

**Planning Commission Minutes
May 29, 2014**

Public Hearing

Case No. 13ZONE1016

Project Name: Flynn Hook Property

Location: 4337 and 4403 Bardstown Road

Owner/Applicant: Salt River Investment, LLC
Jim Rice, Representative
1213 Outer Loop Road
Louisville, KY 40219

Representatives: Raymond Bannon, General Counsel
Representing Flynn Holding Management
Company
Salt River Investment, LLC
10801 Electron Drive Suite 102
Louisville, KY 40299

Todd Lanning
Mindel, Scott & Associates
5151 Jefferson Boulevard
Louisville, KY 40219

Jurisdiction: Louisville Metro
Council District: 2 – Barbara Shanklin

Case Manager: **Julia Williams, AICP, Planner II**

Notice of this public hearing appeared in The Courier Journal, a notice was posted on the property, and notices were sent by first class mail to those adjoining property owners whose names were supplied by the applicants.

The staff report prepared for this case was incorporated into the record. The Commissioners received this report in advance of the hearing, and this report was available to any interested party prior to the public hearing. (Staff report is part of the case file maintained in Planning and Design Services offices, 444 S. 5th Street.)

Request:

A change in zoning from M-2 Industrial to C-2 Commercial; a Revised District Development Plan; a building setback variance; and amendment to existing binding elements.

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Agency Testimony:

Julia Williams presented the case and showed a Power Point presentation, which included photos and maps of the site and surrounding areas (see staff report for detailed presentation.) She added that the binding elements proposed for revision referred to a previous industrial use on the site and are no longer needed.

The following spoke in favor of this request:

Todd Lanning, Mindel, Scott & Associates, 5151 Jefferson Boulevard, Louisville, KY 40219

Raymond Bannon, 10801 Electron Drive Suite 102, Louisville, KY 40299

Summary of testimony of those in favor:

Raymond Bannon, the applicant's representative, gave a brief history of the property and discussed plans for the site. Portions of the original lot have been sold to Tire Discounters and Family Dollar, respectively. He showed a Power Point presentation which included maps and a site plan. There will be cross-access parking on all three lots.

Commissioner Proffitt asked about landscaping relative to the residential community behind this site. Todd Lanning, an applicant's representative, said a buffer and a 6-foot wooden fence, supplemented with trees, are being proposed. The Development Plan does not show the landscaping at this point. Ms. Williams said that only an 8-foot screen is required in this area. She suggested making the landscaping a Condition of Approval, which should be resubmitted to staff showing the wooden fence.

The following spoke in opposition to this request:

No one spoke.

The following spoke neither for nor against this request:

No one spoke.

Rebuttal:

There was no rebuttal.

A recording of the Planning Commission hearing related to this case is available in the Planning & Design Services offices. Please contact the

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Customer Service staff to obtain a copy. The recording of this hearing is available under the May 29, 2014 public hearing proceedings.

Zoning

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

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the intents of **Guideline 1 – Community Form**. The proposal appears to conform to Traditional and Suburban Marketplace Corridor Form Districts Goal F2 and Objectives F2.1, F2.3, Goal F3, Objectives F3.1 and F3.2, Goal F4, Objectives F4.1, F4.2, F4.4 and F4.5 and Community Form Guideline 1 and all applicable Policies adopted thereunder, including Policy I.B.8 because it is located in the Suburban Corridor marketplace Form District which is distinguished by medium and high intensity land uses. This form also encourages unified entry ways. The proposed development will share a common entry point with adjacent businesses: Tire Discounters and Family Dollar. Retail customers will have a choice of utilizing vehicular travel, bicycles or sidewalks to come to the site. This commercial area along Bardstown Road has a vibrant mixture of uses and sense of identity. The proposed uses are medium intensity land uses located between higher intensity nodes. The scale of all structures, its design and mass are consistent with other commercial uses in the vicinity. No setback encroachments are requested. Parking is sufficient for the proposed uses and will not adversely impact pedestrian use of the aesthetic quality of Bardstown Road corridor; and

