

**PLANNING COMMISSION MINUTES**  
**September 18, 2014**

**PUBLIC HEARING**

**CASE NO: 14ZONE1021**

**Request:** Change in Zoning from R-4, Single Family Residential and C-1, Commercial to C-1, Commercial, Detailed District Development Plan and Binding Elements, Variances, and Waivers

**Project Name:** Thomas Car Wash

**Location:** 6511 Preston Highway

**Owner:** PNC Bank National Association

**Applicant:** Eli and Alex Thomas

**Representative:** Wyatt, Tarrant & Combs, LLP  
500 W. Jefferson Street, Suite 2800  
  
Land Design & Development, Inc.  
503 Washburn Avenue

**Jurisdiction:** Louisville Metro

**Council District:** 2-Barbara Shanklin

**Staff Case Manager:** David B. Wagner, 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:**

00:21:45 David Wagner discussed the case summary, standard of review and staff analysis from the staff report.

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

Cliff Ashburner, 500 W. Jefferson Street, Suite 2800, Louisville, KY 40202

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

00:31:21 Mr. Ashburner gave a power point presentation of the proposed development. He also stated that agreed with the staff report that was presented and would like to have the request approved.

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

No one spoke in opposition of this case.

**Deliberation**

00:37:42 Planning Commission deliberation. Commissioners had no concerns about this development and supported what was presented at the hearing.

**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.**

**Zoning Change from R-4 to C-1**

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

**WHEREAS**, the Louisville Metro Planning Commission finds, The proposed redevelopment complies with the Cornerstone 2020 Comprehensive Plan and with all of the applicable Guidelines and Policies it contains. The subject property is surrounded by commercial uses, including a gas station/convenience store with a drive through car wash, an adult store, truck dealership and office buildings. That the subject property remains zoned, even in part, residential, is a curiosity. The proposed redevelopment will use the existing access points on Fern Valley Road and Preston Highway. The proposed redevelopment will remove the existing bank buildings and replace them with a drive through car wash building and coverings for vacuum spaces just to the south of the building (and behind the existing gas station and adult store).

**WHEREAS**, the Louisville Metro Planning Commission further finds The proposed redevelopment complies with Guideline 1 of the Cornerstone 2020 Comprehensive Plan. The subject property is located in the Suburban Marketplace Corridor Form District, a form district located along major roadways with a mixture of medium to high intensity uses. Redevelopment is encouraged, as the applicant is proposing.

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**WHEREAS**, the Louisville Metro Planning Commission further finds, The proposed redevelopment complies with Guideline 2 and with its Policies. The proposed redevelopment is in an activity center at the corner of Fern Valley Road and Preston Highway, one of the more intensely developed commercial areas in the community. The proposed redevelopment is compact in scale and uses existing access points and infrastructure. The proposed redevelopment will use existing utilities. The subject property is also served by a nearby TARC stop.

**WHEREAS**, the Louisville Metro Planning Commission further finds, The proposed redevelopment complies with Guideline 3 and its Policies. The proposed redevelopment is similar in scale to the nearby existing commercial uses. The proposed redevelopment should have no adverse impact on adjacent properties through any additional odor, noise or lighting. The proposed redevelopment should also compliment the adjacent auto-centric uses, including the gas station and truck dealerships to the south and north of the subject property, respectively. The applicant is seeking a waiver of certain landscaping requirements to the south because portions of those two properties are zoned R-4 Single-Family Residential in spite of their intense commercial use.

**WHEREAS**, the Louisville Metro Planning Commission further finds, There is virtually no open space on the subject property, nor are there any identified scenic or historic resources. The proposed redevelopment will, however, comply with these Guidelines. The proposed redevelopment will decrease the amount of impervious surface existing on the subject property by approximately 9,000 square feet and will comply with the tree canopy regulation.

**WHEREAS**, the Louisville Metro Planning Commission further finds, The proposed redevelopment complies with Guideline 6 and its Policies. The proposed redevelopment will replace a shuttered bank branch with a car wash using the existing infrastructure and bringing the subject property more into compliance with the current Land Development Code.

**WHEREAS**, the Louisville Metro Planning Commission further finds The proposed redevelopment complies with these Guidelines and their Policies. The proposed redevelopment will use the existing access points on Fern Valley Road and Preston Highway but will limit access on Preston Highway to right-in/right-out to ensure safe traffic circulation. The applicant has also identified possible locations for future connections to adjoining properties. The proposed redevelopment will also respect the Fern Valley Road parkway buffer requirement. Right of way dedication has not been requested.

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**WHEREAS**, the Louisville Metro Planning Commission further finds, The proposed redevelopment is an auto-centric use but complies with this Guideline and its Policies. The proposed redevelopment is adjacent to a property that hosts a TARC stop, will provide both short- and long-term bicycle parking and will provide safe cross-walks at its entrances on Fern Valley Road and Preston Highway.

