

**Planning Commission Minutes
June 16, 2016**

Public Hearing

Case No. 16ZONE1005

Request: Change in zoning from R-4 to C-N on approximately 1.65 acres with a Variance and Waivers.

Project Name: Dollar General

Location: 9267 Smyrna Parkway

Owner: Robert Penrod
41 Lakeview Drive
Scottsville, KY 42164

Applicant: Zaremba Group LLC
Aaron J. Brooker, Representative
14600 Detroit Avenue Suite 1500
Lakewood, OH 44107

Representative: Glenn A. Price Jr.
Frost Brown Todd
400 W. Market Street 32nd Floor
Louisville, KY 40202

John Addington
BTM Engineering, Inc.
3001 Taylor Springs Drive
Louisville, KY 40220

Jurisdiction: Louisville Metro

Council District: 23 – James Peden

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

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.)

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An audio/visual recording of the Land Development and Transportation Committee meeting 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.

Agency Testimony:

01:43:29 Julia Williams presented the case and showed a Power Point presentation (see staff report and recording for detailed presentation.)

The following spoke in favor of the proposal:

Erik Lattig, Frost Brown Todd, 400 W. Market Street 32nd Floor, Louisville, KY 40202

Christopher Brown, BTM Engineering, Inc., 3001 Taylor Springs Drive, Louisville, KY 40220

Aaron Brooker, Zaremba Group LLC, 14600 Detroit Avenue Suite 1500, Lakewood, OH 44107

Summary of testimony of those in favor of the proposal:

01:50:17 Erik Lattig, the applicant's representative, presented the applicant's case and showed a Power Point presentation (see recording for detailed presentation.)

The following spoke in opposition to the proposal:

No one spoke.

The following spoke neither for nor against the proposal ("Other"):

No one spoke.

Rebuttal:

There was no rebuttal, since no one spoke in opposition.

Deliberation:

01:58:38 Commissioners' deliberation.

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Zoning

02:00:47 On a motion by Commissioner Brown, seconded by Commissioner Lewis, the following resolution was adopted:

WHEREAS, the Louisville Metro Planning Commission finds that the proposal conforms to the Highview Neighborhood Plan. Under Form District Policy A.2.(e) of the Plan Elements of the Cornerstone 2020 Comprehensive Plan (the "Comprehensive Plan"), plans, studies and strategies legislatively developed subsequent to the adoption of the Comprehensive Plan, such as the Highview Neighborhood Plan adopted in June 2015, are intended to take precedence over the more general guidelines of Cornerstone 2020. The Highview Neighborhood Plan makes land use recommendations that encourage commercial development to occur in dedicated neighborhood activity centers. Land Use Recommendation #2 of the Highview Neighborhood Plan indicates that neighborhood activity centers/nodes shown in Figure 2.4 are the preferred location for future medium to high density development, and provides that such centers/nodes should be centered around a defined intersection and be walkable in size, defined as being no more than 1/4 mile from edge to edge. In addition, Land Use Recommendation #6 of the Highview Neighborhood Plan recommends that commercial development should be limited within neighborhood activity centers shown in Figure 3.7. The Proposal complies with the Highview Neighborhood Plan as the Subject Property is within the neighborhood activity center located in and around the intersection of Smyrna Parkway and Cooper Chapel Road as shown in Figure 2.4 and Figure 3.7 of the Highview Neighborhood Plan and such center is walkable in size in that the distance between the Smyrna/Cooper Chapel intersection and the northern entrance of L&N Credit Union development is less than 1/4 mile from edge to edge; and

WHEREAS, the Commission further finds that the proposal meets the intents of **Community Form Guideline 1**. The Proposal conforms to Community Form Guideline 1 and all applicable Policies adopted thereunder, including Policy 1.8.3. The site is located within the Neighborhood Form District, and is consistent with the Neighborhood Form District because the grocery and sundries store will provide a necessary service near existing residential areas in the Smyrna Parkway-Cooper Chapel Road area. The size and scale of the proposal is also consistent with this Form District, which is located at the intersection of a primary collector (Smyrna Parkway) and an Expressway (Gene Snyder Freeway) and is consistent with the Highview Neighborhood Plan given that the Subject Property

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is within the neighborhood activity center which is located at the intersection Smyrna Parkway and Cooper Chapel Road; and