WHEREAS, the Commission further finds that the proposal meets the intents of **Guideline 2 – Centers**. The proposal conforms to Guideline 2– Centers and all applicable Policies adopted thereunder, including Policies 2.2, 2.3, 2.4 and 2.15. The proposed uses will serve residents living in the general vicinity of the store. The uses are similar in character and intensity to other developments in the immediate area. The proposal is located in an area with a sufficient support population. The Development is compact and utilizes land in an economical way, and will use existing public infrastructure. Parking is situated so as to balance safety, traffic, transit pedestrian environmental and aesthetic considerations: it is anticipated that the proposal will receive the approval of the Louisville Department of Public Works and Assets ("Metro Works"), indicating the appropriateness of the proposed parking; and

WHEREAS, the Commission further finds that the proposal meets the intents of **Guideline 3 -Compatibility**. The proposal conforms to Transportation and

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Compatibility Guideline 3 and all applicable Policies adopted thereunder, including Policies 3.1, 3.2, 3.5, 3.6, 3.7, 3.8, 3.9, 3.11, 3.22, 3.24 and 3.28. The development will be compatible with existing commercial and residential development. Residential development is located on Carey Avenue to the rear of the site. The development will not result in odor or air quality nuisances. The traffic-carrying capacity of Bardstown Road will not be adversely affected as a result of this development; no visual nuisances relating to noise or lighting will result from the development; no visual nuisances will be caused. Adequate landscape buffers will be installed pursuant to land Development Code ("LDC") Article 10. Parking, loading and delivery are situated to cause minimal impact to adjacent residences. Signs will be proposed in accordance with LDC; and

WHEREAS, the Commission further finds that the proposal meets the intents of **Guideline 5- Natural Areas and Scenic and Historic Resources**. The proposal conforms to Transportation and the Environmental Goal C1 and Objectives C1.4 and C1.5, Social and Cultural Resources Goal D1, and Objective D1.1, Land Goal E1, E2 and E4 and Objective E4.1, and Natural Areas and Scenic and Historic Resources Guideline 5 and all applicable Policies adopted thereunder, including Policies 5.1, 5.2, 5.3, 5.6 and 5.7. Site development will respect the natural features of the land. There are no historic resources or distinctive cultural features on site. There are no archaeological resources on the site. Soils and slopes are adequate for the proposed development; and

WHEREAS, the Commission further finds that the proposal meets the intents of **Circulation Guideline 9 - Bicycle, Pedestrian and Transit**. The proposal conforms to Site Design Standards for Alternative Transportation Modes Goal11 and Objective 11.1, Goal12 and Goal 15, and Bicycle, Pedestrian and Transit Guideline 9 and all applicable Policies adopted thereunder, including Policies 9.1, 9.2 and 9.4. An existing public sidewalk serves the site along its northern frontage at Bardstown Road. The sidewalk will be extended across the entire Bardstown Road frontage of the site. The site is served by TARC Routes 17 and 62. Bicycle "parking" facilities are located on the site as shown on the development plan; and

WHEREAS, the Commission further finds that the proposal meets the intents of **Guideline 10- Flooding and Stormwater**. The Proposal conforms to Water Goal Bland Objectives BI.1, BI.3 and BI.4, and Flooding and Stormwater Guideline 10 and all applicable Policies adopted thereunder, including Polices 10.1, 10.2, 10.3, 10.4, 10.6, 10.7, 10.10 and 10.11. This site features an existing detention basin in a large easement area at the rear of the property. Impact to the

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watershed has been minimized as a result of the detention basin. Floodplain management standards reflect the full development potential of the watershed. The detention basin ensures adequate compensatory storage and accommodation of stormwater runoff volumes as a result of the development. The on-site drainage system will preserve "through" drainage systems in a manner acceptable to the Metropolitan Sewer District ("**MSD**"): it is anticipated that the development will receive the approval of MSD; and

WHEREAS, the Commission further finds that the proposal meets the intents of **Guideline 12- Air Quality**. The Proposal conforms to Air Goal C1 and Objective Cl.2 and Air Quality Guideline 12 and all applicable Policies adopted thereunder, including Policies 12.1, 12.2, 12.3 and 12.8. It is anticipated that the Air Pollution Control District will approve the proposal. The proposed uses will not results in a significant generator of vehicular traffic. Bardstown Road, as stated above, is a transit route. Sidewalks and bicycle movement are encouraged by on-site public sidewalks and bicycle storage facilities; and