**WHEREAS**, the Louisville Metro Planning Commission further finds, The proposed redevelopment complies with these Guidelines and their Policies. The proposed redevelopment will reduce the existing impervious surface on the subject property by approximately 9,000 square feet and will provide tree canopy where none exists today. Both of these factors should improve the ability of the subject property to absorb stormwater and to improve water quality. The proposed redevelopment will connect to the existing storm sewer in the area. The applicant will comply with all MSD requirements during and after construction.

**WHEREAS**, the Louisville Metro Planning Commission further finds, The proposed redevelopment complies with this Guideline and its Policies. The proposed redevelopment will use existing infrastructure, will provide bike parking and will provide trees where there are none.

**WHEREAS**, the Louisville Metro Planning Commission further finds, The proposed redevelopment complies with this Guideline and its Policies. The proposed redevelopment will provide approximately 9,000 square feet of green space that does not exist today . The waiver requested from the landscape buffer requirements is due to the fact that the commercially-used properties to the south are partially zoned R-4 Single Family Residential.

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

**RESOLVED**, that the Louisville Metro Planning Commission does hereby **RECOMMEND** to the legislative body of Louisville Metro Government that the requested Change in zoning from R-4, Single Family Residential, to C-1, Commercial on property described in the attached legal description be **APPROVED**

**The vote was as follows:**

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

**NO: No one.**

**NOT PRESENT AND NOT VOTING: No one.**

**ABSTAINING: No one.**

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**Variance**

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

**WHEREAS**, the Louisville Metro Planning Commission finds, The proposed redevelopment requires a 25' yard adjacent to the R-4 Single-Family Residential zoned portions of the adjacent properties to the south. Neither of these properties are used residentially, meaning a reduction in the required yard will not adversely affect the public health, safety or welfare .

**WHEREAS**, the Louisville Metro Planning Commission further finds, The proposed variance will not alter the essential character of the general vicinity because it will allow the existing yards (none) to remain. And the area of the variance is to the rear of the buildings that face Fern Valley Road and Preston Highway.

**WHEREAS**, the Louisville Metro Planning Commission further finds, The proposed variance will not cause a hazard or nuisance to the public because it will allow for the existing yards to remain and will allow for adequate access to the proposed redevelopment.

**WHEREAS**, the Louisville Metro Planning Commission further finds, The proposed variance will not allow an unreasonable circumvention of the requirements of the zoning regulation but will instead allow for the subject property to be redeveloped in spite of what must be mistaken zoning lines and/or land uses on the properties to the south of the subject property.

**WHEREAS**, the Louisville Metro Planning Commission further finds, The variance arises from special circumstances that do not apply to other properties in the area. Rarely are residentially-zoned properties used commercially as the subject property and the adjacent properties to the south have been.

**WHEREAS**, the Louisville Metro Planning Commission further finds, The strict application of the regulation will deprive the applicant of the reasonable use of the subject property. The R-4 Single-Family Residential district has no place on the subject property or the adjacent properties to the south. Mandating a 25' buffer area be created because of the incorrect zoning of the properties to the south would create an unreasonable burden on the applicant.

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**WHEREAS**, the Louisville Metro Planning Commission further finds, The circumstances are not the result of actions the applicant has taken but are the result of an error either in the drawing of the zoning boundary or in the permitting of commercial uses on the subject properties for as many years as have passed since these properties began being so used.

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

**RESOLVED**, that the Louisville Metro Planning Commission does hereby **APPROVE** the **VARIANCE** of Land Development Code Section 5.3.2.C.2.b to allow the required 25' side yard setback to be 0' along the adjacent property zoned R-4.

**The vote was as follows:**

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

**NO: No one.**

**NOT PRESENT AND NOT VOTING: No one.**

**ABSTAINING: No one.**

**Waiver of LDC Section 10.2.4 to waive the required 25' Landscape Buffer Area along the adjacent property zoned R-4.**

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

**WHEREAS**, the Louisville Metro Planning Commission finds, The proposed redevelopment contains buffers as required adjacent to all of the commercially used and zoned properties that border it. Curiously, portions of the subject property and the properties to the south, while used commercially for many years, are zoned R-4 Single-Family Residential, triggering buffer requirements under LDC 10.2.4.A. The applicant is seeking to waive the required buffer due to the commercial use of the properties to the south of the subject property.

**WHEREAS**, the Louisville Metro Planning Commission further finds, The waiver will not adversely affect adjoining property owners. There is no landscaping in the area of the

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request now and no buffer would be required if the zoning and use of the adjoining properties were consistent.

**WHEREAS**, the Louisville Metro Planning Commission further finds, The waiver will not violate the Comprehensive Plan for the reasons mentioned above.

**WHEREAS**, the Louisville Metro Planning Commission further finds, The extent of the waiver is the minimum necessary to afford relief to the applicant. The applicant is proposing to provide buffers where required and is providing interior landscaping and trees where none currently exist.

