

# Board of Zoning Adjustment

## Staff Report

May 5, 2020



<b>Case No:</b>	21-VARIANCE-0035, 21-WAIVER-0043 & 21-WAIVER-0045
<b>Project Name:</b>	First Watch
<b>Location:</b>	4948 US Highway 42
<b>Owner(s):</b>	Frankfort Depot 2 LLC.
<b>Applicant:</b>	Mike Hill – LD&D
<b>Jurisdiction:</b>	Northfield
<b>Council District:</b>	7 – Paula McCraney
<b>Case Manager:</b>	Molly Clark, Planner I

### REQUEST:

1. **Variance** of Land Development Code section 9.1.4 to allow a proposed building to be located within the 30 foot building setback along US Highway 42 **(21-VARIANCE-0035)**
2. **Waiver** of Land Development Code section 10.3.5.A.7 to allow parking within the 30 foot Parkway Buffer along US Highway 42. **(21-WAIVER-0043)**
3. **Waiver** of the Land Development Code section 10.2.12 to not provide the required interior landscape areas. **(21-WAIVER-0043)**
4. **Waiver** of the Land Development Code section 10.2.4 to not provide the required 10 foot landscape buffer area (LBA) adjacent to the OR-3 zoned property. **(21-WAIVER-0043)**
5. **Waiver** of the Land Development Code section 5.5.1.A.3.a to not provide a masonry wall along the US Highway 42 road frontage. **(21-WAIVER-0045)**

### CASE SUMMARY/BACKGROUND

The subject site is zoned C-1 Commercial in the Town Center form district and the City of Northfield. It is located on the east side of US Highway 42 and north of Brownsboro Road, in the Greenspring Section 2 subdivision and the Holiday Manor shopping center. The applicant is proposing to demolish the existing Arby's restaurant and construct a First Watch Restaurant (4,300 sq feet). The applicant also proposes to use the existing parking lot without making any changes.

The applicant is requesting to allow parking to encroach into the 30 foot Parkway Buffer along US Highway 42, and to allow off-street parking and the proposed building to be within the 30 foot building setback along US Highway 42. The existing parking layout would remain essentially the same in the areas where it encroaches into the Parkway Buffer and the building setback, so the encroachment is not increasing significantly.

### STAFF FINDINGS

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

### TECHNICAL REVIEW

MSD and Public works have provided preliminary plan review.

## **INTERESTED PARTY COMMENTS**

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

### **STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCE FROM SECTION 10.3.5.a.1 TO ALLOW A PROPOSED BUILDING TO ENCROACH INTO THE REQUIRED 30 FOOT PARKWAY SETBACK.**

- (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 proposed building will be located in the same area as the previous building (Arby's) and will not be a sight distance concern. Also if US Highway 42 was not a parkway, the proposed development's setback would be 15 feet. The proposed building is set back at 11 feet from the front yard property line.

- (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 proposed restaurant will match the existing commercial character that this subject property is surrounded by. The proposed restaurant will be going into the existing Holliday Manor shopping center.

- (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 building is going in the same area as the existing Arby's is located now. The proposed building will be consistent the surrounding commercial developments.

- (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 applicant is trying to use the existing parking lot for redevelopment. The current regulations do not allow the applicant to keep some of the existing conditions.

### **STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER OF SECTION 10.2 TO ALLOW PARKING AND PROPOSED BUILDING WITHIN THE 30 FOOT PARKWAY BUFFER ALONG US HIGHWAY 42**

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

STAFF: The waiver will not adversely affect adjacent property owners, since the property perimeter where the waiver request applies is adjacent to a neighboring building façade which does not have windows, and a grassy area that divides the subject site from a parking lot in the neighboring property to the north.

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

STAFF: Land Use & Development Goal 1, Policy 20 calls for mitigation of adverse visual intrusions when there are impacts to residential areas, roadway corridors, and public spaces. Land Use & Development Goal 1, Policy 10 calls for mitigation of 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.

The subject site and the abutting property are both zoned PEC Planned Employment Center. PVA lists the subject site's use as Manufacturing/Warehouse, and the abutting site to the north is listed as Commercial Office. The intensity of uses does not appear to be substantially different and no known adverse visual intrusions should occur.

