Louisville Metro Planning Commission May 21, 2015 (Continued from April 23, 2015 LD&T)

> Board of Zoning Adjustment June 1, 2015

## DOCKET NO. 13DEVPLAN1003

REVISED DETAILED DISTRICT DEVELOPMENT PLAN WITH AMENDMENTS TO BINDING ELEMENTS AND WAIVERS (FOR PLANNING COMMISSION REVIEW AND DECISION) AND WITH VARIANCES (FOR BOZA REVIEW AND DECISION) TO ALLOW A CVS PHARMACY (IN PLACE OF PREVIOUSLY APPROVED WALGREEN'S PHARMACY AND FIRST FEDERAL SAVINGS BANK BUILDINGS) ON PROPERTY LOCATED AT 9420 SEATONVILLE ROAD

Attorney for Property Owner, First Federal Savings Bank: Bardenwerper Talbott & Roberts, PLLC Land Planner, Landscape Architect and Engineers: Miller Wihry MWG, LLC



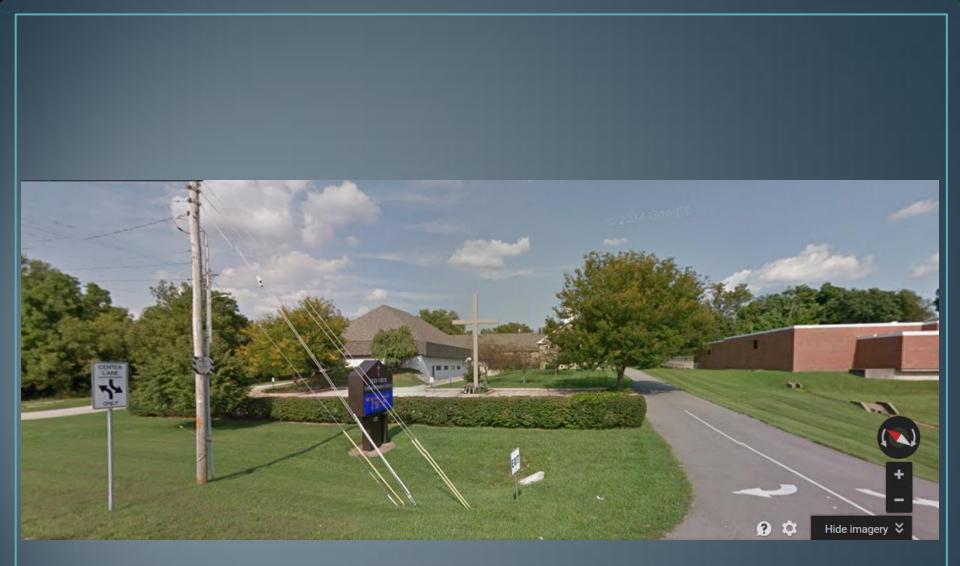




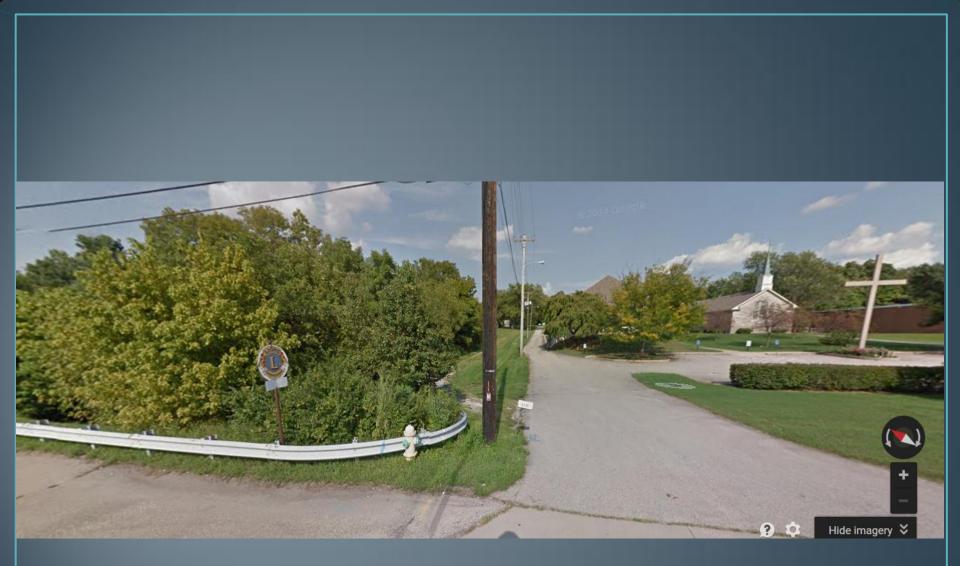
Looking north from new Raising Cane's restaurant toward subject property.



