

Board of Zoning Adjustment

Staff Report

June 7, 2021



Case No:	20-VARIANCE-0104, 20-VARIANCE-0167
Project Name:	Providence Point Apartments
Location:	2020 Herr Lane
Owner(s):	Providence Point LLC
Applicant:	Providence Point LLC
Jurisdiction:	Louisville Metro
Council District:	7 – Paula McCraney
Case Manager:	Dante St. Germain, AICP, Planner II

REQUESTS

- **Variances:**
 - 1: from table 5.2.2 to allow residential buildings in the OR-3 and C-1 zoning district and the Town Center form district to exceed 45' in height (required 45', requested 52', variance of 7') (20-VARIANCE-0104)
 - 2: from 5.2.2 to exceed the front yard maximum setback (required 25', requested 57.61', variance of 32.61') (20-VARIANCE-0167)

CASE SUMMARY/BACKGROUND

The subject property is located along Herr Lane across from Ballard High School, and is currently undeveloped. The applicant proposes to construct a new 520-unit multi-family development, consisting of 12 3- and 4-story buildings. A clubhouse and pool will be located adjacent to, and partially within, Building 1, and the site plan reflects two dog parks.

The applicant requests two variances. The first is from table 5.2.2 to allow five of the twelve proposed buildings to exceed the maximum allowable building height by 7 feet. The other seven buildings will be under the required 45 feet in height. The second is to permit one building to exceed the maximum allowable front yard setback by 32.61 feet. The other five buildings which front Herr Lane will comply with the required minimum/maximum setbacks.

The site was rezoned from R-4 to C-1, C-N and OR-3 under docket 9-08-00. The original approved plan was for general commercial, restaurant, office and bank uses. A revised detailed district development plan was approved under the same docket number in 2006, changing the use of the property to mixed commercial, office and residential, with 312 units and 173,900 square feet of non-residential floor space.

The case was heard by the Planning Commission for five waivers and the Revised Detailed District Development Plan on April 1, 2021. The Commission continued the case to April 15, 2021 for deliberation, and on April 15th continued it again to May 20th. On May 20, 2021, the Commission approved the RDDDP and all five of the requested waivers. The applicant now requests the Board to consider the two variances.

STAFF FINDING

Staff finds that the requested variances are adequately justified and meet the standard of review.

TECHNICAL REVIEW

Plan 2040

Land Development Code (Louisville Metro)

The Revised Detailed District Development Plan and five waivers were approved on May 20, 2021, on condition that the variances are also approved by the Board.

INTERESTED PARTY COMMENTS

Numerous interested party comments in opposition to the proposal have been received. Additionally, attorney Clarence Hixson has objected to the proposal on the grounds of pending litigation in circuit court. One interested party comment was received in favor of the proposal provided that the applicant supplies affordable housing units. The applicant has not committed to providing affordable units. The adjacent religious institutional use has provided a letter that is neither in support nor in opposition.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCE #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 buildings with the excess height will be located to the rear of the property and will not create sight line issues at Herr Lane or the access drives.

- (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 as the buildings requiring the variance will be located to the rear of the property and the variance is unlikely to be noticed from Herr Lane.

- (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 buildings will be built to building code and will not constitute a hazard or nuisance.

- (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 variance requested is minimal and the most affected neighboring property is in institutional use.

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 does not arise from special circumstances which do not generally apply to land in the general vicinity or the same zone as the site is relatively flat and is regular in shape.

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 not create an unnecessary hardship on the applicant as the number of units could be decreased so that the four-story buildings become three stories in height.

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 the variance and no construction has taken place.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCE #2:

- (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 an excess setback does not create a public health, safety or welfare issue.

- (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 as most of the buildings on the Herr Lane frontage observe the required maximum setback.

- (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 an excess setback does not constitute a hazard or nuisance.

- (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 majority of the buildings along Herr Lane observe the required maximum 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 or the same zone as the increased setback is made necessary by the realignment of an access drive which will be shared between the subject site and the adjacent site, to make the access drive align with Wesboro Road across Herr Lane.

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 as the building with the excess setback is located where it is due to the realignment of an access drive so that the drive will line up with Wesboro Road.

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 the variance and no construction has taken place.

