

**PLANNING COMMISSION MINUTES  
DECEMBER 1, 2016**

**PUBLIC HEARING**

**CASE NO. 16ZONE1025**

Request: Change in zoning from R-4 to C-2 on approximately 1.36 acres with a waiver and variance  
Project Name: 436-452 Roberts Avenue  
Location: 436-452 Roberts Avenue  
Owner: Jacob Thompson, Tom Lago, & Pauline Vittitoe  
Applicant: Thompson Brothers Plumbing, Lago's Logos, & Jesse's Lawn Service  
Representative: Miller Wihry  
Jurisdiction: Louisville Metro  
Council District: 13-Vicki Aubrey Welch  
Case Manager: Julia Williams, RLA (IN), 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 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:**

**01:49:18** Julia Williams presented the case and showed a Powerpoint presentation. Ms. Williams responded to questions from the Commissioners (see recording for detailed presentation).

**The following spoke in favor of the request:**

John Miller, 1387 S. 4<sup>th</sup> Street, Louisville, KY 40208  
Tom Lago, 448 Roberts Ave., Louisville, KY 40214

**Summary of testimony of those in favor:**

**02:04:15** John Miller spoke in favor of the request and showed a Powerpoint presentation (see recording for detailed presentation).

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**02:09:30** Tom Lago spoke in favor of the request (see recording for detailed presentation).

**The following spoke in opposition of the request:**  
No one spoke.

**02:10:30** Commissioners' deliberation

**02:12:07** On a motion by Commissioner Peterson, seconded by Commissioner Howard, the following resolution was adopted:

**Change in zoning from R-4 to C-2**

**WHEREAS**, the Louisville Metro Planning Commission finds that all of the applicable Guidelines and Policies of Cornerstone 2020 and the Comprehensive Plan are being met; now, therefore be it

**RESOLVED**, that the Louisville Metro Planning Commission in Case Number 16zone1025 does hereby **RECOMMEND APPROVAL** to Louisville Metro Council the Change in Zoning from R-4 to C-2, based on the Staff Report and the testimony heard today.

**The vote was as follows:**

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

**02:14:20** On a motion by Commissioner Peterson, seconded by Commissioner Carlson, the following resolution was adopted:

**Variance from 5.1.12.A.2 to permit the proposed buildings to be set back further than the range of the two closest principal structures**

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**WHEREAS**, the Louisville Metro Planning Commission finds that the requested variance will not adversely affect public health safety or welfare since the proposed buildings are located at the rear of the property and will be used as a shop/storage; and

**WHEREAS**, the Commission further finds that the requested variance will not alter the essential character of the general vicinity since the building is being located behind the residential looking structure will maintain the residential/industrial character of the area; and

**WHEREAS**, the Commission further finds that the requested variance will not cause a hazard or nuisance to the public since the building is located behind the office structure in the front of the site; and

**WHEREAS**, the Commission further finds that the requested variance will not allow an unreasonable circumvention of zoning regulations since the structures act as accessory structures even though it is larger than the main office structures in the front of the site; and

**WHEREAS**, the Commission further finds that the requested variance arises from special circumstances which do not generally apply to land in the general vicinity or the same zone since metal storage structures are not generally located on residentially zoned lots and the proposal to build a new shop structure is only reflective of the existing storage structure; and

**WHEREAS**, the Commission further finds that the strict application of the provisions of the regulation would deprive the applicant of reasonable use of the land since the area is changing with a mix of non-residential uses occupying lots along the roadway. Industrial uses are already located in the vicinity; and

**WHEREAS**, the Commission further finds that the circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought; and

**Waiver from Chapter 10.2.4 to permit an existing building to encroach into a 15' LBA along the south and west property line where the proposed C-2 zoned site is adjacent to M-2 zoning as shown on the development plan**

**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 the buffers; and

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**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 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 being reduced but the screening and planting requirements will still be met 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 much of the site is an existing condition due to the existing residential character of the lot but also with the existing contractors shop; and

**WHEREAS**, the Commission further finds that the strict application would deprive the applicant of reasonable use of the land because the area is changing with a mix of non-residential uses occupying lots along the roadway. Industrial uses are already located in the vicinity; and

**General and Detailed Development Plan**

**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

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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 provided as well as the front yard; 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; and

**WHEREAS**, the Commission further finds that the development plan conforms to applicable guidelines and policies of the Comprehensive Plan and to requirements of the Land Development Code; now, therefore be it

**RESOLVED**, that the Louisville Metro Planning Commission in Case Number 16ZONE1025 does hereby **APPROVE** Variance from 5.1.12.A.2 to permit the proposed buildings to be set back further than the range of the two closest principal structures, Waiver from Chapter 10.2.4 to permit an existing building to encroach into a 15' LBA along the south and west property line where the proposed C-2 zoned site is adjacent to M-2 zoning as shown on the development plan and the General and Detailed Development Plan, based on the Staff Report and testimony heard today and **SUBJECT** to the following Binding Elements, noting that the rendering for Binding Element Number 9 was shown here today:

**Proposed 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.

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2. The development shall not exceed 5,350 square feet of gross floor area for 436/438 Roberts Ave. The development shall not exceed 6,400 square feet of gross floor area for 440/448/450 Roberts Ave. The development shall not exceed 2,350 square feet of gross floor area for 452 Roberts Ave.
3. No 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) is requested:
  - a) The development plan must receive full construction approval from Develop Louisville, Louisville Metro Public Works and the Metropolitan Sewer District.
  - b) 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.
  - c) A minor plat or legal instrument shall be recorded consolidating 436/438 Roberts Avenue into one lot and 440/448/450 Roberts Avenue 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.
  - 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 reciprocal access and crossover easement agreement in a form acceptable to the Planning Commission legal counsel shall be created between the adjoining property owners and recorded. 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.

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6. There shall be no outdoor music (live, piped, radio or amplified) or outdoor entertainment or outdoor PA system audible beyond the property line.
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 single-family residences. No overnight idling of trucks shall be permitted on-site.
9. The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the December 1, 2016 Planning Commission meeting.