

**Case No. 15ZONE1008 ONLY – July 30, 2015 Planning Commission hearing**

**Request:** Change in zoning from R-4, R-7, and C-1 to C-2; Variances; Waivers; and a General/Detailed District Development Plan.

**Project Name:** Costco

**Location:** 3408 Bardstown Road

**Owner:** Playa Plaza LLC  
J. Mark Blieden, Representative  
6100 Dutchmans Lane, 6<sup>th</sup> Floor  
Louisville, KY 40205

**Applicant:** Costco Wholesale  
Ted Johnson, Representative  
TJ Design Strategies, Ltd.  
2311 West 22<sup>nd</sup> Street Suite 208  
Oak Brook, Illinois 60523

**Representative:** Jackie Frank  
Costco Wholesale  
999 Lake Drive  
Issaquah, WA 98027

**Engineer/Designer:** Mulvanny G2 Architecture  
1110 112<sup>th</sup> Avenue NE Suite 500  
Bellevue, WA 98004

**Jurisdiction:** Louisville Metro

**Council District:** 10 – Steve Magre

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

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:**

00:22:04 Julia Williams presented the case and showed a Power Point presentation (see staff report and recording for detailed presentation.)

00:34:33 Ms. Williams read proposed changes to binding element #13 into the record, as follows:

“The applicant is utilizing the Public Art fee in lieu as outlined in Chapter 5.12.2.A.3. The fee in lieu shall be calculated based on the square footage required for the outdoor amenity area, multiplied by the square foot value of the parcel of land as determined by its actual documented value at the time of development. The fee shall be paid to the Louisville Public Space Art Fund before the issuance of a building permit for the site.”

00:35:12 Ms. Williams said staff had received two letters of support from adjacent property owners.

00:37:57 In response to a question from Commissioner Proffitt, Ms. Williams explained the reasons the applicant had given for the requested Waiver to not provide short-term bicycle parking.

**The following spoke in favor of the proposal:**

Jackie Frank, representing Costco Wholesale, 999 Lake Drive, Issaquah, WA 98027

Cynthia Cooke, 2227 Bashford Manor, Louisville, KY 40218

Lois L. Judd, 2613 Goldsmith Lane, Louisville, KY 40218

Susan Smith, 705 Donard Park Avenue, Louisville, KY 40218

Steve Porter, 2406 Tucker Station Road, Louisville, KY 40299

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

00:39:38 Jackie Frank presented the applicant's case and showed a Power Point presentation (see recording for detailed presentation.)

00:51:05 Cynthia Cooke spoke in support.

00:51:59 Lois Judd spoke in support and said she had heard many positive, supportive comments from people in the neighborhood and surrounding areas. She said some other comments she had heard had to do with wanting as much green space as possible, and some concerns about drainage.

00:54:06 Susan Smith, representing the Donard Park Condominium Association, discussed the project and some of the residents' concerns, primarily HVAC noise and aesthetic views for the residents who face the property. She said some of the other property owners were concerned about delivery truck idling/noise but that Mr. Frank had addressed the concerns about the delivery truck idling. Commissioner Proffitt said truck idling was addressed by binding element #12.

00:57:39 Steve Porter spoke in support of the project.

**The following spoke in opposition to the proposal:**

No one spoke.

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

No one spoke.

**Rebuttal:**

00:58:16 Mr. Frank addressed Ms. Smith's concerns about HVAC noise and truck idling. He said noise and light pollution were primary areas of focus in response to neighbors' concerns; also he answered Commissioner Proffitt's questions about lighting & light standards. Mr. Frank also withdrew the short-term bicycle parking waiver request and indicated that Costco would work with staff on the location of the bike rack.

01:04:25 In response to some Commissioner's questions, Mr Frank said that there are no proposals for the outlot at this time; also, Costco will not be the developer of that outlot.

01:05:45 Commissioner Brown and Mr. Frank discussed intersections and accesses.

**Deliberation:**

01:10:43 Commissioner's deliberation.

