

PLANNING COMMISSION MINUTES
February 17, 2022

PUBLIC HEARING

CASE NO. 21-ZONE-0117

Request: Change in Zoning from R-5 to OR, with Detailed District Development Plan with Binding Elements, Variances, and Waiver

Project Name: Westport Office

Location: 917 & 919 Fountain Avenue, 4700 Westport Road

Owner: Estate of Evelyn Kaelin

Applicant: Louisville Spine & Wellness

Representative: Dinsmore & Shohl

Jurisdiction: Louisville Metro

Council District: 7 – Paula McCraney

Case Manager: Dante St. Germain, 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. (The staff report is part of the case file maintained in Planning and Design Services offices, 444 S. 5th Street.)

Agency Testimony:

01:54:22 Dante St. Germain presented the case and showed a Power Point presentation (see staff report and recording for detailed presentation.)

In response to Commissioner Howard’s question if the parking requested is the minimum or maximum amount required, Dante St. Germain said it is close to the maximum, which is 32 spaces, and they are providing 30.

The following spoke in support of the request:

Cliff Ashburner, Dinsmore & Shohl, 101 S 5th Street, Suite 2500, Louisville, KY 40202

Kent Gootee, Mindel Scott & Associates, 5151 Jefferson Blvd, Louisville, KY 40219

Brett Zemba, 2555 Fisherville Road, Finchville, KY 40022

Steve Porter, 2406 Tucker Station Road, Louisville, KY 40299

Summary of testimony of those in support:

02:05:40 Cliff Ashburner, the applicant’s representative, presented the applicant’s case and showed a Power Point presentation (see recording for detailed presentation.)

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02:12:36 Kent Gootee went into detail on the proposed development plan (see recording for detailed presentation.)

02:16:03 Mr. Ashburner continued the presentation.

Dante St. Germain explained that the site plan presented by the applicant at this meeting was not submitted to staff and has not received preliminary approval. Cliff Ashburner explained the changes to the plan were minor and Kent Gootee went into detail on those changes. There was further detailed discussion on the development plan. The Planning Commission decided to continue with the Public Hearing.

Commissioner Clare asked why there was a need for this much parking. Cliff Ashburner explained there could be quite a few patients and administrative staff in the building at any time. Dr. Zemba explained there would be multiple professionals operating along with his staff and they would need those spaces. Mr. Gootee went into detail on why the variances are needed for this specific site in terms of the parking.

02:37:48 Steve Porter explained that this a compromise between his client, Mr. Biven, and the developers. Mr. Porter said the variances are necessary and if there is good landscaping, it will satisfy Mr. Biven. Mr. Porter also discussed the Binding Elements they added that were presented at this meeting.

The following spoke in opposition to the request:

None.

Summary of testimony of those in opposition:

None.

Rebuttal:

02:43:41 Cliff Ashburner said they are aware of the minor changes that need to be addressed on the development plan and hope the Planning Commission will recommend approval today.

02:45:42 Commissioners' deliberation.

The Planning Commission decided to continue to vote on the proposal and recommend approval to Metro Council on the condition that the applicant submit the plan presented today to staff and receive preliminary approval before the next Planning Commission meeting. Staff will notify the Planning Commission when the plan has been approved.

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

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the Customer Service staff to view the recording or to obtain a copy.

On a motion by Commissioner Carlson, seconded by Commissioner Howard, the following resolution, based on the Standard of Review and Staff Analysis and evidence and testimony heard at today's hearing, was adopted:

Change in Zoning:

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Community Form because the proposal would constitute a non-residential expansion into an existing residential area. The site is located along a minor arterial (Westport Road) and most traffic to the site will come via Westport Road. The proposal is for office/residential zoning which allows relatively low-impact uses which are unlikely to create an adverse impact on neighboring residential uses; and the site is located adjacent to Westport Road, a transit corridor; and the proposed zoning district would not permit hazardous uses. Disadvantaged populations are not disproportionately impacted by the proposal; and the proposed zoning district would not permit uses which create noxious odors, particulates or emissions; and the site is located on Westport Road and most traffic to the site will be routed along Westport Road; and the proposed zoning district would not permit uses which are likely to create high levels of noise; and

