

**PLANNING COMMISSION MINUTES  
NOVEMBER 17, 2016**

**PUBLIC HEARING**

**CASE NO. 16ZONE1062**

Request: Zoning Change from W-3 to C-M  
Project Name: QSR Automations Inc  
Location: 2700 Buddeke Drive  
Owner: Lee Leet, QSR Automations, Inc  
Applicant: Lee Leet, QSR Automations, Inc  
Representative: Clifford Ashburner, Dinsmore & Shohl, LLP  
Jurisdiction: Louisville Metro  
Council District: 9 – Bill Hollander  
Case Manager: Laura Mattingly, Planner I

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.)

**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.**

**Agency Testimony:**

**00:51:18** Laura Mattingly presented the case and showed a Powerpoint presentation. Ms. Mattingly responded to questions from the Commissioners (see recording for detailed presentation).

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

Cliff Ashburner, 101 S. 5<sup>th</sup> Street, Suite 2500, Louisville, KY 40202  
Meme Sweets Runyon, 455 S. 4<sup>th</sup> Street, Suite 990, Louisville, KY 40202

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

**01:03:44** Cliff Ashburner spoke in favor of the request and showed a Powerpoint presentation. Mr. Ashburner responded to questions from the Commissioners (see recording for detailed presentation).

**01:16:12** Meme Runyon spoke in favor of the request (see recording for detailed presentation).

**01:19:00** Cliff Ashburner responded to questions from the Commissioners (see recording for detailed presentation).

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**The following spoke in opposition of the request:**

No one spoke.

**01:22:10 Commissioners' deliberation**

**01:27:40** Tammy Market, Transportation Planning, spoke in regard to verbiage used on plans where there is an improved road project (see recording for detailed presentation).

**01:29:05** Cliff Ashburner discussed the waiver request and binding elements with the Commissioners (see recording for detailed presentation).

**01:31:23** Laura Mattingly spoke in clarification of Binding Element #20 (see recording for detailed presentation).

**01:31:50** Cliff Ashburner discussed the binding element (see recording for detailed presentation).

**01:32:24** Laura Mattingly responded to a question posed by Legal Counsel, Jon Baker (see recording for detailed presentation).

**01:32:43** Mr. Ashburner discussed the sidewalk waiver request with the Commissioners. Mr. Ashburner asked if it would be possible to suspend consideration of this case until after the next one so he may contact his client (see recording for detailed presentation).

**01:36:19** On a motion by Commissioner Carlson, seconded by Commissioner Howard, the following resolution was adopted:

**RESOLVED**, that the Louisville Metro Planning Commission in Case Number 16ZONE1062, does hereby **SUSPEND CONSIDERATION** of the case until later on the docket to allow the applicant's representative time to contact his client.

**The vote was as follows:**

**Yes: Commissioners Brown, Kirchdorfer, Tomes, Peterson, Howard, Smith, Carlson, Gazaway and Chair Jarboe**

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**Absent: Commissioner Lewis**

**01:37:36 Meeting was recessed**

**01:38:18 Meeting was reconvened**

**NOTE: At this time, the Public Hearing continued with Item #5 on the docket (see page 15 of these Minutes).**

**02:49:46 NOTE: At this time, the Commission concluded Case Number 16ZONE1062, for which deliberations had been suspended earlier in this Public Hearing.**

**02:50:34** Cliff Ashburner stated that, with the understanding that Binding Element 20 would not be added back in, that it remain eliminated, we will withdraw our Sidewalk Waiver. So we'll either build the sidewalk or pay the fee in lieu (see recording for detailed presentation).

**02:50:57** Mr. Ashburner discussed with the Commissioners the verbiage to be included on the plan regarding the public right-of-way (see recording for detailed presentation).

**02:54:06** On a motion by Commissioner Brown, seconded by Commissioner Carlson, the following resolution was adopted:

**Zoning Change from W-3 to C-M**

**WHEREAS**, the Louisville Metro Planning Commission finds that all of the applicable Guidelines and Policies of Cornerstone 2020 and the Comprehensive Plan are being met; now, therefore be it

**RESOLVED**, that the Louisville Metro Planning Commission, in Case Number 16ZONE1062, does hereby **RECOMMEND APPROVAL** to Louisville Metro Council the Change in Zoning from W-3 to C-M, based on the Staff Report and testimony heard today.

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**The vote was as follows:**

**Yes: Commissioners Brown, Kirchdorfer, Tomes, Peterson, Howard, Smith, Carlson, Gazaway and Chair Jarboe  
Not Present: Commissioner Lewis**

**02:55:03** On a motion by Commissioner Brown, seconded by Commissioner Carlson, the following resolution was adopted:

**Detailed District Development Plan and Amendments to Binding Elements**

**WHEREAS**, the Louisville Metro Planning Commission finds that a portion of the north side of the site is located within the FEMA flood plain. The applicant has added the appropriate notes to the plan and will have to receive construction approvals from the Metropolitan Sewer District, and

**WHEREAS**, the Commission further finds that provisions for safe and efficient vehicular and pedestrian transportation within and around the development and the community have been provided through the Kentucky Transportation Cabinet roadway improvements that are planned for spring 2017, and the applicant's proposed pedestrian connection to this new sidewalk, the dedication of right-of-way and current access from Buddeke Drive, and

