

PLANNING COMMISSION MINUTES
June 15, 2017

PUBLIC HEARING

CASE NUMBER 16ZONE1087

Request: Change in zoning from R-7 to C-2 with Variances on approx..
0.75 acres
Project Name: BMW of Louisville
Location: 100 and 102 Marshall Drive
Owner: TT of B Louisville Property LLC
Applicant: TT of B Louisville Property LLC
Representative: BTM Engineering, Inc.;
Bardenwerper Talbott and Roberts PLLC
Jurisdiction: Louisville Metro
Council District: 7-Angela Leet
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.)

An audio/visual recording of the Planning Commission meeting 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:

00:17:10 Julia Williams presented the case which was continued from the June 1, 2017 Planning Commission meeting. A copy of the revised binding elements was provided to the Commissioners by the applicant (see Staff Report and recording for detailed presentation).

00:20:13 Paul Whitty stated he has spoken with the zoning authorities in St. Matthews as well as legal counsel for Beechwood Village and all parties agree that Beechwood Village should have authority to enforce the agreement on the site where there cannot be binding elements.

The following spoke in favor of the request:

Bill Bardenwerper, 1000 N Hurstbourne Pkwy., Louisville, KY 40223
Kelly Carls, 206 Marshall Drive, Louisville, KY 40207

Summary of testimony of those in favor:

PLANNING COMMISSION MINUTES
June 15, 2017

PUBLIC HEARING

CASE NUMBER 16ZONE1087

00:21:16 Bill Bardenwerper spoke on behalf of the applicant who is requesting a change in zoning from R-7 to C-2 as well as a district development plan and two variances. An agreement between the applicant and Beechwood Village was signed by both AMSI and the Mayor of Beechwood Village. A copy of this agreement was given to the Commissioners. The business will operate seven days a week (see recording for detailed presentation).

00:27:25 Kelly Carls is a member of the Beechwood Village City Council and stated that the Council is in full support of this agreement.

The following spoke in opposition to the request:

Phyllis Skonicki, 110 Marshall Drive, Louisville, KY 40207

Summary of testimony of those in opposition:

00:29:31 Phyllis Skonick is a resident of Beechwood Village who does not support the request. She stated that the Beechwood City Council initially said during the first neighborhood meeting that they would not take a position on this request one way or the other. Without informing the residents first, they then changed their position at the last Planning Commission meeting and stated they were in favor of this request. She stated that along with PDS Staff, she does not believe that a used car lot is appropriate for the neighborhood.

00:32:48 Commissioners' deliberation

Change in zoning from R-7 to C-2:

00:52:15 On a motion by Commissioner Brown, seconded by Commissioner Carlson, the following resolution was adopted:

GUIDELINE 1 – COMMUNITY FORM

WHEREAS, the Louisville Metro Planning Commission finds that the proposed automobile dealership on this site is appropriate because Suburban Neighborhoods contain retail uses at appropriate locations at appropriate scale when designed to be compatible with residential neighborhoods; and this proposal is to combine an auto display lot that is well screened, buffered and that mitigates (through site design and binding element conditions of approval) all neighborhood impacts with an existing already C-2 zoned auto dealership site next door, and

GUIDELINE 2: CENTERS

PLANNING COMMISSION MINUTES
June 15, 2017

PUBLIC HEARING

CASE NUMBER 16ZONE1087

WHEREAS, the Commission further finds that the proposed automobile dealership complies with all of the applicable Intents and Policies 2, 3, 4, 5, 7, 8, 9, 11, 12, 13, 14 and 15 of Guideline 2 because this property, adjacent to an already properly C-2 zoned site that has long been a car dealership site, involves an efficient use of land similarly used next door and an investment in existing infrastructure; car buyers already visiting the dealership long established next door will have travel times and distances reduced when shopping along a busy arterial already lined with multiple other auto dealerships; since this is an expansion of an already properly C-2 zoned site with a history of various auto dealerships located next door, this rezoning does not involve an isolated commercial use expansion; the activity center established along this stretch of Shelbyville Road means this involves an expansion of same and not the creation of a new activity center; the small addition of land to a long-standing automobile dealership site promises to enhance the commercial use already existing at that location; the new BMW dealership to locate here and next door will be of a high-end design; existing utilities will be utilized; and parking will be well screened and landscaped as shown on plans and elevations presented at the public hearing, and

