

Board of Zoning Adjustment

Staff Report

January 9, 2018



Case No.	17CUP1085 / 17WAIVER1028 /17VARIANCE1062
Project Name	4141 Bardstown Road
Location	4141 Bardstown Road
Owner	4141 Bardstown Road LLC
Applicant	4141 Bardstown Road LLC
Jurisdiction	Louisville Metro
Council District	10 – Pat Mulvihill
Case Manager	Beth Jones, AICP, Planner II

REQUEST

Conditional Use Permit to allow an off-street parking area within an R-4 zoning district (LDC 4.2.39)

1. **Relief** from LDC 4.2.39.B.: Walls, fences or plantings shall be provided in a manner to provide protection for and be in harmony with surrounding residential property.
2. **Relief** from LDC 4.2.39.C.: The minimum front, street side and side yards required in the district shall be maintained free of parking.

Waivers

1. Waiver of the property perimeter landscape buffer area (LBA) requirements along the north property line in the R-4 portion of the site (LDC 10.2.4)
2. Waiver of the vehicular use area landscape buffer area (VUA LBA) requirements along the north property line in the R-4 portion of the site (LDC 10.2.10)
3. Waiver of the vehicular use area (VUA) perimeter planting requirements along the north property line in the R-4 portion of the site (LDC 10.2.11)

Variance

1. To permit an addition to an existing building in a Suburban Marketplace Corridor form district to encroach into the 25 ft minimum side setback required along a common boundary when a non-residential use abuts a residential zone (LDC 5.3.2.C.2.b.)

Location	Requirement	Request	Variance
Side setback	25 ft	0 ft	25 ft

CASE SUMMARY/BACKGROUND

The subject 1.08 acre site is located at the corner of Bardstown Road and Fairland Avenue near the intersection of Bardstown Road and the Buechel Bypass. It is within a Suburban Marketplace Corridor form district and adjoins a Neighborhood form district to the north. Although it has a Bardstown Road address, the site is not accessible from Bardstown Road due to road configuration and topography and is accessed exclusively via Fairland Avenue. Parcels to the north are zoned and used for single-family residences in a Neighborhood form district; properties to the south, east and west are zoned and used for commercial purposes.

The majority of the parcel is zoned C-2; a 0.24 acre portion of the site along the northern property boundary, adjoining the R-4 residential uses to the north, is zoned R-4. The C-2 portion of the site is developed with a commercial structure; its northern façade is located along the zone change line. Two overhead doors to two service bays are located on this façade; one is for pull-in/pull-out service and the other for drive-through access from an overhead entrance door on the south side of the building.

The applicant proposes to use the R-4 portion of the property for parking for customers and employees and for a circulation aisle for customers entering and exiting the service bays. This parking is located along the northern property line where it abuts a residential use.

The timeline for cases relevant to this proposal is as follows:

- 5/10/17: The applicant attempted to file a building permit application for a proposed addition to the existing building; the applicant was informed that a landscape review was required and no permit was issued
- 7/10/17: A landscape review application was submitted by the applicant
- 7/17/17: A foundation-only permit was issued for the proposed building addition (BL-1022838)
- 9/11/17: Waiver and Variance applications were submitted by the applicant
- 10/2/17: The subject CUP application was submitted by the applicant
- 12/15/17: A second request for a building permit for the addition to the existing building was filed by the applicant (BL-1045284); the permit has not been issued and is currently pending a decision on the variance request

At some point between site visits by Metro staff on 7/18/17 and 10/13/17 the building addition shell was constructed and the fencing was installed, although a building permit has yet to be issued. The interior of the addition remains unfinished pending the outcome of this hearing.

STAFF FINDINGS

The applicant constructed the building addition and installed the fencing without obtaining a building permit. As part of the building permit review process, compliance with LDC regulations related to the proposed fencing and building addition would have been required.

