

PLANNING COMMISSION MINUTES

February 2, 2023

PUBLIC HEARING

CASE NO. 22-ZONE-0125

Request: Change in zoning from C-1 to C-2, with Revised General District Development Plan and Revisions to Binding Elements and a Detailed District Development Plan with Binding Elements

Project Name: Christian Brothers Automotive

Location: 4500 S Hurstbourne Pkwy

Owner: Meijer Stores Limited Partnership

Applicant: Thoroughbred Engineering

Representative: Bardenwerper, Talbott and Roberts

Jurisdiction: Louisville Metro

Council District: 26- Brent Ackerson

Case Manager: Jay Lockett, 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:

00:16:56 Jy Lockett presented the case, showed a Power Point presentation, and responded to questions from the Commissioners (see staff report and recording for detailed presentation.)

The following spoke in support of the request:

John Talbott, Bardenwerper Talbott & Roberts PLLC, 1000 North Hurstbourne Parkway, Louisville, KY 40223

Daniel Rehner. P.O. Box 481, Lexington, KY 40588

Billy Green, Christian Brothers Automotive, 17725 Katy Freeway Suite 200, Houston, TX 77094

Summary of testimony of those in support:

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00:20:33 John Talbott, the applicant's representative, presented the applicant's case and showed a Power Point presentation (see recording for detailed presentation.)

00:26:08 In response to questions from Commissioner Carlson, Mr. Talbott elaborated on what "commercially reasonable efforts" meant in proposed binding element #2 (see recording for detailed conversation.)

00:27:46 Commissioner Mims and Mr. Talbott discussed enforcement concerns regarding the same binding element. Billy Green Jr., an applicant's representative, discussed some aspects of the business operations (no body work; only light engine repair; no junked vehicles, cars being dropped off on a weekend, etc.) See recording for detailed discussion.

00:31:44 In response to questions from Commissioner Cheek, Mr. Green explained more about the Christian Brothers chain of automotive repair shops and their services offered (see recording.)

00:32:47 Mr. Talbott and Commissioner Carlson further discussed language for proposed binding element #2 (see recording.)

00:34:56 Laura Ferguson, legal counsel for the Planning Commission, suggested "Vehicles that remain on-site for longer than 24 hours after check-in shall be stored."

00:38:21 In response to questions from Commissioner Howard, Mr. Green said all environmental regulations are followed when disposing of any wastes (oil, lubricants, etc.)

00:39:26 In response to a question from Commissioner Cheek, Mr. Green said the company does not sell tires. He said that, in the event tires are needed, they call a third-party company who brings the new tires and disposes of the old ones.

The following spoke in opposition to the request:

No one spoke.

Deliberations:

00:40:16 Commissioner Carlson asked if the trash collection binding element on the General Development Plan would also be applicable to the other store/s which share the site. Mr. Lockett said there is no restriction on the hours which is not already in the

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law; therefore any business on the site would have to abide by the same collection hours.

00:41:21 In response to questions from the several Commissioners, Mr. Luckett said that all lots on the General Development Plan have a set of binding elements which apply to all lots, in addition to separate binding elements that can be applied to individual uses (Detailed District Development plans.) See recording for detailed discussion.

Further Applicant Discussion:

00:45:13 Mr. Talbott further discussed the General Development Plan binding elements (see recording.) He asked that additional binding elements not be added to the General Development Plan; just eliminate the one binding element regarding auto service, and make everything else specific to the applicant's lot.

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 C-1 to C-2 commercial

00:46:001 On a motion by Commissioner Brown, seconded by Commissioner Howard, 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 the proposal does not represent an expansion of commercial uses into residential areas, as the site is already commercially zoned and used. Existing buffering and transitions will remain around the subject site; the site is located along a major transportation corridor with public transit available nearby. A wide variety of services, amenities and employment opportunities are available in the vicinity; the proposed zoning does not permit industrial development; no disadvantaged populations are likely to be impacted. The site is already zoned for commercial uses and has existing screening and buffering near residential development; no disadvantaged populations are likely to be impacted. The site is already zoned for commercial uses and has existing screening and buffering near residential development; the subject site will utilize existing infrastructure and will be incorporated within the larger commercial development. The use is unlikely to contribute significant

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additional traffic beyond what is already created by the existing commercial development in the area; existing buffering and screening will be maintained around the larger site; and the proposed zoning does not permit industrial development; and

WHEREAS, the Commission further finds that the proposal meets Community Form: Goal 2 because the development is within an existing commercial activity center; the proposal will create a more compact development pattern by creating a new outlot within the parking lot of an existing retail center; the zoning district allows a wide variety of compatible land uses; the proposed zoning district would permit a variety of office, commercial and residential development including mixed-use development; and the development would create a new outlot within underutilized parking lot in an existing commercial activity center. Existing infrastructure exists to serve the development; and

WHEREAS, the Commission further finds that the proposal meets Community Form: Goal 3 because there are no notable natural features on the subject site; the site does not have unstable soils or steep slopes; the site is not within the Ohio River corridor; and the subject site is not in a flood prone area; and

