

# Development Review Committee Staff Report

April 18, 2018



<b>Case No:</b>	18WAIVER1010
<b>Project Name:</b>	Smokey Bones Fire Pit
<b>Location:</b>	2525 Hurstbourne Gem Lane
<b>Owner(s):</b>	Mr. B.H. Griffin III – Ben Hill Griffin Inc.
<b>Applicant:</b>	Mr. Robert Stamm – Smokey Bones
<b>Representative(s):</b>	Mr. Robert Stamm – Smokey Bones
<b>Project Area/Size:</b>	1.84490 acres or 80,363.84 sf.
<b>Zoning:</b>	C-2
<b>Form District:</b>	Suburban Marketplace Corridor
<b>Jurisdiction:</b>	City of Jeffersontown, KY
<b>Council District:</b>	11 – Kevin Kramer
<b>Case Manager:</b>	Ross Allen – Planner I

## REQUEST(S)

- **WAIVER:** from Jeffersontown LDC (July 2004) 10.3.5, table 10.3.1 to allow a proposed decorative fire pit (accessory structure) to encroach approximately 16 ft. into the 30 ft. required Parkway Landscape Buffer Area along South Hurstbourne Parkway.

## CASE SUMMARY/BACKGROUND

The subject site is approximately 1.89 acres having an existing non-residential structure, Smokey Bones Bar and Fire Grill, as located in Eastern Louisville Metro approximately 346 southwest of the South Hurstbourne/Taylorsville Road Intersection being within the City of Jeffersontown, KY.

The applicant is proposing to construct a 10 ft. 4 in. by 4 ft. decorative Fire Pit along the South Hurstbourne Parkway frontage within the 30 ft. required Parkway setback and Landscape Buffer Area. The construction of the proposed decorative fire pit will result in the removal of 15 Burning bush's which are being replaced with 15 Viburnum Burkwood further north of the decorative fire pit and two Black Walnut trees are proposed within the subject parcel farther north of the Viburnum Burkwood as shown on 18LSCAPE1033 for the subject site.

There will also be four American Holly which will be uprooted and transplanted farther north of the Black Walnut's but will be within the right of way along South Hurstbourne Parkway.

## Related Cases:

**09-70-98:** Revised Detailed District Development Plan (Shane Development – Louisville) for the development of 5 lots, Lot #3 being Smokey Bones. Approved by LD&T on Nov. 14, 2002. Binding Elements have been incorporated into the staff report as shown on pages 7 - 8.

**18LSCAPE1033:** Landscape plan submitted in conjunction with 18WAIVER1010. The landscape plan shows that the owner will be removing 15 Burning bush's which are to be replaced with 15 Viburnum Burkwood further north of the decorative fire pit and two Black Walnut trees are proposed within the subject parcel farther north of the Viburnum Burkwood. Four American Holly will be uprooted and transplanted farther north of the Black Walnut trees but will be located within the right of way along South Hurstbourne Parkway. The landscape plan is shown on page 9 of the staff report.

## **STAFF FINDING / RECOMMENDATION**

- **WAIVER:** from Jeffersontown LDC (July 2004) 10.3.5, table 10.3.1 to allow a proposed decorative fire pit (accessory structure) to encroach approximately 16 ft. into the 30 ft. required Parkway Landscape Buffer Area along South Hurstbourne Parkway. Site plan provided to staff and dated April 2, 2018.

