

**PLANNING COMMISSION MINUTES
DECEMBER 15, 2016**

PUBLIC HEARING

CASE NO. 16ZONE1033

Request: Zoning Change from R-4 to C-1 and C-2 With a Waiver for
Approximately 4.67 Acres
Project Name: Greenwood Plaza
Location: 6300 Greenwood Dr.
Owner: Irma V. Waller
Applicant: Brian Forrest
Representative: Evans/Griffin; Bardenwerper, Talbott & Roberts, PLLC
Jurisdiction: Louisville Metro
Council District: 12 – Rick Blackwell
Case Manager: Brian Mabry, Planning & Design 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 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.

Agency testimony:

01:01:01 Brian Mabry presented the case and showed a Powerpoint presentation. Mr. Mabry responded to questions from the Commissioners (see staff report and recording for detailed presentation).

The following spoke in favor of the request:

Nick Pregliasco, 1000 N. Hurstbourne Pkwy., Louisville, KY 40223
Jim Griffin, 4010 Dupont Circle, Suite 478, Louisville, KY 40207
Brian Forrest, 8909 Lippincott Road, Louisville, KY 40222

Summary of testimony of those in favor:

01:08:06 Nick Pregliasco spoke in favor of the request and showed a Powerpoint presentation. Mr. Pregliasco responded to questions from the Commissioners (see recording for detailed presentation).

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01:20:23 Jim Griffin spoke in favor of the request (see recording for detailed presentation).

01:21:28 Nick Pregliasco responded to further questions from the Commissioners (see recording for detailed presentation).

The following spoke in opposition of the request:

Betty Braden, 7419 Beahl Blvd., Louisville, KY 40258

Ed Braden, 7419 Beahl Blvd., Louisville, KY 40258

Summary of testimony of those in opposition:

01:23:52 Betty Braden spoke in opposition of the request. Mrs. Braden stated their main concern is the traffic (see recording for detailed presentation).

Rebuttal:

01:26:45 Nick Pregliasco spoke in rebuttal and responded to questions from the Commissioners (see recording for detailed presentation).

01:31:30 Brian Forrest responded to questions from the Commissioners in regard to the types of uses for the development (see recording for detailed presentation).

Further testimony in opposition of the request:

01:32:27 Ed Braden spoke in opposition of the request (see recording for detailed presentation).

Rebuttal:

01:36:20 Nick Pregliasco spoke in rebuttal and responded to questions from the Commissioners (see recording for detailed presentation).

01:39:38 **Commissioners' deliberation**

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01:42:42 Counsel Baker asked Mr. Pregliasco if he would certify that the iteration of the Findings of Fact is the exact same document that Commissioner Howard has, just that it corrects for C-1 Zoning (see recording for detailed presentation).

01:42:53 Mr. Pregliasco said that is correct (see recording for detailed presentation).

01:46:18 On a motion by Commissioner Brown, seconded by Vice Chair Lewis, the following resolution was adopted:

Change in Zoning from R-4 to C-1 for approximately 4.67 Acres

WHEREAS, the Louisville Metro Planning Commission finds that this property has been one of the remaining decent size residential properties surrounded by recent developments, with commercial developments to the West along Greenwood Road and surrounded on the East and South by the McBride Moss Creek condominium development; there is no market for this property for a residential development as the Moss Creek residential development has been stalled for almost 10 years and is still not fully complete; the property has good access off Greenwood Road and off the access easement serving River City Bank and the Kroger center and near the intersection of Terry Road and Greenwood Road; and it is already an “activity center” location because of the proximity to the River City Bank and other commercial developments to the west as well as Kroger Center, not to mention the church across the street, and

WHEREAS, the Commission further finds that the application complies with the Suburban Neighborhood Form District description of an area characterized by *predominantly* residential uses but that also includes, at appropriate locations, a mixture of uses, such as offices, retail shops, restaurants and services so long as these uses are at a scale appropriate for the nearby neighborhoods; this small retail center is precisely what is contemplated by the Suburban Neighborhood Form District; indeed, when the above-referenced condominium development community was originally approved there were discussions about the lack of restaurant and other retail in close walking distance proximity, which this would provide, in order to round out the “activity center” that the condominium development community and other above-named uses are a part of, and

WHEREAS, the Commission further finds that the application complies with the Intents and applicable Policies 1, 2, 3, 4, 5, 7, 8, 9, 11, 13, 14 and 15 of this Guideline because the subject property adjoins the mixture of commercial, high-density residential condominiums and single-family residential uses mentioned above, placing it in the

