

Board of Zoning Adjustment

Staff Report

October 21, 2019



Case No:	19-VARIANCE-0035
Project Name:	First Watch Middletown
Location:	12913 Shelbyville Road
Owner(s):	John Paselsky, OHP Middletown KY LLC
Applicant:	Petey Cunningham, Holland Development LLC
Jurisdiction:	Middletown
Council District:	19 – Anthony Piagentini
Case Manager:	Lacey Gabbard, AICP, Planner I

REQUEST:

1. **Variance** of Land Development Code section 5.3.2.C.2.b to allow a proposed dumpster enclosure to be located within the 25 foot required setback area along the west property line (19-VARIANCE-0035)

CASE SUMMARY/BACKGROUND

The subject site has an approved plan, 18DEVPLAN1200, for a 4,332 square foot First Watch restaurant. Middletown has requested the dumpster location be moved, which resulted in a revised plan and a variance and waiver request. The subject site is zoned C-1 and C-2 and is located in the Suburban Marketplace Corridor form district.

There are two related cases, 19-DDP-0043 and 19-WAIVER-0043, a Detailed District Development Plan and a waiver to allow the proposed dumpster enclosure to be located within the 25 foot landscape buffer area along the west property line, which were heard at the Development Review Committee on September 19, 2019.

Previous cases:

- 9-82-78: Change in zoning from R-4 Residential and C-1 Commercial to C-2 Commercial.
- 9-16-88: Change in zoning from OR-3 Office/Residential and R-4 Residential Single Family to C-1 Commercial for an Applebee's restaurant.
- 18DEVPLAN1200: Revised Detailed District Development Plan to build a 4,332 square foot First Watch Restaurant.

STAFF FINDINGS

The request is adequately justified and meets the standard of review.

TECHNICAL REVIEW

Public Works and MSD have provided preliminary approval.

INTERESTED PARTY COMMENTS

Staff has received no comments from interested parties concerning this proposal.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCE FROM SECTION 5.3.2.C.2.b TO ALLOW A PROPOSED DUMPSTER ENCLOSURE TO BE LOCATED WITHIN THE 25 FOOT REQUIRED SETBACK AREA ALONG THE WEST PROPERTY LINE

- (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 because the property to the west of the subject site is zoned R-4 single family residential but, according to PVA, the parcel is owned by Louisville Gas & Electric and the use is Utility Industrial. The adjoining parcels on the north side of Shelbyville Road are all internal to the Middletown Station development. The properties on the south side of Shelbyville Road are zoned OR-3 Office-Residential or C-1 Commercial and are screened from the dumpster by Shelbyville Road and the 25 foot scenic corridor buffer located on the subject site.

- (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 dumpster in its proposed location will be screened from view from Shelbyville Road by a 25 foot scenic corridor buffer. Additionally, the proposed location moves the dumpster from a more visible area on the north side of the subject site to a more discrete location on the west side of the site.

- (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 proposed dumpster location is screened from view from Shelbyville Road by a 25 foot scenic corridor buffer, and is adjacent to a neighboring property to the west that is used as Utility Industrial.

- (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 dumpster enclosure in its proposed location is only encroaching a small amount into the setback.

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. The previously approved plan showed the dumpster enclosure on the north side of the property. The city of Middletown has requested the dumpster be relocated to the west side of the site, adjacent to a Utility Industrial site. The proposed location is screened from view and is further from the interior of the site and neighboring, similarly used properties.

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 dumpster enclosure could not be relocated.

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. With the previously approved plan, the applicant proposed a different location for the dumpster location. However, the city of Middletown is requesting the dumpster be relocated to the currently proposed location on the west side of the site.

