

PLANNING COMMISSION MINUTES
September 16, 2021

PUBLIC HEARING

CASE NO. 21-ZONE-0058

Request: Change in zoning from R-4 to C-2, with Detailed District Development Plan and Binding Elements, and Variances and Waiver

Project Name: Poplar Level Road Contractors Shops

Location: 4636 Poplar Level Road

Owner: High Bridge Development LLC

Applicant: High Bridge Development LLC

Representative: BTM Engineering

Jurisdiction: Louisville Metro

Council District: 2 – Barbara Shanklin

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

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:

02:16:13 Dante St. Germain 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:

Chris Brown, BTM Engineering, 3001 Taylor Springs Drive, Louisville, Ky. 40220

Summary of testimony of those in favor:

Chris Brown gave a power point presentation. The proposal is appropriate for the mixed zoning area. There's no tenant and no hours of operation at this time (see recording for detailed presentation).

Laura Ferguson read the following proposed binding element #8: No power equipment that will cause a noise disturbance will be run between the hours of 10 p.m. and 6 a.m.

Deliberation

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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 R-4 to C-2

On a motion by Commissioner Carlson, seconded by Commissioner Howard, 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 neighborhood is mixed-use and mixed zoning, and the proposal would not constitute a non-residential expansion into an existing residential area; the site is located on Poplar Level Road, a major arterial and transit corridor at this location; the site is not located in a workplace form district, but is located on Poplar Level Road, a major arterial and transit corridor; The proposed zoning district would not permit hazardous uses. Uses with air, noise and light emissions must comply with LDC and LMCO restrictions; the proposed zoning district would not permit uses with noxious odors, particulates or emissions; the site is located on Poplar Level Road, a major arterial at this location; any adverse impacts from noise will be mitigated by the required landscaping; the proposed zoning district would not permit junkyards, landfills or quarries or uses of similar intensity; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 2: Community Form because, the site is located adjacent to an existing workplace form district and the design and density will be compatible with the desired form, adjacent uses and existing and planned infrastructure; The site has appropriate access and connectivity. It is located on Poplar Level Road, a major arterial at this location; the site is located across Poplar Level Road from an existing activity and employment center; the proposed zoning district would permit a more compact pattern of development in an activity center; the proposed zoning district would permit a mixture of compatible land uses; the proposed zoning district would permit residential or office uses above retail and other mixed-use multi-story retail buildings; the proposed zoning district would permit new development with commercial uses; the proposal does not include underutilized parking lots; the proposed zoning district, given the size and shape of the lot, would permit development which is appropriate in design and scale in the Neighborhood form. The site is an appropriate location for C-2 development; and

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WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 3: Community Form 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; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Mobility because, the site is located across Poplar Level Road from an existing activity and employment center. Poplar Level Road is a major arterial and transit corridor; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 2: Mobility because, access to the site is via Poplar Level Road, a major arterial at this location; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 3: Mobility because, the site is easily accessible by bicycle, car, transit, pedestrians and people with disabilities. The proposal would create an employment center adjacent to existing housing; the site is located on a transit corridor; 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 site is located adjacent to existing industrial zoning and uses; the site is located on a major arterial street, Poplar Level Road; 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 by permitting commercial uses close to housing; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 2: Housing because, the proposal would encourage intergenerational mixed-income and mixed-use development by permitting commercial development close to housing; the proposal would permit amenities providing neighborhood goods and services close to existing housing; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 3: Housing because, no existing residents will be

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displaced by the proposal; the proposed zoning district would permit innovative methods of housing.

RESOLVED, that the Louisville Metro Planning Commission does hereby **RECOMMEND** to the Louisville Metro Council the change in zoning from R-4, Single Family to C-2, Commercial on property described in the attached legal description be **APPROVED**.

The vote was as follows:

YES: Commissioners Brown, Carlson, Clare, Howard, Mims, Peterson, Seitz, Sistrunk and Lewis

NOT PRESENT AND NOT VOTING: Commissioner Daniels

Waiver from Table 10.2.3 to encroach into the required property perimeter Landscape Buffer Area (LBA) by 25' on the west and east property lines (21-WAIVER-0082)

On a motion by Commissioner Carlson, seconded by Commissioner Peterson, 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 encroachment into the required LBA on either side of the lot largely has no impact on the adjacent sites, as there is an access road on the west side and an undeveloped lot on most of the eastern side, with only a small portion of developed multi-family affected by the encroachment; and

WHEREAS, the waiver will not violate specific guidelines of Plan 2040 as Plan 2040 encourages appropriate transitions between uses which are significantly different in intensity or density. The appropriate transition will be 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 encroachment is needed in order to make a relatively narrow lot buildable; 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 by requiring a deep setback which would make the lot almost unbuildable.

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RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** a Waiver from Table 10.2.3 to encroach into the required property perimeter Landscape Buffer Area (LBA) by 25' on the west and east property lines (21-WAIVER-0082).