- (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 property perimeter where the waiver request applies is adjacent to a neighboring building façade which does not have windows, and a grassy area that divides the subject site from a parking lot in the neighboring property to the north. Staff recommends the Committee discuss with the applicant the site characteristics which resulted in the need to shift the parking lot, access, and retaining wall. Additionally, staff recommends the Committee discuss with the applicant whether there is an opportunity for additional plantings as mitigation for the requested waiver.

- (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, according to the applicant, there are site conditions which necessitated the encroachment for which the waiver is requested.

**STANDARD OF REVIEW AND STAFF ANALYSIS FOR LANDSCAPE WAIVER of section 10.2.12 to allow a reduction of ILA from 5% to 1%:**

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

STAFF: The waiver will not adversely affect adjacent property owners since the applicant is proposing to use the existing parking lot. The adjoining property owners will not experience any changes regarding the parking lot and circulation within the shopping center should function as it does currently.

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

STAFF: Guideline 1, Policy 4 calls for new development and redevelopment to be compatible with scale and site design of nearby existing development. The applicant is proposing to use the existing parking lot and this should not affect circulation throughout the Holiday Manor

shopping center. The proposed development is consistent with the surrounding developments. According to Guideline 13, Policy 17, new development should mitigate adverse impacts of traffic from proposed development on nearby existing communities. The applicant is proposing to redevelop a site from fast food to a sit down restaurant. They are proposing to keep the same parking lot and keeping the development in a appropriate area away from residential. By doing this, the applicant is keeping the traffic circulation the same, and this should not impact traffic on adjacent developments. If more ILA was added to the site, it would take away from the existing parking lot/spaces that is needed for the development. The applicant is also removing a curb cut onto Highway 42 which will add more greenspace to the site aside from the ILA's.

- (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 they are not replacing the parking lot. They are using the existing lot and not making any changes.

- (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 regulation would deprive the applicant of using the existing parking lot for the proposed restaurant. Changing the parking lot configuration will affect circulation throughout the shopping center.

**STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER of section 10.2.4. TO NOT PROVIDE THE REQUIRED 10 FOOT BUFFER ADJACENT TO THE OR-3 PROPERTY:**

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

STAFF: The waiver will not adversely affect adjacent property owners since there is an existing access area that leads into US Highway 42. The applicant is proposing to keep the existing conditions the same and circulation throughout the site should also remain the same. The existing road along the OR-3 property, slightly encroaches on this required buffer as well.

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

STAFF: According to Guideline 24 Policy 6, Plan 2040 encourages that more compact development pattern in activity centers that result in efficient land use for redevelopment. The applicant is doing this with the proposed restaurant by keeping the existing parking lot in an already compact shopping center. This development is also being located in an area with different commercial uses. According to Guideline 25, Policy 7, Plan 2040 encourages that activity centers to include mixture of compatible land uses in order to reduce traffic congestion by requiring fewer trips. The applicant is providing this by placing a proposed restaurant at an old fast food site, an keeping the same access and parking but replacing the building. If the 10 foot buffer is provided, it will change or alter the circulation on the site.

- (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 current regulations does not allow the applicant to keep some of the existing conditions. The applicant will only be replacing the building but keeping the same parking lot and access which encroaches into the required 10 foot buffer.

- (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 current regulations do not allow the applicant to keep the existing parking lot. This site is being redeveloped but the applicant is wanting to keep the parking lot and access the exact same. The proposed buffer is slightly encroaching into the existing access.

**STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER OF SECTION  
5.5.1.A.3.a TO NOT PROVIDE A MASONRY WALL ALONG THE US HIGHWAY 42 ROAD  
FRONTAGE:**

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

STAFF: The applicant is keeping the existing conditions for the parking lot and should not affect circulation through the adjacent commercial developments.

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

STAFF: According to Guideline 33 Policy 15, parking in activity centers should reflect the area's associated Form district standards to balance safety, traffic, transit, pedestrian, environmental and aesthetic considerations. This site is in the Town Center Form District, which is a traditional neighborhood form district. The area itself is not traditional and is more of a suburban style design.

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

STAFF: The waiver is necessary because this regulation applies to traditional neighborhoods and this site does not have traditional neighborhood characteristics. This area looks more like suburban and is very auto-centric. This area should not be a traditional form district. The adjacent neighborhoods are suburban style subdivisions. The masonry wall requirement for this development does not fit the neighborhood.

