

**Planning Commission Minutes  
May 16, 2013**

**Public Hearing**

**CASE NO. 17149**

**Project Name:** Chism Road Auto Repair Shop  
6405 Chism Road

**Owner/ Applicant:** Barnie & Susan Elder  
7700 St. Anthony's Church Road  
Louisville, KY 40214

**Representative:** Bill Schroll  
5450 Southview Drive  
Louisville, KY 40214

**Engineer:** Schroll Land Surveying, LLC  
Same as above

**Existing Use:** Auto Repair Shop  
**Proposed Use:** Auto Repair Shop  
**Zoning District:** C-2 & R-5  
**Form District:** Suburban Marketplace Corridor/Neighborhood  
**Council District:** 14 – Cindi Fowler

**Staff Case Manager:** **Mike Wilcher**

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.)

**Request:**

Change in Zoning from R-5, Single-Family Residential, to C-2, Commercial, is requested for 1.22 acres of the 1.33 acre subject site, consisting of two parcels, to bring the existing 3,873 square foot auto repair shop, partially located on both lots, into compliance with zoning district regulation.

Variance to allow VUA encroachment into the 10' front setback along Chism Road (5.3.1)

Waiver #1 to decrease 35' LBA to 15' by east parking lot and allow 100% utility encroachment (10.2.4)

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Waiver #2 to omit required 8' screen and plantings in 35' LBAs along north and east boundaries (10.2.4)

Waiver #3 to omit 5' VUA/LBA along south boundary (10.2.10)

Waiver #4 to omit sidewalk requirement along south boundary (5.8.1)

Detailed District Development Plan

**Agency Testimony:**

15:01:16 Mike Wilcher showed a PowerPoint presentation and reviewed the requests and case summary/background from the staff report. He then showed zoning and aerial maps and discussed surrounding uses and zoning. Mr. Wilcher then showed a series of the subject property and surrounding areas. He showed and reviewed the applicant's development plan. He showed a variance and waivers exhibit. Mr. Wilcher reviewed the applicable plans and policies and staff analysis and conclusions from the staff report.

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

Bill Schroll, 5450 Southview Drive, Louisville, KY 40214

Robert Matherly, 6405 Chism Road, Louisville, KY 40272

Barnie Elder, 9702 Thixton Lane, Louisville, KY 40291

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

15:15:35 Bill Schroll said he was available for any questions.

15:16:03 Robert Matherly also stated he was available for questions.

15:16:35 Barnie Elder, owner, said he did not know it was out of compliance and is willing to do what needs to be done to comply.

15:17:19 Commissioner Blake addressed the third sentence in proposed binding element 5.b. and asked if the waiver would need to be referred to. Mr. Baker stated that he is not in favor of these types of binding elements and explained the responsibility to implement buffering if the property to the north is developed. He said confusion is created and stated that he would like the language to be on the landscape plan and to be as a separate binding element.

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15:19:30 In response to Mr. Wilcher's question Mr. Baker stated that it should be a new separate binding element should the commission move to approve Waiver #2.

15:20:35 Commissioner Blake also suggested that the specific waiver be stated in that new binding element.

**The following spoke in opposition to this request:**

No one.

**The following spoke neither for nor against the request:**

No one.

**Deliberation**

15:21:08 Commissioner White asked for more clarity on the discussion of proposed binding element 5.b. Mr. Baker said the development proposed is going to create certain effects that need to be mitigated, but such mitigation factors don't need to be in place because there is nothing to the north. But if something is developed on the site to the north, they will come in with the landscaping.

15:23:10 Commissioner Proffitt addressed questions about enforcement by asking who enforces them anyway. He explained that if the applicant wants to impose this condition on themselves, they should go forward.

15:23:44 Mr. Baker explained his issue with conditions such as these is that it is triggered by something that occurs on a separate property in the future that has nothing to do with the subject property.

There was further discussion of the binding element requiring the landscape buffer being implemented if the property to the north is developed.

15:28:32 Commissioner Jarboe said the waivers looked good so he did not have any issues.

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15:29:01 Commissioner Scheer said the variance and waivers are justified.

15:29:10 Commissioner Tomes recognized the issue for the property owner and said the zoning needs to be done to get it into compliance.

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15:29:33 Commissioner Kirchdorfer spoke about his visit to the site. He said he did not see any problems, the request is justified.

15:30:44 Commissioner White said he is for the requests but he raised concern about the proposed binding element discussed (5.b.)