WHEREAS, the Commission further finds that the proposal meets the intents of **Compatibility Guideline 3**. The Proposal conforms to Compatibility Guideline 3 and all applicable Policies adopted thereunder, including Policies 3.1, 3.2, 3.4, 3.6, 3.7, 3.8, 3.9, 3.11, 3.12, 3.21, 3.22, 3.23, 3.24 and 3.28. The site and structures will be accessible to persons with disabilities, and will be in accordance with all local, state and federal laws protecting persons with disabilities. Building materials will be compatible with the nearby commercial uses and residential areas, and will be Nichiha brick veneer panels on the three facades facing Smyrna Parkway and the adjacent properties to the north and south, glass and the use of corrugated steel for the rear facade facing the heavily treed portion of the Parent Tract to the east of the Subject Property. The building and related parking are situated toward the center of the property, which will reduce visibility of parking areas from adjacent streets, the adjacent properties to the north and south and the adjacent residential subdivision to the east. Lighting will conform to the Land Development Code. It is anticipated that the Proposal will receive the approval of Louisville Metro Department of Public Works ("DPW"). It is anticipated that the Proposal will receive the approval of Louisville Air Pollution Control District ("APCD"). It is anticipated that the Proposal will receive the approval of the Metropolitan Sewer Department ("MSD"). All setback requirements have been met, [except where one maximum setback is exceeded and a variance has been requested]. Appropriate landscape buffer requirements have been met. The proposal will conform with all signage requirements of the Land Development Code. Appropriate transition between the adjacent commercial uses, residential areas and the proposed development will be ensured by substantial perimeter landscape and buffer areas around the Subject Property; and

WHEREAS, the Commission further finds that the proposal meets the intents of **Natural Areas and Scenic and Historic Resources Guideline 5**. The Proposal conforms to Natural Areas and Scenic and Historic Resources Guideline 5 and all applicable Policies adopted thereunder, including Policies 5.1, 5.2, 5.3, 5.4 and 5.6 because the Subject Property does not appear to affect any historic resources and the proposed location of the developed portions of the Subject Property respect the heavily treed portions of the Parent Tract, and other areas with steep slopes and unstable soils; and

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WHEREAS, the Commission further finds that the proposal meets the intents of **Circulation Guideline 7**. The Proposal conforms to Circulation Guideline 7 and all applicable Policies adopted thereunder, including Policies 7.1, 7.2, 7.3, 7.9, 7.10, 7.15 and 7.16. Pedestrian connectivity is provided throughout and sidewalks will be constructed internally along all dedicated roadways. Access is provided to and from Smyrna Parkway. The site will be served by the transit services of the Transit Authority of River City ("TARC"). TARC Route #45 Okolona Express provides service for the site because Smyrna Parkway is part of the route. It is anticipated that no dedication of right-of-way will be required by the Department of Public Works. The development exceeds the minimum parking requirement of the Land Development Code. Entry design serving the Subject Property and the future development areas of the Parent Tract is unified; and

WHEREAS, the Commission further finds that the proposal meets the intents of **Bicycle, Pedestrian and Transit Guideline 9**. The Proposal conforms to Bicycle, Pedestrian and Transit Guideline 9 and all applicable Policies adopted thereunder, including Policies 9.1, 9.2, 9.3 and 9.4. Sidewalks will be constructed internally along all dedicated roadways providing easy pedestrian access to and through the Subject Property. Transit service is provided along this segment of Smyrna Parkway via TARC Route 45; and

WHEREAS, the Commission further finds that the proposal meets the intents of **Flooding and Stormwater Guideline 10**. The Proposal conforms to Flooding and Stormwater Guideline 10 and all applicable Policies adopted thereunder, including Policies 10.1, 10.2, 10.3, 10.4, 10.7, 10.10 and 10.11. The development of the site will minimize the potential for the impacts of flooding and effectively manages stormwater runoff. The proposal will not have an adverse effect on the watershed based on full development of the watershed. On-site detention facilities will provide for adequate compensatory stormwater storage. There is no impact to the regulatory floodplain because all structures will be located above the floodplain. No buildings are proposed to be located within the 100-year FEMA regulatory floodplain. It is anticipated that the Proposal will receive the approval of the Metropolitan Sewer District ("MSD"). Moreover, the on-site drainage system will accommodate the "through" drainage system of water flows on-site and off-site. Peak stormwater runoff rates post-development will not exceed pre-development rates; and

WHEREAS, the Commission further finds that the proposal meets the intents of **Air Quality Guideline 12**. The proposal conforms to Air Quality Guideline 12 and all applicable Policies adopted thereunder, including Policies 12.1, 12.3 and

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12.8. It is anticipated that the development will not generate significant volumes of traffic to cause a degradation of ambient air quality standards. The proposal is situated at a location where it can take advantage of TARC Route #45. Sidewalks are proposed for the frontage of the Subject Property along Smyrna Parkway. It is anticipated that the Louisville Air Pollution Control District will approve the Proposal. If approved, the APCD approval will indicate, among other things, that the proposal conforms to Air Quality Guideline 12 and related all Policies because no adverse air quality impacts will be generated by the proposal; and

