

Development Review Committee

Staff Report

June 17th, 2015



Case No:	15DEVPLAN1039
Request:	Variance
Project Name:	Chipotle
Location:	420 South Hurstbourne Parkway
Owner:	JHS Vinings LLC
Applicant:	JDG Vinings IV LLC
Representative:	Marv Blomquist
Jurisdiction:	Hurstbourne
Council District:	18 – Marilyn Parker
Case Manager:	Christopher Brown, Planner II

REQUEST

- Waiver #1: Land Development Code Waiver from Chapter 5.5.1.A.1 of the 2006 Land Development Code to allow parking between the building and the street as well as the building entrance facing Williamsburg Plaza
- Waiver #2: Land Development Code Waiver from Chapter 5.5.A.3.a of the 2006 Land Development Code to eliminate the required 3' screen wall along Williamsburg Plaza
- Waiver #3: Land Development Code Waiver from Chapter 5.8.1 of the 2006 Land Development Code to eliminate the required sidewalk along Hurstbourne Parkway
- Waiver #4: Land Development Code Waiver from Chapter 10.2.4.B of the 2006 Land Development Code to allow an overlap of the utility easement and landscape buffer by more than 50%
- Waiver #5: Land Development Code Waiver from Chapter 10.3.5.A of the 2006 Land Development Code to allow building and parking to encroach into a portion of the required 30' parkway buffer along Hurstbourne Parkway
- Amendment to Binding Elements
- Revised Detailed District Development Plan

CASE SUMMARY/BACKGROUND/SITE CONTEXT

Existing Zoning District: C-2, Commercial
Existing Form District: TC, Town Center
Existing Use: Vacant
Proposed Use: Restaurant
Minimum Parking Spaces Required: 24
Maximum Parking Spaces Allowed: 60
Parking Spaces Proposed: 36
Plan Certain Docket #: 13545

The applicant is proposing to construct a 2,300 SF Chipotle restaurant with a 700 SF outdoor patio on the subject site. The site requires a 0' setback from the ROW intersection of South Hurstbourne Parkway and Williamsburg Plaza per the Land Development Code with parking not permitted between the building and the street. Entrances are required on both street frontages as well. The parking will be located between the building and Williamsburg Plaza with the primary entrance toward this street frontage. The parking will exceed the maximum amount of side parking and require a 3' masonry wall. Screening will be provided by landscaping instead of the wall. The City of Hurstbourne and KTC have stated to the applicant that they would prefer that

the sidewalk not be built along Hurstbourne Parkway. The applicable waiver has been request by the applicant. A 30' parkway buffer and setback are required along South Hurstbourne Parkway while 15' parkway buffer is required along the first 100' of Williamsburg Plaza. The building and parking encroach into a portion of the buffer. The setback regulations create conflicting requirements with the parkway buffer. The building will follow a similar pattern of setbacks within the area that follow the varying parkway buffer and setback requirements.

LAND USE/ZONING DISTRICT/FORM DISTRICT TABLE

	Land Use	Zoning	Form District
Subject Property			
Existing	Vacant	C-2	TC
Proposed	Restaurant	C-2	TC
Surrounding Properties			
North	Proposed Restaurant	C-2	TC
South	Restaurant	C-2	TC
East	Restaurant	C-2	SMC
West	Office	C-2	TC

PREVIOUS CASES ON SITE

- 13545: A change in zoning was approved from OR-3 and C-1 to C-2 by the City of Hurstbourne based on a recommendation for approval from the Planning Commission for the larger development known as The Vinings. The subject site was identified as Lot 3 on the GDDP.
- 13VARIANCE1006: Board of Zoning Adjustment approved a setback variance to allow a building to exceed the 0' corner setback as well as building and parking to encroach into the stream buffer.
- 13DEVPLAN1005: Development Review Committee and the City of Hurstbourne approved a detailed district development with Land Development Code waivers for a proposed restaurant on the subject site.

INTERESTED PARTY COMMENTS

No interested party comments have been received by staff.

