

# Board of Zoning Adjustment Staff Report

October 17, 2016



<b>Case No:</b>	<b>16DEVPLAN1154</b>
<b>Request:</b>	<b>Category 3 Development Plan and Variances to exceed maximum setback along South Fourth Street and Guthrie Street frontages</b>
<b>Project Name:</b>	<b>Fourth Street Apartments</b>
<b>Location:</b>	<b>535 South Fourth Street</b>
<b>Owner:</b>	<b>Jewish Hospital and St. Mary's Healthcare</b>
<b>Applicant:</b>	<b>David Bastos – Power Encore LLC.</b>
<b>Representative:</b>	<b>Kim Oatman – Civil Design Inc.</b>
<b>Jurisdiction:</b>	<b>Louisville Metro</b>
<b>Council District:</b>	<b>4 – David Tandy</b>
<b>Case Manager:</b>	<b>Brian Davis, AICP, Planning Manager</b>

## REQUEST

- Category 3 Plan to construct 232 multi-family apartments with retail and parking.
- **Variance #1:** from the Land Development Code Section 5.2.1.C.7 to allow the proposed structure to be recessed from the right-of-way along South Fourth Street by 3.9 feet.

Location	Requirement	Request	Variance
Setback along South Fourth Street	0 feet	3.9 feet	3.9 feet

- **Variance #2:** from the Land Development Code Section 5.2.1.C.7 to allow the proposed structure to be recessed from the right-of-way along Guthrie Street by 3.7 feet.

Location	Requirement	Request	Variance
Setback along Guthrie Street	0 feet	3.7 feet	3.7 feet

## CASE SUMMARY/BACKGROUND/SITE CONTEXT

The project is located on South Fourth Street between Guthrie Street and West Chestnut Street. There are currently three buildings located on site, each on separate parcels, which includes two office buildings and a 5-story parking structure with vacant commercial on the first floor. The applicant is proposing to demolish the two office buildings and construct a 7-story apartment building with a total of 232 dwelling units with retail space on the first floor fronting South Fourth Street. The existing retail/parking structure will remain and be partially renovated to accommodate new apartment amenities such as a clubhouse, office, and fitness area, as well as providing additional retail on the first floor.

Section 5.2.1.C.7 states buildings located within the Core/Broadway districts of the Downtown Form District shall maintain a zero foot setback along street frontages. The proposed buildings will primarily follow the location of the existing building's footprint, which is setback from the right-of-way of both South Fourth Street (2.0 feet) and Guthrie Street (3.7 feet). Requiring the building to be placed at the right-of-way would require

some expensive relocation of existing utilities and narrow the sidewalk in the area. According to the applicant's justification statement, the additional sidewalk space will help enhance the pedestrian experience by allowing more space for planters, seating, etc. while maintaining the needed space for maneuverability.

**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>	Office/Vacant	C-3	Downtown
<b>Proposed</b>	Residential/Retail	C-3	Downtown
<b>Surrounding Properties</b>			
<b>North</b>	Commercial/Multi-family	C-3	Downtown
<b>South</b>	Commercial/Public and Semi – Public	C-3	Downtown
<b>East</b>	Commercial	C-3	Downtown
<b>West</b>	Commercial/Industry	C-3	Downtown

**PREVIOUS CASES ON SITE**

16DDRO1014: Approved on September 24, 2016, the Downtown Development Review Overlay Committee approved the design of the project with the following conditions:

1. Review based on drawing set dated September 8, 2016. Any changes to the design drawings to be submitted to Overlay Staff for review.
2. Final signage shall be submitted to Staff for review and approval prior to installation.
3. Final streetscape design elements including light fixtures, street furnishings, street trees, and paving materials shall be submitted to staff for final review and approval.
4. Final plans for renovations to parking garage structure to be submitted to Overlay Staff for review.

**INTERESTED PARTY COMMENTS**

None

**APPLICABLE PLANS AND POLICIES**

Land Development Code

**STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCE #1:  
Setback along South 4<sup>th</sup> Street**

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

STAFF: The 3.9 foot building setback from the right of way on South Fourth Street along the retail space is being requested to facilitate the transitioning of exiting sidewalk elevations with retail floor heights (allowing multiple divisions/flexibility of retail). There will be less risk of public health, safety, and welfare since there will be space for transitioning walk elevations and safer for pedestrians.

