

PLANNING COMMISSION MINUTES

February 2, 2023

PUBLIC HEARING

CASE NO. 22-ZONE-0111

Request: Change in zoning from R-6 to C-N, with associated Revised Detailed District Development Plan and Binding Elements, and Waivers

Project Name: Dollar General

Location: 7717 & 7721 St. Andrews Church Road

Owner: Montez Malone

Applicant: Susan Cox

Representative: Wyatt, Tarrant & Combs

Jurisdiction: Louisville Metro

Council District: 25 - Khalil Batshon

Case Manager: Dante St. Germain, AICP, Planner II

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. (The staff report is part of the case file maintained in Planning and Design Services offices, 444 S. 5th Street.)

Agency Testimony:

01:09:28 Dante St. Germain presented the case and showed a Power Point presentation (see staff report and recording for detailed presentation). She noted that the applicant has agreed to put a dedicated, screened recycling holding area next to the dumpster area.

01:15:14 While showing the landscape exhibit, Ms. St. Germain noted that a 6-foot vinyl fence is shown along the southern portion of the site, in addition to the landscaping. The applicant has agreed to provide this.

01:17:33 Commissioner Brown and Ms. St. Germain discussed the placement of the required street trees along St. Andrews Church Road.

01:17:58 Commissioner Carlson and Ms. St. Germain discussed the placement of trees and/or plantings along Cardinal Oaks Drive, along with sidewalks.

01:19:04 In response to a question from Commissioner Mims, Ms. St. Germain confirmed that the side of the building facing Cardinal Oaks Drive has spandrel glass.

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The following spoke in support of the request:

Jon Baker, Wyatt Tarrant & Combs, 400 West Market Street Suite 2000, Louisville, KY 40202

Brandy Zackery, Arnold Consulting Engineering Services, 1136 S Park Dr Suite 201, Bowling Green, KY 42103

Montez Malone, 401 West Main Street Suite 802, Louisville, KY 40202

Herb Sharber, 9814 Silverwood Lane, Louisville, KY 40272

Gary Sanford, 9203 Rainbow Spring Court, Louisville, KY 40241

Summary of testimony of those in support:

01:19:33 Jon Baker, the applicant's representative, presented the applicant's case and showed a Power Point presentation. He clarified that there are two sections that are clear glass; all of the windows are real glass, but the other windows cannot be seen through (see recording for detailed presentation.)

01:30:31 Brandy Zackery, an applicant's representative, gave details about the proposed development plan, and particularly about drainage and retention (see recording for detailed presentation.) She discussed an area on the east side of the site, labeled as a 50-foot drainage easement to be used for retention, and said that if MSD allows it the applicant is willing to plant more trees/plantings in this area. The applicant is planning to add a 6-foot high wooden privacy fence along the Cardinal Oaks property line as well as the southeast property line.

01:35:57 Mr. Baker concluded the applicant's presentation. He discussed the hours of operation at other stores (usually from 8:00 a.m. to either 9:00 p.m. or 10:00 p.m.) and said no alcohol will be sold from this store (in response to a citizen's request at a prior meeting.)

01:37:28 In response to a question from Commissioner Carlson, Ms. Zackery said the privacy fence could be vinyl instead of wood.

01:38:25 Montez Malone, the property owner and applicant, presented his case and showed a Power Point presentation (see recording for detailed presentation.) He noted

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that there are no affordable goods or services located within a 1-mile radius of the multiple multi-family rental housing developments within this area.

01:43:57 Herb Sharber said his residence is about 10 minutes from this site and is in favor of a Dollar General in this area.

01:44:48 Gary Sanford said he has family and friends who live in the area and feels that a Dollar General store will be beneficial in this neighborhood.

The following spoke neither for nor against ("Other"):

Maureen Welch, 7101 Venetian Way, Louisville, KY 40214

Summary of testimony of those neither for nor against:

01:45:40 Maureen Welch said she is neutral. She said she realizes that there are many low-income apartments in the area, and there are not many walkable shopping options. She said she appreciated the applicant agreeing to bind out alcohol sales; adding the vinyl fencing, and adding more landscaping.

01:47:25 Before moving to opposition testimony, Commissioner Carlson asked about the binding element stating that no alcohol will be sold from this site. He also asked about food sales. Mr. Baker said food sales are part of an ongoing discussion with the national heads of the Dollar General chain (see recording for detailed discussion.)

