

Board of Zoning Adjustment Staff Report

May 19, 2014



Case No:	14Variance1027
Project Name:	Retail Development
Location:	4942 US Highway 42
Owner(s):	Mark Blieden
Applicant:	same as above
Representative:	Matt Wolff, Sabak, Wilson & Lingo, Inc.
Project Area/Size:	1.02Ac.
Jurisdiction:	City of Northfield
Council District:	7 - Ken Fleming
Case Manager:	Sherie' Long, Landscape Architect

REQUEST

- Variance #1: A variance from the Land Development Code (LDC), Section 5.2.4.C.3 (b), to allow a proposed infill structure to exceed the setback/build-to line range of the nearest two constructed properties.
- Waiver #1: A waiver of LDC section 5.5.1A.3 (a) to allow parking in front of a building within the Town Center Form District.
- Waiver #2: A waiver of LDC 10.3.5A.1 to allow parking lot pavement to encroach 255sf into the required 30' Parkway Buffer and setback.
- Waiver #3: A waiver of LDC 10.3.5A.1 to replace the required 3' continuous berm with a 3' masonry wall along the property frontage within the 30' Parkway Buffer.

Variance #1

Location	Requirement	Request	Variance
Front setback/build-to line (Northern perimeter)	80'	107'	27'

CASE SUMMARY/BACKGROUND/SITE CONTEXT

The applicant is proposing to demolish two existing buildings in Holiday Manor, a Town Center Form District development in the City of Northfield located between US 42 and Brownsboro Road, one vacant and the other currently occupied by a coffee shop and jeweler. The proposal is to construct one building which will include a 9,278sf retail space, a 1,968sf coffee shop, a 264sf outdoor patio, and a drive-thru. Also a new curb cut is proposed to align with Glenview Avenue located across US Highway 42. Due to the existing utility easement locations, the lot configuration, and the new entrance into the development off of US 42, the proposed building location exceeds the allowed setback for infill development. Therefore the applicant is requesting a variance of 27' to allow the new building to exceed the setback of the adjacent two properties. Town Center Form District does not allow parking in front of the building therefore the applicant is requesting a waiver to allow the proposed parking in front of the proposed building. US Highway 42 is a designed parkway which requires a 30' Parkway Buffer to be located along the entire frontage of the site. A small portion, approximately 255sf, of the proposed parking lot is encroaching into the parkway buffer area at a maximum distance of 15'. A minimum continuous 3' earthen berm is required within the parkway buffer where pavement or parking is located adjacent to the street. Instead of providing the required 3' berm the applicant is requesting to replace the berm with a 3' masonry wall which will extend from the new entrance

off of US 42 along the entire frontage of the site providing the necessary screening for the proposed parking lot. Parkway, interior, and tree canopy plantings will be provided as required.

LAND USE/ZONING DISTRICT/FORM DISTRICT TABLE

The site is zoned C-1 in the Town Center Form District (TC). North across US Highway 42 there are residential properties zoned R-4 in the Neighborhood Form District and to the east, west, and south there are commercial property zoned C-1, and C-2 in the Town Center Form District.

	Land Use	Zoning	Form District
Subject Property			
Existing	Coffee Shop and Vacant Commercial Building	C-1	TC
Proposed	Coffee Shop and Retail Shop	C-1	TC
Surrounding Properties			
North	Single-family residential across US Highway 42	R-4	N
South	Commercial Shops	C-1	TC
East	Bank and Commercial Shops	C-1, C-2	TC
West	Office and Commercial Shops	C-1	TC

PREVIOUS CASES ON SITE

- A proposed Subdivision, Case 18500, which was withdrawn.

INTERESTED PARTY COMMENTS

The Mayor of Northfield contacted the planning director to ensure the City of Northfield is included in the electronic notification system. However, the City of Northfield did receive notice of this hearing by US Mail but not by electronic email. The Mayor did not communicate any issues concerning the applicant's requests.

Councilmen Downard also inquired about the variance request, but did not communicate any issues with the proposal.

APPLICABLE PLANS AND POLICIES

Cornerstone 2020
Land Development Code

STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCES

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

STAFF: The variance will not adversely affect the public health, safety or welfare sense the proposed location of the structure will be setback from the street similar to the structure to the west; the new entrance to the site will be aligned with Glenview Avenue which will create a safer access and visibility into and through the site; plus the circulation into and through the adjacent shopping center will be improved greatly.

- (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 because the applicant's proposal is compatible with the surrounding development; the existing structures in

the development have varying setbacks from the street, and there is parking located in front of the buildings. Plus, the additional green space and plantings along with the proposed 3' masonry wall provided in the 30' Parkway Buffer will mitigate any negative impact.

- (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 because the layout of the development provides safe pedestrian and vehicular access to US Highway 42 and the surrounding shopping center. The parkway buffer planting and the 3' masonry wall will mitigate any negative impact.

- (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 because the applicant is providing: the required 30' Parkway Buffer with tree and shrub planting; a 3' masonry wall (screening) along the entire frontage separating the parking from the street; additional interior green space with tree plantings; and a pedestrian connection from the structure to the street sidewalk.

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. This site has limited area of development due to the existing utilities located along the north, east, and west property lines. The area is even more limited because of the shape and configuration of the lot which narrows at the street frontage. Also the existing internal circulation pattern and access is also restrictive and limiting as to the location and size of any proposed structure.

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 create an unnecessary hardship on the applicant because the applicant's would lose 7 to 9 parking spaces.

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 the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought. The utility locations and site configuration were existing prior to the applicant's proposal.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVERS (Waiver #1: Parking located in front of the structure)

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

STAFF: The waivers will not adversely affect adjacent property owners because the proposed location of the parking will be similar to the existing parking on the adjacent property to the west and other locations within the development; the alignment of the new entrance with Glenview Avenue

greatly improves the internal site circulation. Views will be screened by the 3' masonry wall and the parkway plantings which will lessen the visual impact of the residences across US 42 and the surrounding commercial properties.

