

**Planning Commission Minutes
July 6, 2017**

Public Hearing

Case No. 16ZONE1060

Request: Change in zoning from R-4 to C-2, a Detailed District Development Plan , waivers of landscaping requirements, and a variance of side-yard setback.

Project Name: Vega Auto Repair and Sales

Location: 4933 Poplar Level Road

Owner: Luis Vega

Applicant: Luis Vega

Representative: Concepts 21

Jurisdiction: Louisville Metro

Council District: 2 – Barbara Shanklin

Case Manager: Beth Jones, AICP, 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.)

An audio/visual recording of the Planning Commission public 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:

03:28:46 Beth Jones presented the case and showed a Power Point presentation (see staff report and recording for detailed presentation.)

03:36:50 In response to a question from Commissioner Brown, Ms. Jones said that the rendering shown today is what is being proposed for approval.

03:37:13 In response to a question from Commissioner Howard, Ms. Jones discussed Waiver #3 regarding parking (to allow a waiver of ILA's.) The applicant does have the required number of parking spaces on the plan.

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The following spoke in favor of the request:

No one spoke.

The following spoke in opposition to the request:

No one spoke.

The following spoke neither for nor against the proposal ("Other"):

No one spoke.

Rebuttal:

There was no rebuttal, since no one spoke in opposition.

Deliberation:

03:38:14 Commissioners' deliberation.

Zoning

03:41:03 On a motion by Commissioner Brown, seconded by Commissioner Howard, the following resolution was adopted:

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the intents of **Guideline 1: Community Form**. The proposed use of the site meets guidelines in that it integrates into existing patterns of development, which includes a mixture of medium- to high-density uses. It provides accommodations for transit users, pedestrians and bicyclists and provides connectivity to adjacent developments. It is designed to be compatible with both non-residential development in the corridor. No form district amendment is requested; and

WHEREAS, the Commission further finds that the proposal meets the intents of **Guideline 2 – Centers**. The proposal is not located within an existing center and does not create a new center. It is, however, located in a corridor that consists almost entirely of compatible uses and intensities; and

WHEREAS, the Commission further finds that the proposal meets the intents of **Guideline 3: Compatibility**. The proposed building materials increase the new

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development's compatibility. While it is a non-residential expansion into an existing residential area, it appropriately mitigates potentially negative impacts on adjacent but currently undeveloped residential properties through screening and buffering; and

WHEREAS, the Commission further finds that the proposal meets the intents of **Guideline 4: Open Space**. Open space is not required in associated with this development proposal. The site plan does, however, preserve an existing tree canopy in a significant portion of the site well in excess of requirements; and

WHEREAS, the Commission further finds that the proposal meets the intents of **Guideline 5: Natural Areas and Scenic and Historic Resources**. The site does not include existing historic or scenic features and does not have natural areas requiring special consideration; and

WHEREAS, the Commission further finds that the proposal meets the intents of **Guideline 6: Economic Growth and Sustainability**. The proposal does not include industrial or retail uses and is appropriately located on an arterial roadway; and

WHEREAS, the Commission further finds that the proposal meets the intents of **Guideline 7: Circulation**. The proposal does not require roadway improvements or street development. It provides connections to existing multi-modal facilities and adjacent sites and meets parking requirements; and

WHEREAS, the Commission further finds that the proposal meets the intents of **Guideline 8: Transportation Facility Design**. Transportation facility design is appropriate to the site. The proposal uses an existing curb cut and provides internal connection to adjoining commercial uses; and

WHEREAS, the Commission further finds that the proposal meets the intents of **Guideline 9: Bicycle, Pedestrian and Transit**. The site design provides, where appropriate, for the movement of pedestrians, bicyclists and transit users around and through the development, provides bicycle and pedestrian connections to adjacent developments and to transit stops, and is appropriately located for its density and intensity; and

WHEREAS, the Commission further finds that the proposal meets the intents of **Guideline 10: Flooding and Stormwater**. Drainage plans have been approved by MSD and mitigate negative impacts to the floodplain and minimizes impervious area; and

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WHEREAS, the Commission further finds that the proposal meets the intents of **Guideline 12: Air Quality**. The proposal has been reviewed by APCD and found not to have a negative impact on air quality; and

