

PLANNING COMMISSION MINUTES
February 2, 2017

PUBLIC HEARING

CASE NO. 16ZONE1065

Request: Zone change from C-1 Commercial to C-2 Commercial for expansion of existing restaurant
Project Name: Roosters
Location: 7405 and 7409 Preston Highway
Owner: Robert Gauthier
Applicant: Robert Gauthier
Representative: Bardenwerper, Talbott and Roberts
Jurisdiction: Louisville Metro
Council District: 24 – Madonna Flood
Case Manager: Beth Jones, 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:

02:55:59 Ms. Jones discussed the case summary, standard of review and staff analysis from the staff report.

The following spoke in favor of this request:

Bill Bardenwerper, Bardenwerper, Talbott and Roberts, 1000 North Hurstbourne Parkway, 2nd floor, Louisville, Ky. 40223
Derek Triplett, Land Design and Development, 503 Washburn Avenue, Suite 101, Louisville, Ky. 40222

Summary of testimony of those in favor:

03:02:10 Mr. Bardenwerper gave a power point presentation. The barber shop will be converted into an office, one building will be used for storage but fully enclosed and there will be an outdoor patio with alcohol consumption

03:09:39 Mr. Triplett stated the existing area is all paved. The existing flooding issues will not be made worse by this development.

Deliberation:

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03:10:38 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 C-1 to C-2

On a motion by Commissioner Brown, seconded by Commissioner Howard, the following resolution was adopted.

INTRODUCTION

WHEREAS, this proposal is a very limited one—only for C-2 zoning for a small additional portion of the site (the remainder already zoned C-2) in order for an existing restaurant, BC Roosters Restaurant, to be able to have “alfresco dining”, meaning sale of food and alcoholic beverages in a patio area outdoors; the existing restaurant building will continue operations as normal; the new patio area will be an expansion of the existing restaurant business; this location along Preston Highway, where other commercial uses already exist and where the existing restaurant has long been located and operating, will allow continued growth of the business with minimal impacts; and

GUIDELINE 1 – COMMUNITY FORM

WHEREAS, the Suburban Marketplace Corridor is generally located along major roadways with well-defined beginning and ending points; although not a preferred form of development scheme, the Suburban Marketplace Corridor dominates many of the older major arterials of Metro Louisville, such as Preston Highway where this restaurant is already located and operating; with other Suburban Marketplace Corridors include Dixie Highway, portions of Bardstown Road, portions of Shelbyville Road and so forth; this restaurant does not propose to change anything about the existing Preston Highway Suburban Marketplace Corridor with the rezoning and additional patio area to the rear of the existing building and shielded from Preston Highway; it does not propose to increase the form district length in either direction; rather this site is located right along the heart of the Preston Highway Suburban Marketplace Corridor; it is not a change in use but rather a slightly expanded use, by adding a 2,600 square foot pole barn, a 2,000 square foot covered patio, and a small uncovered patio, to add outdoor seating and an area for sale of food and consumption of alcoholic beverages; the site provides accommodations for transit users, bicyclists, and pedestrians being located on Preston Highway; and

GUIDELINE 2: CENTERS

WHEREAS, the proposed rezoning complies with all of the applicable Intentions and Policies 1, 2,

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3, 4, 5, 7, 8, 10, 11, 12, 13, 14, 15, and 16 of Guideline 2 because Guideline 2 is designed to “encourage mixed land uses organized around compact activity centers that are existing, proposed or planned;” this proposal complies with this Guideline because, although a Suburban Marketplace Corridor, by definition, is not compact but rather is linear, nevertheless even a Suburban Marketplace Corridor conforms with the Centers Guideline because that is the nature of the Suburban Marketplace Corridor—you might say compact in its linear nature with beginning and end points, rather than the preferred new form of Centers which are less linear and more compact; this proposed rezoning will allow an expansion of the existing BC Roosters restaurant that already serves the surrounding area to accommodate growth rather than a new proposed restaurant in a new location, which would be less compact; and WHEREAS, the applicable Policies of this Guideline (1, 2, 3, 4 and 5) all necessarily have to take into account conditions such as this one, a small expansion of the existing restaurant facility along a linear Suburban Marketplace Corridor; if this proposed restaurant was a brand-new one, starting from scratch on a currently residentially zoned property, rather than a site already zoned C-1, it would be forced to conform to an entirely different layout and design; as stated, new activity centers are expected to be compact, to contain focal points, utilize shared parking and so forth; but in a situation such as this, where what is at stake is an expansion of an existing use, as opposed to the continued use of a barbershop business on a portion of the area being rezoned, of an existing commercial structure and unutilized area at the rear of the building, the expectations necessarily have to be less; in this particular case, given the fact that the uses adjoining it are commercial uses (including the residentially zoned property used as a parking lot), and given the fact that this site has been a restaurant site for years, this rezoning request is simply intended to bring more life to this restaurant and allow continued expansion of the business, than might otherwise be the case; an outdoor patio area and outdoor dining will have no negative impacts on any nearby properties at this location, and this business expansion with the attraction of outdoor seating for the sale of food and consumption of alcoholic beverages, will hopefully help and continue to reinvigorate this particular site and this Suburban Marketplace Corridor activity center; and

