

**Planning Commission Minutes
June 4, 2009**

Public Hearing

Docket # 11209

*****Commissioner Tomes returned to the meeting.**

******Commissioner Carlson left at 3:41 pm and did not vote on this case.**

Project Name: Win Properties/Preston Highway
Location: 5300 Preston Hwy. and 2814 Park Brook Lane

Owner(s): The Second Alkal Trust/ Barry Weisberg Trustee
10 Rye Ridge Plaza, Suite 200
Rye Brook, NY 10573

Applicant: Win Properties Inc.
Rick Yarmy
10 Rye Ride Plaza, Suite 200
Rye Brook, NY 10573

Land Planner: Land Design and Development
503 Washburn Avenue, Suite 101
Louisville, KY 40222

Representative: Bardenwerper, Talbott and Roberts, PLLC
8311 Shelbyville Road
Louisville, KY 40222

Project Size/Area: 1.1 Acres
Jurisdiction: Louisville Metro
Council District: 21-Dan Johnson

Staff Case Manager: Julia Williams, 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.)

Request

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Change in zoning from R-5 Single-Family Residential to C-1 Commercial on 673 square feet, a Conditional Use Permit for offsite parking on 0.35 acres, a variance to permit the proposed building to be located beyond the 80 foot setback, and approval of a development plan for a retail building on property located at 5300 Preston Highway and 2814 Park Brook Lane and being in Louisville Metro.

Agency Testimony:

03:08 Julia Williams presented the case. The applicant is a zone change from R-5 residential to C-1 commercial. The applicant has moved the building over about 5 feet to reduce the square footage of the zone change to 472 sq. feet.

Ms. Williams said that the applicant's request to change the zoning from R-5 to C-1 is not appropriate in this location since the proposal is for a zone change only to fit a building onto the site. The building could be re-designed to be accommodated on the current C-1 zoned property. The CUP for off-site parking is appropriate to insure that requirements for parking for the C-1 portion of the site are met and that over flow parking does not occur on the residential streets.

03:09 While the applicant is not requesting a Form District change to Suburban Marketplace, the change in zoning from R-5 to C-1 in a Neighborhood Form District is seen as an expansion of the Suburban Marketplace Corridor which is contrary to Comprehensive Plan policy. The Comprehensive Plan supports defined linear boundaries of the Suburban Marketplace Corridor. Extension of the Suburban Marketplace Corridor is considered when site and community design standards prepared specifically for corridor expansion are met.

03:10 Ms. Williams used a PowerPoint presentation to show the area proposed for rezoning and the area requested for the Conditional Use Permit (CUP) for off-site parking. An aerial of the site was also shown on the PowerPoint. In addition to the CUP a variance is being requested to exceed the maximum 80 foot setback area.

Photos of the site and adjacent properties, such as an auto glass shop, businesses and the residential areas, were shown.

03:13 The applicant has revised the renderings to bring them into compliance and has proposed an 8 foot 80 square foot monument style sign. The sign is smaller than the previously proposed pylon style sign. Staff has been working with the applicant on redesigning the mass of the structure but the suggestions have not been accepted..

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03:14 Ms. Williams stated that at the March 16th LD&T meeting some review items were to be addressed at this Public Hearing. Those review issues were listed in the PowerPoint presentation.

She further stated that if the Commission finds the zoning change appropriate, staff recommends that conditions for enhanced landscaping and building design should be considered for the site.

Some of the citizen concerns were listed on the PowerPoint presentation and include; the size of the building, intrusion of parking lot, traffic on Park Brook, building oriented into neighborhood, piping the drainage, and cut through traffic in the parking lot. She said the applicant has agreed to pipe and cover a ditch along Loretta Avenue.

03:16 Staff findings for the zone change were listed and vocalized in the PowerPoint presentation including recommended actions to be considered.

03:18 Staff recommends denial of the change in zoning from R-5 to C-1, a variance to permit the proposed building to be located beyond the 80ft setback and the development plan

Staff recommends approval of the Conditional Use Permit (CUP) for offsite parking in an R-5 zone.

3:24 Ms Williams answered Commissioner Tomes' concerns and said that staff made recommendations to the applicant to make the building fit in the current zoning. The ideas were not accepted. Ms. Williams said that the LBAs are in compliance but the applicant could do more to further mitigate the impact of the C-1 zoning.

03:25 Ms. Williams answered Commissioner Blake's concerns about the square footage in the Neighborhood Form District. Ms. Williams said that 472 square feet is in the Neighborhood Form District.

03:26 She said the C-1 zoning is appropriate in the Neighborhood Form District. It is neighborhood serving but it would be considered an expansion of the Suburban Marketplace Corridor which is against Comprehensive Plan guidelines which is the reason for the recommended denial.