REQUIRED ACTIONS:

- **APPROVE** or **DENY** the **Variances**

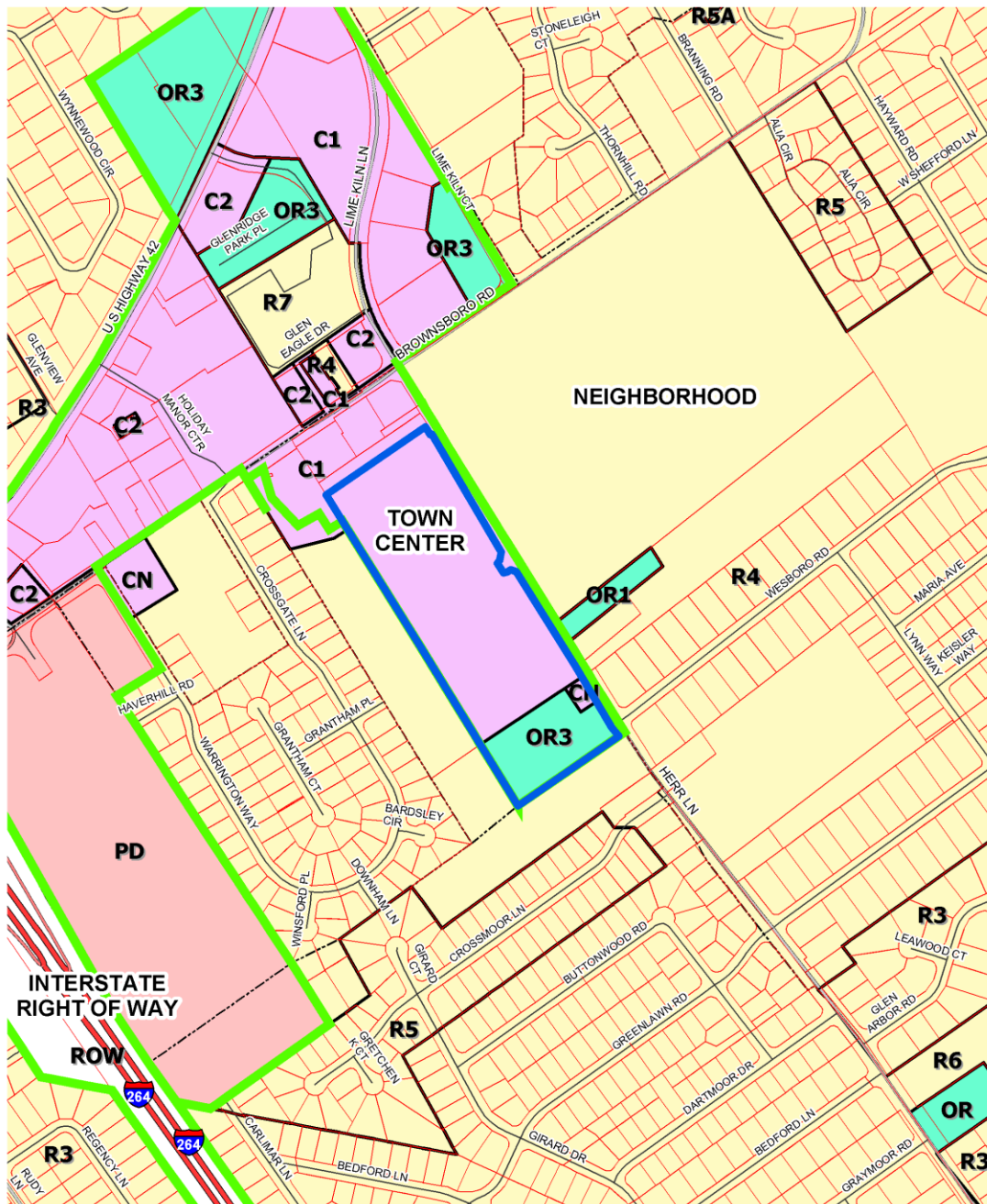
NOTIFICATION

Date	Purpose of Notice	Recipients
04/05/2021	Board of Zoning Adjustment Public Meeting	1 st tier adjoining property owners Registered Neighborhood Groups in Council District 7
04/07/2021	Board of Zoning Adjustment Public Meeting	Notice posted on property

ATTACHMENTS

1. Zoning Map
2. Aerial Photograph

1. Zoning Map



2020 Herr Lane
feet

560

Map Created: 3/22/2021



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2. Aerial Photograph



2020 Herr Lane
feet

560

Map Created: 3/22/2021



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