

# Board of Zoning Adjustment

## Staff Report

January 22, 2018



|                          |   |
|--------------------------|---|
| <b>Case No:</b>          | 17VARIANCE1101                            |
| <b>Project Name:</b>     | 4101 Brook Farm Place Screen Room & Deck  |
| <b>Location:</b>         | 4101 Brook Farm Place                     |
| <b>Owner(s):</b>         | Jerry & Mary Ann Becker                   |
| <b>Applicant:</b>        | Mike Hardin, Enterprise Home Improvements |
| <b>Jurisdiction:</b>     | Louisville Metro                          |
| <b>Council District:</b> | 11 – Kevin Kramer                         |
| <b>Case Manager:</b>     | Dante St. Germain, Planner I              |

**REQUEST**

- **Variance** from Land Development Code table 5.3.1 to allow structures (screen room and deck) to encroach into the required Stony Brook Drive front yard setback.

| Location                  | Requirement | Request | Variance |
|---------------------------|-------------|---------|----------|
| <b>Front Yard Setback</b> | 25 feet     | 15 feet | 10 feet  |

**CASE SUMMARY/BACKGROUND**

The subject property is a double frontage lot located between two public streets, Brook Farm Place and Stony Brook Drive. As a result, front yard setbacks are required along both streets. The property currently contains a one-story single family residential dwelling. The front of the structure faces Brook Farm Place, while the rear faces Stony Brook Drive. The screen room and deck, which would be attached to the rear of the structure, are proposed to be 15 feet from the Stony Brook Drive property line; therefore, a variance of 10 feet is requested. The proposed screen room and deck will be enclosed entirely by an existing wooden fence (4' in height) and landscaping.

The property was part of a rezoning for the entire subdivision from R-4 Single Family to R-5 Single Family in 2002 under case # 9-40-02. The current binding elements for this rezoning case are included as Attachment 6 of this staff report.

**STAFF FINDING**

Staff finds that the requested variance is adequately justified and meets the standard of review.

Based upon the information in the staff report, and the testimony and evidence provided at the public hearing, the Board of Zoning Adjustment must determine if the proposal meets the standards for granting a variance established in the Land Development Code from table 5.3.1 to allow a structure to encroach into the required Stony Brook Drive front yard setback.

## **TECHNICAL REVIEW**

- No technical review was undertaken.

## **INTERESTED PARTY COMMENTS**

No interested party comments were received by staff.

## **STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCE FROM TABLE 5.3.1**

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

STAFF: The requested variance will not adversely affect the public health, safety or welfare as the screen room and deck will be enclosed by an existing fence, with landscaping between the fence and the edge of pavement of Stony Brook Drive.

- (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. The deck, which is level with the first floor of the one-story building, would be screened for the most part by the fence and landscaping. Further, neighboring properties have decks and patios that are visible from Stony Brook Drive. While there are not any other screen rooms on neighboring properties that are visible from Stony Brook Drive, the design of the approved subdivision includes only a few lots in which their effective rear yards are along Stony Brook Drive. The rear of the building is already visible from Stony Brook Drive and a screen room addition is typical in a rear yard.

- (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 as the screen room and deck will be constructed according to building code and are not in conflict with any public right of way or utility services.

- (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 as the front yard with frontage on Stony Brook Drive is shallow and the screen room and deck will be largely concealed by the existing fence and landscaping.

## **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 because this lot has frontage on two public streets.

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 by preventing the applicant from constructing the screen room and deck due to the presence of two front yard setback requirements as opposed to the more typical front and rear yard requirements.

3. The circumstances are not 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 taken subsequent to the adoption of the zoning regulation from which relief is sought as the applicant is requesting a variance and has not yet begun construction.