APPLICABLE PLANS AND POLICIES

Cornerstone 2020
2006 Land Development Code

**STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER
(Parking, Entrance and Wall)**

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

STAFF: The waiver will not adversely affect adjacent property owners since (1) the proposed development is compatible with other developed lots in the area that have parking in front of the building and similar entrances, and (2) the requirement of the masonry, stone or concrete wall is intended to extend a street wall effect of an urban design, which is not present in this area.

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

STAFF: Guideline 2, policy 15 states to encourage the design, quantity and location of parking in activity centers to balance safety, traffic, transit, pedestrian, environmental and aesthetic considerations. Guideline 3, policy 1 states to ensure compatibility of all new development and redevelopment with the scale and site design of nearby existing development and with the pattern of development within the form district. Guideline 3, policy 23 states that setbacks, lot dimensions and building heights should be compatible with those of nearby developments that meet form district guidelines. Guideline 7, policy 3 states to evaluate developments for their ability to promote mass transit and pedestrian use, encourage higher density mixed use developments that reduce the need for multiple automobile trips as a means of achieving air quality standards and providing transportation choices. The intent of this requirement is to promote mass transit and pedestrian use and reduce vehicle trips in and around the site, and to reduce the distance pedestrians and transit users have to travel. The waiver request will not violate specific guidelines of Cornerstone 2020 as the proposal is compatible with the pattern of development within the area and a safe pedestrian access is provided from the public right-of-way to the building entrance.

- 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 proposal is compatible with the pattern of development within the area and a safe pedestrian access is provided from the public right-of-way to the building entrance.

- 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 since the proposal is compatible with the pattern of development within the area and a safe pedestrian access is provided from the public right-of-way to the building entrance.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER (Sidewalk)

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

STAFF: The waiver will adversely affect adjacent property owners since it will not allow for pedestrian connectivity to occur along the South Hurstbourne Parkway corridor to Williamsburg Plaza.

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

STAFF: Guideline 7, Policy 1 states that developments should be evaluated for their impact on the street and roadway system and to ensure that those who propose new developments bear or reasonably share in the costs of the public facilities and services made necessary by development. Guideline 9, Policy 1 states that new development should provide, where appropriate, for the movement of pedestrians, bicyclists and transit users with sidewalks along the streets of all developments where appropriate. The waiver will violate specific guidelines of Cornerstone 2020 by not providing for appropriate movement of pedestrians within the ROW along South Hurstbourne Parkway.

- (c) The extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant

STAFF: The extent of waiver of the regulation is not the minimum necessary to afford relief to the applicant since the sidewalks can be constructed along the street frontage without an adverse impact upon the development layout.

- (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 not deprive the applicant of the reasonable use of the land or would not create an unnecessary hardship on the applicant since there are no constructability issues preventing the sidewalks from being built along South Hurstbourne Parkway.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER (Utility Easement)

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

STAFF: The waiver will not adversely affect adjacent property owners since the proposal will be able to install the required plantings.

- 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 waiver request will not violate specific guidelines of Cornerstone 2020 as the proposal will be able to install the required plantings.

- 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 proposal will comply with all other applicable regulations in Chapter 10.2.4.

- 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 since the proposal will be able to install the required plantings.

**STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER
(Parkway Buffer)**

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

STAFF: The waiver will not adversely affect adjacent property owners since the proposal will provide additional plantings in the parkway buffer along with the required screening and South Hurstbourne Parkway has a wider right-of-way in this area that provides the benefit of additional green space between the property line and the edge of pavement.

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 waiver request will not violate specific guidelines of Cornerstone 2020 as the proposal mitigates the encroachment by providing additional plantings in that area of the parkway buffer, thereby protecting and, perhaps, improving the visual experience.

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 proposal will comply with all other regulations in Chapter 10.3.5.

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 since the proposal will be exceeding the screening requirements in the parkway buffer.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR DEVELOPMENT PLAN, BINDING ELEMENTS, AND PARTIAL REVISION TO THE GDDP

- 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: The subject site is adjacent to a protected waterway, Hurstbourne Creek. The proposed development will not affect this waterway. 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 transportation within and around the development and the community will be provided. Additional pedestrian connectivity should be provided along South Hurstbourne Parkway to make a more complete network of sidewalks to the site. Transportation Planning 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: All open space and landscape buffer requirements are met on the site.

