

# Planning Commission Staff Report

May 21, 2015



<b>Case No:</b>	13devplan1003
<b>Request:</b>	<b>RDDP with Amendments to Binding Elements and Waivers</b>
<b>Project Name:</b>	<b>CVS</b>
<b>Location:</b>	<b>9420 Seatonville Road</b>
<b>Owner:</b>	<b>First Federal Savings Bank</b>
<b>Applicant:</b>	<b>Five Star Development</b>
<b>Representative:</b>	<b>Miller Wihry MWG LLC</b>
<b>Jurisdiction:</b>	<b>Louisville Metro</b>
<b>Council District:</b>	<b>22-Robin Engel</b>
<b>Case Manager:</b>	<b>Julia Williams, AICP, Planner II</b>

## REQUEST

- Waivers:
  1. Waiver from 5.5.1.A.3.a to permit parking in front of the principal structure.
  2. Waiver from 5.9.2.C.4 to permit traffic and circulation in front of principal structure.
  3. Waiver from 5.9.2.A.1.b.i to not provide a pedestrian connection to the building from Bardstown Road.
  4. Waiver from 10.2.12 to allow for more than 120' between Interior Landscape Areas (ILAs) and to reduce the amount of required ILA from 7.5% (2,495 sf) to 4% (1,340 sf).
  5. Waiver from 10.2.4 to permit the encroachment of parking into the 25' LBA along the south and east property lines as shown on the development plan.
  6. Waiver from 10.2.10 to reduce the VUA LBA along Seatonville Road from 15' to 7.5'.
- Revised District Development plan

## CASE SUMMARY/BACKGROUND/SITE CONTEXT

Existing Zoning District: C-1  
Proposed Zoning District: C-1  
Existing Form District: TC  
Existing Use: Vacant  
Proposed Use: Pharmacy/Convenience Store  
Minimum Parking Spaces Required: 25  
Maximum Parking Spaces Allowed: 65  
Parking Spaces Proposed: 57  
Plan Certain Docket #:9-75-97

The applicant requests approval of a revised detailed district development plan with waivers and variances to permit construction of a CVS store consisting of 11,945 square feet (s.f.). This is a 2.75-acre site located at the corner of Bardstown Road and Seatonville Road, north of the Gene Snyder Expressway. The site is proposed to be accessed from Seatonville Road with future access proposed from a shared driveway on the Fern Creek Methodist Church property.

In addition to the above listed waivers the following variances are being requested and will be heard at the May 4, 2015 BOZA hearing.

Variances:

1. Variance from 5.5.1.A.2 to permit the building to exceed to the 0' setback along both Bardstown and Seatonville Roads.
2. Variance from 5.31.C to permit the encroachment of a drive lane into the required 25' setback.
3. Variance from 4.8.3.C to permit the encroachment of a building and parking into the 50' middle buffer zone and 25' outer zone stream buffers along the east side of Cedar Creek.

**LAND USE/ZONING DISTRICT/FORM DISTRICT TABLE**

	<b>Land Use</b>	<b>Zoning</b>	<b>Form District</b>
<b>Subject Property</b>			
<b>Existing</b>	Vacant	C-1	TC
<b>Proposed</b>	Pharmacy/Convenience Store	C-1	TC
<b>Surrounding Properties</b>			
<b>North</b>	Church	R-5A	N
<b>South</b>	Single Family Residential	R-4	TC
<b>East</b>	Single Family Residential	R-4	N
<b>West</b>	Church	R-4	TC

**PREVIOUS CASES ON SITE**

9-75-97- This case was previously before the Planning Commission in 1998 for a proposed rezoning from R-4 to C-1 at which time the Planning Commission recommended approval to Fiscal Court. Fiscal Court overturned the Planning Commission's recommendation, and the applicant appealed to Circuit Court which upheld the Planning Commission's recommendation. A Walgreens was proposed for the site but was never constructed.

A RDDP was approved by LD&T on May 25, 2006 for a First Federal Bank. The bank was never constructed.

**INTERESTED PARTY COMMENTS**

Staff has received phone calls from Tess Krebs (sp.) and Ron Bierly opposing the proposal due to increased traffic congestion, drainage problems, and the environmental impact of the proposal on the site. Please also see other opposition letters.

