

PLANNING COMMISSION MINUTES
September 4, 2014

PUBLIC HEARING

CASE NO. 14ZONE1011

Request: **Rezoning from C-1 to C-2; Variance to encroach into required non-residential to residential setback; Landscape Waivers and Detailed District Development Plan**

Project Name: Derby LLC Auto
Location: 5010 Poplar Level Road
Owner: Derby LLC
 5010 Poplar Level Road
Applicant: Derby LLC
 Same as above
Representative: John Miller; Miller Wihry
 1387 S. Fourth Street
Jurisdiction: Louisville Metro
Council District: 2-Barbara Shanklin
Staff Case Manager: Christopher Brown, Planner II

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:

00:23:19 Christopher Brown discussed the case summary, standard of review and staff analysis from the staff report.

00:28:06 Following Mr. Brown's case summary, Commissioner Proffitt asked about binding element #1 in reference to signage. Mr. Brown answered by saying all signage is allowed according to Chapter 8 of the Land Development Code.

00:29:34 Commissioner Butler asked a follow up question pertaining to curb cuts.

The following spoke in favor of this request:

John Miller, 1387 S. Fourth Street, Louisville, KY 40208

Summary of testimony of those in favor:

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00:30:59 Mr. Miller gave a power point presentation.

00:35:09 Commissioner Brown asked Mr. Miller about plans for any future developments and how would the parking be arranged because they were barely meeting the parking requirement.

00:35:37 Commissioner Turner asked Mr. Miller about trash and how would they get rid of the trash. Mr. Miller stated they currently did not have any dumpsters planned, however, they would be using the dumpsters at the convenience store next door.

The following spoke in opposition to this request:

No one

Deliberation

00:38:07 Planning Commission deliberation. Commissioner Brown stated to make a note on the plan to have one curb cut serving multiple properties. Commissioner Proffitt had some concerns with the wall and how the trash was going to get to dumpster site.

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 Butler, the following resolution was adopted.

WHEREAS, the Louisville Metro Planning Commission finds, The proposal to rezone the subject site from C-1 to C-2, Commercial, will allow the proposed uses to be accommodated on the existing subject site. The existing commercial site is in a corridor of existing mixed commercial uses along Poplar Level Road. The applicant has demonstrated that the proposed C-2 zoning district will comply with **Guideline 1, Community Form**, since the proposal is an existing use with existing structures on the site in the area of mixed commercial along this portion of the Poplar Level Road corridor and it is fully located within the boundaries of the existing form district.

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WHEREAS, the Louisville Metro Planning Commission further finds, The applicant has demonstrated that the proposed C-2 zoning district will comply with **Guideline 3, Compatibility** with the appropriate transitions and buffering being provided adjacent to surrounding street frontages and the residential use to the rear. The reduced buffer and setback will utilize existing pavement on the site while providing code complaint screening and plantings to meet the intent of the landscape buffer and setback. It is a compatible use to the area by locating the higher density zoning along a major arterial corridor with existing activity.

WHEREAS, the Louisville Metro Planning Commission further finds, The proposal complies with the natural areas guidelines of the Comprehensive Plan under **Guideline 5, Natural Areas and Scenic and Historic Resources** by not affecting any known historical resources, adding plantings along the western property perimeter to create a more natural area and reuse of the existing structures on the site.

WHEREAS, the Louisville Metro Planning Commission further finds, The proposal complies with the guidelines of the Comprehensive Plan under **Guideline 6, Economic Growth and Sustainability** since it is located in an area of commercial activity with direct connectivity to a major arterial.

WHEREAS, the Louisville Metro Planning Commission further finds, The proposal provides for appropriate multi-modal transportation facilities following the Comprehensive Plan under **Guidelines 7 and 8, Circulation and Transportation Facility Design** with pedestrian connectivity from the existing sidewalk network along Poplar Level Road. The applicant needs to address cross access and connectivity to the adjacent commercial use to the south. The proposal meets the parking needs of the proposed use and utilizes a portion of the existing curb cut and a second existing curb cut to be removed to allow better access management along the Poplar Level Road corridor.

WHEREAS, the Commission further finds that, based on the evidence and testimony presented, the staff report, and the applicant's justification and findings of fact that all of the applicable Guidelines of Cornerstone 2020 and the Comprehensive Plan are being met; now, therefore be it

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** the requested zoning change from C-1 to C-2.

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The vote was as follows:

YES: Commissioners Proffitt, Butler, Brown, Tomes and Turner

NO: No one.

NOT PRESENT AND NOT VOTING: Commissioners Jarboe, White, Blake and Peterson

ABSTAINING: No one.

Variance

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

WHEREAS, the Louisville Metro Planning Commission finds, The requested variance will not adversely affect the public health, safety or welfare since it follows the existing pattern established on the site and along the commercial corridor.

