area. Front loaded garages are not the prevalent in the area or neighborhood.

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

STAFF: The garage and access to it could be designed to be located off the existing alley instead of creating a new access point in the front of the primary structure.

(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 has not incorporated other design measures that exceed the requirements as the building and site layout could be redesigned to have the garage located at the rear of the structure and off the alley. The land could be reasonably used with a rear facing garage and access off the alley to meet the requirements of the district.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER #3

Waiver from 5.8.1.A.1 to not use the alley for access to the site.

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

STAFF: The waiver will affect adjacent property owners because all the other properties along the block face utilize the existing alley for vehicular access to the site. Having access to the site in front of the structure disrupts the existing sidewalk and movement of pedestrians in the right of way

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

STAFF: The waiver does not comply with Cornerstone 2020 compatibility guidelines as having access in front of the structure is inconsistent with the established access in the area.

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

STAFF: The site and structure could be redesigned to accommodate alley access.

(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 has not incorporated other design measures that exceed the requirements as the site layout could be redesigned to have alley access. The land could be reasonably used with access off the alley to meet the requirements of the district.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER #4
Waiver from 5.9.2.C.4 to permit traffic and circulation in front of the building.

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

STAFF: The waiver will adversely affect adjacent property owners because having the traffic and circulation located in front of the structure instead of utilizing the alley access creates an unnecessary and additional pedestrian/vehicle conflict point that interrupts the existing sidewalk along Baringer.

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

STAFF: The waiver violates the centers guidelines because utilizing the existing alley at the rear of the site would reduce curb cuts along Baringer which would be consistent with the other properties along Baringer as none of those adjacent properties have curb cuts and utilize the alley for access. Traffic and circulation not being located behind the structure also does not balance safety, traffic, pedestrian, and aesthetic concerns. The compatibility guidelines are also not being met as having parking in front of the structure is inconsistent with the access established in the area. Open space guidelines are not being met as the open space on the plan does not meet the needs of the community as it introduces a pedestrian safety issue by having the parking in front of the building and diminishes the public realm of the site to parking. Having parking and drive lanes in the public realm is not consistent with the pattern of development when there is alley access.

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

STAFF: The existing alley could be utilized for access to parking if the site were to be redesigned. The alley is there to provide rear access to lots which is common in the traditional form districts.

(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: Compliance with the LDC would not deprive the applicant of reasonable use of the land as the alley is available for the purpose of vehicular access to the rear of sites. The site could be redesigned to comply with the LDC as there are no other design measures indicated on the plan that exceed the minimums of the district.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER #5

Waiver from 5.4.1.B.1.e to permit parking in the public realm.

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

STAFF: The waiver will adversely affect adjacent property owners because having the parking located in front of the structure creates an unnecessary and additional pedestrian/vehicle conflict point that interrupts the existing sidewalk along Baringer.

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

STAFF: The waiver violates the centers, compatibility, and open space guidelines because parking not being located behind the structure also does not balance safety, traffic, pedestrian, and aesthetic concerns. The compatibility guidelines are also not being met as having parking in front of the structure is inconsistent with the access established in the area. Open space guidelines are not being met as the open space on the plan does not meet the needs of the community as it introduces a pedestrian safety issue by having the parking in front of the building and diminishes the public realm of the site to parking. Having parking and drive lanes in the public realm is not consistent with the pattern of development when there is alley access.

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

STAFF: The alley is there to provide rear access to lots in this area and throughout the neighborhood. There are no topographical or environmental concerns that would make access from the alley infeasible. Parking on the site could be redesigned to meet LDC requirements also the parking in the front of the building is not necessary due to available on street parking along Baringer.

(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: Compliance with the LDC would not deprive the applicant of reasonable use of the land as the alley is available for the purpose of vehicular access to the rear of sites. The site could be redesigned to comply with the LDC as there are no other design measures indicated on the plan that exceed the minimums of the district. On street parking is available along Baringer to provide parking for visitors.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER #6

Waiver from 5.4.1.E.3 to not provide access to parking from the accessory structure/use area.

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

STAFF: The waiver will adversely affect adjacent property owners because having the access to parking located in front of the structure creates an unnecessary and additional pedestrian/vehicle conflict point that interrupts the existing sidewalk along Baringer.

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

STAFF: The waiver violates the centers, compatibility and open space guidelines because not accessing the parking from the accessory use area does not balance safety, traffic, pedestrian, and aesthetic concerns. The compatibility guidelines are also not being met as having parking in front of the structure is inconsistent with the access established in the area. Open space guidelines are not being met as the open space on the plan does not meet the needs of the community as it introduces a pedestrian safety issue by having the parking in front of the building and diminishes the public realm of the site to parking. Having parking and drive lanes in the public realm is not consistent with the pattern of development when there is alley access. Alley access is established throughout the neighborhood for the main access to the accessory use areas.