The following spoke in opposition to the request:

Kathy Watkins, 3008 Knollview Court, Louisville, KY 40214

Ann Ramser, 307 East Kenwood Drive, Louisville, KY

Mona Miller, 3115 Park Side Court, Louisville, KY 40214

Summary of testimony of those in opposition:

01:48:48 Kathy Watkins said she lives directly off Cardinal Oaks Drive. She said that, at a previous meeting, an order had been given to do a study on the natural springs on the property, but she does not know if this has been done. She said there

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are eight other dollar stores within a three-mile radius of this site. She said there are two schools near this site, and said this store will increase the problem of kids cutting school. She is concerned about the increase in traffic, and said school traffic is already a problem. She is concerned about trash from the store. She noted that there is another apartment complex being built nearby. See recording for detailed presentation.

01:59:58 Ann Ramser said she opposes using residential property for commercial uses. She said a Cardinal Market is located approximately 1 mile to the east, and a Dollar General store would duplicate much of the goods being sold there. She said there used to be a TARC bus route on St. Andrews Church Road, but it was eliminated due to lack of use. She objected to the requested waiver and said Dollar General needed to conform to the Land Development Code, not find ways to get around it. She requested a binding element prohibiting the sale of any alcohol or any smoke shops on this site. She discussed three other proposals being considered on properties "within sight" of the Dollar General site and showed a Power Point presentation (see recording for detailed presentation) and discussed her concerns about drainage.

02:06:27 Mona Miller expressed concerns about traffic, noise, litter, trespassing, and flooding concerns. She asked what this could be replaced with if the Dollar General store does not succeed.

02:08:32 In response to a question from Commissioner Clare, Ms. St. Germain said smoke shops are not permitted in C-N zoning; also, there are specific regulations for smoke shops. Julia Williams, Planning & Design Manager, confirmed that smoking retail shops are not permitted in C-N zoning districts.

Rebuttal:

02:09:45 Mr. Baker delivered rebuttal (see recording for detailed presentation.) He noted that some residential/multi-family housing have been denied at Metro Council level due to lack of goods and services in the area. The C-N zoning district can allow for future residential use if this store does not succeed.

02:14:49 In response to a question from Commissioner Carlson, Ms. Zackery said the applicant is not aware of any natural springs on the site. She said a Phase I Environmental Assessment, a Geotechnical Investigation, and a review by MSD of the preliminary detailed development plan have all been done. There are no indications of springs on any of those reviews.

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02:15:38 Commissioner Carlson, Mr. Baker, and Ms. Zackery discussed the applicant putting up a "No Outlet" sign on Cardinal Oaks Drive. Commissioner Lewis said there appears to be a sign there already (see recording for detailed discussion.)

02:18:10 In response to an earlier question from Commissioner Mims, Julia Williams, Planning & Design Manager, said the C-N zoning district does not allow for liquor stores but does allow for liquor sales in conjunction with a "sundries" shop (convenience store) and also allows for alcohol sales in conjunction with a restaurant. However, a binding element prohibiting alcohol sales would cover all of those circumstances. Smoke shops are not permitted in C-N.

02:19:55 In response to a question from Commissioner Brown, Ms. St. Germain confirmed that a binding element regarding the landscape plan is binding element #4C in the staff report.

02:20:20 In response to a question from Commissioner Clare, the Commission decided that binding element #9 (in the staff report) shall read as follows:

Hours of operation shall be limited to 8:00 AM to 10:00 PM. No deliveries shall take place outside these hours.

02:21:32 Commissioner Mims noted that the current "No Outlet" sign on Cardinal Oaks is not visible until after a driver has turned onto Cardinal Oaks.

02:22:00 In response to a question from Commissioner Clare, Ms. St. Germain pointed out the location of the cardboard storage unit on the site plan (see recording.)

02:23:09 In response to questions from Commissioner Mims, Ms. St. Germain said she had proposed binding element language regarding the sale of alcoholic beverages and also the fence, which she will submit to the Commissioners should they choose to approve the development plan.

02:23:35 Ms. Williams, Ms. St. Germain, and the Commissioners discussed the types and locations of proposed trees along Cardinal Oaks Drive (see recording for detailed discussion.)

02:30:02 Ms. Zackery said the black fence that is currently along Cardinal Oaks is on the Cardinal Oaks property, not the applicant's. She listed the trees on the Cardinal Oaks property that are along the applicant's frontage. She said there is 45-50 feet between the sidewalk the applicant is required to install and the proposed building, so the applicant does have enough room to add a few more trees. Commissioner Mims

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suggested eight Type B or C flowering ornamental trees (see recording for detailed discussion.)

Deliberations:

02:33:44 Commissioners' deliberation (see recording for detailed discussion.)

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.

