

**MINUTES OF THE MEETING  
OF THE  
LOUISVILLE METRO BOARD OF ZONING ADJUSTMENT**

**JUNE 1, 2015**

**NEW BUSINESS:**

**CASE NO. 15VARIANCE1013**

**Request:** Variances

**Project Name:** CVS

**Location:** 9420 Seatonville Road

**Owner:** Your Community Bank, Inc.  
Matthew Neel  
2323 Ring Road  
Elizabethtown, KY 42702

**Applicant:** Five Star Development  
Nate Welch  
200 Office Park Drive, Suite 340  
Birmingham, AL 35213

**Attorney:** Nick Pregliasco  
1000 N. Hurstbourne Parkway, #200  
Louisville, KY 40223

**Representative:** Miller Wihry  
John Miller  
1387 S. Fourth Street  
Louisville, KY 40208

**Jurisdiction:** Louisville Metro

**COUNCIL DISTRICT 22—Robin Engel**  
**Staff Case Manager: Julia Williams, AICP, Planner II**

**(CONTINUED FROM MAY 4, 2015)**

Notice of this public hearing was posted on the property, and notices were sent by first class mail to those adjoining property owners whose names were supplied by the applicant.

The staff report prepared for this case was incorporated into the record. The Board members received this report in advance of the hearing, and was available

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to any interested party prior to the public hearing. (The staff report is part of the case file maintained at the Planning and Design Services offices located at 444 S. 5<sup>th</sup> Street).

**Agency Testimony:**

Brian Davis, Planning Supervisor, presented the case for staff case manager, Julia Williams and discussed the case summary, standard of review and staff analysis from the staff report. The applicant is requesting 3 variances for setbacks; and that the applicant received approval for a Revised Detailed District Development Plan with waivers at the May 21, 2015 Planning Commission meeting. Mr. Davis said access will be from Seatonville Road and a future access from a shared driveway from the Fern Creek Methodist Church. The applicant is eliminating 3 parking spaces which will eliminate the need for an Interior Landscaped Area (ILA). Member Jarboe asked if they are building in the floodplain. Mr. Davis said they are putting up a retaining wall.

**The following spoke in favor of this request:**

Nick Pregliasco, Attorney.

John Miller, Representative.

Mike Culbreath, 200 Office Park Drive, Ste. 340, Birmingham, AL 35213.

Jim Birch, 1402 Hickory Hills Trail, Louisville, KY 40299.

**Summary of testimony of those in favor:**

Nick Pregliasco, the applicant's attorney, said the stream will not be disturbed; and 50% of the site will remain greenspace. He said the plan from MSD indicates this property is out of the floodplain. They will be adding a right turn lane along Seatonville Road; and that the neighbors' were not opposed to the proposed buffering (wall and 12-15 ft. tall trees).

John Miller, the applicant's representative, said this site is large enough for a pharmacy, but compact enough to protect the stream. He said they will be providing riparian plantings and turn the existing basin into a rain garden. He said MSD, Public Works and APCD have all preliminarily approved the plan.

Member Fishman asked if CVS approved the plan with three less parking spaces. Mike Culbreath, with CVS, said they are in the process of getting it

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approved; and said that they will have to redesign the store if CVS doesn't want to eliminate the 3 parking spaces. Mr. Culbreath added that they have a legal agreement with the owners of the property with the house, which will be used for another access point.

Member Allendorf said if they have a mini-clinic will increase the number of customers and cars.

Jim Birch said they want to acquire more property around the site; and create a master plan.

**The following spoke neither for nor against the request:**

No one.

**Summary of testimony of those who spoke neither for nor against:**

No one.

**The following spoke in opposition to this request:**

Teena Halbig, 6505 Echo Trail, Louisville, KY 40299.

Peter Bodnar, 8801 Dawson Hill Road, Louisville, KY 40299.

J. Marcus Greer III, 3809 Chevy Chase Road, Louisville, KY 40218.

**Summary of testimony of those in opposition:**

Teena Halbig said she is the past president of the Floyds Fork Environmental Association, and said they are building in the floodway. Ms. Halbig submitted information into the record supporting this; and pictures of flooding in the area. She said CVS should reduce the square footage of the building and parking; and said there are 8 pharmacies in the area. She said they requested a Stormceptor at the Planning Commission meeting too which hasn't been addressed today. Ms. Halbig concluded that the Board should deny the second variance due to the blue line streams, in addition to the third variance encroachment.

Peter Bodnar with the Floyds Fork Neighborhood Association said he opposes the third variance due to flooding in the area. He said the building is too big for the site and will cause more environmental problems. He said CVS wants to compete with Walgreens at any expense.

