

General Waiver Justification:

In order to justify approval of any waiver, the Planning Commission or Board of Zoning Adjustment considers four criteria. Please answer all of the following questions. Use additional sheets if needed. A response of yes, no, or N/A is not acceptable.

Waiver of Section 10.3.5.A.1 and 10.2.10 to allow the encroachment of the proposed and existing parking into the 30 ft Hurstbourne Parkway Buffer area and 15 ft Landscape Buffer Area on Tract 5 and to allow the building to encroach into the Hurstbourne Parkway Buffer Area and Hurstbourne parkway building setback on Tract 6.

Explanation of Waiver:

1. The waiver will not adversely affect adjacent property owners because they almost all have buildings and parking that encroach into the parkway buffers. Furthermore, excess right-of-way and landscaping exists and will continue to exist along this section of Hurstbourne Parkway. This is also one area of Hurstbourne Parkway where parking exists almost up to the ROW line, particularly on the other side of Hurstbourne Parkway.
2. The waiver will not violate the Comprehensive Plan for all the reasons set forth in the Detailed Statement of Compliance with all applicable Guidelines and Policies of the comprehensive plan filed with the original rezoning application.
3. The extent of waiver of the regulation is the minimum necessary to afford relief to the applicant because of the conflict between the Parkway setback buffer and the Town Center Form District requirements.
4. Strict application of the provisions of the regulation would deprive the applicant of a reasonable use of the land or would create an unnecessary hardship on the applicant because it would lose valuable/necessary parking in an area where, as noted, there are no negative resulting impacts.

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General Waiver Justification:

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Waiver of Section 5.5.1.A.1.a and b to waive the design standard to not have the principal building entrance facing the primary street and to waive not having a secondary customer entrance facing the secondary street on Tracts 5 & 6; and to waive the design standard to not have the principal building entrance facing the primary street on Tract 2.

Explanation of Waiver:

1. The waiver will not adversely affect adjacent property owners because they are all commercial users that have far less in common with Plan 2040 than this proposed project because those were developed before this was designated as a Town Center Form District.
2. The waiver will not violate the Comprehensive Plan for all the reasons set forth in the Detailed Statement of Compliance with all applicable Guidelines and Policies of the comprehensive plan filed with the original rezoning application.
3. The extent of waiver of the regulation is the minimum necessary to afford relief to the applicant because not all of the buildings are affected by this waiver, rather only those that, like the other buildings, need to face inward to the now new master plan for development of this mixed use activity center. This waiver was previously granted with respect to the very similar plan that was approved a year ago. And this plan includes entrances on Tract 5 facing Hurstbourne Parkway whereas the currently approved plan does not.
4. Strict application of the provisions of the regulation would deprive the applicant of a reasonable use of the land or would create an unnecessary hardship on the applicant because it would end up with buildings that face different directions given the nature of this site as now a master planned mixed use activity center.

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Waiver of Section 5.5.1.A.3.a to allow parking to be located in front of the building and closer to Hurstbourne Parkway right-of-way than the principal building and to waive the masonry wall required between the parking and Hurstbourne Parkway on Tract 5.

Explanation of Waiver:

1. The waiver will not adversely affect adjacent property owners because virtually all properties along both major arterials of Hurstbourne Parkway and Shelbyville Road have the parking for the businesses located between the building and the street. The use of a masonry wall to hold the street frontage is very beneficial in certain circumstances and situations, but not in this case as it would be the only masonry wall along Hurstbourne Parkway in this area. Furthermore, Hurstbourne Parkway has considerable existing trees and a berm that mitigate the potential adverse consequences of parking located in the front of the building on tract 5 and closer to Hurstbourne Parkway than the LDC otherwise technically permits.
2. The waiver will not violate the Comprehensive Plan for all the reasons set forth in the Detailed Statement of Compliance with all applicable Guidelines and Policies of the comprehensive plan filed with the original rezoning application.
3. The extent of waiver of the regulation is the minimum necessary to afford relief to the applicant because most all of the properties along Hurstbourne Parkway have parking between the buildings and streets and the proposed coffee shop and small retail building would not be functional without this parking. The waiver of the masonry wall is such that it is either waived in full as requested or required.
4. Strict application of the provisions of the regulation would deprive the applicant of a reasonable use of the land or would create an unnecessary hardship on the applicant because it would not be able to accommodate the proposed uses where, as noted, there are no negative resulting impacts. Moreover, not all portions of this overall master planned mixed use activity center, especially given the overall configuration of the site and fact that several buildings are located on it, can address the LDC the exact same way.

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