WHEREAS, the Commission further finds that the proposal meets Community Form: Goal 4 because the subject site does not have any known historic resources; and the subject site does not have any significant cultural or natural resources; and

WHEREAS, the Commission further finds that the proposal meets Mobility: Goal 1 because the development is within an existing marketplace corridor. The zoning district allows a wide variety of compatible land uses that support transit oriented development; and

WHEREAS, the Commission further finds that the proposal meets Mobility: Goal 3 because the development is within an existing commercial activity center. The zoning district allows a wide variety of compatible land uses; the new development provides for connectivity to the existing pedestrian networks on and around the subject site; existing infrastructure exists to serve the subject site; and the new development provides for connectivity to the existing pedestrian networks on and around the subject site. Existing transportation networks in the area are adequate to serve the development; and

WHEREAS, the Commission further finds that the proposal meets Community Facilities: Goal 2 because utility service will be coordinated with utility agencies; water service will be coordinated with Louisville Water Company; and MSD has reviewed and approved the preliminary plan; and

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WHEREAS, the Commission further finds that the proposal meets Economic Development: Goal 1 because the proposed zoning does not permit industrial development; the subject site is within an established commercial activity center along the Major Arterial roadway Hurstbourne Parkway; the proposed zoning does not permit industrial development and is not near the airport or river; and the proposed zoning does not permit industrial development; and

WHEREAS, the Commission further finds that the proposal meets Livability: Goal 1 because the subject site is previously developed and does not have environmental constraints; the subject site is not in the floodplain; and the proposed zoning does not permit hazardous uses and the site is not in the flood plain; and

WHEREAS, the Commission further finds that the proposal meets Housing: Goal 1 because the proposed zoning would allow for a wide variety of housing options and styles. The site is within an established commercial corridor with a variety of uses that support aging in place; and

WHEREAS, the Commission further finds that the proposal meets Housing: Goal 2 because The proposed zoning would allow for a wide variety of housing options and styles. The site is within an established commercial corridor with a variety of uses that support mixed-use and mixed-income development; and the proposed zoning would allow for a wide variety of housing options and styles. The site is within an established commercial corridor with a variety of commercial services and employment opportunities; and

WHEREAS, the Commission further finds that the proposal meets Housing: Goal 3 because no residents would be displaced by the current proposal; and the proposed zoning would allow for a wide variety of housing options and styles. The site is within an established commercial corridor with a variety of uses that support mixed-use and could allow for the provision of fair and affordable 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 C-1 to C-2 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.

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ABSENT: Commissioners Sistrunk and Fischer.

Revised General District Development Plan with Revisions to Binding Elements

00:46:55 On a motion by Commissioner Brown, seconded by Commissioner Howard, 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 site is previously developed and does not contain any natural resources; 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 and the Kentucky Transportation Cabinet have approved the preliminary development plan; and

WHEREAS, the Commissioners further finds that there are no open space requirements associated with this proposal; and

WHEREAS, the Commissioners 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 and land uses are compatible with the existing and future development of the area. The site is adjacent to a major commercial corridor with a variety of services, amenities and employment opportunities and utilizes existing infrastructure; and

WHEREAS, the Commission further finds that the development plan conforms to applicable guidelines and policies of the Comprehensive Plan and to requirements of the Land Development Code. The proposed development would allow for the adaptive re-use of excess parking areas to provide for additional commercial options in an established commercial activity center; now, therefore be it

RESOLVED, the Louisville Metro Planning Commission does hereby **APPROVE** the requested Revised General District Development Plan, **SUBJECT** to the following binding elements:

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Proposed General District Development Plan Binding Elements

1. The development shall be in accordance with the approved district development plan and agreed upon binding elements unless amended pursuant to the Zoning District Regulations. No further development shall occur without prior approval from the Planning Commission except for land uses permitted in the established zoning district.
2. Prior to development (includes clearing and grading) of each site or phase of this project, the applicant, developer, or property owner shall obtain approval of a detailed district development plan in accordance with Chapter 11, Part 6. Each plan shall be in adequate detail and subject to additional binding elements.
3. The following uses, although permitted generally in the C-2 Commercial District, are prohibited uses within the C-2 areas of Stony Brook South: adult entertainment, bookbinding facilities, kennels, monument sales, plumbing and heating shops, sign painting, skating rinks, taverns, theaters, used car sales unless in connection with a new car sales dealership, advertising signs (billboards). The remainder of the C-2 Commercial uses (being those that are not specifically listed in the C-1 District) shall be allowed in the C-2 areas of Stony Brook South, but only to the extent of one-third of the allowable commercial square footage allowed $113 \times 620,670 = 206,890$ square feet).
4. There shall be no direct vehicular access to Watterson Trail from Outlots 3 and 1. Access to Hurstbourne Parkway shall be as shown on the approved Detailed District Development Plan.
5. Signs shall be in accordance with Chapter 8 of the Land Development Code
6. No outdoor advertising signs (billboards), small free-standing (temporary) signs, pennants or banners shall be permitted on the site.
7. There shall be no outdoor storage on the site.
8. Outdoor lighting shall be directed down and away from surrounding residential properties.
9. The western boundary of the site (Outlots 3, 4, 5 and the Meijer lot) shall contain a buffer transition area 40 feet in width which shall contain berming and landscaping as approved by the Commission staff. This 40 foot buffer transition

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area shall remain residentially zoned. Structures shall be no more than one-story, not to exceed 35 feet in height.