**NOTIFICATION**

| Date       | Purpose of Notice   | Recipients  |
|------------|---------------------|---|
| 12/29/2017 | Hearing before BOZA | 1st tier adjoining property owners<br>Registered Neighborhood Groups in Council District 11 |
| 01/05/2018 | Hearing before BOZA | Notice posted on property   |

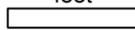
**ATTACHMENTS**

1. Zoning Map
2. Aerial Photograph
3. Site Plan
4. Elevations
5. Site Photos
6. Binding Elements of Case #9-40-02

1. Zoning Map



4101 Brook Farm Place  
feet



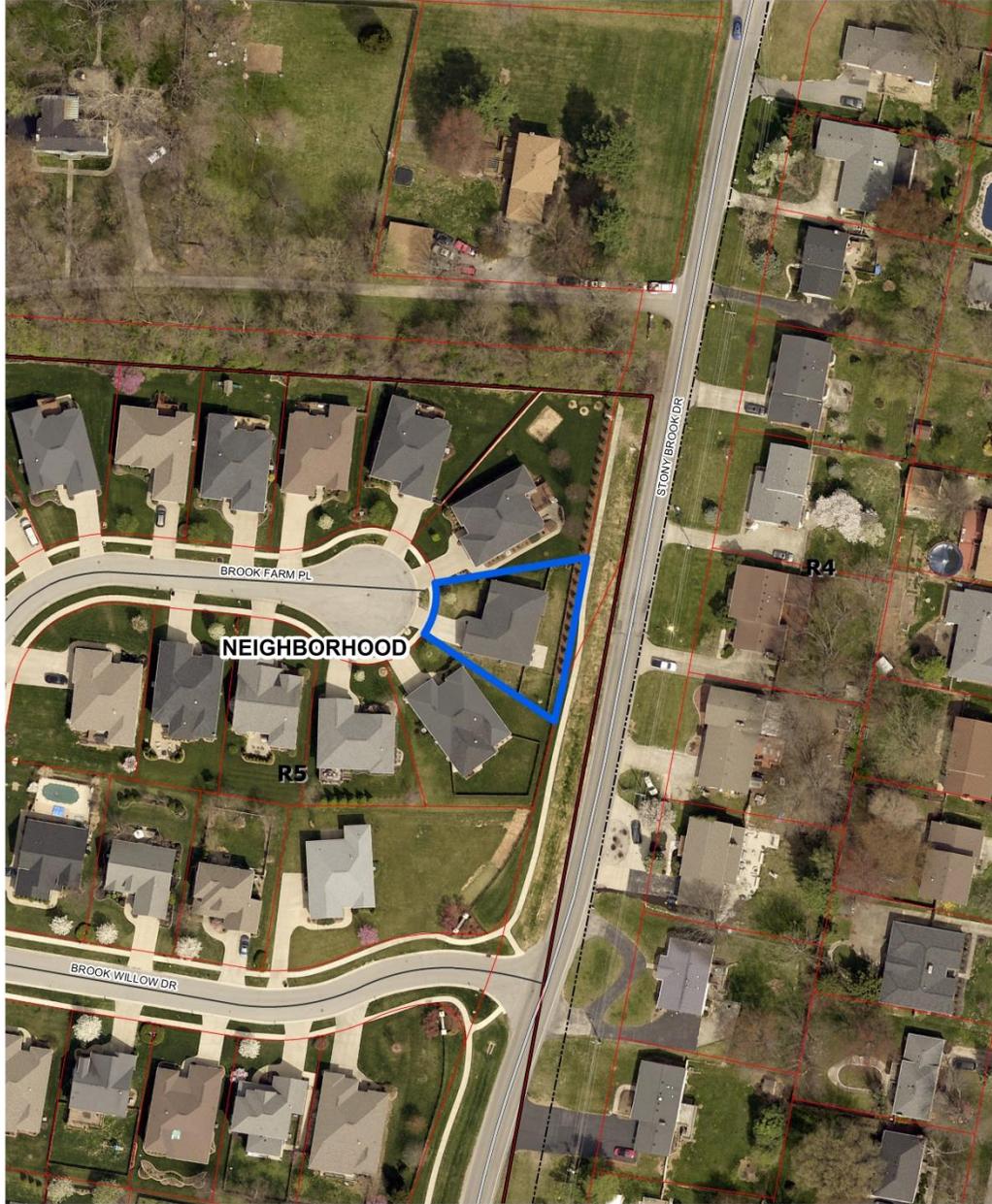
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Map Created: 12/27/2017