**APPLICABLE PLANS AND POLICIES**

Cornerstone 2020  
Land Development Code

**STANDARD OF REVIEW AND STAFF ANALYSIS FOR RDDP and AMENDMENTS TO BINDING ELEMENTS**

- a. The conservation of natural resources on the property proposed for development, including: trees and other living vegetation, steep slopes, water courses, flood plains, soils, air quality, scenic views, and historic sites;

STAFF: Natural resources on the site are not being conserved. The stream buffer is negatively impacted by the encroachment of parking into the middle and outer buffer zones. Further removal of existing trees is proposed on the site within the stream buffer areas for the parking use; this is disruptive to the flood plain, air quality, and scenic views within the Cedar Creek corridor. The buffers

and ILAs for the site are being reduced which further negatively impacts the environmentally sensitive site.

- b. The provisions for safe and efficient vehicular and pedestrian transportation both within the development and the community;

STAFF: Sidewalks are being provided along Seatonville Road and exist along Bardstown Road for pedestrian connectivity into the site. Vehicular access will be from Seatonville Road.

- c. The provision of sufficient open space (scenic and recreational) to meet the needs of the proposed development;

STAFF: Open space is provided at the front of the site along both Bardstown and Seatonville Roads.

- d. The provision of adequate drainage facilities on the subject site in order to prevent drainage problems from occurring on the subject site or within the community;

STAFF: MSD has preliminarily approved the proposal.

- e. The compatibility of the overall site design (location of buildings, parking lots, screening, landscaping) and land use or uses with the existing and projected future development of the area;

STAFF: The overall site design is not compatible with existing uses in the area. The drive lanes encroach into the setback closest to the residential neighborhood. This is the drive lane that the drive thru pharmacy serves. The land use and amount of parking being provided on the site with the waivers and variances requested indicates over development of the environmentally sensitive site.

- f. Conformance of the development plan with the Comprehensive Plan and Land Development Code. Revised plan certain development plans shall be evaluated for conformance with the non-residential and mixed-use intent of the form districts and comprehensive plan.

STAFF: The proposal is not in compliance with the guidelines of the Comprehensive Plan and LDC. The proposal indicates over-development of the site with little mitigation.

**STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVERS #1 and 2  
(Parking and circulation in front of principal structure)**

- (a) The waiver will not adversely affect adjacent property owners; and

STAFF: The waiver will not adversely affect adjacent property owners since safe pedestrian access is provided from the public rights-of-way to the building entrance along Seatonville Road

- (b) The waiver will not violate specific guidelines of Cornerstone 2020.

STAFF: Guideline 2, policy 15 states to encourage the design, quantity and location of parking in activity centers to balance safety, traffic, transit, pedestrian, environmental and aesthetic considerations. Guideline 3, policy 1 states to ensure 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. Guideline 3, policy 23 states that setbacks, lot dimensions and building heights should be compatible with those of nearby developments that meet form district guidelines. Guideline 7, policy 3 states to evaluate developments for their ability to promote mass transit and pedestrian use. Encourage higher density mixed use developments that reduce the need for multiple automobile trips as a means of achieving air quality standards and providing transportation choices. Guideline 9, policy 1 states that new development and redevelopment should provide, where

appropriate, for the movement of pedestrians, bicyclists and transit users with location of retail and office uses, especially in the Traditional Neighborhood, Village, Marketplace Corridor, Traditional Workplace Form Districts close to the roadway to minimize the distance pedestrians and transit users have to travel. The purpose of the requirement is to promote mass transit and pedestrian use and reduce vehicle trips in and around the site, and to reduce the distance pedestrians and transit users have to travel. Cedar Creek and the existing sewers on the site constrain the building location. Therefore, the waivers will not violate specific guidelines and policies of Cornerstone 2020.

- (c) The extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant

STAFF: The extent of waiver of the regulation is the minimum necessary to afford relief to the applicant since Cedar Creek and the existing sewers are the physical restraints preventing compliance with the regulations to be waived.

- (d) Either:  
(i) 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 (net beneficial effect); OR  
(ii) 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.

STAFF: The applicant has not incorporated other design measures that exceed the minimums of the district to compensate for non-compliance with the requirements to be waived. 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 because the existing sewers would have to be relocated to accommodate the structure. Additional mitigation could occur with the compliance of the VUA LBA along Seatonville to make the site more in compliance with other areas of the LDC.

### **STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER #3 (Pedestrian connection from Bardstown Road)**

- (a) The waiver will not adversely affect adjacent property owners; and

STAFF: The waiver will not adversely affect adjacent property owners since pedestrian connections have been provided in a safe and reasonable distance of the transit stop.

- (b) The waiver will not violate specific guidelines of Cornerstone 2020.

