

PLANNING COMMISSION MINUTES
March 16, 2017

PUBLIC HEARING

CASE NO. 16ZONE1069

Project Name: 9205 Old Bardstown Road
Location: 9205 Old Bardstown Road
Owner: Blue Grass Holdings, LLC

Applicant: J&B Louisville, LLC

Representative: Frost, Brown and Todd, PLLC

Jurisdiction: Louisville Metro
Council District: 22 – Robin Engel
Staff Case Manager: Beth Jones, AICP, Planner II

Notice of this public hearing appeared in The Courier Journal, a notice was posted on the property, and notices were sent by first class mail to those adjoining property owners whose names were supplied by the applicants.

The staff report prepared for this case was incorporated into the record. The Commissioners received this report in advance of the hearing, and this report was available to any interested party prior to the public hearing. (Staff report is part of the case file maintained in Planning and Design Services offices, 444 S. 5th Street.)

Agency Testimony:

00:06:22 Ms. Jones discussed the case summary, standard of review and staff analysis from the staff report.

The following spoke in favor of this request:

Tanner Nichols, Frost, Brown and Todd, 400 West Market Street, Suite 3200, Louisville, Ky. 40202

Jason Emly, Cutter Construction, 7393 Pete Andres Road, Floyds Knobs, In. 47119

Jennifer Caummisar, 2780 Jefferson Centre Way, Suite 204, Jeffersonville, In. 47130

Summary of testimony of those in favor:

00:17:38 Mr. Nichols gave a power point presentation. The scale and location are appropriate for the area. The use is less intense and this development allows for future development.

00:24:50 Mr. Emly gave some background information on Jacobi Sales (locally owned – 7 locations). They have outgrown this location.

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00:28:54 Ms. Caummisar provided the trip generation results from the previous plan to the current plan – was 555 p.m. trips and is now 17.

The following spoke in opposition to this request:

Dr. Bing Crosby, 9300 Old Bardstown Road, Louisville, Ky. 40291

John McNear, 9202 Old Bardstown Road, Louisville, Ky. 40291

Summary of testimony of those in opposition:

00:33:14 Dr. Crosby stated that he's opposed to rezoning for M-2 because it might set a precedent. Also, the entire project is in front of his property and the type of building and appearance will be different. There will be more traffic.

00:39:40 Mr. McNear stated he opposes the proposal because of safety issues. The tractor trailers will be a problem and there should be no back entrance on it.

00:55:05 Ms. Markert, Transportation Planning, remarked "You can have one entrance. Normally when we're looking for access points, we like it on the lesser volume road, which would be Old Bardstown Rd. It's a Metro through road so it's built to take truck traffic and there certainly is truck traffic out there. There's a lot of development on Old Bardstown Rd. right now." The applicant is providing shoulder improvements with this development.

Rebuttal

00:57:37 Mr. Nichols said the applicant appreciates the concerns of the neighbors because they are also customers. The dumpster will be screened and landscaping will be provided. If the state determines that a traffic light is warranted for new Bardstown Rd. or Thixton Ln., Jacobi will pay a portion.

Deliberation

01:06:38 Commissioner Tomes stated this plan greatly decreases traffic. The M-2 does break the pattern in the area, but the applicant has eliminated many uses from the list. The landscaping will provide as much cover as possible.

01:08:37 Commissioner Carlson stated the use is appropriate because this area of Fern Creek is agricultural and the proposed business will probably thrive. Also, add to binding element number 3 – The binding element cannot be modified except at a Planning Commission hearing.

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01:10:48 Commissioner Ferguson agrees with Commissioners Carlson and Tomes. Also, the applicant has done a good job buffering the storage area.

01:11:30 Commissioner Lewis stated she agrees with fellow commissioners and added, the roadway is built for all truck traffic and the applicant has reduced their hours of operation as well.

01:12:39 Commissioner Gazaway stated the plan is laid out well to adapt to the neighborhood. Eventually, the neighborhood traffic will settle down.

01:13:25 Chairman Jarboe stated the plan follows the Comprehensive Plan.

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 C-1 to M-2

On a motion by Commissioner Carlson, seconded by Commissioner Lewis, the following resolution was adopted.