REQUIRED ACTIONS:

- **Recommend APPROVAL or DENIAL of the Variance to the City of Middletown**

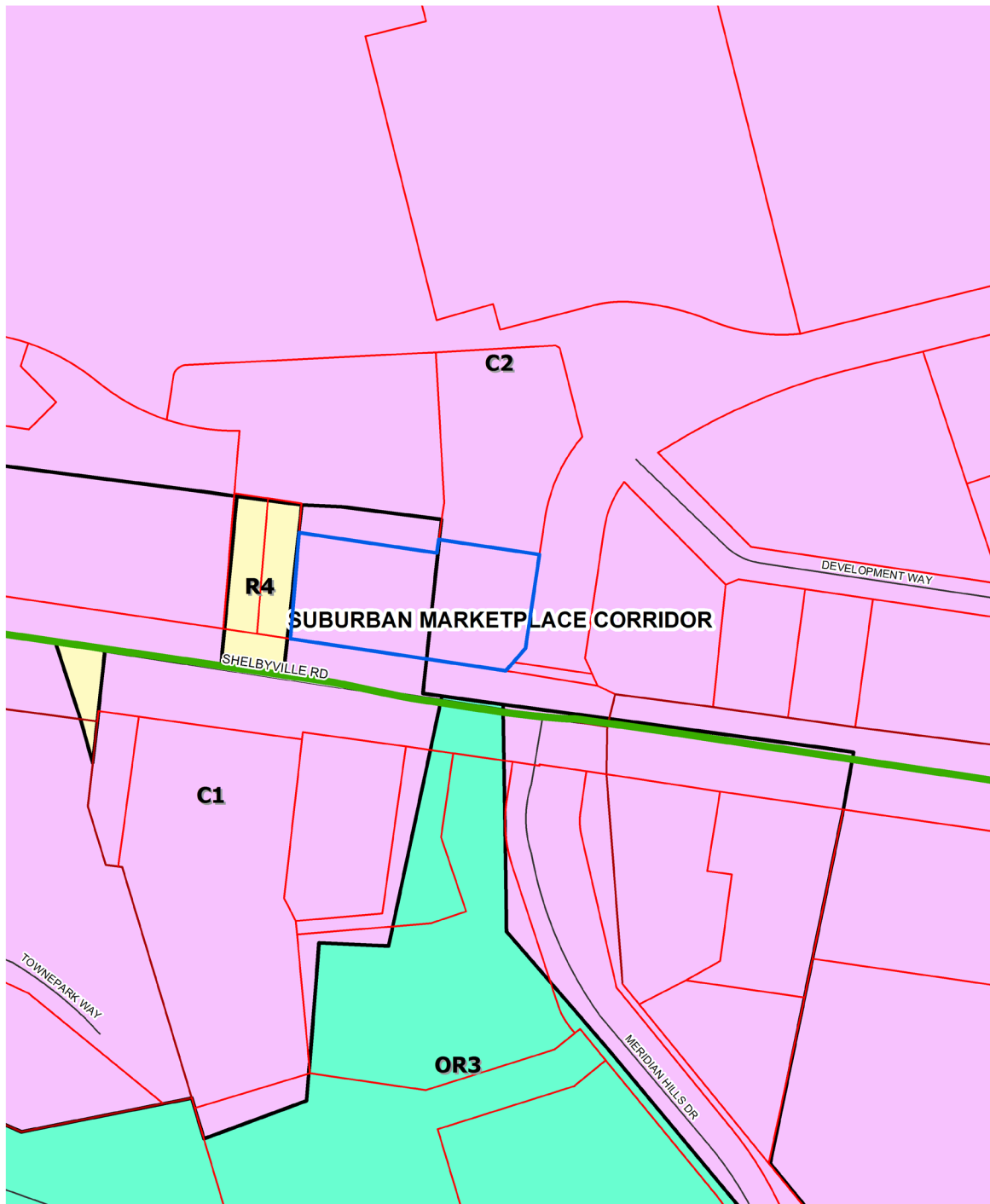
NOTIFICATION

Date	Purpose of Notice	Recipients
10-21-19	Hearing before DRC	1 st tier adjoining property owners Speakers at Planning Commission public hearing Registered Neighborhood Groups in Council District 19

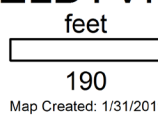
ATTACHMENTS

1. Zoning Map
2. Aerial Photograph
3. General Plan Binding Elements
4. Site Plan Binding Elements

1. **Zoning Map**



12913 SHELBYVILLE ROAD



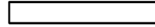
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2. Aerial Photograph



12913 SHELBYVILLE ROAD

feet



Map Created: 1/31/2019



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