

**PLANNING COMMISSION MINUTES**  
**March 7, 2019**

**PUBLIC HEARING**  
**CASE NO. 18ZONE1026**

Request: Change in zoning from R-6 to C-R with a variance  
Project Name: 1805 Mellwood Avenue  
Location: 1805 Mellwood Avenue  
Owner: Ruth Sauter  
Applicant: Ruth Sauter  
Representative: Ruth Sauter  
Jurisdiction: Louisville Metro  
Council District: 9- Bill Hollander  
Case Manager: **Julia Williams, 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:**

00:10:54 Ms. Williams discussed the case summary, standard of review and staff analysis from the staff report.

00:16:19 Commissioner Howard asked if binding element 4B is correct. Ms. Williams said it is a typo. Delete the 2<sup>nd</sup> sentence and it should state: A minor subdivision plat or legal instrument shall be recorded dedicating additional right-of-way to Mellwood Ave. to provide a total of 30 ft. from center line. A copy of the recorded instrument shall be submitted to the Division of Planning and Design Services prior to obtaining a building permit.

**Deliberation**

00:18:30 Planning Commission deliberation.

**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-6 to C-R**

## PLANNING COMMISSION MINUTES

March 7, 2019

### PUBLIC HEARING CASE NO. 18ZONE1026

On a motion by Commissioner Carlson, seconded by Commissioner Howard, the following resolution based on the Cornerstone 2020 Staff Analysis was adopted.

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets the Community Form guideline because the proposal does not affect the existing street pattern. The proposal is for a retail commercial use located near other C-1 and C-2 uses. This proposal includes no new construction and is utilizing an existing building, therefore is not impacting any open space. It is located near Brownsboro Road and the Mellwood Arts Center. The proposal is for the reuse of an existing home that was built in 1900 and is similar in design to other historic structures in the Clifton area; and

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets the Centers guideline because the proposal will not create a new center but it involves the repurposing of an existing building. The Clifton/ Clifton Heights area is a historic urban neighborhood with sufficient population to support a small commercial use. The proposal is efficient and cost effective because it is utilizing an existing building. This proposal is not a center but is near a mix of commercial and residential uses and does provide a service which will serve the neighborhood. The applicant has not indicated that there will be a residential use on the second floor so it appears the use will be commercial only. CR zoning permits residential so residential could be added at any time. The proposal provides for its own access as much of the adjacent property is MSD owned. Utilities for the site are existing; and

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets the Compatibility guideline because it appears that no new construction is proposed and the existing building is compatible with surrounding development. This is historically a corner commercial building and has continued to operate as such so there is no expansion into a residential area. APCD has no issues with the proposal. The proposal will not have any impact on existing traffic. All lighting will comply with LDC standards. The proposal is for a low impact commercial use and is near Brownsboro Road, Frankfort Ave and the Mellwood Arts Center. The proposal includes parking within the property perimeter buffer required adjacent to residential although the proposed use is low impact and much of the adjacent property is unoccupied or owned by MSD. The proposed parking does not adhere to setback requirements but is still compatible because much of the adjacent property is unoccupied or owned by MSD. The proposed parking does not adhere to buffer requirements but is still compatible because much of the adjacent property is unoccupied or owned by MSD. Signs will be in compliance with LDC standards; and

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets the Open Space guideline because the provision of open space for this proposal is not required by the LDC and is not appropriate for this site. Beargrass Creek runs to the

**PLANNING COMMISSION MINUTES**  
**March 7, 2019**

**PUBLIC HEARING**  
**CASE NO. 18ZONE1026**

west of the property. The proposed parking does not encroach into the stream buffer; and

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets the Natural Areas and Scenic Historic Resources guideline because Beargrass Creek runs to the west of the property. The proposed parking does not encroach into the stream buffer. The proposal is for the adaptive reuse of an existing structure. 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 this proposal is a commercial use and is located near other non-residential uses, as well as one block away from Brownsboro Road; and

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets the Circulation guideline because ROW dedication is required but no other roadway improvements. Adequate parking is provided. Joint access is not proposed nor required; and

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets the Transportation Facility Design guideline because a stub street is not necessary because the site is within an existing developed neighborhood. Access to the development is through public rights of way. Roadways are existing and connections are adequate; 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

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets the Landscape Character guideline because Beargrass Creek runs to the west of the property. The proposed parking does not encroach into the stream buffer; and

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets the Infrastructure guideline because existing utilities serve the site. Water is available to the site. 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-6 to C-R on property described in the attached legal description be **APPROVED**.