**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.**

**One vote was taken on all of the following issues:**

**Change in form district; change in zoning; Variances #1, #2, and #3; Waivers #1, #4, #5 and #6; the General Detailed District Development Plan; the proposed binding elements including a change to binding element #13 as specified at this hearing; and a change to binding element #12 (strike the words "Single Family residences" from that binding element to include all types of abutting residences, and adding the words "within 200 feet of residential properties".) Change in Form District from Neighborhood to Suburban Marketplace Corridor**

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

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposed Form District change meets the intents of Community Form/Land Use Guideline 1 - Community Form. The proposal is part of an existing commercial center that has been created along Bardstown Road. The proposal is for a form district change to allow the entire sit to fit in with the established SMC that has been created along Bardstown Road. The NFD is located where the site is residentially zoned but never used as such; and

**WHEREAS**, the Commission further finds that the Suburban Marketplace Corridor form district change is to allow for an expansion into an area where the use has been commercial for some time. Bardstown Road is a major arterial and the form district change will have limited impact on the adjacent properties; and

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets the intents of **Guideline 1 – Community Form**. The proposal provides accommodations for transit users, pedestrians, and employee bicyclists. The adjacent developments are located close enough to the public sidewalk along Bardstown Road that it could be utilized for pedestrians and transit users. Pedestrians are also provided for by way of an existing sidewalk connection to Sumner Road to the north; and

**WHEREAS**, the Commission further finds that the proposal is for one building and an outlot. Existing curb cuts along Bardstown Road are being utilized. Buffers are provided adjacent to the lower density uses; and

**WHEREAS**, the Commission further finds that the proposal is for an expansion of the SMC. The expansion is for the re-use of residentially zoned, commercially used land. The proposal will not be more of a disruption to the existing established residential area as buffers and setbacks will be provided; and

**WHEREAS**, the Commission further finds that the proposal meets the intents of **Guideline 2 – Centers**. The proposal, which will create a new center, is located in the Suburban Marketplace Corridor Form District, and includes new construction or the reuse of existing buildings to provide commercial, office and/or residential use. The proposal is for new construction for commercial use in the established SMC; and

**WHEREAS**, the Commission further finds that C-2 zoning, while permitting C-1 uses, allows for more intense commercial users outside the general neighborhood population. Much of the site is already zoned C-2. There is sufficient population in the vicinity to support the zoning; and

**WHEREAS**, the Commission further finds that expanding the existing C-2 results in an efficient land use pattern as the residential zones have already been used commercially for some time. C-2 zoning allows for a variety of compatible commercial land uses. Transit is available on Bardstown Road; and

**WHEREAS**, the Commission further finds that the proposal is a large development in an existing activity corridor that has been created along Bardstown Road. An outlot is proposed to make the development multi-purpose. No central feature or landscape element is proposed but the entrance faces a larger landscape area/green space; and

**WHEREAS**, the Commission further finds that a pedestrian walkway is proposed through the site from Bardstown Road and a sidewalk will be provided to connect the site to the existing Sumner Road. Existing curb cuts are being utilized. The entrances will be shared with the proposed gas station and out lot. Utilities will be shared on site and all types of transportation have access to the site; and

**WHEREAS**, the Commission further finds that the proposal meets the intents of **Guideline 3 – Compatibility**. The building materials are consistent with the mix of materials found in the area. The proposal is not a non-residential expansion into an existing residential area. The change in zoning is within an area that has been already used commercially. Setbacks and buffers will be provided where there once were none; and

**WHEREAS**, the Commission further finds that APCD has no issues with the proposal; Transportation Planning has not indicated any issues with traffic; lighting will meet LDC requirements; and the proposal is located within an activity center and along a transit corridor; and