Looking north from AT&T facility (one building north of the new Raising Cane's restaurant) toward subject property.



Looking at AT&T facility (to south) and Fern Creek United Methodist Church (to north) one door removed from subject property.



Existing access to Fern Creek United Methodist Church to be shared with proposed CVS Pharmacy as part of expanded church facilities contingent on approval of the proposed CVS plan on the subject property.



United Methodist Church.

Wise house adjoining subject property to the south that will be combined with the Fern Creek United Methodist Church property for future church expansion contingent on approval of the proposed CVS plan. View of stream and culvert along Bardstown Road and Beulah Church Road in front of Beulah Presbyterian Church and Walgreens store



Undisturbed area of the site looking south towards Fern Creek Methodist Church.

Undisturbed Cedar Creek on the Wise property to the south looking south. This then leads to and under Bardstown Road.

This is a view of the retaining wall along Cedar Creek across Bardstown Road, which is the way this creek was previously treated by developments and approving agencies, which will not be the case on the subject property where the creek is left untouched and natural.

# Litigation history following Planning Commission approval of a Walgreen's on this site

- Following a 12/18/97 Public Hearing, PC recommended approval to Fiscal Court of the Walgreen's rezoning and approved its DDDP.
- On 3/10/98, Fiscal Court overturned the PC.
- On 3/2/99, Jefferson Circuit Court reversed Fiscal Court and ordered the rezoning with DDDP, because Fiscal Courts reversal was not based on substantial evidence.
- On 7/21/00, the Court of Appeals reversed and remanded Circuit Court, stating that the standard of review was "compelling need".
- On 7/4/03, Circuit Court upheld its earlier opinion, this time reversing Fiscal Court based on both its arbitrary action and on a "compelling need" for rezoning and development of this site.
- Thereafter case settled, and following Metro Council rezoning Ordinance was adopted.

Ordinance rezoning the property following the Circuit Court case approving the Walgreen's rezoning plan

ORDINANCE NO. 140 , SERIES 2006

AN ORDINANCE CHANGING THE ZONING FROM R-4 SINGLE FAMILY RESIDENTIAL TO C-1 COMMERCIAL ON PROPERTY LOCATED AT 9420 SEATONVILLE ROAD, CONTAINING 2.89 ACRES AND BEING IN LOUISVILLE METRO (DOCKET NO. 9-75-97W).

#### SPONSORED BY: COUNCILWOMAN MADONNA FLOOD

WHEREAS, the Legislative Council of the Louisville/Jefferson County Metro Government (the "Council") has considered the evidence presented at the public hearing held by the Louisville Metro Planning Commission and the recommendations of the Commission and its staff as set out in the minutes and records of the Planning Commission in Docket No. 9-75-97W; and

WHEREAS, in 1997, the Planning Commission recommended approval for the rezoning of this property to the Jefferson County Fiscal Court, but Fiscal Court voted to override the Planning Commission's recommendation in Resolution No. 29, Series 1998 because the proposed development plan for the property did not comply with the Comprehensive Plan due primarily to the incompatibility of the intensity of the proposed use with the environmental sensitivities and constraints of the subject site; and