Waivers 1-3 are the result of the applicant's proposal to use the area for parking purposes, leaving insufficient remaining space to provide the buffering and landscaping required by use and transition zone regulations. There is sufficient undeveloped space on the site to locate the required parking at the elsewhere on the site. The existing building on the site would still require the circulation lanes shown on the proposed plan, but sufficient space would remain to provide at least a portion of the required buffering and landscaping directly adjoining the existing residential development. The side yard setback requirement addressed by Relief 2 and Variance 1 could also be substantially met.

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 a Conditional Use Permit as established by the Land Development Code.

TECHNICAL REVIEW

Plan document may require modification pending the results of this hearing.

INTERESTED PARTY COMMENTS

A neighborhood meeting was held on 10/25/17. The applicant has also submitted statements regarding the proposal from the two nearest residential property owners.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR CONDITIONAL USE PERMIT

1. Is the proposal consistent with applicable policies of the Comprehensive Plan?

STAFF: Cornerstone 2020 policies require mitigation of the potential negative impacts of parking on adjoining residential development (Guideline 3.A.21: Provide appropriate transitions between uses that are substantially different in intensity; Guideline 3.A.22: Mitigate the impacts caused when incompatible developments unavoidably occur adjacent to one another by using buffers such as landscaping, vegetative berms and/or walls; Guideline 3.A.24: Parking areas located adjacent to residential areas are designed to minimize adverse impacts of lighting, noise and other potential impacts). The CUP and requested waivers and reliefs will specifically preclude the possibility of any mitigation, as the proposed parking will occupy the space which would be used for this purpose.

2. Is the proposal compatible with surrounding land uses and the general character of the area including such factors as height, bulk, scale, intensity, traffic, noise, odor, drainage, dust, lighting and appearance?

STAFF: Parking directly adjacent to residential uses is permitted upon compliance with screening, buffering and landscaping. The applicant is requesting waivers of all such requirements thus making the parking area incompatible with the adjacent residential uses.

3. Are necessary on-site and off-site public facilities such as transportation, sanitation, water, sewer, drainage, emergency services, education and recreation adequate to serve the proposed use?

STAFF: Existing public utilities appear to be adequate to support the proposal. The applicant will be required to improve Fairland Avenue to a full width of 18 ft and provide a full-width overlay to Public Works standards.

4. Does the proposal comply with the specific standards required to obtain the requested Conditional Use Permit?

4.2.39 Off-Street Parking Areas

An Off-Street Parking Area may be permitted in a district where it is ordinarily prohibited, provided it serves a use in a building for which insufficient off-street parking space is provided, and where the provision of such parking space will materially relieve traffic congestion on the streets and when developed in compliance with the listed requirements.

A. The area shall be located within 200 feet of the property on which the building to be served is located measured by the shortest walking distance (using sidewalks and designated crosswalks).

STAFF: The proposed parking area is located on the R-4 portion of the site, approximately 45 ft from the building at its furthest point.

B. Walls, fences, or plantings shall be provided in a manner to provide protection for and be in harmony with surrounding residential property.

STAFF: The area proposed for this non-residential use is adjoined by residential uses to the north and northwest. Both screening and landscaping are required; the applicant is requesting relief from these requirements.

An 8 ft high chain link fence with slats has been constructed along the shared property line with the adjoining residential use to the north. Use of chain link fencing, with or without slats, to satisfy screening requirements of the LDC is specifically prohibited, although it may be used along with plants, berms or other allowable materials for other purposes (LDC 10.4.9).

C. The minimum front, street side, and side yards required in the district shall be maintained free of parking.

STAFF: Although it has a Bardstown Road address, the site is not accessible from Bardstown Road due to road configuration and topography. It is instead accessed exclusively via Fairland Avenue, making the subject portion of the site the side yard for the full site. As the side yard, it is subject to a 25 ft setback requirement (LDC 5.3.2.C.2.b.). Since the proposed parking spaces are located along the side property line, the required side yard setback cannot be met. The applicant is requesting relief from this standard.

