

PLANNING COMMISSION MINUTES
September 17, 2020

PUBLIC HEARING

CASE NO. 20-ZONE-0006

Request: Change in form district from NFD to SMCFD, change in zoning from R-4 to C-1, with Detailed District Development Plan and Binding Elements

Project Name: Vogt Retail Development

Location: 4310 – 4318 Bardstown Road, 4403 – 4405 Fegenbush Lane

Owner: John and Joyce Vogt, Sterling Trust Company

Applicant: John and Joyce Vogt

Representative: Mindel Scott & Associates

Jurisdiction: Louisville Metro

Council District: 2 – Barbara Shanklin

Case Manager: Dante St. Germain, 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.)

Agency Testimony:

04:48:58 Ms. St. Germain discussed the case summary, standard of review and staff analysis from the staff report.

04:54:14 Ms. St. Germain said she received a proposed binding element (No. 11) from the applicant this morning and it's not in the commissioner packets. It reads as follows: Prior to building permit submission, the Developer shall prepare a Pedestrian Access/Crossing Plan for the Bardstown and Fegenbush Road Intersection, based on the two pedestrian crossing locations identified within Kentuckian Regional Planning and Development Agency (KIPDA) "Transit, Bicycle & Pedestrian" Focus Area provided through their Online Resource Center. The Plan shall include at a minimum, topographic information to ensure accessible slopes can be provided, proposed pavement makings, sidewalk locations, landing and tactile warnings based on ADA and MUTCD guidelines. The plan shall be submitted to the Kentucky Transportation Cabinet's Planning Department prior to its transmittal Metro Public Works Department for budgeting improvements.

04:55:03 Commissioner Mims asked if Metro Public Works or Metro Transportation have reviewed and agree to the proposed binding element. Ms. St. Germain said no.

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The following spoke in favor of this request:

Kent Gootee, Mindel, Scott and Associates, 5151 Jefferson Boulevard, Louisville, Ky.
40219

Summary of testimony of those in favor:

04:57:21 Mr. Gootee said he started with KYTC to see if they have any plans for the Bardstown/Fegenbush intersection. KYTC referred Mr. Gootee to the Planning Dept. and then to KIPDA's Resource page, which shows 2 pedestrian connections on the east and west sides of Bardstown Rd. (none for Fegenbush). The research prompted the proposed binding element. A draft of this binding element was sent to Commissioner Brown and Travis Fiechter on Tues. of this past week but there was no response. Commissioner Mims said Public Works needs to review it or add to the binding element: ...subject to the final approval by Metro Public Works and/or 'The binding element is herein should be submitted to Metro Public Works for approval of the work scope' of what is being proposed by the binding element. Mr. Gootee responded, Metro Public Works is not the approving agency for that intersection. It will need to go to KYTC first.

05:09:13 Ms. Stuber said she was unable to verify with Commissioner Brown exactly what he wants but mainly it's general improvements. A study might be the best way to get started. Metro Public Works and KYTC will need to work together. No work can be done until a plan is presented.

05:13:53 Acting Chair Lewis said the applicant has done what the Planning Commission asked them to do at the last meeting.

Deliberation

05:15:33 Commissioner Howard said the plan is in order, including the additional binding element. The other commissioners agree.

An audio/visual recording of the Planning Commission hearing related to this case is available on the Planning & Design Services website, or you may contact the Customer Service staff to view the recording or to obtain a copy.

Change in form district from Neighborhood to Suburban Marketplace Corridor

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On a motion by Commissioner Howard, seconded by Commissioner Seitz, the following resolution based on the Plan 2040 Staff Analysis and testimony heard at the hearings was adopted.

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Community Form because, the site is adjacent to an existing activity center and the proposal would not constitute a non-residential expansion into an existing residential area; the site is located adjacent to Bardstown Road, a transit corridor, and next to an existing activity center; the proposal would expand an existing activity center in an appropriate location where residential populations will be minimally impacted; the site is located near the intersection of Bardstown Road (a major arterial) and Fegenbush Lane (a minor arterial) and traffic will be routed along these roads; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 2: Community Form because, the site is adjacent to an existing activity center and is in an appropriate location for the proposed uses; the site is adjacent to an existing marketplace corridor; the proposal would permit a more compact pattern of development in an existing activity center; the proposal would permit a mixture of compatible land uses in an existing activity center; the proposal would permit residential uses in the existing center; the proposal would not include any underutilized parking lots; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 3: Community Form because, no natural systems are evident on the subject site; No wet or highly permeable soils, or severe, steep or unstable slopes are evident on the site; the site is not located in a flood-prone area. No karst features are evident on the site; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 4: Community Form because, no historic or architectural assets are evident on the site; no distinctive cultural features are evident on the site; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Mobility because, the site is adjacent to an existing marketplace corridor. The applicant requests the appropriate Suburban Marketplace Corridor form district; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 3: Mobility because, the proposal would permit a mix of complementary neighborhood serving businesses; the proposal would permit a mixture