Those Who Spoke In Favor:

Cliff Ashburner
8311 Shelbyville Road

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Louisville, KY 40222

Kevin Young
Land Design & Development
503 Washburn Avenue
Louisville, KY 40222

Scott Kramer
Studio Kramer Architects
3258 Rockreigle Parkway
Jeffersontown, KY 40299

Greg Camp
5707 Loretta Street
Louisville, KY 40213

Summary of Testimony of Proponents:

03:27 Cliff Ashburner with Bardenwerper, Talbott and Roberts, represented the applicant. He showed a PowerPoint presentation that included a map of the form district. He spoke of the transition zone and contended that the use is more of a neighborhood serving use than what is found in the Suburban Marketplace Form District. He said the entire property has been under common ownership for 40 years.

03:32 He pointed out that a property on the site that is zoned R-5 does not have a house located on it and he feels it is highly unlikely that one will be built on the property. He showed photos of the commercial uses around the site and of the site which included trees that will be preserved and an entrance onto Preston Highway that will be removed.

03:34 Kevin Young with Land Design and Development explained how he reviewed all of the suggestions regarding the design of the plan. A plan was shown on the PowerPoint presentation and he talked about how the entrance onto Preston Highway has been removed.

He said they can provide enhanced landscaping along the buffers and will provide an 8 ft privacy fence in addition to the existing trees along the property line. He said the neighbors will have vegetation, a fence and more trees for buffering.

03:37 As requested at the LD&T meeting, Mr. Young said that the pylon sign will be removed and replaced with a monument style sign that will be 8 ft tall and 80

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sq feet maximum. Landscaping has been added. The area of the rezoning has been reduced and is now 472 sq feet and a revised building design has been submitted. He said they have also agreed to add a pipe along Loretta Street to address the neighbors' concern. He also said the tree canopy as noted on the plan, is being exceeded by 50%.

03:38 Scott Kramer with Studio Kramer Architects, showed the building design in the PowerPoint. He talked about the materials used for the building. He discussed the scale and proportion of the building. He said that his staff looked at a recommended a "pitched" roof and found that if the "pitched" roof were used, then the building would be "out of scale". He contended that he found that by keeping the parapet low the scale would be maintained in a more pleasant way. He said that this design does comply with the Land Development Code.

03:40 Mr. Kramer said lighting is not shown on the plan, but there will be emergency lighting and shielded lighting facing down in order to light the sidewalk at the back of the building.

03:41 Cliff Ashburner said that the findings of fact have been submitted and the only change he suggested is that a change be made to reflect the reduction of square footage. He said the proposed findings still list the square footage as 673 square feet.

03:41 Mr. Young answered Commissioner Wells-Hatfield's question about enhanced landscaping for neighbors. Her concern was that the neighbors are not looking at the parking lot. He said he added a 4 ft Evergreen hedge and enhanced landscaping to the plan, so that the neighbors could be shielded. He explained that enhanced landscaping would consist of about 10% more landscaping. He said the irrigation of internal islands has been discussed and considered. Ms. Wells-Hatfield suggested using ground cover for the islands.

03:44 She asked Mr. Ashburner if he would be willing to add a binding element stating that if the landscaping dies, it would be replaced within 6 months. Mr. Ashburner agreed to that binding element.

03:44 Commissioner Blake asked Mr. Ashburner if he has spoken with Ms. Williams concerning her statements that if the zoning change is approved, enhanced landscaping and building design should be added. Mr. Ashburner said they used the guidance from the LD&T meeting.

03:46 Ms. Williams said that this new building design is similar to what was presented before. Mr. Ashburner said that they added glazing on the side.

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03:47 Commissioner Hamilton asked what kind of buffering will be used to protect the first house on Loretta Street.

03:47 Mr. Young said this design preserves the tree mass and there is the 8 ft fence. He added that the back of the building has improved. He said that they may inter-mix some Evergreen trees.

03:48 Commissioner Hamilton pointed out a sidewalk that ends abruptly. Mr. Young said that since they are adding a pipe that he maybe able to push the sidewalk over, but there are no connecting sidewalks.

03:49 Paula Wahl with Public Works said that normally they would like the sidewalk to end at the driveway which is within the right of way.

03:51 Greg Camp a resident and president of the Preston Park Neighborhood Association, said he was reassured that the ditch problem will be taken care of. He said they would like a sidewalk in the neighborhood and that he is in favor of the proposal.

An audio/visual recording of the Planning Commission hearing related to this case is available in the Planning & Design Services offices. Please contact the Customer Service staff to view the recording or to obtain a copy. The recording of this hearing will be found on the CD of the June 4, 2009 public hearing proceedings.