15:31:12 Mr. Baker said his issue with the binding element is the proper parties becoming aware of it and acting on it.

15:32:32 Phillip Bills provided some background and history to the property.

**An audio/visual recording of the Planning Commission hearing related to this case is available in the Planning & Design Services offices. Please contact the Customer Service staff to view the recording or to obtain a copy. The recording of this hearing will be found on the CD of the May 16, 2013 public hearing proceedings.**

**Zoning**

On a motion by Commissioner Kirchdorfer, the following resolution was adopted.

**WHEREAS**, the Louisville Metro Planning Commission finds, based on the testimony, staff report, and discussion, that the proposal complies with Guideline 1-Community Form because it is the continued use of the existing building that was built in the late 1950's and was converted from a fire station to an auto repair shop in 1989. The proposed rezoning will correct a zoning line that runs through the existing building and there is no proposed expansions of the existing structures; and

**WHEREAS**, the Louisville Metro Planning Commission further finds the proposal complies with Guideline 2-Centers because the proposal is for the continued use of the existing building. The site is adjoining the properties along Dixie Highway which is a major arterial; and

**WHEREAS**, the Louisville Metro Planning Commission further finds the proposal complies with Guideline 3-Compatibility because it fits with the commercial characteristics of the Dixie Highway corridor. The current use of property has been ongoing since the late 1980, early 1990's; and

**WHEREAS**, the Louisville Metro Planning Commission further finds the proposal complies with Guideline 4-Open Space because the proposal is an existing

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condition and is consistent with the open space patterns of surrounding commercial properties; and

**WHEREAS**, the Louisville Metro Planning Commission further finds the proposal complies with Guideline 5-Natural Areas and Scenic and Historic Resources because the proposal is utilizing current conditions of the site and structure; and

**WHEREAS**, the Louisville Metro Planning Commission further finds the proposal complies with Guideline 6-Economic Growth and Sustainability because site is just off Dixie Highway, a suburban marketplace corridor as well as a major arterial; and

**WHEREAS**, the Louisville Metro Planning Commission further finds the proposal complies with Guideline 7&8 Circulation and Transportation Facility Design because the subject site is an existing development that is accessed by established roads and is located just off Dixie Highway a major arterial. The site will utilize the existing onsite parking that is adequate to meet the needs of the current use; and

**WHEREAS**, the Louisville Metro Planning Commission further finds the proposal complies with Guideline 9-Bicycle, Pedestrian, and Transit because the subject site is located near the TARC Transit route on Dixie Highway and Chism Road is a no outlet street with little traffic; and

**WHEREAS**, the Louisville Metro Planning Commission further finds the proposal complies with Guideline 10-Flooding and Stormwater because the site is not located within any floodplain area and the proposal does not add any net impervious surface; and

**WHEREAS**, the Louisville Metro Planning Commission further finds the proposal complies with Guideline 11,12, and 13 Water Quality, Air Quality, and Landscape Character because there is no proposed construction that would cause an erosion concern and there is not any expansion to the site that would increase vehicle traffic. In regards to the landscape characters, the site is representative of other commercial sites in the area; and

**WHEREAS**, the Louisville Metro Planning Commission further finds the proposal complies with Guideline 14-Infrastructure because the site has adequate utility service and roadway connections; now, therefore be it

**RESOLVED**, that the Louisville Metro Planning Commission does hereby **RECOMMEND** to the legislative body of the Louisville Metro Council that the

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change in zoning from R-5 to C-2 on property described in the legal description be **APPROVED**.

**The vote was as follows:**

**YES: Commissioners Scheer, Burns, Jarboe, Turner, Proffitt, Blake, Tomes, Kirchdorfer, Hughes, and White**

**NO: No one.**

**NOT PRESENT AND NOT VOTING: No one.**

**ABSTAINING: No one.**

**Variance**

On a motion by Commissioner Kirchdorfer, the following resolution was adopted.