WHEREAS, The Planning Commission finds that the proposal conforms to KRS 100.213 because it is in agreement with the Comprehensive Plan for Louisville and Jefferson County, Kentucky as detailed in these Findings; and

WHEREAS, The Planning Commission further finds that the proposal conforms to Community Form Guideline 1 and all applicable Policies adopted thereunder; the property lies within the Neighborhood Form District, is consistent with the Neighborhood Form District and therefore no change in the Form District is proposed; the proposal is consistent with Guideline 1.B.3 since the scale of the development is appropriate for the location and nearby neighborhoods; the proposal provides for accessibility and connectivity between adjacent uses and neighborhoods by automobile, pedestrian, bicycles and public transit; and

WHEREAS, The Planning Commission further finds that the proposal conforms to Centers Guideline 2 and all applicable Policies adopted thereunder, including Policies 2, 3, 4, 5, 7, 8 and 15 and 16; the development will be located at an intersection off Bardstown Road, a major arterial, which meets the requirements that at least one of the intersecting streets be classified as collector level or above; the new business will reduce commuting times and transportation-related air pollution by allowing residents to shop closer to home, which is one of the overriding objectives

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of the Cornerstone 2020 Comprehensive Plan; the new business will be bordered on the east by Bardstown Road and on the west by Old Bardstown Road and provide easy access to nearby neighborhoods that are not currently served; non-residential and mixed uses should be developed in designated activity centers; the development plan submitted with this application leaves the existing C-1 portion of the property open for development with cross access; Note 13 of the development plan reads upon development of the adjacent properties, a unified access and circulation system shall be developed and provide for vehicular movement through adjacent sites as determined by Public Works and a cross access agreement shall be recorded prior to construction approval for the adjacent property; and

WHEREAS, The Planning Commission further finds that the proposal conforms to Compatibility Guideline 3 and all applicable Policies adopted thereunder, including Policies 1, 2, 6, 7, 8, 9, 21, 22, 23, 24 and 28; the proposal is of a scale and site design compatible with nearby existing development and with the pattern of development in the Neighborhood Form District; the type of building materials will be appropriate for the character of the neighborhood, and any adverse impact on adjacent residential uses, including traffic, parking, signs and lighting, will be mitigated through binding elements that have been proposed and agreed to by the developer; appropriate transitioning from residential to non-residential uses will be provided through the use of natural vegetative buffers and landscaping, landscape buffer yards, the 30-foot parkway buffer along Bardstown Road, the 80-foot setback along Bardstown Road and the 15-foot "Vehicular Use and Landscape Buffer" located along Old Bardstown Road; the proposed development is designed to provide accessibility to people with disabilities; the parking, loading and delivery areas are adequate for the proposed uses and are designed to minimize any adverse impact on adjacent residential areas, with parking and circulation areas screened and buffered from any adjacent streets; all signage will be compatible with the Neighborhood Form District and will comply with the requirements of Chapter 8, Part 3, of the Land Development Code; and

WHEREAS, The Planning Commission further finds that the proposal conforms to Open Space Guideline 4 and all applicable Policies adopted thereunder; the proposed new business and specifically the northern portion of the development provides greenspace between the new business and the rental equipment storage lot; the greenspace maintains the existing natural features of the location; and

WHEREAS, The Planning Commission further finds that the proposal conforms to Natural Areas and Scenic and Historic Resources Guideline 5 and all applicable Policies adopted thereunder, including Policies 1, 3, and 6; the site is located between a major arterial (Bardstown Road), as well as a collector road (Old Bardstown Road) and given the other characteristics of the site, the proposal respects the natural features of the site by avoiding substantial changes to the topography of the site; note 20 of the

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development plan provides that a Kentucky Historic Properties survey form shall be submitted to historic preservation staff prior to demolishing of existing structures; and

WHEREAS, The Planning Commission further finds that the proposal conforms to Economic Growth and Stability Guideline 6 and all applicable Policies adopted thereunder; the development will address the need for retail services provided by the new business for the already existing and growing population within this area, thereby reducing travel to shopping and work and locating services and facilities near these growing neighborhoods; the development will also assure the community's continued growth and the competitiveness of the marketplace in this area; and