GUIDELINE 3: COMPATIBILITY

WHEREAS, the proposed subdivision complies with all of the applicable Intents and Policies 1, 2, 3, 5, 6, 7, 8, 9, 11, 12, 21, 22, 23, 24, and 28 of Guideline 3 because this proposal for an outdoor patio, pole barn and outdoor seating at an unutilized portion of the current site and a portion of the site already used as a barber shop, to the rear of the existing restaurant business complies with this Guideline because, as stated, the restaurant use already exists and is simply an expansion thereof; the only thing that is involved in this application is a proposal for outdoor area and use of the existing barber shop building where food and beverage can be served, in order to help ensure a successful restaurant at this location and expansion thereof to meet demand; this particular restaurant, B. C. Roosters, has been operating for some time and is very popular in this particular area of town, which will allow outdoor seating and service of alcohol that is increasingly popular in many areas of Metro Louisville and is anticipated to be at this location as well; and

WHEREAS, the applicable Policies of this Guideline (1, 2, 3, 5, 6, 7, 8, 9, 21, 22, 23 and 28) all suggest ways to mitigate the potentially adverse impacts of a nonresidential use on nearby

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residential properties; this proposal for outdoor seating and sale of food and consumption of alcoholic beverages at an existing restaurant site complies with all of these Policies of this Guideline because there are no residential uses that really might be adversely impacted. The adjoining property is already zoned C-1 and the residentially zoned property is a parking lot for this center with a conditional use permit to allow same; a restaurant with a sizable amount of parking has been located at this location for years; the idea of outdoor patio, pole barn, and seating for the sale of food and the consumption of alcoholic beverages is simply to help reinvigorate this commercial stretch of Suburban Marketplace Corridor and to allow the continued growth of this popular restaurant, as stated, currently operating at this location; further, provisions of the Land Development Code that relate to noise, lighting, signage, landscaping, screening and buffering must all be complied with, unless legitimate reasons are given for waivers therefrom; no waivers or variances are requested with this rezoning; those provisions of the Land Development Code are designed to mitigate the potentially adverse impacts addressed by many of these Policies of this Guideline; and

GUIDELINES 4 AND 5 – OPEN SPACE AND NATURAL AREAS/SCENIC AND HISTORIC RESOURCES

WHEREAS, the proposed subdivision complies with all of the applicable Intents and Policies 1, 2, 3, 4, and 8 of Guideline 4 and Policies 1, 5, and 6 of Guideline 5 because given the location of this property along a busy arterial which serves as the main shopping corridor for this area of south central Metro Louisville, the issues of open space and natural/scenic and historic resources are not really pertinent to this property or this proposal; and

GUIDELINE 6 – ECONOMIC GROWTH AND SUSTAINABILITY

WHEREAS, the proposed subdivision complies with all of the applicable Intents and Policies 1, 2, 3, 5, 6, 7, 8, 9, and 11 of Guideline 6 because this Guideline seeks to “reduce the public and private cost for land development” and to “ensure availability of necessary usable land to facilitate commercial ... development” in Metro Louisville; this proposal for an outdoor area and utilization of an existing barber shop business location at this restaurant site complies with this Guideline because it is intended to breathe new life into older commercial corridor and expansion of business to meet the demands of the current restaurant; and