WHEREAS, Fiscal Court's resolution overriding the Planning Commission's recommendation was then appealed to Jefferson Circuit Court commencing a significant period of litigation concerning the subject property's rezoning, and now the matter currently is before the Kentucky Court of Appeals; and

WHEREAS, during this matter's pendency before the Kentucky Court of Appeals, a revised development plan has been submitted for the subject property which proposes a use less intensive than the previously submitted development plan, and the revised development plan is considerably more sensitive to the environmental constraints existing on the site; and

WHEREAS; the remaining parties to the pending litigation have reached an agreement to submit the revised development plan, in conjunction with the request to rezone the subject site, for reconsideration in hopes that if said requests are approved then all pending litigation concerning the subject property's rezoning will be dismissed; and

WHEREAS, on May 25, 2006, the revised development plan received unanimous approval from the Land Development and Transportation Committee of the Planning Commission ("LD&T"); and

WHERAS, based on revised development plan approved by LD&T on May 25, 2006, the Council now concurs in and adopts the findings of the Planning Commission for the zoning change in Docket No. 9-75-97W, the Council approves and accepts the recommendations of the Planning Commission in Docket No. 9-75-97as set out in said minutes and records;

## Now therefore be it ordained by the Legislative Council of the Louisville/Jefferson County Metro Government as follows:

Section I: That the zoning of the property located at 9420 Seatonville Road, containing 2.89 acres and being in Louisville Metro, more particularly described in the minutes and records of the Planning Commission in Docket No. 9-75-97W, is hereby changed from R-4 Single Family Residential to C-1 Commercial, based on the revised

development plan approved by LD&T on May 25, 2006, provided said property shall be subject to the binding elements as set forth in the May 25, 2006 minutes of LD&T in Docket No. 9-75-97W.

Section II: This Ordinance shall take effect upon passage and approval.

Kathleen J. Herron

Metro Council Clerk

Jerry Abramson Mayor

Kevin J. Kramer President of the Council

8-23-06 Approved: Date

LOUISVILLE METRO COUNCIL **READ AND PASSED** aust 17. 2006

APPROVED AS TO FORM AND LEGALITY:

Irv Maze Jefferson County Attorney

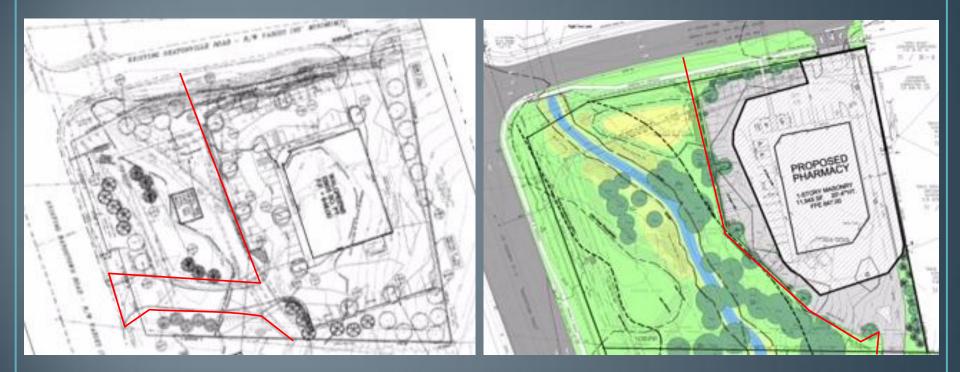
By: Leller



Approved Walgreen's rezoning plan.