WHEREAS, the Commission further finds that the proposal meets Land Use & Development Goal 2: Community Form because OR zoning is appropriate for a small corner activity center in an existing neighborhood. Westport Road is a minor arterial at this location; and the site has appropriate access and connectivity, as it is located on Westport Road and most of the traffic to the site will be routed along Westport Road; and the site is not located in an existing activity center. Low-intensity commercial previously existed on a portion of the site and was supported by nearby populations; and the proposal would create a new activity center. OR zoning would support neighborhood-serving office uses, which encourages a more compact development pattern and cost-effective infrastructure investment; and the proposal would permit a mixture of compatible land uses in a new activity center; and the proposal would permit residential uses in a new activity center; and the proposed zoning district would encourage new development providing office uses; and the proposal would not include any underutilized parking lots; and the placement of the structure would be compatible with nearby residences; and

WHEREAS, the Commission further finds that the proposal meets Land Use & Development Goal 3: Community Form because no natural systems are evident on the subject site; and no wet or highly permeable soils, or severe, steep or unstable slopes

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are evident on the site; and the site is not located in a flood-prone area. No karst features were evident on the site; and

WHEREAS, the Commission further finds that the proposal meets Land Use & Development Goal 4: Community Form because the existing structures on the site are not proposed to be preserved. They do not appear to have historic or architectural value; and the existing structures on the site are not proposed to be preserved. They do not appear to constitute distinctive cultural features; and

WHEREAS, the Commission further finds that the proposal meets Land Use & Development Goal 1: Mobility because the site is not located within or near an existing marketplace corridor or existing activity center. However, Westport Road is a transit corridor at this location and development on this site would support transit-oriented development; and

WHEREAS, the Commission further finds that the proposal meets Land Use & Development Goal 2: Mobility because access to the site will be via Westport Road, a minor arterial and transit corridor at this location; and

WHEREAS, the Commission further finds that the proposal meets Land Use & Development Goal 3: Mobility because OR zoning would permit neighborhood-serving office uses; and the proposal would permit a mixture of compatible land uses that are easily accessible by bicycle, car, transit, pedestrians and people with disabilities; and the site is located on an existing transit corridor and the proposal would encourage higher density mixed-use developments; and Transportation Planning has approved the proposal; and

WHEREAS, the Commission further finds that the proposal meets Land Use & Development Goal 2: Community Facilities because the relevant utilities have approved the proposal; and Louisville Water Company has approved the proposal; and MSD has approved the proposal; and

WHEREAS, the Commission further finds that the proposal meets Economic Development: Goal 1 because the site is located on a minor arterial street and does not have adequate access to a major arterial. The proposed zoning district would not allow uses likely to generate high volumes of traffic; and

WHEREAS, the Commission further finds that the proposal meets Land Use & Development Goal 1: Livability because no karst features are evident on the subject site; and

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WHEREAS, the Commission further finds that the proposal meets Land Use & Development Goal 1: Housing because the proposal would support aging in place by permitting higher density housing options on the site, or neighborhood-serving office uses in proximity to existing residential development; and

WHEREAS, the Commission further finds that the proposal meets Land Use & Development Goal 2: Housing because the proposal would permit inter-generational mixed-income and mixed-use development. The site is connected to the neighborhood and surrounding area; and the proposal would permit housing in proximity to Westport Road, a multi-modal transportation corridor; and

WHEREAS, the Commission further finds that the proposal meets Land Use & Development Goal 3: Housing because the proposal would permit innovative methods of housing.

