

PLANNING COMMISSION MINUTES
July 1, 2021

PUBLIC HEARING

CASE NO. 21-ZONE-0014

Project Name: The Haymarket
Location: 3020 River Road
Owner(s): Riverbend Farms II, LLC
Applicant: Ashbourne Farms
Representative(s): Dinsmore & Shohl, LLP
Jurisdiction: Louisville
Metro Council District: 9 – Bill Hollander
Case Manager: Joel P. Dock, AICP, Planner II

NOTE: COMMISSIONER DANIELS LEFT AT APPROXIMATELY 3:26 PM AND DID NOT VOTE ON THIS CASE.

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 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:

02:39:44 Julia Williams discussed the case summary, standard of review and staff analysis from the staff report.

The following spoke in favor of this request:

Cliff Ashburner, Dinsmore and Shohl, 101 South 5th Street, Louisville, Ky. 40202
Kelli Jones, Sabak, Wilson and Lingo, 608 South 3rd Street, Louisville, Ky. 40202
Ed Krebs, 815 West Market Street, Suite 502, Louisville, Ky. 40202
Steve Porter, 2406 Tucker Station Road, Louisville, Ky. 40299

Summary of testimony of those in favor:

Cliff Ashburner gave a power point presentation explaining the proposal (see recording for detailed presentation).

Kelli Jones discussed the parking along Mockingbird Valley Rd. with some right-of-way dedication as well as some dedication on River Rd. There will be planting of shrubs and trees to soften the view of the site from Mockingbird Valley Rd.

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Ms. Jones discussed the waiver requests, tree canopy, etc. (see recording for detailed presentation).

Mr. Ashburner stated the site is in the flood plain so the applicant can either use the existing buildings or create/build a platform for the building (see recording for detailed presentation).

Ed Krebs said fire sprinklers will be added to the building.

Steve Porter said he represents the Mockingbird Valley Preservation Alliance which is the neighborhood organization, and this property is within the boundaries of that organization's concern (see recording for detailed presentation).

The following spoke in opposition to this request:

Tom Halbleib, Stites and Harbison, 400 West Market Street, Louisville, Ky. 40202

Summary of testimony of those in opposition:

Tom Halbleib is counsel for River Fields. Additional C-1 zoning along this portion of River Rd. is inconsistent with its and the Ky. Dept. of Transportation's vision of a scenic by-way (see recording for detailed presentation).

Rebuttal

Mr. Ashburner said the proposed rezoning complies with Plan 2040 and the Mockingbird Valley Neighborhood Plan. There are no hours of operation set at this time – maybe 7:00 a.m. to 9:00 p.m. in the summertime (see recording for detailed presentation).

Ms. Williams said there is one binding element that may be troublesome – the exclusion of multiple family dwellings could become a fair housing issue. Mr. Ashburner agrees with removing it as a prohibited use. Mr. Porter agrees as well (see recording for detailed presentation).

Deliberation

Planning Commission deliberation.

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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-5 to C-1

On a motion by Commissioner Brown, seconded by Commissioner Carlson, the following resolution based on the Plan 2040 Staff Analysis and testimony heard today was adopted.

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Community Form because, the proposal does not encroach upon a residential area as evidenced by abutting zoning districts, roadways, and the interstate; the proposed district is appropriately located for its intensity adjacent to commercial activity centers and roadways providing access in multiple directions throughout Metro; adverse impacts of traffic will not result. The proposal is in an area of commercial development that is appropriate for expansion at this site; Adverse impacts of noise will not result. The proposal is in an area of commercial development that is appropriate for expansion at this site. The interstate abutting the site producing a large amount of noise; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 2: Community Form because, the proposal is in an area of commercial development that is appropriate for expansion at this site given the abutting zoning districts, roadways, and the interstate. Utilities and improvements to the site will be made as required and needed for the proposal; the proposal is for non-residential development in the Neighborhood form district with access to an arterial roadway and the Louisville Loop; the proposed district results in the reuse of existing non-residential land and structures to encourage a more compact development pattern; the proposal incorporates additional land uses into an area that maintains a variety of uses with access to multiple modes of travel which supports alternative modes of travel and reduction of trips; the proposal provides commercial reuse of non-residential structures; the district is appropriately located adjacent to commercial development and arterial roadways having shared-use pedestrian paths; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 3: Community Form because, development proposals will need to be cognizant of the floodplain regulations and karst potential that overlaps the site to avoid adverse impacts to nearby properties and the environment; MSD preliminary approval has been received to limit the potential for adverse impacts in areas having wet or permeable soils or areas with erosion; MSD preliminary approval