**PLANNING COMMISSION MINUTES**  
**March 7, 2019**

**PUBLIC HEARING**  
**CASE NO. 18ZONE1026**

The vote was as follows:

**YES: Commissioners Brown, Carlson, Daniels, Howard, Lewis and Jarboe**  
**NOT PRESENT AND NOT VOTING: Commissioners Peterson, Robinson, Smith and Tomes**

**Variance from Chapter 5.2.2.C to permit a driveway and parking to encroach into the side and rear setbacks**

On a motion by Commissioner Carlson, seconded by Commissioner Howard, the following resolution based on the Standard of Review and Staff Analysis was adopted.

**WHEREAS**, the variance will not adversely affect the public health, safety or welfare because the proposed parking addition is located to the rear and side of the existing house where MSD owns most of the land; and

**WHEREAS**, the requested variance will not alter the essential character of the general vicinity because the proposed parking addition is located to the rear and side of the existing house where MSD owns most of the land; and

**WHEREAS**, the requested variance will not cause a hazard or nuisance to the public because the proposed parking addition is located to the rear and side of the existing house where MSD owns most of the land; and

**WHEREAS**, the requested variance will not allow an unreasonable circumvention of the zoning regulations because the proposed parking addition is located to the rear and side of the existing house where MSD owns most of the land; and

**WHEREAS**, the requested variance does not arise from any special circumstances. The applicant is expanding into the required side yard with the proposed parking; and

**WHEREAS**, the Louisville Metro Planning Commission finds, the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant because the proposed parking allows for another use of the site where there is no on street parking available; and

**WHEREAS**, the Louisville Metro Planning Commission further finds the circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought. The applicant is not responsible for the existing location of the house, but they would like to expand into the side yard with parking.

**PLANNING COMMISSION MINUTES**  
**March 7, 2019**

**PUBLIC HEARING**  
**CASE NO. 18ZONE1026**

**Waiver from Chapter 10.2.4 to not provide the LBAs and planting requirements along the side and rear property lines**

On a motion by Commissioner Carlson, seconded by Commissioner Howard, the following resolution based on the Standard of Review and Staff Analysis was adopted.

**WHEREAS**, the waiver will not adversely affect adjacent property owners since the majority of the adjacent land is owned by MSD and there are existing trees and plantings on their property; and

**WHEREAS**, Guideline 3, Policy 9 of Cornerstone 2020 calls for protection of the character of residential areas, roadway corridors and 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 majority of the adjacent land is owned by MSD and there are existing trees and plantings on their property; and

**WHEREAS**, the Louisville Metro Planning Commission finds, the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant since the majority of the adjacent land is owned by MSD and there are existing trees and plantings on their property; and

**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 since the majority of the adjacent land is owned by MSD and there are existing trees and plantings on their property.

**PLANNING COMMISSION MINUTES**  
**March 7, 2019**

**PUBLIC HEARING**  
**CASE NO. 18ZONE1026**

**RESOLVED**, that the Louisville Metro Planning Commission does hereby **APPROVE** a variance from chapter 5.2.2.C to permit a driveway and parking to encroach into the side and rear setbacks and a waiver from chapter 10.2.4 to not provide the landscape buffer areas and planting requirements along the side and rear property lines.

**The vote was as follows:**

**YES: Commissioners Brown, Carlson, Daniels, Howard, Lewis and Jarboe**  
**NOT PRESENT AND NOT VOTING: Commissioners Peterson, Robinson, Smith and Tomes**

**District Development Plan and Binding Elements**

On a motion by Commissioner Carlson, seconded by Commissioner Howard, the following resolution based on the Standard of Review and Staff Analysis was adopted.

**WHEREAS**, 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**, provisions for safe and efficient vehicular and pedestrian transportation within and around the development and the community has been provided, and Metro Public has approved the preliminary development plan; and

**WHEREAS**, there are no open space requirements pertinent to the current proposal; and

**WHEREAS**, 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; and

**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.

**RESOLVED**, that the Louisville Metro Planning Commission does hereby **APPROVE** the Detailed District Development Plan **SUBJECT** to the following Binding Elements:

**PLANNING COMMISSION MINUTES**  
**March 7, 2019**

**PUBLIC HEARING**  
**CASE NO. 18ZONE1026**

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:
  - a. The development plan must receive full construction approval from Construction Review, Louisville Metro Public Works and the Metropolitan Sewer District.
  - b. A minor subdivision plat or legal instrument shall be recorded dedicating additional right-of-way to Mellwood Avenue to provide a total of 30 feet from the centerline). A copy of the recorded instrument shall be submitted to the Division of Planning and Design Services prior to obtaining a building permit.
  - 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 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 audible beyond the property line.

**PLANNING COMMISSION MINUTES**  
**March 7, 2019**

**PUBLIC HEARING**  
**CASE NO. 18ZONE1026**

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.

**The vote was as follows:**

**YES: Commissioners Brown, Carlson, Daniels, Howard, Lewis and Jarboe**  
**NOT PRESENT AND NOT VOTING: Commissioners Peterson, Robinson, Smith and Tomes**