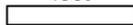


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2. Aerial Photograph



4101 Brook Farm Place  
feet



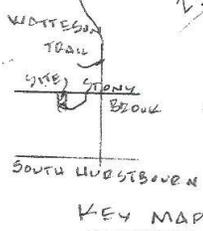
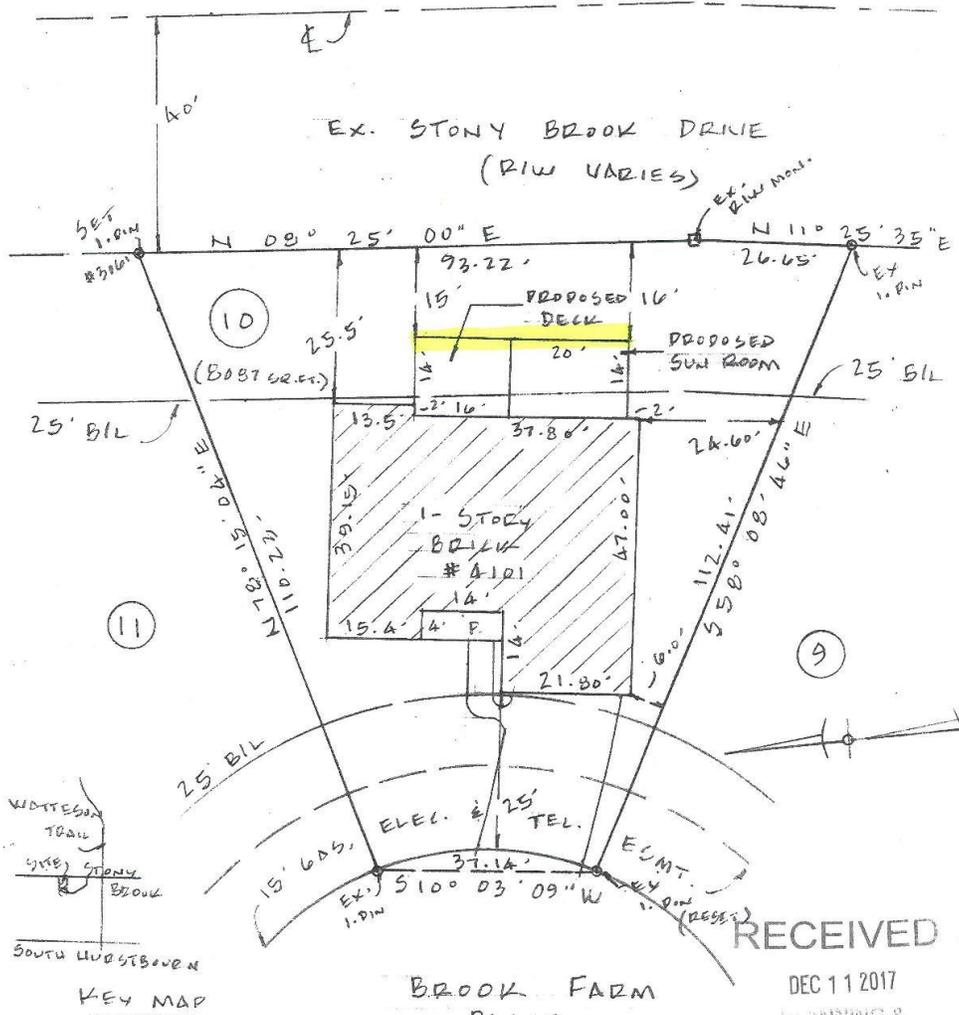
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Map Created: 12/27/2017



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3. Site Plan



**LAND SURVEYOR'S CERTIFICATE**

I hereby certify that this survey as depicted hereon was performed under my supervision and was conducted under the standards for survey defined under KAR 18:150. It is an "Urban Survey", with an unadjusted closure of 1 part in 10,000 and is witnessed by monuments as shown. The survey method used was that of random traverse and the bearings have been rotated and adjusted for closure using bearing N 14° 03' 09" W. This survey is subject to all road way, easements, and right of ways, if any whether shown hereon or not. The property is not located in a flood hazard area as shown by FEMA map No. 21111C0079E dated 12-5-06.