WHEREAS, the Commission further finds that the proposal meets the intents of **Guideline 13: Landscape Character**. The site does not include potential connections to a system of natural corridors but does preserve a significant existing tree canopy; and

WHEREAS, the Commission further finds that the proposal meets the intents of **Guideline 14: Infrastructure**. The site is located in an area served by existing utilities or planned for utilities, has access to an adequate supply of potable water and water for fire-fighting purposes and has adequate means of sewage treatment and disposal; and

WHEREAS, the Commission further finds that, based on the staff report, the applicant's findings of fact, and the evidence and testimony presented today, that all of the applicable guidelines of Cornerstone 2020 and the Land Development Code are being met; now, therefore be it

RESOLVED, the Louisville Metro Planning Commission does hereby **RECOMMEND** to the Louisville Metro Council that the proposed rezoning on property described in the attached legal description be **APPROVED**.

The vote was as follows:

YES: Commissioners Brown, Howard, Carlson, Ferguson, Tomes, Lindsey, Lewis, and Jarboe.

NO: No one.

NOT PRESENT: Commissioners Smith and Peterson.

ABSTAINING: No one.

Waiver 1: To reduce the required perimeter LBA from 25 ft. to 5 ft. (LDC 10.2.4.)

Waiver 2: To reduce the required VUA LBA from 10 ft. to 5 ft. (LDC 10.2.10)

Waiver 3: To not provide VUA interior landscape areas (LDC 10.2.12)

Variance 1: To reduce the required side yard setback from 25 ft. to 5 ft. (LDC 5.3.2.C.2.b.)

Detailed District Development Plan

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03:41:58 On a motion by Commissioner Brown, seconded by Commissioner Howard, the following resolution was adopted:

(Waivers 1 and 2) WHEREAS, the Louisville Metro Planning Commission finds that the waivers will not adversely affect adjacent property owners. These landscape areas are required specifically due to a shared property line with a flag parcel zoned for residential use. The specific portion of the shared property line affected by the requested waivers is along the narrow "pole" portion of the adjoining lot, where future residential development would not be likely. Adjacent to the "flag" area of the adjoining parcel, where future residential development would more likely be located, the proposal retains an existing tree canopy far in excess of buffering requirements. In addition, approximately 80% of the parking associated with the proposal is located within or behind the building, where it would be also be buffered from residential uses by the tree canopy; and

WHEREAS, the Commission further finds that the waivers will not violate the Community Design, Land Use or Site Design guidelines of Cornerstone 2020 for Suburban Marketplace Corridor form districts; and

WHEREAS, the Commission further finds that the waivers are being requested only for the specific area necessary to develop the site as proposed. The applicant will provide landscaping to the extent possible in the reduced LBA areas; and

WHEREAS, the Commission further finds that the applicant is retaining a significant tree canopy in excess of requirements at the rear of the property, adjacent to the area most likely to be developed for residential purposes; and

(Waiver #3) WHEREAS, the Commission further finds that this waiver will not adversely affect adjacent property owners. Twenty four of the thirty three parking spaces provided are located within or behind the proposed building, adjacent to an existing tree canopy area of 29,152 sq ft. which would serve as a buffer to any future residential uses on the adjacent R-4 parcel. The width of the parcel can only accommodate 7 parking spaces along the street frontage which, if considered separately, would have no ILA requirement; and

WHEREAS, the Commission further finds that the waivers will not violate the Community Design, Land Use or Site Design guidelines of Cornerstone 2020 for Suburban Marketplace Corridor form districts; and

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WHEREAS, the Commission further finds that the waiver is being requested only for ILAs in the parking areas. The proposal retains a significant tree canopy area elsewhere on the site; and

WHEREAS, the Commission further finds that the applicant is retaining a significant tree canopy in excess of requirements at the rear of the property; and

(Variance) WHEREAS, the Commission further finds that the requested variance will not adversely affect the public health, safety or welfare. The requested variance will affect only the adjoining undeveloped property and only in a specific area of the property that is unlikely to be developed for residential uses due to its flag lot configuration. There are no health or safety impacts associated with the variance; and