- (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 current regulations for Town Center is for traditional neighborhoods. This area is not traditional in design. To apply traditional neighborhood standards for this site is unnecessary especially since this area is more auto centric than traditional parts of Louisville.

**REQUIRED ACTIONS:**

- **APPROVE** or **DENY** the **Variance**
- **APPROVE** or **DENY** the **Waivers**

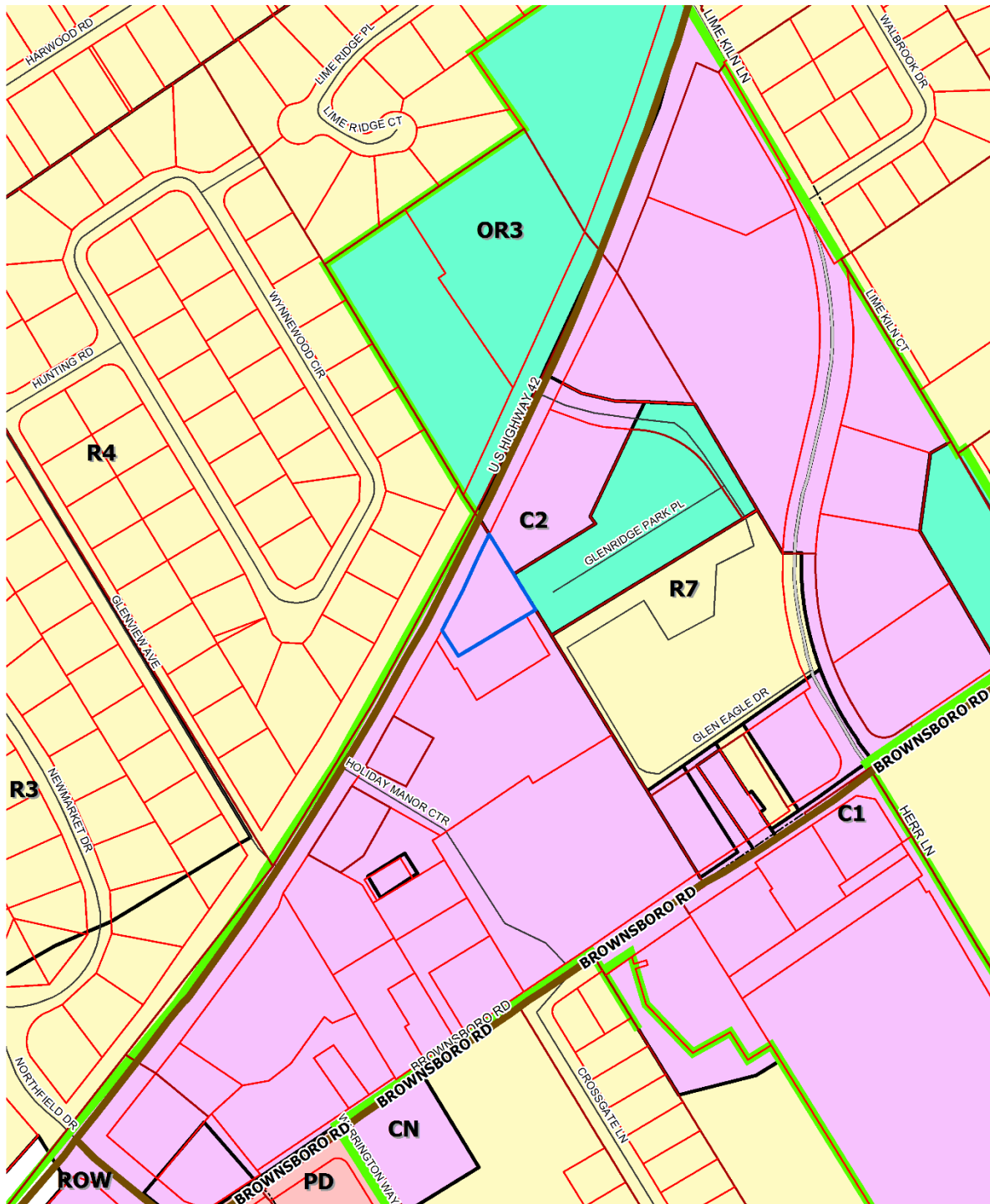
**NOTIFICATION**

Date	Purpose of Notice	Recipients
4-19-21	Hearing before BOZA	1 <sup>st</sup> tier adjoining property owners Registered Neighborhood Groups in Council District 7