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has been received to minimize negative impacts of development within the floodplain. If Karst features are discovered during site development and that feature will be disturbed, the developer will need to proceed in accordance with LDC 4.9; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 4: Community Form because, this parcel abuts a cultural resource site 15JF90 to the west, which appears to be located at 1039-1041 Zorn Ave. However, maps do not show defined boundaries of this site. If human remains are discovered during the excavation or development of a site, the applicant shall immediately cease excavation activities and notify the Louisville Metro Coroner and the Jefferson County Historic Landmarks Commission; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Mobility because, the proposed district is appropriately located for its intensity adjacent to similar districts. The site is along the path of the Louisville Loop which provides shared-use connectivity to parks and the downtown area; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 2: Mobility because, access to the subject property is via arterial level roadway through areas of similar or higher intensity or density; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 3: Mobility because, a mix of complementary uses is provided. The proposed district is appropriately located for its intensity adjacent to similar districts. The site is along the path of the Louisville Loop which provides shared-use connectivity to parks and the downtown area; to improve mobility, and reduce vehicle miles traveled and con-gestion, encourage a mixture of compatible land uses the proposed district is appropriately located for its intensity adjacent to similar districts. The site is along the path of the Louisville Loop which provides shared-use connectivity to parks and the downtown area; the proposed district is appropriately located for its intensity adjacent to similar districts. The site is along the path of the Louisville Loop which provides shared-use connectivity to parks and the downtown area. While TARC service is not available at this location. TARC service would greatly benefit the use of nearby parks and amenities; all improvements to the sidewalk and transportation network will be made during development of the site; all improvements made necessary by the development will be provided to ensure adequate levels of services and access; all improvements made necessary by the development will be provided to ensure adequate levels of services and access. As the development progresses changes to the network may be needed as the needs of the Louisville Loop may progress in the area; and

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WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 2: Community Facilities because, utilities would appear to be available based on existing development; the area would appear to have adequate levels of water for firefighting purposes. Any improvements required by the local fire district will be incorporated; MSD preliminary approval has been received to ensure adequate means of sewage treatment and disposal to protect public health and to protect water quality; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Livability because, MSD preliminary approval has been received to limit negative impacts to the floodplain and water quality; MSD preliminary approval has been received to limit negative impacts to the integrity of the floodplain and reduce disturbance of water systems.

RESOLVED, that the Louisville Metro Planning Commission does hereby **RECOMMEND** to the Louisville Metro Council the change in zoning from R-5, Single Family Residential to C-1, Commercial on property described in the attached legal description be **APPROVED**.

The vote was as follows:

YES: Commissioners Brown, Carlson, Clare, Howard, Mims and Lewis
NOT PRESENT AND NOT VOTING: Commissioners Daniels, Peterson and Seitz
ABSTAINING: Commissioner Sistrunk

Waivers:

- 1. Waiver of LDC, section 5.6.1.C to not provide 50% clear windows or doors along facades facing the public street**

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

WHEREAS, the waiver will not adversely affect adjacent property owners as the requested waiver does not reduce any elements that are intended to provide transition between uses or reduce potential nuisances upon adjacent property; and

WHEREAS, the waiver will not violate related guidelines of Plan 2040 as Community Form, Goal 1, Policy 4 seeks to ensure new development and redevelopment are compatible with the scale and site design of nearby existing development and with the desired pattern of development within the Form District. Quality design and building