STAFF: Guideline 9, Policy 1 states that new development should provide, where appropriate, for the movement of pedestrians, bicyclists and transit users with walkways for access to public transportation stops. The waiver is compatible with the pattern of development within the form district because of the stream crossing that would have to occur which prevents compliance with the regulation. Therefore, the waivers will not violate specific guidelines and policies of Cornerstone 2020.

- (c) The extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant

STAFF: The extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant since the physical constraint of crossing Cedar Creek is preventing the pedestrian connection.

- (d) Either:  
(i) 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 (net beneficial effect); OR  
(ii) 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.

STAFF: The applicant has not incorporated other design measures that exceed the minimums of the district to compensate for non-compliance with the requirements to be waived. 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 because the applicant would have to construct a bridge across the stream for a pedestrian connection. To have the stream crossing MSD would have to grant a variance. MSD has denied variances in the past for stream crossings on this site.

**STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER #4  
(Distance between ILAs and lower percentage of ILA)**

- (a) The waiver will not adversely affect adjacent property owners; and

STAFF: The waiver will adversely affect adjacent property owners since the pavement will not be shaded and will create a greater heat island in the vicinity of adjacent residential properties.

- (b) The waiver will not violate specific guidelines of Cornerstone 2020; and

STAFF: 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.

- (c) The extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant; and

STAFF: The extent of the waiver of the regulation is not the minimum necessary to afford relief to the applicant since the parking on the site is 32 spaces over the minimum; parking could be reduced to accommodate ILAs on the site or larger ILAs could be created to compensate for not meeting the 120' rule. The removal of 10 parking spaces would create enough square footage of ILA to meet the minimum requirement.

- (d) Either:  
(i) 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 (net beneficial effect); OR  
(ii) 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.

STAFF: The applicant has not incorporated other design measures that exceed the minimums of the district to compensate for non-compliance with the requirements to be waived. The strict application of the provisions of the regulation would not deprive the applicant of the reasonable use of the land or create an unnecessary hardship on the applicant because the requirements could be met with the reduction of parking on the site by 10 spaces. There are also other areas of open pavement that could be broken up into ILAs to meet the minimum requirement.

**STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER #5  
(Encroachment of parking into south/east LBAs)**

- (a) The waiver will not adversely affect adjacent property owners; and

STAFF: The waiver will adversely affect adjacent property owners since it brings the parking area closer to the adjacent single family residences.

- (b) The waiver will not violate specific guidelines of Cornerstone 2020; and

STAFF: 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.

- (c) The extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant; and

STAFF: The extent of the waiver of the regulation is not the minimum necessary to afford relief to the applicant since the applicant could remove 2 parking spaces to make the site come into compliance with the regulation along the south property line. The 8' wall could be continued to the north property line along Seatonville Road so that the waiver along the east property line would not be necessary.

- (d) Either:

(i) 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 (net beneficial effect); OR  
(ii) 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.

STAFF: The applicant has not incorporated other design measures that exceed the minimums of the district to compensate for non-compliance with the requirements to be waived. The strict application of the provisions of the regulation would not deprive the applicant of the reasonable use of the land or create an unnecessary hardship on the applicant because the requirements could be met with the reduction of parking on the site by 2 spaces. The 8' wall could be continued to the north property line along Seatonville Road so that the waiver along the east property line would not be necessary.

### **STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER #6 (Reduction in VUA LBA)**

- (a) The waiver will not adversely affect adjacent property owners; and

STAFF: The waiver will not adversely affect adjacent property owners since the planting and screening requirements will still be met on the site.

- (b) The waiver will not violate specific guidelines of Cornerstone 2020; and

STAFF: The waiver will not violate guideline 3, Compatibility, of Cornerstone 2020, which calls for the protection of roadway corridors and public areas from visual intrusions, for mitigation of parking areas so as not to negatively impact nearby residents and pedestrians, and for parking areas adjacent to streets to be screened and buffered. The waiver will not violate guideline 13, Landscape Character, which calls for the protection of parkways through standards for buffers, landscape treatment, lighting and signs. The purpose of vehicle use area landscape buffer areas is to improve the appearance of vehicular use areas and property abutting public rights-of way.

- (c) The extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant; and

STAFF: The extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant since the planting and screening requirements can still be met.

- (d) Either:

(i) 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 (net beneficial effect); OR  
(ii) 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.

STAFF: The applicant has not incorporated other design measures that exceed the minimums of the district to compensate for non-compliance with the requirements to be waived. 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 because the landscape requirements can still be met on the site.