Change in zoning from R-6 Single Family Residential to C-N Neighborhood Commercial

02:37:45 On a motion by Commissioner Brown, seconded by Commissioner Carlson, the following resolution, based on the Standard of Review and Staff Analysis and evidence and testimony heard today, was adopted:

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Community Form: Goal 1 because there are other commercially-zoned parcels nearby. C-N permits neighborhood-serving goods and services, and the lot is on a corner; the site is located on St. Andrews Church Road, a minor arterial at this location; the proposal is not for industrial zoning; the proposed zoning district would not permit hazardous uses. Uses with air, noise and light emissions will have to comply with LMCO and LDC restrictions; the proposed zoning district would not permit uses with noxious odors, particulates and emissions; the site is located on St. Andrews Church Road, a minor arterial at this location; the proposed zoning district permits lower- intensity commercial uses, which are less likely to create noise impacts; and the proposed zoning district would not permit industries that handle hazardous or flammable materials or are similar to junkyards, landfills or quarries; and

WHEREAS, the Commission further finds that the proposal meets Community Form: Goal 2 because the proposal would expand an existing activity center. The proposed district would permit design that is compatible with the desired form and adjacent uses, and existing and planned infrastructure; the site has appropriate access and connectivity. St. Andrews Church Road is a minor arterial at this location; the site is located near an existing activity center and other commercial uses are located nearby;

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the proposed zoning district would encourage more compact development pattern; the proposed C-N zoning district permits a mixture of compatible land uses in an existing center; the proposal would permit mixed commercial and residential uses; the proposal would permit construction of a new commercial structure; the proposal does not include any underutilized parking lots; and the placement, design and scale of C-N development is compatible with nearby residences; and

WHEREAS, the Commission further finds that the proposal meets Community Form: Goal 3 because no natural features are evident on the site; no wet or highly permeable soils, or severe, steep or unstable slopes are evident on the site; the site is not located in the Ohio River Corridor; and the site is not located in a flood-prone area; and

WHEREAS, the Commission further finds that the proposal meets Community Form: Goal 4 because no historic assets are evident on the site; and no distinctive cultural features are evident on the site; and

WHEREAS, the Commission further finds that the proposal meets Mobility: Goal 1 because the site is located near an existing activity center; and

WHEREAS, the Commission further finds that the proposal meets Mobility: Goal 2 because access to the site is via St. Andrews Church Road, a minor arterial at this location; and

WHEREAS, the Commission further finds that the proposal meets Mobility: Goal 3 because C-N would permit retail uses and would encourage a mix of complementary neighborhood serving businesses and services; the site is easily accessible by car and bicycle. Access by pedestrians and people with disabilities would be improved by the development. More development in this area may attract future transit; the proposed zoning district would permit a mixed-use development near an existing activity center; and Transportation Planning has approved the proposal; and

WHEREAS, the Commission further finds that the proposal meets Community Facilities: Goal 2 because the relevant utilities have approved the proposal; Louisville Water Company has approved the proposal; and MSD has approved the proposal; and

WHEREAS, the Commission further finds that the proposal meets Economic Development: Goal 1 because the proposal is not for industrial zoning; the site is located on a minor arterial road; the proposal is not for industrial zoning. The site is not located near the airport or the Ohio River; and the proposal is not for industrial zoning; and

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WHEREAS, the Commission further finds that the proposal meets Livability: Goal 1 because no karst terrain is evident on the site; and the site is not located in the regulatory floodplain; and

WHEREAS, the Commission further finds that the proposal meets Housing: Goal 1 because the proposed zoning district would promote aging in place by providing neighborhood- serving small commercial near existing housing; and

WHEREAS, the Commission further finds that the proposal meets Housing: Goal 2 because the proposal would permit inter-generational mixed-income and mixed-use development; and the proposal is not for housing. C-N zoning would permit neighborhood-serving goods and services in proximity to existing housing; and

WHEREAS, the Commission further finds that the proposal meets Housing: Goal 3 because no existing residents will be displaced by the proposal; and the proposed zoning district would permit innovative methods of housing; now, therefore be it

RESOLVED, the Louisville Metro Planning Commission does hereby **RECOMMEND** to the Louisville Metro Council that the requested change in zoning from R-6 Single Family Residential to C-N Neighborhood Commercial on property described in the attached legal description be **APPROVED**.

The vote was as follows:

YES: Commissioners Cheek, Carlson, Pennix, Mims, Brown, Howard, Clare, and Lewis.

ABSENT: Commissioners Clare and Fischer.