## Original Approved Walgreen's Pharmacy Plan

## Proposed Your Community Bank/CVS Plan for sale to CVS



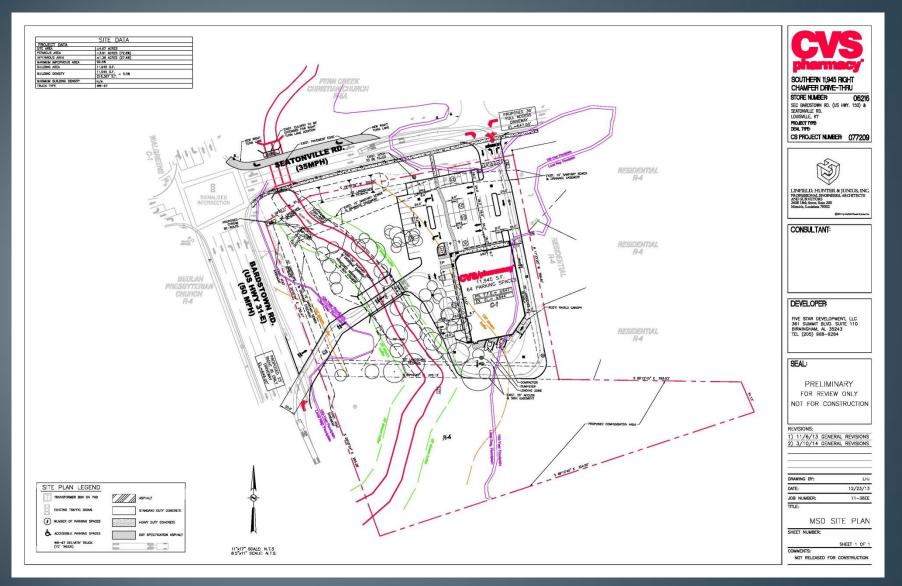
The proposed developable (colored gray) area on the proposed CVS plan to the right is clearly less than the approved developable area on the originally approved Walgreen's plan to the left.

Approved First Fed. Savings Bank (nka Your Community Bank) Plan

## Proposed Your Community Bank/CVS Plan for sale to CVS



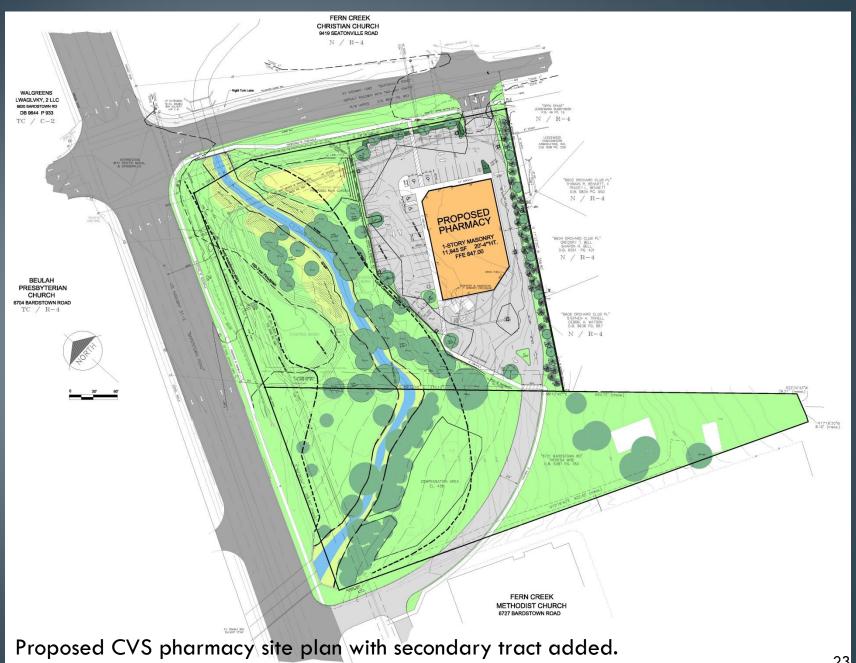
The proposed expanded developable area (colored gray) on the plan to the right is the only increase over the approved developable area on the Branch Bank plan (to the left and in white on the right side plan). This Branch Bank plan was a plan substituted for the original approved Walgreen's plan because Walgreen's moved across Bardstown Road from this site when the original Walgreen's approval ended in litigation, ultimately decided at Circuit Court <sup>20</sup>



Previous proposed CVS plan with its own Cedar Creek crossing, which was denied a Floodplain Variance by MSD  $^{21}$ 