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activity center that already exists in and around this location; with goods and services available in close proximity to the west of this site and at the Kroger center and the residential uses mentioned above, this small retail center adds to the vitality and sense of place among the mostly disconnected nearby neighborhoods, some of whose residents will be able to walk to this small center for food or to shop at the retail establishments; others will find it a convenient stop on their ways home returning west along Greenwood Road or North on Terry Road, and

WHEREAS, the Commission further finds that as an “activity center”, it is appropriately located along a minor arterial road very close to Terry Road, also a minor arterial road, expanding the existing activity center to the west, and it is designed to be of intensity, density, size and mix of uses appropriate for a small neighborhood center; everything within this small center is compact, and it presently is contemplated to include four buildings: a Taco Bell restaurant, another fast food restaurant or coffee shop, and two retail buildings which are connected; and they share parking and work off the same utility infrastructure, and

WHEREAS, the Commission further finds that the application complies with the Intent and applicable Policies 1, 2, 4, 5, 6, 7, 8, 9, 12, 20, 21, 22, 23, 24 and 28 of this Guideline because, as set forth above, this is a small neighborhood-serving retail center; it will have an attractive look and feel in accordance with the style and design concepts accompanying this application and as shown at the neighborhood meeting, and the elevations to be shown at the public hearing; odors would only exist as a consequence of the proposed restaurants, but those are located along the Greenwood Road portion of the site the furthest away from the adjoining residential properties, which are further separated by the sewer and drainage easement, further buffering these developments; noise would only potentially emanate from the later hours of the restaurants as the retail portion is not anticipated to have any form of late hours; but residential properties potentially impacted by such nuisances are located significant distances away; lighting will follow restrictions of the Land Development Code (LDC) and thus be directed down and away from nearby residential properties, with 90 degree cut-off at property lines; transitions to adjoining properties on the south and east side will be attractively screened with the required landscaping as well as the increased distance of the drainage easement and parking will be shared; loading and delivery will be located and/or screened so as to minimize impacts on nearby properties and signage will be in conformance with the LDC, and

WHEREAS, the Commission further finds that the application complies with the Intent and applicable Policies 2, 5, 6 and 11 of this Guideline because, as set forth above, this property is located along Greenwood Road and close to Terry Road, both of which are minor arterials, with significant improvements to Greenwood Road already approved; due to the location of the property, surrounded by commercial development to the west

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and a stalled residential development to the south and east, the property no longer has any residential viability for development; as part of an existing activity center, it is designed to be a high quality, neighborhood compatible retail center with much needed restaurant uses; it is located close to fairly intense residential populations the length of Greenwood Road from Greenbelt Highway to Dixie Highway and along minor arterial-level streets connecting with Greenwood Road, such as Terry Road; and absent this rezoning application, this no longer suitable single-family property could not be reused in virtually any other manner, and

WHEREAS, the Commission further finds that the application complies with the Intents and applicable Policies 1, 2, 4, 6, 9, 10, 11, 12, 13, 14, 15, 16 and 18 of Guideline 7; Policies 1, 4, 5, 7, 9, 10 and 11 of Guideline 8; and Policies 1, 2, 3 and 4 of Guideline 9 because, as mentioned above, Greenwood Road is slated for near-term reconstruction and improvement; this will move traffic much more efficiently along this busy arterial roadway; the traffic from this development will have access off of Greenwood Road and off the private access easement serving the Kroger center; also, the intersection of Greenwood Road and Terry Road is already a signalized one, which helps with traffic flows through that intersection and into and out of this site by creating traffic gaps for vehicles to safely enter and exit; furthermore, the design of this small center, together with its points of access, take into account the standards promulgated by KTC and Metro Transportation Planning and Public Works; the latter required a review and preliminary approval of a traffic study with traffic counts and a detailed district development plan (DDDP) submitted with this application prior to time of docketing for LD&T and Planning Commission public reviews; and that review and preliminary stamp of approval assures that Transportation Planning and Public Works standards for corner clearances, access, connectivity, internal circulation and parking minimums are all satisfied; and bike racks and sidewalks will be provided as required, and

WHEREAS, the Commission further finds that the application complies with the Intents and applicable Policies 1, 3, 4, 6, 7, 10 and 11 of this Guideline because stormwater drainage will be addressed through the very significant drainage easement to the south and east, in compliance with MSD's standards for storm water management; MSD reviewed the storm water management plan and gave its preliminary stamp of approval to the DDDP prior to docketing for LD&T and Planning Commission public reviews; and the applicant's professional representatives have met with MSD to review area resident concerns about use of the existing drainage easement, and

WHEREAS, the Commission further finds that the application complies with the Intents and applicable Policies 3, 5 and 8 of this Guideline because MSD has promulgated both soil erosion/sedimentation control regulations and even newer ones with respect to water quality; and construction plans for this center will require compliance with these regulations prior to obtaining building permits, and