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of compatible land uses that are easily accessible by bicycle, car, transit, pedestrians and people with disabilities; the site is located on an existing transit corridor and the proposal would encourage higher density mixed-use developments adjacent to an existing activity center; Transportation Planning has approved the proposal; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 2: Community Facilities because, the relevant utilities have approved the proposal; Louisville Water Company has approved the proposal; MSD has approved the proposal; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Economic Development because, the site is located on a major arterial street; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Livability because, no karst features are evident on the site; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Housing because, the proposal would support aging in place by permitting higher density housing options on the site, or neighborhood-serving commercial uses in proximity to existing residential development; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 2: Housing because the proposal would permit inter-generational mixed-income and mixed-use development. The site is connected to the neighborhood and surrounding area; the proposal would permit housing in proximity to Bardstown Road, a multi-modal transportation corridor; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 3: Housing because the proposal would permit innovative methods of housing.

RESOLVED, that the Louisville Metro Planning Commission does hereby **RECOMMEND** that the Louisville Metro Council change the form district from Neighborhood to Suburban Marketplace Corridor on property described in the attached legal description be **APPROVED**.

The vote was as follows:

YES: Commissioners Daniels, Howard, Mims, Seitz and Lewis

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NOT PRESENT AND NOT VOTING: Commissioners Brown, Carlson, Peterson and Jarboe

Zoning Change from R-4 to C-1

On a motion by Commissioner Howard, seconded by Commissioner Seitz, the following resolution based on the Plan 2040 Staff Analysis, testimony from both hearings and the Applicant's Justification was adopted.

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Community Form because, the site is adjacent to an existing activity center and the proposal would not constitute a non-residential expansion into an existing residential area; the site is located adjacent to Bardstown Road, a transit corridor, and next to an existing activity center; the proposal would expand an existing activity center in an appropriate location where residential populations will be minimally impacted; the site is located near the intersection of Bardstown Road (a major arterial) and Fegenbush Lane (a minor arterial) and traffic will be routed along these roads; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 2: Community Form because, the site is adjacent to an existing activity center and is in an appropriate location for the proposed uses; the site is adjacent to an existing marketplace corridor; the proposal would permit a more compact pattern of development in an existing activity center; the proposal would permit a mixture of compatible land uses in an existing activity center; the proposal would permit residential uses in the existing center; the proposal would not include any underutilized parking lots; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 3: Community Form because, no natural systems are evident on the subject site; No wet or highly permeable soils, or severe, steep or unstable slopes are evident on the site; the site is not located in a flood-prone area. No karst features are evident on the site; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 4: Community Form because, no historic or architectural assets are evident on the site; no distinctive cultural features are evident on the site; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Mobility because, the site is adjacent to an existing

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marketplace corridor. The applicant requests the appropriate Suburban Marketplace Corridor form district; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 3: Mobility because, the proposal would permit a mix of complementary neighborhood serving businesses; the proposal would permit a mixture of compatible land uses that are easily accessible by bicycle, car, transit, pedestrians and people with disabilities; the site is located on an existing transit corridor and the proposal would encourage higher density mixed-use developments adjacent to an existing activity center; Transportation Planning has approved the proposal; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 2: Community Facilities because, the relevant utilities have approved the proposal; Louisville Water Company has approved the proposal; MSD has approved the proposal; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Economic Development because, the site is located on a major arterial street; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Livability because, no karst features are evident on the site; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Housing because, the proposal would support aging in place by permitting higher density housing options on the site, or neighborhood-serving commercial uses in proximity to existing residential development; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 2: Housing because the proposal would permit inter-generational mixed-income and mixed-use development. The site is connected to the neighborhood and surrounding area; the proposal would permit housing in proximity to Bardstown Road, a multi-modal transportation corridor; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 3: Housing because the proposal would permit innovative methods of housing.