WHEREAS, the Commission further finds that the requested variance will not alter the essential character of the general vicinity. The proposal is consistent with the pattern of development along the Poplar Level Road corridor and will not alter the essential character of the general vicinity; and

WHEREAS, the Commission further finds that no hazards or nuisances will be created as a result of the variance. The proposed development will not restrict or endanger the public; and

WHEREAS, the Commission further finds that the requested variance will not allow an unreasonable circumvention of the zoning regulations. The applicant's variance request is not unreasonable in that the requirement is related to the residential zoning of the adjoining property, which is currently undeveloped and unlikely to be developed for residential uses in the future; and

WHEREAS, the Commission further finds that the requested variance arises from the residential zoning and the unusual configuration of an adjoining property. The 25 ft. side yard is required due to its residential zoning, but its configuration makes it unlikely that that the specific area of the variance request would be developed for residential use. The remainder of the shared property lines, where residential development is most likely to occur, will have setbacks and landscaping in excess of requirements; and

WHEREAS, the Commission further finds that, due to the narrow width of the parcel, strict application of the regulation would not permit the applicant to construct a functional building and also provide for circulation lane to the rear of the property for the necessary employee and customer parking; and

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WHEREAS, the Commission further finds that the circumstances are the result of the size and shape of the applicant's parcel and of the zoning of the adjoining parcel and not due to actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought; and

(Development Plan) WHEREAS, the Commission further finds that the proposal preserves 71% of an existing tree canopy on the site; and

WHEREAS, the Commission further finds that the development plan meets all internal circulation requirements and provides connections to existing pedestrian facilities along Poplar Level Road; and

WHEREAS, the Commission further finds that open space is not required for this application; and

WHEREAS, the Commission further finds that the Metropolitan Sewer District has issued preliminary approval of the development plan and will ensure the provision of adequate drainage facilities on the subject site; and

WHEREAS, the Commission further finds that the overall site design and land use are compatible with existing development in the general vicinity; and

WHEREAS, the Commission further finds that the development plan conforms to applicable guidelines and policies of the Comprehensive Plan as demonstrated in the Cornerstone 2020 Staff Review Checklist (Attachment 3); and

WHEREAS, the Commission further finds that, based on the staff report, the applicant's findings of fact, and the evidence and testimony presented today, that all of the applicable guidelines of Cornerstone 2020 and the Land Development Code are being met; now, therefore be it

RESOLVED, the Louisville Metro Planning Commission does hereby **APPROVE** the requested **Waiver 1** To reduce the required perimeter LBA from 25 ft. to 5 ft. (LDC 10.2.4.); **Waiver 2** To reduce the required VUA LBA from 10 ft. to 5 ft. (LDC 10.2.10); **Waiver 3** To not provide VUA interior landscape areas (LDC 10.2.12); a **Variance** to reduce the required side yard setback from 25 ft. to 5 ft. (LDC 5.3.2.C.2.b.); and a **Detailed District Development Plan, SUBJECT** to the following binding elements:

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1. 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 LDC. Any changes/additions/alterations of any binding element(s) shall be submitted to the Planning Commission or its 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 Develop Louisville, Louisville Metro Public Works and the Metropolitan Sewer District.
 - b. Encroachment permits must be obtained from the Kentucky Transportation Cabinet.
 - c. The property owner/developer must obtain approval of a detailed plan for screening, buffering and/or landscaping as described in LDC Chapter 10, which shall be implemented prior to occupancy of the site and maintained thereafter.
 - d. An approved Tree Preservation Plan in accordance with LDC Chapter 10 is required prior to obtaining approval for site disturbance activities.
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.

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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 them. At all times during development of the site, the applicant and developer, their heirs and successors as well as assignees, contractors, subcontractors, and other parties engaged in development of the site shall be responsible for compliance with these binding elements.
7. The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the July 6, 2017 Planning Commission meeting.

The vote was as follows:

YES: Commissioners Brown, Howard, Carlson, Ferguson, Tomes, Lindsey, Lewis, and Jarboe.

NO: No one.

NOT PRESENT: Commissioners Smith and Peterson.

ABSTAINING: No one.