

PLANNING COMMISSION MINUTES
June 18, 2020

BUSINESS SESSION

CASE NO. 19-ZONE-0094

Request: Change in zoning from R-5 to C-1, with Detailed District Development Plan and Binding Elements, and associated landscape Waiver
Project Name: Westport Road Retail
Location: 917 & 919 Fountain Avenue, 4700 Westport Road
Owner: Estate of Evelyn Kaelin
Applicant: 4700 Westport LLC
Representative: Dinsmore & Shohl LLC
Jurisdiction: Louisville Metro
Council District: 7 – Paula McCraney
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:

03:14:41 Dante St. Germain presented a Power Point Slide show (see staff report and recording for detailed presentation.) Dante noted the change to C-1 is more intensive zoning district than required for the proposed use and more intensive than appropriate for the location. The Waiver is not adequately justified.

03:22:09 Commissioner Carlson and Dante St. Germain discussed binding element number 8 (see recording for detailed presentation.)

03:23:24 Commissioner Lewis asked if the issues discussed at the previous Land Development and Transportation have been addressed. Dante St. Germain replied the ROW dedication/cross section of the have been provided to Commissioners. Planning Commission can discuss the hours of operation and lighting at today's meeting. Dante St. Germain noted opposition comments regarding traffic, access to the site, and the intensity of the zoning district.

The following spoke in favor of this request:

Cliff Ashburner, 101 South Fifth Street, suite 2500, Louisville, Kentucky, 40202
Kent Gootee, Mindel Scott & Associates, 5151 Jefferson Boulevard, Louisville, KY 40219

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Paul Grisanti, 2401 Merrick Road, Louisville, Kentucky, 40207
Steven Porter, 2406 Tucker Station Road, Louisville, Kentucky, 40299

Summary of testimony of those in favor:

03:25:35 Cliff Ashburner, representing the applicant, presented a Power Point slide show (see recording for detailed presentation.) Mr. Ashburner noted the voiced concerns from the adjacent property owners and the applicant is willing to provide an 8-foot vinyl fence along the adjacent properties with significant landscaping for screening. Cliff stated Kent Gootee can elaborate the proposed screening plan.)

03:36:44 Kent Gootee detailed the proposed screening plan with an 8-foot fence along the length of the property line and landscaping (see recording for detailed presentation.)

03:43:12 Paul Grisanti detailed the reduction of the building by 5 feet, the proposed fence, and landscaping (see recording for detailed presentation.)

03:46:14 Cliff Ashburner continued his Power Point slide show detailing nearby examples of commercial next to residential use properties and the proposed binding elements (see recording for detailed presentation.)

03:51:37 Commissioner Lewis asked if the proposed fence will only go between two adjacent properties. Kent Gootee replied the fence is only between the residential properties along the back of the site. The site will have screening along Fountain Avenue and the unimproved alley. Commissioner Lewis asked for the density of the proposed landscaping versus the density required. Kent Gootee replied they are over the 1.5 multiplier applied to the buffer for the site.

03:53:53 Commissioner Carlson asked for the measurements of the proposed building with respect to the previous buildings on the site. Cliff Ashburner replied he can answer this question in rebuttal. Commissioner Carlson asked how many tenants will be occupying the proposed building. Cliff Ashburner replied Paul Grisanti can answer this question. Paul Grisanti replied they anticipate multiple tenants but would prefer one. Mr. Grisanti noted they cannot allow certain tenants due to parking limits. There can be 4-5 maximum tenants in for the proposed building.

03:57:02 Commissioner Howard asked how far away the proposed fence line will be from Fountain Avenue. Kent Gootee replied the fence will be approx. 31 feet from the edge of pavement and 10 feet from the property line. Dante St.

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Germain stated fences can be 8 feet in the side yard setback.

04:02:15 Steve Porter, representing Ernest Biven and adjacent property owners, asked for clarification if there is an entrance into the rear of the building. Paul Grisanti replied the main entrance will be on Westport Road and four entrances for other tenants will be on the rear portion of the building directly from the parking lot. Cliff Ashburner noted the masonry façade will be provided along the rear of the building. Steve Porter asked if there will be any screening for the residences across from Fountain Avenue. Kent Gootee replied there is a required 3-foot screening between Fountain Avenue and the proposed parking lot (see recording for detailed presentation).

The following spoke in opposition to this request:

Steven Porter, 2406 Tucker Station Road, Louisville, Kentucky, 40299
Brennen Sneed, 826 Fountain Avenue, Louisville, Kentucky, 40222

Summary of testimony of those in opposition:

04:07:16 Steve Porter, representing Earnest Biven and adjacent property owners, stated there are objections to the waiver and the change to commercial zoning. Mr. Porter detailed the zoning history of the site and adjacent properties. Steve noted the removal of the existing residential house and parking locations would affect adjacent properties. He read the neighborhood form district requirements violations (see recording for detailed presentation.)

04:30:58 Brennen Sneed stated concerns with traffic on Fountain Avenue for the parking lot entrance and the historical commercial zoning of the site is no longer needed since the area is residential (see recording for detailed presentation.)