WHEREAS, the Commission further finds that the proposal meets the intents of **Landscape Character Guideline 13**. The proposal conforms to Landscape Character Guideline 13 and all applicable Policies adopted thereunder, including Policies 1, 2, 4, 5 and 6. A Tree Preservation Plan will be submitted to the Planning Commission staff for review and approval prior to the beginning of construction. The heavily treed portion of the Parent Tract to the east of the Subject Property will be preserved so as to provide a natural buffer between the Subject Property and the adjacent residential subdivision. Landscaping- native plant species --will be provided in accordance with Chapter 10 of the Land Development Code wherever possible. Additional Landscape Buffer Areas around the perimeter of the site and roadways, wherever required, will be implemented in accordance with the Land Development Code specifications; and

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

WHEREAS, the Commission further finds that the proposal meets the intents of **Community Facilities Guideline 15**. The proposal conforms to Community Facilities Guideline 15 and all applicable Policies adopted thereunder, including Policy 15.9. Adequate firefighting services will be provided by the Highview Fire Protection District; and

WHEREAS, the Commission further finds that all necessary utilities, including gas, electric, water, telephone, cable and telecommunications, either presently

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exist on-site or will be constructed. Essential public services, including sidewalks, will be constructed to serve the site as described above; and

WHEREAS, the Commission further finds that, based on the evidence and testimony presented, the applicant's justification statement 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 **RECOMMEND** to the Louisville Metro Council that the requested change in zoning from R-4 to C-N on property described in the attached legal description, be **APPROVED**.

The vote was as follows:

YES: Commissioners Lewis, Brown, Turner, Jarboe, Howard, Smith.

NO: No one.

NOT PRESENT: Commissioners Blake, Kirchdorfer, Tomes, and Peterson.

ABSTAINING: No one.

- **Variance from 5.3.1.C.5 to reduce the non-residential to residential setback from 30' to 25'.**
- **Waiver #1 from 5.6.1.C to not provide 50% clear glazing on the Smyrna Parkway façade.**
- **Waiver #2 from 10.2.4.B to permit the encroachment of an easement in an LBA by more than 50%.**
- **Waiver #3 from 10.3.5 to not provide the berm in the parkway buffer.**
- **District Development plan**

02:00:59 On a motion by Commissioner Brown, seconded by Commissioner Lewis, the following resolution was adopted:

(Variance) WHEREAS, the Louisville Metro Planning Commission finds that the requested variance will not adversely affect the public health, safety or welfare since the encroachment is for the access road and adjacent to property that the applicant owns and is vacant; and

WHEREAS, the Commission further finds that the requested variance will not alter the essential character of the general vicinity since the encroachment is for

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the access road and adjacent to property that the applicant owns and is vacant;
and

WHEREAS, the Commission further finds that the requested variance will not cause a hazard or nuisance to the public since the encroachment is for the access road and adjacent to property that the applicant owns and is vacant; and

WHEREAS, the Commission further finds that the requested variance will not allow an unreasonable circumvention of the zoning regulations since the encroachment only involves the access point to the property; and

WHEREAS, the Commission further finds that the requested variance arises from special circumstances which do not generally apply to land in the same zone since the parcel is being subdivided by the owner and applicant; and

WHEREAS, the Commission further finds that the strict application of the regulations provide the applicant of reasonable use of the land since the encroachment is for the access road and adjacent to property that the applicant owns and is vacant; 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) WHEREAS, the Commission further finds that the requested waiver conforms to **Compatibility Guideline 3 and Policy 3.4 and 3.9**. The proposal conforms to Compatibility Guideline 3 and all applicable Policies adopted thereunder, including Policy 3.4 and 3.9 because interior stock space is needed to provide for consumer goods including grocery and sundry items. If this interior space cannot be provided within this grocery and sundries store, then it will be unable to provide those goods in a manner similar to all other Dollar General stores. In addition, due to the distance of the building from the sidewalk and right-of-way line, the waiver has minimal impact on the intent of the requirement; and

WHEREAS, the Commission further finds that the requested waiver conforms to the intent of the Land Development Code. The intent of the Code is to enliven the building façade; however, for this type of land use it is necessary to provide adequate interior wall space to locate consumer goods. Due to the distance of the building from the street edge and the sidewalk, the waiver is a minimal request; and