**WHEREAS**, the Louisville Metro Planning Commission further finds, The strict application of the provisions of the regulation would deprive the applicant of reasonable use of the land. The R-4 Single-Family Residential district has no place on the subject property or the adjacent properties to the south. Mandating a 25' buffer area be created because of the incorrect zoning of the properties to the south would create an unreasonable burden on the applicant.

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

**RESOLVED**, that the Louisville Metro Planning Commission does hereby **APPROVE** the **Land Development Code Waiver** of Section 10.2.4 to waive the required 25' Landscape Buffer Area along the adjacent property zoned R-4.

**The vote was as follows:**

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

**NO: No one.**

**NOT PRESENT AND NOT VOTING: No one.**

**ABSTAINING: No one.**

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**Waiver of Section 5.9.2 to waive the required pedestrian connection from the building to Fern Valley Road.**

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

**WHEREAS**, the Louisville Metro Planning Commission finds, The waiver will not adversely affect adjoining property owners. There is no existing sidewalk connection to the existing vacant bank building. The applicant is providing a pedestrian connection to the other frontage of the property on Preston Highway, which is also very near to a TARC stop.

**WHEREAS**, the Louisville Metro Planning Commission further finds, The waiver will not violate the Comprehensive Plan for the reasons mentioned in the applicant's main justification statement and because the intent of the regulation is being met through the provided pedestrian connection on Preston Highway. The proposed use of the property is as auto-centric as any possible use, a car wash. Therefore, there should be little pedestrian traffic to the subject property. Providing a connection near the TARC stop will allow employees who might not drive to the subject property a safe entrance.

**WHEREAS**, the Louisville Metro Planning Commission further finds, The extent of the waiver is the minimum necessary to afford relief to the applicant. The applicant is proposing to provide the pedestrian connection at Preston Highway, where there is likely to be more pedestrian demand due to the presence of the TARC stop.

**WHEREAS**, the Louisville Metro Planning Commission further finds, The strict application of the provisions of the regulation would deprive the applicant of reasonable use of the land. In order to construct a pedestrian path from Fern Valley Road, the applicant would need to remove a section of the existing driveway and build a sidewalk adjacent to the commercial property to the south and east (Cirilla's) and would cause pedestrians to cross multiple driving lanes to get to a use that, ultimately, is unlikely to be visited by pedestrians

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

**RESOLVED**, that the Louisville Metro Planning Commission does hereby **APPROVE** the following requested **Land Development Code Waiver** of LDC Section 5.9.2 to waive the required pedestrian connection from the building to Fern Valley Road.



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**The vote was as follows:**

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

**NO: No one.**

**NOT PRESENT AND NOT VOTING: No one.**

**ABSTAINING: No one.**

**Development Plan and Binding Elements**

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

**WHEREAS**, the Louisville Metro Planning Commission finds, The site has no natural resources to conserve as it has previously been developed.

**WHEREAS**, the Louisville Metro Planning Commission further finds, Safe and efficient vehicular and pedestrian transportation is provided by the sidewalks and the existing access points on both street frontages. Possible locations for cross-connectivity are provided around the site if adjoining properties are ever re-developed. Bicycle parking is being added to the site to assist cyclists in using the site.

**WHEREAS**, the Louisville Metro Planning Commission further finds, Open space is not required for this proposal.

**WHEREAS**, the Louisville Metro Planning Commission further finds, MSD has approved the drainage facilities for the site.

**WHEREAS**, the Louisville Metro Planning Commission further finds, The proposal is compatible with the surrounding area as it already is being used for myriad businesses, including automotive services and sales. The surrounding area is developed for other commercial and institutional uses as well. Therefore, the buildings, parking lots, screening, and landscaping are appropriately located.

**WHEREAS**, the Louisville Metro Planning Commission further finds, The proposal conforms to the Comprehensive Plan and Land Development Code as Cornerstone 2020 encourages efficient land use and discourages development of vacant sites if existing commercial sites can be utilized.

**WHEREAS**, the Louisville Metro Planning Commission further finds, based on the evidence and testimony presented, the staff report, and the applicant's justification and

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findings of fact that all of the applicable Guidelines of Cornerstone 2020 and the Comprehensive Plan are being met; now, therefore be it;

**RESOLVED**, that the Louisville Metro Planning Commission does hereby **APPROVE** the 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. 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.
3. 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.
  - 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.
4. 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.
5. The applicant, developer, or property owner shall provide copies of these binding elements to tenants, purchasers, contractors, subcontractors and other parties

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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.

6. The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the September 18, 2014 Planning Commission meeting.
7. Upon development or redevelopment of abutting properties, a unified access and circulation system shall be developed to eliminate preexisting curb cuts and provide for vehicular movement throughout abutting sites as determined appropriate by the Department of Public Works. A cross access agreement to run with the land and in a form acceptable to the Planning Commission legal counsel shall be recorded prior to the time of construction approval for the abutting property to be developed.

**The vote was as follows:**

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

**NO: No one.**

**NOT PRESENT AND NOT VOTING: No one.**

**ABSTAINING: No one.**