**WHEREAS**, the Louisville Metro Planning Commission finds, based on the testimony, staff report, and discussion, that the variance and waivers requested will allow the rezoning of the Eastern portion of the property and bring the current conditions into compliance; and

**WHEREAS**, the Louisville Metro Planning Commission further finds existing vehicle use areas are being reduced and portions of VUA in the right-of-way are being removed, however portions that need to remain will encroach into the required setback areas due to building location. The building location also does not allow for enough room for the required LBA along Chism Road due to the required maneuvering area needed to access the building through the bay doors; and

**WHEREAS**, the Louisville Metro Planning Commission further finds a portion of the 35-foot landscape buffer area at the Southeast portion of the property will be reduced to 15 foot to allow a drive aisle to access a proposed parking area and an existing access gate to the rear portion of the property. This will result in a 100% encroachment of an existing sewer and drain easement; and

**WHEREAS**, the Louisville Metro Planning Commission further finds the sidewalk waiver is being requested due to lack of connectivity to other sidewalks; and

**WHEREAS**, the Louisville Metro Planning Commission further finds the 35-foot LBA along the Northern and Eastern property line are a result of adjoining residentially zoned properties. The properties to the North are vacant and do not have an improved roadway, therefore screening and planting would not result in screening the commercial use from residentially used property since the property

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is not currently being used. The property to the East is currently a single-family residence and will be screened, however the current owner on the adjoining lot has stated that the required trees would be of no benefit to them and would rather not have the extra trees along the common property line. The applicant has met with a Planning and Design Landscape Architect and has discussed alternative planting in the front area between parking areas that would be more beneficial; now, therefore be it

**RESOLVED**, that the Louisville Metro Planning Commission does hereby **GRANT** the variance to allow VUA encroachment into the 10' front setback in the neighborhood form district (5.3.1) on property described in the legal description.

**The vote was as follows:**

**YES: Commissioners Scheer, Burns, Jarboe, Turner, Proffitt, Blake, Tomes, Kirchdorfer, Hughes, and White**

**NO: No one.**

**NOT PRESENT AND NOT VOTING: No one.**

**ABSTAINING: No one.**

**Waiver 1**

On a motion by Commissioner Kirchdorfer, the following resolution was adopted.

**WHEREAS**, the Louisville Metro Planning Commission finds, based on the testimony, staff report, and discussion, that the variance and waivers requested will allow the rezoning of the Eastern portion of the property and bring the current conditions into compliance; and

**WHEREAS**, the Louisville Metro Planning Commission further finds existing vehicle use areas are being reduced and portions of VUA in the right-of-way are being removed, however portions that need to remain will encroach into the required setback areas due to building location. The building location also does not allow for enough room for the required LBA along Chism Road due to the required maneuvering area needed to access the building through the bay doors; and

**WHEREAS**, the Louisville Metro Planning Commission further finds a portion of the 35-foot landscape buffer area at the Southeast portion of the property will be reduced to 15 foot to allow a drive aisle to access a proposed parking area and an existing access gate to the rear portion of the property. This will result in a 100% encroachment of an existing sewer and drain easement; and

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**WHEREAS**, the Louisville Metro Planning Commission further finds the sidewalk waiver is being requested due to lack of connectivity to other sidewalks; and

**WHEREAS**, the Louisville Metro Planning Commission further finds the 35-foot LBA along the Northern and Eastern property line are a result of adjoining residentially zone property. The properties to the North are vacant and do not have an improved roadway, therefore screening and planting would not result in screening the commercial use from the residentially used property since the property is not currently being used. The property to the East is currently a single-family residence and will be screened, however the current owner adjoining lot have stated that the required trees would be of no benefit to them and would rather not have the extra trees along the common property line. The applicant has met with a Planning and Design Landscape Architect and have discussed alternative planting in the front area between parking areas that would be more beneficial; now, therefore be it

**RESOLVED**, that the Louisville Metro Planning Commission does hereby **GRANT** the waiver to decrease 35' LBA to 15' by east parking lot and allow 100% utility encroachment (10.2.4) on property described in the legal description.

**The vote was as follows:**

**YES: Commissioners Scheer, Burns, Jarboe, Turner, Proffitt, Blake, Tomes, Kirchdorfer, Hughes, and White**

**NO: No one.**

**NOT PRESENT AND NOT VOTING: No one.**

**ABSTAINING: No one.**

**Waiver 2**

On a motion by Commissioner Kirchdorfer, the following resolution was adopted.

