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RESOLUTION NO. 29 , SERIES 1998

LOUISVILLE & JEFFERSON COUNTY  
PLANNING COMMISSION  
DOCKET NO. 9-75-97V

A RESOLUTION OVERRIDING THE RECOMMENDATION OF THE LOUISVILLE AND JEFFERSON COUNTY PLANNING COMMISSION AND DENYING THE REQUESTED CHANGE IN ZONING FROM R-4 RESIDENTIAL SINGLE FAMILY TO C-1 COMMERCIAL ON PROPERTY LOCATED AT 9420 SEATONVILLE ROAD AND BEING IN UNINCORPORATED JEFFERSON COUNTY.

WHEREAS, the Louisville and Jefferson County Planning Commission (the "Planning Commission") held a public hearing on December 18, 1997, and by resolution dated January 15, 1998, made findings that the proposed change in zoning complied with the Comprehensive Plan and recommended that Fiscal Court approve the proposed change in zoning from R-4 Residential Single Family to C-1 Commercial on property located at 9420 Seatonville Road and being in unincorporated Jefferson County;

WHEREAS, Fiscal Court has reviewed the entire record before the Planning Commission in Docket No. 9-75-97V, including the findings and recommendation of the Planning Commission, and does not concur with or adopt the findings of the Planning Commission;

WHEREAS, Fiscal Court finds that the proposed change in zoning violates Comprehensive Plan Guidelines E-1, E-2, E-5, and E-6 because the subject site is environmentally sensitive and constrained in that Cedar Creek runs directly through the site; the proposal will add to the existing water runoff problems at the lower end of Cedar Creek; the proposal will result in the receiving stream at Seatonville Road experiencing rapid peak flows due to higher runoff, which will result in more flood occurrences downstream; adding the amount of impervious area proposed will add to the stressed condition of the stream, transfer water management problems downstream, and increase instability of the stream bank on site and downstream; the floodplain serves as a natural, temporary control area for runoff; and development in close proximity to the stream will result in degradation of water quality from runoff because sediments such as tire and brake linings, rust, salts, oils, and solvents not filtered through grass, sod, or soil will directly enter the stream;

WHEREAS, Fiscal Court further finds that the proposed change in zoning violates Comprehensive Plan Guidelines C-1 and C-4 because the applicant has not demonstrated that a sufficient support population exists; the record contains evidence that there are five commercial developments similar to the proposed development located 330 yards, 340 yards, 830 yards, 2,330 yards, and 1.2 miles from the subject site; and the proposed change in zoning will encourage the extension of linear development, as indicated in the Site Inspection Committee Report; and


WHEREAS, Fiscal Court therefore finds that the proposed change in zoning in Docket No. 9-75-97V does not comply with the Comprehensive Plan;

NOW, THEREFORE, BE IT RESOLVED that Fiscal Court hereby overrides the recommendation of the Planning Commission in Docket No.9-75-97V and denies the requested change in zoning from R-4 Residential Single Family to C-1 Commercial on property located at 9420 Seatonville Road and further described in the records and minutes of the Planning Commission.

Adopted this 10th day of March, 1998.

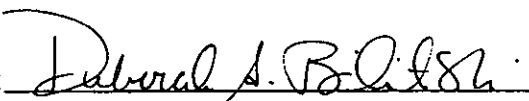
  
DAVID L. ARMSTRONG  
COUNTY JUDGE/EXECUTIVE

ATTEST:

  
MARY BOLTON  
FISCAL COURT CLERK

APPROVED AS TO FORM AND LEGALITY:

MICHAEL E. CONLIFFE  
JEFFERSON COUNTY ATTORNEY

BY:   
DEBORAH A. BILITSKI  
ASSISTANT COUNTY ATTORNEY

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Change in zoning from R-4 Residential Single Family to C-1 Commercial and a variance to permit parking to encroach into required yards on property located at 9420 Seatonville Road, containing 2.89 acres and being in unincorporated Jefferson County.

Owner: James E. and Ann H. Vogt  
1599 Weybridge Circle  
Naples, Florida 34110

Developer: W. Glenn Hogan  
Baumgardner-Hogan Real Estate  
7400 New LaGrange Road  
Louisville, Kentucky 40222

Existing Use: Undeveloped Land

Proposed Use: Pharmacy/Convenience Store

The public hearing was held on this request on December 18, 1997. The Commission deferred action for further review of landscaping and drainage issues by the LD&T Committee. As a result of LD&T review the applicant, staff landscape architect and area residents in opposition to the proposal met on site to discuss potential solutions to screening and buffering questions discussed during the public hearing.