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

STAFF: The proposal meets guideline 3.9 since the 3' masonry wall and additional green space in the parkway buffer will protect the character of the area and lessen the visual impact of the parking adjacent to the street.

- (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 is the minimum necessary to afford relief to the applicant; and allows the majority of the proposed parking to be located next to the front door of both the retail and coffee shop.

- (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 is providing a net benefit by providing both the 30' Parkway Buffer planted with trees and shrubs, and the 3' masonry screen wall which reduces the impact of the parking being located between the proposed building and the street.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVERS (Waiver #2: Encroachment of the Parkway Buffer)

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

STAFF: The waivers will not adversely affect adjacent property owners; and the encroachment is only into a small portion, 255sf, of the total 30' Parkway Buffer. The required plantings will be provided along with a mitigation area of an additional 262sf of green space to compensate for the encroachment. Plus the applicant is providing a 3' masonry wall to screen the view of the parking from the residences across US Highway 42 and the street.

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

STAFF: The proposal meets guideline 3.1 and 3.9. The development is compatible with the surrounding development; and the required 30' Parkway Buffer and plantings along with the additional 3' masonry screen wall reduces the visual impact of the parking from the street and the residences across US Highway 42.

- (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 is the minimum necessary to afford relief to the applicant. Only a small portion, 255sf, of the 30' Parkway Buffer is being encroached. Plus additional green space, 262sf, is being provided to mitigate the encroachment.

- (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 is providing a 'net benefit' by providing the 30' Parkway Buffer tree and shrub plantings along with a 3' masonry screen wall. Plus the applicant is providing an additional 262sf of green space to mitigate the small encroachment.

**STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVERS
(Waiver #3: 3' masonry wall in place of required berm)**

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

STAFF: The waivers will not adversely affect adjacent property owners; and the 3' masonry wall will screen the proposed parking from street view and the residences across US 42. The 3' masonry wall provides the architect along the street edge which reflects the intent of the Town Center concept of buildings fronting the street. Plus, there are currently no other berms along this portion of the existing shopping center, therefore no visible impact will occur by not providing a berm.

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

STAFF: Both the LDC and the Guidelines 3.9 are being met since the required 30' Parkway Buffer and plantings are being provided along the street frontage. Plus, the 3' berm requirement will be fulfilled by the addition of the 3' masonry screen wall.

(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 is the minimum necessary to afford relief to the applicant. A continuous berm does not reflect the existing character of the current development. Allowing the 3' masonry wall instead of providing a berm will allow the Town Center concept to be reflected along the street frontage while still screening the parking from the street view and the residences across US 42. The proposed wall will be an improvement over a berm.

(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 is incorporating design measures that exceed the minimum by providing a 3' masonry screen wall along the entire frontage in addition to the required 30' Parkway Buffer plantings. The wall will provide an architectural element which reflects the character of the proposed building, plus the wall will reflect the Town Center concept of buildings fronting the street therefore the proposed wall is an improvement over the required 3' berm.

TECHNICAL REVIEW

No outstanding technical review items.

STAFF CONCLUSIONS

The standard of review and staff analysis has been met for the requested variance and waivers. Sufficient buffering and screening: will be provided by the parkway buffer planting and additional 3' masonry screen wall;

will reduce the impact of the proposed parking lot in front of the building; will reduce the impact of the parking encroaching into the parkway buffer; and will be an improvement over the required berm. Plus it will reduce the impact of the additional setback of the building from the street. The proposed screening will create a look and feel along the front property line and within the interior of the site which will enhance the view from the adjacent residential and commercial properties. Based upon the information in the staff report, the testimony and evidence provided at the public hearing, the Board of Zoning Adjustment must determine if the proposal meets the standards for granting Waivers and a Variance as established in the Land Development Code.

