

**PLANNING COMMISSION MINUTES  
MARCH 29, 2018**

**PUBLIC HEARING**

**CASE NUMBER 17ZONE1070**

Request:	R-7 to C-2
Project Name:	Gas and Convenience Store
Location:	4949 Terry Road
Owner:	Gilbert & Dorothy Mettling
Applicant:	Axis Investments, LLC
Representative:	Cliff Ashburner, Dinsmore & Shohl, LLP
Jurisdiction:	Louisville Metro
Council District:	1 – Jessica Green
Case Manager:	Laura L. Mattingly, 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. (The staff report is part of the case file maintained in Planning and Design Services offices, 444 S. 5th Street.)

**Agency Testimony:**

**01:59:45** Laura Mattingly discussed the case summary, standard of review and staff analysis from the staff report, noting that KYTC will need to approve the Traffic Impact Study prior to the issuance of an Encroachment Permit.

**The following spoke in favor of this request:**

Cliff Ashburner, 101 S 5<sup>th</sup> Street, Suite 2500, Louisville, KY40207

**Summary of testimony of those in favor:**

**02:08:10** Cliff Ashburner summarized the applicant's proposal and showed a presentation. He responded to questions from the Commissioners.

**The following spoke in opposition to this request:**

No one spoke.

**Deliberation:**

**02:13:21** The Commissioners concur that the proposal is justified.

**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**

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**02:14:50** On a motion by Commissioner Howard, seconded by Commissioner Carlson, the following resolution, based on the Cornerstone 2020 Checklist and the applicant's presentation, was adopted:

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets the Community Form guideline because this proposal is located within a small commercially zoned area along Cane Run Road and is appropriately scaled to serve the neighborhood. The proposal is located at the intersection of a major arterial and a minor arterial, and

**WHEREAS**, the Commission further finds that the proposal meets the Centers guideline because the proposal has sufficient population to support it, as it is surrounded by single family subdivisions as well as multi-family housing. The proposal utilizes the entire site and is cost effective due to existing infrastructure. The proposed development is commercial in nature but there are multi-family and single family developments in close proximity. The proposal does not share entrances, but this is not appropriate at this location as the only shared property line is with a residential use. The proposal will be utilizing existing utilities. The existing 5' public sidewalks will be maintained and new sidewalks added where none currently exist along the frontage, and

**WHEREAS**, the Commission further finds that the proposal meets the Compatibility guideline because building materials appear to be compatible with surrounding development. This proposal is not a non-residential expansion into a residential area, as most of the parcel is already C-2. The proposal is providing the required screening and setbacks for adjacent less intense uses. A note has been placed on the plan regarding lighting and all lighting will be required to adhere to Land Development Code standards. The proposal is located on a major arterial, near a small area of other commercial zones. The 25' buffer adjacent to the R-7 property to the west has been provided and all setbacks and height restrictions have been adhered to. Setbacks, lot dimensions and building height appear to be compatible and appropriate. The parking is located away from the R-7 property to the north, although the drive thru is adjacent to the apartments. Buffers have been provided. The proposed site design appears to be the most compatible layout for this use. The proposal will be utilizing the existing pole sign on the east side of the site, and

**WHEREAS**, the Commission further finds that the proposal meets the Open Space guideline because this site has been previously developed and there does not appear to be any natural features. The proposal will be adding 12,109 SF of tree canopy, and

**WHEREAS**, the Commission further finds that the proposal meets the Natural Areas and Scenic and Historic Resources guideline because this site has been previously developed and this proposal will increase the natural features on site by adding tree canopy that currently does not exist. This site does not contain any hydric soils or steep slopes, and

**WHEREAS**, the Commission further finds that the proposal meets the Economic Growth and Sustainability guideline because this proposal is located on an arterial road near other commercial zones, and

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**WHEREAS**, the Commission further finds that the proposal meets the Circulation guideline because the proposal is using an existing roadway and access is acceptable. Where sidewalks do not currently exist, the applicant has proposed them and a TARC line runs along both Cane Run Road and Terry Road. A TARC boarding area is proposed. Transportation has stated that right of way dedication is not needed in this location. Parking is adequate for the proposed uses. The adjacent site, while partially zoned C-1, is a multi-family residential use, and

**WHEREAS**, the Commission further finds that the proposal meets the Transportation Facility Design guideline because access is from Cane Run Road a major arterial, as well as Terry Road. The proposal is using the existing roadway network, and