WHEREAS, the Commission further finds that the proposal meets the intents of **Guideline 14- Infrastructure**. The Proposal conforms to Infrastructure Guideline 14 and all applicable Policies adopted thereunder, including Policies 14.2, 14.3, 14.4, 14.6 and 14.7. The proposal has adequate service for all necessary utilities. An adequate water supply for domestic and fire-fighting purposes serves the site. New utilities will be located underground wherever possible and will be situated where recommended by each utility for appropriate possible maintenance and repair access; and

WHEREAS, the Commission further finds that the proposal meets the intents of **Guideline 15 -Community Facilities**. The proposal conforms to Community Facilities Guideline 15 and all applicable Polices adopted thereunder, including Policy 15.9. Firefighting services will be provided by the Buechel Fire Department; and

WHEREAS, the Commission further finds that, based on the evidence and testimony presented, the staff report, and the applicant's justification and findings of fact that all of the applicable Guidelines of Cornerstone 2020 and the Comprehensive Plan are being met; now, therefore be it

RESOLVED, the Louisville Metro Planning Commission does hereby **RECOMMEND** to the Louisville Metro Council that the proposed change in zoning from M-2 Industrial to C-2 Commercial on property described in the attached legal description be **APPROVED**.

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The vote was as follows:

YES: Commissioners Blake, Proffitt, Brown, Peterson, and Tomes.

NO: No one.

NOT PRESENT: Commissioners Jarboe, Kirchdorfer, Turner, and White.

ABSTAINING: No one.

Variance

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

WHEREAS, the Louisville Metro Planning Commission finds that the requested variance will not adversely affect the public health, safety or welfare. The building setback will not affect the public as the site has good pedestrian connectivity that prevents the vehicle pedestrian conflicts that can arise from buildings being too far setback from the road; and

WHEREAS, the Commission further finds that the requested variance will not alter the essential character of the general vicinity. The buildings along Bardstown Road in the area have altering setbacks; the three lots associated with this proposal are no different. With such variation of setbacks the character of the area will not be altered; and

WHEREAS, the Commission further finds that the requested variance will not cause a hazard or nuisance to the public. The building setback will not affect the public as the site has good pedestrian connectivity that prevents the vehicle pedestrian conflicts that can arise from buildings being too far setback from the road; and

WHEREAS, the Commission further finds that the requested variance will not allow an unreasonable circumvention of the zoning regulations. Due to the pedestrian connectivity on the site and the altering setbacks of existing buildings along Bardstown Road the request is not unreasonable. Placing more parking in the front of the building in this area also maintains a consistent setback for the rear of the properties that are adjacent to residential. Furthering the activity on the look from the residential and putting it to Bardstown Road; and

WHEREAS, the Commission further finds that the requested variance arises from special circumstances which do not generally apply to land in the general vicinity or the same zone. The special circumstance for the variance is that

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the site is located adjacent to single family residential. Having the building setback further than required allows for more parking to be located in front of the structure and between the structure and Bardstown Road. This keeps traffic located along the activity area of the site close to Bardstown Road and away from the residential. All lots associated with the proposal have minimal parking between the building and the adjacent residential; and

WHEREAS, the Commission further finds that, based on the evidence and testimony presented, the staff report, and the applicant's justification and findings of fact that all of the applicable Guidelines of Cornerstone 2020 and the Comprehensive Plan are being met; now, therefore be it

RESOLVED, the Louisville Metro Planning Commission does hereby **APPROVE** the requested Variance from table 5.3.2 to permit the building on proposed Lot 2B to be setback approximately 142' from the front property line instead of between 10' and 80', a 62' variance.

The vote was as follows:

YES: Commissioners Blake, Proffitt, Brown, Peterson, and Tomes.

NO: No one.

NOT PRESENT: Commissioners Jarboe, Kirchdorfer, Turner, and White.

ABSTAINING: No one.