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WHEREAS, the Commission further finds that the application complies with the Intents and applicable Policies 2, 4, 7 and 8 of this Guideline because this proposed extension of a small neighborhood center in close proximity to a large residential support population, notably along close to the intersection of two minor arterial roads, not only will vehicle miles traveled be reduced, but also customers already driving these road systems will be able to pop in and pop out of this center without having to travel greater distances for the exact same services, and

WHEREAS, the Commission further finds that the application complies with the Intents and applicable Policies 1, 2, 4, 5 and 6 of this Guideline because compliance with this Guideline is achieved by virtue of compliance with LDC requirements and as stated above, landscaping, screening and buffering will exceed LDC requirements, as promised neighbors at the neighborhood meeting, and

WHEREAS, the Commission further finds that for all the reasons explained at LD&T and the Planning Commission public hearing and also in the public hearing exhibit books on the approved detailed district development plan, this application also complies with all other applicable Guidelines and Policies of the Cornerstone 2020 Comprehensive Plan; now, therefore be it

RESOLVED, that the Louisville Metro Planning Commission, in Case Number 16ZONE1033, does hereby **RECOMMEND APPROVAL** to Louisville Metro Council the Change in Zoning from R-4 to C-1, based on the Staff Report, testimony heard today and the Findings of Fact provided by the applicant at this meeting.

The vote was as follows:

Yes: Commissioners Brown, Tomes, Peterson, Howard, Smith, Carlson, Gazaway, Vice Chair Lewis and Chair Jarboe
Not Present: Commissioners Kirchdorfer

01:47:19 On a motion by Commissioner Brown, seconded by Vice Chair Lewis, the following resolution was adopted:

Detailed District Development Plan

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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 Commission further 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

WHEREAS, the Commission further finds that there are no open space requirements pertinent to the current proposal. The open space provided on the site is in the form of the buffers and landscape islands provided, and

WHEREAS, the Commission further 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 Commission further finds that 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. Access between the subject property and other nonresidential properties is provided, and

WHEREAS, the Commission further finds that the development plan conforms to applicable guidelines and policies of the Comprehensive Plan and, except for the requested waiver, to requirements of the Land Development Code; and

Waiver of LDC Section 10.2.4.b to allow the property perimeter landscape buffer area along the south and east lines of the subject property to encroach 100% into the existing sewer and drain easement

WHEREAS, the Louisville Metro Planning Commission finds that the waiver will not adversely affect adjacent property owners since the screening and buffering requirements will still be met. In addition, the width of the drainage easement will contribute to the buffering of the subject properties from neighboring residential properties. The easement is wide enough so that it will not be overly burdened by the presence of the LBA, and

WHEREAS, the Commission further finds that Guideline 3, Policy 9 of Cornerstone 2020 calls for protection of the character of residential areas, roadway corridors and

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public spaces from visual intrusions and mitigation when appropriate. Guideline 3, Policies 21 and 22 call for appropriate transitions between uses that are substantially different in scale and intensity or density, and mitigation of 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, 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 areas should be designed to minimize 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 airborne and waterborne pollutants. The landscape buffers are not being reduced they are just being proposed to be located within an existing wide drainage easement, making the site compatible with the surrounding properties, and

WHEREAS, the Commission further finds that the waiver is the minimum to give relief to the applicant because the LBA will otherwise fully comply with the LDC except that the LBA is located completely within the existing drainage easement along the south and east property lines of the subject property, and

WHEREAS, the Commission further finds that the strict application would deprive the applicant of reasonable use of the land because locating the LBA outside of the easement would cause an unnecessary hardship with the layout of the proposed development; now, therefore be it

RESOLVED, that the Louisville Metro Planning Commission, in Case Number 16ZONE1033, does hereby **APPROVE** the Detailed District Development Plan and the Waiver of LDC Section 10.2.4.b to allow the property perimeter landscape buffer area along the south and east lines of the subject property to encroach 100% into the existing sewer and drain easement, based on the Staff Report, testimony heard today and the Findings of Fact provided by the applicant and **SUBJECT** to the following Binding Elements:

Proposed 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 31,455 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, alteration permit or demolition 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) A minor subdivision plat or legal instrument 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.
 - c) Encroachment permits must be obtained from the Kentucky Department of Transportation, Bureau of Highways.
 - d) 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.
6. A certificate of occupancy must be received from the appropriate code enforcement department prior to occupancy of the structures or land for the proposed use. All

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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 audible beyond the property line.
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 materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the December 15, 2016, Planning Commission hearing.

The vote was as follows:

Yes: Commissioners Brown, Tomes, Peterson, Howard, Smith, Carlson, Gazaway, Vice Chair Lewis and Chair Jarboe
Not Present: Commissioners Kirchdorfer