Waivers:

Waiver #1: from 10.2.4.B.3 to permit an easement to overlap a required Landscape Buffer Area by more than 50% (22-WAIVER-0192)

Waiver #2: from 5.6.1.C.1 to permit a façade facing a street to be comprised of less than 50% clear windows and doors (22-WAIVER-0193)

02:38:32 On a motion by Commissioner Brown, seconded by Commissioner Carlson, the following resolution, based on the Standard of Review and Staff Analysis and evidence and testimony heard today, was adopted:

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(Waiver #1) WHEREAS, the Louisville Metro Planning Commission finds that the waiver will not adversely affect adjacent property owners as the overlap will still permit the required plantings in the areas affected; and

WHEREAS, the Commission further finds that the waiver will not violate specific guidelines of Plan 2040 as Plan 2040 encourages appropriate buffering and transitions between uses that are significantly different in density or intensity. The required plantings can still be provided in the VUA LBA affected by one overlap. The required plantings can also be provided in the property perimeter LBA affected by the other overlap; and

WHEREAS, the Commission further finds that the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant as moving the parking lot would not affect the overlaps, as the easements are already in place; and

WHEREAS, the Commission further finds that 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 because the easements are already in place and cannot be moved; and

(Waiver #2) WHEREAS, the Commission further finds that the waiver will not adversely affect adjacent property owners as building will appear to have windows; and

WHEREAS, the Commission further finds that the waiver will not violate specific guidelines of Plan 2040 as Plan 2040 does not address the design of building facades; and

WHEREAS, the Commission further finds that the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant as providing the required clear windows would afford views into rear rooms rather than display areas for goods; and

WHEREAS, the Commission further finds that 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 because allowing views into the areas where goods are displayed would require redesigning the building; now, therefore be it

RESOLVED, the Louisville Metro Planning Commission does hereby **APPROVE** the requested **Waiver #1** from 10.2.4.B.3 to permit an easement to overlap a required Landscape Buffer Area by more than 50% (22-WAIVER-0192); **AND** the requested

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Waiver #2 from 5.6.1.C.1 to permit a façade facing a street to be comprised of less than 50% clear windows and doors (22-WAIVER-0193).

The vote was as follows:

YES: Commissioners Cheek, Carlson, Pennix, Mims, Brown, Howard, Clare, and Lewis.

ABSENT: Commissioners Sistrunk and Fischer.

Revised Detailed District Development Plan with revised Binding Elements

02:39:28 On a motion by Commissioner Brown, seconded by Commissioner Carlson, the following resolution, based on the Standard of Review and Staff Analysis and evidence and testimony heard today, was adopted:

WHEREAS, the Louisville Metro Planning Commission finds that no natural resources are evident on the site. The site is cleared of tree canopy; and

WHEREAS, the Commission further finds that provisions for safe and efficient vehicular and pedestrian transportation within and around the development and the community has been provided, and Metro Public Works has approved the preliminary development plan; and

WHEREAS, the Commission further finds that no open space provisions are pertinent to the request; and

WHEREAS, the Commission further finds that the Metropolitan Sewer District has approved the preliminary development plan and will ensure the provision 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 Commission further finds that the overall site design is in compliance with existing and planned future development in the area. The design would include small-scale retail along an arterial road; and

WHEREAS, the Commission further finds that the development plan conforms to applicable requirements of the Land Development Code and Plan 2040 with the exception of the requested waivers. The site plan generally complies with the policies and guidelines of the Comprehensive Plan; now, therefore be it

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RESOLVED, the Louisville Metro Planning Commission does hereby **APPROVE** the requested Revised 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.
2. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.
3. 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.
4. 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 Construction Review, Louisville Metro Public Works and the Metropolitan Sewer District.
 - b. Encroachment permits shall be obtained from the Kentucky Transportation Cabinet.
 - 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 certificate of occupancy. Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter. The landscape plan shall include, at a minimum, the landscaping shown at the February 2, 2023 Planning Commission hearing and located in the case file as Exhibit 1.

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- d. A minor subdivision plat or legal instrument shall be recorded to consolidate 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.
- e. The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the February 2, 2023 Planning Commission meeting. A copy of the approved rendering is available in the case file on record in the offices of the Louisville Metro Planning Commission.
5. There shall be no outdoor music (live, piped, radio or amplified) or outdoor entertainment or outdoor PA system audible beyond the property line.
6. No idling of trucks shall take place within 200 feet of residential structures. No overnight idling of trucks shall be permitted on-site.
7. 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.
8. 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.
9. Hours of operation shall be limited to 8:00 AM to 10:00 PM. No deliveries shall take place outside these hours.
10. No sale of alcoholic beverages shall take place on site.
11. The fence shown on Exhibit 1 shall be vinyl or similar material and shall not be made of wood.

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12. Eight (8) Type B or C trees shall be provided adjacent to Cardinal Oaks Drive.
13. The area marked on the development plan as "RACK, DUMPSTER, & RECYCLING ENCLOSURE TO BE SCREENED PER CHAPTER 10" shall be screened as per the Land Development Code requirements for refuse containers.

The vote was as follows:

YES: Commissioners Cheek, Carlson, Pennix, Mims, Brown, Howard, Clare, and Lewis.

ABSENT: Commissioners Sistrunk and Fischer.