RESOLVED, that the Louisville Metro Planning Commission does hereby
RECOMMEND that the Louisville Metro Council the zoning from Single Family

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Residential, R-4 to Commercial, C-1 on property described in the attached legal description be **APPROVED**.

The vote was as follows:

YES: Commissioners Daniels, Howard, Mims, Seitz and Lewis

NOT PRESENT AND NOT VOTING: Commissioners Brown, Carlson, Peterson and Jarboe

Detailed District Development Plan and Binding Elements

On a motion by Commissioner Howard, seconded by Commissioner Daniels, the following resolution based on the Standard of Review and Staff Analysis was adopted.

WHEREAS, no natural resources appear to exist on the site. The existing buildings are not proposed to be retained. However, the existing buildings do not appear to be historic sites; and

WHEREAS, provisions for safe and efficient vehicular and pedestrian transportation within and around the development and the community has been provided, and Metro Public Works has approved the preliminary development plan; and

WHEREAS, there are no open space requirements pertinent to the current proposal; and

WHEREAS, the Metropolitan Sewer District has approved the preliminary development plan and will ensure 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; and

WHEREAS, the Louisville Metro Planning Commission finds, the overall site design is compatible with the existing and future development of the area. Appropriate buffering is being provided to the existing residential uses to the south. However, those uses are likely to change in the future as the activity center at the intersection expands; and

WHEREAS, the Louisville Metro Planning Commission further finds the development plan conforms to applicable guidelines and policies of the Land Development Code and the Comprehensive Plan.

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** the Detailed District Development Plan **SUBJECT** to the following Binding Elements:

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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. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.
3. 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.
4. 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 Construction Review, Louisville Metro Public Works and the Metropolitan Sewer District.
 - b. Encroachment permits must be obtained from the Kentucky Transportation Cabinet for any work in the Bardstown Road right-of-way.
 - c. A minor subdivision plat or other legal instrument shall be recorded creating the lot lines as shown on the development plan, dedicating additional right-of-way to Bardstown Road to provide a total of 65 feet from the centerline, and dedicating additional right-of-way to Fegenbush Lane to provide a total of 60 feet from the centerline. 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. A reciprocal access and crossover easement agreement in a form acceptable to the Planning Commission legal counsel shall be created for the new lots 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.
 - e. The property owner/developer must obtain approval of a detailed plan for screening (buffering/landscaping) as described in Chapter 10 prior to requesting

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- a certificate of occupancy. Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter.
- f. A Tree Preservation Plan in accordance with Chapter 10 of the LDC shall be reviewed and approved prior to obtaining approval for site disturbance.
- g. Final elevations/renderings shall be submitted for review and approval by Planning Commission staff. A copy of the approved rendering shall be available in the case file on record in the offices of the Louisville Metro Planning Commission.
5. 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.
 6. There shall be no outdoor music (live, piped, radio or amplified) or outdoor entertainment or outdoor PA system audible beyond the property line.
 7. No idling of trucks shall take place within 200 feet of residential structures. No overnight idling of trucks shall be permitted on-site.
 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 Developer / Property Owner shall install a concrete boarding pad, bench pad and then notify TARC when the construction is complete. TARC will then install a standard bench. In addition, the Developer / Property Owner shall clean the stop as needed.
 10. Upon development or redevelopment of adjacent properties (currently McDonald's and National Express Car Wash), a unified access and circulation system shall be developed to eliminate preexisting curb cuts and provide for vehicular movement throughout adjacent sites as determined appropriate by the Department of Public Works. A cross access agreement to run with the land and in a form acceptable to Planning Commission legal counsel shall be recorded

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prior to the time of construction approval for the adjacent property to be developed.

11. Prior to building permit submission, the Developer shall prepare a Pedestrian Access/Crossing Plan for the Bardstown and Fegenbush Road Intersection, based on the two pedestrian crossing locations identified within Kentuckian Regional Planning and Development Agency (KIPDA) "Transit, Bicycle & Pedestrian" Focus Area provided through their Online Resource Center. The Plan shall include at a minimum, topographic information to ensure accessible slopes can be provided, proposed pavement makings, sidewalk locations, landing and tactile warnings based on ADA and MUTCD guidelines. The plan shall be submitted to the Kentucky Transportation Cabinet's Planning Department prior to its transmittal Metro Public Works Department for budgeting improvements.

The vote was as follows:

YES: Commissioners Daniels, Howard, Mims, Seitz and Lewis

NOT PRESENT AND NOT VOTING: Commissioners Brown, Carlson, Peterson and Jarboe