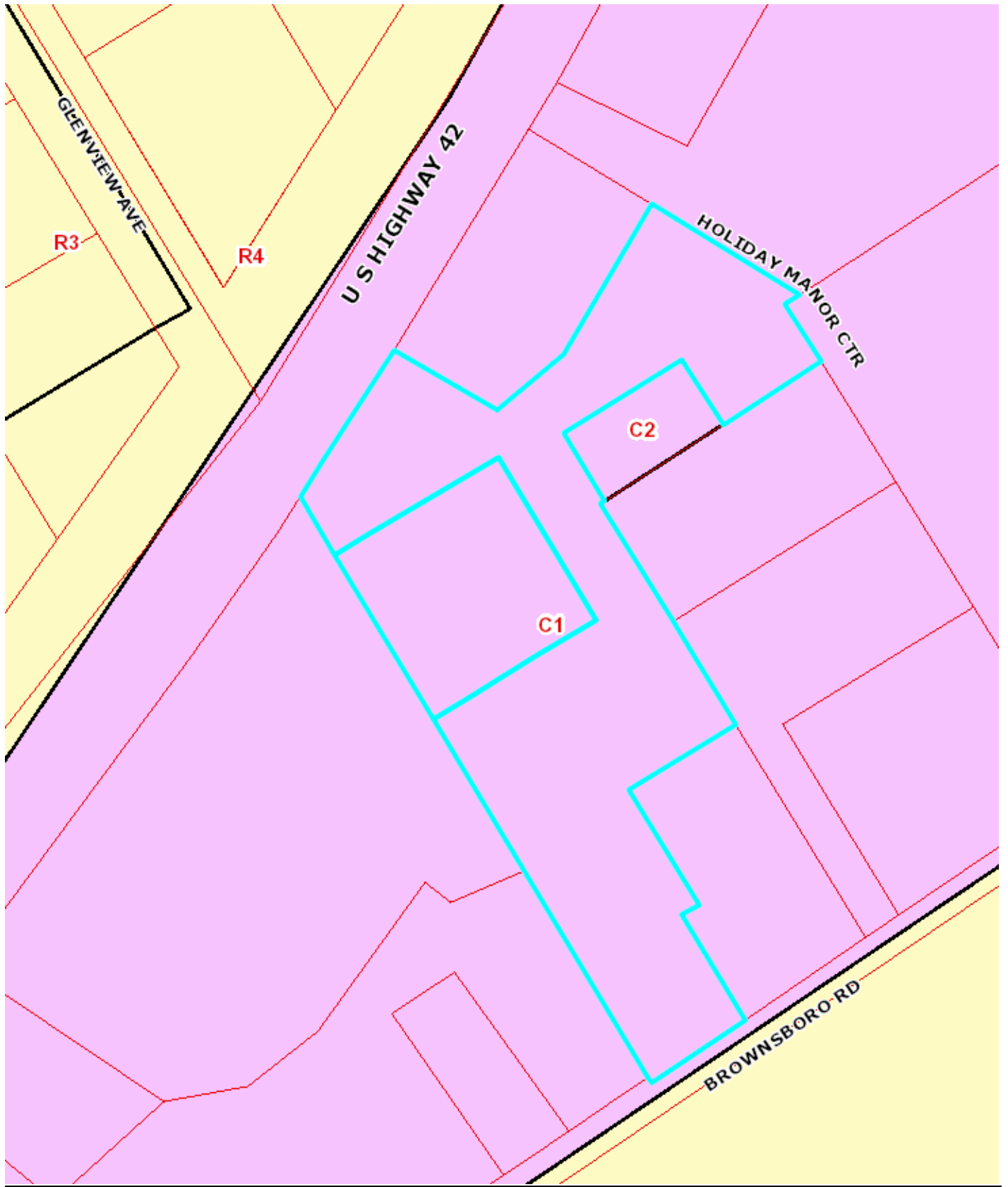
NOTIFICATION

Date	Purpose of Notice	Recipients
5/19/2014	BOZA Hearing	1 st tier adjoining property owners Neighborhood notification recipients
5/8/2014	Sign Posting	Subject property