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

STAFF: The setback along South Fourth Street is 3.9 feet and will facilitate the transitioning of existing sidewalk elevations with the retail floor heights, allowing multiple divisions and flexibility for retail. Also,

the existing structure has the same setback and there is no noticeable change to the character of the corridor when compared to other buildings.

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

STAFF: The South Fourth Street side of the proposed building will utilize a 3.9 foot setback allowing for a safer transition of existing sidewalk elevations to the proposed building. The setback will be coordinated with the South Fourth Street Streetscape and will enhance the general vicinity and will not be a hazard or nuisance to the public.

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

STAFF: The retail frontage setback along South Fourth Street is being requested per the DDRO and neighboring comments and therefore the associated 3.9 foot setback is not an unreasonable circumvention of the zoning regulations.

**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 special circumstances that create the need for the variance include; the existing building is already set back in some areas, Louisville Metro has asked for more residential and retail development in the Downtown Form District and the variances will allow for enhancements like planters and safety features such as recessed door swings.

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 regulations would deprive the applicant of making essential improvements such as planters and recessed doors which help market the residential and retail units. Furthermore, the strict application of the regulations would require the construction of new foundations on Guthrie Street that would require higher costs and result in a disruption of pedestrians and vehicles over a longer duration than if the requested setbacks as currently proposed.

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, the applicant nor the existing property owner/s have taken any actions subsequent to the adoption of regulations from which relief is sought.

**STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCE #2:  
Setback along Guthrie Street**

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

STAFF: The proposed 3.7 foot building setback from the right of way along Guthrie Street is being requested in order to maintain the existing foundation wall of the existing building and to construct an 18 to 30-inch tall planter wall in front of the first floor residential units for privacy. The 3.7 foot building setback will be maintained for all levels. If the variance is granted, and the new walls can be constructed over the existing foundations there will be less risk of public health, safety, and welfare since excavation closer to Guthrie Street will not have to occur.

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

STAFF: The proposed building, along Guthrie Street, will be built on the same foundation wall as the existing building and therefore will not alter the character of the general vicinity.

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

STAFF: The Guthrie Street frontage of the proposed building is to be built using the same foundation wall as the current building/existing and therefore there will not be any changes to the setback of the building along Guthrie Street which does not pose a hazard or nuisance to the public.

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

STAFF: The 3.7 foot setback along Guthrie Street is not an unreasonable circumvention of the zoning regulations because the proposed building will be utilizing the existing foundation. The new street wall facing Guthrie Street will be at the same location as it has been for many years and allowance of the variance creates safer conditions that were already existent.

#### 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 special circumstances that create the need for the variance include; the existing building is already set back in some areas, Louisville Metro has asked for more residential and retail development in the Downtown Form District and the variances will allow for enhancements like planters and safety features such as recessed door swings.

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 regulations would deprive the applicant of making essential improvements such as planters and recessed doors which help market the residential and retail units. Furthermore, the strict application of the regulations would require the construction of new foundations on Guthrie Street that would require higher costs and result in a disruption of pedestrians and vehicles over a longer duration than if the requested setbacks as currently proposed.

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, the applicant nor the existing property owner/s have taken any actions subsequent to the adoption of regulations from which relief is sought.

#### **TECHNICAL REVIEW**

- As of the writing of this staff report, Transportation Planning has not stamped the plan. Transportation Planning has requested new traffic generation information from the applicant since the amount of retail space changed from the original submittal. They will then determine if a full traffic analysis is needed prior to formal approval of the plan.

## STAFF CONCLUSIONS

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 for a Category 3 Development Plan and the associated variances from Section 5.2.1.C.7 meets the standards for granting a variance as established in the Land Development Code.