D. The area shall be used exclusively for transient parking of motor vehicles belonging to invitees of the owner or lessee of said lot.

STAFF: As described by the applicant, the proposal satisfies this requirement.

E. The approval of all plans and specifications for the improvement, surfacing, and drainage for said parking area will be obtained from the appropriate Director of Works prior to use of the parking area.

STAFF: MSD and Transportation Planning have reviewed and commented on the proposal.

F. The approval of all plans and specifications for all entrances, exits, and lights shall be obtained from the department responsible for transportation planning prior to the public hearing on the Conditional Use Permit.

STAFF: Transportation Planning has provided preliminary approval of the proposal.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVERS 1, 2 and 3

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

STAFF: The waiver will adversely affect adjacent property owners as they are entitled by regulation to a buffer area, screening and landscaping, as opposed to the chain link fence with slats that has already been installed by the applicant and which is specifically not permitted as a means of satisfying LDC screening requirements (LDC 10.4.9.).

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

STAFF: The waivers will violate multiple guidelines related to compatibility as set by Cornerstone 2020 Guideline 3, detailed in Attachment 3 to this report. All transition and impact mitigation requirements

between commercial and residential uses, including buffering, screening and landscaping, would be waived.

Line Item 15: Provide appropriate transitions between uses that are substantially different in intensity.

Line Item 16: Does not constitute a non-residential expansion into an existing residential area, or demonstrates that despite such an expansion, impacts on existing residences (including traffic, parking, signs, lighting, noise, odor and stormwater) are appropriately mitigated.

Line Item 21: Provides appropriate transitions between uses that are substantially different in intensity such as landscaped buffer yards, vegetative berms, compatible building design and materials, height restrictions, or setback requirements.

Line Item 22: Mitigates the impacts caused when incompatible developments unavoidably occur adjacent to one another by using buffers that are of varying designs such as landscaping, vegetative berms and/or walls, and that address those aspects of the development that have the potential to adversely impact existing area developments.

Line Item 24: Parking, loading and delivery areas located adjacent to residential areas are designed to minimize adverse impacts and that these areas are located to avoid negatively impacting motorists, residents and pedestrians.

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

STAFF: There is sufficient undeveloped space elsewhere on the site to locate the required parking. The circulation lanes within the subject portion of the site would still be required to serve the existing building but, if the parking were to be relocated, sufficient space would remain to provide at least a portion of the required buffering and landscaping adjoining the existing residential development.

(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 proposed other design measures exceeding minimum requirements. Strict application of the regulation would not deprive the applicant of reasonable use of the land as there is sufficient area available in other areas of the site for location of the required parking which would move parking away from direct adjacency to existing residential uses and also allow at least some of the required screening and buffering.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCE 1 (LDC 5.3.2.C.2.b.)

The building addition was constructed without a building permit and encroaches on a required setback along the zone change boundary located along the north side of the existing building and its new addition.

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

STAFF: The requested variance will not adversely affect the public health, safety or welfare as the common boundary in question would meet setback requirements if the entirety of the site were zoned for its actual use, as is normally the case.

(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 as the addition in question is an extension of an existing structure and results in a street side setback consistent with adjoining structures.

(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 as it maintains the appropriate setbacks from the public right-of-way and the neighboring residential use.

(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 as the addition in question is an extension of an existing structure.

ADDITIONAL CONSIDERATIONS:

1. The requested variance does not arise 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 in that the parcel has dual zoning, creating a change in zone within the boundaries of 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 create an unnecessary hardship on the applicant by requiring a setback that would not normally be required within a single site if not for the existing dual zoning.

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.

