

PLANNING COMMISSION MINUTES
July 30, 2018

PUBLIC HEARING

CASE NO. 17ZONE1017

Request: Change in Zoning from R-4 and O-R to C-1 and District
Development Plan with Variance

Project Name: Circle K

Location: 9201, 9205 and 9211 Preston Highway

Owner: Scott Whitaker
9211 Preston Highway
Louisville, Ky. 40229

Applicant: Mac's Convenience Stores, LLC
4080 West Jonathan Moore Pike
Columbus, In. 47201

Representative: Bardenwerper, Talbott & Roberts, PLLC
William B. Bardenwerper
1000 North Hurstbourne Parkway, 2nd floor
Louisville, Ky. 40223

Jurisdiction: Louisville Metro

Council District: 24 - Madonna Flood

Case Manager: Julia Williams RLA AICP Planning Supervisor

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:

00:03:17 Ms. Williams discussed the case summary, standard of review and staff analysis from the staff report.

The following spoke in favor of this request:

John Talbott, Bardenwerper, Talbott and Roberts, PLLC, 1000 North Hurstbourne Parkway, Louisville, Ky. 40223
Jason L. Hall, Prism Engineering, 2309 Watterson Trail, Suite 200, Louisville, Ky. 40299
Norma Davenport, 9115 Preston Highway, Louisville, Ky. 40219

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Summary of testimony of those in favor:

00:11:12 Mr. Talbott gave a power point presentation. The proposal is on Preston and there is mostly commercial zoning. It's also a state highway and very busy. The Circle K will be a corner market and serve the area well. There won't be a lot of new traffic and the proposal will help the existing traffic because there's a Thornton across the street. The proposal will cut down left turns. The area is not residential and no one will want to build a home on that site. The applicant has gone above and beyond to help mitigate concerns from the neighbors.

00:26:11 Mr. Hall stated the previous plan had several waivers and variances but now there's only 1 variance. The applicant is providing more landscape buffer area, numerous trees, screening and a fence. The plan is much better than when the applicant started the project.

00:28:55 Mr. Talbott stated they would like to begin construction for the project before the state starts road improvements.

00:39:13 Commissioner Brown asked questions regarding traffic impact and Ms. Zimmerman answered.

01:21:43 Ms. Davenport lives 2 blocks from the corner. It's not a residential neighborhood area and 90% of the homes are rental. If Manslick is widened, it may help. It needs to be commercial.

The following spoke in opposition to this request:

John Cox, 500 West Jefferson Street, Suite 2100, Louisville, Ky. 40202

Barbara Fischer, 6124 Overhill Drive, Louisville, Ky. 40229

Rhonda Williams, 4709 East Manslick Road, Louisville, Ky. 40219

Jerry Lee Rodgers, 4605 East Manslick Road, Louisville, Ky. 40219

Lee Childress, 1103 Farman Court, Louisville, Ky. 40219

Karen M. Kopp, 4713 East Manslick Road, Louisville, Ky. 40219

Summary of testimony of those in opposition:

00:41:16 Mr. Cox stated he was retained by some of the neighbors. There is still plenty of residential in the area. There are 3 criteria for rezoning that have not been met and the request doesn't comply with Cornerstone 2020. Any future uses should be Office Residential or Multi-family. Landscaping and fencing will not be adequate as the request is not compatible. There is no need for another gas station in this area.

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Mr. Cox submitted a petition, of over 110 signatures of people in opposition (in the area), into the record.

00:59:19 Ms. Fischer stated traffic is bad on Manslick. The neighbors fought Meijer in the past and they have no gas station as a result. A second gas station is not needed as headlights from the Thornton's are intrusive now.

01:02:18 Ms. Rhonda Williams stated E. Manslick is a cut-through and a very busy road. The proposal will negatively affect E. Manslick, not Preston.

Ms. Williams requests the site be used as an office or other low impact use.

01:08:08 Mr. Rogers stated a gas station is not warranted as there are 13 nearby with 3 of those being vacant. They have little or no landscaping (trees). The proposal will devalue the residential homes.

Mr. Rodgers provided a list of 29 people in opposition. Also, traffic is terrible during rush hour on E. Manslick, South Park and Preston Hwy. Mr. Rodgers submitted a traffic count (weekday rush hours) conducted on May 18, 2018. There are sewers on resident's property and there's potential for an explosion.

01:17:28 Mr. Childress stated there needs to be a study on S. Park Rd. traffic.