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materials should be promoted to enhance compatibility of development and redevelopment projects. The proposed rendering demonstrates a high level of design and consideration to the character of the area, as well as the desired farm-like aesthetic. Outdoor market areas will be in front of the structure and the structure is setback considerable form the right-of-way; thus, reducing the need to maintain views into this commercial development; and

WHEREAS, the Louisville Metro Planning Commission finds, the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant as the renderings provided meet the needs of the proposed development and do not detract from the overall quality of design expected or existing in the area; and

WHEREAS, the Louisville Metro Planning Commission further finds 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 as a silo, barn-like entryway, and outdoor market areas will be provided which create an attractive and inviting space for the public.

2. Waiver of LDC, section 5.9.2 to omit the vehicular connection between the subject site and the adjacent development

WHEREAS, the waiver will not adversely affect adjacent property owners as each site provides sufficient parking and pedestrian pathways will be provided between the two properties; and

WHEREAS, the waiver will not violate related guidelines of Plan 2040 as Mobility Goal 1, Policy 1. promotes healthy lifestyles and reduce congestion, new development and redevelopment should provide for the movement of pedestrians, bicyclists and transit users, where appropriate. Mobility Goal 3, Policy 20 promote joint access and circulation systems for development sites comprised of more than one building site or lot. Pedestrian circulation between sites will be provided and each site has sufficient parking and access to reduce the need for vehicles passing between the site but to allow for pedestrian interaction; and

WHEREAS, the Louisville Metro Planning Commission finds, the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant as grade changes in the area of potential connection and connection might be limited by the existing conditions on the adjacent site. Pedestrian connection is provided; and

WHEREAS, the Louisville Metro Planning Commission further finds the strict application of the provisions of the regulation would create an unnecessary hardship on the

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applicant as each site has parking facilities and pedestrian connection is being maintained.

3. Waiver of LDC, section 10.2.12 to encroach 5' into the 15' vehicle use area (VUA) landscape buffer areas (LBA) along Mockingbird Valley Road

WHEREAS, the waiver will not adversely affect adjacent property owners as all required plantings and screening will be provided and the request is adjacent to a roadway; and

WHEREAS, the waiver will not violate specific guidelines of Plan 2040. Community form Goal 1, Policy seeks to ensure an appropriate transition between uses that are substantially different in scale and intensity or density of development. The transition may be achieved through methods such as landscaped buffer yards, vegetative berms, compatible building design and materials, height restrictions and setback requirements. Policy 12 calls for the parking, loading and delivery areas located adjacent to residential areas to minimize adverse impacts from noise, lights, and other potential impacts. The encroachment will not reduce the required plantings or screening requirements and will continue to ensure that visual intrusions are minimized and transitions to roadways are provided; and

WHEREAS, the Louisville Metro Planning Commission finds, the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant as the development site was required to dedicate right-of-way; thus, reducing the area that could be used to comply with the landscape requirements; and

WHEREAS, the Louisville Metro Planning Commission further finds the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant as the encroachment will not reduce the required plantings or screening requirements and will continue to ensure that visual intrusions are minimized and transitions to roadways are provided.

4. Waiver of Land Development Code (LDC), section 10.3.5 to encroach 3' into the parkway buffer at an intersection

WHEREAS, the waiver will not adversely affect adjacent property owners as the reduction does not reduce any elements that are intended to provide transition between uses or reduce potential nuisances upon adjacent property, and all screening and planting requirements will be met; and

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WHEREAS, Plan 2040 defines a parkway as roadways with a designation used to protect existing scenic roadways, to ensure a quality visual experience on developing corridors and to improve the visual experience on established roads with area-wide significance. Mobility goals call for development, preservation, and maintenance of an interconnected system of scenic corridors and parkways and encourages the preservation of important cultural resources, landscapes and scenic vistas in the design, maintenance and development of major thoroughfares and parkways. Existing conditions encroach upon the parkway and right-of-way without appropriate screening, consideration for the parkway, or the general safety of users of the parkway. The proposal will greatly improve these conditions and comply with the parkway buffer applicable to the frontage road but not fully with the parkway buffer extension required for intersections on parkways. All planting and screening will be provided as required. A 10' VUA LBA is provided on the remainder of Mockingbird Valley Road; and