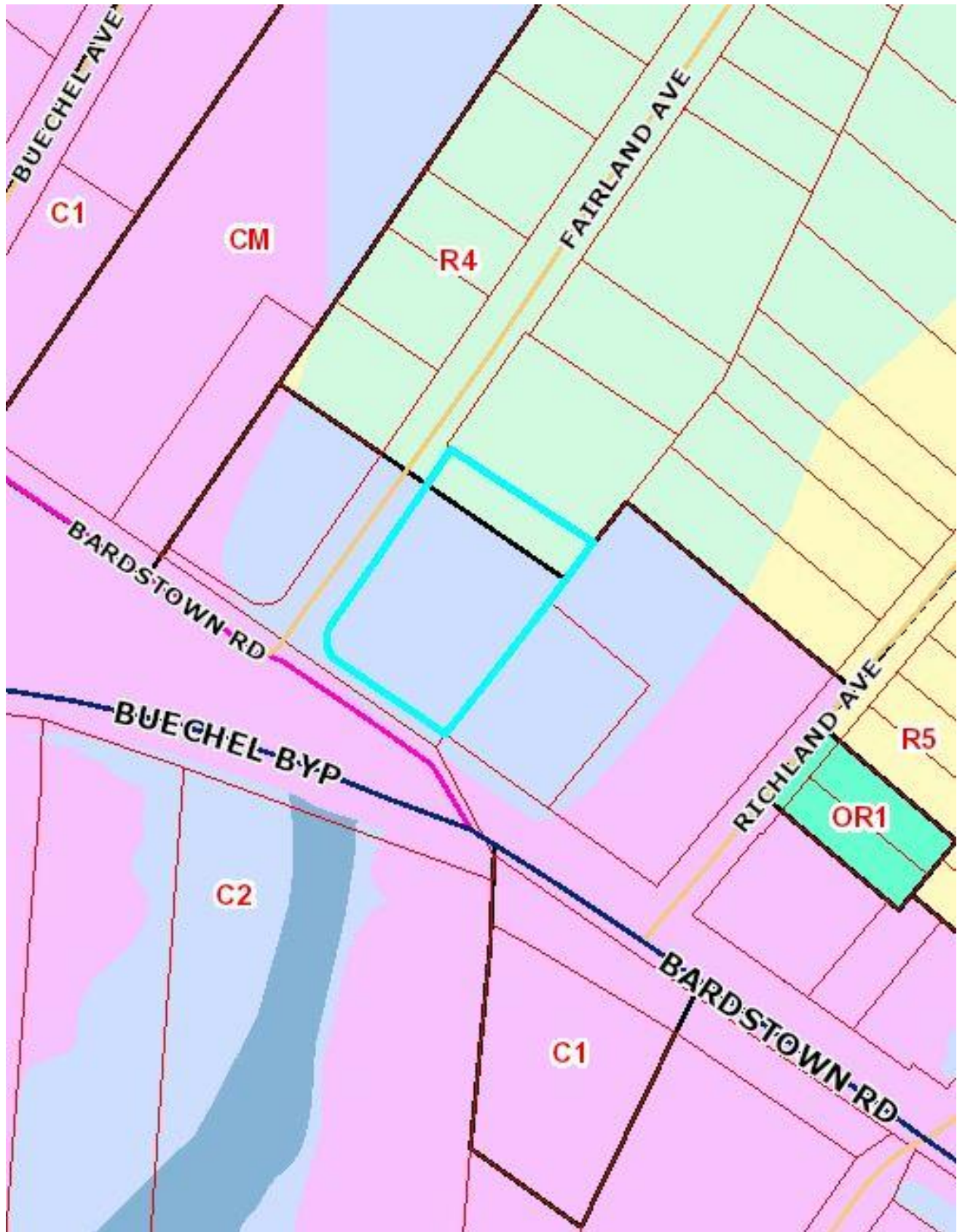
NOTIFICATION

Date	Purpose of Notice	Recipients
10/25/2017	Neighborhood Meeting	1st and 2nd tier adjoining property owners Registered Neighborhood Groups in Council District 10
12/29/2017	Notice of BOZA Hearing	1st and 2nd tier adjoining property owners Registered Neighborhood Groups in Council District 10
12/22/2017		Sign Posting