WHEREAS, The Planning Commission further finds that the proposal conforms to Circulation Guideline 7 and all applicable Policies adopted thereunder; the proposed development provides for future internal circulation, as well as connections to major thoroughfares and adjacent road networks; the proposal will include adequate sidewalks, bicycle racks and pedestrian access; note 13 of the development plan reads upon development of the adjacent properties, a unified access and circulation system shall be developed and provide for vehicular movement through adjacent sites as determined by Public Works and a cross access agreement shall be recorded prior to construction approval for the adjacent property; and

WHEREAS, The Planning Commission further finds that the proposal conforms to Transportation Facility Guideline 8 and all applicable Policies adopted thereunder including Policies 2, 5, 10 and 11; primary access to the site is from Bardstown Road and Old Bardstown Road and will not route traffic through areas of lower intensity; these primary access points will have adequate site distance; the internal circulation pattern for drives within the development ensures the functioning hierarchy of streets and appropriate linkage between Bardstown Road and Old Bardstown Road; and

WHEREAS, The Planning Commission further finds that the proposal conforms to Bicycle, Pedestrian and Transit Guideline 9 and all applicable Policies adopted thereunder; the proposal will provide for a 5-foot multi-use path along Old Bardstown Road, as well as a 15-foot "Vehicular Use and Landscape Buffer" located along Old Bardstown Road; bike parking will be provided on the property; and

WHEREAS, The Planning Commission further finds that the proposal conforms to Flooding and Stormwater Guideline 10 and all applicable Policies adopted thereunder, including Policies 1, 2, 3, 4, 7, 10 and 11; because we anticipate approval of the Metropolitan Sewer District and otherwise the proposal complies with all applicable policies set forth in Guideline 10; in the event peak post-development surface water runoff exceeds predevelopment levels, the site will be

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subject to the payment of facilities management fees pursuant to Metropolitan Sewer District requirements; and

WHEREAS, The Planning Commission further finds that the proposal conforms to Air Quality Guideline 12 and all applicable Policies adopted thereunder, including Policies 1, 2, 6 and 8; the proposed development will not create, but rather capture, traffic from the already significant existing and growing residential population in this area; the Guideline further encourages development to occur in and around residential populations to reduce vehicle miles traveled, especially along clogged arterials and in clogged intersections, such as Bardstown Road at the Gene Snyder Freeway; and

WHEREAS, The Planning Commission further finds that the proposal conforms to Landscape Character Guideline 13 and all applicable Policies adopted thereunder; the development plan is compliant with the tree canopy requirements of the Land Development Code and landscaping features will be provided on site; best management practices during construction activities will be employed; construction fencing will be erected prior to any construction or grading activities preventing compaction of root systems of trees to be preserved and the protective fencing will remain in place throughout construction; and

WHEREAS, The Planning Commission further finds that the proposal conforms to Infrastructure Guideline 14 and all applicable Policies adopted thereunder; all utilities are available or will be available to the site, including adequate water, electric and sewer service; adequate water supply of portable water for domestic purposes is available through Louisville Water Company facilities; these facilities will also serve the safety needs of the development for adequate water for firefighting purposes; sufficient sewage treatment will be provided to the development and all other necessary utility facilities are available; and

WHEREAS, The Planning Commission further finds that the proposal conforms to Community Facilities Guideline 15 and all applicable Policies adopted thereunder, including Policy 15.9 because adequate fire fighting services will be provided by the Fern Creek Fire Protection District; and

WHEREAS, The Planning Commission further finds that the proposal conforms to all other applicable Goals, Objectives, Guidelines and Policies of the Comprehensive Plan; and

WHEREAS, The Planning Commission further finds that all necessary utilities, including gas, electric, water, telephone, cable and telecommunications, are either

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presently exist on-site or will be constructed and essential public services, including sidewalks, presently exist to serve the site as shown on the development plan; and

WHEREAS, The Planning Commission further finds that implementation of proposed use is anticipated to begin upon final approval;

RESOLVED, that the Louisville Metro Planning Commission does hereby **RECOMMEND**, to Metro Council, **APPROVAL** of Case No. 16ZONE1069, a change in zoning from C-1 Commercial to M-2 Industrial based on testimony heard today, staff report and accept the applicant's proposed finding of facts as justification.