WHEREAS, the Louisville Metro Planning Commission finds, the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant as the area of encroachment is necessary to provide the needed width of the drive lane to serve parking in this area; and

WHEREAS, the Louisville Metro Planning Commission further finds the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant as the relief does not violate specific guidelines of Plan 2040, adversely impacts adjacent property owners, and all plantings and screening will be provided.

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** the following waivers: 1. Waiver of LDC, section 5.6.1.C to not provide 50% clear windows or doors along facades facing the public street.; 2. Waiver of LDC, section 5.9.2 to omit the vehicular connection between the subject site and the adjacent development; 3. Waiver of LDC, section 10.2.12 to encroach 5' into the 15' vehicle use area (VUA) landscape buffer areas (LBA) along Mockingbird Valley Road; and 4. Waiver of Land Development Code (LDC), section 10.3.5 to encroach 3' into the parkway buffer at an intersection.

The vote was as follows:

YES: Commissioners Brown, Carlson, Clare, Howard, Mims and Lewis

NOT PRESENT AND NOT VOTING: Commissioners Daniels, Peterson and Seitz

ABSTAINING: Commissioner Sistrunk

Detailed District Development Plan

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

WHEREAS, the conservation of natural resources on the property proposed for development, including: trees and other living vegetation, steep slopes, water courses, flood plains, soils, air quality, scenic views, and historic sites will be provided. All tree canopy required by the Land development code will be provided, MSD preliminary approval has been received to minimize adverse impacts to water courses, and cultural resources will be preserved as needed; and

WHEREAS, provisions for safe and efficient vehicular and pedestrian transportation within and around the development and the community will be provided. Sidewalks and pedestrian connection will be provided in the public right-of-way and connect from the right-of-way to the buildings. Pedestrian connection will also be provided to an adjacent center; and

WHEREAS, large portions of the site will be left open to the sky and used for a market or garden; and

WHEREAS, the Metropolitan Sewer District has approved the preliminary development plan and will ensure the provisions 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 Louisville Metro Planning Commission finds, the proposal is compatible with the overall character of the area and design of the form district. The proposed rendering demonstrates a high level of design and consideration to the character of the area, as well as the desired farm-like aesthetic. Outdoor market areas will be in front of the structure to encourage pedestrian interaction; and

WHEREAS, the Louisville Metro Planning Commission further finds the proposed development plan conforms to the Comprehensive Plan and all relief requested from the Land Development Code appears to be adequately justified.

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

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Planning Commission or the Planning Commission's designee for review and approval; any changes/additions/alterations not so referred shall not be valid.

2. Before any permit (including but not limited to building, parking lot, change of use, site disturbance) is requested:
 - a. The development plan must receive full construction approval from Louisville Metro Construction Review, Louisville Metro Public Works and the Metropolitan Sewer District.
 - b. Encroachment permits must be obtained from the Kentucky Transportation Cabinet, 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. The property shall be consolidated by minor plat or legal instrument as shown on the approved development plan.

3. 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.

4. 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.

5. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.

6. Hours of operation shall be from 7:00 a.m. to 9:00 p.m. The gated entrances shown on the approved Plan shall be opened and remain open during operating hours. The gate along River Road shall be opened from the exterior only. Gates along Mockingbird valley Road shall be opened from the interior only.

7. Pedestrian connection from the subject site to the adjacent center shall be provided prior to occupancy of the subject site.

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8. If human remains are discovered during the excavation or development of the site, the applicant shall immediately cease excavation activities and notify the Louisville Metro Coroner and the Jefferson County Historic Landmarks Commission.