*[Signature]*  
 Gary J. Dukes PLS #3061  
 Dated: 12-4-17

BROOK FARM PLACE  
 (30' R/W)

Gary Dukes PLS  
 Land Surveying  
 3602 Briarglen Lane  
 Louisville, KY 40220  
 garydukespls@gmail.com  
 502-553-4912

RECEIVED

DEC 11 2017  
 PLANNING &  
 DESIGN SERVICES



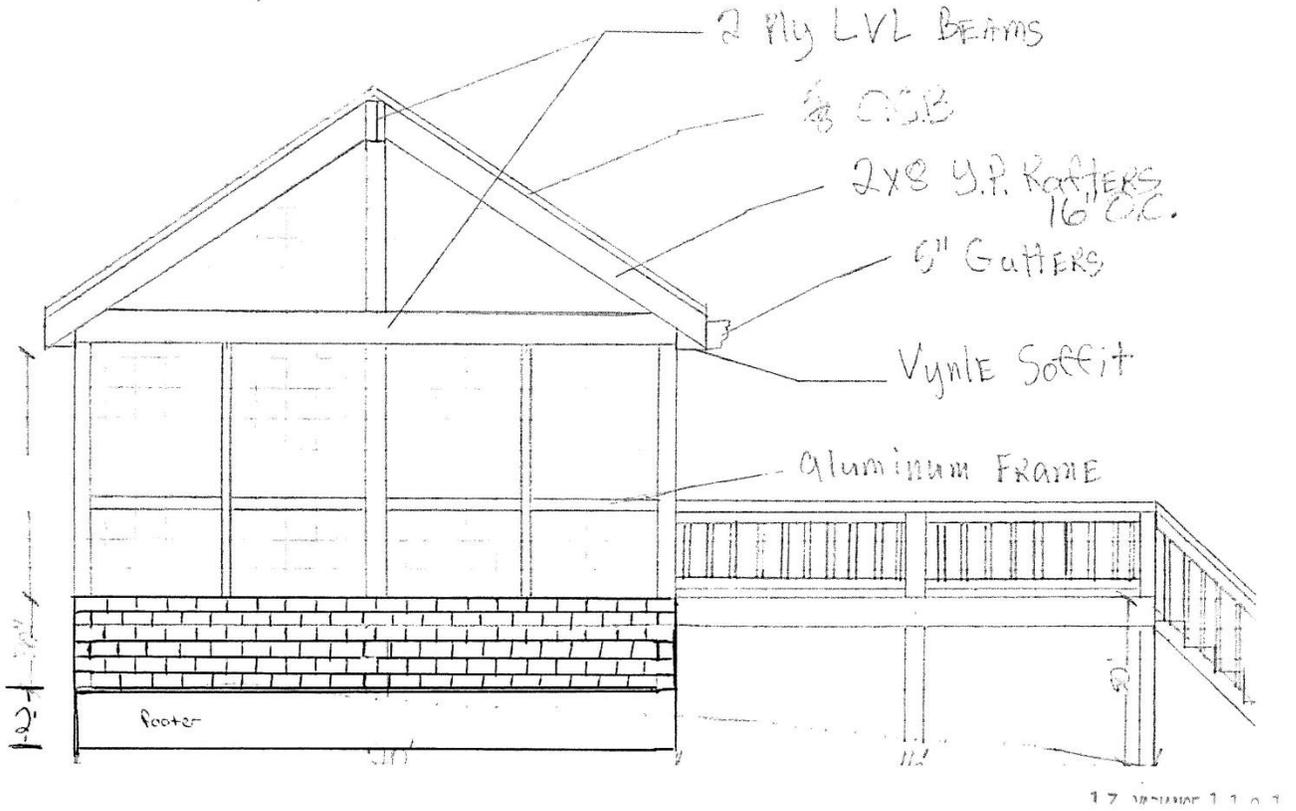
SURVEY FOR ADDITION  
 Location: 4101 BROOK FARM PLACE  
 Description: LOT 10 BROOKHURST  
SUB. SEC. 2 (P.B. 51 P. 1)  
JERRY & MARY ANN BELKER  
 For: 410 ENTERPRISE HOME IMPR.

Scale: 1"=20' Date: 12-4-17 By: G.J.D.

