

# Development Review Committee

## Staff Report

March 1, 2023



<b>Case No:</b>	22-DDP-0141
<b>Project Name:</b>	Paul's Fruit Market
<b>Location:</b>	4966 US Hwy 42
<b>Owner(s):</b>	Ben Coomes
<b>Applicant:</b>	Ben Coomes
<b>Jurisdiction:</b>	Louisville Metro
<b>Council District:</b>	7 – Paula McCraney
<b>Case Manager:</b>	John Michael Lawler, Planner I

### REQUEST(S)

- Waivers:
  1. Waiver from LDC Section 4.4.8.E.8 to allow outdoor display and sales in the required parkway buffer area. (22-WAIVER-0241)
  2. Waiver from LDC Section 10.2.4.B.1 to allow a covered patio canopy to encroach into the required 30' landscape buffer area (22-WAIVER-0241).
- Revised Detailed District Development plan.

### CASE SUMMARY/BACKGROUND

The applicant is proposing a 3,290 sq. ft addition to an existing structure, along with a covered patio, on 1.20 acres of land. Access to the site is provided by two separate access points along Glen Eagle Dr, a private right-of-way. The building addition will occupy space that is currently a drive thru canopy. Only the proposed covered patio will add to the building's existing footprint. The site fronts on US Hwy 42 to the west and Glen Eagle Drive to the south. A sidewalk is present in the right-of-way for US Hwy 42 and the applicant is proposing a connection to the walk for the site. No sidewalk is required along Glen Eagle Drive. Office uses are present across US Hwy 42, while office and commercial uses are present across Glen Eagle Drive and flanking the building to the north and east. The proposed covered patio will encroach into a 30' landscape buffer area required along the western property line has, for which the applicant has submitted a waiver. They are also requesting a waiver to allow outdoor display and sales in the required parkway buffer area. This site was previously R-4 and was rezoned to C-1 as part of the Glenview Pointe rezoning (9-77-84).

### STAFF FINDING

Staff finds that the proposal meets the guidelines of the Comprehensive Plan and requirements of the Land Development Code. The proposed addition will not adversely affect the surrounding properties or existing parkway. Staff also finds that the waivers are justified and are the minimum relief necessary to allow for the expansion.

## TECHNICAL REVIEW

Transportation Planning and MSD have preliminarily approved the proposal.

## INTERESTED PARTY COMMENTS

None received.

## STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER TO ALLOW A COVERED PATIO CANOPY AND OUTDOOR DISPLAY AND SALES IN THE REQUIRED PARKWAY BUFFER AREA (22-WAIVER-0241).

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

STAFF: The waivers will not adversely affect adjacent property owners since buffering, screening, and plantings will still be provided along the right-of-way. Adjacent properties also have structures that are as close, or closer, to the right-of-way as the proposed development.

- (b) The waivers will not violate specific guidelines of Plan 2040; and

STAFF: Community Form Goal 1, Policy 10 calls to mitigate the impacts caused when incompatible developments unavoidably occur adjacent to one another. Buffers should be used between uses that are substantially different in intensity or density. Buffers should be variable in design and may include landscaping, vegetative berms and/or walls and should 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. Residential uses that develop adjacent to agricultural land uses may be required to provide screening and buffering to protect both the farmer and homeowners. The plan is in compliance with Plan 2040 because the proposed development is in keeping with the existing development pattern along the parkway and has existing landscaping on site that serve as sufficient buffers, in-line with what is present along this portion of the parkway.

- (c) The extent of the waivers of the regulations are the minimum necessary to afford relief to the applicant; and

STAFF: The extent of the waivers of the regulations are the minimum necessary to afford relief to the applicant since all setbacks, screening, and plantings will still be provided along the parkway.

- (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 or would create an unnecessary hardship on the applicant, as the applicant is still providing all other setbacks, screening, and plantings required by the code.

**STANDARD OF REVIEW AND STAFF ANALYSIS FOR RDDDP and AMENDMENT TO BINDING ELEMENTS**

- 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: There do not appear to be any environmental constraints or historic resources on the subject site. 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 and pedestrian transportation within and around the development and the community has been provided, and Metro Public Works has approved the preliminary development plan.