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J. Marcus Greer III, said his mother lives across Seatonville Road and said debris gets all over her driveway. He said when it rains, the water backs up onto the streets; and if toxic water gets into the stream will kill the fish.

**Rebuttal:**

Mr. Pregliasco said CVS is the best use for the property; and that a fast food restaurant would double the amount of cars.

**Discussion:**

Chair Proffitt asked Mr. Miller to explain building in the floodplain. Mr. Miller said this is an intermittent stream and explained the difference between the FEMA guidelines and the 100 Year Floodplain. He said 90% of the stream buffer will be preserved.

**Deliberation:**

Member Bergmann said they are pushing the boundaries of the floodplain; and that the building is too large for the site. He and other Board members were concerned about the flooding in the area. Member Jarboe said people need to quit building in the floodplain. Member Allendorf said that 70% of Louisville was probably swamp land and that the applicant is adding fill dirt to take it above the floodplain. Chair Proffitt said the project would not be possible without the basins and is in favor of keeping the natural vegetation where they can; and add more landscaping. Member Fishman asked if the applicant would agree to install the Stormceptor.

**Public Hearing:**

Mr. Miller agreed to install a Stormceptor; and that they will maintain it (clean it etc.).

**Deliberation:**

Chair Proffitt discussed the motion if the Board should approve the variances.

**An audio/visual recording of the Board of Zoning Adjustment hearing related to this case is available in the Planning & Design Services offices. Please contact the Customer Service staff to view the recording or to obtain a copy. The recording of this hearing will be found on the CD of the June 1, 2015 public hearing proceedings.**

**MINUTES OF THE MEETING  
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**CASE NO. 15VARIANCE1013**

**Variance: To allow a proposed building to exceed the 0 ft. setback along Bardstown Road and Seatonville Road:**

On a motion by Member Allendorf, seconded by Member Fishman, the following resolution was adopted:

**WHEREAS**, the Board finds from the file of this case, the staff report including the standard of review and additional considerations, where the four standard of review requirements control over the additional considerations; the site plan; the PowerPoint presentations; the evidence, the applicant's justification statement, testimony and discussion at the public hearing that the applicant is requesting a variance from Chapter 5.5.1.A.2 of the Land Development Code to allow a proposed building to be 265 feet from Seatonville Road and 81 feet from Bardstown Road; and

**WHEREAS**, the Board finds that the requested variance will not adversely affect the public health, safety or welfare since the location preserves the existing location of Cedar Creek; and

**WHEREAS**, the Board finds that the variance will not alter the essential character of the general vicinity since preserving the creek along the frontage of the lot is characteristic of both the residential lot to the south and the church lot across Seatonville Road to the north; and

**WHEREAS**, the Board finds that the variance will not cause a hazard or nuisance to the public since buffers between the residential zones to the east and south will be provided and a buffer between the parking lot and Seatonville Road will be provided; and

**WHEREAS**, the Board finds that the variance will not allow an unreasonable circumvention of the zoning regulations since Cedar Creek is an existing blue line stream being preserved on the site; and

**WHEREAS**, the Board finds that the variance arises from special circumstances which do not generally apply to land in the general vicinity or the same zone since Cedar Creek runs along the property frontage where the Town Center form indicates the building location; and

**MINUTES OF THE MEETING  
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LOUISVILLE METRO BOARD OF ZONING ADJUSTMENT**

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**WHEREAS**, the Board finds that the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land since the applicant would have to move Cedar Creek in order to get the building at the corner as required;

**RESOLVED**, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the variance to allow a proposed building to be 265 feet from Seatonville Road; and 81 feet from Bardstown Road.

**YES: Members Allendorf, Fishman, Turner, Jarboe, Proffitt and Bergmann.**

**NO: No one.**

**NOT PRESENT FOR THIS CASE AND NOT VOTING: Member Tharp.**

**ABSTAINING: No one.**

**Variance: To allow the encroachment of a drive lane into the required 25 ft. setback along the southeast property line:**

On a motion by Member Allendorf, seconded by Member Fishman, the following resolution was adopted:

**WHEREAS**, the Board finds from the file of this case, the staff report including the standard of review and additional considerations, where the four standard of review requirements control over the additional considerations; the site plan; the PowerPoint presentations; the evidence, the applicant's justification statement, testimony and discussion at the public hearing that the applicant is requesting a variance from Chapter 5.31.C of the Land Development Code to allow a drive lane to encroach into the 25 foot setback (varies) along the southeast property line; and

**WHEREAS**, the Board finds that the requested variance will not adversely affect the public health, safety or welfare since an 8 ft. tall brick wall and landscaping will buffer the site from the adjacent residential properties; and