ATTACHMENTS

1. Zoning Map
2. Aerial Photograph
3. Site Plan
4. Elevations
5. Applicant's Justification Statement

1. **Zoning Map**

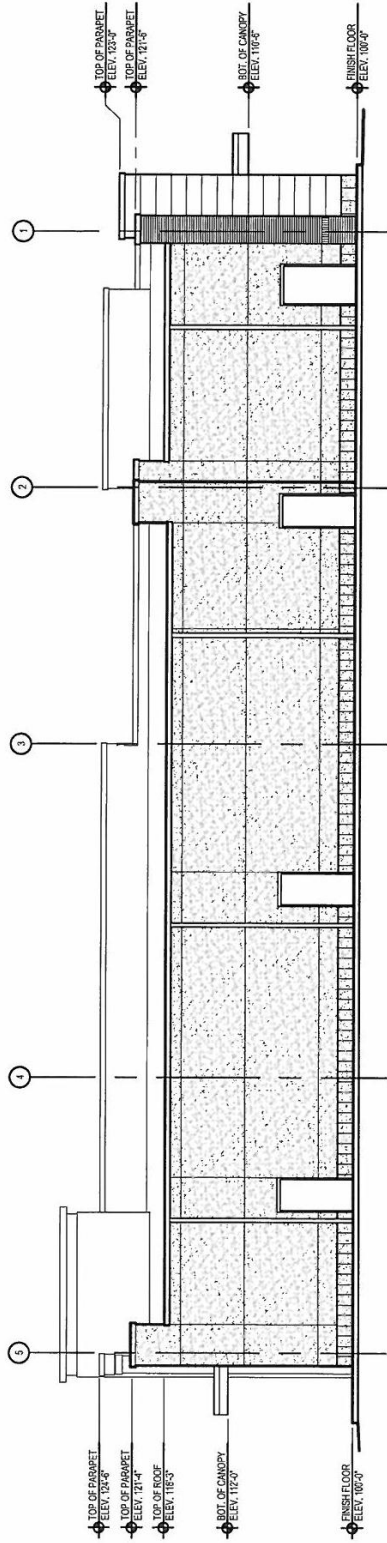


2. Aerial Photo

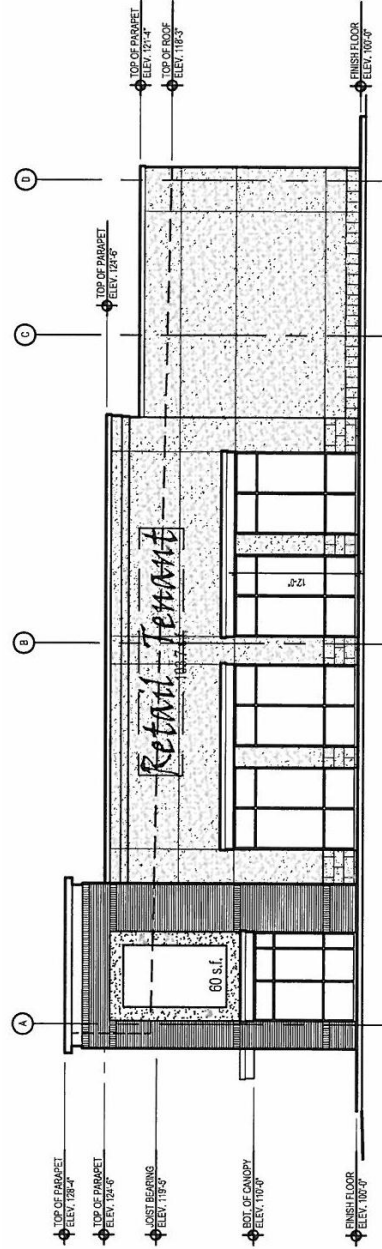


4. Elevations

T|B|D|+



REAR ELEVATION



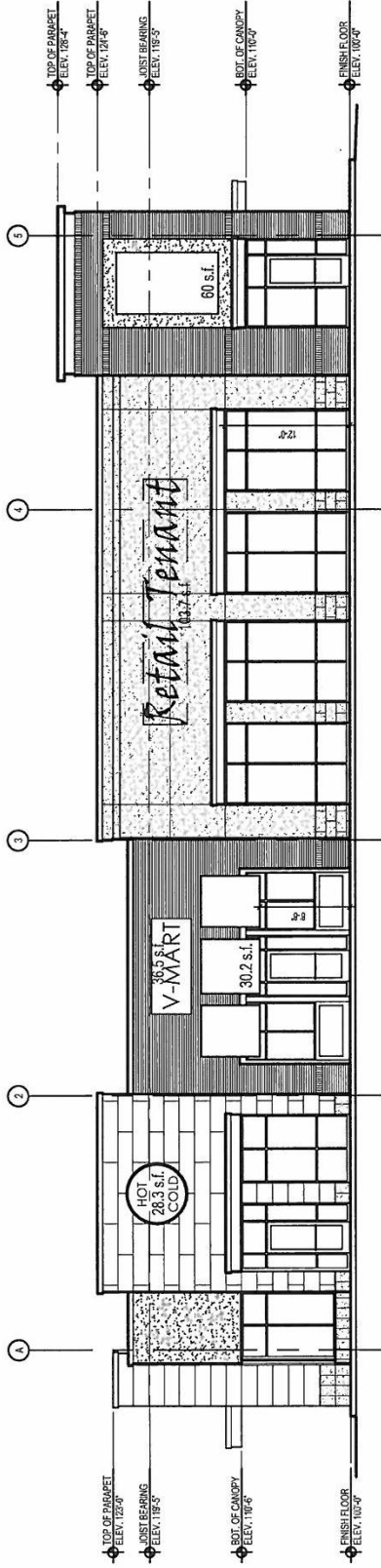
RIGHT SIDE ELEVATION

FACADE AREA - 2,082 sf ALLOWED SIGN AREA - 229.1 sf

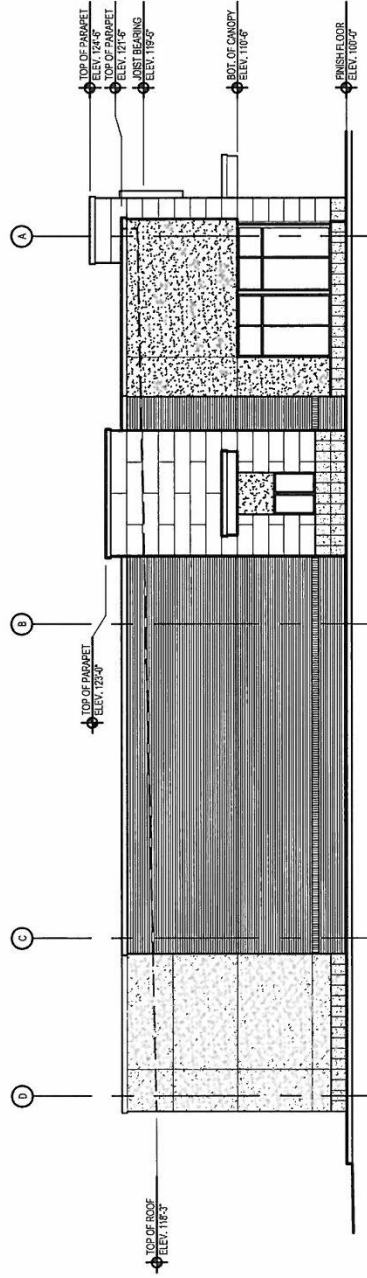
Holiday Manor
U.S. 42 - Strip Center

Kaden Development
SCALE: 1/8" = 1'-0" & March 20, 2014

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FRONT ELEVATION - BROWNSBORO ROAD
 FACADE AREA - 2,725 sf ALLOWED SIGN AREA - 261.25 sf



DRIVE THRU ELEVATION

Holiday Manor
 U.S. 42 - Strip Center
 Kaden Development
 SCALE: 1/16" = 1'-0" & March 20, 2014

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5. **Applicant's Justification Statement**



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VARIANCE JUSTIFICATION

Holiday Manor – Retail Shops
APPLICANT: HOLIDAY MANOR ASSOCIATES, LTD
LDC CHAPTER 5.2.4.C.3.B

March 26, 2014
Revised: April 28, 2014
Case # 14VARIANCE1027

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The Holiday Manor shopping center was built in the early 1970's and is located between US HWY 42 and Brownsboro Road, just east of Interstate 264. Holiday Manor falls within the North Field city limits and is a vibrant suburban retail center for this area of eastern Jefferson County. The majority of the adjacent properties have parking lots situated along the right of way with the buildings set back which conveys the typical suburban retail corridor. (See Exhibit 'A' below)

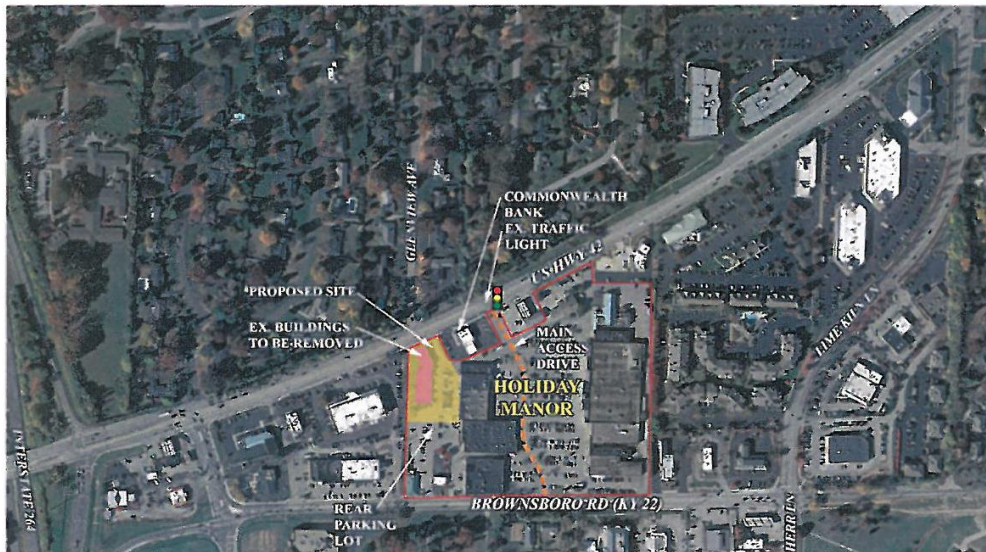


Exhibit 'A' – Aerial photograph of Holiday Manor fall 2013.