Revised Detailed District Development plan, General Development plan, and Amended Binding Elements

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

WHEREAS, the Louisville Metro Planning Commission finds that there are no existing natural resources evident on the site. The applicant will be providing trees and vegetation for buffering and other landscape requirements; and

WHEREAS, the Commission further finds that pedestrian connectivity and vehicular access is found throughout the site all lots are connected with sidewalks and crosswalks as well as vehicular connections to and from all the lots; and

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WHEREAS, the Commission further finds that the open space for the site is located along the rear and provides a significant buffer between the site and the adjacent single family residential; and

WHEREAS, the Commission further finds that the provision of adequate drainage facilities on the subject site has been provided in order to prevent drainage problems from occurring on the subject site or within the community. MSD has preliminarily approved the proposal; and

WHEREAS, the Commission further finds that 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 has been met. The buffering along the north property line exceeds the requirements of the LDC due to the detention and easements in the area. With the exception of the building setback variance the plan complies with the LDC. The variance is consistent with the altering setbacks found along Bardstown Road; and

WHEREAS, the Commission further finds that, based on the evidence and testimony presented and the applicant's justification and findings of fact that all of the applicable Guidelines of Cornerstone 2020 and the Comprehensive Plan are being met; now, therefore be it

RESOLVED, the Louisville Metro Planning Commission does hereby **APPROVE** the Revised Detailed District Development plan and the General Development plan, **SUBJECT** to the following binding elements, and **ON CONDITION** that a revised development plan be resubmitted to staff showing the location of a wood fence along the north property line, at the height required by the Land Development Code:

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 for review and approval; any changes/additions/alterations not so referred shall not be valid.
2. The development shall not exceed 11,250 square feet of gross floor area for Lot 2A, 9,150 sf for Lot 2B, and 4,288 sf for Lot 2C.
3. No pennants, balloons, or banners shall be permitted on the site.

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4. Construction fencing shall be erected when off-site trees or tree canopy exists within 3' of a common property line. Fencing shall be in place prior to any grading or construction to protect the existing root systems from compaction. The fencing shall enclose the entire area beneath the tree canopy and shall remain in place until all construction is completed. No parking, material storage or construction activities are permitted within the protected area.
5. Before any permit (including but not limited to building, parking lot, change of use, site disturbance, alteration permit or demolition permit) is requested:
 - a. The development plan must receive full construction approval from Louisville Metro Department of Inspections, Permits and Licenses, Louisville Metro Public Works and the Metropolitan Sewer District.
 - b. Encroachment permits must be obtained from the Kentucky Department of Transportation, Bureau of Highways.
 - c. A minor subdivision plat or legal instrument shall be recorded creating the lot lines as shown on the development plan. A copy of the recorded instrument shall be submitted to the Division of Planning and Design Services; transmittal of approved plans to the office responsible for permit issuance will occur only after receipt of said instrument.
 - d. The property owner/developer must obtain approval of a detailed plan for screening (buffering/landscaping) as described in Chapter 10 prior to requesting a building permit. Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter.
 - e. A reciprocal access and crossover easement agreement in a form acceptable to the Planning Commission legal counsel shall be created between the adjoining property owners and recorded. A copy of the recorded instrument shall be submitted to the Division of Planning and Design Services; transmittal of approved plans to the office responsible for permit issuance will occur only after receipt of said instrument.
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. There shall be no outdoor music (live, piped, radio or amplified) or outdoor entertainment or outdoor PA system audible beyond the property line.

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8. 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.
9. The property owner shall provide a cross over access easement if the property to the east is ever developed for a nonresidential use. A copy of the signed easement agreement shall be provided to Planning Commission staff upon request.
10. The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the May 29, 2014 Planning Commission meeting.
11. No idling of trucks between the rear of the shopping center and adjacent single-family residences. No overnight idling of trucks shall be permitted on-site.
12. No idling of trucks shall take place within 200 feet of single-family residences. No overnight idling of trucks shall be permitted on-site.

The vote was as follows:

YES: Commissioners Blake, Proffitt, Brown, Peterson, and Tomes.

NO: No one.

NOT PRESENT: Commissioners Jarboe, Kirchdorfer, Turner, and White.

ABSTAINING: No one.