**WHEREAS**, the Commission further finds that buffers are provided along the perimeter and the planting requirements will exceed the LDC. The buffer waivers are mitigated because additional landscaping beyond the LDC will be planted. The setbacks and lot requirements are compatible because the landscape requirements will exceed the LDC. The loading areas on the site are to the rear of the site and are setback 75' from the shared property line with the rear adjacent residential. Parking and circulation areas will be adequately screened, and signs seen from the roadway will meet LDC requirements; and

**WHEREAS**, the Commission further finds that the proposal meets the intents of **Guideline 4 – Open Space**. Open space is provided in the form of landscape buffers and setbacks, and no natural features are evident on the site; and

**WHEREAS**, the Commission further finds that the proposal meets the intents of **Guideline 5 – Natural Areas and Scenic and Historic Resources**. No natural features are evident on the site; the site is not recognized for having any historical or cultural value; and soils are not an issue for the proposal; and

**WHEREAS**, the Commission further finds that the proposal meets the intents of **Guideline 6 – Economic Growth and Sustainability**. The proposed retail commercial development is located in an activity center, and the proposals commercial zoning is located along a major arterial; and

**WHEREAS**, the Commission further finds that the proposal meets the intents of **Guideline 7 – Circulation**. The proposal will incur any additional costs for roadway improvements. All types of transportation modes are provided for on the site. While short term bike parking is not provided for long term bicycle parking for employees is provided in the building. A pedestrian walkway is proposed through the site from Bardstown Road and a sidewalk will be provided to connect the site to the existing Sumner Road. Existing curb cuts are being utilized. The entrances will be shared with the proposed gas station and out lot. No new roadway will be created. Right of way will be dedicated, and adequate parking is provided. Cross access is provided within the development but is not provided to adjacent sites due to their small lot nature and their proximity to Bardstown Road; and

**WHEREAS**, the Commission further finds that the proposal meets the intents of **Guideline 8 – Transportation Facility Design**. No new roadways are being created, and access to the site is from Bardstown Road; and

**WHEREAS**, the Commission further finds that the proposal meets the intents of **Guideline 9 – Bicycle, Pedestrian and Transit**. All types of transportation modes are provided for on the site. While short term bike parking is not provided for long term bicycle parking for employees is provided in the building. A pedestrian walkway is proposed through the site from Bardstown Road and a sidewalk will be provided to connect the site to the existing Sumner Road. Existing curb cuts are being utilized. The entrances will be shared with the proposed gas station and out lot. No new roadway will be created; and

**WHEREAS**, the Commission further finds that the proposal meets the intents of **Guideline 10 – Flooding and Stormwater** and **Guideline 12 – Air Quality**. MSD has preliminarily approved the proposal and APCD has no issues with the proposal; and

**WHEREAS**, the Commission further finds that the proposal meets the intents of **Guideline 13 – Landscape Character**. No natural features are evident on the site; and

**WHEREAS**, the Commission further finds that the proposal meets the intents of **Guideline 14 – Infrastructure**. Existing and planned utilities will serve the site; Adequate water is available to the site; and The Health Department has no issues with the proposal; and

**Variance #1 from Chapter 5.3.2.C.2.A, to permit the building to be setback 785' from the Bardstown Road property line instead of the required 275'. (510' variance)**

**WHEREAS**, the Louisville Metro Planning Commission finds that the requested variance will not adversely affect the public health, safety or welfare since the building will be buffered where it is adjacent to residential; and

**WHEREAS**, the Commission further finds that the requested variance will not alter the essential character of the general vicinity since the proposal has outlots along Bardstown Road and the lot configuration is unusual for the area; and

**WHEREAS**, the Commission further finds that the requested variance will not cause a hazard or nuisance to the public since the building will be buffered where it is adjacent to residential; and

**WHEREAS**, the Commission further finds that the requested variance will not allow an unreasonable circumvention of the zoning regulations since there are out lots along 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 lot configuration is unusual for the area since it goes deep into the existing residential area. The building size for the use also allows the parking to all be located in the front instead of all around the building where there would be conflicts with pedestrians and loading; and