Staff discussed existing vegetation and whether an enhanced level of vegetation, possibly a double row of evergreens, should be provided along the residential property line to the east. Two area residents who live near the site requested that eight foot tall solid wood fences be constructed on their properties. Staff was concerned whether this would be sufficient for the rest of the community. The site plan shows a six foot wide buffer. There was discussion during previous meetings to provide an additional 15 foot wide landscape easement on the adjacent Hobba property. It was difficult for staff to determine the exact location of the property line in the field because the property line wasn't staked. Staff requested that the applicant stake existing vegetation and indicate it on the landscape plan in order to determine where additional plantings are necessary.

The Commission suggested the addition of a binding element that would address the issue of landscaping at the time of construction or prior to the

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issuance of a construction permit. The Commission's intent is to supplement existing landscaping with a double row of evergreens in areas where needed.

The Commission and staff stated there was confusion concerning the 25 foot buffer strip along the stream bank. The site plan as submitted did not depict the location of the buffer strip. Staff requested that this proposed buffer strip be shown on the plan.

The applicant's representative agreed to work with Planning Commission staff and the representatives of MSD to comply with the requirements of the floodplain ordinance and to delineate the 25 foot buffer strip on the development plan.

The applicant's representative agreed to additional binding elements and that they will address everyone's concerns.

John Carroll, Attorney for parties in opposition to this proposal requested the addition of a binding element concerning the 15 foot landscape buffer area, requiring the buffer to be obtained, recorded and made a part of the landscape plan prior to construction.

Chairman Dulworth stated that the Commission would not entertain new testimony and did not permit additional parties to speak.

Commissioner Adams discussed the possibility of providing additional screening along the south property line based on the staff landscape architect's recommendation. Staff can request additional landscaping in this area if necessary.

The applicant's representative agreed to work with the staff landscape architect to improve and increase the landscaping on the property.

In a business session prior to the public hearing, the Commission took the following action.

On a motion by Commissioner Adams, the following resolution was adopted:

**WHEREAS**, The Commission finds that based upon testimony and evidence submitted during the public hearing, Land Development and Transportation Committee review, the staff report and the file of the case that the proposal complies with all applicable Environmental Guidelines, including Environmental

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Guidelines E-1, E-2, E-3, E-4, E-5, E-6, E-7, E-8, E-9, and E-14 because the proposal meets the requirements of the Jefferson County Flood Plain Ordinance (adopted by Jefferson Fiscal Court in 1997) even though this application was filed prior to the date that the Flood Plain Ordinance became effective; because, as required by the Flood Plain Ordinance (a) the structure will be elevated at least 1 foot above the Flood Plain and will not be located within the flood way ("conveyance zone"), (b) the elevation of the 100-year flood will not rise beyond 1/10 of 1 foot based on a fully developed watershed – which is an acceptable increase under the Flood Plain Ordinance, and (c) because the on-site stream will be protected by a 25-foot wide landscape buffer area (a "no-disturb" zone), as required by the Flood Plain Ordinance, as enforced by MSD ("Metropolitan Sewer District"); the proposal further complies with all Environmental Guidelines because access to the site is located outside the Flood plain as shown on a drawing presented at public hearing showing the actual limits of the 100-year flood; because MSD approved the development plan on August 14, 1997, which approval indicates that flooding or erosion will not occur because of the use of the property as proposed, that peak post-construction runoff rates will not exceed peak pre-construction rates, and that storm water runoff will not convey water pollution due to its low position in the watershed and on-site water storage area near the Bardstown Road property frontage; and because cutting, filling and grading will only be utilized as minimally necessary to meet MSD requirements, and because the Applicant has agreed by binding element to utilize MSD's best management practices during and after site preparation and construction; because there is to be no stream relocation or rechannelization as correctly depicted on the development plan and as referred to by letter from Robert E. Stauble of MSD presented at the public hearing with reference to notes #5 and #7 which do not apply to the approved development plan; and because the Jefferson County Air Pollution Control District indicated by letter dated January 30, 1997 that the project would not have an adverse impact on national air quality standards and because trip generation rates to the site will be "passer-by" trips and are predicted to be only about 77 additional trips per peak hour as indicated by Institute of Transportation Engineers data submitted at the public hearing; and