### **LAND USE/ZONING DISTRICT/FORM DISTRICT TABLE**

	<b>Land Use</b>	<b>Zoning</b>	<b>Form District</b>
<b>Subject Property</b>			
<b>Existing</b>	Commercial – Smokey Bones Bar and Fire Grill	C-2	Suburban Marketplace Corridor
<b>Proposed</b>	Commercial – Smokey Bones Bar and Fire Grill	C-2	Suburban Marketplace Corridor
<b>Surrounding Properties</b>			
<b>North</b>	Commercial – Mattress Firm Clearance, Shane Co.	C-2	Suburban Marketplace Corridor
<b>South</b>	Commercial – Longhorn Steakhouse, (across S. Hurstbourne Pkwy) – PNC Bank, Lotus Spa, and Kroger Fuel	C-2	Suburban Marketplace Corridor
<b>East (across S. Hurstbourne Pkwy)</b>	Commercial – Shopping Center: Potbelly Sandwich Shop, Starbucks, Old Chicago Pizza, Great Clips, and PNC Bank	C-2	Suburban Marketplace Corridor
<b>West</b>	Commercial – Mattress Firm Clearance, Target, The Home Depot	C-2	Suburban Marketplace Corridor

## **TECHNICAL REVIEW**

The applicant is aware that case no. 18LSCAPE1033 will need to be approved before proceeding for construction documentation. South Hurstbourne Parkway is considered right of way as owned by the State of KY and as a result any plantings and landscaping as found in the right of way will be determined by the Kentucky Transportation Cabinet, KYTC during their construction review if required. MSD and Transportation Planning have stamped the plan preliminarily.

## **INTERESTED PARTY COMMENTS**

Staff has not received any comments from interested parties.

## **APPLICABLE PLANS AND POLICIES**

Land Development Code (Middletown LDC 2006)  
Comprehensive Plan (Cornerstone 2020)

**STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER: from Jeffersontown LDC (July 2004) 10.3.5, table 10.3.1 to allow a proposed decorative fire pit (accessory structure) to encroach approximately 16 ft. into the 30 ft. required Parkway Landscape Buffer Area along South Hurstbourne Parkway. Approval based on the site plan provided to staff and dated April 2, 2018.**

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

STAFF: The waiver will not adversely affect adjacent property owners since the fire pit is for decorative purposes. No cooking or seating is proposed, only the fire pit. The applicant further understands that the decorative fire pit will be unable to have lettering or any signage upon the walls or will need to comply with the existing binding elements, alter the binding elements, or come into compliance with Chapter 8 of the Jeffersontown LDC and with any additional parkway standards. The footprint of the fire pit is only 40 sf. and all affected plantings will be relocated on site, so as not to deprive the parkway buffer of its previously approved plantings requirements. The applicant states, "the purpose of the decorative fire pit is to improve aesthetics of the restaurant and will only affect the adjacent property owners positively."

- (b) The waiver will not violate specific guidelines of Cornerstone 2020; and

STAFF: Guideline 3, Policy 1 of Cornerstone 2020 asks to ensure compatibility of all new development and redevelopment with the scale and site design of nearby existing development and with the pattern of development within the form district. Surrounding lots to the northeast and southwest along the northern side of South Hurstbourne Pkwy do not have anything similar as found within the Parkway landscape buffer. However, existing monument signs are present for Shane and Co. and Longhorn Steakhouse.

Guideline 3, Policy 2 of Cornerstone 2020 asks for the consideration of Building Materials. When assessing compatibility, it is appropriate to consider the choice of building materials in the following circumstances: (1) projects involving residential infill (2) projects involving non-residential uses; and (3) when specified in the Land Development Code. The proposed decorative fire pit will have 4 ft. 2.5 in. faux wood (1 in. x 4 in.) staggered boards with a black pre-finished structure to hold the paneling in place.

Guideline 3, Policy 8 of Cornerstone 2020 asks for the mitigation of adverse impacts of lighting from proposed development on nearby properties, and on the night sky. Staff is unaware of any potential lighting issues as a result of the decorative fire pit however the area is a commercial corridor having illuminated signs existing along the Parkway.