Current proposed CVS plan in darker gray color superimposed on previous approved Branch Bank plan in lighter gray color. Previous proposed Cedar Creek crossing removed, now proposing to utilize existing Fern Creek Methodist Church

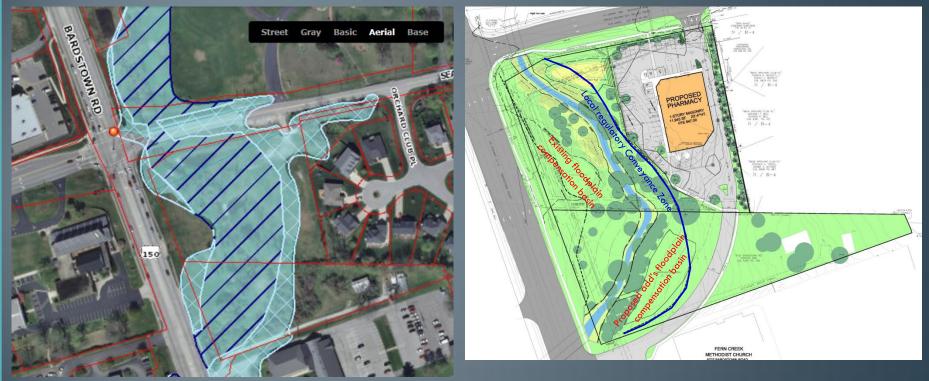


## MSD Design Manual

- "Local Regulatory Flood" means the flood having a one-percent (1%) probability of being equaled or exceeded in any given year based on a fully developed watershed.
- "Local Regulatory Floodplain" means any stream course or normally dry land area susceptible to being partially or completely inundated by the overflow of water from sources of public water or by the unusual and rapid accumulation or runoff of public surface waters and subject to a local regulatory flood.
- **"The Local Regulatory Conveyance Zone"** is the channel of a river or a solid blue line stream and the land adjacent to that river or stream which, if unobstructed, will discharge a local regulatory flood without cumulatively increasing the water surface elevation more than one tenth of one foot. The conveyance zone is determined by an equal loss of conveyance (at higher elevation) occurring on each side of the channel.
- **"Floodplain Storage Compensation"** means an artificially excavated, hydraulically equivalent volume of floodplain storage sufficient to offset a reduction in floodplain storage resulting from filling or construction within the local regulatory floodplain.

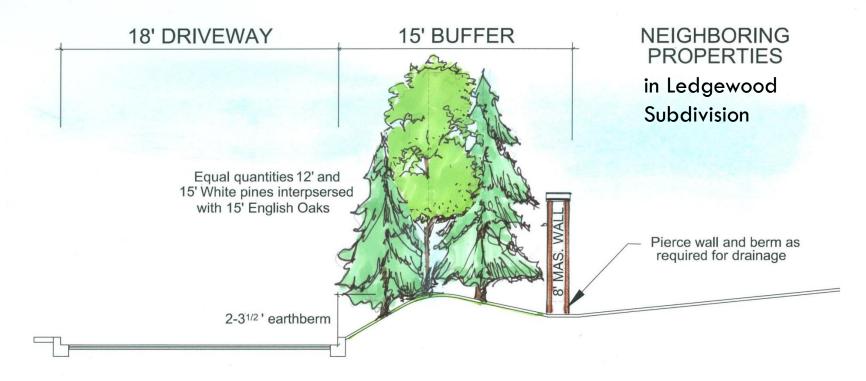
## LOJIC map Local Regulatory Conveyance Zone and Floodplain

MSD-accepted Local Regulatory Conveyance Zone with floodplain compensation



Nothing could be built on this site without encroaching into the floodplain, which is permitted by MSD regulation.