**WHEREAS**, The Commission finds that the proposal complies with all applicable Utilities Guidelines, including Utilities Guidelines U-1, U-2, and U-3, because the site can be served by all existing water, electric and sewer service; and

**WHEREAS**, The Commission finds that the proposal complies with all applicable Transportation Guidelines, including Transportation Guidelines T-1, T-2, T-3, T-4, T-7, T-8, T-9, T-10, T-11 because Bardstown Road is a major arterial roadway

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and Seatonville Road is a collector level road; because sidewalks will be located where shown on the development plan and bicycle storage facilities will be located on site; because Bardstown Road has transit service near the site as shown by Comprehensive Plan Core Graphic. 14 and by transit map introduced at public hearing; because the Jefferson County Department of Public Works and Transportation approved the development plan on August 14, 1997 indicating adequate access to the site from the surrounding transportation network, proper internal circulation and adequate parking and loading facilities; because access to the site primarily will come from vehicles on Bardstown Road or Seatonville Road – but not through areas of significantly lower intensity; and

**WHEREAS**, The Commission finds that the proposal complies with all applicable Residential Guidelines, including Residential Guideline R-1 because the site fronts on Bardstown Road and is located at the intersection of a major arterial roadway (Bardstown Road) and a collector (Seatonville Road); because the Applicant has agreed to substantial buffering and screening throughout the site; because store operating hours and dumpster loading/unloading hours are limited by binding element reducing noise and activity at the site during late evening and early morning hours; and because nearby residential lots are large with deep setbacks to the houses; and because lighting will be directed down and away from adjoining residential properties; and

**WHEREAS**, The Commission finds that the proposal complies with all applicable Commercial Guidelines, including Commercial Guideline C-1, C-2, C-3, C-4, and C-7 because the December 18, 1997 report from John Sugrue, Walgreens' Regional Manager indicates that the proposed Walgreens location meets minimum population density requirements, that the trade area has a sufficient median income level to support the store; additionally, as testified to at the public hearing the drug store industry is moving to free-standing locations and the nearest shopping center has an agreement with a major grocer not to allow a drug store tenant; because the distance of the proposed structure from other residential structures in the area is far enough not to cause a nuisance to the residents; because the sign will be "monument" in style and its height and area will be limited by binding element; because the proposal has only 1 entrance from Bardstown Road and 1 entrance from Seatonville Road, neither of which will cause congestion or alter the traffic-carrying capacity of the roadways; because other commercial and non-residential uses exist throughout the general area stretching along Bardstown Road to the north, and then traveling south to Snyder Freeway; and the proposed store will be near to, and compatible with other shopping facilities, including Cedar Creek Shopping Center and Harley

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Center; and because the store facade as presented at public hearing is a compatible material and design for the vicinity; and

**WHEREAS**, The Commission finds that the proposal complies with all applicable Community Facilities Guidelines, including Community Facilities Guideline F-8 because an existing fire hydrant exists on Bardstown Road, and additional fire hydrants may be located on site if required by the Fern Creek Fire Department; and

**WHEREAS**, The Commission finds that the proposal has received preliminary approval from the Jefferson County Department of Public Works and the Metropolitan Sewer District; and

**WHEREAS**, The Commission finds the proposal to be in conformance with all other applicable guidelines of the Comprehensive Plan; now, therefore, be it

**RESOLVED**, that the Louisville and Jefferson County Planning Commission does hereby **RECOMMEND** to Fiscal Court of Jefferson County that the change in zoning **from R-4 Residential Single Family to C-1 Commercial** on property described in the attached legal description be **APPROVED**.

**RESOLVED**, That the Louisville and Jefferson County Planning Commission does hereby **APPROVE** the district development plan **SUBJECT to the following binding elements:**

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 13,905 square feet of gross floor area.
3. The only permitted freestanding sign shall be 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 front property line. The sign shall not exceed 88 square feet in area per side and 10 feet in height. No sign shall have more than two sides.
4. No outdoor advertising signs (billboards), small free-standing (temporary) signs, pennants, balloons, or banners shall be permitted on the site.