- 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. Buildings and parking lots will be compatible with adjacent developments.

- 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: While waivers and variances are being requested for specific requirements of the Land Development Code, the development plan conforms to applicable guidelines and policies of the Comprehensive Plan with the exception of the request sidewalk waiver.

TECHNICAL REVIEW

- The variance was scheduled to be heard by the Board of Zoning Adjustment on June 15th, 2015.

STAFF CONCLUSIONS

The standards of review have been met for the requested waivers and development plan with the exception of the sidewalk waiver along South Hursbourne Parkway. The sidewalk along South Hurstbourne would provide

more pedestrian connectivity to the site as well as Williamsburg Plaza. The rest of the waivers follow the pattern of development in the area. Based upon the information in the staff report, the testimony and evidence provided at the public hearing, the Development Review Committee must determine if the proposal meets the standards for granting waivers and the revised detailed district development plan with binding elements as established in the Land Development Code. The decisions should be made as recommendations to the City of Hurstbourne.

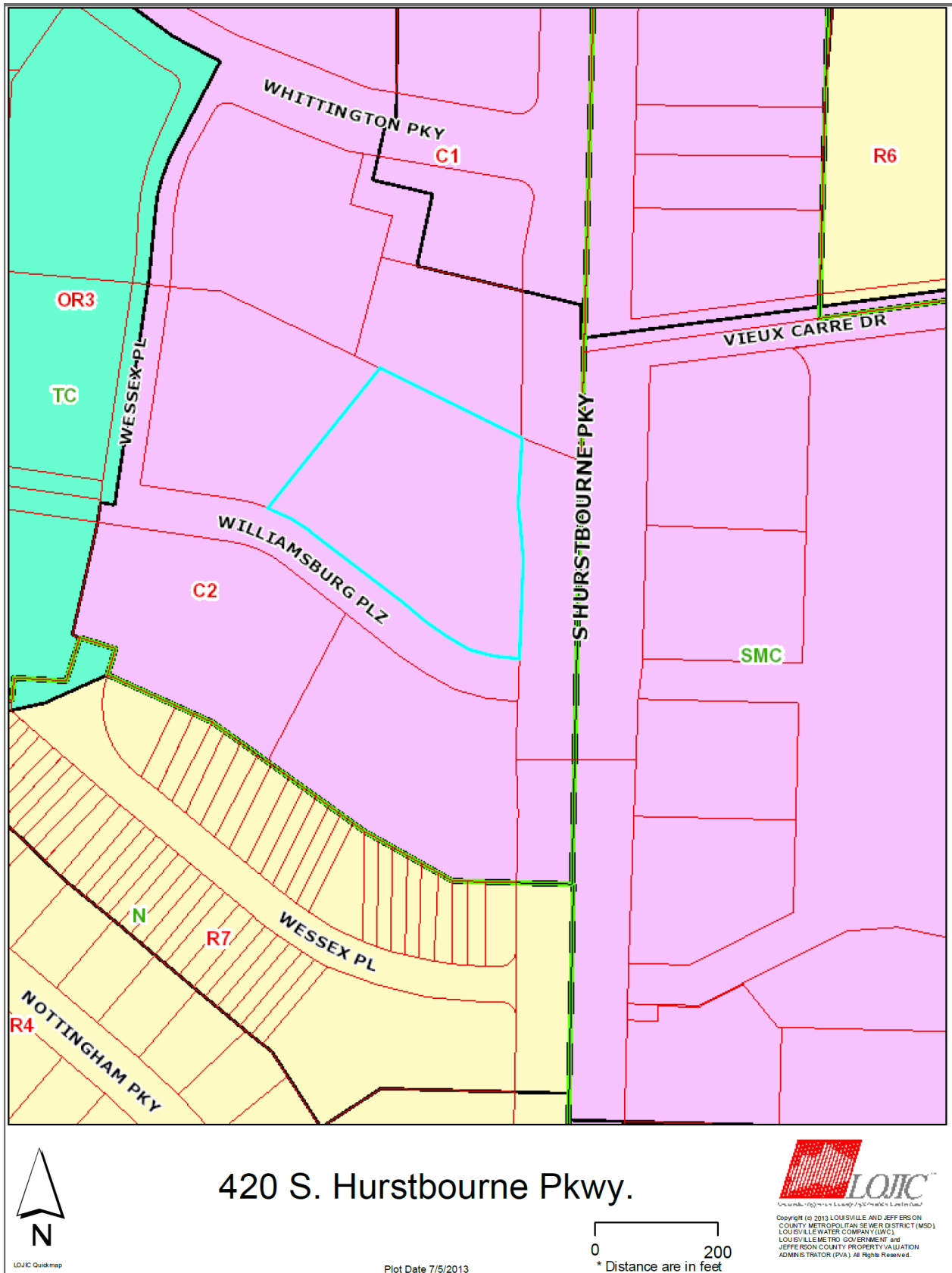
NOTIFICATION

Date	Purpose of Notice	Recipients
6/1/15	Hearing before DRC	1 st and 2 nd tier adjoining property owners Speakers at Planning Commission public hearing Subscribers of Council District 18 Notification of Development Proposals