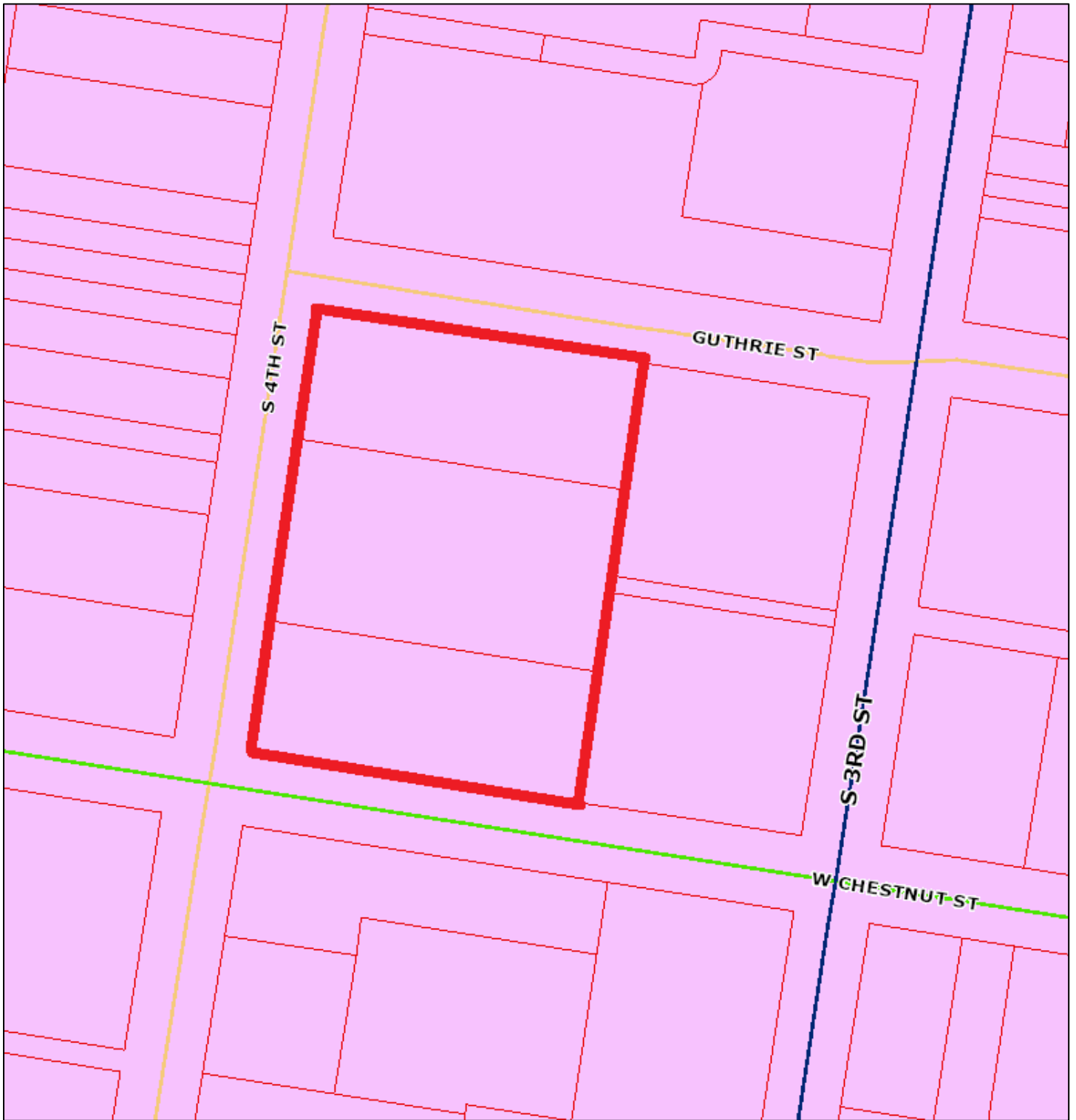
## NOTIFICATION

Date	Purpose of Notice	Recipients
9/30/2016	Hearing before PC / BOZA	1 <sup>st</sup> tier adjoining property owners Speakers at Planning Commission public hearing Subscribers of Council District 4 Notification of Development Proposals
9/30/2016	Hearing before PC / BOZA	Sign Posting on property

## ATTACHMENTS

1. Zoning Map
2. Aerial Photograph

1. Zoning Map



2. Aerial Photograph