**WHEREAS**, the Commission further finds that 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. The lot configuration is unusual for the area since it goes deep into the existing residential area. The building size for the use also allows the parking to all be located in the front instead of all around the building where there would be conflicts with pedestrians and loading; and

**WHEREAS**, the Commission further finds that the circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought; and

**Variance #2 from Chapter 5, Table 5.3.2, to permit encroachments into the 50' setback along the south property line and into the 75' setback along the north property line.**

**WHEREAS**, the Louisville Metro Planning Commission finds that the requested variance will not adversely affect the public health, safety or welfare since the building will be buffered where it is adjacent to residential; and

**WHEREAS**, the Commission further finds that the requested variance will not alter the essential character of the general vicinity since the site was previously paved from property line to property line with no buffers. While there are encroachments into the setbacks, the encroachments are less than what is existing and moves the use further away from the existing residential; and

**WHEREAS**, the Commission further finds that the requested variance will not cause a hazard or nuisance to the public since the use will be further away from the existing

residential than what currently exists. Buffers will be provided where there are currently no buffers; and

**WHEREAS**, the Commission further finds that the requested variance will not allow an unreasonable circumvention of the zoning regulations since the existing conditions put the use closer to the existing residential and the proposal provides buffering in addition to setbacks; 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 proposal is located in a transition zone between the Neighborhood Form and the proposed Suburban Marketplace Form. While these two forms are adjacent to each other frequently, the lot configuration is unusual; and

**WHEREAS**, the Commission further finds that the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land since the transition standards are causing the setbacks instead of the average SMC requirement; and

**WHEREAS**, the Commission further finds that the circumstances are the result of action of the applicant taken subsequent to the adoption of the zoning regulations from which relief is sought; and

**Variance #3 from Chapter 8.3.3, to permit the sign square footage attached to the building facades to be 710 SF instead of the required 500 SF.**

**WHEREAS**, the Louisville Metro Planning Commission finds that the requested variance will not adversely affect the public health, safety or welfare because the signage is located on the building; and

**WHEREAS**, the Commission further finds that the requested variance will not alter the essential character of the general vicinity since the increase in signage is only 210 sf more than required on a building that will not generally be seen from the roadway; and

**WHEREAS**, the Commission further finds that the requested variance will not cause a hazard or nuisance to the public since it is located on a building and out of reach to the public; and

**WHEREAS**, the Commission further finds that the requested variance will not allow an unreasonable circumvention of the zoning regulations since the increase in signage is only 210 sf more than required on a building that will not generally be seen from the roadway; 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 is that the building is located where it will be

generally not seen from the roadway and the signs are to direct the public to different services within the building; and

**WHEREAS**, the Commission further finds that the circumstances are the result of action of the applicant taken subsequent to the adoption of the zoning regulations from which relief is sought; and

**Waiver #1 – Waiver from Chapter 10.2.4, to permit encroachments into the 25' LBA along the north and south property lines.**

**WHEREAS**, the Louisville Metro Planning Commission finds that the waiver will not adversely affect adjacent property owners since the buffers and landscape requirements will still be met on the site; and

**WHEREAS**, the Commission further finds that Guideline 3, policy 9 of Cornerstone 2020 calls for the protection of the character of residential areas, roadway corridors and public spaces from visual intrusions and mitigate when appropriate. Guideline 3, policies 21 and 22 calls for appropriate transitions between uses that are substantially different in scale and intensity or density, and to mitigate the impact caused when incompatible developments occur adjacent to one another through the use of landscaped buffer yards, vegetative berms and setback requirements to address issues such as outdoor lighting, lights from automobiles, illuminated signs, loud noise, odors, smoke, automobile exhaust or other noxious smells, dust and dirt, litter, junk, outdoor storage, and visual nuisances. Guideline 3, policy 24 states that parking, loading and delivery areas located adjacent to residential areas should be designed to minimize the impacts from noise, lights and other potential impacts, and that parking and circulation areas adjacent to streets should be screened or buffered. Guideline 13, policy 4 calls for ensuring appropriate landscape design standards for different land uses within urbanized, suburban, and rural areas. Guideline 13, Policy 6 calls for screening and buffering to mitigate adjacent incompatible uses. The intent of landscape buffer areas is to create suitable transitions where varying forms of development adjoin, to minimize the negative impacts resulting from adjoining incompatible land uses, to decrease storm water runoff volumes and velocities associated with impervious surfaces, and to filter air borne and water borne pollutants. The full landscape buffer planting and screening will be in compliance with the LDC; and

