

Board of Zoning Adjustment Staff Report

April 2, 2018



Case No:	18VARIANCE1022
Project Name:	Hurstbourne Town Center
Location:	101 Whittington Parkway
Owner(s):	Viking Partners Hurstbourne
Applicant:	Viking Partners Hurstbourne
Representative(s):	Bardenwerper, Talbott & Roberts, PLLC
Jurisdiction:	City of Hurstbourne
Council District:	18 – Marilyn Parker
Case Manager:	Joel P. Dock, Planner II

REQUEST(S)

- **Variations**

1. **Variance** of Land Development Code (LDC), section 5.2.4.C.3.a for buildings on Tract 1 to exceed the 15' SSY as shown on the development plan
2. **Variance** of Land Development Code (LDC), section 5.2.4.C.3.a for building on Tract 4 to exceed the 15' SSY as shown on the development plan
3. **Variance** of Land Development Code (LDC), section 5.2.4.C.3.a for building on Tract 5 to exceed the 15' SSY as shown on the development plan
4. **Variance** of Land Development Code (LDC), section 5.5.1.A.2 for building on Tract 6 to not be built to the corner and at the right-of-way lines as shown on the development plan

CASE SUMMARY

A mixed-use development is proposed across 28 acres of land bound by Hurstbourne and Whittington Parkways and Shelbyville Road. Each new structure or set of structures associated with a particular use is proposed on an individual lot for a total of 6 lots. Vehicular and pedestrian cross connectivity and shared parking integrates the uses across each parcel. A revised and category 3 development plan with waivers was heard by the Development Review Committee on April 28, 2018.

Associated Cases

9-28-04: OTF to C-2 for PF Chang's restaurant (approved 8/19/04).

9-41-05: OTF to C-1 for northern portions of site. (approved 9/1/05; revised 9/14/06)

18DEVPLAN1127: RDDDP/Cat. 3 with waivers (DRC 3/28/18)

STAFF FINDING

The variance requests on Tracts 1 & 5 appear to be adequately justified and meet the standard of review. The requests made on Tracts 4 & 6 do not appear to be adequately justified. Cornerstone 2020 states, "Town Centers are easily disrupted by new forms of development. Therefore the harmony and compatibility of infill and redevelopment in town centers should receive special attention." In the request on Tract 6, sufficient material (renderings) has not been provided to make a complete analysis. Further, the orientation of the structure in conjunction with the variance request does not adhere to the design principles of the Town Center form district. The request on Tract 4 disrupts the street wall proposed by adjacent development and creates an unsafe barrier to pedestrian interaction.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCE

1. Section 5.2.4.C.3.a for buildings on Tract 1 to exceed the 15' SSY

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

STAFF: The requested variances will not adversely affect public health, safety, or welfare as the proposed structures do not impact the safe movement of vehicles or pedestrians, have sufficient pedestrian and vehicular connectivity, and are oriented around a central focal point.

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

STAFF: The requested variance will not alter the essential character of the general vicinity as the proposed buildings are oriented around central public open space.

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

STAFF: The requested variance will not cause a hazard or nuisance to the public as the structures are for residential use only.

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

STAFF: The requested variance will not allow an unreasonable circumvention of the zoning regulations as the Town Center form district calls for structures to be oriented towards the public roadway or central focal point. The structures are internally oriented towards a central focal point and have a high level of connectivity.

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 requested variance does not arise from special circumstances which do not generally apply to land in the general vicinity or the same zone as the site is being wholly redeveloped from the previous uses which did not meet the standards established for the form 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: The strict application of the provisions of the regulation would deprive the applicant of reasonable use of the land as the intent of the form district is being observed through the internal orientation of structures towards a focal point.

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 circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought as appropriate relief is being requested from the Board of zoning Adjustment.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCE

2. Section 5.2.4.C.3.a for buildings on Tract 4 to exceed the 15' SSY

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

STAFF: The requested variances will adversely affect public health, safety or welfare as the street wall being established by adjacent proposed structures will be negatively impacted. Further, the human-scale presence, overall multi-modal use of the property, and integration within the existing context of surrounding properties which are located in the Town Center form district will be negatively impacted. Walkability is reduced through the provision of surface parking lots which form barriers between uses and public ways.

