

Board of Zoning Adjustment Staff Report

June 1, 2015



Case No:	15variance1013
Request:	Variances
Project Name:	CVS
Location:	9420 Seatonville Road
Owner:	First Federal Savings Bank
Applicant:	Five Star Development
Representative:	Miller Wihry MWG LLC
Jurisdiction:	Louisville Metro
Council District:	22-Robin Engel
Case Manager:	Julia Williams, AICP, Planner II

REQUEST

- 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.

Variances

Location	Requirement	Request	Variance
Bardstown Road and Seatonville Road	0'	265'/81'	265'/81'
Southeast property line	25'	Varies	varies
East side of Cedar Creek	100' stream buffer	Varies	Varies

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 received approval of a revised detailed district development plan with waivers at the May 21, 2015 Planning Commission hearing. The applicant is requesting 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 variances the following waivers were approved at the May 21, 2015 Planning Commission hearing:

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'.

LAND USE/ZONING DISTRICT/FORM DISTRICT TABLE

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

B-99-06-A variance to permit the proposed building to be located beyond the 0' setbacks along Bardstown Road and Seatonville Road was approved by BOZA on June 19, 2006.

13devplan1003- A revised district development plan and waivers were approved on May 21, 2015 by the Planning Commission.

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 VARIANCE #1 (Exceed 0' setback along both Seatonville and Bardstown Roads)

- (a) The requested variance will not adversely affect the public health, safety or welfare.

STAFF: The requested variance will not adversely affect public health safety or welfare since the location preserves the existing location of Cedar Creek.

- (b) The requested variance will not alter the essential character of the general vicinity.

STAFF: The requested variance will not alter the essential character of the general vicinity since preserving the creek along the frontage of the lot is characteristic of both the residential lot to the south and the church lot across Seatonville to the north.

- (c) The requested variance will not cause a hazard or nuisance to the public.

STAFF: The requested variance will not cause a hazard or nuisance to the public since buffers between the residential zones to the east and south will be provided and a buffer between the parking lot and Seatonville Road will be provided.

- (d) The requested variance will not allow an unreasonable circumvention of the zoning regulations.

STAFF: The requested variance will not allow an unreasonable circumvention of the zoning regulations since Cedar Creek is an existing blue line stream being preserved on the site.

ADDITIONAL CONSIDERATIONS:

1. The requested variance arises from special circumstances which do not generally apply to land in the general vicinity or the same zone.

STAFF: The requested variance arises from special circumstances which do not generally apply to land in the general vicinity or the same zone since Cedar Creek runs along the property frontage where the Town Center form indicates the building location.

2. 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.

STAFF: The strict application of the provisions of the regulation would deprive the applicant of reasonable use of the land since the applicant would have to move Cedar Creek in order to get the building at the corner as required.

3. The circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought.

STAFF: The circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought. Cedar Creek has been existing on the site for some time, well before the current application.

**STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCE #2
(Drive lane to encroach into 25' setback)**

- (a) The requested variance will not adversely affect the public health, safety or welfare.

STAFF: The requested variance will not adversely affect public health safety or welfare since an 8' brick wall and landscaping will buffer the site from the adjacent residential properties.

- (b) The requested variance will not alter the essential character of the general vicinity.

STAFF: The requested variance will not alter the essential character of the general vicinity since the buffering and landscape requirements will still be met.

- (c) The requested variance will not cause a hazard or nuisance to the public.

STAFF: The requested variance will not cause a hazard or nuisance to the public since the buffer will still be met on the site.

- (d) The requested variance will not allow an unreasonable circumvention of the zoning regulations.

STAFF: The requested variance will not allow an unreasonable circumvention of the zoning regulations since the buffering and screening requirements will still be met on the site.

ADDITIONAL CONSIDERATIONS:

1. The requested variance arises from special circumstances which do not generally apply to land in the general vicinity or the same zone.

STAFF: The requested variance arises from special circumstances which do not generally apply to land in the general vicinity or the same zone since the building is located away from Cedar Creek, which is along the sites frontage.

2. 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.

STAFF: The strict application of the provisions of the regulation would not deprive the applicant of reasonable use of the land since the setback could be met on the site with a reduction in parking and building.