Guideline 13, Policy 4 calls for ensuring appropriate landscape design standards for different land uses within urbanized, suburban, and rural areas. The owner although relocating existing planting and replacing existing plantings shows that 18LSCAPE1033 is in fact have trees at a requirement of 1 type A tree per 40 feet of frontage. Staff is unaware if the trees are type A but the applicant does show existing and proposed trees on the landscaping plan that exceed the 40 ft. spacing/staggering of plantings for the requirement along the South Hurstbourne Pkwy. frontage.

Guideline 13, Policy 7 calls for protection of the character of parkways and scenic byways and corridors through standards for buffers, landscape treatment, lighting and signs. The intent of parkway development standards is to protect existing scenic and aesthetic qualities, to ensure a quality visual experience on developing corridors and to protect and improve the visual experience on established corridors. The proposal conforms to landscape character guidelines because plant communities provided on-site are natural plant species which will filter views of the tennis court from off-site. The applicant states that the "decorative fire pit is to help increase business for the restaurant by improving aesthetics to positively impact surrounding businesses and the economy of the overall area."

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

STAFF: The extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant since the owner is relocating 4 trees along with shrubbery in order to have the decorative fire pit within the Parkway landscape 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 strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land since, as the applicant states, "any affected plantings in the Parkway landscape buffer will be relocated/replanted to not deprive the required plantings in the Parkway landscape buffer area. The decorative fire pit will not be a nuisance to the adjacent property owners and will positively affect the aesthetics and economy of the overall area. The fire pit is a brand standard that is being installed at Smokey Bones locations all over the United States of America."

**REQUIRED ACTIONS**

**Approve/Deny WAIVER:** from Jeffersontown LDC (July 2004) 10.3.5, table 10.3.1 to allow a proposed decorative fire pit (accessory structure) to encroach approximately 16 ft. into the 30 ft. required Parkway Landscape Buffer Area along South Hurstbourne Parkway. Approval based on the site plan provided to staff and dated April 2, 2018.as a Recommendation to the City of Jeffersontown, KY.

