

PLANNING COMMISSION MINUTES
April 2, 2015

PUBLIC HEARING

CASE NO. 14ZONE1030

Request: Change in Zoning from R-7 to C-1, District Development Plan and Binding Elements, Variances, and Waivers

Project Name: Family Dollar

Location: 3901 West Market Street

Owner: Leslie and Michael Johnson
3905 West Market Street
Louisville, Ky. 40212

Chalonda Johnson
5510 Dione Court
Louisville, Ky. 40216

Philip Marby, Marby Property Maintenance LLC
3868 Darlene Drive
Louisville, Ky. 40216

Applicant: Edward Allen, The Hutton Company
736 Cherry Company
Chattanooga, TN. 37402

Representative: Bill Bardenwerper
Bardenwerper, Talbott and Roberts
1000 North Hurstbourne
Louisville, Ky. 40223

Jurisdiction: Louisville Metro

Council District: 5 – Cheri Bryant Hamilton

Case Manager: Christopher Brown, 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:

PLANNING COMMISSION MINUTES
April 2, 2015

PUBLIC HEARING

CASE NO. 14ZONE1030

01:15:24 Mr. Brown discussed the case summary, standard of review and staff analysis from the staff report.

The following spoke in favor of this request:

Bill Bardenwerper, Bardenwerper, Talbott and Roberts, 1000 North Hurstbourne Parkway, Louisville, Ky. 40223

Summary of testimony of those in favor:

01:30:36 Mr. Bardenwerper showed renderings/elevations in a power point presentation. He has identified the Family Dollar stores in the west end as compared to the city overall.

The following spoke in opposition to this request:

Mrs. Marvinna Marshall, 235 Southwestern Parkway, Louisville, Ky. 40212
Yvonne Harvey, 245 Southwestern Parkway, Louisville, Ky. 40212

Summary of testimony of those in opposition:

01:55:45 Mrs. Marshall is a member of the Shawnee Neighborhood Association. Although the area is underdeveloped, it does not mean that another Family Dollar is warranted. There are too many in the west end. A CVS or Walgreens would be an asset to the community.

2:00:10 Ms. Harvey said she's in the process of starting a petition to submit to the Council person to let her know another Family Dollar is not wanted or needed.

Rebuttal

02:10:42 Mr. Bardenwerper said the stores are placed in densely populated areas.

Deliberation

02:21:19 Commissioner Kirchdorfer said litter is an wide spread issue at other businesses as well as Family Dollar stores and needs to be addressed through education. Commissioner Jarboe told Ms. Marshall and Ms. Harvey if they want to be involved in retail in the west end they can check with Metro Government and the West End Dream Team. "Also, you want Family Dollar to succeed because successful retail businesses follow other successful retail businesses."

PLANNING COMMISSION MINUTES
April 2, 2015

PUBLIC HEARING

CASE NO. 14ZONE1030

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-7 to C-1

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

REZONING

WHEREAS, The Traditional Neighborhood Form District is characterized by predominantly residential uses, by a grid pattern of streets with sidewalks and often including alleys. Residential lots are predominantly narrow and often deep, but the neighborhood may contain sections of larger estate lots, and also sections of lots on which appropriately integrated higher density residential uses may be located. The higher density uses are encouraged to be located in centers or near parks and open spaces having sufficient carrying capacity. There is usually a significant range of housing opportunities, including multi-family dwellings.

Traditional neighborhoods often have and are encouraged to have a significant proportion of public open space such as parks or greenways, and may contain civic uses as well as appropriately located and integrated neighborhood centers with a mixture of mostly neighborhood-serving land uses such as offices, shops, restaurants and services. Although many existing traditional neighborhoods are fifty to one hundred twenty years old, it is hoped that the Traditional Neighborhood Form will be revitalized under the new Comprehensive Plan. Revitalization and reinforcement of the Traditional Neighborhood Form will require particular emphasis on (a) preservation and renovation of existing buildings in stable neighborhoods (if the building design is consistent with the predominant building design in those neighborhoods), (b) the preservation of the existing grid pattern of streets and alleys, (c) preservation of public open spaces; and

WHEREAS, The proposal for commercial development is appropriate for the area. The site is an existing C-1 plan certain with R-7 zoning to the west along three adjacent residential properties. The surrounding area is a mix of commercial and residential along the intersection with corner commercial to the east and south. The proposal is for a neighborhood serving commercial use that incorporates into the mix of low and medium density commercial uses mixed with residential along the corridor. The building has little to no setback at the corner intersection. The development respects the massing and spacing of corner commercial structures at the intersection. The proposal expands the location of the existing alley along the rear of the site that allows access