9. The following uses are specifically excluded from the property:

- Animal race tracks
- Athletic facilities
- ATV courses
- Automobile rental agencies or sales
- Automobile parking areas as a principal use
- Automobile service stations
- Boarding and lodging houses and group housing
- Bowling alleys
- Camping areas or RV parks
- Cannabis sales
- Car washes
- Communication towers
- Community service facility
- Consignment sales
- Convents and monasteries
- Country clubs
- Crematories
- Day care centers, day nurseries, nursery schools
- Department stores
- Drug stores or pharmacies
- Dwelling, multiple family (3 or more units per building)
- Extended stay lodging
- Family care home
- Firearms or ammunition sales
- Flea markets
- Funeral homes
- Health club, fitness center
- Health spa
- Heliport
- Homeless shelter
- Hotels and motels
- Ice storage houses
- Kennels, commercial
- Laundries or laundrettes, self-service
- Medical laboratories
- Mobile home park

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Motorcycle sales or rentals
Nursing homes, homes for aged and infirm
Off-premise signs (except for the existing sign)
Outdoor firearms ranges
Package liquor stores
Pawn shop
Pet grooming, training
Pet shop
Radio and television stores
Rehabilitation homes
Religious buildings
Residential care facilities
Restaurants, fast-food
Retail or variety stores that carry a wide variety of inexpensive merchandise, some of it priced at one dollar or less
Short term rentals
Storage pods or trucks, except temporary
Tanning salons
Transitional housing
Variety stores

10. All uses currently permitted in the C-2 zone (but not permitted in C-1) or permitted in industrial zones are specifically excluded from the property.

11. The following uses are permitted only as secondary or ancillary uses to the main use: Clothing sales Furniture sales Groceries Rental businesses

12. The following uses are specifically allowed on the property:

Agricultural uses
Antique shops
Art galleries
Artisan shops
Bakeries
Bed and breakfasts
Bicycle sales and service
Bookstores
Boutique
Catering kitchen/ bakery
Confectionary, ice cream or candy stores
Craft
Design Studio with sales
Drive-through coffee shop

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Dwellings, single-family or two-family
Florist shops
Home occupations
Interior decorating shops
Jewelry stores
Libraries, museums
Nurseries, retail
Offices
Parks, playgrounds, community centers
Photographic shops
Photography studios
Physical fitness instruction
Restaurants, tea rooms and cafes
Stationery stores
Tailor
Veterinary hospital

13. No earthen fill shall be brought to the property to raise the ground level.
14. No new building on the property shall exceed two stories or one floor above the flood elevation at the time of construction.
15. Any newly constructed or reconstructed building(s) shall not exceed the current building(s)' footprint square footage by more than twenty percent.
16. No perimeter fencing shall obstruct the view of the property from River Road or Mockingbird Valley Road.
17. Lighting a. All exterior lighting, whether freestanding or attached to any structure, including lot lights and lighting for any signage, shall be fully shielded, shall utilize flat or hidden lenses, and shall be pointed directly to the ground with the exception of low voltage architectural accent lighting. b. No LED lighting shall have a correlated color temperature (CCT) exceeding 3000 degrees Kelvin. c. No parking lot light fixtures shall be more than sixteen feet high, measured from ground level.
18. Signage
 - a. No lighted signage shall be placed above the first-floor level, except it shall be allowed on a gable over an entrance if fully shielded and pointed directly to the ground and not backlit.
 - b. No changing image or moving signs shall be permitted.
 - c. All freestanding signage shall not exceed six feet in height, measured from ground level, and shall not exceed 60 square feet in area.

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d. The existing outdoor advertising sign may remain on the property, but no additional such signs are allowed

19. Any proposed changes to the binding elements shall be heard at a public hearing before the Planning Commission.

The vote was as follows:

YES: Commissioners Brown, Carlson, Howard, Mims and Lewis

NO: Commissioner Clare

NOT PRESENT AND NOT VOTING: Commissioners Daniels, Peterson and Seitz

ABSTAINING: Commissioner Sistrunk