The vote was as follows:

YES: Commissioners Carlson, Ferguson, Gazaway, Lewis, Tomes and Jarboe
NOT PRESENT AND NOT VOTING: Commissioners Brown, Howard, Peterson and Smith

Revised Detailed District Development Plan

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

WHEREAS, The only existing site condition of these is karst. The applicant has provided documentation of a karst study which shows no indication of sinkholes on the property; and

WHEREAS, The site provides adequate connectivity to existing multi-modal transportation facilities. The circulation plan allows for connectivity to future development on the remainder of the tract; and

WHEREAS, The proposed development includes no open space requirements; and

WHEREAS, MSD has reviewed the development plan and issued preliminary approval; and

WHEREAS, the Louisville Metro Planning Commission finds, the development plan directs traffic away from the nearest residential development toward the center of the parcel. All screening and buffering requirements are being met; and

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WHEREAS, the Louisville Metro Planning Commission further finds the development plan conforms to the requirements of the Comprehensive Plan and the Land Development Code.

WAIVER 1: To waive the required 5 ft. wide sidewalk along the Bardstown Road property line (LDC 6.2.6.B.2)

WHEREAS, No sidewalks exist along this portion of Bardstown Road and the surrounding area is developed with agricultural and large-lot single family residential uses; and

WHEREAS, The development plan includes pedestrian access via installation of the required sidewalk along Old Bardstown Road, which is a two-lane roadway with a lower level of use and thus safer for non-vehicular uses; and

WHEREAS, the Louisville Metro Planning Commission finds, required sidewalks along the Old Bardstown Road property line will be installed; and

WHEREAS, the Louisville Metro Planning Commission further finds an existing drainage ditch along the Bardstown Road frontage would interfere with the installation of a sidewalk; and

WHEREAS, the waiver will not adversely affect adjacent properties since no sidewalks exist along this side of Bardstown Road in this area and sidewalks will be provided along the parallel Old Bardstown Road; and

WHEREAS, the waiver will not violate the Comprehensive Plan in that the development will still provide a north-south pedestrian way along the property on the Old Bardstown Road frontage which is a much safer pedestrian environment being adjacent to a two-lane road rather than along the higher speed multi-lane Bardstown Road. The development will provide a 5-foot along the Old Bardstown Road frontage to off-set the waiver of the sidewalk on Bardstown Road which will encourage alternative modes of transportation by being wide enough for both pedestrians and bicyclists; and

WHEREAS, the extent of the waiver is the minimum to afford relief as the development is located between two existing roads which would require double the amount of sidewalks that most developments are required to provide. The Bardstown Road sidewalk would be impractical as it would be located between the pavement of the road and a roadside drainage ditch; and

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WHEREAS, the development will provide a 5-foot wide north-south pedestrian path on the Old Bardstown Road side of the development. The Old Bardstown Road frontage is a quieter, safer location for pedestrian and bicycle traffic.

**WAIVER 2: To permit a utility easement to overlap a VUA LBA by more than 50%
(LDC 10.2.4.B)**

WHEREAS, Screening and planting requirements will be met. The only potential negative affect is to the property owner, who would be required to restore the screening and planting should it be affected by needed utility access; and

WHEREAS, the waiver only affects an overlap of easements; and

WHEREAS, the Louisville Metro Planning Commission finds, the applicant is requesting a waiver only for the area directly affected by the utility easement overlap; and

WHEREAS, the Louisville Metro Planning Commission further finds the location of the site between a Major Arterial and a Primary Collector limits the space on the east and west side of the development that can be used for buffering purposes; and

WHEREAS, The waiver will not adversely affect adjacent properties since the required screening and plantings will be provided. The Old Bardstown Road frontage has at least a minimum 5-feet outside of the LWC easement where plantings can be placed; and

WHEREAS, The waiver will not violate the Comprehensive plan in that the development is still providing the required width of the buffers and the required screening the buffers just overlap existing or proposed easements that are required along the roads; and

WHEREAS, The extent of the waiver is the minimum to afford relief as the development is located between two existing roads that limit the amount of space that can be used for the buffering; and

WHEREAS, The development will provide a high quality of building design, internal landscape areas and is providing the required buffer widths, screening and planting required by the code.