**ATTACHMENTS**

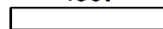
1. Zoning Map
2. Aerial Photograph

1. **Zoning Map**



4948 US Highway 42

feet



320

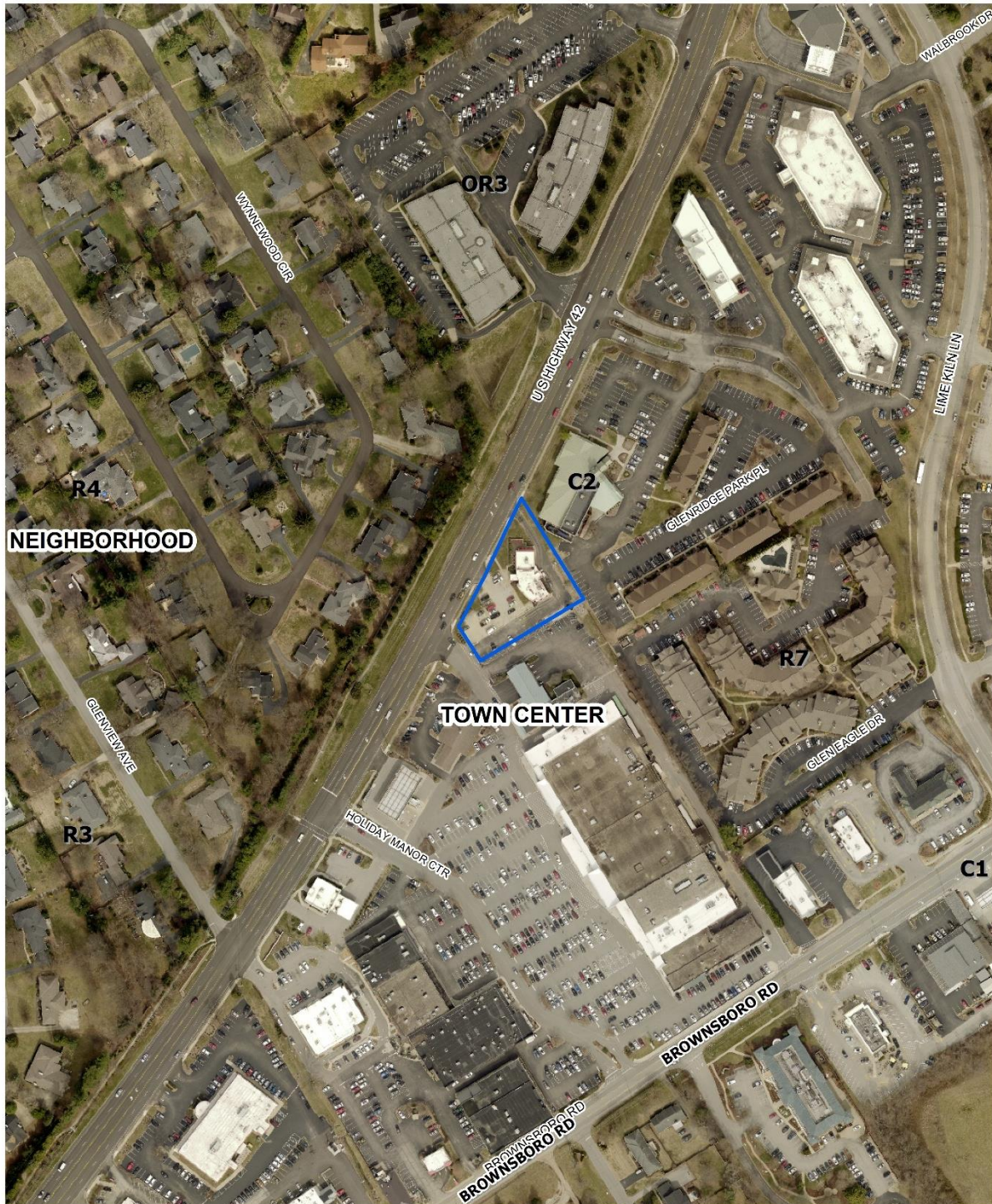
Map Created: 2/27/2020



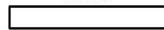
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2. Aerial Photograph



4948 US Highway 42  
feet



240

Map Created: 2/27/2020



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