

Land Development & Transportation Committee

Staff Report

February 12th, 2015



Case No:	14DEVPLAN1176
Request:	Revised Detailed District Development Plan; Land Development Code waivers and Binding Element Amendments
Project Name:	Discount Tire
Location:	12719 Shelbyville Rd
Owner:	Nicklies Revocable Living Trust
Applicant:	Halle Properties LLC
Representative:	RA Smith National
Jurisdiction:	Middletown
Council District:	19 – Julie Denton
Case Manager:	Christopher Brown, Planner II

REQUEST

- Waiver #1: Landscape waiver from Chapter 10.2.4.B of the 2004 Land Development Code to allow an overlap of the existing utility easements by more than 50% within the scenic corridor landscape buffer
- Waiver #2: Landscape waiver from Chapter 10.2.10 of the 2004 Land Development Code to allow the dumpster and enclosure to encroach into the required 10' VUA LBA along the rear access easement
- Waiver #3: Landscape waiver from Chapter 10.3.6 to allow the proposed building to encroach 10' at its closest point into the required 40' scenic corridor setback
- Amendment to Binding Elements
- Revised Detailed District Development

CASE SUMMARY/BACKGROUND/SITE CONTEXT

Zoning District: C-2, Commercial
Form District: SMC, Suburban Marketplace Corridor
Existing Use: Restaurant
Proposed Use: Retail Tire Store
Minimum Parking Spaces Required: 27
Maximum Spaces Allowed: 45
Parking Spaces Proposed: 31
Plan Certain Docket #: 9-47-86

The applicant is proposing to construct a 7,373 SF retail tire store with 3 service bays on an out lot of the existing larger commercial shopping center at the intersection of Aiken Road and Shelbyville Road within the City of Middletown. The site currently utilized for a restaurant with drive thru. The access to the site will remain to the rear of the property and reduced to one means of ingress/egress from the existing two. The building will shift to the east with the new construction. Pedestrian connectivity will be provided from Shelbyville Road with the installation of 5' sidewalks within the Shelbyville Road ROW and a direct connection from the sidewalk to the building entrance. All parking and plantings will be provided on the site. The applicant is requesting to waivers to allow utility easements to overlap the scenic corridor buffer along Shelbyville Road by more than 50% and allow a small portion of the building to encroach 10' into the scenic corridor buffer setback. A similar encroachment occurs with the existing structure to the west. Along the rear of the property, the proposed dumpster will encroach into the required 10' VUA LBA. A waiver has been requested for this encroachment. The waivers requested will not prevent the required plantings and screening from being provided on the site.

LAND USE/ZONING DISTRICT/FORM DISTRICT TABLE

	Land Use	Zoning	Form District
Subject Property			
Existing	Restaurant	C-2	SMC
Proposed	Retail Tire Store	C-2	SMC
Surrounding Properties			
North	Mixed Commercial	C-2	SMC
South	Office	C-2	SMC
East	Porter Paints	C-2	SMC
West	Restaurant	C-2	SMC

PREVIOUS CASES ON SITE

9-47-86: The Planning Commission approved a rezoning for the larger shopping center and related out lots from R-4, M-1 and M-2 to C-2 and from R-9 and C-1 to C-2 in 1986. The subject property containing the Burger King was approved by the Planning Commission in 1999.

INTERESTED PARTY COMMENTS

No interested party comments have been received by staff.

APPLICABLE PLANS AND POLICIES

Cornerstone 2020
2004 Land Development Code (Middletown)

**STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVERS
(Utility Easement Overlaps)**

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

STAFF: The waiver will not adversely affect adjacent property owners since the required planting and screening materials will be provided on site.