## CVS - Proposed East property line buffer



## Waivers

- <u>To permit parking in front of principal structure</u> (routinely granted, as in recent Walmart case, in Traditional Form Districts where obstacles exist or mitigation is offered, as in this case in the form of significant landscape and 55% of former Branch Bank site left green)
- <u>To permit traffic circulation in front of principal structure</u> (routinely granted, as in recent Walmart case, in Traditional Form Districts where obstacles exist or mitigation is offered, as in this case in the form of significant landscape and 55% of former Branch Bank site left green)
- <u>To not to provide a pedestrian connection to building from Bardstown Road</u> (*mitigated by sidewalks along Seatonville Road and along shared access with the church*)
- <u>To reduce amount of required parking lot ILA from 2,495 sf to 1,345 sf</u> (*mitigated by overall 55% of the former approved Branch Bank left green*)
- <u>To permit encroachment of parking into LBA along the south property line</u> (mitigated by plan to share new parking area with expanded church)
- <u>To reduce the VUA LBA along Seatonville Road from 15 ft to 7.5 ft</u> (*mitigated by wide 33 ft public verge*)
- <u>To eliminate 8 ft brick wall only along the open space, not adjoining the</u> <u>residential properties</u> (*mitigated by the 8 ft wall and enhanced landscaping*)

## Variances

- <u>To permit building to exceed maximum from Bardstown Road</u> (*mitigated by preservation of Cedar Creek*)
- <u>To permit encroachment of drive lane into required 25 ft along</u> <u>shared residential property line</u> (mitigated by 8 ft brick wall and enhanced landscaping)
- To permit encroachment of building and parking into the 50 ft Middle and 25 ft Outer Zone of buffers along Cedar Creek (mitigated by overall 55% of approved former Branch Bank site left green and by the protection of 635 linear feet of Cedar Creek)

A2b	12' CVS pharmacy Drive-Thru Pharmacy
Туре:	Monument Sign
Illumination:	Internally Illuminated LED
Square Footage:	69.64 (21.33 + 48.31)

#### Specifications:

1. 3/16" white Lexan faces

- First surface applied vinyl copy to match; 230-53 Red Vinyl copy with 230-22 Black Outline stroke
- Aluminum cabinet with mitred corners painted to match; STO NA 06-0027 "Peachy Beige"
- 4. 2" aluminum retainers painted to match
- Aluminum top cap/base with dryvit finish to match; Benjamin Moore #HC-47, "Brookline Beige"

#### Electrical:

(2) 60w Transformer Total Amps: 1.42 (1) 20 amp 120V Circuit Req.

#### Electrical: EMB

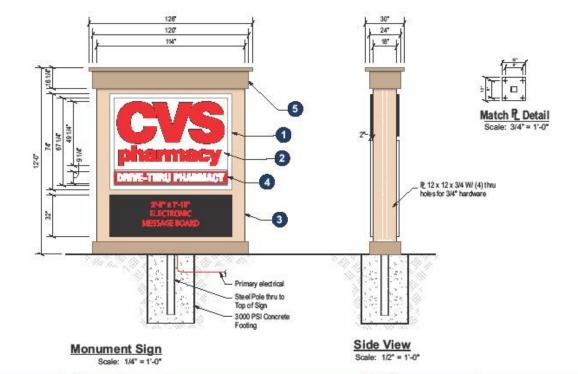
Total Amps: 9.30 (1) 20 amp 120V Circuit Req.

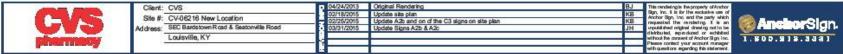
#### General Notes:

This sign is to be installed in accordance with the requirements of Article 600 of the National Electrical Code.

- 1) Grounded and bonded per NEC 600.7/NEC 250
- Existing branch circuit in compliance with NEC 600.5, not to exceed 20 amps
- 3) Sign is to be UL listed per NEC 600.3
- UL disconnect switch per NEC 600.6- required per sign component before leaving manufacturer\*

\*For multiple signs, a disconnect is permitted but not required for each section.





Sign proposed at Bardstown Road entrance.