The vote was as follows:

YES: Commissioners Brown, Carlson, Clare, Howard, Mims, Peterson, Seitz, Sistrunk and Lewis

NOT PRESENT AND NOT VOTING: Commissioner Daniels

Variance #1: from Table 5.3.2 to encroach into the required setback to residential uses, without loading, on the west side property line (required 30', requested 10', variance of 20') (21- VARIANCE-0087)

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

WHEREAS, the requested variance will not adversely affect the public health, safety or welfare as the encroachment into the required setback will not have a public impact; and

WHEREAS, the requested variance will not alter the essential character of the general vicinity as the encroachment will not generally be visible from the public right-of-way; and

WHEREAS, the requested variance will not cause a hazard or nuisance to the public as the encroachment will not impact sight lines, and the building will be constructed to building code; and

WHEREAS, the requested variance will not allow an unreasonable circumvention of the zoning regulations as the proposed setback is against an access road leading to multi-family development, but not against the multi-family development itself; and

WHEREAS, the requested variance arises from special circumstances which do not generally apply to land in the general vicinity or the same zone because the lot is irregular in shape and narrow enough that if the applicant were to comply with the setbacks, the lot would be almost unbuildable; and

WHEREAS, the Louisville Metro Planning Commission finds, the strict application of the provisions of the regulation may deprive the applicant of the reasonable use of the land

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or create an unnecessary hardship on the applicant by requiring a significant setback to an access road, which would make the lot nearly unbuildable; and

WHEREAS, the Louisville Metro Planning Commission further finds the circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought as the applicant is requesting the variance and has not begun construction.

Variance #2: from Table 5.3.2 to encroach into the required setback to residential uses, with loading, on the east side property line (required 50', requested 10', variance of 40') (21- VARIANCE-0087)

WHEREAS, the requested variance will not adversely affect the public health, safety or welfare as the encroachment into the required setback will not have a public impact; and

WHEREAS, the requested variance will not alter the essential character of the general vicinity as the encroachment will not generally be visible from the public right-of-way; and

WHEREAS, the requested variance will not cause a hazard or nuisance to the public as the encroachment will not impact sight lines, and the building will be constructed to building code; and

WHEREAS, the requested variance will not allow an unreasonable circumvention of the zoning regulations as the proposed setback will mainly be against an undeveloped lot with only a small portion of the setback required against developed multi-family; and

WHEREAS, the requested variance arises from special circumstances which do not generally apply to land in the general vicinity or the same zone because the lot is irregular in shape and narrow enough that if the applicant were to comply with the setbacks, the lot would be almost unbuildable; and

WHEREAS, the Louisville Metro Planning Commission finds, the strict application of the provisions of the regulation may deprive the applicant of the reasonable use of the land or create an unnecessary hardship on the applicant by requiring a significant setback to an undeveloped lot, which would make the lot nearly unbuildable; and

WHEREAS, the Louisville Metro Planning Commission further finds the circumstances are not the result of actions of the applicant taken subsequent to the adoption of the

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zoning regulation from which relief is sought as the applicant is requesting the variance and has not begun construction.

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** Variance #1 from Table 5.3.2 to encroach into the required setback to residential uses, without loading, on the west side property line (required 30', requested 10', variance of 20') (21- VARIANCE-0087) and Variance #2 from Table 5.3.2 to encroach into the required setback to residential uses, with loading, on the east side property line (required 50', requested 10', variance of 40') (21- VARIANCE-0087).

The vote was as follows:

YES: Commissioners Brown, Carlson, Clare, Howard, Mims, Peterson, Seitz, Sistrunk and Lewis

NOT PRESENT AND NOT VOTING: Commissioner Daniels

Detailed District Development Plan and Binding Elements

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

WHEREAS, tree canopy will be provided on the site. No other natural resources are evident on the site; 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.

WHEREAS, no open space requirements 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 compatible with existing and projected future development of the area. The site will be developed at an appropriate intensity and scale for the form district and the area; and

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WHEREAS, the Louisville Metro Planning Commission further finds the development plan conforms to applicable guidelines and policies of the Land Development Code, with the exception of the requested waiver and variances, and conforms with the Comprehensive Plan.

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 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.
 - c. A Tree Preservation Plan in accordance with Chapter 10 of the LDC shall be reviewed and approved prior to obtaining approval for site disturbance.
 - d. Final elevations/renderings shall be submitted for review and approval by Planning Commission staff. A copy of the approved rendering shall be available in the case file on record in the offices of the Louisville Metro Planning Commission.

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

8. No power equipment that will cause a noise disturbance will be run between the hours of 10 p.m. and 6 a.m

The vote was as follows:

YES: Commissioners Brown, Carlson, Clare, Howard, Mims, Peterson, Seitz, Sistrunk and Lewis

NOT PRESENT AND NOT VOTING: Commissioner Daniels