

PLANNING COMMISSION MINUTES
May 21, 2015

PUBLIC HEARING

CASE NO. 13DEVPLAN1003

Request: RDDP with Amendments to Binding Elements and Waivers
Project Name: CVS
Location: 9420 Seatonville Road

Owner: First Federal Savings Bank

Applicant: Five Star Development
Mike Colbreath
116 Jefferson Street
Huntsville, Alabama

Representative: Miller Wihry MWG LLC
John Miller
1387 South 4th Street
Louisville, Ky. 40208

Jurisdiction: Louisville Metro
Council District: 22-Robin Engel
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.)

Agency Testimony:

00:31:10 Mrs. Williams discussed the case summary, standard of review and staff analysis from the staff report. This case was continued from DRC.

The following spoke in favor of this request:

Bill Bardenwerper, Bardenwerper, Talbott and Roberts, 1000 North Hurstbourne Parkway, Louisville, Ky. 40223
John Miller, Miller Wihry MWG, LLC, 1387 South 4th Street, Louisville, Ky. 40208
Jim Birch, 14202 Hickory Hills Trail, Louisville, Ky. 40299
Mike Colbreath, Five Star Development, 116 Jefferson Street, Huntsville, Al.

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Summary of testimony of those in favor:

00:45:09 Mr. Bardenwerper stated that the committee should not over-regulate. Fifty-five percent of the site will remain green.

Mr. Bardenwerper gave the history of the site.

00:58:27 Mr. Miller remarked, "This site was originally zoned for a Walgreens that ended up building diagonally across Bardstown Rd. Walgreens, as constructed, is a 20% larger building and with more parking than what's constructed on 1.44 acres, which is exactly half the size as the site was when bank brought it in to get their development plan. As part of that approval, the bank gave .13 acres to the Highway Dept. for extra right-of-way. Today the site is 2.75 acres."

Mr. Miller also stated, "All the waivers being requested are a result of trying to put the pharmacy on this site while minimizing the impact on the creek and the creek buffers."

1:12:28 Mr. Birch is speaking on behalf of the church and the church is in support of the project. "The agreements we have after meeting with the developer have given us the opportunity to, not only purchasing the Weiss property, but also to have reciprocal access agreements through the CVS property." The developer is also providing a right turn lane on Seatonville Rd.

1:18:03 Mr. Culbreath remarked (regarding parking spaces), "The 57 is a number the national firm has decided, for this size store, would be the bare minimum."

The following spoke in opposition to this request:

Trina Palma, 3308 Mardale Drive, Louisville, Ky. 40299
Joseph Marcus Greer III, 3809 Chevy Chase Road, Louisville, Ky. 40291
Teena Halbig, 6505 Echo Trail, Louisville, Ky. 40299

Summary of testimony of those in opposition:

01:29:11 Ms. Palma remarked "I am with the Floyds Fork Environmental Association, which was organized in 1991 as a necessity to ensure the health and protection of the Floyds Fork water shed and its attributors. Cedar Creek is an attributor to Floyds Fork."

Ms. Palma stated, "The initial reason this site was changed to C-1 zoning was for a small business and a 12,000 square foot business with over 50 parking spaces for an already congested area is simply too much."

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1:32:19 Mr. Greer lives in Buechel but is familiar with the site. The proposal doesn't fit with the area. Flooding is an existing issue and the proposal will make it worse.

1:37:21 Ms. Halbig, Floyds Fork Environmental Association, mentioned the Ordinance chaired by Councilwoman Madonna Flood. "The proposed development plan for the property did not comply with the Comp. Plan due primarily to the incompatibility of the intensity of the proposed use and the environmentally sensitivities and constraints of the subject site."

Ms. Halbig wants to keep all existing vegetation to remain and no mow signs put in place.

Agency Testimony:

2:05:25 Mr. Barry, from MSD remarked, "There's a Flood Plain Ordinance in Jefferson County and MSD administers it. That ordinance does not prohibit construction in the flood plain, it regulates it. MSD can't solve all the flooding problems in Jefferson County by not approving a development. This development is addressing all our requirements."

Rebuttal

2:12:31 Mr. Bardenwerper stated, "Something is going to be built on this site. It's just a question of what and when." A pharmacy will have the least impact.

Deliberation

02:21:00 Planning Commission deliberation. Commissioner Peterson said he thinks the use is better than what could be done. Commissioner Jarboe thinks the proposal is too intense, too large for the area and the justification statements from the applicant are weak; however the applicant has provided the best mitigation possible. Commissioner Proffitt doesn't support the waivers that deal with parking but is in support of the development. Commissioner Brown supports all the waivers and the plan. Commissioner White agrees with the applicant's justifications and the development altogether. Chairman Blake said the parking is too intense. Also, the applicant has purchased the property next door to help with access.