**WHEREAS**, the Louisville Metro Planning Commission finds, based on the testimony, staff report, and discussion, that the variance and waivers requested will allow the rezoning of the Eastern portion of the property and bring the current conditions into compliance; and

**WHEREAS**, the Louisville Metro Planning Commission further finds existing vehicle use areas are being reduced and portions of VUA in the right-of-way are being removed, however portions that need to remain will encroach into the



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required setback areas due to building location. The building location also does not allow for enough room for the required LBA along Chism Road due to the required maneuvering area needed to access the building through the bay doors; and

**WHEREAS**, the Louisville Metro Planning Commission further finds a portion of the 35-foot landscape buffer area at the Southeast portion of the property will be reduced to 15 foot to allow a drive aisle to access a proposed parking area and an existing access gate to the rear portion of the property. This will result in a 100% encroachment of an existing sewer and drain easement; and

**WHEREAS**, the Louisville Metro Planning Commission further finds the sidewalk waiver is being requested due to lack of connectivity to other sidewalks; and

**WHEREAS**, the Louisville Metro Planning Commission further finds the 35-foot LBA along the Northern and Eastern property line are a result of adjoining residentially zoned properties. The properties to the North are vacant and do not have an improved roadway, therefore screening and planting would not result in screening the commercial use from a residentially used property since the property is not currently being used. The property to the East is currently a single-family residence and will be screened, however the current owner adjoining lot have stated that the required trees would be of no benefit to them and would rather not have the extra trees along the common property line. The applicant has met with a Planning and Design Landscape Architect and have discussed alternative planting in the front area between parking areas that would be more beneficial; now, therefore be it

**RESOLVED**, that the Louisville Metro Planning Commission does hereby **GRANT** the waiver to omit screening in the north LBA and to erect a wood fence and trees in the east (10.2.4) on property described in the legal description.

**The vote was as follows:**

**YES: Commissioners Scheer, Burns, Jarboe, Turner, Proffitt, Blake, Tomes, Kirchdorfer, Hughes, and White**

**NO: No one.**

**NOT PRESENT AND NOT VOTING: No one.**

**ABSTAINING: No one.**

**Waiver 3**

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On a motion by Commissioner Kirchdorfer, the following resolution was adopted.

**WHEREAS**, the Louisville Metro Planning Commission finds, based on the testimony, staff report, and discussion, that the variance and waivers requested will allow the rezoning of the Eastern portion of the property and bring the current conditions into compliance; and

**WHEREAS**, the Louisville Metro Planning Commission further finds existing vehicle use areas are being reduced and portions of VUA in the right-of-way are being removed, however portions that need to remain will encroach into the required setback areas due to building location. The building location also does not allow for enough room for the required LBA along Chism Road due to the required maneuvering area needed to access the building through the bay doors; and

**WHEREAS**, the Louisville Metro Planning Commission further finds a portion of the 35-foot landscape buffer area at the Southeast portion of the property will be reduced to 15 foot to allow a drive aisle to access a proposed parking area and an existing access gate to the rear portion of the property. This will result in a 100% encroachment of an existing sewer and drain easement; and

**WHEREAS**, the Louisville Metro Planning Commission further finds the sidewalk waiver is being requested due to lack of connectivity to other sidewalks; and

**WHEREAS**, the Louisville Metro Planning Commission further finds the 35-foot LBA along the Northern and Eastern property line are a result of adjoining residentially zoned properties. The properties to the North are vacant and do not have an improved roadway, therefore screening and planting would not result in screening the commercial use from a residentially used property since the property is not currently being used. The property to the East is currently a single-family residence and will be screened, however the current owner adjoining lot have stated that the required trees would be of no benefit to them and would rather not have the extra trees along the common property line. The applicant has met with a Planning and Design Landscape Architect and have discussed alternative planting in the front area between parking areas that would be more beneficial; now, therefore be it

**RESOLVED**, that the Louisville Metro Planning Commission does hereby **GRANT** the waiver to omit 5' VUA/LBA along south boundary (10.2.10) on property described in the legal description.

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**The vote was as follows:**

**YES: Commissioners Scheer, Burns, Jarboe, Turner, Proffitt, Blake, Tomes, Kirchdorfer, Hughes, and White**

**NO: No one.**

**NOT PRESENT AND NOT VOTING: No one.**

**ABSTAINING: No one.**

**Waiver 4**

On a motion by Commissioner Kirchdorfer, the following resolution was adopted.