**WHEREAS**, the Commission further finds that the proposal meets the Bicycle, Pedestrian and Transit guideline because location is appropriate and sidewalks along the site's frontage will be completed with this proposal. Pedestrian connections have been shown on the plan and there are several TARC stops along Cane Run Road and Terry Road within walking distance, and

**WHEREAS**, the Commission further finds that the proposal meets the Flooding and Stormwater guideline because MSD has given preliminary approvals for the proposed drainage plans, and

**WHEREAS**, the Commission further finds that the proposal meets the Air Quality guideline because APCD has no issues with the proposal, and

**WHEREAS**, the Commission further finds that the proposal meets the Infrastructure guideline because this area is developed and served by utilities, and

**WHEREAS**, the Commission further finds that the subject property is within the Neighborhood Form District at the intersection of Terry Road, a collector road, and Cane Run Road, an arterial road. The proposed redevelopment complies with the intent of Guideline 1 because it will allow a neighborhood serving commercial use at an appropriate location, and

**WHEREAS**, the Commission further finds that the proposed redevelopment complies with the intent and applicable Policies of Guideline 2- Centers. The subject property is almost entirely commercially zoned and used, with a small triangle of residentially zoned property at the southern end. The property is surrounded by other commercial and multifamily properties in this small center along Cane Run Road, and

**WHEREAS**, the Commission further finds that the proposed redevelopment complies with the intent of and applicable Policies of Guideline 3- Compatibility. The proposed redevelopment will bring a well-designed fuel station to the subject property, along with a drive through restaurant as part of the main building. The proposed redevelopment should not have an adverse traffic, noise or odor impact compared to the existing commercial uses on the subject property. The applicant will provide required buffering adjacent to the apartments to the west of the subject property, along with a sidewalk connection directly to that property, and

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**WHEREAS**, the Commission further finds that the proposed redevelopment complies with the intent and applicable Policies of Guideline 7- Circulation. The proposed redevelopment will have access on both Terry Road and Cane Run Road. Access to Cane Run Road will be evaluated by the Kentucky Department of Transportation. The Applicant is providing a pedestrian connection directly to the property to the west of the subject property. There is no shared vehicular access to adjoining properties existing and none is proposed, and

**WHEREAS**, the Commission further finds that the proposed redevelopment complies with the intent and applicable Policies of Guideline 9- Bicycle, Pedestrian and Transit. The proposed redevelopment will connect a sidewalk to the adjacent multifamily property and will provide sidewalks around the site as required by the LDC. Bike parking will be provided on site, and transit service is available on Terry Road, and

**WHEREAS**, the Commission further finds that the proposed redevelopment complies with the intent and applicable Policies of Guidelines 10 and 11. The Applicant will incorporate storm water design measures consistent with MSD requirements for water quantity and quality, and

**WHEREAS**, the Commission further finds that the proposed redevelopment complies with the intent of Guideline 12. The proposed redevelopment will provide sidewalks and bike parking and is adjacent to a transit corridor, mitigating the impact of the proposed fueling station use, and

**WHEREAS**, the Commission further finds that the proposed redevelopment complies with the intent of Guideline 13. The proposal will provide landscaping in keeping with the LDC, improving the appearance of the site; now, therefore be it

**RESOLVED**, that the Louisville Metro Planning Commission does hereby **RECOMMEND** to the Louisville Metro Council that the change in zoning from R-7 Multi-Family Residential to C-2 Commercial on 0.2 acres of property described in the attached legal description be **APPROVED**.

**The vote was as follows:**

**YES: Brown, Howard, Carlson, Ferguson, Tomes, and Jarboe**

**NOT PRESENT: Lindsey, Lewis, Smith, and Peterson**

**Variance and Waiver**

**02:15:50** On a motion by Commissioner Howard, seconded by Commissioner Carlson, the following resolution, based on the Standard of Review and Staff Analysis, was adopted:

**Variance from Section 5.3.1 to allow the proposed structure to be setback more than 80' from the front and street side property lines**

**WHEREAS**, the Louisville Metro Planning Commission finds that

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**WHEREAS**, the Commission further finds that the requested variance will not adversely affect the public health, safety or welfare as the required setbacks have been provided adjacent to residential and the sight lines from the public right of way are unaffected by the proposed front and street side setbacks, and

**WHEREAS**, the Commission further finds that the requested variance will not alter the essential character of the general vicinity as the proposed site design is similar to existing commercial sites in the area, and

**WHEREAS**, the Commission further finds that the requested variance will not cause a hazard or nuisance to the public as the building will be buffered where it is adjacent to residential and the building location does not affect visibility from public areas, and