RESOLVED, the Louisville Metro Planning Commission does hereby **RECOMMEND** to the Louisville Metro Council **APPROVE** the change in zoning, in case 21-ZONE-0117, from R-5, Single-Family Residential, to OR, Office Residential, for the property at 917 and 919 Fountain Avenue and 4700 Westport Road described in the staff report.

The vote was as follows:

YES: Commissioners Brown, Carlson, Clare, Daniels, Howard, Mims, Price, Sistrunk, and Lewis

NO: None

ABSTAIN: None

ABSENT: Commissioner Seitz

On a motion by Commissioner Carlson, seconded by Commissioner Howard, the following resolution, based on the Standard of Review and Staff Analysis and evidence and testimony heard at today's hearing, was adopted:

21-WAIVER-0166:

WHEREAS, the Louisville Metro Planning Commission finds that the waiver will not adversely affect adjacent property owners as the required screening is proposed to be provided in the reduced landscape buffer area; and

WHEREAS, the Commission further finds that the waiver will not violate specific guidelines of Plan 2040 as Plan 2040 encourages adequate buffering between uses which are of substantially different intensity or density. The required screening and planting material is proposed to be provided; and

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WHEREAS, the Commission further finds that the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant as the building is at its current location due to the width of drive aisles and parking in the parking lot, and the building size is needed to provide the applicant with enough room to expand an existing business which is currently located on another site; and

WHEREAS, the Commission further finds that 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 because the constraints of the site require an encroachment and the lower-impact use of the site (a building wall) will be facing the most affected adjoining property.

RESOLVED, the Louisville Metro Planning Commission does hereby **APPROVE** the Waiver from Table 10.2.3 to allow encroachment into a required property perimeter Landscape Buffer Area.

The vote was as follows:

YES: Commissioners Brown, Carlson, Clare, Daniels, Howard, Mims, Price, Sistrunk, and Lewis

NO: None

ABSTAIN: None

ABSENT: Commissioner Seitz

On a motion by Commissioner Carlson, seconded by Commissioner Howard, the following resolution, based on the Standard of Review and Staff Analysis and evidence and testimony heard at today's hearing, was adopted:

21-VARIANCE-0182:

WHEREAS, the Louisville Metro Planning Commission Finds that the requested variance will not adversely affect the public health, safety or welfare as the encroachment will not affect sight lines or create a safety issue; and

WHEREAS, the Commission further finds that the requested variance will not alter the essential character of the general vicinity as the provided setback is within a required Landscape Buffer Area and will be landscaped appropriately; and

WHEREAS, the Commission further finds that the requested variance will not cause a hazard or nuisance to the public as the encroachment does not place the building so close to the adjoining building as to create a hazard or nuisance; and

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WHEREAS, the Commission further finds that the requested variance will not allow an unreasonable circumvention of the zoning regulations as the site constraints require the building to encroach into the required setback; and

WHEREAS, the Commission further finds that the requested variance does not arise from special circumstances which do not generally apply to land in the general vicinity or the same zone because the lot is regular in shape and when consolidated would be twice the size of other lots in the vicinity; and

WHEREAS, the Commission further finds that the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant by requiring the applicant to reduce the size of the proposed building which would reduce the ability of the business to expand in the way it needs to expand; and

WHEREAS, the Commission further finds that the circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought as the applicant is requesting the variance and has not begun construction.

22-VARIANCE-0010:

WHEREAS, the Louisville Metro Planning Commission Finds that the requested variance will not adversely affect the public health, safety or welfare as the excess setback will not affect sight lines or create a safety issue; and

WHEREAS, the Commission further finds that the requested variance will not alter the essential character of the general vicinity as the site is a corner lot which is to be developed with an office use, as opposed to the residential uses nearby, and therefore would be expected to be somewhat different from the residential development; and

WHEREAS, the Commission further finds that the requested variance will not cause a hazard or nuisance to the public as the structure will be built according to building code including all fire codes; and

WHEREAS, the Commission further finds that the requested variance will not allow an unreasonable circumvention of the zoning regulations as the vehicular maneuvering area in front of the building necessitates the excess setback; and

WHEREAS, the Commission further finds that the requested variance does not arise from special circumstances which do not generally apply to land in the general vicinity

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or the same zone because the lot is regular in shape and when consolidated would be twice the size of other lots in the vicinity; and

WHEREAS, the Commission further finds that the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant by requiring the applicant to rearrange the orientation of the structures and parking on the lot; and

WHEREAS, the Commission further finds that the circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought as the applicant is requesting the variance and has not begun construction.

