

Land Development & Transportation Committee
Staff Report
July 22, 2021



Case No:	21-DDP-0061
Project Name:	Hurstbourne Town Center
Location:	9351 Viking Center Drive
Owner(s):	Viking Partners Hurstbourne
Applicant:	Viking Partners Hurstbourne
Representative(s):	Land Design & Development, Inc.
Jurisdiction:	City of Hurstbourne
Council District:	18 – Marilyn Parker
Case Manager:	Joel P. Dock, AICP, Planner II

REQUEST(S)

- **Waiver** of Land Development Code (LDC), section 5.5.1.A.1 to not face entrances towards public streets or a focal point
- **Waiver** of LDC, section 10.3.5.A.1 to allow the building to encroach upon the 30' parkway buffer and setback
- **Revised Detailed District Development Plan**

CASE SUMMARY

The proposed development plan revises two similar proposals for this tract approved in 2018 and 2019 in cases 17DEVPLAN1127 and 19DEVPLAN1065. Each proposal involved the redevelopment of the current development site, along with a larger development site that generally encompasses the land between Shelbyville Road, Hurstbourne Parkway, and Whittington Parkway. The larger development area is not being revised with this application. The development on Tract 6 and associated waivers are the only requests before the Committee. The new use proposed is a multi-tenant dentist office.

Associated Cases

9-28-04: OTF to C-2 for PF Chang's restaurant (approved 8/19/04).
9-41-05: OTF to C-1 for northern portions of site. (approved 9/1/05; revised 9/14/06)
17DEVPLAN1127: RDDDP/Cat. 3 with waivers (approved 4/5/18)
17VARIANCE1022: Variances for setback to exceed the maximum on multiple tracts and for buildings not to be located at the corner (approved 4/16/18)
19DEVPLAN1065: RDDDP/Cat. 3 with waivers (approved 5/22/19)
19VARIANCE1040: Variances for building not to be located at the corner on Tract 6 (approved 5/20/19)

STAFF FINDING

The waivers and revised plan appear to be adequately justified based on staff's analysis contained in the standard of review.

TECHNICAL REVIEW

Detailed descriptions of waivers, and variances approved in 2018 and 2019 are provided on the applicant's development plan. Variances run with the land; therefore, the approved variance for the structure on Tract 6 to not be located at the corner remain valid for the plan and the encroachment is consistent with prior approvals. Waivers run with plans and the only revisions are on Tract 6; therefore, waivers for building design and landscape encroachments were again required. No changes to current binding elements are proposed.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER (entrances)

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

STAFF: The waiver will not adversely affect adjacent property owners as the orientation of the structure is not anticipated to reduce interaction with adjacent owners or detract from the character of the center.

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

STAFF: The Town Center Form District is defined by buildings that are generally close to and oriented toward the street. These characteristics strengthen the role of the Town Center as a community focal point. The Town Center should have a high level of pedestrian, roadway, transit and bicycle access, a connected street pattern, shared parking and pedestrian amenities. Town Centers are easily disrupted by new forms of development. Therefore, the harmony and compatibility of infill and redevelopment in town centers should receive special attention. The establishment of new town centers requires a high level of planning and design. The center has been previously disrupted and the character no longer conforms to these principles, nor is it anticipated that the center will be developed in a fashion consistent with the Town Center Form; thus, deviation from these principles is in keeping with the previously approved and proposed pattern of development for the center.

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

STAFF: The extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant as the applicant has appropriately requested the waiver and the relief is consistent with the overall approved and proposed plans for the center.

- (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 regulation would deprive the applicant of the reasonable use of the land as prior approvals have omitted many of the standards of the Town Center form district and further application of these standards without strict compliance for the remainder of the center would be unnecessary.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER (parkway)

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

STAFF: The waiver will not adversely affect adjacent property owners as the relief requested is not anticipated to reduce interaction with adjacent owners or detract from the character of the center.

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

STAFF: The Town Center Form District is defined by buildings that are generally close to and oriented toward the street. These characteristics strengthen the role of the Town Center as a community focal point. The Town Center should have a high level of pedestrian, roadway, transit and bicycle access, a connected street pattern, shared parking and pedestrian amenities. Town Centers are easily disrupted by new forms of development. Therefore the harmony and compatibility of infill and redevelopment in town centers should receive special attention. The establishment of new town centers requires a high level of planning and design. The center has been previously disrupted and the character no longer conforms to these principles, nor is it anticipated that the center will be developed in a fashion consistent with the Town Center Form; thus, deviation from these principles is in keeping with the previously approved and proposed pattern of development for the center.