ATTACHMENTS

1. Zoning Map
2. Aerial Photograph
3. Cornerstone 2020 Checklist
4. Conditions of Approval

1. Zoning Map



2. Aerial Photograph



3. Cornerstone 2020 Checklist

+	Exceeds Guideline	+/-	More Information Needed
✓	Meets Guideline	NA	Not Applicable
---	Does Not Meet Guideline		

SUBURBAN MARKETPLACE CORRIDOR: NON-RESIDENTIAL

#	Cornerstone 2020 Plan Element or Portion of Plan Element	Staff Finding	Staff Comments
Community Form/Land Use Guideline 1: Community Form			
1	B.8: Integrates into the existing pattern of development, which includes a mixture of medium- to high-density uses.	✓	Use is appropriate for form district.
2	B.8: Provides accommodations for transit users, pedestrians and bicyclists and provides connectivity to adjacent developments.	✓	Proposal provides multi-modal accommodations.
3	B.8: Includes a compact group of buildings using the same curb cut, parking and signs, and that have a common buffering or streetscape plan with respect to any abutting lower density or intensity uses.	NA	
4	B.8: Is of a medium to high density designed to be compatible with both non-residential development in the corridor and adjacent low density residential development in other form districts.	---	Proposal includes multiple waiver, variance and relief requests of buffering and landscaping requirements.
5	B.8: Is located within the boundaries of the existing form district, and if the proposal is to expand an existing corridor, the justification for doing so addresses the use or reuse of land within the existing corridor, the potential for disruption of established residential neighborhoods, and compliance with the site and community design standards of the Land Development Code.	✓	Proposal is located within the existing form district.
Community Form/Land Use Guideline 2: Centers			
6	A.1/7: A proposal creating a new center is located in the Suburban Marketplace Corridor form district and includes new construction or the reuse of existing buildings to provide commercial, office and/or residential use.	NA	
7	A.3: Retail commercial development is located in an area that has a sufficient population to support it.	NA	
8	A.4: Is compact and results in an efficient land use pattern and cost-effective infrastructure investment.	NA	
9	A.5: Includes a mix of compatible land uses that will reduce trips, support the use of alternative forms of transportation and encourage vitality and sense of place.	NA	
10	A.6: Incorporates residential and office uses above retail and/or includes other mixed-use, multi-story retail buildings.	NA	

#	Cornerstone 2020 Plan Element or Portion of Plan Element	Staff Finding	Staff Comments
11	A.12: Large development in a center is designed to be compact and multi-purpose, and is oriented around a central feature such as a public square or plaza or landscape element.	NA	
12	A.13/15: Shares entrance and parking facilities with adjacent uses to reduce curb cuts and surface parking, and locates parking to balance safety, traffic, transit, pedestrian, environmental and aesthetic concerns.	NA	
13	A.14: Is designed to share utility hookups and service entrances with adjacent development, and places utility lines underground in common easements.	NA	
14	A.16: Is designed to support easy access by bicycle, car and transit and by pedestrians and persons with disabilities.	NA	
Community Form/Land Use Guideline 3: Compatibility			
15	A.2: Building materials increase the new development's compatibility.	✓	
16	A.4/5/6/7: Does not constitute a non-residential expansion into an existing residential area, or demonstrates that despite such an expansion, impacts on existing residences (including traffic, parking, signs, lighting, noise, odor and stormwater) are appropriately mitigated.	---	Is not an expansion of a non-residential use as proposed use is already in place, but does not mitigate its impacts on adjoining residential uses.
17	A.5: Mitigates any potential odor or emissions associated with the development.	✓	Proposal is not expected to create significant additional odor or emissions.
18	A.6: Mitigates any adverse impacts of its associated traffic on nearby existing communities.	✓	Proposal is not expected to create significant additional traffic.
19	A.8: Mitigates adverse impacts of its lighting on nearby properties, and on the night sky.	✓	Proposal is not expected to create significant additional light impacts.
20	A.11: Higher density or intensity use is located along a transit corridor AND in or near an activity center.	✓	Overall property use is appropriate.
21	A.21: Provides appropriate transitions between uses that are substantially different in scale and intensity or density of development such as landscaped buffer yards, vegetative berms, compatible building design and materials, height restrictions, or setback requirements.	---	Proposal provides none of the required buffering or transition with adjoining residential uses.
22	A.22: Mitigates the impacts caused when incompatible developments unavoidably occur adjacent to one another by using buffers that are of varying designs such as landscaping, vegetative berms and/or walls, and that address those aspects of the development that have the potential to adversely impact existing area developments.	---	Proposal provides none of the required buffering or transition with adjoining residential uses.
23	A.23: Setbacks, lot dimensions and building heights are compatible with those of nearby developments that meet form district standards.	✓	The building addition does not meet setback requirements; the applicant is requesting a variance.