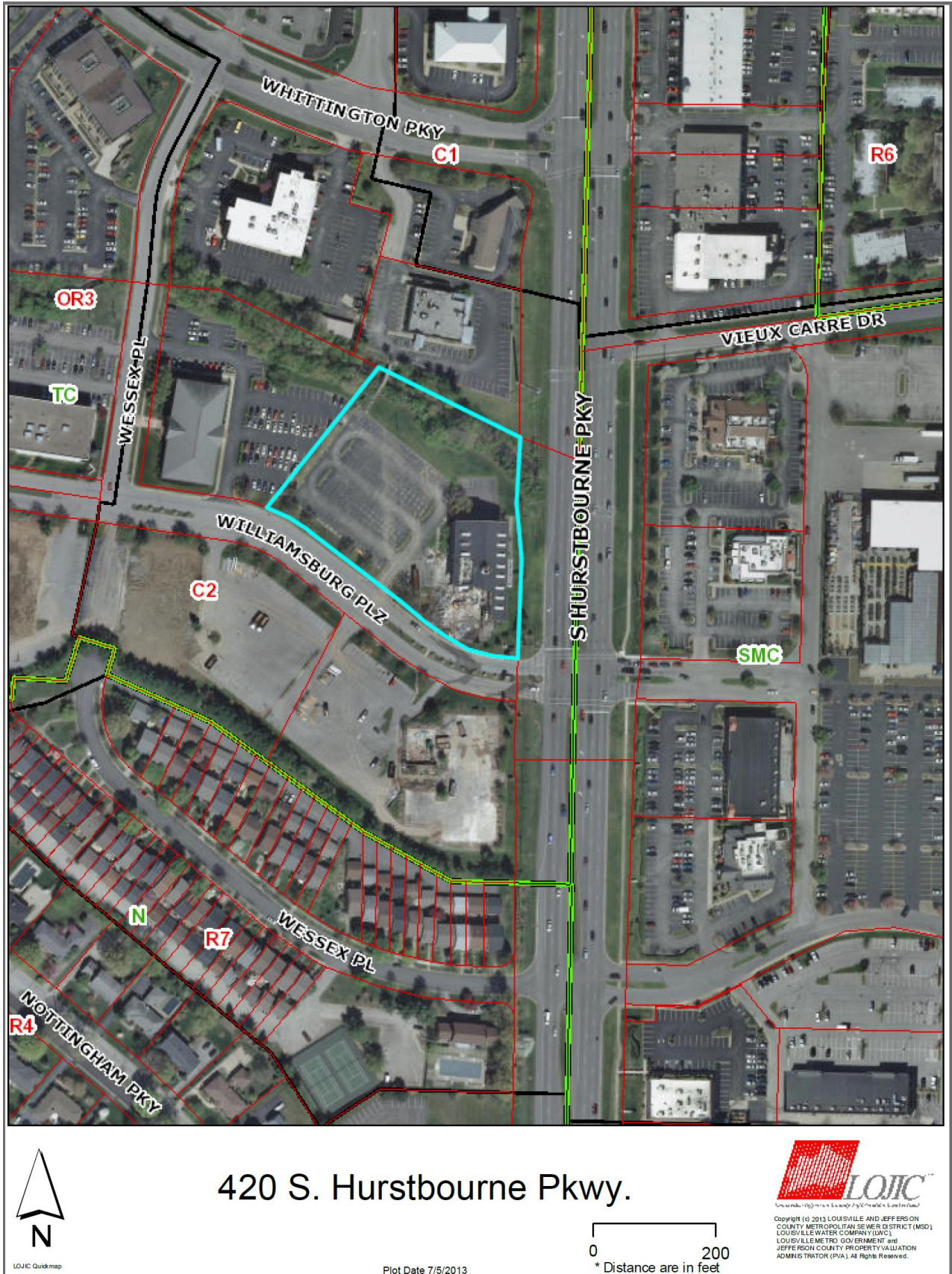
ATTACHMENTS

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

1. **Zoning Map**



2. Aerial Photograph



3. Existing Binding Elements

All binding elements from the approved General District Development Plan are applicable to this site, in addition to the following:

1. 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 Hurstbourne for review and approval; any changes/additions/alterations not so referred shall not be valid.
2. The development shall not exceed 11,778 square feet of gross floor area.
3. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.
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. 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.
6. 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.
7. At the time a building permit is requested, the applicant shall submit a certification statement to the permit issuing agency, from an engineer, or other qualified professional stating that the lighting of the proposed development is in compliance with Chapter 4 Part 1.3 of the land development code and shall be maintained thereafter. No building permits shall be issued unless such certification statement is submitted. Lighting shall be maintained on the property in accordance with Chapter 4 Part 1.3 of the Land Development Code.
8. If sidewalks along South Hurstbourne Parkway have not been built by the Kentucky Transportation Cabinet (KYTC) within five (5) years after construction approval for lot 3, then the owner/developer shall be responsible for their construction as shown on the approved district development plan and the owner/developer will also be responsible for constructing a sidewalk connection from the existing sidewalk along Williamsburg Plaza to the sidewalk along Hurstbourne Parkway either along the edge of Williamsburg Plaza right of way with the removal of the signature entrance wall, through the property and dedicating a sidewalk easement, or via another method satisfactory to the Louisville Metro Public Works Department.