WHEREAS, the applicable Policies of this Guideline (3, 5, 6 and 11) all pertain to investment in older commercial areas, redevelopment, location of activity centers along arterials and adaptive reuse; as explained, this BC Roosters Restaurant opened in the center and breathed new life therein, and this will allow the continued expansion thereof; if successful here, other B. C. Roosters Restaurants locations in other commercial strips, like this one, in Metro Louisville, may open breathing new life into older existing commercially zoned sites and corridors; and

GUIDELINES 7, 8 AND 9 – CIRCULATION; TRANSPORTATION FACILITY DESIGN; AND BICYCLE, PEDESTRIAN AND TRANSIT

WHEREAS, the proposed subdivision complies with all of the applicable Intents and Policies 1, 2, 3, 4, 5, 6, 8, 9, 10, 12, 13, 16, and 19 of Guideline 7, Policies 1, 2, 5, 7, and 9 of Guideline 8

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and Policies 1, 2, 4, and 5 of Guideline 9 because these Guidelines are intended to “insure a balanced and comprehensive multi-modal transportation network that is coordinated with desired growth and development patterns and provides for the movement of people and goods [that insures] transportation facilities that are safe and efficient, that minimize adverse impacts upon the community and that accommodates, where possible, all modes of travel...; [and that] support[s] transit and non-motorized methods of travel”; this proposal for outdoor seating and consumption of alcoholic beverages complies with these Guidelines because the plan has been designed in accordance with requirements imposed by Metro Works and KTC; access from Preston Highway and internal circulation comply with the requirements of those agencies; the expansion of the current business also meets the intent and goals of these Guidelines as the site is already existing and easily accessible; and

WHEREAS, the applicable Policies (1, 2, 3, 4, 5, 6, 8, 9, 10, 12, 13, 16, and 19) of Guideline 7 all address specific design features that must be addressed on every development plan; this proposal for outdoor dining and consumption of alcoholic beverages complies with these Policies of this Guideline for reasons stated, which include the fact that Land Design and Development (LD&D) has laid out the site in consultation with Metro Works and KTC, utilizing design standards that are commonplace for restaurant uses along busy commercial corridors of this kind with appropriate mitigations measures taken; and

WHEREAS, applicable Policies (1, 2, 5, 7, and 9) of Guideline 8 and Applicable Policies (1, 2, 4, and 5) of Guideline 9 all address alternate means of transportation, such as bicycle, pedestrian or transit; this proposal complies with those Policies of this Guideline because, once again, sidewalks, bicycle accessibility and transit availability are all addressed on the plan as standard design elements; the expansion of the business will allow easier access than an alternate site not located along Preston Highway and easily accessible by transit, bicycle, and pedestrians; and

GUIDELINES 10, 11 AND 12 – FLOODING AND STORMWATER; WATER QUALITY; AND AIR QUALITY

WHEREAS, the proposed subdivision complies with all of the applicable Intents and Policies 1, 2, 3, 5, 6, 7, 8, 9, 10, 11, and 12 of Guideline 10, Policies 1,3, 8, and 9 of Guideline 11 and Policies 1, 2, 3, 5, 6, and 8 of Guideline 12 because Guidelines 10, 11 and 12 requires development “minimize the potential for an impact of flooding and to effectively manage storm water; (2) protect water quality; (and to) minimize, reduce or eliminate ... air pollution ...”; this proposal for an expansion of the existing business and outdoor dining and consumption of alcoholic beverages in an existing restaurant site complies with these guidelines because it is a slightly more intense use of an already existing restaurant with existing parking; the area of the expansion is already impervious surface and won't increase the flooding or stormwater issues; consequently, nothing new is proposed on this property that would exacerbate any existing storm water conditions, contribute to the degradation of water quality or cause greater air pollution. In fact, the quite the contrary i.e., because to the extent that applicable agencies, such as MSD, require mitigation of existing stormwater problems, and once construction occurs, this proposal will be required to satisfy the requirements of MSD storm water management and soil erosion sedimentation control; also, to the extent that this is expansion of an existing site,

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reinvigorating commercial activity in the area should mitigate adverse impacts on air quality that might occur if this was a new restaurant at a new location; utilizing this site along this busy commercial corridor in close proximity to a large residential population will help minimize vehicle miles traveled between places where people live and places where they shop and dine; and