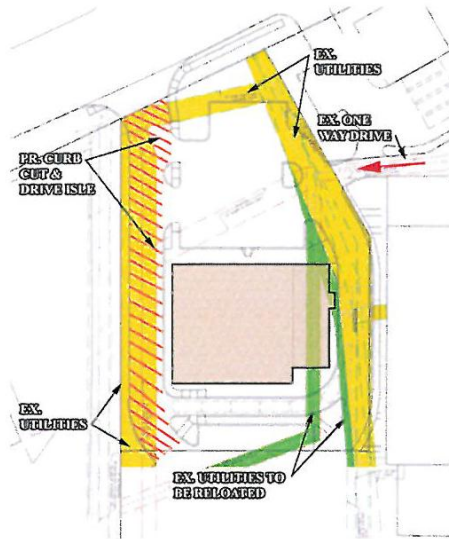
The Holiday Manor shopping center's primary access is via a traffic light at US HWY 42 and runs through the shopping center to Brownsboro Road. There are two other secondary access points off of US HWY 42, one at each the east and west ends of the property. The majority of the retail buildings front on the primary access drive running through the shopping center. There are three out parcels along US HWY 42 that are not owned by the applicant.

The subject property is located in the western part of the property in the rear parking lot to the west of the main retail buildings. These two buildings are oriented toward the back of the retail center and do not provide adequate visibility to US HWY 42, therefore limiting the ability to lease their space. This part of

PATRICK R. DOMINIK, Landscape Architect • DAVID J. SEDLAR, Civil Engineer • DENNIS L. KRAUS, Land Surveyor
ERIC W. PENLAND, Civil Engineer • JOSEPH S. MARSHALL, Civil Engineer

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the property is heavily constrained by its narrowing lot dimensions as it approaches US HWY 42, an existing curb cut & drive isle, an existing one way vehicle access drive from the core shopping center to the east and existing utilities along the north, east and west property lines. (See Exhibit 'B' below)



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Exhibit 'B' – Existing site constraints and proposed retail shops overlay.

The intent of the proposed retail shops is to enhance the western approach to Holiday Manor, provide future retail shop owners visibility onto US HWY 42 that currently does not exist within the current building pattern, improve vehicular traffic flow & visibility at the western access to the shopping center, provide retail space with adequate parking near the front door & drive-thru access, and improve a dated portion of an already successful retail shopping center. (See Exhibit 'C' below)

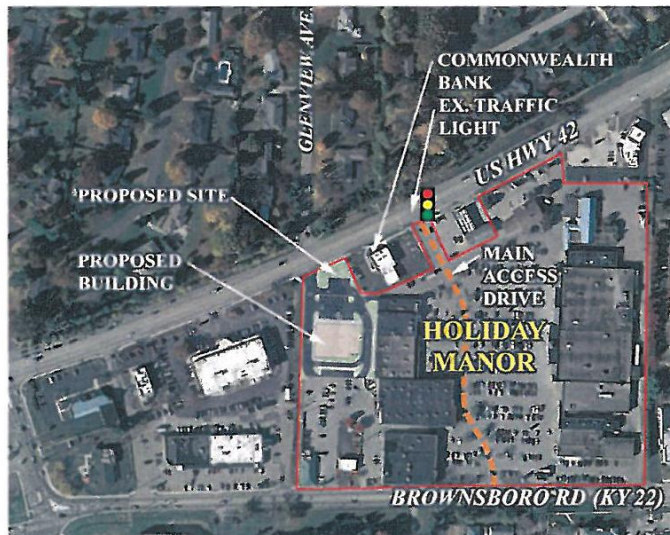
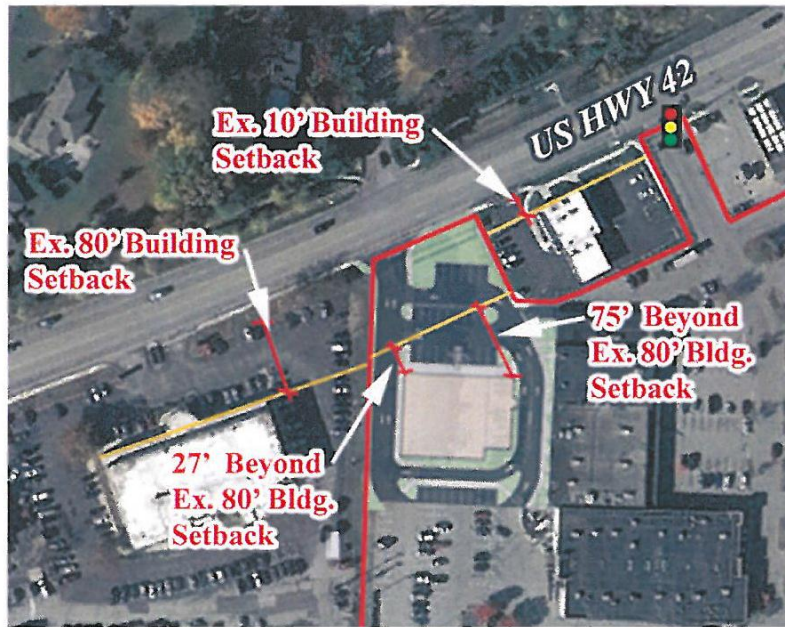


Exhibit 'C' – Aerial photograph and proposed retail shops overlay.