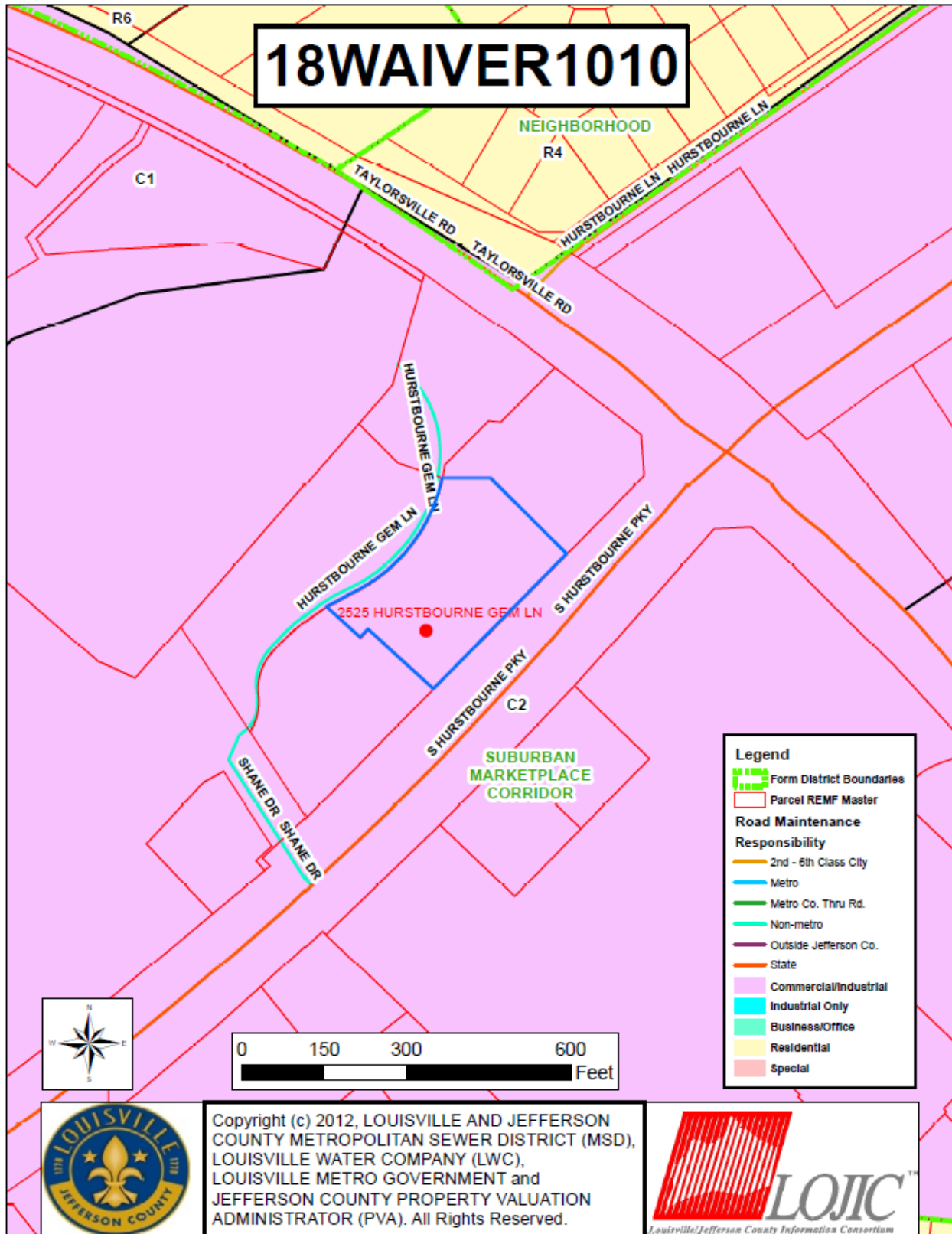
**NOTIFICATION**

Date	Purpose of Notice	Recipients
April 18, 2018	Hearing before DRC April 18, 2018	1 <sup>st</sup> tier adjoining property owners Subscribers of Council District 11 Notification of Development Proposals