**WHEREAS**, the Commission further finds that the requested variance will not allow an unreasonable circumvention of the zoning regulations as the proposed site design is typical for a gas station and all other required setbacks are being met, and

**WHEREAS**, the Commission further finds that the requested variance arises from special circumstances which do not generally apply to land in the general vicinity or the same zone as this site is constrained by its triangular shape and three frontages, and

**WHEREAS**, the Commission further finds that the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant as the site layout would have to be substantially altered from the business's design due the typical layout of parking for gas stations, and

**WHEREAS**, the Commission further finds that the circumstances are the result of action of the applicant taken subsequent to the adoption of the zoning regulations from which relief is sought, and

**Waiver from Section 10.2.10 to allow pavement to encroach into the required 15' vehicle use area landscape buffer along the northern property line**

**WHEREAS**, the Commission further finds that the waiver will not adversely affect adjacent property owners as the encroachment is only 2.5 feet and the landscaping that will be provided is a significant improvement over existing conditions where no landscaping is provided, and

**WHEREAS**, the Commission further finds that the waiver will not violate Guideline 3, Compatibility, of Cornerstone 2020, which calls for the protection of roadway corridors and public areas from visual intrusions, for mitigation of parking areas so as not to negatively impact nearby residents and pedestrians, and for screening and buffering of parking areas adjacent to streets. The waiver will not violate Guideline 13, Landscape Character, which calls for the protection of parkways through standards for buffers, landscape treatment, lighting and signs. The purpose of vehicle use area landscape buffer areas is to improve the appearance of vehicular use areas and property abutting public rights-of way. The guidelines are not violated

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as the remaining 12.5 buffer and plantings that are proposed meet the intent of the Comprehensive Plan, 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 12.5' of buffer is all that can be provided after provisions are made for adequate parking and vehicle maneuvering, and

**WHEREAS**, the Commission further finds that the 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 as providing the full 15' buffer would cause issues with meeting other requirements, such as parking and maneuvering on site; now, therefore be it

**RESOLVED**, that the Louisville Metro Planning Commission does hereby **APPROVE (1)** the variance from Section 5.3.1 to allow the proposed structure to be setback more than 80' from the front and street side property lines and **(2)** the waiver from Section 10.2.10 to allow pavement to encroach into the required 15' vehicle use area landscape buffer along the northern property line.

**The vote was as follows:**

**YES: Brown, Howard, Carlson, Ferguson, Tomes, and Jarboe**

**NOT PRESENT: Lindsey, Lewis, Smith, and Peterson**

**Detailed District Development Plan**

**02:17:31** On a motion by Commissioner Howard, seconded by Commissioner Carlson, the following resolution, based on the Standard of Review and Staff Analysis, was adopted:

**WHEREAS**, the Louisville Metro Planning Commission finds that there do not appear to be any environmental constraints or historic resources on the subject site. Tree canopy requirements of the Land Development Code will be provided on the subject site, and

**WHEREAS**, the Commission further finds that the Kentucky Cabinet of Transportation and Department of Public Works will ensure that provisions for safe and efficient vehicular and pedestrian transportation within and around the development and the community will be provided, and

**WHEREAS**, the Commission further finds that open space is not required as part of this plan and no existing open space is impacted by this development, 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

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**WHEREAS**, the Commission further finds that the overall site design and land uses are compatible with the existing and future development of the area. Appropriate landscape buffering and screening will be provided to screen adjacent properties and roadways, and

**WHEREAS**, the Commission further finds that the development plan generally conforms to applicable guidelines and policies of the Comprehensive Plan and to requirements of the Land Development Code; now, therefore be it

**RESOLVED**, that the Louisville Metro Planning Commission does hereby **APPROVE** the detailed district development plan, noting a correction is needed to the plan to show the zoning as R-7, and **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 Develop Louisville, Louisville Metro Public Works and the Metropolitan Sewer District.
  - b. Encroachment permits must be obtained from the Kentucky Department of Transportation, 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. A minor plat or legal instrument shall be recorded consolidating 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.

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5. 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.
6. There shall be no outdoor music (live, piped, radio or amplified) or outdoor entertainment or outdoor PA system permitted on the site.
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. The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the March 29, 2018 Planning Commission meeting.

**The vote was as follows:**

**YES: Brown, Howard, Carlson, Ferguson, Tomes, and Jarboe**

**NOT PRESENT: Lindsey, Lewis, Smith, and Peterson**