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

STAFF: Guideline 3, policy 9 calls for the protection of the character of residential areas, roadway corridors and public spaces from visual intrusions and mitigate when appropriate. Guideline 3, policies 21 and 22 calls for appropriate transitions between uses that are substantially different in scale and intensity or density, and to mitigate the impact caused when incompatible developments occur adjacent to one another through the use of landscaped buffer yards, vegetative berms and setback requirements to address issues such as outdoor lighting, lights from automobiles, illuminated signs, loud noise, odors, smoke, automobile exhaust or other noxious smells, dust and dirt, litter, junk, outdoor storage, and visual nuisances. Guideline 3, policy 24 states that parking, loading and delivery areas located adjacent to residential areas should be designed to minimize the impacts from noise, lights and other potential impacts, and that parking and circulation areas adjacent to streets should be screened or buffered. Guideline 13, policy 4 calls for ensuring appropriate landscape design standards for different

land uses within urbanized, suburban, and rural areas. The intent of landscape buffer areas is to create suitable transitions where varying forms of development adjoin, to minimize the negative impacts resulting from adjoining incompatible land uses, to decrease storm water runoff volumes and velocities associated with impervious surfaces, and to filter air borne and water borne pollutants. The overlap proposed will still allow buffering to be provided to meet the intent of the guidelines; therefore, the waiver will not violate specific guidelines of Cornerstone 2020.

- (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 required screening and planting materials will be provided along Shelbyville Road.

- (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 or would create an unnecessary hardship on the applicant by requiring shifting of the building and elimination of parking below the minimum required along Shelbyville Road to accommodate the expansion of the buffer area to eliminate the overlap.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVERS (Setback and Buffer Encroachments)

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

STAFF: The waivers will not adversely affect adjacent property owners since the required buffers will be maintained along the front and rear of the property with the required screening and planting materials.

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

STAFF Guideline 3, policy 9 of Cornerstone 2020 calls for the protection of the character of residential areas, roadway corridors and public spaces from visual intrusions and mitigate when appropriate. Guideline 3, policies 21 and 22 calls for appropriate transitions between uses that are substantially different in scale and intensity or density, and to mitigate the impact caused when incompatible developments occur adjacent to one another through the use of landscaped buffer yards, vegetative berms and setback requirements to address issues such as outdoor lighting, lights from automobiles, illuminated signs, loud noise, odors, smoke, automobile exhaust or other noxious smells, dust and dirt, litter, junk, outdoor storage, and visual nuisances. Guideline 3, policy 24 states that parking, loading and delivery areas located adjacent to residential areas should be designed to minimize the impacts from noise, lights and other potential impacts, and that parking and circulation areas adjacent to streets should be screened or buffered. Guideline 13, policy 4 calls for ensuring appropriate landscape design standards for different land uses within urbanized, suburban, and rural areas. 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 adjacent areas to the out lot are along the access road and the overall site will be providing the required planting materials while meeting the scenic corridor buffer requirements; therefore, the waiver will not violate specific guidelines of Cornerstone 2020.

- (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 to allow the needed building and accessory dumpster locations to allow proper maneuvering on the site. The building location will be similar to those to the east and west of the subject site.

- (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 or would create an unnecessary hardship on the applicant by requiring the elimination of additional maneuvering space to allow proper access to the building and dumpster areas by service vehicles.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR DEVELOPMENT PLAN and AMENDMENT TO BINDING ELEMENTS

- 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: There does not appear to be any environmental constraints or historic resources on the subject site. Tree canopy requirements of the Land Development Code will be provided on the subject site.

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

STAFF: Provisions for safe and efficient vehicular and pedestrian transportation within and around the development and the community has been provided, and Metro Public Works and the Kentucky Transportation Cabinet have approved the preliminary development plan.

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

STAFF: There are no open space requirements with the current proposal.

- 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: The Metropolitan Sewer District has approved the preliminary development plan and will ensure the provisions of adequate drainage facilities on the subject site in order to prevent drainage problems from occurring on the subject site or within the community.

- 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 site design and land uses are compatible with the existing and future development of the area. Appropriate landscape buffering and screening will be provided to screen adjacent

properties and roadways. Parking lots will meet all required setbacks and the building will follow a similar setback as existing structures to the east and west of the subject site.