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

STAFF: The requested variance will alter the essential character of the general vicinity as the proposed setback is inconsistent with adjacent proposed uses and the property is capable of being redesigned to hold the street and encourage interaction while still meeting the needs of the operator and the intent of the Town Center Form District.

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

STAFF: The requested variance will cause a hazard or nuisance to the public as the increases setback will cause pedestrians across parking areas which may have increased traffic due to drive-through services.

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

STAFF: The requested variance will allow an unreasonable circumvention of the zoning regulations as the property is capable of being redesigned to hold the street and encourage interaction while still meeting the needs of the operator and the intent of the Town Center Form District.

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 requested variance does not arise from special circumstances which do not generally apply to land in the general vicinity or the same zone as the requirements for redevelopment in the Town Center Form district are consistent throughout the development.

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 strict application of the provisions of the regulation would not deprive the applicant of reasonable use of the land as the subject property is capable of being redesigned to meet the needs of the operator and the form district. The subject site has sufficient parking to meet demand and drive-through facilities can be re-routed through rear parking areas.

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 circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought as appropriate relief is being requested from the Board of zoning Adjustment.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCE

3. Section 5.2.4.C.3.a for buildings on Tract 5 to exceed the 15' SSY

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

STAFF: The requested variances will not adversely affect public health safety or welfare as the Parkway buffer is being maintained to protect the aesthetic value of the right-of-way.

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

STAFF: The requested variance will not alter the essential character of the general vicinity as the Parkway buffer is being maintained to protect the aesthetic value of the right-of-way.

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

STAFF: The requested variance will not cause a hazard or nuisance to the public as the request does not impact the safe movement of pedestrians or vehicles.

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

STAFF: The requested variance will not allow an unreasonable circumvention of the zoning regulations as the Parkway buffer is being maintained to protect the aesthetic value of the right-of-way.

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 requested variance arises from special circumstances which do not generally apply to land in the general vicinity or the same zone as a designated parkway exists along the East property line and requires 30' buffer.

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 strict application of the provisions of the regulation would deprive the applicant of reasonable use of the land as the Parkway buffer is being maintained to protect the aesthetic value of the right-of-way.

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 circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought as appropriate relief is being requested from the Board of zoning Adjustment.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCE

4. Section 5.5.1.A.2 for building on Tract 6 to not be built to the corner and at the right-of-way lines as shown on the development plan

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

STAFF: The requested variances will not adversely affect public health, safety or welfare as the additional setback requested along the right-of-way of two major arterial roadways in a suburban area allows for the safe provision of pedestrian space and entryways in an architecturally pleasing manner consistent with the Town Center form district.

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

STAFF: The requested variance will alter the essential character of the general vicinity if the provision of additional setback is not accompanied by appropriate orientation towards the public right-of-way as required by the Town Center form district. Request orientation relief was requested at the DRC meeting on 3/28/18. Staff found that the requested relief was not accompanied by sufficient information and that such relief may negatively impact the character encouraged by the Town Center form district.

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

STAFF: The requested variance will not cause a hazard or nuisance to the public as no impact to the safe movement of pedestrians or vehicles is being created.

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

STAFF: The requested variance will allow an unreasonable circumvention of the zoning regulations as mitigation for lack of compliance has not been demonstrated at this time.

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 requested variance does not arise from special circumstances which do not generally apply to land in the general vicinity or the same zone as the standards are applicable for all corner lots located in the Town Center form 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: The strict application of the provisions of the regulation would deprive the applicant of reasonable use of the land; however, the intent of the principles for design in a town center form district have not been demonstrated.

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 circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought as appropriate relief is being requested from the Board of zoning Adjustment.

REQUIRED ACTIONS

- **APPROVE or DENY** the following:
 1. **Variance** of Land Development Code (LDC), section 5.2.4.C.3.a for buildings on Tract 1 to exceed the 15' SSY as shown on the development plan
 2. **Variance** of Land Development Code (LDC), section 5.2.4.C.3.a for building on Tract 4 to exceed the 15' SSY as shown on the development plan
 3. **Variance** of Land Development Code (LDC), section 5.2.4.C.3.a for building on Tract 5 to exceed the 15' SSY as shown on the development plan
 4. **Variance** of Land Development Code (LDC), section 5.5.1.A.2 for building on Tract 6 to not be built to the corner and at the right-of-way lines as shown on the development plan