- c. The provision of sufficient open space (scenic and recreational) to meet the needs of the proposed development;

STAFF: Open space requirements do not apply to the site. Future development will meet Land Development Code requirements.

- 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 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.

- 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 and roadways.

- 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: The development plan conforms to applicable guidelines and policies of the Comprehensive Plan and to requirements of the Land Development Code.

**REQUIRED ACTIONS:**

- **APPROVE** or **DENY** the **Waivers**
- **APPROVE** or **DENY** the **Detailed District Development Plan**

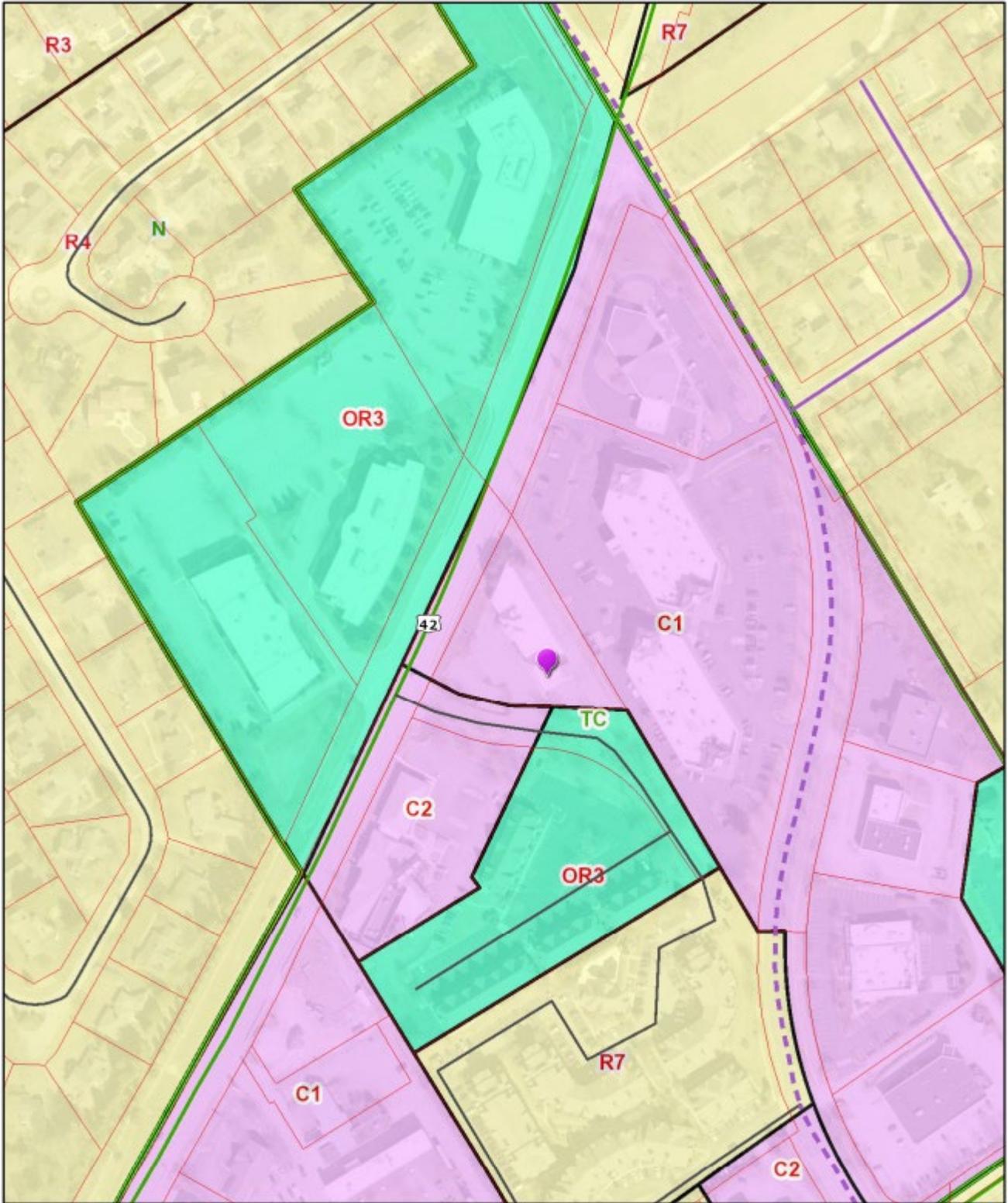
**NOTIFICATION**

Date	Purpose of Notice	Recipients
2/17/2023	Hearing before DRC on 3/1/2023	1 <sup>st</sup> tier adjoining property owners and current residents Speakers at Planning Commission public hearing Registered Neighborhood Groups in Council District 7