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5. There shall be no outdoor storage on the site.
6. Outdoor lighting shall be directed down and away from surrounding residential properties. 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.
7. The speaker for the drive-through shall be inaudible at the property line.
8. The applicant shall submit a plan for approval by the Planning Commission staff landscape architect showing trees/tree masses to be preserved prior to beginning any construction procedure (i.e. clearing, grading, demolition). Any modification of the tree preservation plan requested by the applicant may be approved by the Planning Commission staff landscape architect if the changes are in keeping with the intent of the approved tree preservation plan. The plan shall exhibit the following information:
  - a. Proposed site plan (showing buildings, edges of pavement, property/lot lines, easements, existing topography, and other significant site features (LOJIC topographic information is acceptable).
  - b. Preliminary drainage considerations (retention/detention, ditches/large swales, etc.).
  - c. Location of all existing trees/tree masses existing on the site as shown by aerial photo or LOJIC maps.
  - d. Location of construction fencing for each tree/tree mass designated to be preserved.
9. 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. Encroachment permits must be obtained from the Kentucky Department of Transportation, Bureau of Highways.
  - c. 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



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- implemented prior to occupancy of the site and shall be maintained thereafter.
- d. The property owner/developer must obtain approval of a detailed plan for screening (buffering/landscaping) that exceeds the requirements for plant material established in Article 12 in accordance with the recommendation of the Planning Commission staff landscape architect prior to requesting a building permit. Such plan shall be implemented prior to occupancy of the building and shall be maintained thereafter.
10. If a building permit is not issued within one year of the date of approval of the plan or rezoning, whichever is later, 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.
11. 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.
12. 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.
13. A soil erosion and sedimentation control plan shall be developed and implemented in accordance with the Metropolitan Sewer District recommendations. Documentation of the MSD's approval of the plan shall be submitted to the Planning Commission prior to grading and construction activities.
14. Bicycle storage facilities shall be located on site to allow for convenient customer access to the store.
15. All best management practices as recommended by the Metropolitan Sewer District during and after required site preparation and during construction shall be utilized.

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16. No sale of liquor, including beer, shall be permitted on site.
17. Hours of operation shall be limited to 8:00 A.M. through 10:00 P.M.
18. Prior to requesting construction plan approval the developer shall submit a plan to the Planning Commission staff landscape architect showing a 15 foot wide recorded landscape easement on the Hobba property, existing vegetation to be preserved in the landscape easement, and supplemental planting as approved by the staff landscape architect.
19. Dumpster loading or unloading shall be limited to store operation hours.
20. The applicant shall comply with the Jefferson County Floodplain Ordinance as advised, from time to time, by MSD.

### VARIANCE

On a motion by Commissioner Adams, the following resolution was adopted:

**WHEREAS**, The Commission finds that the proposed Variance request would allow parking spaces at the easternmost portion of the site to encroach into the setback area; that the proposed Variance will not adversely affect the public health, safety or welfare, will not alter the essential character of the general vicinity, will not cause a hazard or nuisance to the public, and will not allow an unreasonable circumvention of the regulations because the parking area must be set back on the site due to the geography and topography of the site and the existing location of the stream (Cedar Creek) running generally through the center of the property, which is to be preserved and protected with a 25-foot wide landscape easement; because the development plan showing the location of the parking spaces has been reviewed and approved by the Jefferson County Department of Public Works and Transportation and by the Metropolitan Sewer District, whose approvals among other things indicate the appropriate location of these parking spaces, because the parking spaces abut an adjacent property which will be unaffected by the parking spaces due to the rise in elevation off-site as shown on the development plan which will substantially reduce the off-site visibility of the easternmost parking spaces; because these geographic, topographic and stream location considerations are not the result of actions of the Applicant; because they do not appear to prevail on other properties in the general vicinity; and because without the granting of the requested Variance the

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Applicant will suffer hardship by being unable to meet its minimum off-street parking requirement (see development plan recapitulation); and

**WHEREAS**, the Commission finds based upon the findings as listed above, that there is a special circumstance which does not generally apply to land in the general vicinity or in the same zone, that strict application of the provisions of the regulations would create an unnecessary hardship on the applicant, that the special circumstance is not the result of actions by the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought; and that the granting of the variances will not adversely affect the public health, safety or welfare, will not alter the essential character of the general vicinity, will not cause a hazard or a nuisance to the public, and will not allow an unreasonable circumvention of the requirements of the zoning regulations,

**NOW, THEREFORE, BE IT RESOLVED**, that the variance is hereby **APPROVED**.

The variance allows parking spaces to be located 10 feet from the Seatonville Road street side property line.

The vote was as follows:

**YES:** Commissioners Dulworth, Adams, Crawford, Thieneman and Wagner.

**NO:** Commissioner Seraphine.

**NOT PRESENT FOR THIS CASE AND NOT VOTING:** No one.

**ABSTAINING:** Commissioner Cash.