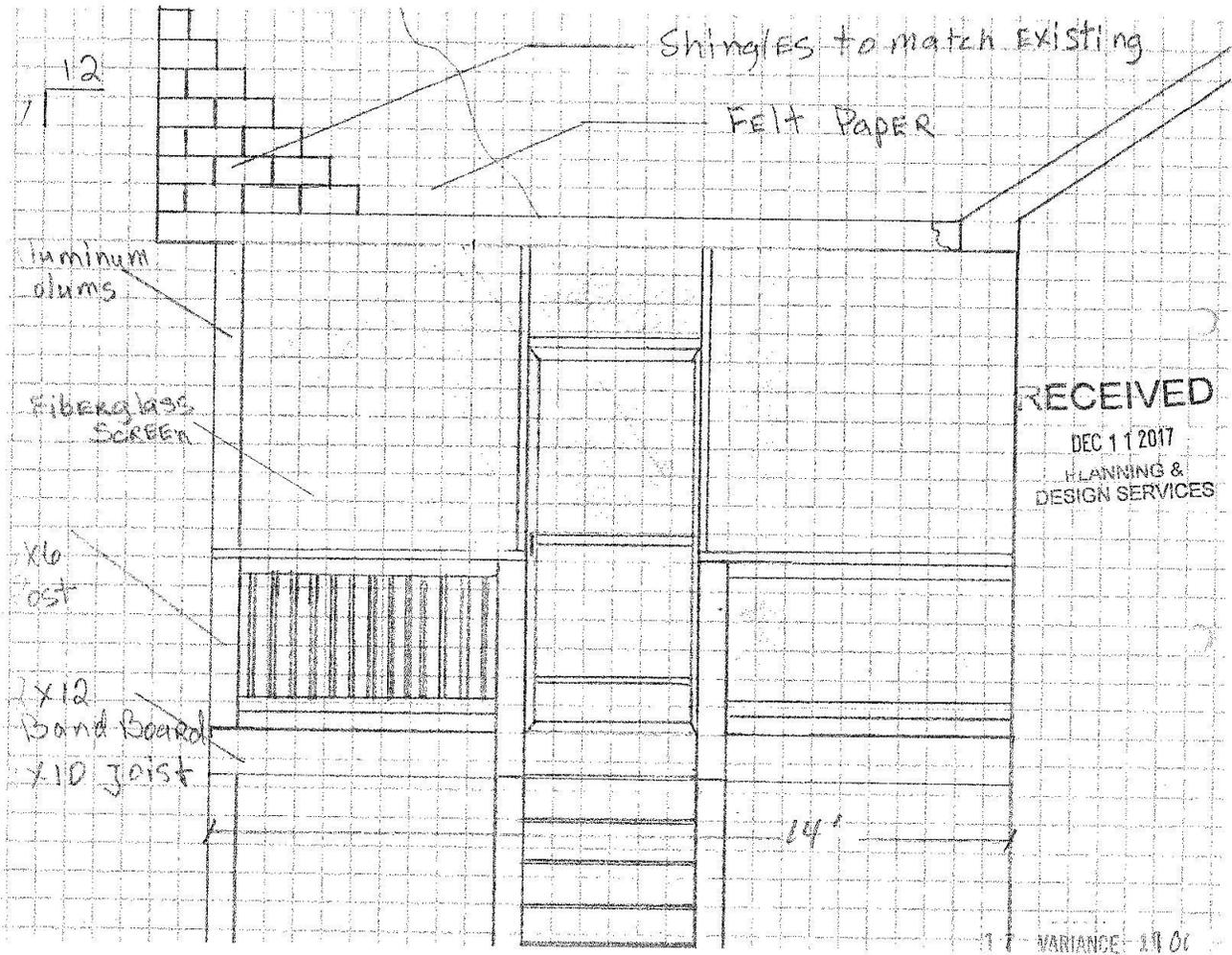


4. Elevations

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East elevation



North elevation

5. **Site Photos**



Front of the subject property.



Location of the proposed variance.



View of the rear yard from Stony Brook Drive.

6. **Binding Elements of Case #9-40-02**

**PLANNING COMMISSION MINUTES**

August 1, 2002

**PUBLIC HEARING**

**DOCKET NO. 9-40-02/10-22-02**

agreement with Guidelines 7 and 8 of the Cornerstone 2020 Comprehensive Plan for Louisville and Jefferson County, Kentucky; and

**WHEREAS**, based on the forgoing, the Commission finds that the proposal is also in compliance with all other applicable guidelines of the Cornerstone 2020 Comprehensive Plan;

**BUILDING LIMIT WAIVER**

**WHEREAS**, based on testimony and evidence submitted with the application, in the Staff Report and to the Planning Commission at various meetings, including LD&T Committee meeting and the public hearing, that the proposal is in agreement with Guideline 7 of the Cornerstone 2020 Comprehensive Plan for Louisville and Jefferson County, Kentucky; and

**WHEREAS**, based on the forgoing, the Commission finds that the proposal is also in compliance with all other applicable guidelines of the Cornerstone 2020 Comprehensive Plan;

**RESOLVED**, that the Louisville and Jefferson County Planning Commission does hereby **RECOMMEND** to Fiscal Court of Jefferson County, that the change in zoning **from R-4 Single Family Residential to R-5 Single Family Residential** on property described in the attached legal description be **APPROVED**.