### TECHNICAL REVIEW

- All agency review comments have been addressed.

### STAFF CONCLUSIONS

The proposals land use is too intense for the environmentally constrained site. The building and parking are too big for the site and are the cause for the waivers and variance requests. The building and parking could be reduced on the site to make it more compliant. A destination type business would be more suitable for the site as it would attract consumers that would purposefully patronize the business rather than attract location type or drive-by consumers.

Based upon the information in the staff report, the testimony and evidence provided at the public hearing, the Land Development & Transportation Committee must determine if the proposal meets the standards for granting a LDC Waivers and a Revised District Development Plan established in the Land Development Code.

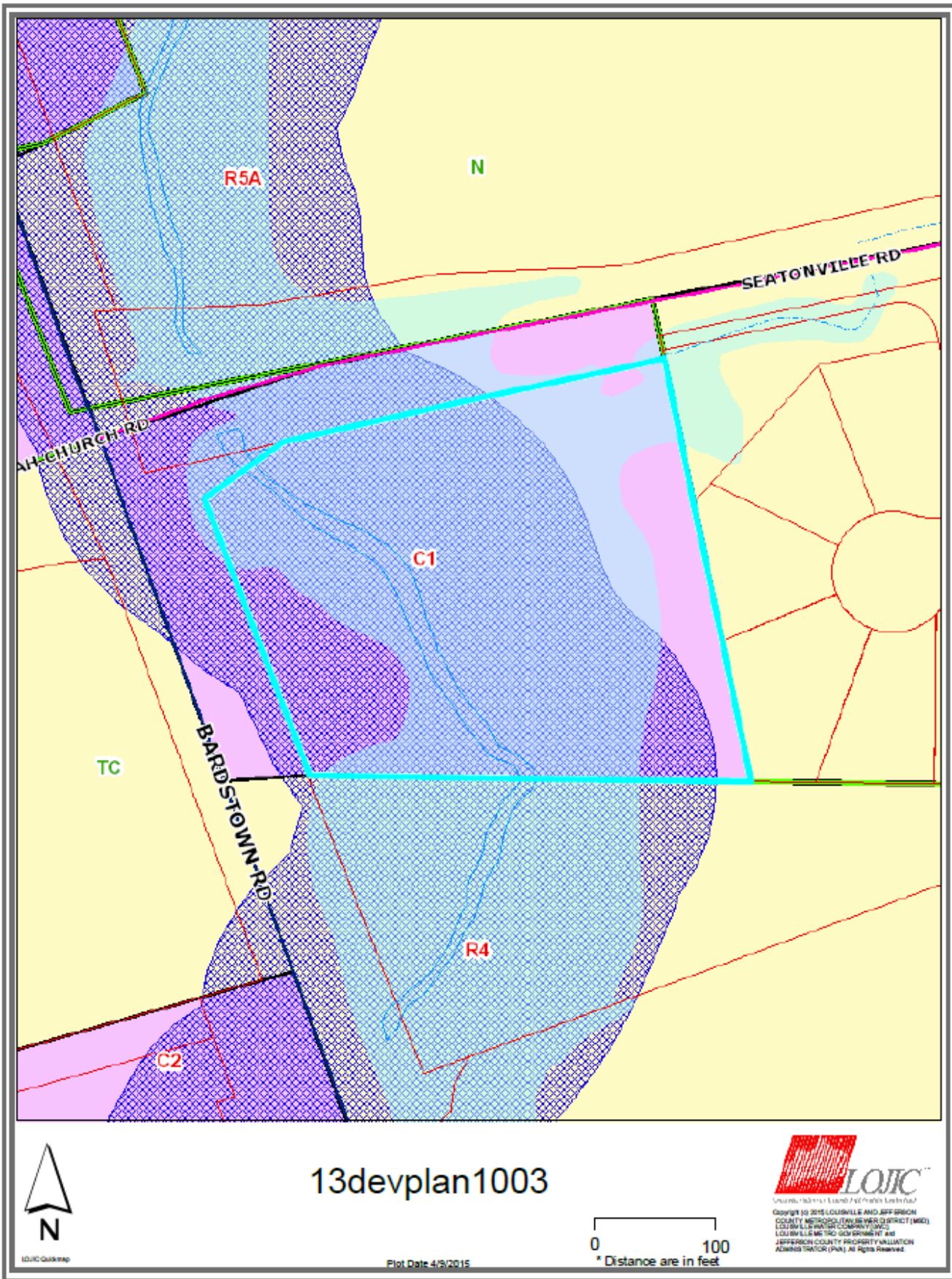
### NOTIFICATION

Date	Purpose of Notice	Recipients
4/9/15	Hearing before LD&T on April 23, 2015	1 <sup>st</sup> tier adjoining property owners Speakers at Planning Commission public hearing Subscribers of Council District 22 Notification of Development Proposals
4/22/15	Hearing before BOZA on May 4, 2015	1 <sup>st</sup> tier adjoining property owners Speakers at Planning Commission public hearing Subscribers of Council District 22 Notification of Development Proposals