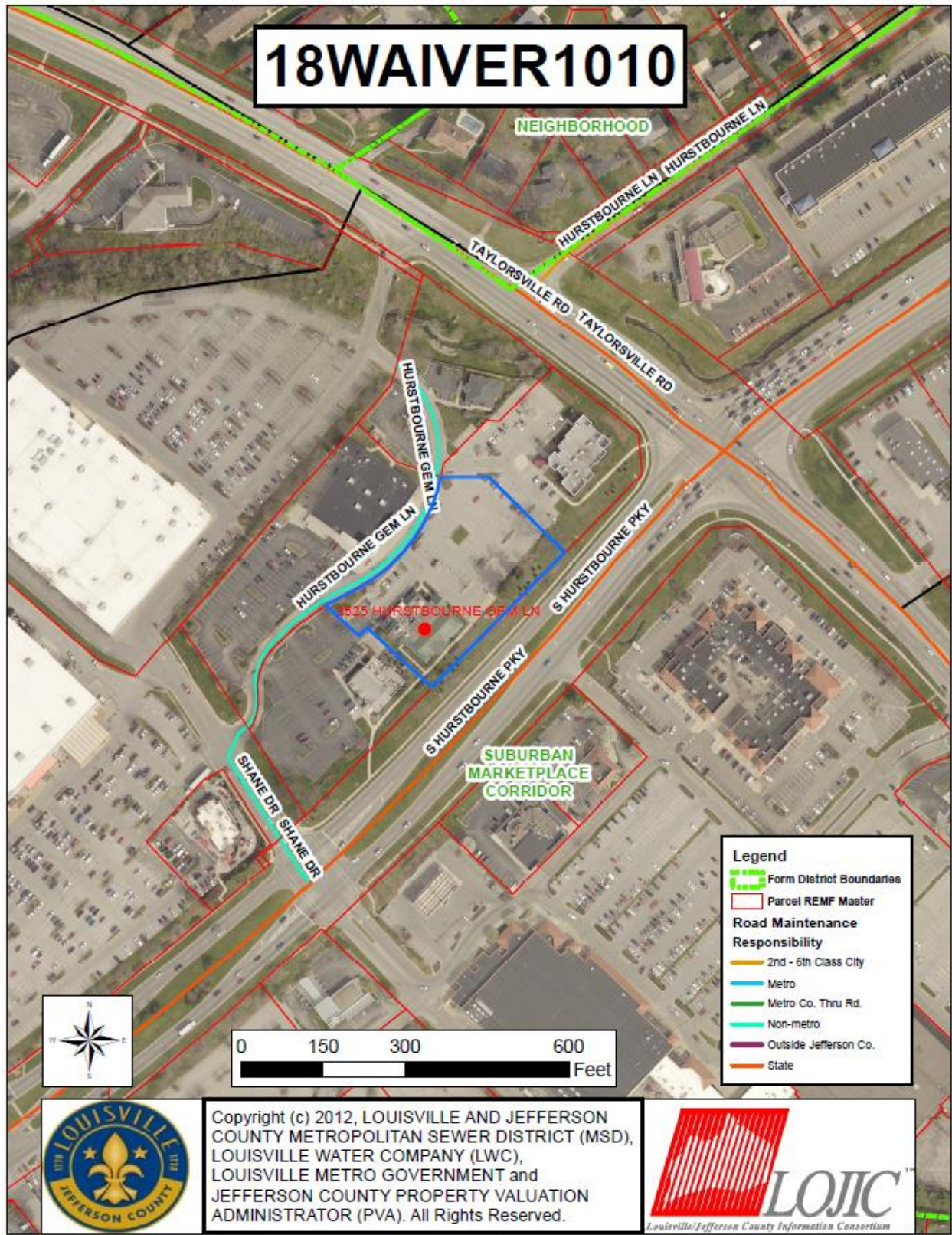
**ATTACHMENTS**

1. Zoning Map
2. Aerial Photograph
3. Binding Elements as found on 09-70-98 RDDDP (pg. 1 of 2)
4. Binding Elements as found on 09-70-98 RDDDP (pg. 2 of 2)
5. 18LSCAPE1033 latest revision as of April 2, 2018