**WHEREAS**, the Board finds that the variance will not alter the essential character of the general vicinity since the buffering and landscape requirements will be met; and

**WHEREAS**, the Board finds that the variance will not cause a hazard or nuisance to the public since the buffer will still be met on the site; and

**MINUTES OF THE MEETING  
OF THE  
LOUISVILLE METRO BOARD OF ZONING ADJUSTMENT**

**JUNE 1, 2015**

**NEW BUSINESS:**

**CASE NO. 15VARIANCE1013**

**WHEREAS**, the Board finds that the variance will not allow an unreasonable circumvention of the zoning regulations since the buffering and screening requirements will still be met on the site; and

**WHEREAS**, the Board finds that the requested variance arises from special circumstances which do not generally apply to land in the general vicinity or the same zone since the building is located away from Cedar Creek, which is along the sites frontage;

**RESOLVED**, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the variance (for the required 25 ft. setback) to allow a drive lane to vary from the southeast property line.

**YES: Members Allendorf, Fishman, Turner, Jarboe, Proffitt and Bergmann.**

**NO: No one.**

**NOT PRESENT FOR THIS CASE AND NOT VOTING: Member Tharp.**

**ABSTAINING: No one.**

**Variance—To allow a building and parking to encroach into the 50 ft. middle buffer zone; and 25 ft. outer zone stream buffers along the east side of Cedar Creek (requirement 100 ft.) which will vary:**

On a motion by Member Allendorf, seconded by Member Fishman, the following resolution was adopted:

**WHEREAS**, the Board finds from the file of this case, the staff report including the standard of review and additional considerations, where the four standard of review requirements control over the additional considerations; the site plan; the PowerPoint presentations; the evidence, the applicant's justification statement, testimony and discussion at the public hearing that the applicant is requesting a variance from Chapter 4.8.3.C of the Land Development Code to allow a building and parking to encroach into the 50 ft. middle buffer zone; and 25 ft. outer zone stream buffers along the east side of Cedar Creek (requirement 100 ft.) which will vary; and

**WHEREAS**, the Board finds that the requested variance will not adversely affect the public health, safety or welfare because a reduction in the stream buffer will not have any impact on the public because more than half of the site will be preserved for the stream buffer; and

**MINUTES OF THE MEETING  
OF THE  
LOUISVILLE METRO BOARD OF ZONING ADJUSTMENT**

**JUNE 1, 2015**

**NEW BUSINESS:**

**CASE NO. 15VARIANCE1013**

**WHEREAS**, the Board finds that the variance will not alter the essential character of the general vicinity because it would be similar to the land use pattern along this area of Cedar Creek and would in fact maintain the greatest amount of stream buffer of any commercial uses in the area; and

**WHEREAS**, the Board finds that the variance will not cause a hazard or nuisance to the public because more than half of the site will be preserved for stream buffer remaining to protect water quality; and

**WHEREAS**, the Board finds that the variance will not allow an unreasonable circumvention of the zoning regulations because it would allow use of this property in a manner consistent with its surroundings, provide a needed community service in a central location and provide a reasonable use of private property while preserving more than half of the site to preservation of the stream environment; and

**WHEREAS**, the Board finds that the requested variance arises from special circumstances which do not generally apply to land in the general vicinity or the same zone because the location of Cedar Creek is consuming as it virtually bisects the site; also because the site is limited by other creek related issues such as the floodplain and floodway; and

**WHEREAS**, the Board finds that the strict application of the regulation would deprive the applicant of the reasonable use of the land because it would not allow adequate usable area for the proposed use or perhaps any commercial use; and

**WHEREAS**, the Board find that the circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought because the site has been zoned commercially for many years, but has remained undeveloped due to the restrictions associated with the creek;

**RESOLVED**, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the variance to allow an encroachment of a building and parking into the required 50 ft. middle buffer zone; and 25 ft. outer zone stream buffers to be varied along the east side of Cedar Creek **ON CONDITION:**



**MINUTES OF THE MEETING  
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LOUISVILLE METRO BOARD OF ZONING ADJUSTMENT**

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**CASE NO. 15VARIANCE1013**

**The conditions are as follows:**

1. The applicant will install and maintain a Stormceptor.
2. The landscaping will look substantially the same as what was presented at the hearing today.

**YES: Members Allendorf, Fishman, Turner and Proffitt.**

**NO: Members Jarboe and Bergmann.**

**NOT PRESENT FOR THIS CASE AND NOT VOTING: Member Tharp.**

**ABSTAINING: No one.**