**WHEREAS**, the Commission further finds that there are no open space requirements pertinent to the current proposal, 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

**WHEREAS**, the Commission further finds that the overall site design and land uses are compatible with the existing and future development of the area, as this proposal is a lower intensity than the current use and improves the quality of the development in 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 conforms to applicable guidelines and policies of the Comprehensive Plan and to requirements of the Land Development Code, with the exception of the requested waiver; and

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**Waiver from 10.2.4.B to allow a utility easement to overlap a Landscape Buffer Area along Buddeke Drive by 100%**

**WHEREAS**, the Louisville Metro Planning Commission finds that The waiver will not adversely affect adjacent property owners as the Landscape Buffer Area is still being provided with all required plantings, and

**WHEREAS**, the Commission further finds that Guideline 3, Policy 9 of Cornerstone 2020 calls for protection of the character of residential areas, roadway corridors and public spaces from visual intrusions and mitigation when appropriate. Guideline 3, Policies 21 and 22 call for appropriate transitions between uses that are substantially different in scale and intensity or density, and mitigation of the impact caused when incompatible developments occur adjacent to one another through the use of landscaped buffer yards, vegetative berms and setback requirements to address issues such as outdoor lighting, lights from automobiles, illuminated signs, loud noise, odors, smoke, automobile exhaust or other noxious smells, dust and dirt, litter, junk, outdoor storage, and visual nuisances. Guideline 3, Policy 24 states that parking, loading and delivery areas located adjacent to residential areas should be designed to minimize impacts from noise, lights and other potential impacts, and that parking and circulation areas adjacent to streets should be screened or buffered. Guideline 13, Policy 4 calls for ensuring appropriate landscape design standards for different land uses within urbanized, suburban, and rural areas. Guideline 13, Policy 6 calls for screening and buffering to mitigate adjacent incompatible uses. The intent of landscape buffer areas is to create suitable transitions where varying forms of development adjoin, to minimize the negative impacts resulting from adjoining incompatible land uses, to decrease storm water runoff volumes and velocities associated with impervious surfaces, and to filter airborne and waterborne pollutants. This intent will be filled as the applicant has proposed the required buffer width and plantings, 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 the unusual 185' width of the utility easement leaves no other place for the LBA that will not have a 100% encroachment of the easement, 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 moving the LBA out of the easement would require a major reconfiguration of the site plan; now, therefore be it

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**RESOLVED**, that the Louisville Metro Planning Commission in Case Number 16ZONE1062 does hereby **APPROVE** the Detailed District Development Plan with the **REVISION** to the sidewalk shown along the River Road frontage to be constructed by the developer, the Amendments to Binding Elements shown on pages 17 and 18 of the Staff Report with the **REVISION** to propose Binding Element Number 12 to state "all proposed landscaping and/or berms shall be maintained in good condition by the applicant or owner" and a **REVISION** to Binding Element Number 9 that would read "upon construction of this development and upon completion of the River Road widening project the owner shall either a) provide a direct connection to River Road in location shown on the approved development plan within six months, or b) provide a pro-rated fee towards the cost of a traffic signal at River Road and River Green Circle to Louisville Metro Public Works within sixty days of request by Metro Public Works not to exceed \$10,000", and Binding Element Number 13 to state "the owner/developer will consult with River Fields in any future landscape projects", and Waiver from 10.2.4.B to allow a utility easement to overlap a Landscape Buffer Area along Buddeke Drive by 100%, based on the Staff Report and testimony heard today, and **SUBJECT** to the following Binding Elements:

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. The development shall not exceed 71,220 square feet of gross floor area.
3. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.
4. 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.
5. Before any permit (including but not limited to building, parking lot, change of use, site disturbance, alteration permit or demolition permit) is requested:

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- a. The development plan must receive full construction approval from Develop Louisville 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 Tree Preservation Plan in accordance with Chapter 10 of the LDC shall be reviewed and approved prior to obtaining approval for site disturbance.
  - d. 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; transmittal of approved plans to the office responsible for permit issuance will occur only after receipt of said instrument.
6. There shall be no outdoor music (live, piped, radio or amplified) or outdoor entertainment or outdoor PA system audible beyond the property line.
  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 November 17, 2016 Planning Commission hearing.
  9. Upon construction of this development, and upon completion of the River Road widening project, the owner shall either a) provide a direct connection to River Road in the location shown on the approved development plan within 6 months, or b) provide a prorated fee toward the cost of a traffic signal at River Road and River Green Circle to Louisville Metro Public Works within 60 days of request by Metro Public Works, not to exceed \$10,000.

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10. In an effort to minimize impact of lighting on adjacent properties, lighting for the parking area shall be directed downward and toward the interior of the parking area.
11. The applicant shall complete all new landscaping ~~within two years of the final approval of this rezoning request, or a Detailed Plan is approved.~~ **prior to issuance of the certificate of occupancy.**
12. All landscaping and/or berms, existing or new, shall be maintained in good condition by the applicant **or owner.**
13. **The owner/developer will consult with River Fields in any future landscaping projects.**

**The vote was as follows:**

**Yes: Commissioners Brown, Kirchdorfer, Tomes, Peterson, Howard, Smith, Carlson, Gazaway and Chair Jarboe**  
**Not Present: Commissioner Lewis**

**02:57:40 NOTE: At this time, the last item on the agenda (#6) was heard (see page 21 of these Minutes).**