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.

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WAIVERS #1 and 2
(Parking and circulation in front of principal structure)

2:49:29 On a motion by Commissioner Brown, seconded by Commissioner Proffitt, the following resolution was adopted.

WHEREAS, The waiver will not adversely affect adjacent property owners since safe pedestrian access is provided from the public rights-of-way to the building entrance along Seatonville Road; and

WHEREAS, Guideline 2, policy 15 states to encourage the design, quantity and location of parking in activity centers to balance safety, traffic, transit, pedestrian, environmental and aesthetic considerations. Guideline 3, policy 1 states to ensure compatibility of all new development and redevelopment with the scale and site design of nearby existing development and with the pattern of development within the form district. Guideline 3, policy 23 states that setbacks, lot dimensions and building heights should be compatible with those of nearby developments that meet form district guidelines. Guideline 7, policy 3 states to evaluate developments for their ability to promote mass transit and pedestrian use. Encourage higher density mixed use developments that reduce the need for multiple automobile trips as a means of achieving air quality standards and providing transportation choices. Guideline 9, policy 1 states that new development and redevelopment should provide, where appropriate, for the movement of pedestrians, bicyclists and transit users with location of retail and office uses, especially in the Traditional Neighborhood, Village, Marketplace Corridor, Traditional Workplace Form Districts close to the roadway to minimize the distance pedestrians and transit users have to travel. The purpose of the requirement is to promote mass transit and pedestrian use and reduce vehicle trips in and around the site, and to reduce the distance pedestrians and transit users have to travel. Cedar Creek and the existing sewers on the site constrain the building location. Therefore, the waivers will not violate specific guidelines and policies of Cornerstone 2020; and

WHEREAS, the Louisville Metro Planning Commission finds, the extent of waiver of the regulation is the minimum necessary to afford relief to the applicant since Cedar Creek and the existing sewers are the physical restraints preventing compliance with the regulations to be waived; and

WHEREAS, the Louisville Metro Planning Commission further finds The applicant has not incorporated other design measures that exceed the minimums of the district to compensate for non-compliance with the requirements to be waived. The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or create an unnecessary hardship on the applicant because

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the existing sewers would have to be relocated to accommodate the structure. Additional mitigation could occur with the compliance of the VUA LBA along Seatonville to make the site more in compliance with other areas of the LDC.

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** Case No. 13DEVPLAN1003, Waivers 1 and 2 of Chapter 5 of the Land Development Code based on the staff report and the testimony heard today.

The vote was as follows:

YES: Commissioners Blake, Brown, Jarboe, Kirchdorfer, Peterson, Proffitt, Tomes, Turner and White

NO: No one

NOT PRESENT AND NOT VOTING: Commissioner Butler

ABSTAINING: No one

On a motion by Commissioner Brown, seconded by Commissioner Proffitt, the following resolution was adopted.

WAIVER #3
(Pedestrian connection from Bardstown Road)

WHEREAS, The waiver will not adversely affect adjacent property owners since pedestrian connections have been provided in a safe and reasonable distance of the transit stop; and

WHEREAS, Guideline 9, Policy 1 states that new development should provide, where appropriate, for the movement of pedestrians, bicyclists and transit users with walkways for access to public transportation stops. The waiver is compatible with the pattern of development within the form district because of the stream crossing that would have to occur which prevents compliance with the regulation. Therefore, the waivers will not violate specific guidelines and policies of Cornerstone 2020; and

WHEREAS, The extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant since the physical constraint of crossing Cedar Creek is preventing the pedestrian connection; and

WHEREAS, The applicant has not incorporated other design measures that exceed the minimums of the district to compensate for non-compliance with the requirements to be waived. The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or create an unnecessary hardship on the applicant because the applicant would have to construct a bridge across the stream for

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a pedestrian connection. To have the stream crossing MSD would have to grant a variance. MSD has denied variances in the past for stream crossings on this site.

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** Case No. 13DEVPLAN1003, Waiver #3, 5.9.2.a.1.b of the Land Development Code, to not provide the pedestrian connection to Bardstown Rd. based on the staff report, testimony heard today and that the future cross connectivity will provide that direct connection to Bardstown Rd. from the site.

The vote was as follows:

YES: Commissioners Blake, Brown, Jarboe, Kirchdorfer, Peterson, Proffitt, Tomes, Turner and White

NO: No one

NOT PRESENT AND NOT VOTING: Commissioner Butler

ABSTAINING: No one

On a motion by Commissioner Brown, seconded by Commissioner Tomes, the following resolution was adopted.