**WHEREAS**, the Louisville Metro Planning Commission finds, based on the testimony, staff report, and discussion, that the variance and waivers requested will allow the rezoning of the Eastern portion of the property and bring the current conditions into compliance; and

**WHEREAS**, the Louisville Metro Planning Commission further finds existing vehicle use areas are being reduced and portions of VUA in the right-of-way are being removed, however portions that need to remain will encroach into the required setback areas due to building location. The building location also does not allow for enough room for the required LBA along Chism Road due to the required maneuvering area needed to access the building through the bay doors; and

**WHEREAS**, the Louisville Metro Planning Commission further finds a portion of the 35-foot landscape buffer area at the Southeast portion of the property will be reduced to 15 foot to allow a drive aisle to access a proposed parking area and an existing access gate to the rear portion of the property. This will result in a 100% encroachment of an existing sewer and drain easement; and

**WHEREAS**, the Louisville Metro Planning Commission further finds the sidewalk waiver is being requested due to lack of connectivity to other sidewalks; and

**WHEREAS**, the Louisville Metro Planning Commission further finds the 35-foot LBA along the Northern and Eastern property line are a result of adjoining residentially zoned properties. The properties to the North are vacant and do not have an improved roadway, therefore screening and planting would not result in screening the commercial use from a residentially used property since the property is not currently being used. The property to the East is currently a single-family residence and will be screened, however the current owner adjoining lot have stated that the required trees would be of no benefit to them

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and would rather not have the extra trees along the common property line. The applicant has met with a Planning and Design Landscape Architect and have discussed alternative planting in the front area between parking areas that would be more beneficial; now, therefore be it

**RESOLVED**, that the Louisville Metro Planning Commission does hereby **GRANT** the waiver to omit sidewalk requirement along south boundary (5.8.1) on property described in the legal description.

**The vote was as follows:**

**YES: Commissioners Scheer, Burns, Jarboe, Turner, Proffitt, Blake, Tomes, Kirchdorfer, Hughes, and White**

**NO: No one.**

**NOT PRESENT AND NOT VOTING: No one.**

**ABSTAINING: No one.**

**Detailed District Development Plan**

On a motion by Commissioner Kirchdorfer, the following resolution was adopted.

**WHEREAS**, the Louisville Metro Planning Commission finds, based on the testimony, staff report, and discussion, that the proposal will have a minimal effect on existing natural resources since there are few; and

**WHEREAS**, the Louisville Metro Planning Commission further finds provisions for safe and efficient vehicular and pedestrian transportation both within the development and within the community has been provided per preliminary approval by Metro Public Works; and

**WHEREAS**, the Louisville Metro Planning Commission further finds ample areas of open space are located on the grounds behind the existing facility; and

**WHEREAS**, the Louisville Metro Planning Commission further finds the proposal received preliminary approval by the Metropolitan Sewer District to ensure that adequate drainage facilities exist on the subject site, as well as to ensure drainage problems are prevented from occurring either on-site or within the community; and

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**WHEREAS**, the Louisville Metro Planning Commission further finds the overall site design appears to be compatible with existing and future development in this specific area of the community; and

**WHEREAS**, the Louisville Metro Planning Commission further finds the development plan appears to conform to applicable guidelines and policies of the Comprehensive Plan and the Land Development Code, despite the requested variance and multiple landscape waivers; now, therefore be it

**RESOLVED**, that the Louisville Metro Planning Commission does hereby **APPROVE** the Detailed District Development Plan on property described in the legal description **SUBJECT** to the following Binding Elements and that Binding Element #7 is also added as a note on the landscape plan.

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 for review and approval; any changes/additions/alterations not so referred shall not be valid.
2. The development shall not exceed **3,873** square feet of gross floor area.
3. Signs shall be in accordance with Chapter 8 or as presented at the public hearing (No freestanding signage is proposed on the development site).
4. 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.
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 *Louisville Metro Department of Inspections, Permits and Licenses, 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

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10 prior to requesting a building permit. Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter.

- c. At the time that the properties to the **NORTH** of the subject property is ever developed for a non-residential use, the property owner shall, as required by Metro Public Works, enter into and provide a reciprocal cross over access easement agreement acceptable to the County Attorney's Office. A copy of the recorded signed easement agreement shall be provided to Planning Commission staff upon request.
  - d. A minor plat or other 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.
6. The materials and design of existing/proposed structures shall be substantially the same as depicted in the photos/rendering as presented at the **May 16, 2013** Planning Commission public hearing.
7. In addition, if the properties to the **NORTH** of the subject site are ever developed into a non-residential use, the property owner shall install the required landscape buffer, plantings, and screening as agreed in requested Waiver #2.

**The vote was as follows:**

**YES: Commissioners Scheer, Burns, Jarboe, Turner, Proffitt, Blake, Tomes, Kirchdorfer, and Hughes**

**NO: No one.**

**NOT PRESENT AND NOT VOTING: No one.**

**ABSTAINING: Commissioner White**