**WHEREAS**, the Commission further finds that the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant since the planting and screening requirements will still be met and exceed the minimums along the property boundary; and

**WHEREAS**, the Commission further finds that the applicant has incorporated other design measures that exceed the minimums of the district and compensate for non-compliance with the requirements to be waived because the landscaping within the buffers will be more than what is required under the LDC; and

**Landscape Waiver #4 – Waiver from 10.2.12 to allow more than 120 feet between Interior Landscape Areas as shown on the plan**

**WHEREAS**, the Louisville Metro Planning Commission finds that the waiver will not adversely affect adjacent property owners since the total ILA areas is being on the site; and

**WHEREAS**, the Commission further finds that the waiver will not violate specific guidelines of Cornerstone 2020. Guideline 13, Policy 5 calls for standards to ensure the creation and/or preservation of tree canopy as a valuable community resource. The purpose of interior landscape areas is to break up large impervious areas and allow for a greater distribution of tree canopy coverage. The tree canopy coverage over pavement will still be met.; and

**WHEREAS**, the Commission further finds that the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant since the minimum square footage of ILA will still be met on the site; and

**WHEREAS**, the Commission further finds that the applicant is using larger islands elsewhere on the site to meet the ILA square footage; and

**Waiver #5 – Waiver from Chapter 5.6 to not provide 60% animating features, windows, and a varied roofline.**

**WHEREAS**, the Louisville Metro Planning Commission finds that the requested waiver will not adversely affect adjacent property owners because there are buffers to screen the building from the adjacent properties; and

**WHEREAS**, the Commission further finds that the waiver will not violate specific guidelines of Cornerstone 2020. Guideline 3, policy 1 and 2 calls for the 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. The type of building materials may be considered as a mitigation measure and may also be considered in circumstances specified in the Land Development Code. When assessing compatibility, it is appropriate to consider the choice of building materials in the following circumstances: (1) projects involving residential infill (2) projects involving non-residential uses; and (3) when specified in the Land Development Code. The proposal is for a non-residential use. The Land Development Code provides building design standards for non-residential and mixed use buildings. The purpose of the regulation is to provide visual interest and a human scale that are representative of the form district through the use of windows, columns, pilasters, piers, variation of material, entrances, storefront windows, and other animating features. Animating features of the building are less relevant with the building setback from the road; and

**WHEREAS**, the Commission further finds that the extent of the waiver of the regulation is not the minimum necessary to afford relief to the applicant since the proposed use is more warehouse style retail than smaller scale retail; and

**WHEREAS**, the Commission further finds that the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant since the proposed use is more warehouse style retail than smaller scale retail; and

**Waiver #6 – Waiver from Chapter 10.2.4.B, to permit over 50% overlap of an easement and an LBA along the south property line.**

**WHEREAS**, the Louisville Metro Planning Commission finds that the waiver will not adversely affect adjacent property owners since the buffers and landscape requirements will still be met on the site; and