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

STAFF: There are no known environmental or topographical concerns with providing access to parking from the accessory use area. The applicant could redesign the site so that the building meets the setback requirements which would allow for more room in the rear of the site to meet the access and private yard requirements.

(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: Compliance with the LDC would not deprive the applicant of reasonable use of the land as the alley is available for the purpose of vehicular access to the rear of sites. The site could be redesigned to comply with the LDC as there are no other design measures indicated on the plan that exceed the minimums of the district. On street parking is available along Baringer to provide parking for visitors.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER #7

Waiver from 5.4.1.G.3 to permit parking between the front façade of the structure and the primary street.

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

STAFF: The waiver will adversely affect adjacent property owners because having the parking located in front of the structure creates an unnecessary and additional pedestrian/vehicle conflict point that interrupts the existing sidewalk along Baringer.

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

STAFF: The waiver violates the centers, compatibility and open space guidelines because parking not being located behind the structure also does not balance safety, traffic, pedestrian, and aesthetic concerns. The compatibility guidelines are also not being met as having parking in front of the structure is inconsistent with the access established in the area. Open space guidelines are not being met as the open space on the plan does not meet the needs of the community as it introduces a pedestrian safety issue by having the parking in front of the building and diminishes the public realm of the site to parking. Having parking and drive lanes in the public realm is not consistent with the pattern of development when there is alley access.

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

STAFF: The alley is there to provide rear access to lots in this area and throughout the neighborhood. There are no topographical or environmental concerns that would make access from the alley infeasible. Parking on the site could be redesigned to meet LDC requirements also the parking in the front of the building is not necessary due to available on street parking along Baringer.

(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: Compliance with the LDC would not deprive the applicant of reasonable use of the land as the alley is available for the purpose of vehicular access to the rear of sites. The site could be redesigned to comply with the LDC as there are no other design measures indicated on the plan that exceed the minimums of the district. On street parking is available along Baringer to provide parking for visitors.

STANDARD OF REVIEW FOR DEVELOPMENT PLAN

- 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 proposal has not indicated any preservation of the existing trees on the site. The established view shed along Willow is disrupted by having parking and vehicular circulation being located in front of the structure. The 200+ foot building would also disrupt current views from adjacent residential areas to the rest of the neighborhood. The proposal does include the preservation of an existing single family residence on the site that is a contributing structure to established Cherokee Triangle National Register district.

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

STAFF: The safest route for vehicles to access the site is through the existing alley. The plan indicates no vehicular access from the alley but is continuing the vehicle/pedestrian conflict by having access to parking from Baringer.

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

STAFF: The open space on the site does not meet the needs of the development as the development itself is creating vehicular/pedestrian conflicts by having parking and circulation being located in front of the building. Cherokee park is located nearby and the occupants of the building would have to contend with additional vehicular conflicts by having parking and circulation in front of the structure. Also aesthetically, the open space is not consistent with the public realm of the block face along Willow and Baringer by having the parking and circulation being located in front of the structure.

- 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: MSD has preliminarily approved the development plan.

- 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 all site design is not compatible with the existing development in the area. The waivers and variance requests attest to the incompatibility of the site design to the overall established character of the area. The only development that the site design is compatible with are the 3 other high rise developments along Willow, all other development in the area are three story apartments and residences.

- f. Conformance of the development plan with the Comprehensive Plan and Land Development Code.

STAFF: Staff finds that the proposal does not comply with Comprehensive Plan Guideline 1 because the proposal does not preserve the public realm of the site by having parking and drive lanes located between the principal structure and primary roadway (Willow Ave). The majority of building heights in the neighborhood is 3 stories; the proposed 15 story building is not consistent with the existing neighborhood.

Staff finds that the proposal does not comply with Comprehensive Plan Guideline 2 because the overall development pattern in the neighborhood is 3 story structures and the proposal is for 15 stories. The

proposal is for a residential use that does not comply with the infill standards within the block face and the consistent building heights within the neighborhood which does not encourage vitality or a sense of place.

The proposal is not designed to minimize impact on the adjacent residential along Baringer Avenue due to the scale and placement of the proposed structure. The majority of parking will be located underneath the structure but providing the parking entrance off the existing alley would reduce curb cuts. Parking is also not located behind the structure per form district requirements which does not balance safety, traffic, pedestrian and aesthetic considerations.