In a business session subsequent to the public hearing on this request, the Commission took the following action.

ZONING

On a motion by Commissioner Blake, the following resolution was adopted.

WHEREAS, the proposed development consists of a 9,000 square foot small retail center located on the site of a previously developed but long vacant retail site; a small portion of the property that was previously zoned R-5 is to be rezoned; the applicant is also seeking a Conditional Use Permit (CUP) to accommodate off-street parking in the R-5 area; the requests for a small rezoning and a CUP are to allow the redevelopment of the subject property by respecting the neighborhood to the rear of the site and limiting the future potential for commercial intrusion into the neighborhood; the area of the

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rezoning is only 472 square feet as the majority of the subject property is already zoned C-1 commercial; and

WHEREAS, this proposed development complies with Guideline 2 and specifically with Policies 2, 3, 4, 5, 7, 8, 12, 14 and 15 thereof because the proposed 9,000 square foot building is located along Preston Highway, a major arterial through the center of Louisville Metro, is surrounded by commercial to the north and south, residential to the west and Preston Highway and additional residential to the east; because the proposed development is compact, will contain a mixture of compatible commercial uses that will add to the mix of commercial uses along Preston Highway and, because of the compromise request (rezoning for building only) will not intrude into the neighborhood to the west; because the proposed development will be focused toward the corner of Preston Highway and Park Brook Lane and because utilities are available to the property already and parking is more than adequate for the proposed use; and

WHEREAS, the proposed development complies with the intent of Guideline 3 and specifically with Policies 1, 2, 4, 5, 6, 7, 8, 9, 12, 21, 22, 23 and 24 thereof because the proposed development will continue to be compatible with surrounding land uses as the site was previously developed as a commercial development; because the proposed building and signage will be more in keeping with the current development standards than the previous building, and the proposed development will provide buffers where none previously existed; because adverse impacts from odor, traffic, noise and lighting will be mitigated; and because the proposed development will comply with all local, state and federal regulations concerning handicap access; and

WHEREAS, neither of these Guidelines applies to the proposed development as the proposed development is the adaptive reuse of an existing commercial facility and a small addition onto an area that is too small for development separate and apart from the proposed development; and

WHEREAS, the proposed development complies with the intent of Guideline 6 and specifically with Policies 3 and 6 thereof because the proposed development is along an older section of Preston Highway where there are a variety of commercial uses, including traditionally neighborhood-serving uses, restaurants and even larger industrial uses and the proposed redevelopment of this commercial site as a small retail center will enhance the neighborhood feel of this section of Preston Highway; and

WHEREAS, the proposed development complies with the intent of Guidelines 7 and 8 and specifically with Policies 1, 2, 3, 9 and 10 of Guideline 7 and Policy 9

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of Guideline 8 because the proposed development will eliminate an existing entrance on Preston Highway; because this section of Preston Highway is served by TARC service; because the proposed development has adequate parking, will dedicate right-of-way as needed and will have adequate access for pedestrians due to the provision of sidewalks; and because the two remaining access points to the proposed development are very near to Preston Highway, there will not be any access to the proposed development through every lower intensity area; and

WHEREAS, the proposed development complies with the intent of Guideline 9 and specifically with Policies 1 and 2 thereof. By redeveloping this subject property, which is served by TARC, the applicant is necessarily making it easier for pedestrians to access the property and those surrounding it; and

WHEREAS, the proposed development complies with the intents of Guidelines 10 and 11 and specifically with Policies 3, 7 and 11 of Guideline 10 and Policy 3 of Guideline 11 because the redevelopment of the subject property using existing drainage facilities along Preston Highway will reduce the cost to the public infrastructure improvements; because the plan will ensure that post-development rates of run-off will not exceed the rate of pre-development flows as required by the Metropolitan Sewer District and because during construction of the site, the applicant will follow all soil retention and erosion prevention measures required by MSD; and

WHEREAS, the proposed development complies with the intent of Guideline 12 and specifically with Policies 1 and 8 thereof because locating a small, neighborhood-serving retail center adjacent to a neighborhood and on a major arterial that already carries large volume of traffic is one way to insure that the amount of vehicle miles traveled to the subject property is reduced, reducing the development's impact on air quality; and

WHEREAS, the proposed development complies with the intent of Guideline 13 and specifically Policies 5 and 6 thereof. When completed, the proposed development will actually have more open space, including tree canopy, than the previously developed but smaller commercial center and because bringing this former commercial site up to today's standards will enhance the appearance of this section of Preston Highway; **now, therefore be it**

RESOLVED, that the Louisville Metro Planning Commission does hereby **RECOMMEND** to the legislative council of Louisville Metro government that the change in zoning from **R-4 Residential to C-1 Commercial** on property described in the attached legal description be **APPROVED**.