**WHEREAS**, the Commission further finds that the waiver will not violate specific guidelines of Cornerstone 2020. Guideline 3, policy 9 calls for the protection of the character of residential areas, roadway corridors and public spaces from visual intrusions and mitigate when appropriate. Guideline 3, policies 21 and 22 calls for appropriate transitions between uses that are substantially different in scale and intensity or density, and to mitigate the impact caused when incompatible developments occur adjacent to one another through the use of landscaped buffer yards, vegetative berms and setback requirements to address issues such as outdoor lighting, lights from automobiles, illuminated signs, loud noise, odors, smoke, automobile exhaust or other noxious smells, dust and dirt, litter, junk, outdoor storage, and visual nuisances. Guideline 3, policy 24 states that parking, loading and delivery areas located adjacent to residential areas should be designed to minimize the impacts from noise, lights and other potential impacts, and that parking and circulation areas adjacent to streets should be screened or buffered. Guideline 13, policy 4 calls for ensuring appropriate landscape design standards for different land uses within urbanized, suburban, and rural areas. The intent of landscape buffer areas is to create suitable transitions where varying forms of development adjoin, to minimize the negative impacts resulting from adjoining incompatible land uses, to decrease storm water runoff volumes and velocities associated with impervious surfaces, and to filter air borne and water borne pollutants; and

**WHEREAS**, the Commission further finds that the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant since the planting and screening requirements will still be met and exceed the minimums along the property boundary; and

**WHEREAS**, the Commission further finds that the applicant has incorporated other design measures that exceed the minimums of the district and compensate for non-compliance with the requirements to be waived because the landscaping within the buffers will be more than what is required under the LDC; and

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

**General and Detailed District Development plan with changes to binding elements #13**

**WHEREAS**, the Louisville Metro Planning Commission finds that there are not any environmental constraints or historic resources on the subject site. Tree canopy requirements of the Land Development Code will be provided on the subject site; and

**WHEREAS**, the Commission further finds that provisions for safe and efficient vehicular and pedestrian transportation within and around the development and the community has been provided, and Transportation Planning and the Kentucky Transportation Cabinet have approved the preliminary development plan; and

**WHEREAS**, the Commission further finds that open space is provided in the landscape buffer areas and the detention areas on the site; and

**WHEREAS**, the Commission further finds that the Metropolitan Sewer District has approved the preliminary development plan and will ensure the provisions 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 Commission further finds that the overall site design and land uses are compatible with the existing and future development of the area. Appropriate landscape buffering and screening will be provided to screen adjacent properties and roadways; and

**WHEREAS**, the Commission further finds that, based on the evidence and testimony presented, the applicant's justification and the staff report 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 change in form district; change in zoning; Variances #1, #2, and #3; Waivers #1, #4, #5 and #6; the General Detailed District Development Plan; the proposed binding elements including a change to binding element #13 as specified at this hearing; and a change to binding element #12 (strike the words "Single Family residences" from that binding element to include all types of abutting residences, and adding the words "within 200 feet of residential properties") and the General and Detailed District Development Plan, **SUBJECT** to the following binding elements:

**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. Prior to development (includes clearing and grading) of each site or phase of this project, the applicant, developer, or property owner shall obtain approval of a detailed district development plan in accordance with Chapter 11, Part 6. Each plan shall be in adequate detail and subject to additional binding elements.
3. The building on the site shall not exceed 164,169 square feet of gross floor area (this does not include the out lot).
4. There shall be no direct vehicular access to Adele Avenue or Sumner Road.
5. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.
6. 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.
7. Before any permit (including but not limited to building, parking lot, change of use, site disturbance, alteration permit) is requested:
  - a. The development plan must receive full construction approval from Develop Louisville, 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. 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. The landscaping shall be substantially the same as depicted in the concept landscape plan as presented at the July 30, 2015 Planning Commission meeting.
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.
11. The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the July 30, 2015 Planning Commission meeting.
12. No idling of trucks shall take place within 200 feet of ~~single-family residences~~ residential properties. No overnight idling of trucks shall be permitted on-site.
- ~~13. The applicant is utilizing the Public Art fee in lieu as outlined in Chapter 5.12.2.A.3. The fee shall be paid to the Louisville Public Space Art Fund before the issuance of a building permit for the site.~~
- 13 The applicant is utilizing the Public Art fee in lieu as outlined in Chapter 5.12.2.A.3. The fee in lieu shall be calculated based on the square footage required for the outdoor amenity area, multiplied by the square foot value of the parcel of land as determined by its actual documented value at the time of development. The fee shall be paid to the Louisville Public Space Art Fund before the issuance of a building permit for the site.”
- 14 Long term bicycle parking will be provided inside the building.
- 15 Vehicular and pedestrian cross-connectivity shall be provided to the abutting lots to the north and south upon redevelopment with compatible uses of the abutting properties. Exact location of the connection shall be reviewed in consultation with the owner and developer upon re-development of the adjacent lots to determine the safest and most efficient layout for the circulation. (NOTE: Binding element #15 was added during a later vote.)