**RESOLVED**, that the Louisville and Jefferson County Planning Commission does hereby **APPROVE** the district development plan **SUBJECT** to the following 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. Any changes/additions/alterations of any binding element(s) shall be submitted to the Planning Commission for review and approval; any changes/additions/alterations not so referred shall not be valid.
2. The development shall be in accordance with the approved Preliminary Subdivision Plan. No further subdivision of the land into a greater number of lots than originally approved shall occur without approval of the Planning Commission.

**PLANNING COMMISSION MINUTES**

**August 1, 2002**

**PUBLIC HEARING**

**DOCKET NO. 9-40-02/10-22-02**

3. The density of the development shall not exceed 3.08 dwelling units per acre (42 units on 13.65 acres).
4. Construction fencing shall be erected when off-site trees or tree canopy exists within 3' of a common property line. Fencing shall be in place prior to any grading or construction to protect the existing root systems from compaction. The fencing shall enclose the entire area beneath the tree canopy and shall remain in place until all construction is completed. No parking, material storage or construction activities are permitted within the protected area.
5. The applicant shall identify and submit for approval by designated DPDS staff, a plan showing the location of Tree Preservation Areas on site (exclusive of areas dedicated as public right-of-way) prior to beginning any construction procedure (i.e., clearing, grading, demolition). All construction shall be conducted in accordance with the approved Tree Preservation Plan. A partial plan may be submitted to delineate clearing necessary for preliminary site investigation. All Tree Preservation Plans must be prepared in accordance with the standards set forth by DPDS.
6. Before any permit (including but not limited to building, parking lot, change of use or alteration 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).
7. If a building permit is not issued within one year of the date of approval of the plan or rezoning, whichever is later, 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.
8. A certificate of occupancy must be received from the appropriate code enforcement department 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.

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August 1, 2002

### PUBLIC HEARING

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9. 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.
10. If work is required within the easements causing removal or damage of landscape materials, the property owner shall be responsible for replacement of materials according to the approved landscape plan.
11. The site shall be developed in accordance with the tree preservation areas delineated on the site plan and related notes. Any modification of the tree preservation plan requested by the applicant may be approved by the designated DPDS staff if the changes are in keeping with the intent of the approved tree preservation plan.

All plans setting out tree preservation areas must contain the following notes:

1. Tree preservation areas (TPAs) identified on this plan represent portions of the site the developer has designated to be left undisturbed during the development of roadways, utilities and similar infrastructure. These are not permanent preservation areas. Tree in these areas may be removed during construction of homes or buildings on individual lots.
2. Dimension lines have been used on this plan to establish the general location of TPAs and represent minimum distances. The final boundary for each TPA shall be established in the field by the applicant, developer, or property owner to include canopy area of all trees at or within the dimension line.
3. Tree protection fencing shall be erected around all TPAs prior to site disturbance (except as provided in these notes) to protect the existing tree stands and their root systems. The fencing shall be located at least 3 feet beyond the edge of the tree canopy and shall

## PLANNING COMMISSION MINUTES

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remain in place until all construction is completed. When trees must be removed in a TPA, the fence shall be relocated to protect all remaining trees within that TPA. When a tree mass contains both WPAs and TPAs, fencing shall only be required at the outer most perimeter of that tree mass.