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The vote was as follows:

YES: Commissioners Ernst, Blake, Abstain, Hatfield, Tomes, Hamilton, and Storm.

NO: No one.

NOT PRESENT: Commissioners Carlson and Howard.

ABSTAINING: No one.

CONDITIONAL USE PERMIT

On a motion by Commissioner Blake the following resolution was adopted.

WHEREAS, in association with the rezoning of a portion of the subject property, the applicant proposes to use a portion of the development site that is zoned R-5 for 16 off-street parking spaces; the proposed parking spaces are directly adjacent to the area being rezoned and will be accessed through existing commercially-zoned property; the proposed parking area will comply with all buffers and setbacks required by the Land Development Code and will be use exclusively for employees or customers of the commercial building proposed as part of the development; **now, therefore be it**

RESOLVED, that the Louisville Metro Planning Commission does hereby **GRANT** the Conditional Use Permit to allow offsite parking on property described in the attached legal description.

The vote was as follows:

YES: Commissioners Ernst, Blake, Abstain, Hatfield, Tomes, Hamilton, and Storm.

NO: No one.

NOT PRESENT: Commissioners Carlson and Howard.

ABSTAINING: No one.

VARIANCE

On a motion by Commissioner Blake the following resolution was adopted.

WHEREAS, the proposed variance will not adversely affect the public health, safety or welfare because the building will address the intersection of Preston Highway and Park Brook Lane while maintaining a buffer area adjacent to the residences to the south of the subject property; and

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WHEREAS, the proposed variance will not alter the essential character of the general vicinity because the proposed plan is to redevelop a commercial property with a newer, larger building that will provide services to the surrounding neighborhood; and

WHEREAS, the proposed variance will not cause a hazard or nuisance to the public as it only involves the placement of the building and relative to the three road frontages that surround the subject property, and because portions of the building are within 80' of each frontage, but not the 60% required by the LDC; and

WHEREAS, the proposed variance will not allow an unreasonable circumvention of the requirements of the zoning regulation because the site is oddly shaped and surrounded by three roads, two of which intersect Preston Highway at odd angles, rendering redevelopment of the property difficult, especially considering parking and traffic safety requirements; and

WHEREAS, the proposed variance arises from the odd shape of the property and the need for safe and efficient movement of cars in, through and out of the site; and

WHEREAS, the strict application of the LDC's maximum setback requirement would produce a plan with cars parked between the residences to the west and the proposed building, likely resulting in a plan that created hardship on both the applicant and surrounding property owners; and

WHEREAS, the circumstances are the result of the shape of the property and the application of the LDC's maximum setback requirement, both of which hinder the redevelopment of the subject property; **now, therefore be it**

RESOLVED, that the Louisville Metro Planning Commission does hereby **GRANT** to permit the proposed building to be located beyond the 80 foot setback on property described in the attached legal description.

The vote was as follows:

YES: Commissioners Ernst, Blake, Abstain, Hatfield, Tomes, Hamilton, and Storm.

NO: No one.

NOT PRESENT: Commissioners Carlson and Howard.

ABSTAINING: No one.

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DEVELOPMENT PLAN

On a motion by Commissioner Blake, the following resolution was adopted.

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** the district development plan on condition that the landscaping is enhanced 10% along Park Brook and that the building design is enhanced **SUBJECT** to the following Binding Elements.

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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 9,000 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) is requested:
 - a. The development plan must receive full construction approval from Louisville Metro Department of Inspections, Permits and Licenses, 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

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- 10 prior to requesting a building permit. Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter
- e. 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.
 - f. A Tree Preservation Plan in accordance with Chapter 10 of the LDC shall be reviewed and approved prior to obtaining approval for site disturbance.
6. 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.
 7. There shall be no outdoor music (live, piped, radio or amplified) or outdoor entertainment or outdoor PA system or permitted on the site.
 8. 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.
 9. The façade elevations shall be in accordance with applicable form district standards and shall be approved by PDS staff prior to construction permit approval.
 10. No overnight idling of trucks shall be permitted on-site.
 11. If any landscaping dies, it shall be replaced within 6 months.
 12. Gaps in the existing vegetation in the 25 foot LBA shall be filled in with evergreens.

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13. All landscaped areas shall be irrigated.

Condition of Approval for the CUP

1. The number of vehicles parked on the CUP site shall be limited to 16. The CUP use is limited to parking only.

The vote was as follows:

YES: Commissioners Ernst, Blake, Abstain, Hatfield, Tomes, Hamilton, and Storm.

NO: No one.

NOT PRESENT: Commissioners Carlson and Howard.

ABSTAINING: No one.