Under the current Metropolitan Land Development Code this area is in a Town Center Form District and US HWY 42 has been designated a Parkway. The Town Center Form District does not allow parking in front of the building and the maximum building setback within an Infill Context is based on the range of setbacks of the nearest two constructed properties. The Parkway requires a 30' landscape buffer and setback along the right of way. The applicant is requesting a variance from LDC 5.2.4.C.3.B to allow the proposed retail building to exceed the maximum setback of the nearest two properties by 27'-75'. (See Exhibit 'D' below) As mentioned above, the properties constraints coupled with the awkwardly angled property line cause the request for such distances from the maximum allowable setback. Per Comprehensive Plan – Guideline 3.1 the proposed plan is compatible with the surrounding development and per Guideline 6.3 is a re-investment in an outdated portion of an existing vibrant retail center. The applicant's proposal provides the 30' Parkway Buffer that includes a 3' high masonry wall for the parking lot per Guideline 3.9 & LDC 10.2. The applicant proposes to install Type C trees at a rate of 1 tree per 15 linear feet of frontage & shrub material in the Parkway Buffer due to an existing overhead power line running the length of the US HWY 42 frontage. In addition, the applicant proposes less vehicle use area than what currently exists and exceeds the requirements for interior landscape areas.



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Exhibit 'D' – Proposed retail shops setback exhibit.

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In order to meet the intent of the design for this retail development, the applicant is requesting the following variance:

1. Explain how the variance:

a) Will not adversely affect the public health, safety or welfare.

This variance is internal to the development and there are no through roads so it will have no bearing on adjacent property owners. Allowing the building to exceed the maximum setback is similar to the building setback on the adjacent property to the west and will improve visibility and traffic flow into the shopping center.

b) Will not alter the essential character of the general vicinity.

No. As stated above, all the adjacent buildings along this frontage of US HWY 42 have variable setbacks and parking in the front of the building. The applicant's proposal is compatible with the established pattern along this side of US HWY 42 and is mitigating the additional setback & parking lot in front of the building with a 30' Parkway Buffer that includes a 3' high masonry wall to protect the visual character of the adjacent roadway.

c) Will not cause a hazard or a nuisance to the public.

This variance will not cause a hazard or nuisance to the public. The intent of the regulations will still be met and a means for safe pedestrian and vehicular circulation is provided.

d) Will not allow an unreasonable circumvention of the requirements of the zoning regulations.

No. The applicant is mitigating this variance by:

- Providing a 3' high masonry wall along the US HWY 42 frontage.
- Providing a 30' Parkway Buffer and proposes to install Type C trees at a rate of 1 tree per 15 linear feet of frontage & shrub material in the Parkway Buffer due to an existing overhead power line running the length of the US HWY 42 frontage.
- Providing more interior landscape area than what is required.
- Providing a safe pedestrian connection from the public sidewalk to the principal structures.

Therefore, this variance will not allow an unreasonable circumvention of the requirements of the zoning regulations.

2. Additional consideration.

a) Explain how the variance arises from special circumstances, which do not generally apply to land in the general vicinity; (Please specify/identify)

This is a previously developed site that is still in use but the majority of the leasable space is vacant due to the lack of visibility from US HWY 42 and the outdated buildings. The site constraints are unique to land along this portion of US HWY 42. This portion of the property is heavily constrained by its narrowing lot dimensions as it approaches US HWY 42, an existing curb cut & drive isle, an existing one way vehicle access drive from the core shopping center to the east and existing utilities along the north, east and west property lines. In order to provide a similar square footage that exists in the current buildings, the new building must setback from the maximum allowable setback of 15'.

b) Explain how 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.

The strict application of the regulation would:

- Cause the applicant to lose approximately two thirds of their leasable space and existing tenants and possible future tenants in order to provide the 15' maximum building setback.
- Cause the applicant to lose 23 prime parking spaces near the front door of their retail spaces. On-street parking does not exist along US HWY 42.
- Cause the applicant to redesign the site so that it is no longer consistent with the surrounding retail uses.

Any of these would be an unnecessary hardship on the applicant.

c) Are the circumstances the result of actions of the applicant taken subsequent to the adoption of the regulation which relief is sought.

This circumstance is due to it being a previously developed site which is heavily constrained by its narrowing lot dimensions as it approaches US HWY 42, an existing curb cut & drive isle, an existing one way vehicle access drive from the core shopping center to the east and existing utilities along the north, east and west property lines.. These circumstances are in no way the result of actions taken by the applicant.

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WAIVER JUSTIFICATIONS
Holiday Manor – Retail Shops
 APPLICANT: HOLIDAY MANOR ASSOCIATES, LTD

March 26, 2014
Revised: April 28, 2014
 Case # 14VARIANCE1027

The Holiday Manor shopping center was built in the early 1970's and is located between US HWY 42 and Brownsboro Road, just east of Interstate 264. Holiday Manor falls within the North Field city limits and is a vibrant suburban retail center for this area of eastern Jefferson County. The majority of the adjacent properties have parking lots situated along the right of way with the buildings set back which conveys the typical suburban retail corridor. (See Exhibit 'A' below)