4. No parking, material storage, or construction activities are permitted within the TPAs beyond that allowed for preliminary site investigation work.
5. Clearing necessary to provide access for survey work, rock soundings or other usual and customary site investigations shall be permitted prior to Site Disturbance Approval. Preliminary site investigations shall be carefully planned to minimize the amount of clearing required. Clearing should follow proposed roadway centerlines and should not result in a clear access way of more than twenty (20) feet in width. Cleared access ways beyond proposed roadways to assess individual lots shall not exceed 12 feet in width or encroach into any proposed open space lots. No trees exceeding eight (8) inches in diameter measured at a height of four and one-half feet above ground level shall be removed without prior approval by DPDS.
12. The area of Open Space Lot 44 not required for detention/floodplain mitigation or utility easement shall be designated as a Woodland Protection Area (WPA).
13. The site shall be developed in accordance with the woodland protection areas delineated on the site plan and related notes. Any modification of the woodland protection area requires notification of adjoining property owners and LD&T action.
14. The applicant shall provide deeds of restriction ensuring that WPAs will be permanently protected in a manner consistent with these binding elements and the approved plan. The form of such restrictions shall be approved by Planning Commission counsel.  
All plans setting out woodland protection areas must contain the following notes:

PLANNING COMMISSION MINUTES

August 1, 2002

PUBLIC HEARING

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1. Woodland Protection Areas (WPAs) identified on this plan represent portions of the site that shall be permanently preserved (all existing vegetation; all trees greater than 2" in caliper; selected trees as shown on the plan). All clearing, grading and fill activity in these areas must be in keeping with restrictions established at the time of development plan approval. No further clearing, grading, construction or other land disturbing activity shall take place within designated WPAs beyond pruning to improve the general health of the tree or to remove dead or declining trees that may pose a public health and safety threat.
  
15. Prior to the recording of the record plat, copies of the recorded documents listed below shall be filed with the Planning Commission.
  - a) Articles of Incorporation filed with the Secretary of State and recorded in the office of the Clerk of Jefferson County and the Certificate of Incorporation of the Homeowners Association.
  - b) A deed of restriction in a form approved by Counsel to the Planning Commission addressing responsibilities for the maintenance of common areas and open space, maintenance of WPAs, TPAs and other issues required by these binding elements / conditions of approval.
  - c) Bylaws of the Homeowner's Association in a form approved by the Counsel for the Planning Commission.
  
16. At the time the developer turns control of the homeowner's association over to the homeowners, the developer shall provide sufficient funds to ensure there is no less than \$3,000 cash in the homeowner's association account. The subdivision performance bond may be required by the Planning Commission to fulfill this funding requirement.
  
17. The signature entrance shall be submitted to the Planning Commission staff for review prior to recording the record plat.
  
18. The applicant shall provide a wetlands determination letter from the US Army Corps of Engineers for this site prior to any clearing, grading or construction. If wetlands are identified the applicant shall demonstrate to the Planning Commission that the wetlands on site will be preserved or shall revise the preliminary plan to mitigate any impact on the wetlands.

PLANNING COMMISSION MINUTES

August 1, 2002

PUBLIC HEARING

DOCKET NO. 9-40-02/10-22-02

- 19. A geotechnical study shall be performed for review and approval by MSD prior to construction plan approval.
- 20. Open space lots shall not be further subdivided or developed for any other use and shall remain as open space in perpetuity. A note to this effect shall be placed on the record plat.
- 21. An original stamped copy of the approved Tree Preservation Plan shall be present on site during all clearing, grading, and construction activity and shall be made available to any DPDS inspector or enforcement officer upon request.
- 22. All houses shall have brick fronts, and those houses adjacent to Stony Brook Drive shall have brick fronts and brick skirts.

The vote was as follows:

**YES:** Commissioners Abstain, Adams, Crawford, Ernst, Herron, Matheny, Norton, and Thieneman

**NO:** No one

**NOT PRESENT FOR THIS CASE:** Commissioners Cash and Howard

**ABSTAINING:** No one

DOCKET NO. 10-22-02 and 9-40-02

**Project:** Brookhurst Subdivision  
**Owner:** Brookhurst, Inc.  
**Engineer:** Mindel, Scott & Associates  
**Location:** 4122 Stony Brook Drive  
**Jurisdiction:** Unincorporated Jefferson County  
**Zoning Change Request:** R-4 to R-5  
**Existing Use:** Vacant  
**Area:** 13.65 acres  
**Proposed Use:** Single Family Residential Subdivision  
**Existing Form Area:** Neighborhood  
**Proposed Form Area:** Neighborhood  
**Surrounding Land Use and Zoning:**  
North: Single family residential/R-4  
South: Single family residential /R-4  
East: Vacant, Single family residential subdivision/ R-4