A2c	14" CVS Shared Sign	
Туре:	Monument Sign	
Illumination:	Internally Illuminated LED	
Square Footage:	65.27 (22.19 + 22.19 + 20.89)	

#### Specifications:

- 3/16" white Lexan faces
  First surface applied vinyl copy to match;
  230-53 Red Vinyl copy with
  230-22 Black Outline stroke
- Aluminum cabinet with mitred corners painted to match; STO NA 06-0027 "Peachy Beige"
- 4. 2" aluminum retainers painted to match Colonial White
- Aluminum top cap/base with dryvit finish to match; Benjamin Moore #HC-47, "Brookline Beige"

#### Electrical:

(2) 60w Transformer Total Amps: 1.42 (1) 20 amp 120V Circuit Reg.

#### Electrical: EMB

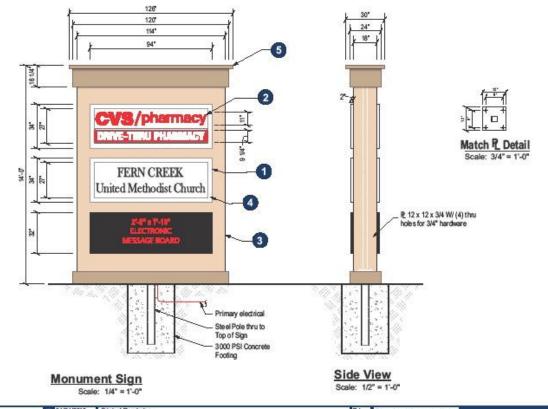
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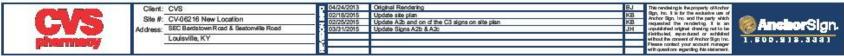
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- NEC 600.5, not to exceed 20 amps
- 3) Sign is to be UL listed per NEC 600.3
- UL disconnect switch per NEC 600.6- required per sign component before leaving manufacturer\*

\*For multiple signs, a disconnect is permitted but not required for each section.





Sign proposed at shared church entrance.

A2a	6' CVS pharmacy Drive-Thru Pharmacy
Туре:	Monument Sign
Illumination:	Internally Illuminated LED
Square Footage:	16.33

#### Specifications:

- 1. 3/16" white Lexan faces
- First surface applied vinyl copy to match; 230-53 Red Vinyl copy with 230-22 Black Outline stroke
- Aluminum cabinet with mitred corners painted to match; STO NA 06-0027 "Peachy Belge"
- 4. 2" aluminum retainers painted to match Colonial White
- Aluminum top cap/base with dryvit finish to match; Benjamin Moore #HC-47, "Brookline Beige"

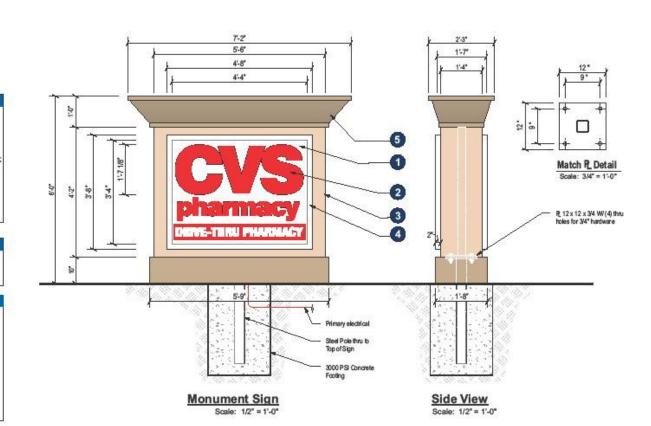
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Client: CVS Clyate lase plan by the scalar of the C3 signs on site plan by the C3 signs on site plan by

### Sign proposed at Seatonville entrance.

Please contact your account manage with questions agarding this statement



Due to our continued efforts to improve our products, product specifications are subject to change without notice.