1. **Zoning Map**



2. Aerial Photograph



### 3. Binding Elements as found on 09-70-98 RDDDP (pg. 1 of 2)

DOCKET NO. 9-70-98  
BINDING ELEMENTS

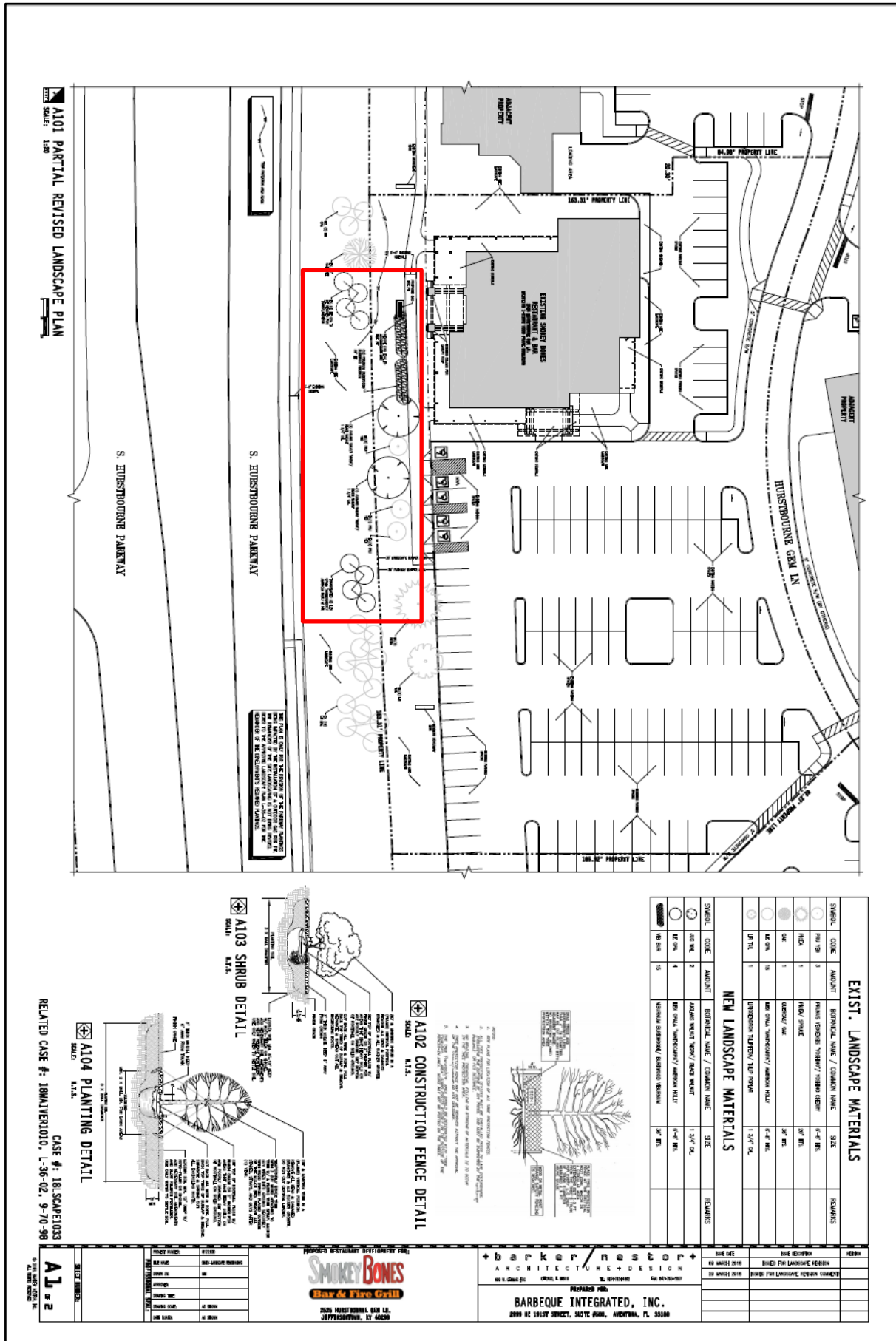
1. The development shall be in accordance with the approved district development plan and agreed upon binding elements unless amended pursuant to the Zoning District Regulations. No further development shall occur without prior approval from the Planning Commission and the City of Jeffersontown, except for land uses permitted in the established zoning district.
2. There shall be no alterations to the exterior of the historic house and ice house unless approved by the Planning Commission, the Jefferson County Department of Historic Preservation and Archives, and the City of Jeffersontown.
3. The development shall not exceed 46,567 square feet of gross floor area.