Staff finds that the proposal does not comply with Comprehensive Plan Guideline 3 because the proposal is not compatible with the scale of the closest residential structures as the closest residential structures are 2 and 3 stories tall and the location of the structure does not continue the existing block face. The design, having parking in front of the structure is inconsistent with the access established in the area. There is no evidence of a transition between the height of the proposed structure and the 3 story adjacent properties. Landscape buffers are not evident and setbacks are not being met. There is no evidence that indicates that the impact of the 200' structure adjacent to the 3 story structures will be mitigated. Setbacks and building heights are not compatible with the adjacent nearby developments and do not meet form district standards. The residential design standards are not being met as the height of the structure does not fall in between the heights of the two closest residential structures.

Staff finds that the proposal does not comply with Comprehensive Plan Guideline 4 because the open space on the plan does not meet the needs of the community as it introduces a pedestrian safety issue by having the parking in front of the building and diminishes the public realm of the site to parking. The private yard area does not meet the needs of the community because the size of the yard area is smaller than the minimum 30%. Having parking and drive lanes in the public realm is not consistent with the pattern of development when there is alley access.

Staff finds that the proposal does not comply with Comprehensive Plan Guideline 5 because the size and scale of the new structure is not compatible with the height, bulk, scale, and placement of the existing closest residential structures.

Staff finds that the proposal does not comply with Comprehensive Plan Guideline 7 because the proposed transportation facilities are not consistent with the access established in the area. In the traditional form alley access is preferential over new curb cuts. The proposal does not include utilization of the existing alley for access to parking. The parking in front of the structure does not support pedestrian activity and connection with the public realm area of the site as it does not support access to the surrounding land uses.

The proposal also does not comply with the Land Development Code as indicated in the standard of review for the variances, waivers, and development plan.

TECHNICAL REVIEW

- All technical review comments have been addressed.

STAFF CONCLUSIONS

The only difference between the current plan and the previous plan is the building height and gross square footage. The previous plan proposed a building height of 213.5' and the new plan proposes a building height of 201.67', a difference of 11.83'. The previous plan proposed a gross square footage of 114,238 sf and the current proposal indicates 97,874 sf for a difference of 16,364 sf.

The proposals variance and waiver requests do not comply with the infill standards of Chapter 5 of the Land Development Code. The Planning Commission should consider the non-compliance with the Comprehensive Plan, ~~Neighborhood Plan~~, and Land Development Code when making a determination for the site. Relief of the waiver and variance requests have not been appropriately mitigated as indicated in the applicants justification statements.

According to the Metro Council ordinance that approved the change in zoning, Metro Council has directed the Planning Commission to provide a recommendation to the Council on the District Development Plan and to take final action on the associated requests (variances and waivers).

Based upon the information in the staff report, the testimony and evidence provided at the public hearing, the Planning Commission must determine if the proposal meets the standards for granting LDC Waivers and Variances established in the Land Development Code.

NOTIFICATION

| Date | Purpose of Notice | Recipients |
|----------|--|---|
| 1/31/13 | Hearing before LD&T on 2/14/13 | 1 st and 2 nd tier adjoining property owners Subscribers of Council District 8 Notification of Development Proposals |
| 3/1/13 | Hearing before PC on 4/4/13 Cancelled and rescheduled for 4/25/13 | 1 st and 2 nd tier adjoining property owners Subscribers of Council District 8 Notification of Development Proposals |
| 3/1/13 | Hearing before PC on 4/25/13 | Sign Posting on property |
| 4/10/13 | Hearing before PC on 4/25/13 | Legal Advertisement in the Courier-Journal |
| 11/21/14 | Hearing before LD&T on 12/11/14 | 1 st and 2 nd tier adjoining property owners Speakers at Planning Commission public hearing Subscribers of Council District 8 Notification of Development Proposals |
| 2/6/15 | Hearing before PC on 2/25/15 | 1 st and 2 nd tier adjoining property owners Speakers at Planning Commission public hearing Subscribers of Council District 8 Notification of Development Proposals |