GUIDELINE 3: COMPATIBILITY

WHEREAS, the Commission further finds that the proposed automobile dealership complies with all of the applicable Intents and Policies 1, 2, 4, 5, 6, 7, 8, 9, 20, 21, 22, 23, 24, 28 and 29 of Guideline 3 because the proposed new BMW automobile dealership here and next door is a compatible use in an area of large employment activities, notably other auto dealerships; the proposed dealership building on the already C-2 zoned adjacent site will include an attractive, remodeled dealership building consisting of high quality building materials; odors and air quality emissions, traffic, noise, lighting and visual impacts are addressed on this discretionary DDDP site (and also on the adjoining ministerial plan site) by virtue of an agreed upon list of landscaping, screening, lighting, drainage facility and amenity designs with the City of Beechwood Village; and the images shown at the public hearing and 3 neighborhood meetings detail a lot of this, including enhanced setbacks with good screening and buffering and less intense lighting, and

GUIDELINE 6 – ECONOMIC GROWTH AND SUSTAINABILITY

WHEREAS, the Commission further finds that the proposed automobile dealership complies with all of the applicable Intents and Policies 1, 2, 5 and 6 of Guideline 6 because this site represents a small expansion at a high-traffic location to accommodate a new car dealership in an already existing activity center; and this reduces costs of land development and further promotes an existing employment center with good access to an existing support population that will visit this new auto dealership, and

PLANNING COMMISSION MINUTES
June 15, 2017

PUBLIC HEARING

CASE NUMBER 16ZONE1087

**GUIDELINES 7, 8 AND 9 – CIRCULATION; TRANSPORTATION FACILITY DESIGN;
AND BICYCLE, PEDESTRIAN AND TRANSIT**

WHEREAS, the Commission further finds that the proposed automobile dealership complies with all of the applicable Intents and Policies 1, 2, 4, 10, 11, 13, 14, 15 and 18 of Guideline 7, Policies 1, 5, 7, 8, 9, 10 and 11 of Guideline 8, and Policies 1, 2, 3 and 4 of Guideline 9 because Shelbyville Road has adequate traffic-carrying capacity for business growth, and a car dealership generates less traffic than many retail users because of fewer large purchases as opposed to more smaller purchases – thus less customers than many retail uses on similar acreage; since roads systems are adequate, the issues to address, as addressed on the DDDP accompanying this application, involve the issues of parking adequacy, alternative transportation modes, and whether internal traffic movements, internal parking arrangements and access from Shelbyville Road via the adjacent already C-2 zoned site as well as between adjoining sites are appropriately designed; the DDDP satisfies all of the design requirements of Metro Public Works and Transportation planning which are inherent in all three of these Guidelines; and the DDDP received the preliminary stamp of approval from these agencies prior to the public hearing, and

**GUIDELINES 10, 11 AND 12 – FLOODING AND STORMWATER; WATER QUALITY;
AND AIR QUALITY**

WHEREAS, the Commission further finds that the proposed automobile dealership complies with all of the applicable Intents and Policies 1, 3, 6, 7, 10 and 11 of Guideline 10, Policies 3 and 5 of Guideline 11, and Policies 1, 4, 7, 8 and 9 of Guideline 12 because MSD requires that post development peak rates of runoff do not exceed pre-development conditions and that adjacent properties are not adversely affected by the subject site's new and through drainage from storm water run-off; MSD gave its preliminary stamp of approval on the DDDP prior to the public hearing; moreover, stormwater measures being added, where not required, to the adjoining, already C-2 zoned companion site, will improve overall stormwater conditions more so than if this site alone was considered absent applicant/developer concessions made of the adjoining pre-"Plan Certain" lot; MSD has also established soil erosion and sediment control as well as water quality standards which must be met with this development's construction plans; and as to all of the Policies associated with air quality, they are always addressed when commuting times and distances are reduced when new activities congregate, as here, in an existing activity center, and

