

PLANNING COMMISSION MINUTES
November 20, 2014

PUBLIC HEARING

CASE NO. 14ZONE1027

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

Project Name: Zaxby's

Location: 8018-8102 Old Bardstown Road
9816 & 9816-R Hillock Drive

Owner: Thomas Grove Management Co., LLC
PO Box 1282
Prospect, KY 40059

Mark & Linda Shircliff
11420 Race Road
Louisville, KY 40291

Applicant: Zaxby's of Louisville
2001 Ashley's Court
Louisville, KY 40242

Representative: Bardenwerper, Talbott & Roberts, PLLC
1000 N. Hurstbourne Pkwy
Louisville, KY 40223

Land Design & Development, Inc.
503 Washburn Avenue, Suite 101
Louisville, KY 40222

Jurisdiction: Louisville Metro

Council District: 22-Robin Engel

Staff Case Manager: David B. Wagner, Planner II

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

The staff report prepared for this case was incorporated into the record. The Commissioners received this report in advance of the hearing, and this report was

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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:

02:22:50 David Wagner discussed the case summary, standard of review and staff analysis from the staff report.

The following spoke in favor of this request:

Bill Bardenwerper, 1000 N. Hurstbourne Pkwy, 2nd Floor, Louisville, KY 40223
Ann Richard, 503 Washburn Avenue, Suite 101, Louisville, KY 40222
Tim Hatfield, 4740 Dunbar Valley Road, Fisherville, KY 40023
Steve Brewer, 2001 Ashley's Court, Louisville, KY 40242

Summary of testimony of those in favor:

02:34:56 Mr. Bardenwerper gave a power point presentation regarding the proposed development at Old Bardstown Road.

02:45:40 Mr. Hatfield spoke and said his only concerns would be the cross access traffic between the proposed development and the existing daycare.

02:50:40 Ms. Richard spoke and gave the Commission some information regarding the catch basin and underground retention basin.

The following spoke in opposition to this request:

Coulter Marvel, 10115 Landwood Drive, Louisville, KY 40291

Summary of testimony of those in opposition:

02:51:49 Mr. Coulter said that his main concern regarding the proposed project would be the safety of the kids who attend the daycare considering there will be access traffic flow coming through going to the proposed development.

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Rebuttal

02:57:13 Mr. Bardenwerper's rebuttal consisted of discussing the configuration of the intersection. He said that he believes the reason Public Works and Transportation Planning approved the plan was because it would give them an opportunity to advance their planning ability, but to also receive dedicated roadway from the applicant free of charge.

Deliberation

03:02:42 The Commissioners had no concerns with the proposed development.

An audio/visual recording of the Planning Commission hearing related to this case is available on the Planning & Design Services website, or you may contact the Customer Service staff to view the recording or to obtain a copy.

Zoning Change from R-4 to C-1

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

WHEREAS, the Louisville Metro Planning Commission finds, Compliance with **Guideline 1 (Community Form)**, **Guideline 2 (Centers)** and **Guideline 3 (Compatibility)** has been found for this proposal. The proposal site lies within an existing activity corridor and at the intersection of primary collector, major arterial, and local level streets. It is surrounded on all sides by non-residential uses except to the west at the rear of the lot. Samples of the surrounding non-residential uses are retail, restaurant, and daycare. Since the site is located along a high activity corridor, there should be very few nuisances to surrounding areas and landscaping and setbacks will be applied along the rear of the lot to protect the single family residential use to the west. The proposal will fill in the gap between two previous re-zonings to the north and south which were re-zoned to C-2, C-1, and OR-3, showing that this corridor area has a history of being deemed appropriate for an increase in the intensity of land uses. The applicant has provided renderings of the building and cross-access to the development to the south to further the site's compatibility and provide access to the site by multiple modes of transportation.

WHEREAS, the Louisville Metro Planning Commission further finds The proposal complies with **Guideline 4 (Open Space)** as there are no open space requirements for this proposal and there are no natural features to integrate into the development.

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WHEREAS, the Louisville Metro Planning Commission further finds There are no natural areas or habitats to integrate on this site nor are there any historic landmarks. Therefore, the proposal complies with **Guideline 5 (Natural Areas and Scenic and Historic Resources**

WHEREAS, the Louisville Metro Planning Commission further finds The proposal complies with **Guideline 7 (Circulation), Guideline 8 (Transportation Facility Design), and Guideline 9 (Bicycle, Pedestrian and Transit)**. The site has been designed to allow for the relocation of Old Bardstown Road and the owner will dedicate right-of-way for said relocation upon the request of Public Works. The cross connection with the lot to the south will be provided to help improve vehicular traffic for the surrounding sites. At the time of the relocation, a pedestrian connection from the new sidewalk will be provided to the entrance of the building. The site provides easy access by all forms of transportation as it is a short walking distance to Bardstown Road for the bus route and bicycle parking racks will be installed. The existing street grid pattern will not be affected

WHEREAS, the Louisville Metro Planning Commission further finds The proposal complies with **Guideline 10 (Flooding and Stormwater), Guideline 12 (Air Quality), and Guideline 14 (Infrastructure)** as the Air Pollution Control District and MSD have approved the proposal. All required infrastructure for utilities will be provided or already exist.