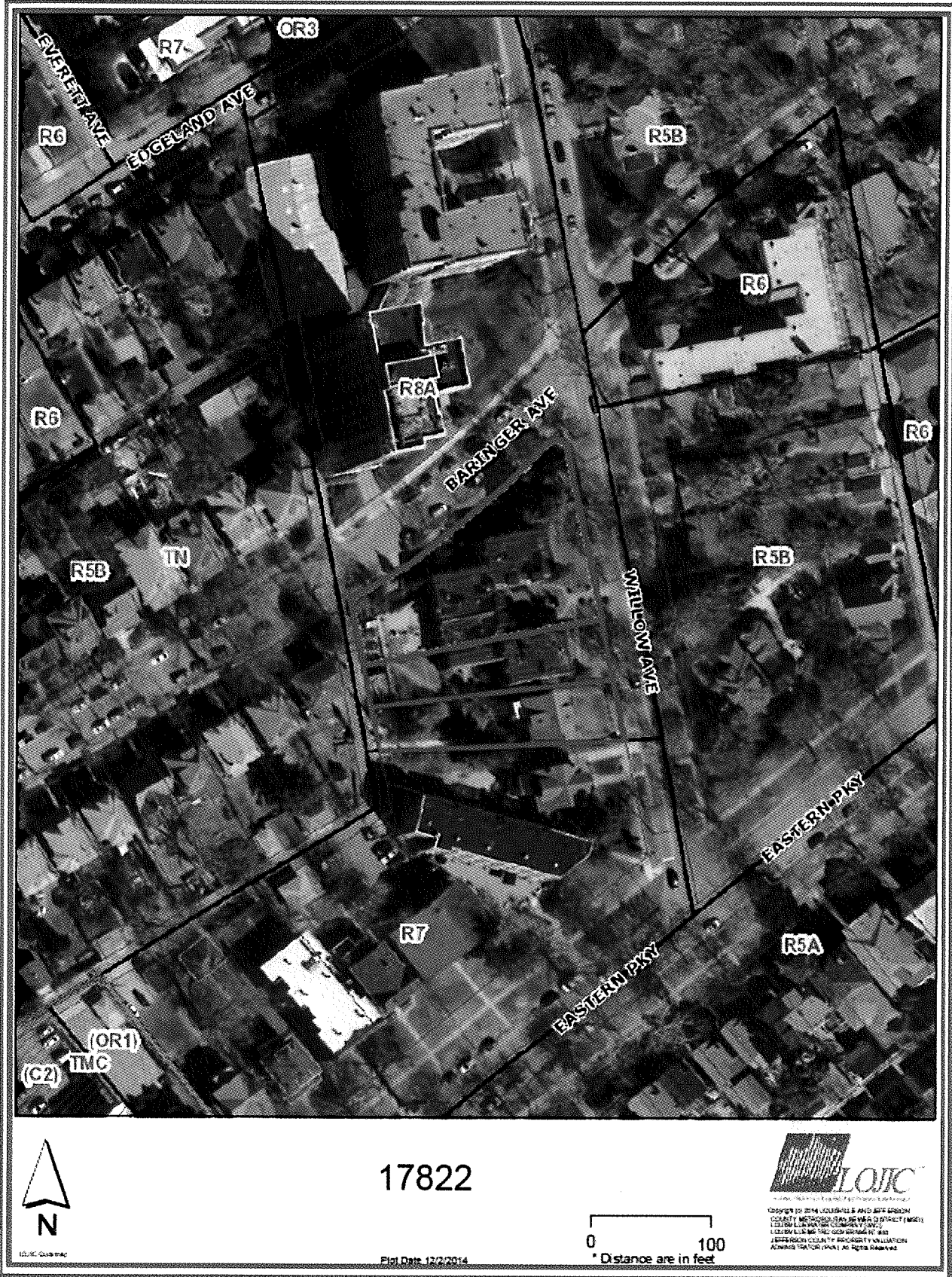
ATTACHMENTS

1. Zoning Map
2. Aerial Photograph
3. Proposed Binding Elements

1. **Zoning Map**



2. Aerial Photograph



3. **Proposed Binding Elements**

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. The development shall not exceed 97,874 square feet of gross floor area.
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.
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 Inspections, Permits and Licenses, Louisville Metro Public Works and the Metropolitan Sewer District.
 - b. 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.
 - c. A minor plat or legal instrument shall be recorded consolidating the property into one lot. A copy of the recorded instrument shall be submitted to the Division of Planning and Design Services; transmittal of the approved plans to the office responsible for permit issuance will occur only after receipt of said instrument.
 - 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.
5. Prior to any site disturbance permit being issued and prior to any clearing, grading or issuance of a site disturbance permit, a site inspection shall be conducted by PDS staff to ensure proper placement of required tree protection fencing in accordance with the approved Tree Preservation Plan.
6. 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.
7. The applicant, developer, or property owner shall provide copies of these binding elements to tenants, purchasers, contractors, subcontractors and other parties engaged in development of this site and shall advise them of the content of these binding elements. These binding elements shall run with the land and the owner of the property and occupant of the property shall at all times be responsible for compliance with these binding elements. At all times during development of the site, the applicant and developer, their heirs, successors; and assignees, contractors, subcontractors, and other parties engaged in development of the site, shall be responsible for compliance with these binding elements.
8. The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the February 25, 2015 Planning Commission meeting and as approved by the Cherokee Triangle Architectural Review Committee.