GUIDELINE 13 – LANDSCAPE CHARACTER

PLANNING COMMISSION MINUTES
June 15, 2017

PUBLIC HEARING

CASE NUMBER 16ZONE1087

WHEREAS, the Commission further finds that the proposed automobile dealership complies with all of the applicable Intents and Policies 1, 2, 3, 4, 5 and 7 of Guideline 13 because, as the concept landscape plan produced at the public hearing and neighborhood meetings demonstrate, as will be included in the eventual landscape plan filed with DPDS post zoning approval, this site will not just comply with, but rather will exceed, LDC landscape requirements; and as mentioned above as respects stormwater management, enhanced landscaping, screening and buffering are added next door where not required; now, therefore be it

RESOLVED, the Louisville Metro Planning Commission does hereby **RECOMMEND** to the Louisville Metro Council that the change in zoning from R-7 to C-2 be **APPROVED** based on the applicant's findings of fact and the provisions within the Staff Report that do support the compliance. The Planning Commission feels that the existing R-7 zoning is inappropriate for this location and that C-2 zoning is appropriate given the measures the applicant is taking to mitigate the impact the use will have on the surrounding properties.

The vote was as follows:

Yes: Brown, Carlson, Lewis, Smith, Ferguson, and Jarboe

Absent: Howard and Peterson

Abstain: Tomes and Lindsey

No: None

Variance #1 from section 4.4.3.A.1.a.:

00:54:30 On a motion by Commissioner Brown, seconded by Commissioner Carlson, the following resolution was adopted:

RESOLVED, the Louisville Metro Planning Commission does hereby **DENY** the variance from section 4.4.3.A.1.a. to permit a fence height of 8' in a street side yard instead of the required 48" as this height would be inappropriate for the surrounding residential uses in that proximity to the existing right of way.

The vote was as follows:

Yes: Brown, Carlson, Lewis, Smith, Ferguson, and Jarboe

Absent: Howard and Peterson

Abstain: Tomes and Lindsey

No: None

PLANNING COMMISSION MINUTES
June 15, 2017

PUBLIC HEARING

CASE NUMBER 16ZONE1087

Variance #2 from section 5.1.12.B.2.e.i.1:

00:55:15 On a motion by Commissioner Brown, seconded by Commissioner Carlson, the following resolution was adopted:

RESOLVED, the Louisville Metro Planning Commission does hereby **DENY** the variance from section 5.1.12.B.2.e.i.1 to permit parking to encroach approximately 9.5' into the required +/- 34.5' setback along Marshall Drive as a wall of that height in that proximity to the existing right of way would be out of character with the surrounding area.

Please note: the vote for this motion took place at timestamp 00:59:50.

The vote was as follows:

Yes: Brown, Carlson, Lewis, Smith, Ferguson, and Jarboe

Absent: Howard and Peterson

Abstain: Tomes and Lindsey

No: None

District Development plan:

00:57:51 On a motion by Commissioner Brown, seconded by Commissioner Carlson, the following resolution was adopted:

RESOLVED, the Louisville Metro Planning Commission does hereby **APPROVE** the district development plan based on the testimony heard today and **ON CONDITION** that the development plan be revised to reflect the denial of the two proposed variances; **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 City of Beechwood Village for review and 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. Signage:

PLANNING COMMISSION MINUTES
June 15, 2017

PUBLIC HEARING

CASE NUMBER 16ZONE1087

- a. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site. Temporary way finding signs, construction-related signs or directional signs are permitted. Plans for all proposed freestanding signage shall be submitted to the City of Beechwood Village for review.
 - b. No median, street signage or other structure in the City of Beechwood Village right of way can be installed or removed without review and coordination with the City of Beechwood Village.
 - c. The property owner shall be responsible for reimbursing the City of Beechwood Village for legal fees incident to any and all necessary signage enforcement on the City's part.
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) is requested:
- 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 plat or legal instrument shall be recorded consolidating the property into the larger lot to the west (4311 Shelbyville Road). 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.