PLANNING COMMISSION MINUTES
April 2, 2015

PUBLIC HEARING

CASE NO. 14ZONE1030

from South 39th Street. There are a few issues that need to be addressed in regards to **Guideline 1, Community Form**. The proposal does not include on-street parking or parking to the rear of the building. The parking provided on site is to the west side of the proposed building. In addition, the proposal's design is compatible with the scale of existing developments in the corridor, but the materials and style are not consistent with the traditional form that creates a pedestrian level interest through the use of clear glazing and animating features. These issues need to be addressed in regards to the design of the proposal; and

WHEREAS, The proposal complies with **Guideline 3, Compatibility** with the exceptions of the previously identified issues regarding clear glazing in the building design and the animating features along the South 39th Street facade. All other compatibility issues have been addressed. While the proposal constitutes a non-residential expansion into an existing residential area, impacts to existing residences appear to be appropriately mitigated through the use of setbacks, landscaping and screening. The proposal is for a higher density and intensity use and is located along a transit corridor and in an existing activity center with the location being in the identified West Market Commercial area of the Shawnee neighborhood plan. Impacts of lighting, noise and other potential impacts to the existing residential properties to the north and west are appropriately mitigated through the use of landscaping and screening as required by the Land Development Code; and

WHEREAS, The proposal complies with the natural areas guidelines of the Comprehensive Plan under **Guideline 5, Natural Areas and Scenic and Historic Resources** by providing all required tree canopy for the site. Historic Preservation staff has identified issues with the proposal. The demolition of the structures could have an adverse effect on sites potentially eligible for the National Register. Guideline #5 under Community Form/Land Use (Table #3) in the Cornerstone 2020 Comprehensive Plan stresses the protection of historic resources. The applicant has agreed to a binding element requiring documentation and recording of these structures prior to demolition as a mitigation measure; and

WHEREAS, the Louisville Metro Planning Commission finds, the proposal provides for appropriate multi-modal transportation facilities following the Comprehensive Plan under **Guidelines 7 and 8, Circulation and Transportation Facility Design** with full pedestrian connectivity, appropriate access around the development as well as bicycle parking provided to support the proposed uses. The existing network of streets, alleys and sidewalks supports access to surrounding lands to support the appropriate development of adjacent lands. Alley access will also be provided to the site; and

PLANNING COMMISSION MINUTES
April 2, 2015

PUBLIC HEARING

CASE NO. 14ZONE1030

WHEREAS, the Louisville Metro Planning Commission further finds the proposal appears to comply with all other applicable Guidelines and Policies of Cornerstone 2020.

RESOLVED, that the Louisville Metro Planning Commission does hereby **RECOMMEND**, to Metro Council, **APPROVAL** of the zoning change from R-7 to C-1 for Case No. 14ZONE1030 based on the applicant's justification statement, discussion and testimony heard today.

The vote was as follows:

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

NO: No one

NOT PRESENT AND NOT VOTING: Commissioner Butler

ABSTAINING: No one

Variance

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

WHEREAS, The requested variance will not adversely affect the public health, safety or welfare since the building will be located near the 0' ROW intersection with sidewalks directly serving the building; and

WHEREAS, The requested variance will not alter the essential character of the general vicinity since the building will be located near the ROW intersection with minimal setback due to the odd angle of the lot; and

WHEREAS, The requested variance will not cause a hazard or nuisance to the public since the building will be located near the 0' ROW intersection with sidewalks to serve the structure; and

WHEREAS, The requested variance will not allow an unreasonable circumvention of the zoning regulations since it follows an established pattern of varying setbacks at the street intersections and the angle of the lot existed prior to current ownership; and

WHEREAS, The requested variance arises from special circumstances which do not generally apply to land in the general vicinity or the same zone since the shape of the lot makes it difficult to hold a 0' setback along the ROW intersection; and

PLANNING COMMISSION MINUTES
April 2, 2015

PUBLIC HEARING

CASE NO. 14ZONE1030

WHEREAS, the Louisville Metro Planning Commission finds, 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 by requiring a building that would have to follow the odd angle of the lot at the street intersection.

WHEREAS, the Louisville Metro Planning Commission further finds the circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought since the shape of the lot existed prior to the zoning regulation.

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** the Variance from Chapter 5.5.1.A.2 to allow the building to exceed the 0 foot corner setback required along South 39th Street and West Market Street, noting that the façade of the building does come up to W. Market and the corner of the building does touch South 39th Street based on the applicant's justification statement, discussion and testimony provided today.