**ATTACHMENTS**

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

1. Zoning Map



2. Aerial Photograph



### 3. Existing Binding Elements w/ Proposed Changes

- ~~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. No further development shall occur without prior approval from the Planning Commission, except for land uses permitted in the established zoning district.~~
- ~~2. The development shall not exceed 8,220 square feet of gross floor area.~~
- ~~3. As per the previous Binding Element No. 2, a landscape buffer strip as shown on the approved district development plan shall be provided parallel to US Hwy. 42. This buffer strip is to be planted in grass, seasonal flowers or other vegetative ground cover and trees at a ratio of one tree for each 25 feet of lineal distance along US Hwy. 42.~~
- ~~4. The only permitted freestanding sign shall be a monument style sign, located as shown on the approved development plan. No portion of the sign, including the leading edge of the sign frame, shall be closer than 10 feet to the front property line. The sign shall not exceed 52 square feet in area per side and 6 feet, 6 inches in height. No sign shall have more than two sides.~~
- ~~5. Outdoor lighting shall be directed down and away from US Hwy. 42. Lighting fixtures shall have a 90-degree cutoff so that no light source is visible off site. Lighting levels attributable to the fixtures located on the subject site shall not exceed two foot candles at the property line.~~
- ~~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).~~
  - ~~b. The property owner/developer must obtain approval of a detailed plan for screening (buffering/landscaping) as described in Article 12 prior to requesting a building permit. Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter.~~~~
- ~~7. If a building permit is not issued within one year of the date of approval of the plan, 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 office 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.~~
- ~~9. The property owner/developer shall provide copies of these binding elements to tenants, contractors and other parties engaged in development of this project and shall inform them of the content of these binding elements. Further, the property owner/developer shall require contractors to similarly notify all of their sub-contractors whose duties relate to the binding elements. The property owner/developer shall ensure their compliance with the binding elements.~~
- ~~10. Planning Commission approval of the revised district development plan is subject to staff landscape architect approval of the landscape plan.~~

#### **4. Proposed Binding Elements**

All binding elements from the approved General 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 Lyndon, St. Matthews, Hurstbourne, or Middletown etc.) for review and approval; any changes/additions/alterations not so referred shall not be valid.
2. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.
3. 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.
4. Before any permit (including but not limited to building, parking lot, change of use, or site disturbance) is requested:
  - a. The development plan must receive full construction approval from Construction Review, Louisville Metro Public Works, and the Metropolitan Sewer District.
  - b. Encroachment permits must be obtained from the Kentucky Transportation Cabinet.
  - c. The property owner/developer must obtain approval of a detailed plan for screening (buffering/landscaping) as described in Chapter 10 prior to requesting a building permit. Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter.
  - d. The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the March 1, 2023 Development Review Committee meeting. A copy of the approved rendering is available in the case file on record in the offices of the Louisville Metro Planning Commission.
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. There shall be no outdoor music (live, piped, radio or amplified) or outdoor entertainment or outdoor PA system audible beyond the property line.
7. 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.

8. The parkway buffer is to be planted in grass, shrubs, seasonal flowers, or other vegetative ground cover and trees at a ratio of one Type A tree for each 25 feet of lineal distance along US Hwy 42.
9. The only permitted freestanding sign shall be a monument style sign, located as shown on the approved development plan. No portion of the sign, including the leading edge of the sign frame, shall be closer than 10 feet to the front property line. The sign shall not exceed 52 square feet in area per side and 6 feet, 6 inches in height. No sign shall have more than two sides.
10. Outdoor lighting shall be directed down and away from US Hwy. 42. Lighting fixtures shall have a 90-degree cutoff so that no light source is visible off-site. Lighting levels attributable to the fixtures located on the subject site shall not exceed two-foot candles at the property line.