### ATTACHMENTS

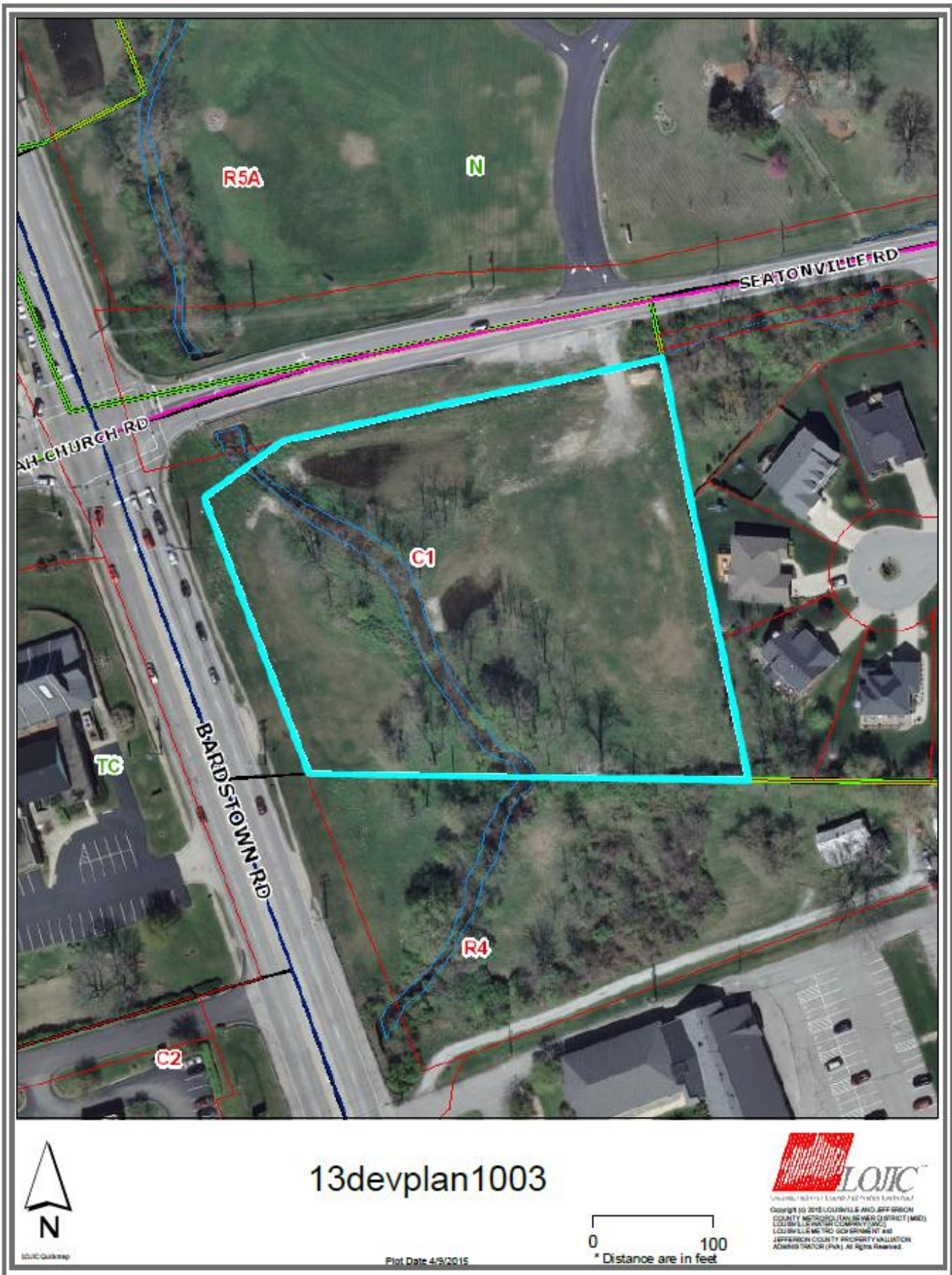
- Zoning Map
- Aerial Photograph
- Existing Binding Elements
- Proposed Binding Elements