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** Case No. 16ZONE1069, Waiver 2, to permit a utility easement to overlap a vehicular use area landscape buffer area by more than 50%, Waiver 1, to waive the required 5 foot wide sidewalk along the new Bardstown Road property line; also, the Revised

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Detailed District Development Plan to include the binding elements listed in the staff report, making an amendment to binding element 3 to read as follows: The subject site may not be developed for any manufacture, processing, treatment or storage use, nor as a truck or transfer terminal, freight and motor freight and motor freight stations use, that is permitted by M-2 Industrial zoning. Notwithstanding the limitations above, this binding element shall not prohibit the repair, storage and light assembly of tractors, mower, loaders, utility vehicles, shredders, excavators, trenchers, backhoes or other equipment and implements for agriculture, construction or lawn and garden uses. This binding element shall not be modified, except after a full Planning Commission public hearing based on the staff report, the applicant's proposed justification and testimony heard today, **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 LDC. 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 LDC 11.6. Each plan shall be in adequate detail and subject to additional binding elements.
3. The subject site may not be developed for any manufacture, processing, treatment or storage use, nor as a truck or transfer terminal, freight and motor freight and motor freight stations use, that is permitted by M-2 Industrial zoning. Notwithstanding the limitations above, this binding element shall not prohibit the repair, storage and light assembly of tractors, mower, loaders, utility vehicles, shredders, excavators, trenchers, backhoes or other equipment and implements for agriculture, construction or lawn and garden uses. This binding element shall not be modified, except after a full Planning Commission public hearing.
4. Signs shall be in accordance with LDC Chapter 8 or as presented at the public hearing.
5. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.

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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. Prior to any site disturbance permit being issued and prior to any clearing, grading or issuance of a site disturbance permit, a site inspection shall be conducted by PDS staff to ensure proper placement of required tree protection fencing in accordance with the approved Tree Preservation Plan.
8. Before any permit is requested, including but not limited to permits for building, parking lot, change of use, site disturbance, alteration or demolition:
 - a. The development plan must receive full construction approval from Louisville Forward, Louisville Metro Public Works and the Metropolitan Sewer District,
 - b. Encroachment permits must be obtained from the Kentucky Transportation Cabinet, and
 - c. The property owner/developer must obtain approval of a detailed plan for screening/buffering/landscaping as described in LDC Chapter 10 prior to requesting a building permit. Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter.
9. 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.
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 property owner shall provide a cross over access easement if the property to the south is ever developed for a nonresidential use. A copy of the signed

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easement agreement shall be provided to Planning Commission staff upon request.

12. The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the March 16, 2017 Planning Commission meeting.
13. No overnight idling of trucks shall be permitted on-site.
14. At the time a building permit is requested, the applicant shall submit a certification statement to the permit issuing agency, from an engineer, or other qualified professional stating that the lighting of the proposed development is in compliance with LDC 4.1.3 and shall be maintained thereafter. No building permits shall be issued unless such certification statement is submitted.
15. The business at the development shall restrict the hours of operation from 6 AM to 9 PM.
16. If it is determined by KYTC that a traffic signal at the intersection of Thixton Lane and Bardstown Road is warranted in the future, the developer of this site for docket number 16ZONE1069 shall contribute up to \$7,500 of the total cost toward the installation of the traffic signal.
17. At such time as sidewalks are constructed along the portion of Old Bardstown Road adjacent to this property, a clearly defined, safe pedestrian access will be provided by the owner of the property from the public sidewalk through off-street parking to building entrances.
18. Developer shall be responsible for any required utility relocations, final surface overlay, signage, and striping associated with required road improvements to Bardstown Road and Old Bardstown Road.

The vote was as follows:

YES: Commissioners Carlson, Ferguson, Gazaway, Lewis, Tomes and Jarboe

NOT PRESENT AND NOT VOTING: Commissioners Brown, Howard, Peterson and Smith