04:33:47 Commissioner Jarboe noted the applicant stated that if there are alcohol sales on the site the tenant would have to comply with CN zoning regulations which does not allow outdoor alcohol sales. Steve Porter replied the CUP in C-1 allows the use of outdoor alcohol sales. Commissioner Jarboe and Steve Porter discussed the CUP regulations for the site (see recording for detailed presentation.) Dante St. Germain read proposed binding element 9.h stating to allow conditional uses allowed in the C-1 commercial zoning district under chapter 4 part 2 that allows outdoor alcohol sales (see recording for detailed presentation.)

04:36:43 Commissioner Howard, Commissioner Jarboe, Steve Porter, Cliff

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Ashburner discussed the CUP process regarding the permission to have outdoor alcohol sales and the conditions for C-1 zoning (see recording for detailed presentation.)

Rebuttal

04:38:36 Cliff Ashburner stated commercial has been on this site has been allowed on this site and detailed similar neighborhood that are a mix of residential and commercial uses in the area (see recording for detailed presentation.) Mr. Ashburner noted the location of the parking is dictated by Land Development Code and Public Works.

04:43:01 Commissioner Jarboe asked Cliff Ashburner if the applicant can clarify the type of tenants would be on site. Cliff Ashburner replied the businesses that would be allowed would not be the sort to be open at night. Paul Grisanti stated realistically there would not be a tenant open past 10 p.m.

04:45:42 Commissioner Seitz asked if there was a way to constrict the site from outdoor alcohol sales onsite. Cliff Ashburner replied that would be part of a CUP but later a binding element can be amended.

04:46:43 Commissioner Carlson stated concerns with binding element 4.f, the lack of side and rear elevations, the type of glazing required, and hours of operation (see recording for detailed presentation.) Commissioner Jarboe and Cliff Ashburner discussed the entrances, façade, and glazing on the proposed building. Paul Grisanti submitted a PDF copy of the south elevations to Julia Williams. Commissioners discussed the hours of operation of 8 a.m. to 10 p.m. (see recording for detailed presentation.)

04:55:07 Commissioners discussed the rear and side elevations (see recording for detailed presentation.)

04:57:33 Commissioners discussed continuing this case based on not having the east side elevation available (see recording for detailed presentation.)

Deliberation

04:58:33 Planning Commission deliberation (see recording for detailed presentation.) Commissioner Peterson and Carlson stated this development would be better suited elsewhere on Westport Road. Commissioner Lewis and Howard expressed concerns with light from traffic and the zoning.

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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-5 to C-1

05:04:53 On a motion by Commissioner Howard, seconded by Commissioner Seitz, the following resolution based on the Plan 2040 Staff Analysis and testimony heard today was adopted:

RESOLVED, that the Louisville Metro Planning Commission does hereby **RECOMMEND** to the Louisville Metro Council the change in zoning from R-5, Single Family Residential to C-1, Commercial on property described in the attached legal description with **NO RECOMMENDATION**.

The vote was as follows:

YES: Commissioners Howard, Seitz, and Jarboe.

NO: Commissioner Peterson, Carlson, and Lewis.

NOT PRESENT AND NOT VOTING: Commissioners Brown, Daniels, and Mims.

05:08:06 The motion was a tie. Travis Fiechter stated Commissioners can continue to discuss this case to come to an agreement and break the tie motion or Commissioners have the option to forward this case with no recommendation (see recording for detailed presentation.)

05:09:04 Commissioner Jarboe stated he is in support of this development with the mitigation of restricted hours of operation to prevent traffic in and out of the site at night.

05:10:29 Commissioner Lewis expressed concerns with traffic lights in and out of the parking lot and would like to hear testimony from other adjacent property owners regarding car traffic lights at night.

05:11:14 Commissioner Howard noted there will be landscaping to help mitigate the amount of light from cars entering and leaving the parking lot.

05:11:51 Commissioner Peterson stated this parcel would work if it was already

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adjacent to a commercial lot and stated concerns with setting a precedent of allowing commercial on this portion of Westport Road.

05:12:58 Commissioner Carlson stated he would prefer this site to be rezoned C-N and to continue this case to explain landscaping mitigation, side elevations, and hours of operation.

05:14:13 Brian Davis read KRS 100.2112G "A tie vote shall be subject to further consideration by the Planning Commission for a period not to exceed 30 days at the end of which if the tie has not been broken the application shall be forwarded to the fiscal court or legislative body without a recommendation of approval or disapproval." Commissioner Jarboe, Brian Davis, and Travis Fiechter discussed bringing this case back to Planning Commission when more information is available or forwarding this case to Louisville Metro Council with no recommendation (see recording for detailed presentation.)

05:16:19 Commissioner Seitz and Peterson discussed the expansion of commercial uses in this area and the difference between C-N and C-1 on this site (see recording for detailed presentation.)

05:18:32 Commissioners and Dante St. Germain discussed the available landscaping on homes across from the development to help mitigate traffic lights (see recording for detailed presentation.)

05:21:15 Commissioners discussed continuing this case or send this case as a tie to Metro Council for a final decision with no recommendation (see recording for detailed presentation.) Commissioners concluded to send this case to Metro Council for final decision and asked the applicant to decide.

05:23:06 Cliff Ashburner stated the applicant would like to forward this case to Metro Council with no recommendation.