9. There shall be no outdoor music (live, pipe, radio or amplified) or outdoor entertainment or outdoor PA system or drive-thru speakers audible beyond the property line.

10. Outdoor activity: No loading or unloading of merchandise, trash pickup (ie dumpster pickup and unloading, pallet or trash removal from the site), nor trash compacting shall occur on the property between the hours of 7PM to 7AM.
11. No overnight idling of trucks shall be permitted on site.
12. Delivery Truck Parking On Site: No delivery trucks with lights, engines, refrigerator motors or similar equipment in operation shall be allowed to park on the property between the hours of 7PM and 7AM.
13. As a condition of serving alcohol on the premises, the Applicant, its successors and assigns, hereby consent and agree it will maintain at least 50% of its income from food sales. In addition, any business located thereon shall close at 11 PM; no alcohol may be served after 11 PM and no food orders may be taken after 11 PM Sunday through Wednesday. On Thursday, Friday and Saturday, the business shall close at 12:00 AM with no alcohol or food served after that time. In both cases, all customers will exit the premises within one hour after closing.
14. The Applicant, its successors and assigns, hereby consents and agrees that the City of Hurstbourne has full right and authority to take any and all appropriate direct legal action against Applicant, its successors and assigns, to enforce the Binding Elements and inspect the premises to determine compliance with the Binding Elements. Further, the applicant shall sign a separate binding element agreement re-stating this restriction and no permit of any kind may be pulled unless and until said Binding Element Agreement is so signed. All binding elements and/or conditions of approval stated in this Municipal Order are accepted in total without exception by the entity requesting approval of this development item.

4. Proposed Binding Elements

2. The development shall not exceed ~~44,778~~ **2,300** square feet of gross floor area **with a 700 square foot outdoor patio.**