

CASE SUMMARY

APPLICATION TYPE: SUBDIVISION

FINAL PLAT



File Number: 5-SD-22-F Related File Number:
Application Filed: 3/28/2022 Date of Revision:
Applicant: NED FERGUSON

PROPERTY INFORMATION

General Location: Located on the south side of Kingston Pike, west of Winston Road
Other Parcel Info.:
Tax ID Number: 120 J A 008 Jurisdiction: City
Size of Tract: 0.51 acres
Accessibility:

GENERAL LAND USE INFORMATION

Existing Land Use: CO (Commercial)
Surrounding Land Use:
Proposed Use: Density:
Sector Plan: West City Sector Plan Designation: GC (General Commercial)
Growth Policy Plan: N/A (within City limits)
Neighborhood Context:

ADDRESS/RIGHT-OF-WAY INFORMATION (where applicable)

Street: 8004 Kingston Pk.
Location:
Proposed Street Name:
Department-Utility Report:
Reason:

ZONING INFORMATION (where applicable)

Current Zoning: C-G-1 (General Commercial)
Former Zoning:
Requested Zoning:
Previous Requests:
Extension of Zone:
History of Zoning:

PLAN INFORMATION (where applicable)

Current Plan Category:
Requested Plan Category:

SUBDIVISION INFORMATION (where applicable)

Subdivision Name: Resubdivision of Lot 1, Final Plat of Acre Kingston Pike, LLC

No. of Lots Proposed: 2 **No. of Lots Approved:** 0

Variances Requested: 1. Reduce the Kingston Pike right-of-way width requirement from 50 ft to 39.2 ft from the center line to the property line.
2. Reduce the corner radius requirement from 75 ft to 0 ft at the intersection of Kingston Pike and Winston Road.

S/D Name Change:

OTHER INFORMATION (where applicable)

Other Bus./Ord. Amend.:

PLANNING COMMISSION ACTION AND DISPOSITION

Planner In Charge: Michelle Portier

Staff Recomm. (Abbr.): Deny the variance to waive the requirement to dedicate right-of-way and reduce the curb radius needed because the conditions do not meet the variance requirements of the Subdivision Regulations and the applicant has created their own hardship.

Deny the subdivision plat because it is not in compliance with the subdivision regulations.

Staff Recomm. (Full):

Comments:

CASE HISTORY:

- 1) This property was rezoned from C-G-3 to C-G-1 in 2020 (Case 11-J-20-RZ). Planning staff had concerns about the applicant being able to fit multiple drive-thru uses in this location and advised the applicant accordingly. The applicant proceeded with the request. Planning recommended denial, but it was approved.
- 2) The applicants also received for a special use request for two drive-thru facilities (Case 1-D-21-SU). The site plan was redesigned and underwent a series of changes during the special use review process, resulting in a three-month delay before the Planning Commission heard the case. The January request was heard in April.

STAFF ANALYSIS:

- 1) Staff recommends denial of this request because the applicant does not meet the requirements for a variance as stated in the Subdivision Regulations. According to Section 1.05 (A), The Planning Commission shall not grant variations to the Subdivision Regulations unless they make findings based upon the evidence presented to them in each specific case that:
 - a. Because of the particular surroundings, shape, or topographical conditions of the specific property involved, a particular hardship to the owner would result, as distinguished from a mere inconvenience if the strict letter of the regulations were adhered to.
 - b. The conditions upon which the request for a variation is based is unique to the property for which the variation is sought and is not applicable, generally, to other property, and has not been created by any person having an interest in the property.
 - c. The purpose of the variation is not based exclusively upon a desire for financial gain.
 - d. The granting of the variation will not be detrimental to the public safety, health, or welfare, or injurious to other property or improvements in the neighborhood in which the property is located.
- 2) Regarding each point listed above:
 - a. There are no topographical conditions present on the shape causing a particular hardship. The shape and size of the lot were a known quantity when the applicant first sought to rezone the property, before the site design process began, and were told the site was too small to accommodate the two separate buildings they desired.
 - b. The Subdivision Regulations state specifically that a variance should not be granted if the hardship is created by the person with the interest in the property, but that is exactly what has occurred.
 - i. As stated previously, this property was rezoned in 2020. Planning staff had concerns about the applicant being able to fit their intended uses in this location and advised the applicant accordingly. Planning recommended denial of the request, but it was approved.

ii. Then the applicants went through the special use process. The applicants were advised at that time that subdivision was not likely to be feasible. When a subdivision creates an additional lot, ROW dedication is required. They were advised that, since the applicant does not have a hardship, approval of a plat would be unlikely. They continued through the special use process, and now request a variance to subdivide.

c. Staff would argue that the reason for the plat is for the financial gain of the applicant.

d. Staff does not find it would be injurious to the public health, safety, or welfare to other property, though it could impact improvements in the future. Other properties along Kingston Pike are situated similarly along Kingston Pike. Should Kingston Pike ever need to undergo changes, right-of-way dedication may be required for all businesses along that stretch. While that may seem like a stretch, part of the review process is acknowledging that what we approve impacts development 20 years in the future, not just what development looks like now. We should not hamper what may be needed because the applicant failed to do their due diligence when appropriating property on the front end.

3) The purpose of this plat is to divide the parcel into two separate lots to accommodate two separate uses.

OTHER CONSIDERATIONS:

1) The applicants were told at every step in the process that what they were trying to do was not the best use of the property, as they were trying to incorporate two buildings on a site that was only meant for one. Additionally, both uses incorporate drive-thru facilities, which require more land for drive aisles. This can be hampered by sites that are too small to accommodate the extra paths of vehicular traffic. It should not be up to a municipality to solve site problems for an applicant that are not related to a hardship and are shared by other property owners in the area through the variance process. Site size, zoning, and subdivision requirements should be taken into consideration by those seeking to buy a property for a specific use.

2) The C-G zone allows multiple uses on the same property, so the plat is not needed for the businesses to operate.

Action: Denied **Meeting Date:** 6/9/2022

Details of Action:

Summary of Action: Deny the variance to waive the requirement to dedicate right-of-way and reduce the curb radius needed because the conditions do not meet the variance requirements of the Subdivision Regulations and the applicant has created their own hardship.

Deny the subdivision plat because it is not in compliance with the subdivision regulations.

Date of Approval: **Date of Denial:** 6/9/2022 **Postponements:** 5/12/2022

Date of Withdrawal: **Withdrawn prior to publication?:** **Action Appealed?:**

LEGISLATIVE ACTION AND DISPOSITION

Legislative Body: Knox County Chancery Court

Date of Legislative Action: **Date of Legislative Action, Second Reading:**

Ordinance Number: **Other Ordinance Number References:**

Disposition of Case: **Disposition of Case, Second Reading:**

If "Other": **If "Other":**

Amendments: **Amendments:**

Date of Legislative Appeal: **Effective Date of Ordinance:**