WHEREAS, the Louisville Metro Planning Commission further finds, The requested variance will not alter the essential character of the general vicinity since it will maintain the existing setback on the site.

WHEREAS, the Louisville Metro Planning Commission further finds, The requested variance will not cause a hazard or nuisance to the public since screening and planting material will mitigate the encroachment of the auto storage area along the western property perimeter adjacent to the residential use.

WHEREAS, the Louisville Metro Planning Commission further finds, The requested variance will not allow an unreasonable circumvention of the zoning regulations since the pattern of encroachment existed on the site prior to the current request.

WHEREAS, the Louisville Metro Planning Commission further finds, The requested variance arises from special circumstances which do not generally apply to land in the general vicinity or the same zone since the adjacent properties are both commercially zoned and the areas are both for vehicular parking or storage.

WHEREAS, the Louisville Metro Planning Commission further finds, The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or create an unnecessary hardship on the applicant by reducing the area needed for automobile storage associated with the auto repair garage.

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WHEREAS, the Louisville Metro Planning Commission further finds, The circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought since it existed prior to the current request.

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** the Variance from Chapter 5.3.2.C.2.b of the Land Development Code to allow pavement to encroach 10' into the required 25' setback along the rear property adjacent to residential use.

The vote was as follows:

YES: Commissioners Proffitt, Butler, Brown, Tomes and Turner

NO: No one.

NOT PRESENT AND NOT VOTING: Commissioners Jarboe, White, Blake and Peterson

ABSTAINING: No one.

Waiver #1

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

WHEREAS, the Louisville Metro Planning Commission finds, The waiver will not adversely affect adjacent property owners since the required screening and planting materials will be provided along the rear property perimeter.

WHEREAS, the Louisville Metro Planning Commission further finds, Guideline 3, policy 9 of Cornerstone 2020 calls for the protection of the character of residential areas, roadway corridors and public spaces from visual intrusions and mitigate when appropriate. Guideline 3, policies 21 and 22 calls for appropriate transitions between uses that are substantially different in scale and intensity or density, and to mitigate 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, **Published Date: August 29, 2014 Page 6 of 17 Case 14ZONE1011**

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

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areas should be designed to minimize the 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 air borne and water borne pollutants. The intent of the buffer will be met with area as shown on the development plan by providing the required screening and planting materials to create appropriate separation between the uses; therefore, the waiver will not violate specific guidelines of Cornerstone 2020.

WHEREAS, the Louisville Metro Planning Commission further finds, The extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant since to allow the needed automobile storage area while providing sufficient buffering between the uses.

WHEREAS, the Louisville Metro Planning Commission further finds, 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 by requiring extensive pavement removal along the rear of the existing buildings and extensive reduction of the area needed for automobile storage.

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** the Waiver from Chapter 10.2.4 of the Land Development Code to allow pavement to encroach 10' into the required 25' landscape buffer area adjacent to residential use.

The vote was as follows:

YES: Commissioners Proffitt, Butler, Brown, Tomes and Turner

NO: No one.

NOT PRESENT AND NOT VOTING: Commissioners Jarboe, White, Blake and Peterson

ABSTAINING: No one.

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Detailed District Development Plan & Binding Elements

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

WHEREAS, the Louisville Metro Planning Commission finds, The site will reduce portions of existing pavement along the west property perimeter and add tree plantings to address the issue of natural resources.

WHEREAS, the Louisville Metro Planning Commission further finds The provisions for safe and efficient vehicular and pedestrian transportation both within the development and the community are addressed by the reduction of a curb cut, restoring sidewalk and connection from the existing sidewalk into the site. The applicant needs to address issues of cross access and vehicular connectivity between the commercial uses to the south.

WHEREAS, the Louisville Metro Planning Commission further finds, Open space is not required for the development.

WHEREAS, the Louisville Metro Planning Commission further finds, The Metropolitan Sewer District has approved the preliminary development plan and will ensure the provisions of adequate drainage facilities on the subject site in order to prevent drainage problems from occurring on the subject site or within the community.

WHEREAS, the Louisville Metro Planning Commission further 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. Buildings and parking lots will meet all required setbacks with the exception of the non-residential to residential setback to the rear which follows the existing built pattern on the subject site.

WHEREAS, the Louisville Metro Planning Commission further finds, 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 variance which follow the guidelines of Cornerstone 2020.

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** the Detailed District Development Plan **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

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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 Louisville Metro Construction Permit Review, Transportation Planning 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.
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. 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.

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The vote was as follows:

YES: Commissioners Proffitt, Butler, Brown, Tomes and Turner

NO: No one.

**NOT PRESENT AND NOT VOTING: Commissioners Jarboe, White, Blake,
Peterson and Kirchdorfer**

ABSTAINING: No one.