10. Within 60 days of the provision of transit service on Hurstbourne Parkway, the owner shall construct two (2) transit shelters in locations to be determined in consultation with the Transit Authority. The Owner / Developer will maintain the transit stops on an as needed basis.
11. 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 Construction Review, Louisville Metro Public Works and the Metropolitan Sewer District.
 - b. Encroachment permits must be obtained from the Kentucky Transportation Cabinet.
 - c. A major subdivision plat creating the lots and roadways as shown on the approved district development plan shall be recorded prior to issuance of any building permits, per Ordinance 195, Series 2005 for the process of dedicating a private road as a public right-of-way:
 - d. 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.
 - e. A reciprocal access and crossover easement agreement in a form acceptable to the Planning Commission legal counsel shall be created between the adjoining property owners and recorded. A copy of the recorded instrument shall be submitted to the Division of Planning and Design Services prior to obtaining a building permit.
 - f. Where sidewalk easements are shown on the approved development plan, sidewalk easement agreements in forms acceptable to the Planning Commission legal counsel shall be reviewed and approved in consultation with the Louisville Metro Department of Public Works and recorded with the record subdivision plat. A copy of the recorded instrument shall be submitted to the Division of Planning and Design Services.

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12. A certificate of occupancy must be received from the appropriate code enforcement office 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.
13. The property owner/developer shall provide copies of these binding elements to tenants, contractors and other parties engaged in development of this project, and shall inform them of the content of these binding elements. Further, the property owner/developer shall require contractors to similarly notify all of their sub-contractors whose duties relate to the binding elements. The property owner/developer shall ensure their compliance with the binding elements.
14. All street signs shall be installed by the Developer and shall conform with the Manual on Uniform Traffic Control Devices (MUTCD) requirements. Street signs shall be installed prior to the recording of the subdivision record plat or occupancy of the first residence on the street and shall be in place at the time of any required bond release. The address number shall be displayed on a structure prior to requesting a certificate of occupancy for that structure.
15. Improvements required by KYTC within the Hurstbourne Parkway right-of-way ("J-turn") shall be made prior to allowing any access from adjacent property to the proposed public roadways.

The vote was as follows:

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

ABSENT: Commissioners Sistrunk and Fischer.

Detailed District Development Plan with Binding Elements

00:47:35 On a motion by Commissioner Brown, seconded by Commissioner Howard, the following resolution, based on the Standard of Review and Staff Analysis and evidence and testimony heard today, was adopted:

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WHEREAS, the Louisville Metro Planning Commission finds that the site is previously developed and does not contain any natural resources; 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 and the Kentucky Transportation Cabinet have approved the preliminary development plan; and

WHEREAS, the Commissioners further finds that there are no open space requirements associated with this proposal; and

WHEREAS, the Commissioners 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 and land uses are compatible with the existing and future development of the area. The site is adjacent to a major commercial corridor with a variety of services, amenities and employment opportunities and utilizes existing infrastructure; and

WHEREAS, the Commission further finds that the development plan conforms to applicable guidelines and policies of the Comprehensive Plan and to requirements of the Land Development Code. The proposed development would allow for the adaptive re-use of excess parking areas to provide for additional commercial options in an established commercial activity center; now, therefore be it

RESOLVED, the Louisville Metro Planning Commission does hereby **APPROVE** the requested 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. 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

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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.

3. 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 building permit. Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter.
 - c. A minor subdivision plat or legal instrument shall be recorded creating the lot lines as shown on the development plan. A copy of the recorded instrument shall be submitted to the Division of Planning and Design Services prior to obtaining a building permit.
 - d. A shared parking and reciprocal access and crossover easement agreement in a form acceptable to the Planning Commission legal counsel shall be created between the adjoining property owners and recorded. A copy of the recorded instrument shall be submitted to the Division of Planning and Design Services prior to obtaining a building permit.
 - e. A Tree Preservation Plan in accordance with Chapter 10 of the LDC shall be reviewed and approved prior to obtaining approval for site disturbance.
 - f. Final elevations/renderings shall be submitted for review and approval by Planning Commission staff and shall be substantially similar to the renderings/elevations shown at the Planning Commission public hearing. A copy of the approved rendering shall be available in the case file on record in the offices of the Louisville Metro Planning Commission.
4. A certificate of occupancy must be received from the appropriate code enforcement department prior to occupancy of the structure or land for the

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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.

5. 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.
6. Trash collection shall not occur before 6 AM or later than 10 PM in accordance with the Louisville Metro Noise Ordinance.
7. No junked or inoperable vehicles shall be permitted to be parked on the subject site. Vehicles that are to remain on site for longer than 24 hours after check-in shall be stored overnight within the repair bays.

The vote was as follows:

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

ABSENT: Commissioners Sistrunk and Fischer.