WAIVER #4
(Distance between ILAs and lower percentage of ILA)

WHEREAS, the area along Cedar Creek being preserved from the site would mitigate any issues the reduction in the ILAs would have; and

WHEREAS, it will comply with Guideline 13 of Cornerstone 2020 due to the preservation area plus the additional compensation area being provided on the abutting site; and

WHEREAS, it would be the minimum necessary because the site is constrained due to existing buffers required along the stream buffer.

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** Case No. 13DEVPLAN1003, Waiver #4, Chapter 10.2.12 of the Land Development Code and that the area along Cedar Creek being preserved from the site would mitigate any issues that the reduction in the ILAs would have and it will comply with Guideline 13 of Cornerstone 2020 due to this preservation area plus the additional compensation area being provided on the abutting site. This would be the minimum necessary because the site is constrained due to existing buffers required along the stream buffer.

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The vote was as follows:

YES: Commissioners Blake, Brown, Kirchdorfer, Peterson, Tomes, Turner and White

NO: Commissioners Jarboe and Proffitt

NOT PRESENT AND NOT VOTING: Commissioner Butler

ABSTAINING: No one

On a motion by Commissioner Brown, seconded by Commissioner Tomes, the following resolution was adopted.

WAIVER #5
(Encroachment of parking into south/east LBAs)

WHEREAS, the site is constrained due to the existing Cedar Creek and the applicant is going to preserve other areas on the property to help mitigate those problems; and

WHEREAS, the additional landscaping and brick wall that's going to be used to screen this from the abutting property; and

WHEREAS, It does comply with Guideline 3 of Cornerstone 2020 because the applicant has taken measures to mitigate the reduction in the landscape buffer area; and

WHEREAS, The applicant is acquiring the property to the south, which adds additional property beyond the parking area for additional buffering.

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** Case No. 13DEVPLAN1003 Waiver #5, 10.2.4 of the Land Development Code, to permit the encroachment into the 25 foot LBA required along the south and east property lines based on the fact that the site is constrained due to the existing Cedar Creek and the applicant is going to preserve other areas on the property to help mitigate those problems plus the additional landscaping and brick wall that's going to be used to screen this from the abutting property. It does comply with Guideline 3 of Cornerstone 2020 because the applicant has taken measures to mitigate the reduction in the landscape buffer area. The applicant is also adding the property to the south, which adds additional property beyond the parking area for additional buffering.

The vote was as follows:

YES: Commissioners Blake, Brown, Kirchdorfer, Peterson, Tomes, Turner and White

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NO: Commissioners Jarboe and Proffitt

NOT PRESENT AND NOT VOTING: Commissioner Butler

ABSTAINING: No one

On a motion by Commissioner Brown, seconded by Commissioner White, the following resolution was adopted.

WAIVER #6
(Reduction in VUA LBA)

WHEREAS, The waiver will not adversely affect adjacent property owners since the planting and screening requirements will still be met on the site; and

WHEREAS, The waiver will not violate guideline 3, Compatibility, of Cornerstone 2020, which calls for the protection of roadway corridors and public areas from visual intrusions, for mitigation of parking areas so as not to negatively impact nearby residents and pedestrians, and for parking areas adjacent to streets to be screened and buffered. The waiver will not violate guideline 13, Landscape Character, which calls for the protection of parkways through standards for buffers, landscape treatment, lighting and signs. The purpose of vehicle use area landscape buffer areas is to improve the appearance of vehicular use areas and property abutting public rights-of way; and

WHEREAS, The extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant since the planting and screening requirements can still be met; and

WHEREAS, The applicant has not incorporated other design measures that exceed the minimums of the district to compensate for non-compliance with the requirements to be waived. The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or create an unnecessary hardship on the applicant because the landscape requirements can still be met on the site.

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** Case No. 13DEVPLAN1003, Waiver #6, 10.2.10 of the Land Development Code based on the staff report and testimony heard today.

The vote was as follows:

YES: Commissioners Blake, Brown, Jarboe, Kirchdorfer, Peterson, Tomes, Turner and White

NO: Commissioner Proffitt

NOT PRESENT AND NOT VOTING: Commissioner Butler

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ABSTAINING: No one

Revised Development Plan and Binding Elements

On a motion by Commissioner Brown, seconded by Commissioner Tomes, the following resolution was adopted.