1. **Zoning Map**





2. Aerial Photograph



### 3. Existing 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. Use of the subject site shall be limited to a bank and other uses permitted in the C-1 zoning district. There shall be no other use of the property unless prior approval is obtained from the LD&T Committee. Notice of a request to amend this binding element shall be given in accordance with the Planning Commission's policies and procedures. The LD&T Committee may require a public hearing on the request to amend this binding element.~~
3. The development shall not exceed 4,000 square feet of gross floor area.
4. There shall be no direct vehicular access to Bardstown Road.
5. Signs shall be in accordance with Chapter 8.
6. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.
7. 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.
8. 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. Encroachment permits must be obtained from the Kentucky Department of Transportation, Bureau of Highways.
  - b. ~~A minor subdivision plat or deed of consolidation shall be recorded dedicating additional right-of-way to Bardstown Road to provide a total of 65 feet from the centerline and dedicating additional right-of-way to Seatonville Road to provide a total of 50 feet from the centerline. 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 appropriate variances shall be obtained from the Board of Zoning Adjustment to allow the development as shown on the approved district development plan.
  - d. 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.
  - e. A Tree Preservation Plan in accordance with Chapter 10 of the LDC shall be reviewed and approved prior to obtaining approval for site disturbance.
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. There shall be no outdoor music (live, piped, radio or amplified) or outdoor entertainment or outdoor PA system (audible beyond the property line or permitted on the site).
11. 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.
12. The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the May 25, 2006 Land Development and Transportation meeting.
13. No idling of trucks shall take place within 200 feet of single-family residences. 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 Chapter 4 Part 1.3 of the land development code and shall be maintained there after. No building permits shall be issued unless such certification statement is submitted. Lighting shall be maintained on the property in accordance with Chapter 4 Part 1.3 of the land development code. Lighting shall be maintained on the property in accordance with Chapter 4 Part 1.3 of the land development code.~~
15. Prior to any site disturbance permit being issued and any clearing or grading to occur on the site, the tree preservation fencing must be installed, and inspected by Planning and Design Services.
- ~~16. Before a certificate of occupancy is issued, the applicant shall submit a 24X36 inch plan labeling all of the trees on site and illustrating all of the trees that are to be removed; all of the trees that are to remain and where they will be planting new trees. Any trees shown to be preserved that are removed that weren't supposed to be will be replaced with a 4" caliper native species.~~

#### **4. Proposed 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 11,945 square feet of gross floor area.
3. There shall be no direct vehicular access to Bardstown Road from this lot.
4. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.
5. 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.

6. 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 appropriate variances shall be obtained from the Board of Zoning Adjustment to allow the development as shown on the approved district development plan.
  - d. 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.
  - e. A reciprocal access and crossover easement agreement in a form acceptable to the Planning Commission legal counsel shall be created between the adjoining property owner to the south (if ever developed non-residentially) and recorded. A copy of the recorded instrument shall be submitted to the Division of Planning and Design Services.
  - f. A Tree Preservation Plan in accordance with Chapter 10 of the LDC shall be reviewed and approved prior to obtaining approval for site disturbance.
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. 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 April 23, 2015 LD&T meeting.
12. No idling of trucks shall take place within 200 feet of single-family residences. No overnight idling of trucks shall be permitted on-site.
13. A “no mow zone” per MSD’s Green Infrastructure Design Manual (2011), will be established within the 100 foot stream buffer as shown on the development plan. More specifically, the area within the stream buffer zones between the proposed parking lot and Bardstown Road. “No Mowing Zone” signs will be posted on site, 2 along Bardstown Road, 1 along Seatonville Road, and 2 between the parking lot and the local conveyance zone as shown on the development plan. The applicant will work with PDS staff on the locations.

14. Native riparian plantings will be added to the 25' stream buffer in areas indicated on the development plan. The riparian plantings will be shown and approved on a landscape plan provided to Planning and Design Services staff. The applicant will work with PDS staff to determine amount and type of plantings.
15. The proposed rain garden as shown on the development plan will be planted with native plants as indicated in MSDs "*How –To Guide for Building Your Own Rain Garden*" (2008). The rain garden plantings will be shown and approved on a landscape plan provided to Planning and Design Services staff. The applicant will work with PDS staff to determine amount and type of plantings.
16. Landscaping shall be provided minimally as shown on the approved development plan. 9'-12' evergreens shall be planted within the buffer along the east property line.