The vote was as follows:

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

NO: No one

NOT PRESENT AND NOT VOTING: Commissioner Butler

ABSTAINING: No one

Waiver #1

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

WHEREAS, The waiver will not adversely affect adjacent property owners since the entrance will connect to the public sidewalk system along West Market Street; and

WHEREAS, Guideline 3, policy 1 calls for new development and redevelopment with the scale and site design of nearby existing development and with the pattern of development within the form district. The waiver will not violate specific guidelines of Cornerstone 2020 since it follows the pattern of development within the vicinity and follows the intent of the comprehensive plan by allowing access from both the parking lot and primary street frontage along West Market Street; and

PLANNING COMMISSION MINUTES
April 2, 2015

PUBLIC HEARING

CASE NO. 14ZONE1030

WHEREAS, the Louisville Metro Planning Commission finds, Guideline 3, the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant since entry will be allowed to the building from both the primary street frontage along West Market Street and the parking area; and

WHEREAS, the Louisville Metro Planning Commission further finds the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant since an additional entrance would be required along South 39th Street causing internal layout issues for the building.

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** Waiver #1, a waiver from Chapter 5.5.1.A.1.b of the Land Development Code to not provide an entrance along both street frontages or corner entrance at ROW intersection noting that the applicant has attempted to put the entrance along Market St. and the façade is part of the mitigating effort; based on the applicant's justification statement, the presentation by staff, the discussion and testimony provided today.

The vote was as follows:

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

NO: No one

NOT PRESENT AND NOT VOTING: Commissioner Butler

ABSTAINING: No one

Waiver #2

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

WHEREAS, the requested waiver will not adversely affect adjacent property owners since the lack of animating features along the street façade has been mitigated by animating features very close to the façade requirement along that side; and

WHEREAS, the waiver will not violate specific guidelines of Cornerstone 2020 since the façade along S. 39th St. does include animating features that closely equal the 75% calculation; also noting that the client is providing a great deal of green space along that façade as well; and

PLANNING COMMISSION MINUTES
April 2, 2015

PUBLIC HEARING

CASE NO. 14ZONE1030

WHEREAS, the Louisville Metro Planning Commission finds, the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant since the applicant has taken upon themselves to provide certain animating features on the wall

WHEREAS, the Louisville Metro Planning Commission further finds, the applicant has incorporated other design measures, including but not limited to, the additional green space along that corner and the closely approximating animating features.

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** Waiver #2, a waiver from Chapter 5.6.1.A.1 of the Land Development Code to provide less than the required 75% animating features along the 39th St. façade based on the finding of facts, testimony heard today and discussion in Business Session.

The vote was as follows:

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

NO: Commissioner White

NOT PRESENT AND NOT VOTING: Commissioner Butler

ABSTAINING: No one

Waiver #3

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

WHEREAS, The requested waiver will adversely affect adjacent property owners by not providing visual interest and a human scale that are representative of the form district along West Market Street and South 39th Street. The facades will contain areas of blank space with no clear glazing in the majority of windows and doors to be provided on the building; and

WHEREAS, Guideline 3, policy 1 and 2 calls for the compatibility of all new development and redevelopment with the scale and site design of nearby existing development and with the pattern of development within the form district. The type of building materials may be considered as a mitigation measure and may also be considered in circumstances specified in the Land Development Code. When assessing compatibility, it is appropriate to consider the choice of building materials in the following circumstances: (1) projects involving residential infill (2) projects involving non-residential uses; and (3) when specified in the Land Development Code. The proposal is for a non-residential use. The Land Development Code provides building design standards for non-residential and mixed use buildings. The purpose of the

PLANNING COMMISSION MINUTES
April 2, 2015

PUBLIC HEARING

CASE NO. 14ZONE1030

regulation is to provide visual interest and a human scale that are representative of the form district through the use of windows, columns, pilasters, piers, variation of material, entrances, storefront windows, and other animating features the elimination and reduction of clear glazing creates a blank space and no pedestrian level interest along the major street frontages adjacent to the proposed building; therefore, the waiver will violate specific guidelines of Cornerstone 2020; and

WHEREAS, the Louisville Metro Planning Commission finds, the extent of the waiver of the regulation is not the minimum necessary to afford relief to the applicant since additional clear glazing could be provided along the street frontages without affecting the proposed use; and

WHEREAS, the Louisville Metro Planning Commission further finds the strict application of the provisions of the regulation would not deprive the applicant of the reasonable use of the land or would not create an unnecessary hardship on the applicant since additional clear glazing could be provided along the street frontages without affecting the proposed use.