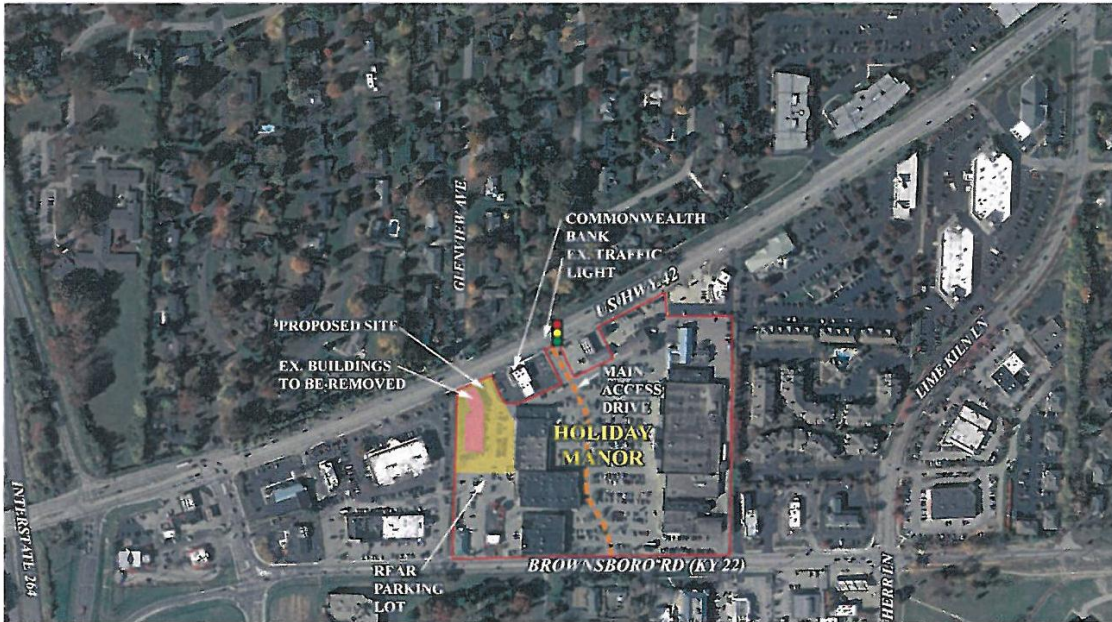


Exhibit 'A' – Aerial photograph of Holiday Manor fall 2013.

The Holiday Manor shopping center's primary access is via a traffic light at US HWY 42 and runs through the shopping center to Brownsboro Road. There are two other secondary access points off of US HWY 42, one at each the east and west ends of the property. The majority of the retail buildings front on the primary access drive running through the shopping center. There are three out parcels along US HWY 42 that are not owned by the applicant.

The subject property is located in the western part of the property in the rear parking lot to the west of the main retail buildings. These two buildings are oriented toward the back of the retail center and do not

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 ERIC W. PENLAND, Civil Engineer • JOSEPH S. MARSHALL, Civil Engineer

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provide adequate visibility to US HWY 42, therefore limiting the ability to lease their space. This part of the property is heavily constrained by its narrowing lot dimensions as it approaches US HWY 42, an existing curb cut & drive isle, an existing one way vehicle access drive from the core shopping center to the east and existing utilities along the north, east and west property lines.

The intent of the proposed retail shops is to enhance the western approach to Holiday Manor, provide future retail shop owners visibility onto US HWY 42 that currently does not exist within the current building pattern, improve vehicular traffic flow & visibility at the western access to the shopping center, provide retail space with adequate parking near the front door & drive-thru access, and improve a dated portion of an already successful retail shopping center. (See Exhibit 'B' below)



Exhibit 'B' – Aerial photograph and proposed retail shops overlay.

Under the current Metropolitan Land Development Code this area is in a Town Center Form District and US HWY 42 has been designated a Parkway. The Town Center Form District does not allow parking in front of the building and the Parkway requires a 30' landscape buffer and setback along the right of way. Per *Comprehensive Plan – Guideline 3.1* the proposed plan is compatible with the surrounding development and per *Guideline 6.3* is a re-investment in an outdated portion of an existing vibrant retail center. The applicant's proposal encroaches into the required 30' Parkway Buffer but the encroachment is offset with additional buffer area that equals that of the encroachment and includes a 3' masonry wall for the parking lot per *Guideline 3.9* & LDC 10.2. (See Exhibit 'C' below) The applicant proposes to install Type C trees at a rate of 1 tree per 15 linear feet of frontage & shrub material in the 30' parkway buffer due to an existing overhead power line running the length of the US HWY 42 frontage.

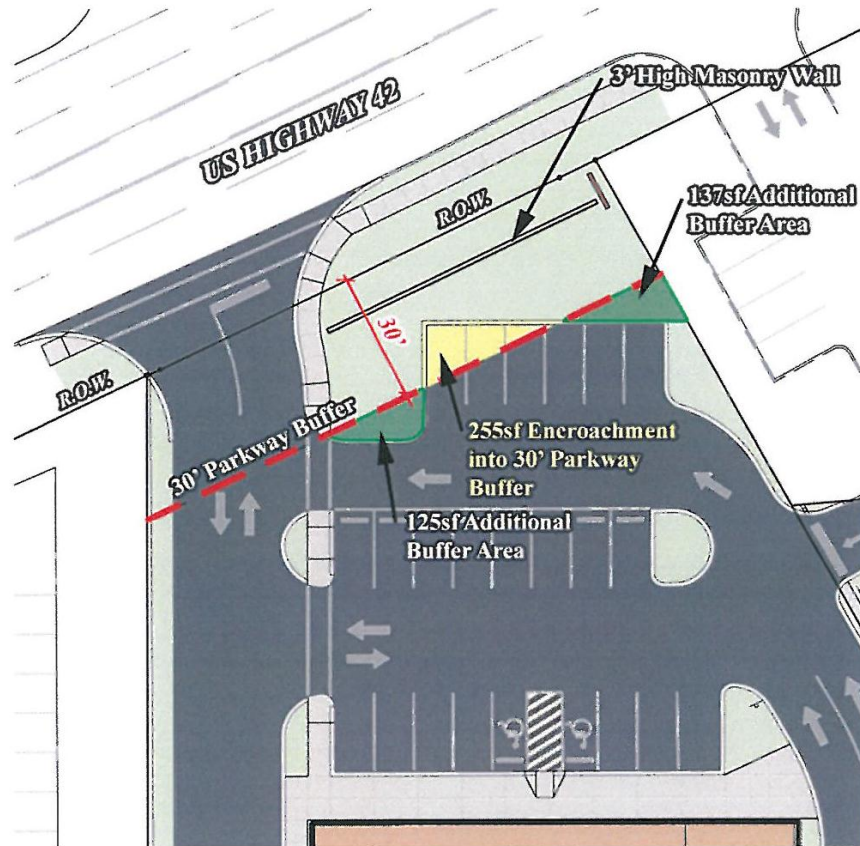


Exhibit 'C' – Parkway Buffer Encroachment exhibit.