## International Dark-Sky Association

From Wikipedia, the free encyclopedia

The **International Dark-Sky Association (IDA)** is a United States-based non-profit organization incorporated in 1988 by founders Dr David Crawford, a professional astronomer, and Dr Timothy Hunter, a physician/amateur astronomer. The mission of the IDA is "to preserve and protect the night time environment and our heritage of dark skies

through quality outdoor lighting."<sup>[1]</sup> Light pollution is the result of outdoor lighting that is not properly shielded, allowing light to be directed into the eyes and the night sky. Light that shines into the eyes is called glare and light shining into the night sky above the horizon causes skyglow. Lighting can also cause light trespass when it is directed into areas that it is not wanted, *e.g.*, a neighbor's yard and windows. IDA was the first organization in the darksky movement, and is currently the largest.

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- 2 International Dark Sky Places
  - 2.1 International Dark Sky Parks
  - 2.2 International Dark Sky Reserves
  - 2.3 International Dark Sky Communities
- 3 See also
- 4 References
- 5 External links

### **Principal approach**

IDA's principal approach is to raise awareness about the value of dark, star-filled night skies and encourage their protection and restoration through education about the problems and solutions, including outdoor lighting practices that create less light pollution. In 2011, the organization had about 5,000 members in 70 countries.

Among many concerns, IDA and related organizations are collating research on light at night's (LAN) effects on human health and ecology as a result of artificial light at night. The hypothesis is that humans have evolved over millennia exposed to roughly equal periods of light and dark. The disruption of this circadian rhythm can cause hormone imbalance in all living organisms. In the last century, artificial lighting has reduced the regular period of darkness and may negatively impact health. Light at night has been linked to increased incidence of hypertension, attention deficit disorder, obesity, diabetes and some forms of cancer.<sup>[2]</sup>

### **International Dark Sky Places**

To promote awareness about the issues, the IDA has an **International Dark Sky Places** program that aims "to protect locations of exceptional nighttime visages for future generations." <sup>[3]</sup>

#### International Dark Sky Parks

- Natural Bridges National Monument, Utah, United States, established 2006
- Cherry Springs State Park, Pennsylvania, United States, established 2008

http://en.wikipedia.org/wiki/International\_Dark-Sky\_Association





### Cimarron DIE CAST ARCHITECTURAL LUMINAIRE

With a contemporary, clean design and full cutoff performance, Cimarron luminaires deliver more light where you need (and want) it. Each fixture also features a low profile, low EPA and rugged cast aluminum construction.

MOUNTING Two arm designs optimize design flexibility. The diecast aluminum arm offers a sleek, upswept look while the extruded straight arm follows the housing's contoured lines for continuity of style. Wall bracket and pole/tenon accessories are also available to allow easy mounting for virtually any application.



DOOR Die cast aluminum door hinges to housing and secures with two captive screws. This provides four-point contact to ensure a clean lens and optical assembly. Both the flat tempered glass and door are sealed with durable one-piece extruded silicone gaskets. HOUSING Architecturally styled, one-piece die-cast aluminum housing with nominal .125" wall thickness. Low profile design reduces the overall wind loading and provides a sleek, unobtrusive look. These features complement most building architectural styles. BALLAST HPF ballast circuit, starting rated at -20° F (-40° F for HPS). Ballast and other electrical components mounted directly to housing for excellent heat dis-

sipation and long life.

ELECTRICAL Energy efficient HID lamps up to 400 watts. Pulserated porcelain sockets have spring loaded, nickel plated center contact.



LISTING UL 1598 approved and CSA Certified for wet location applications. IDA dark sky, neighbor friendly

## **Proposed Additional Binding Elements**

- The applicant/developer shall install an 8 ft high brick wall along the rear property line as shown on the development plan approved at the 5/21/15 Planning Commission meeting.
- The applicant/developer shall provide enhanced landscaping in the following form of equal numbers of 12 ft and 15 ft interspersed, upright oak trees along the entire eastern property line in addition to the 8 ft high brick wall shown on the plan approved at the 5/21/15 Planning Commission meeting.
- The applicant/developer shall install a sidewalk from Bardstown Road along the shared access drive with Fern Creek United Methodist Church.
- Style and design of the pharmacy building shall be as shown on the elevation renderings provided at the 5/21/15 Planning Commission meeting.