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STAFF: The strict application of the regulation would deprive the applicant of the reasonable use of the land as prior approvals have omitted many of the standards of the Town Center form district and further application of these standards without strict compliance for the remainder of the center would be unnecessary.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR REVISED DETAILED DISTRICT DEVELOPMENT PLAN AND/OR 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: The proposed development does not appear to impact natural resources as the existing conditions of the subject site consist primarily of impervious surfaces.

- 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 both within the development and the community has been provided. Sidewalk connectivity to each road fronting the development site are provided and vehicular connectivity is provided from internal roadways from Whittington parkway.

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

STAFF: Provision of sufficient open space (scenic and recreational) to meet the needs of the proposed development will be provided through landscape and tree canopy.

- 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 prior approvals and future development.

- 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 the comprehensive plan as the redevelopment is occurring on a previously developed site.

REQUIRED ACTIONS

- **APPROVE or DENY** the **Waiver** of Land Development Code (LDC), section 5.5.1.A.1 to not face entrances towards public streets or a focal point
- **APPROVE or DENY** the **Waiver** of LDC, section 10.3.5.A.1 to allow the building to encroach upon the 30' parkway buffer and setback
- **RECOMMEND** that the City of Hurstbourne **APPROVE or DENY** the **Revised Detailed District Development Plan**

