

**PLANNING COMMISSION MINUTES
OCTOBER 20, 2016**

PUBLIC HEARING

CASE NO. 15ZONE1059

Request: Change in zoning from R-4 to C-1 on approximately 0.20 acres with waivers and variances
Project Name: Houchens Industries
Location: 5501 Lovers Lane and 5502 Billtown Road
Owner: JR Food Stores Inc.
Applicant: Houchens Industries Inc.
Representative: Arnold Consulting Engineering Services Inc.; Bardenwerper Talbott and Roberts PLLC
Jurisdiction: Louisville Metro
Council District: 22-Robin Engel
Case Manager: Julia Williams, RLA, 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:

00:32:46 Julia Williams presented the case and showed a Powerpoint presentation. Ms. Williams responded to questions from the Commissioners (see recording and staff report for detailed presentation).

The following spoke in favor of this request:

Bill Bardenwerper, 1000 N. Hurstbourne Pkwy., Louisville, KY 40223
Brian Shirley, 1136 South Park Drive, Bowling Green, KY 42103
Andrew Webb, 700 Church Street, Bowling Green, KY 42102

Summary of testimony of those in favor:

00:44:02 Bill Bardenwerper spoke in favor of the request and showed a Powerpoint presentation (see recording for detailed presentation).

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00:49:53 Brian Shirley spoke in favor of the request (see recording for detailed presentation).

00:53:50 Bill Bardenwerper spoke in favor of the request (see recording for detailed presentation).

00:55:07 Andrew Webb spoke in favor of the request (see recording for detailed presentation).

00:57:15 Bill Bardenwerper spoke in favor of the request (see recording for detailed presentation).

00:58:56 Andrew Webb explained the reasons for requesting the waiver in regard to windows (see recording for detailed presentation).

00:59:47 Bill Bardenwerper spoke in favor of the request and responded to questions from the Commissioners (see recording for detailed presentation).

01:03:08 Brian Shirley responded to questions from the Commissioners (see recording for detailed presentation).

The following spoke in opposition to the request:

No one spoke.

01:06:45 Commissioners' deliberation

01:11:11 On a motion by Commissioner Carlson, seconded by Commissioner Turner, the following resolution was adopted:

Change in Zoning from R-4 to C-1:

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

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RESOLVED, that the Louisville Metro Planning Commission in Case Number 15ZONE1059 Change in Zoning from R-4 to C-1 does hereby **RECOMMEND APPROVAL** to Louisville Metro Council, based on the Staff Report, the testimony heard today and the applicant's submission.

The vote was as follows:

YES: Commissioners Carlson, Howard, Smith, Turner, Peterson, Brown, Vice Chair Lewis and Chair Jarboe

NOT PRESENT: Commissioners Kirchdorfer and Tomes

01:13:43 On a motion by Commissioner Carlson, seconded by Commissioner Turner, the following resolution was adopted:

Variance from Chapter 5.3.1.C.5 to permit vehicle maneuvering within the 30' setback along the southeastern property line:

WHEREAS, the Louisville Metro Planning Commission finds that the variance will not adversely affect the public health, safety or welfare because the applicant will install an 8 ft. high vinyl privacy fence in this area with landscaping and take other mitigation measures so as not to adversely affect the adjoining property, and

WHEREAS, the Commission further finds that the variance will not alter the essential character of the general vicinity because this property is already almost entirely zoned for this use; it is a pre-"Plan Certain" site, meaning that it could be developed without a discretionary review in a less attractive, more impactful way but for the small amount of additional rezoning requested plus one waiver and one variance, and

WHEREAS, the Commission further finds that the variance will not cause a hazard or a nuisance to the public because the nuisance issues are addressed with screening and buffering; no hazard issue is involved with this request, and

WHEREAS, the Commission further finds that the variance will not allow an unreasonable circumvention of the requirements of the zoning regulations because of the mitigation measures explained above, notably screening and buffering and high quality aesthetics, and

WHEREAS, the Commission further finds that strict application of the provisions of the regulation would deprive the applicant of a reasonable use of the land or would create

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an unnecessary hardship because the applicant would likely lose its drive-thru or would have to eliminate part of the store, and

WHEREAS, the Commission further finds that the circumstances of this variance are not the result of actions of the applicant taken subsequent to the adoption of the regulation which relief is sought but rather they are the result of the size, configuration and location of utilities and access of and on this lot; and

Waiver from Chapter 5.6.1.C.1 to permit less than 50% clear windows on the Lovers Lane and Billtown Road facades:

WHEREAS, the Louisville Metro Planning Commission finds that the waiver will not adversely affect adjacent property owners because this a design issue that does not have to do with issues of impact on adjoining properties; moreover, aesthetics of this site and building are also not negatively impacted by this waiver, and

WHEREAS, the Commission further finds that the waiver will not violate the Comprehensive Plan for all the reasons set forth in the Detailed Statement of Compliance with all applicable Guidelines and Policies of the Cornerstone 2020 Comprehensive Plan filed with the original rezoning application, and

WHEREAS, the Commission further finds that the extent of waiver of the regulation is the minimum necessary to afford relief to the applicant because the building otherwise remains aesthetically attractive, although this is a minor waiver for some building facades so as not to adversely impact internal store operations, and

