

PLANNING COMMISSION MINUTES
May 12, 2002

PUBLIC HEARING

CASE NO. 22-ZONE-0009

Request: Change in zoning from M-2 to C-2, with Detailed District Development Plan with Binding Elements, and Waiver
Project Name: 905 E Oak Street Rezoning
Location: 905 E Oak Street
Owner: Joe W Burnett Jr.
Applicant: Joe W Burnett Jr.
Representative: Bardenwerper, Talbott & Roberts
Jurisdiction: Louisville Metro
Council District: 6 – David James
Case Manager: Dante St. Germain, AICP, Planner II
Presented By: Julia Williams, AICP, Planning Supervisor

NOTE: Commissioner Sistrunk left and did not vote on the remaining cases.

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:

03:57:07 Julia Williams discussed the case summary, standard of review and staff analysis from the staff report (see recording for detailed presentation).

The following spoke in favor of this request:

Paul Whitty, Bardenwerper, Talbott and Roberts, 1000 North Hurstbourne Parkway, Louisville, Ky. 40223

Summary of testimony of those in favor:

4:03 Paul Whitty gave a power point presentation. The request is a down-zoning and an adaptive reuse of an existing building that was constructed in the early 1880's. The existing zoning is no longer appropriate and there have been changes of an economic, physical and social nature in the area (see recording for detailed presentation).

Deliberation

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No Planning Commission deliberation.

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 M-2 to C-2

On a motion by Commissioner Carlson, seconded by Commissioner Mims, the following resolution based on the Plan 2040 Staff Analysis and Applicant's testimony was adopted.

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Community Form because, the proposal would not constitute a nonresidential expansion into an existing residential area. The site is already in nonresidential use and is located on a commercial corridor (E Oak Street); the site is located on E Oak Street and Logan Street, which are both transit corridors; the proposal would not permit hazardous uses. Uses with air, noise and light emissions must comply with LMCO and LDC restrictions; the proposed zoning district would not permit uses with noxious odors, particulates and emissions; access to the site is via E Oak Street, a minor arterial, and Logan Street, also a minor arterial; no noise impacts are anticipated. The nearest affected property is developed as a parking lot; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 2: Community Form because, the site is located on a transit corridor and an existing activity center with commercial, institutional and industrial uses; the site has appropriate access and connectivity; the site is within an existing activity center; the proposal would permit a more compact development pattern in an existing activity center; the proposed zoning district would permit a mixture of compatible land uses in an existing activity center; the proposal would permit residential and office uses above retail and other mixed-use multi-story retail buildings; the proposal would re-use an existing commercial building; the proposal does not include underutilized parking lots; the proposal includes appropriate placement, design and scale within an existing activity center by re-using an existing building; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 4: Community Form because, the proposal would re-use an existing structure; the proposal would re-use an existing structure. The existing ghost sign on the southern façade is proposed to be preserved as-is and should be permitted to continue normal deterioration; and

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WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Mobility because, the site is located within an existing activity center along E Oak Street; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 2: Mobility because, traffic to the site is likely to be routed along E Oak Street, a minor arterial; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 3: Mobility because, the proposal would permit a mix of higher density uses in an existing center; the site is accessible by bicycle, car, transit, pedestrians and people with disabilities; the proposal would permit higher density development in an existing activity center; Transportation Planning has approved the proposal; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 2: Community Facilities because, the relevant utilities have approved the proposal; Louisville Water Company has approved the proposal; MSD has approved the proposal; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Economic Development because, the proposal is near the intersection of two minor arterials (Logan Street and E Oak Street); and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Housing because, the proposal would support aging in place as it would provide a mix of commercial uses along an existing commercial corridor in proximity to housing; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 2: Housing because, the proposal would permit mixed-income and mixed-use inter-generational development that is connected to the neighborhood and surrounding area; the site is located on E Oak Street, a multimodal transportation corridor and commercial corridor providing neighborhood goods and services, and Logan Street, a multi-modal transportation corridor; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 3: Housing because, no residents will be displaced by the proposal; the proposal would permit innovative methods of housing.

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RESOLVED, that the Louisville Metro Planning Commission does hereby **RECOMMEND** to the Louisville Metro Council the change in zoning from M-2 Industrial to C-2 Commercial on property described in the attached legal description be **APPROVED**.

The vote was as follows:

YES: Commissioners Carlson, Clare, Daniels, Mims, Price and Howard
NOT PRESENT AND NOT VOTING: Commissioners Brown, Sistrunk and Lewis

Waiver from 10.2.4 to allow structures to encroach into to the required property perimeter Landscape Buffer Area and waive required plantings (22-WAIVER-0031)

On a motion by Commissioner Carlson, seconded by Commissioner Mims, the following resolution based on the Standard of Review and Staff Analysis and Applicant's testimony was adopted.

WHEREAS, the waiver will not adversely affect adjacent property owners as the most affected property is developed as a parking lot and is industrially zoned. The subject property is also unlikely to be affected by the lack of buffering, as the site has been used commercially in the past and has not been negatively impacted; and

WHEREAS, 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 adjacent property is being used in a similar intensity as what would be permitted by the proposed zoning district; 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 subject site is already developed with structures, which are infeasible to be removed to make room for the required landscape buffer area; and

WHEREAS, the Louisville Metro Planning Commission further finds 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 provision of the required landscape buffer area is impossible without removing the structures already on the lot. The principal structure has been in place for more than 100 years.

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** the Waiver from 10.2.4 to allow structures to encroach into to the required property perimeter Landscape Buffer Area and waive required plantings (22-WAIVER-0031).

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The vote was as follows:

YES: Commissioners Carlson, Clare, Daniels, Mims, Price and Howard
NOT PRESENT AND NOT VOTING: Commissioners Brown, Sistrunk and Lewis

Detailed District Development Plan and Binding Elements

On a motion by Commissioner Carlson, seconded by Commissioner Daniels, the following resolution based on the Standard of Review and Staff Analysis and Applicant's testimony was adopted.

WHEREAS, no natural resources are evident on the site. The site is fully developed; and

WHEREAS, 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, no open space provisions are pertinent to the request; and

WHEREAS, 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 Louisville Metro Planning Commission finds, the overall site design is in compliance with existing and planned future development in the area. No new construction is proposed. The structures on the site already exist within their current context and are compatible with the surrounding development; and

WHEREAS, the Louisville Metro Planning Commission further finds the development plan conforms to applicable requirements of the Land Development Code and Plan 2040 with the exception of the requested waiver. The site plan generally complies with the policies and guidelines of the Comprehensive Plan. The site plan would preserve an existing structure which is part of the fabric of the neighborhood.

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

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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. 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.
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. 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.
7. 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

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other parties engaged in development of the site, shall be responsible for compliance with these binding elements.

8. The ghost sign located on the southern façade of the principal structure shall not be enhanced, painted over, removed, or in any way altered or obscured.

The vote was as follows:

YES: Commissioners Carlson, Clare, Daniels, Mims, Price and Howard

NOT PRESENT AND NOT VOTING: Commissioners Brown, Sistrunk and Lewis