#	Cornerstone 2020 Plan Element or Portion of Plan Element	Staff Finding	Staff Comments
24	A.24: Parking, loading and delivery areas located adjacent to residential areas are designed to minimize adverse impacts of lighting, noise and other potential impacts, and that these areas are located to avoid negatively impacting motorists, residents and pedestrians.	---	Proposed parking is not located to mitigate negative impacts.
25	A.24: Includes screening and buffering of parking and circulation areas adjacent to the street, and uses design features or landscaping to fill gaps created by surface parking lots. Parking areas and garage doors are oriented to the side or back of buildings rather than to the street.	✓	Proposed parking area is located to the side of the building and is screened from Fairland Avenue.
26	A.25: Parking garages are integrated into their surroundings and provide an active, inviting street-level appearance.	NA	
27	A.28: Signs are compatible with the form district pattern and contribute to the visual quality of their surroundings.	✓	Signage will be reviewed during Construction Review process.
Community Form/Land Use Guideline 4: Open Space			
28	A.2/3/7: Provides open space that helps meet the needs of the community as a component of the development and provides for the continued maintenance of that open space.	+	Although not required, undevelopable open space will remain on the site.
29	A.4: Open space design is consistent with the pattern of development in the Form District.	✓	Open space is not required.
30	A.5: Integrates natural features into the pattern of development.	✓	Proposal buffers existing stream on site.
Community Form/Land Use Guideline 5: Natural Areas and Scenic and Historic Resources			
31	A.1: Respects the natural features of the site through sensitive site design, avoids substantial changes to the topography and minimizes property damage and environmental degradation resulting from disturbance of natural systems.	✓	Proposal buffers existing stream on site.
32	A.2/4: Includes the preservation, use or adaptive reuse of buildings, sites, districts and landscapes that are recognized as having historical or architectural value, and, if located within the impact area of these resources, is compatible in height, bulk, scale, architecture and placement.	NA	
33	A.6: Encourage development to avoid wet or highly permeable soils, severe, steep or unstable slopes with the potential for severe erosion.	✓	Proposal is located within a floodplain, but does meet MSD buffering requirements.
Marketplace Guideline 6: Economic Growth and Sustainability			
34	A.3: Encourage redevelopment, reinvestment and rehabilitation in the downtown where it is consistent with the form district pattern.	NA	
35	A.4: Encourage industries to locate in industrial subdivisions or adjacent to existing industry to take advantage of special infrastructure needs.	NA	
36	A.6: Locate retail commercial development in activity centers. Locate uses generating large amounts of traffic on a major arterial, at the intersection of two minor arterials or at locations with good access to a major arterial and where the proposed use will not adversely affect adjacent areas.	NA	