RESOLVED, the Louisville Metro Planning Commission does hereby **APPROVE** the variance from Table 5.3.2 to allow encroachment into a required non-residential to residential setback (required: 30', requested: 10', variance of 20'), and the variance from section 5.1.12.B.2.e.i.1 to permit a principal structure to exceed the allowed maximum infill front yard setback (required: 30', requested: 60', variance of 30').

The vote was as follows:

YES: Commissioner Brown, Carlson, Clare, Daniels, Howard, Mims, Price, Sistrunk, and Lewis

NO: None

ABSTAIN: None

ABSENT: Commissioner Seitz

On a motion by Commissioner Carlson, seconded by Commissioner Howard, the following resolution, based on the Standard of Review and Staff Analysis and evidence and testimony heard at today's hearing, was adopted:

Detailed District Development Plan

WHEREAS, the Louisville Metro Planning Commission finds that no natural resources appear to exist on the site. The existing building is not proposed to be retained. However, the existing building does not appear to be a historic 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

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WHEREAS, the Commission further finds that there are no open space requirements pertinent to the current proposal; 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 is compatible with the existing and future development of the area. The site is a corner lot proposed for office development in proximity to an existing neighborhood. The site proposal would provide a small, neighborhood-serving office use; and

WHEREAS, the Commission further finds that the development plan conforms to applicable guidelines and policies of the Comprehensive Plan and the regulations of the Land Development Code, with the exception of the requested waiver and variances.

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 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. Encroachment permits must be obtained from the Kentucky Transportation Cabinet for any work in the Westport Road right-of-way.

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- 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 certificate of occupancy. 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.
 - 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. The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the February 17, 2022 Planning Commission meeting. A copy of the approved rendering is available in the case file on record in the offices of the Louisville Metro Planning Commission.
- 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. The hours of operation shall be limited to 7:00 AM to 9:00 PM.
- 9. Lighting and Signage Binding Element
 - a. All exterior lighting, whether freestanding or attached to any structure, including parking lot lights and lighting for any signage, shall be fully shielded, shall utilize flat or hidden lenses, and shall be pointed directly to the ground. An exception is low voltage landscape lighting aimed away from adjacent properties.
 - b. No lighting shall have a corrected color temperature (CCT) exceeding 2700 degrees Kelvin.

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- c. No lighting of any kind is permitted on the south wall of the building facing the property at 913 Fountain Ave, or within the LBA on the southern edge of the property.
- d. No parking lot light fixtures shall be more than fourteen feet high, measured from the ground level.
- e. No lighted signage shall be placed on the Fountain Avenue elevation (west face) of the building.
- f. No changing image or moving signs shall be permitted.
- g. All freestanding signage shall not exceed six feet in height, measured from ground level.

RESOLVED, the Louisville Metro Planning Commission does hereby **APPROVE** the Detailed District Development Plan for 21-ZONE-0117, on the condition that a revised plan be submitted to staff for approval no later than the next Planning Commission meeting and that staff advise the Planning Commission via email that this has been accomplished, along with approval of the Binding Elements on pages 17 and 18 of the staff report and also to adopt Binding Element #8 and #9 that were submitted today via email and read into the record.

The vote was as follows:

YES: Commissioners Clare, Mims, Brown, Howard, Carlson, Daniels, Sistrunk, Price, and Lewis

NO: None

ABSTAIN: None

ABSENT: Commissioner Seitz