Lot 1	23,000 square feet
Lot 2	6,000 square feet
Lot 3	7,600 square feet
Lot 4	8,500 square feet
Lot 5	2,805 square feet
4. There shall be no direct vehicular access to Hurstbourne Parkway and Taylorsville Road.
5. The only permitted freestanding signs shall be located as shown on the approved development plan. No portion of the signs, including the leading edge of the sign frame, shall be closer than 15 feet to front property line. The signs shall not exceed 60 square feet in area per side and 6 feet in height. No sign shall have more than two sides. There shall be no signage attached to the historic structures (Funk House and ice house) unless approved by the Jefferson County Department of Historic Preservation and Archives and the Planning Commission.
6. No outdoor advertising signs (billboards), small freestanding (temporary) signs, pennants, or banners shall be permitted on the site.
7. There shall be no outdoor storage on the site.
8. The existing access points are to be closed and removed and access to the site be made through the curb cuts shown on the plan.
9. Outdoor lighting shall be directed down and away from surrounding residential properties. Lighting fixtures shall have a 90-degree cutoff so that no light source is visible off-site. Lighting levels attributable to the fixtures located on the subject site shall not exceed two foot candles at the property line.
10. The applicant shall submit a plan for approval by the Planning Commission staff showing trees/tree masses to be preserved prior to beginning any construction procedure (i.e. clearing, grading, demolition). Any modification of the tree preservation plan requested by the applicant may be approved by the Planning Commission staff if the changes are in keeping with the intent of the approved tree preservation plan. The plan shall exhibit the following information:
  - a. Proposed site plan (showing buildings, edges of pavement, property/lot lines, easements, existing topography, and other significant site features (LOJIC topographic information is acceptable).
  - b. Preliminary drainage considerations (retention/detention, ditches/large swales, etc.).
  - c. Location of all existing trees/tree masses existing on the site as shown by aerial photo or LOJIC maps.
  - d. Location of construction fencing for each tree/tree mass designated to be preserved.
  - e. All trees within the perimeter buffers as shown on the plan shall be preserved unless they cannot be saved due to storm damage or are dead.
11. Construction fencing shall be erected at the edge of the area of development in accordance with Beargrass Creek no disturbance zone and the tree preservation plan prior to any grading or construction to protect the stream corridor and existing tree stands and their root systems from compaction. In addition, the fencing for other trees to be preserved on site shall be enclosed the entire area beneath the tree canopy and shall remain in place until all construction is completed. No parking, material storage, or construction activities shall be permitted within the protected area.
12. Before any permit (including but not limited to building, parking lot, change of use or alteration permit) is requested:
  - a. The construction plan must receive full construction approval from the Jefferson County Department of Public Works and Transportation (400 Fiscal Court Building) and the Metropolitan Sewer District (700 West Liberty).
  - b. A minor subdivision plat shall be recorded creating the lot lines and the access easement as shown on the development plan. A copy of the recorded instrument shall be submitted to the Division of Planning and Development Services; transmittal of approved plans to the office responsible for permit issuance will occur only after receipt of said instrument.
  - c. The property owner/developer must obtain approval of a detailed plan for screening (buffering/landscaping) as described in Article 12 and in accordance with the parkway policy prior to requesting a building permit. Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter.
13. If a building permit is not issued within two years of the date of approval of the plan, the property shall not be used in any manner unless a revised district development plan is approved or an extension is granted by the Planning Commission.
14. A certificate of occupancy must be received from the appropriate code enforcement office 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.