**The vote was as follows:**

**YES: Commissioners Blake, Proffitt, Brown, Kirchdorfer, Jarboe, Tomes, and Turner.**

**NO: No one.**

**NOT PRESENT: Commissioners White and Peterson.**

**ABSTAINING: Commissioner Lewis.**

**Waiver #2 – Waiver from Chapter 5.5.2.B.1.A and 5.9.2.A.1.b.ii, to not provide vehicular access to adjacent non-residential properties to the north and south.**

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

**WHEREAS**, the Louisville Metro Planning Commission finds that future cross access is necessary to relieve traffic along Bardstown Road by allowing consumers to visit multiple businesses without having to use Bardstown Road. Future cross access would improve circulation on the adjacent sites and reduce curb cuts along Bardstown Road. Will not adversely affect adjacent property owners since the cross access would only be for the adjacent non-residential properties which are developed on significantly smaller lots and are located too close to Bardstown Road to have an impact; and

**WHEREAS**, the Commission further finds that the waiver will violate specific guidelines of Cornerstone 2020. Guideline 2, policy 13 calls to encourage adjacent development sites to share entrance and parking facilities in order to reduce the number of curb cuts and the amount of surface parking. Guideline 7, policy 13 calls for the requirement of joint and cross access easements according to standards set forth in the Land Development Code, to reduce traffic on major thoroughfares and to reduce safety hazards. Guideline 7, policy 16 calls for the promotion of joint access and circulation systems for development sites comprised of more than one building site or lot. The purpose of the requirements to be waived are to allow similar, compatible non-residential and multi-family uses to access adjacent sites without use of the main road to reduce curb cuts, the amount of surface parking, and to reduce traffic on the main thoroughfare; now therefore be it

**RESOLVED**, the Louisville Metro Planning Commission does hereby **DENY** the requested Waiver from Chapter 5.5.2.B.1.A and 5.9.2.A.1.b.ii, to not provide vehicular access to adjacent non-residential properties to the north and south.

**The vote was as follows:**

**YES: Commissioners Blake, Proffitt, Brown, Kirchdorfer, Jarboe, Tomes, and Turner.**

**NO: No one.**

**NOT PRESENT: Commissioners White and Peterson.**

**ABSTAINING: Commissioner Lewis.**

**WITHDRAWN – Waiver #3 - Chapter 9.2, to not provide short term bicycle parking.**

**Addition of Binding Element #15 to the General and Detailed District Development Plan**

01:34:18 On a motion by Commissioner Brown, seconded by Commissioner Proffitt, the following resolution was adopted:

**RESOLVED**, the Louisville Metro Planning Commission does hereby **APPROVE** the addition of a binding element to the General and Detailed District Development Plan (Binding Element #15) to read as follows:

“A vehicular and pedestrian cross-connectivity shall be provided to the abutting lots to the north and south upon redevelopment with compatible uses of the abutting properties. Exact location of the connection shall be reviewed in consultation with the owner and developer upon re-development of the adjacent lots to determine the safest and most efficient layout for the circulation.”

**The vote was as follows:**

**YES: Commissioners Blake, Proffitt, Brown, Kirchdorfer, Jarboe, Tomes, and Turner.**

**NO: No one.**

**NOT PRESENT: Commissioners White and Peterson.**

**ABSTAINING: Commissioner Lewis.**