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

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

The vote was as follows:

YES: Commissioners Blake, Proffitt, Turner, Jarboe and Butler

NO: No one.

NOT PRESENT AND NOT VOTING: Commissioners Tomes, Brown, White and Peterson

ABSTAINING: Commissioner Kirchdorfer.

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Waiver of LDC Section 5.9.2.b.i

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

WHEREAS, the Louisville Metro Planning Commission finds, The waiver will not adversely affect adjacent property owners because a pedestrian connection is provided from Hillock Drive. Once the Old Bardstown Road relocation occurs, the owner will be required to provide the pedestrian connection at that time per the binding elements.

WHEREAS, the Louisville Metro Planning Commission further finds, The waiver will not violate **Guideline 7 (Circulation)**, **Guideline 8 (Transportation Facility Design)**, and **Guideline 9 (Bicycle, Pedestrian and Transit)** of Cornerstone 2020. It is effectively a temporary Waiver since the pedestrian connection will be provided once Old Bardstown Road is relocated. Another connection is provided from Hillock Drive.

WHEREAS, the Louisville Metro Planning Commission further finds, The extent of waiver of the regulation the minimum necessary to afford relief to the applicant because this is the only sidewalk requested to be eliminated.

WHEREAS, the Louisville Metro Planning Commission further finds, The strict application of the provisions of the regulation will deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant because the applicant would be required to build a sidewalk that will only soon have to be torn out.

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

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** the waiver of LDC section 5.9.2.b.i to not provide the required pedestrian connection from the building entrance to the Old Bardstown Road sidewalk.

The vote was as follows:

YES: Commissioners Blake, Proffitt, Jarboe, Turner and Butler

NO: No one.

NOT PRESENT AND NOT VOTING: Commissioners Tomes, Brown, White and Peterson

ABSTAINING: Commissioner Kirchdorfer

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Development Plan and Binding Elements

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

WHEREAS, the Louisville Metro Planning Commission finds, The site is already built out and there are no natural resources on the site to conserve.

WHEREAS, the Louisville Metro Planning Commission further finds, Transportation Review has approved the proposal's transportation facilities.

WHEREAS, the Louisville Metro Planning Commission further finds, No open space is required on this site.

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

WHEREAS, the Louisville Metro Planning Commission further finds, The site design is compatible with existing commercial development in the area. The building will be located to allow for the future relocation of Old Bardstown Road. The required screening and landscaping will be provided along the rear of the site to help mitigate any potential nuisances to the abutting single family residences.

WHEREAS, the Louisville Metro Planning Commission further finds, The proposal complies with the guidelines of the Comprehensive Plan as explained in the review for the re-zoning request.

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

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** the Detailed District Development Plan **SUBJECT** to the following 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.

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2. Construction fencing shall be erected when off-site trees or tree canopy exists within 3' of a common property line. Fencing shall be in place prior to any grading or construction to protect the existing root systems from compaction. The fencing shall enclose the entire area beneath the tree canopy and shall remain in place until all construction is completed. No parking, material storage or construction activities are permitted within the protected area.

3. Before any permit (including but not limited to building, parking lot, change of use, site disturbance, alteration permit or demolition permit) is requested:

a. The development plan must receive full construction approval from Louisville Metro Department of Inspections, Permits and Licenses, Louisville Metro Public Works and the Metropolitan Sewer District.

b. Encroachment permits must be obtained from the Kentucky Department of Transportation, Bureau of Highways.

c. The property owner/developer must obtain approval of a detailed plan for screening (buffering/landscaping) as described in Chapter 10 prior to requesting a building permit. Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter.

d. A 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.

4. A certificate of occupancy must be received from the appropriate code enforcement department prior to occupancy of the structure or land for the proposed use. All binding elements requiring action and approval must be implemented prior to requesting issuance of the certificate of occupancy, unless specifically waived by the Planning Commission.

5. The applicant, developer, or property owner shall provide copies of these binding elements to tenants, purchasers, contractors, subcontractors and other parties 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.

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6. The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the _____ Planning Commission meeting.
7. Upon the development or redevelopment of abutting properties, a unified access and circulation system shall be developed to eliminate preexisting curb cuts and provide for vehicular movement throughout abutting sites as determined appropriate by the Department of Public Works. A cross access agreement to run with the land and in a form acceptable to the Planning Commission legal counsel shall be recorded prior to the time of construction approval for the abutting property to be developed.
8. The proposed easternmost access point from the site to Hillock Drive is to be closed and a new access point to the site be made from the site to the relocated Old Bardstown Road as shown on the development plan. The owner shall then also provide a pedestrian access from the front of the building to the abutting sidewalk along relocated Old Bardstown Road and striping through the VUA.
9. The area identified for future right-of-way for the relocation of Old Bardstown Road, as shown, shall be dedicated to public use by minor plat or deed at the applicant's expense within 60 days of request by the Director of Louisville Metro Public Works.

The vote was as follows:

YES: Commissioners Blake, Proffitt, Turner and Butler

NO: Commissioner Jarboe

NOT PRESENT AND NOT VOTING: Commissioners Tomes, Brown, White and Peterson

ABSTAINING: Commissioner Kirchdorfer