In order to meet the intent of the design for this retail development, the applicant is requesting the following waivers:

A. Waiver of LDC 5.5.1A.3.a. to allow parking in front of the building within the Town Center Form District.

1. Will the waiver adversely affect adjacent property owners?

No. This waiver is internal to the development and there are no through-roads so it will have no bearing on adjacent property owners. Allowing the parking lot in the front is similar to the property to the west which has its parking in the front of the building. This will also open up views to the new Commonwealth Bank to the east. The moving of the existing curb cut to the west will better align with Glenview Ave across US HWY 42 which will improve vehicular traffic flow and visibility.

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2. Will the waiver violate the Comprehensive Plan?

No. Per Guideline 6.3 The proposed plan is a re-investment in an outdated portion of an existing vibrant retail center. The new building orientation will provide the visibility (which does not exist today) needed to sustain the retail shops vitality. Per Guideline 3.9 A 3' high masonry wall and 30' Parkway Buffer will protect the character and visual impacts of the existing roadway corridor from the proposed parking lot.

3. Is extent of waiver of the regulation the minimum necessary to afford relief to the applicant?

Yes. This waiver allows the applicant to improve an outdated portion of the retail center with a new retail building that is current with today's market requirements for quality retail space and provides adequate parking near the front door.

4. Has either (a) the applicant 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 would (b) the strict application of the provisions of the regulation deprive the applicant of the reasonable use of land or would create an unnecessary hardship on the applicant?

In order to facilitate a new building that is similar in size to the existing two buildings, provide visibility onto US HWY 42, maintain an important access point to US HWY 42 and an internal one way access drive to the main shopping center, and avoid costly utility relocations, the new retail shops need to set back from the road and provide parking in front of the building. To mitigate for the parking in the front of the building the applicant is proposing to install a 3' high masonry wall and 30' Parkway Buffer to screen the parking lot from the adjacent roadway. The strict application of this regulation would be detrimental to the intended use of this property and would result in a significant loss of retail square footage and tenants.

B. Waiver of LDC 10.3.5.A.1. to allow a parking lot to encroach 255sf into the required 30' Parkway Buffer and Setback.

1. Will the waiver adversely affect adjacent property owners?

No. This waiver is internal to the development and there are no through-roads so it will have no bearing on adjacent property owners. Allowing the parking lot to encroach into the parkway buffer will be consistent with adjacent properties to the east and west. To mitigate for the parking lot encroaching into the Parkway Buffer by 255sf the applicant's proposal offsets the encroachment with additional buffer area equaling 262sf and includes a 3' high masonry wall to screen the parking lot from the adjacent roadway. (See Exhibit 'C' above)

2. Will the waiver violate the Comprehensive Plan?

No. Per Guideline 3.1 The proposed plan is compatible with the surrounding development and the applicants proposal provides the required 30' Parkway Buffer that includes a 3' continuous screen for the parking lot per Guideline 3.9 & LDC 10.2. Therefore the intent of this regulation is being met.

3. Is extent of waiver of the regulation the minimum necessary to afford relief to the applicant?

Yes. This waiver allows the applicant to improve an outdated portion of the retail center with a new retail building and provide retail space with adequate parking near the front door. The

parking lot will be adequately screened from the roadway corridor and meet the requirements set forth in the Metropolitan Land Development Code.

- 4. Has either (a) the applicant 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 would (b) the strict application of the provisions of the regulation deprive the applicant of the reasonable use of land or would create an unnecessary hardship on the applicant?*

The applicant is proposing to mitigate for the parking lot encroaching into the Parkway Buffer by 255sf by offsetting the encroachment with additional buffer area equaling 262sf and includes a 3' high masonry wall along the US HWY 42 frontage and provide more interior landscape area than is required.

C. Waiver of LDC 10.3.5.A.1. to replace the 3' continuous berm with a 3' masonry wall along the properties frontage within the Parkway Buffer.

- 1. Will the waiver adversely affect adjacent property owners?*

No. The 3' masonry wall replaces the required 3' berm and screens the parking lot from the roadway corridor. The 3' masonry wall will tie into the buildings architecture and reflects the intent of the Town Center concepts. There are no berms along this side of US HWY 42, therefore there will be no visible impacts from this waiver.

- 2. Will the waiver violate the Comprehensive Plan?*

No. Per Guideline 3.9 & LDC 10.3.5 a 30' Parkway Buffer is required along the US HWY 42 frontage, which includes a continuous 3' high screen and is being provided in its entirety and the applicant is providing a 3' high masonry wall that runs the length of the buffer, therefore the intent of this regulation is being met.

- 3. Is extent of waiver of the regulation the minimum necessary to afford relief to the applicant?*

Yes. A 3' continuous berm does not reflect the character of the retail center or the Town Center concept. Allowing the 3' masonry wall would allow the applicant to provide an architectural element that can relate to the architecture of the retail shops behind and also provide the needed screening of the parking lot to protect the visual character of the roadway corridor.

- 4. Has either (a) the applicant 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 would (b) the strict application of the provisions of the regulation deprive the applicant of the reasonable use of land or would create an unnecessary hardship on the applicant?*

The applicant is proposing to replace the 3' berm with a 3' masonry wall and the 30' Parkway Buffer. The wall requires less maintenance and provides an architectural element adjacent to the roadway that reflects the building behind. The 3' berm does not exist on the adjacent lots along this side of US HWY 42 and does not reflect the character of the retail center or the Town Center concepts.

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