WHEREAS, the Commission further finds that the strict application of the provisions of the regulation would deprive the applicant of a reasonable use of the land or would create an unnecessary hardship on the applicant because the applicant would have to design its building in a manner that significantly affect internal store operations particularly as respects shelf space and display of merchandise; and

Waiver from Chapter 5.9.2.B to not provide a pedestrian connection from Lovers Lane to the building:

WHEREAS, the Louisville Metro Planning Commission finds that the waiver will not adversely affect adjacent property owners since pedestrian connections have been provided in a safe and reasonable distance elsewhere on site, and

WHEREAS, the Commission further finds that Guideline 9, Policy 1 states that new development should provide, where appropriate, for the movement of pedestrians, bicyclists and transit users with walkways for access to public transportation stops.

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Pedestrians are being provided for elsewhere on site where there would be less conflict with vehicles, and

WHEREAS, the Commission further finds that the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant since there are alternative ways for a pedestrian to get into the site and building, and

WHEREAS, the Commission further finds that providing a pedestrian connection from Lovers Lane would either eliminate the drive through proposed on the site or reduce the number of gas pumps; and

District 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 community has been provided, and Metro Public Works and the Kentucky Transportation Cabinet have approved the preliminary development plan, and

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 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 15ZONE1059 does hereby **APPROVE** Variance from Chapter 5.3.1.C.5 to permit

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vehicle maneuvering within the 30' setback along the southeastern property line, Waiver from Chapter 5.6.1.C.1 to permit less than the 50% clear windows on the Lovers Lane and Billtown Road facades, Waiver from Chapter 5.9.2.B to not provide a pedestrian connection from Lovers Lane to the building, and District Development Plan, based on the Staff Report, the applicant's justification and the evidence and testimony heard today, and **SUBJECT** to the following Binding Elements:

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. The development shall not exceed 17,000 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. Encroachment permits must be obtained from the Kentucky Department of Transportation, Bureau of Highways.
 - 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.

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- d. 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 prior to issuance of a building permit.

6. 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.

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 property owner shall provide a cross over access easement if the property to the south and west are ever developed for a nonresidential use. A copy of the signed easement agreement shall be provided to Planning Commission staff upon request.

10. The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the October 20, 2016 Planning Commission meeting.

11. No idling of trucks shall take place within 200 feet of single-family residences. No overnight idling of trucks shall be permitted on-site.

The vote was as follows:

YES: Commissioners Carlson, Howard, Smith, Turner, Peterson, Brown, Vice Chair Lewis and Chair Jarboe

NOT PRESENT: Commissioners Kirchdorfer and Tomes

LAND DEVELOPMENT AND TRANSPORTATION COMMITTEE MINUTES
September 22, 2016

NEW BUSINESS

CASE NUMBER 15ZONE1059

Request:	R-4 to C-1 with Waivers and Variances
Project Name:	Houchins Industries
Location:	5501 Lovers Lane and 5502 Billtown Road
Owner:	JR Food Stores Inc.
Applicant:	Houchens Industries Inc.
Representative:	Arnold Consulting Engineering Services Inc.;
	Bardenwerper Talbott and Roberts PLLC
Jurisdiction:	Louisville Metro
Council District:	22-Robin Engel
Case Manager:	Julia Williams, RLA, AICP, Planning Supervisor

The staff report prepared for this case was incorporated into the record. This report was available to any interested party prior to the LD&T meeting (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 Land Development and Transportation Committee meeting 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:

00:21:00 Julia Williams presented the case (see staff report and recording for detailed presentation).

The following spoke in favor of the request:

Bill Bardenwerper, 1000 N Hurstbourne Pkwy., 2nd Floor, Louisville, KY 40223
Brian Shirley, 1336 South Park Drive, Bowling Green, KY 42103
Andrew Webb, 700 Church Street, Bowling Green, KY 42102

Summary of testimony of those in favor:

00:23:42 Bill Bardenwerper spoke on behalf of the applicant. He stated that this is the 3rd Crossroads IGA they have proposed in this area and this particular project has been in process for a while. Only a small section of the parcel needs rezoning at this time.

00:30:43 Brian Shirley stated that they are requesting to not provide a pedestrian connection to the site from Lovers Lane because they feel it would be unsafe due to the

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proximity to the drive through window and gas canopy. They are proposing to construct a sidewalk and bicycle parking off of Billtown Road. The site entrances have been placed as far away from the intersection of Billtown Road and Lovers Lane as possible, per the request of KTC, and the lot functions as a one-way circulation. The variance is for vehicle use in the area adjacent to a residential property. The home is vacant, but they would like to be granted the variance in the event that someone purchases the home in the future.

00:35:45 Houchens Representative, Andrew Webb, stated that Ace Hardware, Subway, and Crossroads IGA will occupy this building. The hardware store will use approximately 3,000 square ft. of the 14,000 square ft. building. There will be one loading dock with a scissor lift that can facilitate one truck at a time. The hours of operation would be from 6:00 a.m. to 11:00 p.m.

By general consensus, the Land Development and Transportation Committee **SCHEDULED** Case Number 15ZONE1059 to be heard at the October 20, 2016 Planning Commission public hearing.