- f. Conformance of the development plan with the Comprehensive Plan and Land Development Code. Revised plan certain development plans shall be evaluated for conformance with the non-residential and mixed-use intent of the form districts and comprehensive plan.

STAFF: The development plan conforms to applicable guidelines and policies of the Comprehensive Plan and to requirements of the Land Development Code with the exception of the requested waivers. The requested waivers follow the intent of the Comprehensive Plan and the 2004 Land Development Code.

TECHNICAL REVIEW

- Actions require final approval by the City of Middletown.

STAFF CONCLUSIONS

The standard of review for the requested landscape waivers has been met. Based upon the information in the staff report, the testimony and evidence provided at the public hearing, the Land Development and Transportation Committee must determine if the proposal meets the standards for granting landscape waivers and a revised detailed district development plan as established in the Land Development Code.

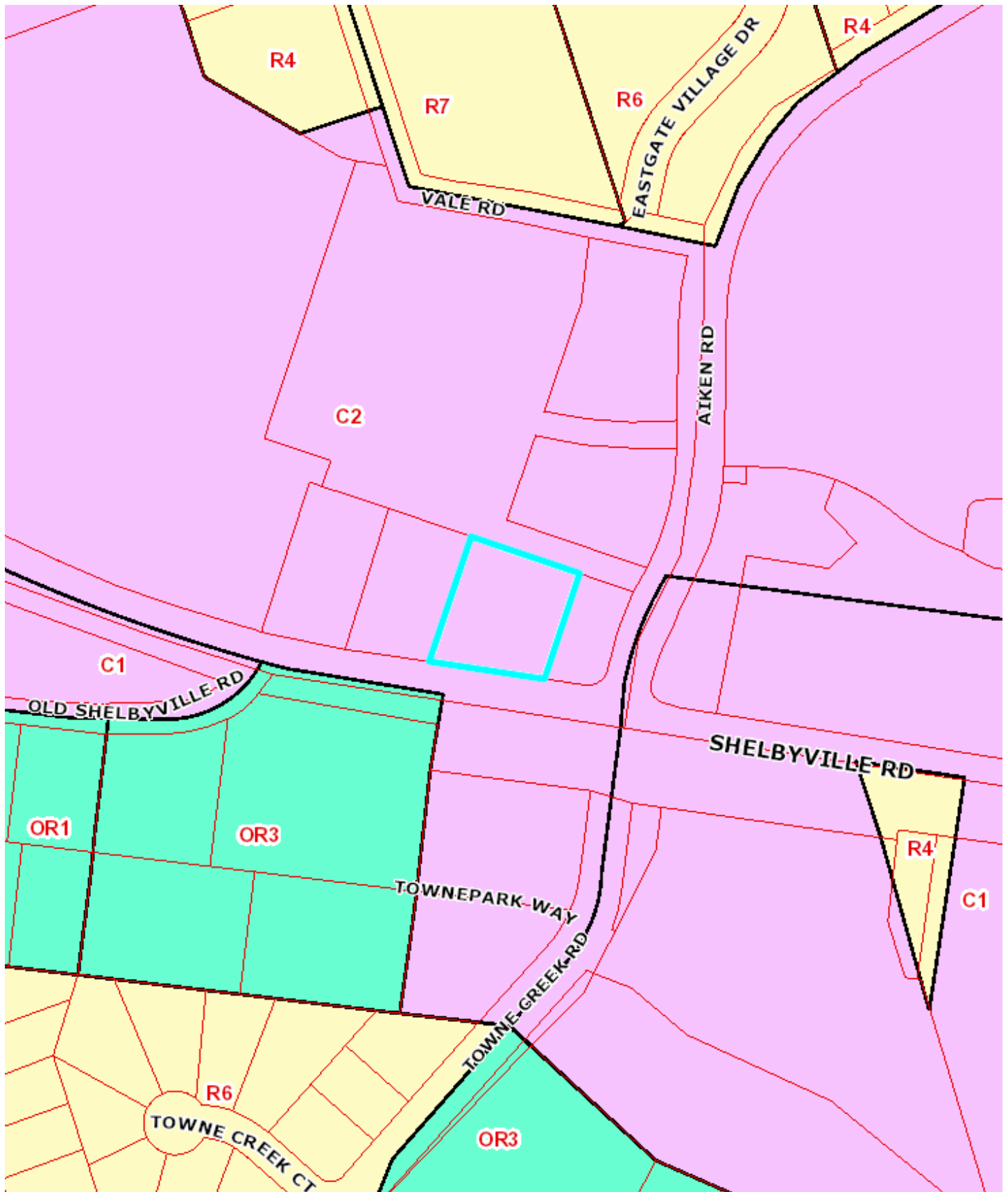
NOTIFICATION

Date	Purpose of Notice	Recipients
02/02/15	Hearing before LD&T	1 st tier adjoining property owners Speakers at Planning Commission public hearing Registered Neighborhood Groups

ATTACHMENTS

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

1. Zoning Map



2. Aerial Photograph



3. Existing 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 Middletown.
2. The development shall not exceed 2,820 square feet for the restaurant. Additionally, all final architectural elevations and renderings, and exterior lighting shall be approved by the City of Middletown prior to installation. All exterior lighting to be subdued.
3. Access to the out lots shown on the approved district development plan shall be restricted to internal access roads. There shall be no direct access to Shelbyville Road or Aiken road from any outlet.
4. Before a building permit is requested:
 - a. The development 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. The property owner/developer must obtain approval from the Planning Commission and the City of Middletown of a detailed plan for screening (buffering/landscaping) as described in Article 12 prior to requesting a building permit. Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter.
5. The only permitted freestanding sign shall be located as shown on the approved development plan sign plan. No portion of the sign, including the leading edge of the sign frame, shall be closer than 7 feet to front property line. The sign shall not exceed 30 square feet in area per side and 15 feet in height. No sign shall have more than two sides.
6. No outdoor advertising signs (billboards), small free-standing (temporary) signs, pennants or banners shall be permitted on the site.
7. There shall be no outdoor storage on the site.