WHEREAS, applicable Policies (1, 2, 3, 5, 6, and 8) of Guideline 12 all suggest ways to protect air quality; this proposal complies with these Policies of this Guideline because it involves expanding an already existing restaurant site where transit exists, where sidewalks are or can be provided and where provisions for bicycle and transit are or can be assured; and

GUIDELINE 13 – LANDSCAPE CHARACTER

WHEREAS, the proposed subdivision complies with all of the applicable Intents and Policies 1, 2, 3, 4, 5, and 6 of Guideline 13 because this Guideline is designed to “protect and enhance landscape character”; this proposal complies with this Guideline and all of the applicable Policies (1, 4, 5 and 6) of this Guideline because the new Land Development Code requires that new land use proposals comply with the various landscape regulations unless, because of the extent of change in the particular land use, all of the provisions thereof do not have to be complied with; no waivers have been requested; and

WHEREAS, for all the reasons explained at LD&T and the Planning Commission public hearing and also in the public hearing exhibit books on the approved detailed district development plan, this application also complies with all other applicable Guidelines and Policies of the Cornerstone 2020 Comprehensive Plan.

RESOLVED, that the Louisville Metro Planning Commission does hereby **RECOMMEND**, to Metro Council, **APPROVAL** of Case No. 16ZONE1065, a change in zoning from C-1 to C-2 Commercial based on the staff report, testimony heard today and the applicant’s finding of facts.

The vote was as follows:

YES: Commissioners Brown, Carlson, Ferguson, Gazaway, Howard, Peterson, Smith, Tomes and Jarboe

NOT PRESENT AND NOT VOTING: Commissioner Lewis

Revised Detailed District Development Plan and Binding Elements

On a motion by Commissioner Brown, seconded by Commissioner Howard, the following resolution was adopted.

WHEREAS, The conservation of natural resources on the property proposed for development, including trees and other living vegetation, steep slopes, water courses,

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flood plains, soils, air quality, scenic views and historic sites. The site includes none of these natural resources; and

WHEREAS, The plan has been reviewed and approved by DPW; and

WHEREAS, The proposed development includes no open space requirements; and

WHEREAS, The proposal has been reviewed and approved by MSD; and

WHEREAS, the Louisville Metro Planning Commission finds, the proposal is consistent with development on adjacent and nearby sites; and

WHEREAS, the Louisville Metro Planning Commission further finds the proposal has been fully reviewed and approved by Louisville Metro Planning and Design Services and the appropriate public agencies and public service providers.

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** Case No. 16ZONE1065, the Detailed District Development Plan and the binding elements on pages 11 and 12 of the staff report based on the staff report and testimony heard today, **SUBJECT** to the following Binding Elements:

Binding Elements:

1. The site shall be maintained in accordance with all applicable sections of the Land Development Code (LDC) and agreed-upon binding elements unless amended pursuant to the LDC. Changes/additions/alterations of any binding element(s) shall be submitted to the Planning Commission or to its designee for review and approval; any changes/additions/alterations not so referred shall not be valid.
2. Notice of a request to amend these binding elements shall be provided in accordance with Planning Commission policies and procedures. The Planning Commission may require a public hearing on any such request.
3. The development shall not exceed 11,027 square feet.
4. 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. All signs shall be in accordance with LDC Chapter 8 sign regulations. No outdoor advertising signs, small freestanding signs, pennants, balloons or banners shall be permitted.
6. There shall be no outdoor music from any source, outdoor entertainment or outdoor PA system usage permitted on the site.
7. All lighting shall comply with the requirements of LDC 4.1.3.
8. The applicant, developer or property owner shall provide a copy of these binding elements to tenants, purchasers, contractors, subcontractors and other parties engaged in development and/or use of this site and shall advise all parties of their content. 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. These binding elements shall run with the land and the owner(s) and occupant(s) of the property shall at all times be responsible for compliance with them.

The vote was as follows:

YES: Commissioners Brown, Carlson, Ferguson, Gazaway, Howard, Peterson, Smith, Tomes and Jarboe

NOT PRESENT AND NOT VOTING: Commissioner Lewis