#### 4. Binding Elements as found on 09-70-98 RDDDP (pg. 2 of 2)

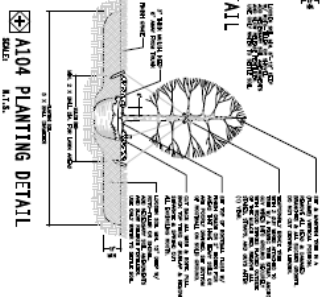
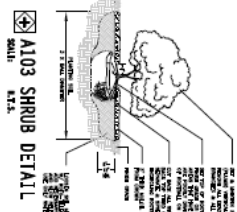
15. The property owner/developer shall provide copies of these binding elements to tenants, contractors and other parties engaged in development of this project, and shall inform them of the content of these binding elements. Further, the property owner/developer shall require contractors to similarly notify all of their sub-contractors whose duties relate to the binding elements. The property owner/developer shall ensure their compliance with the binding elements.
16. If work is required within an easement causing removal or damage of landscape materials, the property owner will be responsible for replacement of materials according to the approved landscape plan.
17. A soil erosion and sedimentation control plan shall be developed and implemented in accordance with the Metropolitan Sewer District and the USDA Natural Resources Conservation Service recommendations. Documentation of the MSD's approval of the plan shall be submitted to the Planning Commission prior to grading and construction activities.
18. For each walnut tree removed from the grove in the preservation area at the corner of Hurstbourne Parkway and the access easement, walnut trees must be planted in place of the removed trees similar to Article 12.D.9.C, with substitution as follows:
  - a. If a 6"-12" caliper walnut tree is removed, it must be replaced by two (2) new walnut trees of the required minimum size.
  - b. If a 12"-24" caliper walnut tree is removed, it must be replaced by three (3) new walnut trees of the required minimum size.
  - c. If a walnut tree of greater than 24" caliper is removed, it must be replaced by four (4) new walnut trees of the required minimum size.
19. Beargrass Creek shall be retained in its existing location; grading and vegetation removal along the stream banks and adjacent slopes shall be minimized. All work within the 25 foot buffer around the creek shall be in conformance with the approved Stream Corridor Restoration Plan. Any change to the stream Corridor Restoration Plan requires approval from MSD and DPDS.
20. The approved landscape plan/Article 12 compliance plan shall be in accordance with the approved Stream Corridor Restoration Plan, tree preservation plan, and tree planting plan for the Funk House.
21. Signs shall be of monument style and shall conform to the signage concept drawing entitled, "Sign Exhibit" dated "October 22, 1998."
22. The following uses shall not be permitted: Adult entertainment, automobile repair garages, bingo halls and parlors, taverns, bars, saloons, and lounges and restaurants identified by signs as a tavern, bar, saloon or similar designation.
23. The building material on Lot 4 shall be of brick or similar materials that are compatible with the historic house.
24. The ice house on Lot 5 shall not be located within the 100 year floodplain nor the no disturbance zone as shown on the Exhibit for Lot 2.
25. An enhanced tree planting plan shall be established around the Funk House, which meets approval of Planning Commission Staff and the Office of Historic Preservation. This plan shall be approved by the Office of Historic Preservation and Planning Commission Staff prior to the movement of the Funk House.
26. A plan must be submitted to Planning Staff showing all existing trees to be saved and all existing trees to be removed before any clearing and grading can be performed.
27. To ensure proper placement of Tree Preservation fencing before any clearing or grading occurs, Planning Staff must be consulted.
28. A rendering of the renovation of the historic Funk House, along with its façade materials, must be reviewed and approved by Historic Preservation before a building permit is requested.
29. The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the February 14, 2002, LD&T meeting.
30. Unless an extension is granted by the City of Jefferson town, the exterior renovation of the historic Funk House shall be completed on or before December 31, 2002.





A101 PARTIAL REVISED LANDSCAPE PLAN  
SCALE: 1/8\"/>

THE TOTAL AREA OF RELINQUISHMENT OF THE LANDSCAPE MATERIALS IS THE TOTAL AREA OF THE LANDSCAPE MATERIALS TO BE REMOVED. THE TOTAL AREA OF RELINQUISHMENT OF THE LANDSCAPE MATERIALS IS THE TOTAL AREA OF THE LANDSCAPE MATERIALS TO BE REMOVED.



RELATED CASE #: 18WAIVER1010, L-36-02, 9-70-98  
CASE #: 18LSCAPE1033

EXIST. LANDSCAPE MATERIALS			
SYMBOL	CODE	AMOUNT	REMARKS
○	1		
○	2		
○	3		
○	4		
○	5		

NEW LANDSCAPE MATERIALS			
SYMBOL	CODE	AMOUNT	REMARKS
○	1		
○	2		
○	3		
○	4		
○	5		

AJ # 2



**barkearnestor**  
ARCHITECTURE DESIGN  
PREPARED FOR:  
**BARBEQUE INTEGRATED, INC.**  
2009 W. 101ST STREET, SUITE 2000, AUBURN, FL 32508