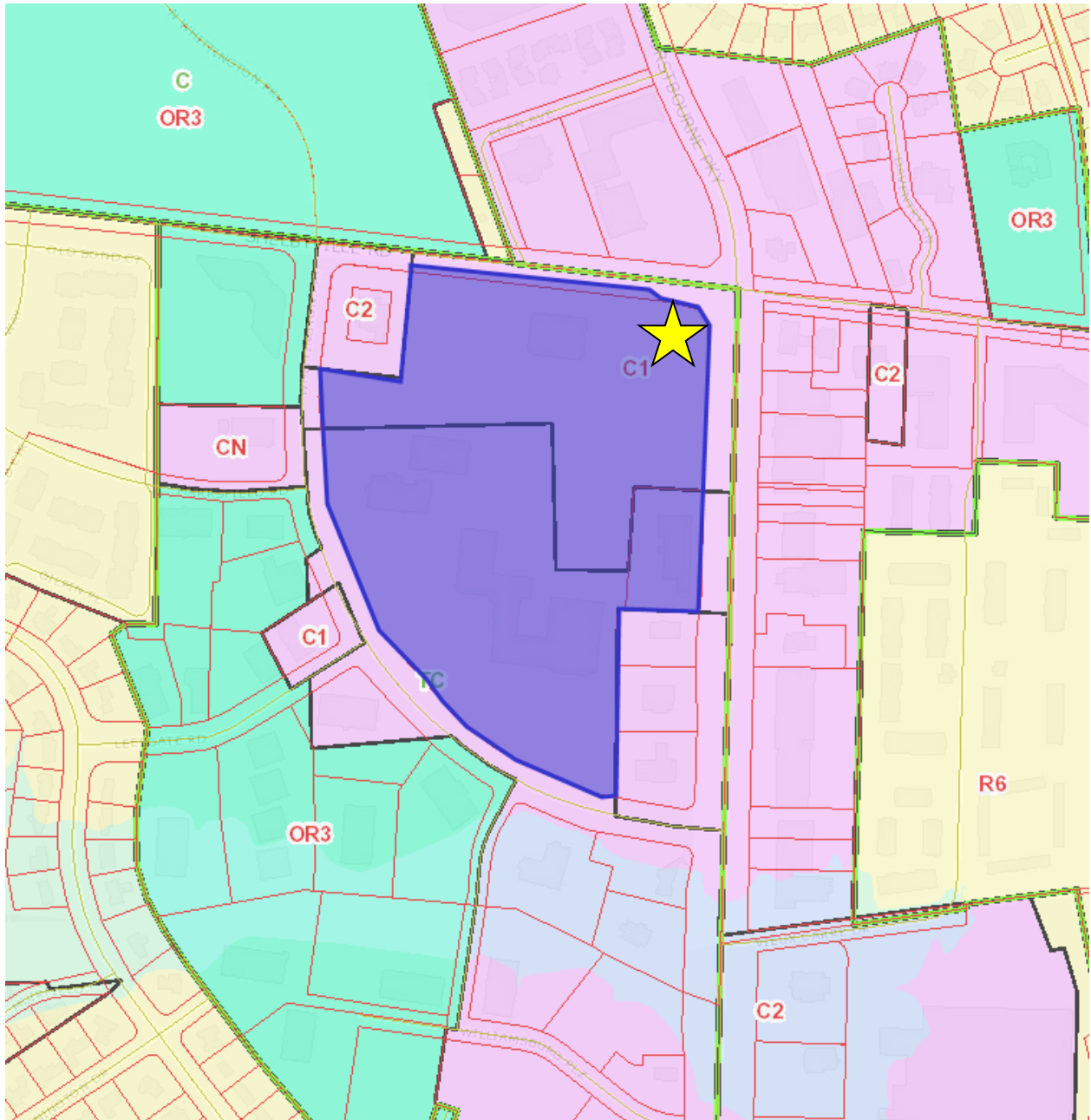
NOTIFICATION

Date	Purpose of Notice	Recipients
07/08/21	Hearing before LD&T	1 st tier adjoining property owners. Registered Neighborhood Groups in Council District 18

ATTACHMENTS

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

1. **Zoning Map**



2. Aerial Photograph



4. Binding Elements (C-1 development site only/North)

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 the City of Hurstbourne for review and approval; any changes/additions/alterations not so referred shall not be valid.
2. There shall be no direct vehicular access to Hurstbourne Parkway or Shelbyville Road.
3. There shall be no street parking marked, constructed, or allowed, on Whittington Parkway and the plan shall be revised to remove street parking that it shows on Whittington Parkway
4. Before any permit (including but not limited to building, parking lot, change of use, site disturbance, alteration permit or demolition permit) is requested for each tract:
 - a. The property owner/developer must obtain approval of a detailed plan for screening (buffering/landscaping) as described in Chapter 10
 - b. A subdivision plat creating the tracts as shown on the approved district development plan shall be recorded.
 - c. Renderings of each building shall be provided to Planning and Design Services staff and to the City of Hurstbourne for review and incorporation into the case file, excluding the renderings for the apartment project on Tract 1, which shall be substantially similar to those presented to the Planning Commission and the City of Hurstbourne in connection herewith.
 - d. A cross access and shared parking agreement shall be recorded for all tracts as shown on the approved detailed district development plan. A blanket cross parking and access easement shall satisfy this requirement.
 - e. The applicant shall receive the approval of MSD that its construction plans comply with current drainage requirements.
5. Except as otherwise permitted by the City of Hurstbourne sign ordinance, no outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted. All signs must be in compliance with City of Hurstbourne ordinances and applicant must obtain City of Hurstbourne sign permits for any signage.
6. 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.
7. The address number shall be displayed on a structure prior to requesting a certificate of occupancy for that structure.
8. The applicant shall provide documentation to Planning and Design Services staff for incorporation into the case file showing that the development complies with all the regulations from Chapter 4, Part 1, Section 3, Lighting, prior to the issuance of a construction permit. These regulations include the following items:
 - a. Mounting Height Limit
 - b. Luminaire Shielding

- c. Canopy Lighting Level
 - d. Light Trespass
9. The applicant, its successors and assigns, shall maintain the apartments and site in a high state of repair, including, but not limited to:
- a. Maintenance of exterior finishes, no peeling paint, broken or non-functioning light fixtures, holes in the exterior, windows, and stairways in good condition.
 - b. Maintenance of grounds, including regular mowing, landscape upkeep and replacement of any plant material which might die, sidewalks repaired, exterior light kept functioning, common areas picked up and kept clean.
 - c. Maintenance of parking and all interior access roads, no significant pavement degradation allowed, no abandoned cars allowed to remain in parking area, snow removal, keeping any signage painted and well kept.
10. The applicant, its successors and assigns, shall develop a set of rules and regulations for the residents of the apartments, to help insure that the structures and grounds remain in a high state of repair and provide those rules to the City of Hurstbourne.
11. The applicant, its successors and assigns, agree that during the construction phase, the site shall be kept mowed and picked up, to the greatest extent possible, given the necessities of the construction operations. Construction vehicles shall not cut through Hurstbourne local access streets and shall be directed to access the site through Whittington Parkway.
12. 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.