Mr. Childress stated he's never seen a beautiful gas station and if this one is, it won't be for long.

01:28:00 Ms. Kopp stated the traffic is very upsetting when she transports her grandchild to and from school.

The following spoke neither for nor against the request:

Elaine Massacci, 4606 East Manslick Road, Louisville, Ky. 40219
Paul Ogden, 2103 Glenview Avenue, Louisville, Ky.

Summary of testimony of those neither for nor against:

01:25:38 Ms. Massacci stated there can't be a gas station at Meijer.

01:30:12 Mr. Ogden is a commercial realtor and stated traffic is a major problem but it's up to legislature to find the solution. Also, he compliments the applicant for working on making the plan more compatible.

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Rebuttal

01:32:20 Mr. Talbott stated that traffic is always an issue, but this proposal solves the problem by eliminating left turns. Any other use will bring more traffic. Multi-family won't fit on the corner. There are regulations and standards to regulate gas stations and MSD has approved it. The plan meets the Comprehensive Plan.

Commissioner Brown asked about the hours of operation and the fence. Mr. Talbott said it will 24 hours and the fence will be vinyl.

01:37:39 Commissioner Brown stated Ky. Transportation makes the final decision on what gets permitted but they were looking at restricting full access to Manslick and require a right-in right-out. Also, will there be a restriction on Preston? Ms. Stuber said no.

Deliberation

01:42:37 The commissioners are in agreement that the gas station is appropriate for this site and will help eliminate traffic. It's a low intensity use, residential would not be appropriate and office or multi-family will generate high traffic use. The location will serve the community well and the right-in right-out is a plus.

01:54:29 Commissioner Brown requests adding a condition on the development plan that the Manslick access is restricted to right-in right-out. Mr. Talbott would like to leave it up to Ky. Transportation.

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 and OR to C-1

On a motion by Commissioner Brown, seconded by Commissioner Tomes, the following resolution was adopted based on the staff analysis and testimony heard today.

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Community Form guideline because the proposal is for C-1 which is located at the intersection of a minor arterial (Manslick) and major arterial (Preston). The buffer and setbacks are being provided between the site and the adjacent residentially zoned properties; and

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WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Centers guideline because the proposal will not create a new center but includes new construction and the demolition of existing homes for a commercial use; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Centers guideline because the proposal is surrounded by single family residential subdivisions which could be enough population to support the proposal. The proposal is also located in the vicinity of the Gene Snyder expressway; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Centers guideline because the proposal will not create a new center and does not incorporate into an existing center or corridor. On the other hand, it does offer a service that may reduce trips due to its proximity to single family housing; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Centers guideline because the proposal does not share parking and entrances with adjacent uses because all the adjacent uses are low density residential. The curb cuts have been reduced from 3 to 2. Parking is located close to the building; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Centers guideline because utilities are available to the area; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Centers guideline because all sidewalks and pedestrian connections have been provided; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Compatibility guideline because the proposed building materials match the existing materials found in the area; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Compatibility guideline because the proposal is a non-residential expansion into a residential area and appears to be appropriately mitigating the expansion through compliance with the buffers; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Compatibility guideline because APCD has no issues with the proposal; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Compatibility guideline because Transportation Planning has no issues with the proposal; and

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WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Compatibility guideline because the appropriate notes have been placed on the plan stating the lighting will be in conformance with the Land Development Code; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Compatibility guideline because the site is a higher intensity use than all surrounding property and is located along a transit corridor; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Compatibility guideline because the required buffers for non-residential to residential transitions are in compliance with the LDC; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Compatibility guideline because parking areas would not appear to have an impact on adjacent residential properties; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Compatibility guideline because the required buffers are in compliance with the LDC; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Compatibility guideline because signs shall comply with Ch. 8 of the LDC; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Open Space guideline because tree canopy requirements will be met on the site; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Natural Areas and Scenic Historic Resources guideline because there do not appear to be any historic features on-site; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Natural Areas and Scenic Historic Resources guideline because soils are not an issue for the site; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Economic Growth and Sustainability guideline because although not located in an activity center, the proposal is located at the intersection of a major and minor arterial; and