8. Structures on the outlots shall not be more than one story and the architectural appearance shall conform to the remainder of the development.
9. All areas containing commercial trash receptacles including dumpsters to be individually enclosed and screened from public view.
10. If a building permit is not issued within one year 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.
11. 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.
12. The property owner/developer shall provide copies of these binding elements to 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.

13. The above binding elements may be amended as provided for in the Zoning District Regulations, and the Ordinances of the City of Middletown.

4. Proposed 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 Middletown.~~ **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 and to the City of Middletown for review and approval; any changes/additions/alterations not so referred shall not be valid.**
2. The development shall not exceed ~~2,820~~ **7,373** square feet for the restaurant. Additionally, all final architectural elevations and renderings, and exterior lighting shall be approved by the City of Middletown prior to installation. All exterior lighting to be subdued.
4. Before a building permit is requested:
a. ~~The development 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).~~ **The development plan must receive full construction approval from Louisville Metro Department of Codes and Regulations Construction Permits and Transportation Planning Review and the Metropolitan Sewer District.**
b. The property owner/developer must obtain approval from the Planning Commission and the City of Middletown of a detailed plan for screening (buffering/landscaping) as described in ~~Article 12~~ **Chapter 10** prior to requesting a building permit. Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter.
5. ~~The only permitted freestanding sign shall be located as shown on the approved development plan sign plan. No portion of the sign, including the leading edge of the sign frame, shall be closer than 7 feet to front property line. The sign shall not exceed 30 square feet in area per side and 15 feet in height. No sign shall have more than two sides.~~ **Signs shall be in accordance with Chapter 8.**
8. Structures on the out lots shall not be more than one story. ~~and the architectural appearance shall conform to the remainder of the development.~~
10. If a building permit is not issued within ~~one~~ **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.
12. ~~The property owner/developer shall provide copies of these binding elements to 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.~~ **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.

13. ~~The above binding elements may be amended as provided for in the Zoning District Regulations, and the Ordinances of the City of Middletown.~~