3. The circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought.

STAFF: 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. The applicant was aware of the setback requirements when choosing to develop the site.

**STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCE #3
(Stream buffer encroachments)**

- (a) The requested variance will not adversely affect the public health, safety or welfare.

STAFF: The requested variance will adversely affect public health safety or welfare since the full buffer is not in compliance for the entire stream corridor nor is a variable buffer being provided. Providing the full buffer allows for less encroachment and less run-off from paved surfaces on the site.

- (b) The requested variance will not alter the essential character of the general vicinity.

STAFF: The requested variance will alter the essential character of the general vicinity since the lots to the north and south have full buffers provided and significant plantings protecting the stream.

- (c) The requested variance will not cause a hazard or nuisance to the public.

STAFF: The requested variance will cause a hazard or nuisance to the public since water quality would be reduced to the stream if the full buffer is provided. Run-off from the paved surfaces on the site will directly affect the stream quality and any wildlife that may exist in the area.

- (d) The requested variance will not allow an unreasonable circumvention of the zoning regulations.

STAFF: The requested variance will allow an unreasonable circumvention of the zoning regulations since the parking and building could be reduced on the site to at least provide for a variable buffer.

ADDITIONAL CONSIDERATIONS:

1. The requested variance arises from special circumstances which do not generally apply to land in the general vicinity or the same zone.

STAFF: The requested variance does not arise from special circumstances which do not generally apply to land in the general vicinity or the same zone since Cedar Creek has been in this same location for some time the stream buffers for the site were known and have been complied with in other development proposals for the site.

2. 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.

STAFF: The strict application of the provisions of the regulation would not deprive the applicant of reasonable use of the land since other development proposals on the site have indicated compliance which indicates that the site can provide the full stream buffer with the "right" size development.

3. The circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought.

STAFF: 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. The applicant was aware of the stream buffer requirements when choosing to develop the site.

STREAM BUFFER VARIANCE SPECIFIC CONSIDERATIONS:

Buffer Area Requirements are dimensional requirements with respect to which variances may be requested as specified in KRS 100.243. In addition to the applicable criteria for variances provided by statute, the following factors may be considered in such a variance request.

- a. The variance is necessary because the requirements of this section represent an extreme hardship such that minimal or no reasonable economic use of the land is available without reducing the width of the required Buffer Area.

STAFF: As it has been shown on a previous development plan, the full stream buffer could be provided within the limits of the Land Development Code. Reducing the parking and building on the site would not reduce the economic use of the site.

- b. The size, shape, or topography of the property, as of March 1, 2003, is such that it is not possible to construct a single family detached dwelling without encroaching into the required Buffer Area.

STAFF: NA, the applicant is proposing a commercial structure.

- c. Encroachment into the required Buffer Area shall be limited to the minimum necessary to accommodate the proposed use.

STAFF: The encroachment into the buffers is not the minimum necessary for the use because the parking could be reduced on the site to accommodate more of the required buffer.

- d. The Applicant shall commit, to the satisfaction of the County, to mitigation measures that substantially offset any potential adverse impacts of the proposed encroachment during site preparation, construction, and post-construction.

STAFF: Several binding elements have been added to the proposal which deal with riparian plantings, a rain garden, and establishing a no mow zone.

- e. Approval of the variance will not result in a reduction in water quality.

STAFF: MSD has preliminarily approved the application and has reviewed the site for potential water quality issues.

TECHNICAL REVIEW

- All agency review comments have been addressed.

STAFF CONCLUSIONS

With the exception of the stream buffer variance, the proposal meets the intent of the Land Development Code. The applicant could reduce the parking on the site to provide more stream buffer.

Based upon the information in the staff report, the testimony and evidence provided at the public hearing, the Board of Zoning Adjustment must determine if the proposal meets the standards for granting variances established in the Land Development Code.