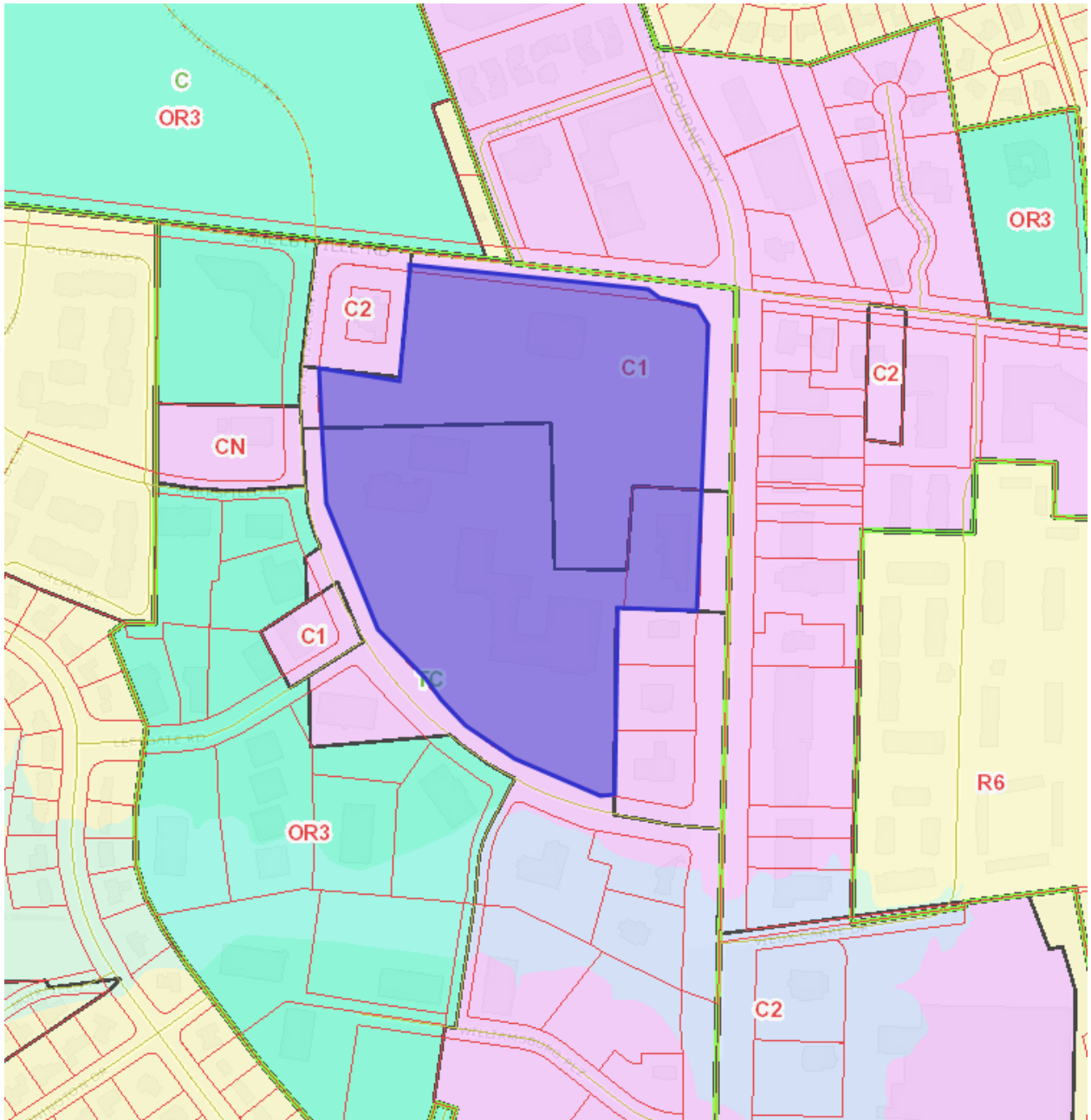
NOTIFICATION

Date	Purpose of Notice	Recipients
3/5/18	Hearing before BOZA	1 st tier adjoining property owners, Registered Neighborhood Groups in Council District 18

ATTACHMENTS

1. Zoning Map
2. Aerial Photograph

1. **Zoning Map**



2. Aerial Photograph