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WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Circulation guideline because sidewalks will be provided to improve pedestrian mobility in the area; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Circulation guideline because the proposal provides for all required sidewalks and pedestrian connections to the building; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Circulation guideline because access is provided through the existing street network and connections to adjacent land uses are not appropriate; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Circulation guideline because right-of-way shall be dedicated as required by Transportation Planning Staff; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Circulation guideline because the proposed parking meets the LDC requirements; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Circulation guideline because cross access is not appropriate, as both abutting land uses are single family residential; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Transportation Facility Design guideline because access would be from both the minor and major arterial; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Bicycle, Pedestrian and Transit guideline because the proposal provides for all required sidewalks and pedestrian connections to the building and is located along a transit line; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Flooding and Stormwater guideline because MSD has no issues with the proposal; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Air Quality guideline because APCD has no issues with the proposal; and

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WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Infrastructure guideline because the proposal would appear to be located in an area with adequate utility service. All agency review comments should be addressed; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Infrastructure guideline because an adequate water supply is available; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Infrastructure guideline because the Health Department has no issues with the proposal.

RESOLVED, that the Louisville Metro Planning Commission does hereby **RECOMMEND** to the Louisville Metro Council the change in zoning from R-4, Single Family Residential and O-R, Office Residential to C-1, Commercial on 2.2 acres on property described in the attached legal description be **APPROVED**.

The vote was as follows:

YES: Commissioners Brown, Howard, Smith, Tomes and Jarboe

NOT PRESENT AND NOT VOTING: Commissioners Carlson, Lewis, Peterson and Robinson

Variance from Section 5.3.1.C.5 to allow primary structure to exceed 80' maximum setback

On a motion by Commissioner Brown, seconded by Commissioner Howard, the following resolution was adopted based on the staff analysis and testimony heard today.

WHEREAS, the Louisville Metro Planning Commission finds that the requested variance will not adversely affect the public health, safety or welfare since the building will be buffered where it is adjacent to residential; and

WHEREAS, the Louisville Metro Planning Commission finds that the requested variance will not alter the essential character of the general vicinity since the proposal is across the street from a similar use; and

WHEREAS, the Louisville Metro Planning Commission finds that the requested variance will not cause a hazard or nuisance to the public since the building will be buffered where it is adjacent to residential; and

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WHEREAS, the Louisville Metro Planning Commission finds that the requested variance will not allow an unreasonable circumvention of the zoning regulations since the building will be buffered where it is adjacent to residential and there is a similar use across the street; and

WHEREAS, the Louisville Metro Planning Commission finds that the gas station and convenience store land use is the special circumstance that is causing the variance. It is preferable to have the building located closest to the adjacent residential rather than the gas pumps; and

WHEREAS, the Louisville Metro Planning Commission finds that having the gas pumps facing the residential land would be more of a nuisance than a proposed building that would deprive the applicant of reasonable use of the land; and

WHEREAS, the Louisville Metro Planning 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.

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** the variance from the Land Development Code section 5.3.1.C.5 to allow primary structure to exceed 80 foot maximum setback.

The vote was as follows:

YES: Commissioners Brown, Howard, Smith, Tomes and Jarboe

NOT PRESENT AND NOT VOTING: Commissioners Carlson, Lewis, Peterson and Robinson

Development Plan and Binding Elements

On a motion by Commissioner Brown, seconded by Commissioner Howard, the following resolution was adopted based on the staff analysis and testimony heard today.

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 Louisville Metro Planning Commission finds that 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; and

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WHEREAS, the Louisville Metro Planning Commission finds that there are no open space requirements pertinent to the current proposal; and

WHEREAS, the Louisville Metro Planning Commission 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 Louisville Metro Planning Commission finds 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. Parking lots will meet all required setbacks; and

WHEREAS, the Louisville Metro Planning 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.

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** the Detailed District Development Plan **ON CONDITION** that a note is added to the development plan, note number 28 to reference binding element number 10 when the state reviews the site for permitting, **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:

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- 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 subdivision plat shall be recorded creating the lot lines as shown on the development plan. 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.
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 July 30, 2018 Planning Commission meeting.
 9. The property owner shall provide a cross over access easement if the property to the east is ever developed for a nonresidential use. A copy of the signed easement agreement shall be provided to Planning Commission staff upon request.

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10. The Kentucky Transportation Cabinet shall review the proposed access to the Manslick Rd. entrance and as a condition of the permitting make any changes to prohibit left-in left-out.

The vote was as follows:

YES: Commissioners Brown, Howard, Smith, Tomes and Jarboe

NOT PRESENT AND NOT VOTING: Commissioners Carlson, Lewis, Peterson and Robinson