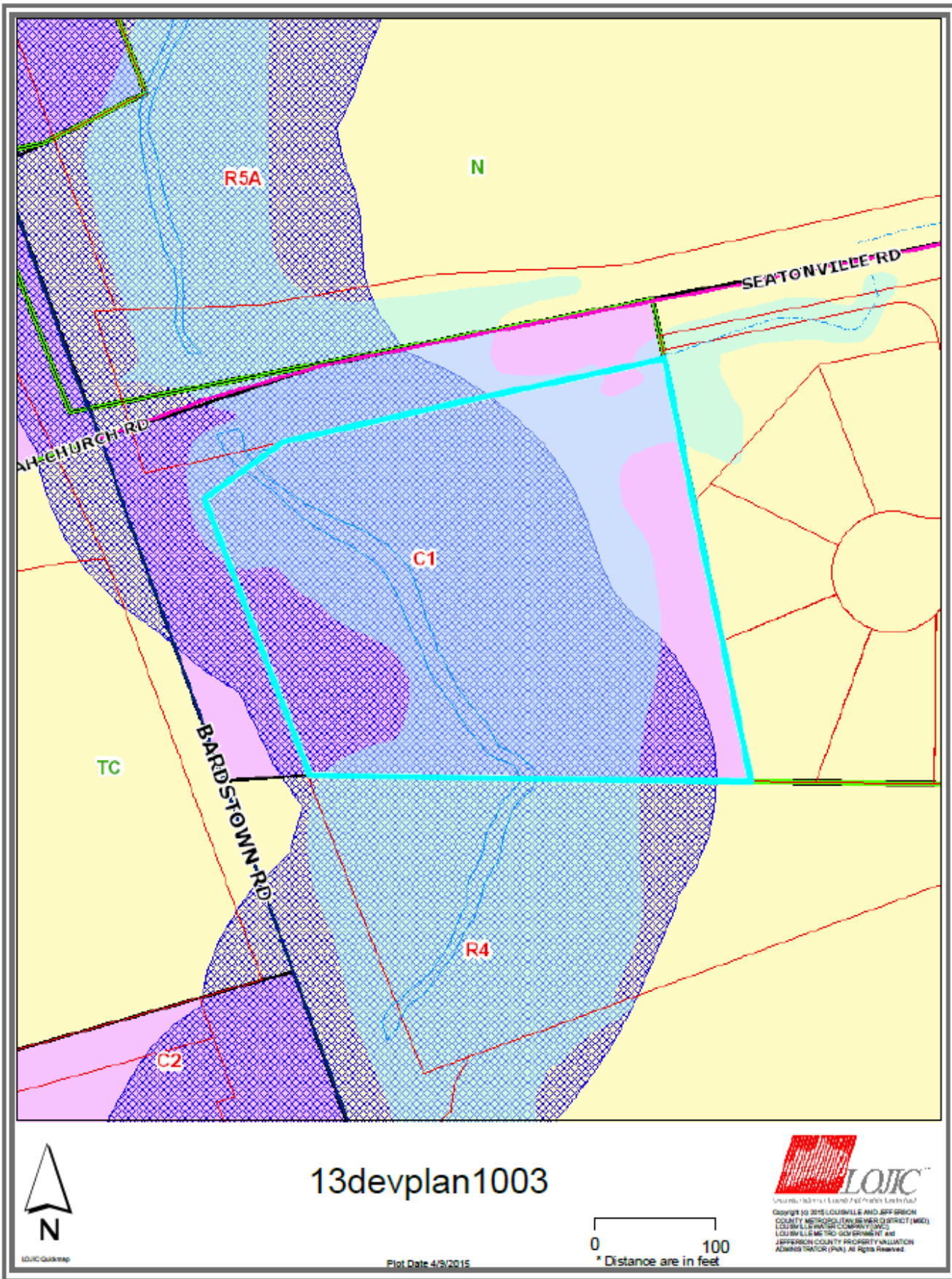
NOTIFICATION

Date	Purpose of Notice	Recipients
4/9/15	Hearing before LD&T on 4/23/15	1 st 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 5/4/15 Case continued to the June 1 st , BOZA hearing	1 st tier adjoining property owners Speakers at Planning Commission public hearing Subscribers of Council District 22 Notification of Development Proposals
4/16/15	Hearing before BOZA	Sign Posting on property

ATTACHMENTS

1. Zoning Map
2. Aerial Photograph

1. **Zoning Map**



2. Aerial Photograph