#	Cornerstone 2020 Plan Element or Portion of Plan Element	Staff Finding	Staff Comments
37	A.8: Require industrial development with more than 100 employees to locate on or near an arterial street, preferably in close proximity to an expressway interchange. Require industrial development with less than 100 employees to locate on or near an arterial street.	NA	
Mobility/Transportation Guideline 7: Circulation			
38	A.1/2: Contribute its proportional share of the cost of roadway improvements and other services and public facilities made necessary by the development through physical improvements to these facilities, contribution of money, or other means.	✓	Proposal does require some roadway improvements which are being made by the applicant.
39	A.3/4: Promote mass transit, bicycle and pedestrian use and provides amenities to support these modes of transportation.	✓	Proposal provides multi-modal accommodations.
40	A.6: Transportation facilities are compatible with and support access to surrounding land uses, and contribute to the appropriate development of adjacent lands. Includes at least one continuous roadway through the development, adequate street stubs, and relies on cul-de-sacs only as short side streets or where natural features limit development of "through" roads.	✓	Proposal provides multi-modal accommodations and connects to and improves existing facilities.
41	A.9: Includes the dedication of rights-of-way for street, transit corridors, bikeway and walkway facilities within or abutting the development.	✓	Proposal provides required rights-of-way.
42	A.10: Includes adequate parking spaces to support the use.	✓	The parking proposed for this area will not satisfy the full requirements for the site. Additional parking will be installed outside of the CUP area.
43	A.13/16: Provides for joint and cross access through the development and to connect to adjacent development sites.	NA	
Mobility/Transportation Guideline 8: Transportation Facility Design			
44	A.8: Adequate stub streets are provided for future roadway connections that support and contribute to appropriate development of adjacent land.	NA	
45	A.9: Avoid access to development through areas of significantly lower intensity or density if such access would create a significant nuisance.	NA	
46	A.11: The development provides for an appropriate functional hierarchy of streets and appropriate linkages between activity areas in and adjacent to the development site.	NA	
Mobility/Transportation Guideline 9: Bicycle, Pedestrian and Transit			
47	A.1/2: Provides, where appropriate, for the movement of pedestrians, bicyclists and transit users around and through the development, provides bicycle and pedestrian connections to adjacent developments and to transit stops, and is appropriately located for its density and intensity.	✓	Proposal provides multi-modal accommodations.

Livability/Environment Guideline 10: Flooding and Stormwater			
48	Drainage plans have been approved by MSD, and the proposal mitigates negative impacts to the floodplain and minimizes impervious area. Solid blue-line streams are protected through a vegetative buffer, and drainage designs are capable of accommodating upstream runoff assuming a fully-developed watershed. If streambank restoration or preservation is necessary, the proposal uses best management practices.	✓	Proposal has received preliminary approval of MSD.
Livability/Environment Guideline 12: Air Quality			
49	Has been reviewed by APCD and found to not have a negative impact on air quality.	✓	
Livability/Environment Guideline 13: Landscape Character			
50	A.3: Includes additions and connections to a system of natural corridors that can provide habitat areas and allow for migration.	NA	
Community Facilities Guideline 14: Infrastructure			
51	A.2: Is located in an area served by existing utilities or planned for utilities.	✓	
52	A.3: Has access to an adequate supply of potable water and water for fire-fighting purposes.	✓	
53	A.4: Has adequate means of sewage treatment and disposal to protect public health and to protect water quality in lakes and streams.	✓	

4. Conditions of Approval for CUP

1. All development shall be in accordance with the approved district development plan, including all notes thereon, and with all applicable sections of the Land Development Code (LDC). No further development shall occur on the site without prior review of and approval by the Board of Zoning Adjustment (BOZA).
2. The Conditional Use Permit shall be exercised as proscribed by KRS 100.237 within two years of BOZA approval. If it is not so exercised, the site shall not be used for a Community Service Facility without further review and approval by BOZA.
3. Proof of a completed karst survey must be submitted to PDS staff before issuance of any building permit.
4. No further development or outdoor storage of any kind is permitted within designated stream buffer. Currently existing outdoor storage located within the stream buffer must be discontinued.

5. Condition of Approval for Existing Fencing to Remain

1. Existing chain link fencing, including vinyl slats, must be maintained in good condition for as long as the fence remains in place. Any replacement fence constructed in the future must meet LDC requirements for fencing for screening purposes.