PLANNING COMMISSION MINUTES
June 15, 2017

PUBLIC HEARING

CASE NUMBER 16ZONE1087

- e. A Tree Preservation Plan in accordance with Chapter 10 of the LDC shall be reviewed and approved prior to obtaining approval for site disturbance.
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. No idling of trucks shall take place within 200 feet of residences. No overnight idling of trucks shall be permitted on-site.
9. Hours of Operation:
 - a. Deliveries: 7am-7pm Monday- Friday; 9am-5pm Saturday and Sunday
 - b. Trash Pick-Up: 7am-6pm Monday-Friday
 - c. Construction: 7am-7pm Monday- Friday; 8am-5pm Saturday and Sunday
 - d. Business Hours: 7am- 9pm Monday-Sunday
10. The only permitted use of the subject property shall be an automobile sales parking lot. Any changes in use shall be reviewed and approved by the Planning Commission or its designee. Thirty (30) days advance notice of any Planning Commission or designee decision shall be given to the City of Beechwood Village and 1st tier adjacent property owners.

PLANNING COMMISSION MINUTES
June 15, 2017

PUBLIC HEARING

CASE NUMBER 16ZONE1087

11. The applicant shall provide a copy of the plan and application to the City of Beechwood Village, within one week of filing to Planning and Design Services, of all Revised Detailed District Development Plans, Amendment to Binding Elements, Change of Zoning or Conditional Use Permit requests, Waivers, and Variances.
12. Dumpsters shall be enclosed as required by the Land Development Code, be lidded and the lid shall not be made of metal.
13. Landscaping shall be installed pursuant to the "Detailed Landscape Plan" presented at the June 15, 2017 Planning Commission hearing and presented to the City of Beechwood Village on May 9, 2017. Any and all landscaping shall be maintained, including mowing, trimming, pruning, replacing all bushes, trees, grass, and or plantings. Any replacement landscaping shall be of similar quality and size as approved by Planning and Design services staff. All landscaping approved by the Planning and Design Services staff shall be installed following the exact specifications of the approved final landscaping plan.
14. Lighting:
 - a. At the time a building permit for the parking lot construction is requested, the applicant/developer shall submit a certification statement to the permit issuing agency, from an engineer, or other qualified professional stating that the lighting of the proposed development is in compliance with Chapter 4 Part 1.3 of the Land Development Code and shall be maintained accordingly thereafter. No permits shall be issued unless such certification statement is submitted.
 - b. Outdoor lighting shall be directed down and away from surrounding residential properties. Lighting fixtures shall assure that no light source is visible off site. Lighting levels attributable to the fixtures located on the subject site shall not exceed 0.25 foot candles at the property line. Light shall be LED or equivalent.
15. Proper drainage of storm water and water run off from site shall not overflow and encroach onto neighboring private property owners, City of Beechwood Village or its right of way. If water encroaches or ponds onto said properties, land owner shall take immediate action to remedy the situation. Storm water shall drain according to MSD and in accordance with MSD approved construction documents. Any storm water runoff is sole responsibility of property owner. Owner shall take appropriate actions to meet recommended site drainage specifications as approved by MSD.
16. No test drives of vehicles shall be permitted within the City of Beechwood Village. Managers, sales agents and customers shall be advised by the applicant, developer and/or property owner of this prohibition.

PLANNING COMMISSION MINUTES
June 15, 2017

PUBLIC HEARING

CASE NUMBER 16ZONE1087

17. An 8-foot tall (at top of columns) masonry wall shall be installed as located on the DDDP pursuant to the "brick wall detail" (except for height as noted herein) presented at the June 1, 2017 Planning Commission Public Hearing. The wall shall be maintained by the property owner.

The vote was as follows:

Yes: Brown, Carlson, Lewis, Smith, Ferguson, and Jarboe

Absent: Howard and Peterson

Abstain: Tomes and Lindsey

No: None