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WHEREAS, the Commission further finds that compliance with the regulation would substantially impact the desired site pattern of the development because the grocery store would be unable to stock the consumer goods which Dollar General customers expect when coming to this or any other Dollar General location. Thus, compliance with the regulation is not appropriate and the granting of the waiver would result in a development more in keeping with the Comprehensive Plan and the overall intent of the Land Development Code; and

WHEREAS, the Commission further finds that the requested waiver will have no adverse impacts on adjacent property owners because it only affects the amount of glazing on this building with no effect on adjacent property owners; and

WHEREAS, the Commission further finds that the strict application of the regulation would deprive the applicant of the reasonable use of the land and would create an unnecessary hardship on the applicant because the application of the regulation to this site would cause Dollar General not to be able to provide the consumer goods provided at all other Dollar General stores; and

(Waivers #2 and #3 - of section 10.2.4. to allow a utility easement to encroach more than 50% into the landscape buffer area and from 10.3.5 to not provide the berm in the parkway buffer)

WHEREAS, the Commission further finds that the waivers will not adversely affect adjacent property owners since the landscape requirements will still be met and a 3' screen provided; 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

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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. The landscape requirements will still be met and a 3' screen provided; and

WHEREAS, the Commission further finds that the extent of the waivers of the regulations is the minimum necessary to afford relief to the applicant since the landscape requirements will still be met and a 3' screen provided; and

WHEREAS, the Commission further finds that the strict application of the provisions of the regulations would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant since the landscape requirements will still be met and a 3' screen provided; and

(DDP) WHEREAS, the Commission further finds that there do not appear to be 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 Metro Public Works has approved the preliminary development plan; and

WHEREAS, the Commission further finds that there are no open space requirements with the current proposal; 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. Buildings and parking lots will meet all required setbacks; and

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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 Variance from 5.3.1.C.5 to reduce the non-residential to residential setback from 30' to 25'; the requested Waiver #1 from 5.6.1.C to not provide 50% clear glazing on the Smyrna Parkway façade; the requested Waiver #2 from 10.2.4.B to permit the encroachment of an easement in an LBA by more than 50%; the requested Waiver #3 from 10.3.5 to not provide the berm in the parkway buffer; and the District Development plan, **SUBJECT** to the following 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 7,500 square feet of gross floor area.
3. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.
4. Construction fencing shall be erected when off-site trees or tree canopy exists within 3' of a common property line. Fencing shall be in place prior to any grading or construction to protect the existing root systems from compaction. The fencing shall enclose the entire area beneath the tree canopy and shall remain in place until all construction is completed. No parking, material storage or construction activities are permitted within the protected area.
5. Before any permit (including but not limited to building, parking lot, change of use, site disturbance) is requested:
 - a. The development plan must receive full construction approval from Develop Louisville, Louisville Metro Public Works and the Metropolitan Sewer District.

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- b. A minor subdivision plat or legal instrument shall be recorded creating the lot lines as shown on the development plan. A copy of the recorded instrument shall be submitted to the Division of Planning and Design Services; transmittal of approved plans to the office responsible for permit issuance will occur only after receipt of said instrument.
 - 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.
 - d. A Tree Preservation Plan in accordance with Chapter 10 of the LDC shall be reviewed and approved prior to obtaining approval for site disturbance.
6. A certificate of occupancy must be received from the appropriate code enforcement department prior to occupancy of the structure or land for the proposed use. All binding elements requiring action and approval must be implemented prior to requesting issuance of the certificate of occupancy, unless specifically waived by the Planning Commission.
 7. There shall be no outdoor music (live, piped, radio or amplified) or outdoor entertainment or outdoor PA system audible beyond the property line.
 8. The applicant, developer, or property owner shall provide copies of these binding elements to tenants, purchasers, contractors, subcontractors and other parties engaged in development of this site and shall advise them of the content of these binding elements. These binding elements shall run with the land and the owner of the property and occupant of the property shall at all times be responsible for compliance with these binding elements. At all times during development of the site, the applicant and developer, their heirs, successors; and assignees, contractors, subcontractors, and other parties engaged in development of the site, shall be responsible for compliance with these binding elements.
 9. The property owner shall provide a cross over access easement if the property to the north is ever redeveloped. The property owner shall provide a cross over access easement if the property to the south is ever developed non-residentially. A copy of the signed easement agreement shall be provided to Planning Commission staff upon request.
 10. The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the June 16, 2016 Planning Commission meeting.

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11. No idling of trucks shall take place within 200 feet of residential development.
No overnight idling of trucks shall be permitted on-site.

The vote was as follows:

YES: Commissioners Lewis, Brown, Turner, Jarboe, Howard, Smith.

NO: No one.

NOT PRESENT: Commissioners Blake, Kirchdorfer, Tomes, and Peterson.

ABSTAINING: No one.