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** Waiver #3, a waiver from Chapter 5.6.1.C.1 of the Land Development Code to not provide the required 50% clear glazing for windows and doors along both S. 39th St. and W. Market St. based on the applicant's justification statement in their packet, presentation by staff, testimony and discussion in Business Session.

The vote was as follows:

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

NO: Commissioner White

NOT PRESENT AND NOT VOTING: Commissioner Butler

ABSTAINING: No one

Development Plan and Binding Elements

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

WHEREAS, There does not appear to be any environmental constraints on the subject site. Tree canopy requirements of the Land Development Code will be provided on the subject site. The applicant will be documenting and recording the identified historic resources on the property; and

PLANNING COMMISSION MINUTES
April 2, 2015

PUBLIC HEARING

CASE NO. 14ZONE1030

WHEREAS, Provisions for safe and efficient vehicular and pedestrian transportation within and around the development and the community has been provided, and Metro Public Works and the Kentucky Transportation Cabinet have approved the preliminary development plan; and

WHEREAS, Open space requirements for the proposed development will be provided per the Land Development Code; and

WHEREAS, 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 Louisville Metro Planning Commission finds, the overall site design and land uses are compatible with the existing and future development of the area. Appropriate landscape buffering will be provided to screen adjacent properties. Buildings and parking lots will meet appropriate setbacks. The clear glazing and animating features along the street frontages needs to be considered in regards to the building design; and

WHEREAS, the Louisville Metro Planning Commission further finds the development plan conforms to applicable guidelines and policies of the Comprehensive Plan and to requirements of the Land Development Code with the exception of the requested waivers, variance and identified technical review issues. The issues regarding building design need to be considered on the site with the proposed development. The identified technical review issues need to be addressed as well to ensure a code compliant development plan and no additional waivers are needed for the proposal.

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** the Revised Detailed District Development Plan as presented; also, delete the existing binding elements paragraph 4, items 1-6 as noted on page 18 of the staff report and instead approve the proposed binding elements paragraph 5, items 1-10, adding items 11 and 12 with binding element 11 to read as follows: Property owners shall be responsible for assuring that the parking lots, sidewalks and landscape areas are kept free of litter and that trash receptacles are provided and regularly emptied. Failure to do so shall be subject to citation as a Binding Element Violation. Binding element number 12 will read as follows: The applicant will provide a split-face block enclosure for the trash dumpsters along with a chain link fence front and the colors would be provided for that material to match, as closely as possible, the façade of the existing building based on the items presented today, discussion, presentation by staff and the staff report **SUBJECT** to the following Binding Elements:

PLANNING COMMISSION MINUTES
April 2, 2015

PUBLIC HEARING

CASE NO. 14ZONE1030

Commissioner Brown added, the technical plan issues that are still unresolved need to be addressed prior to plan transmittal. Commissioner Proffitt accepts the amendment and Commissioner Peterson seconded it.

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 8, 320 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, 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. The property owner/developer must obtain approval of a detailed plan for screening (buffering/landscaping) as described in Chapter 10 prior to obtaining any permits. Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter.
 - c. A minor plat or legal instrument shall be recorded consolidating the property into one lot. A copy of the recorded instrument shall be submitted to the Division of Planning and Design Services; transmittal of the approved plans to the office responsible for permit issuance will occur only after receipt of said instrument.

PLANNING COMMISSION MINUTES
April 2, 2015

PUBLIC HEARING

CASE NO. 14ZONE1030

- 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. 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.
8. The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the April 2nd, 2015 Planning Commission meeting.
9. No idling of trucks shall take place within 200 feet of single-family residences. No overnight idling of trucks shall be permitted on-site.
10. State Level 1 documentation is required to record all the historic resources on the property. The required elements for the documentation include:
 - a. Archival quality photographs (include digital copies on a CD)
 - b. Completion of Kentucky Historic Resources Inventory Form, including a statement of significance
 - c. A site plan showing the historic resources and property boundary
11. Property owners shall be responsible for assuring that the parking lots, sidewalks and landscape areas are kept free of litter and that trash receptacles are provided and regularly emptied. Failure to do so shall be subject to citation as a Binding Element Violation.
12. The applicant will provide a split-face block enclosure for the trash dumpsters along with a chain link fence front and the colors would be provided for that material to match, as closely as possible, the façade of the existing building

PLANNING COMMISSION MINUTES
April 2, 2015

PUBLIC HEARING

CASE NO. 14ZONE1030

The vote was as follows:

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

NO: No one

NOT PRESENT AND NOT VOTING: Commissioner Butler

ABSTAINING: Commissioner White