WHEREAS, the plan makes the maximum effort to protect the Cedar Creek environment, no construction is proposed near the creek. The plan through the proposed easement on the adjacent property to the southwest protects the creek all the way from where it crosses the Seatonville Road to where it crosses Bardstown Road; and

WHEREAS, the proposed plan has been approved by Metro Works with regard to both vehicular and pedestrian circulation. Additionally the plan provides for the connection to the Fern Creek Methodist Church providing an alternative route for customers of the pharmacy and a needed alternative exit route for church goers; and

WHEREAS, the proposed plan ultimately provides for 1.4 acres of open space on site and via the easement arrangement 1.2 acres of open space off-site. Essentially off-setting the additional size of the proposed pharmacy development over the previously approved plan for a bank at this location; and

WHEREAS, the proposed plan provides for compensation for both new run-off and fill within the floodplain. The proposed development does not encroach on the Local Conveyance Zone. Accordingly the plan has been approved by MSD; and

WHEREAS, the Louisville Metro Planning Commission finds, the proposed commercial development is compatible with other commercial development in the immediate vicinity and the site design incorporates the combination of a brick and vegetative screening to provide a separation between residential and commercial uses; and

WHEREAS, the Louisville Metro Planning Commission further finds, the proposed plan conforms with the uses permitted within the Town Center Form District in a way that to the maximum degree possible protects the natural resources in the property and the adjacent residential properties.

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** Case No. 13DEVPLAN1003 Revised Development Plan **ON CONDITION** that the cross access from the abutting property to the south, as shown on the supplemental plan, is provided and binding elements on pages 11, 12 and 13 of the staff report with the following changes and additions: binding element 11 will reference today's date and

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Planning Commission meeting – May 21, 2015 Planning Commission meeting; Binding element 16 will read as follows: Landscaping shall be provided minimally as shown on the approved development plan presented 5/21/15. Twelve to fifteen foot evergreens and upright deciduous trees shall be planted within the buffer along the east property lined. Additional Binding Element – The applicant or developer shall install an 8 foot high brick wall along the rear property line as shown on the development plan presented at the May 21, 2015 Planning Commission meeting. Additional Binding Element - No operations shall occur on site between the hours 10:00 p.m. and 8:00 a.m.; based on the testimony heard today and the applicant’s justification and **SUBJECT** to the following Binding Elements:

Proposed Binding Elements

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 11,945 square feet of gross floor area.
3. There shall be no direct vehicular access to Bardstown Road from this lot.
4. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.
5. 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.
6. 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.

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- b. Encroachment permits must be obtained from the Kentucky Department of Transportation, Bureau of Highways.
 - c. The appropriate variances shall be obtained from the Board of Zoning Adjustment to allow the development as shown on the approved district development plan.
 - 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 owner to the south (if ever developed non-residentially) and recorded. A copy of the recorded instrument shall be submitted to the Division of Planning and Design Services.
 - 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.
7. Prior to any site disturbance permit being issued and prior to any clearing, grading or issuance of a site disturbance permit, a site inspection shall be conducted by PDS staff to ensure proper placement of required tree protection fencing in accordance with the approved Tree Preservation Plan.
8. 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.
9. There shall be no outdoor music (live, piped, radio or amplified) or outdoor entertainment or outdoor PA system audible beyond the property line.
10. 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.

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11. The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the May 21, 2015 Planning Commission meeting.
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.
13. A “no mow zone” per MSD’s Green Infrastructure Design Manual (2011), will be established within the 100 foot stream buffer as shown on the development plan. More specifically, the area within the stream buffer zones between the proposed parking lot and Bardstown Road. “No Mowing Zone” signs will be posted on site, 2 along Bardstown Road, 1 along Seatonville Road, and 2 between the parking lot and the local conveyance zone as shown on the development plan. The applicant will work with PDS staff on the locations.
14. Native riparian plantings will be added to the 25’ stream buffer in areas indicated on the development plan. The riparian plantings will be shown and approved on a landscape plan provided to Planning and Design Services staff. The applicant will work with PDS staff to determine amount and type of plantings.
15. The proposed rain garden as shown on the development plan will be planted with native plants as indicated in MSDs *“How –To Guide for Building Your Own Rain Garden”* (2008). The rain garden plantings will be shown and approved on a landscape plan provided to Planning and Design Services staff. The applicant will work with PDS staff to determine amount and type of plantings.
16. Landscaping shall be provided minimally as shown on the approved development plan presented 5/21/15 - 12’ to 15’ evergreens and upright deciduous trees shall be planted within the buffer along the east property lined.
17. The applicant or developer shall install an 8 foot high brick wall along the rear property line as shown on the development plan presented at the May 21, 2015 Planning Commission meeting.
18. No operations shall occur on site between the hours 10:00 p.m. and 8:00 a.m.

The vote was as follows:

YES: Commissioners Blake, Brown, Kirchdorfer, Peterson, Proffitt, Tomes, Turner and White

NO: Commissioner Jarboe

NOT PRESENT AND NOT VOTING: Commissioner Butler