

PLANNING COMMISSION MINUTES
April 15, 2021

PUBLIC HEARING

CASE NO. 20-ZONE-0110

Request: Change in Zoning from R-5, single-family residential to OR, office-residential with detailed plan, waivers and variances
Project Name: Southall Professional Office
Location: 3506 Dutchmans Lane
Owner: Mapp Management, LLC
Applicant: Mapp Management, LLC
Representative: Cliff Ashburner - Dinsmore & Shohl, LLP
Jurisdiction: Louisville Metro
Council District: 26 - Brent Ackerson
Case Manager: Joel Dock, AICP, Planner II

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

Agency Testimony:

01:32:50 Joel Dock presented the case and showed a Power Point presentation (see recording for detailed presentation.)

01:37:25 In response to a question from Commissioner Clare, Mr. Dock discussed the new parking on the site and the shared driveway access from Bowman. Once a vehicle enters the property, the access is no longer shared; there is no need for any shared access agreements between the two properties because the apron for the access is contained within the right-of-way.

The following spoke in support of this request:

Cliff Ashburner, Dinsmore & Shohl, 101 South Fifth Street, Louisville, KY 40202

Derek Triplett, Land Design & Development, 503 Washburn Avenue, Louisville, KY 40222

Summary of testimony of those in support:

01:39:32 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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01:47:17 Derek Triplett discussed landscaping and how that is intended to mitigate/screen the parking area (see recording.)

01:49:35 Mr. Ashburner resumed and concluded his presentation.

01:51:20 In response to a question from Commissioner Mims, Mr. Ashburner said no lighting study had been done yet but discussed some possible parking lot lighting. He also said there is no plan yet for signage, but whatever is decided upon will be a monument-style sign and will conform to the Land Development Code. Mr. Dock said the signage on this site would have to be monument or columnar style, because this site is in a Neighborhood form district.

01:56:00 In response to a question from Commissioner Brown, Mr. Ashburner said the applicant does not yet have a tenant and so cannot provide hours of operation. However, based on the square footage of the building, any business here would have to be a small office, usually with typical business hours.

01:56:47 In response to a question from Commissioner Howard, Mr. Ashburner confirmed that the land use directly across the street from the parking area is a funeral home parking lot.

The following spoke in opposition to this request:

No one spoke.

01:58:40 Commissioners' deliberation.

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.

Change-in-Zoning from R-5, single-family to OR, office-residential

02:05:27 On a motion by Commissioner Carlson, seconded by Commissioner Mims, the following resolution, based on the Plan 2040 Staff Analysis and evidence and testimony heard today, was adopted

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WHEREAS, the Louisville Metro Planning Commission finds that the request meets the intents of Community Form: Goal 1 because the proposed land use is located along an arterial roadway and does not encroach upon residential neighborhoods to the rear of the subject site which will remain residentially zoned. The district does not result in the displacement of residents, loss of affordable housing units, or create adverse impacts of traffic, parking, signs, lighting, noise, odor, or stormwater; the proposed land use is located along an arterial roadway with transit service which connects major arterials and activity centers to employment and populations; traffic would not appear to have a significant impact based on the roadway classification. Residential roadways are not used for access; and the OR district does not allow for uses that produce significant odors or noises; and

WHEREAS, the Commission further finds that the request meets the intents of Community Form: Goal 2 because the proposed district is the minimum necessary to allow for professional offices and is limited in intensity and density; the subject site is appropriately located for its intensity and density with transit service which connects major arterials and activity centers to employment and populations; the land use introduces supportive services to the area that are supported by population and employment centers in the area. The proposal is compact and uses the site efficiently to provision an office in the existing structure; the land use introduces supportive services to the area that are supported by population and employment centers in the area; all modes of transportation are supported by required improvements of the proposal; introduction of the land use enhances neighborhood vitality and sense of place given the location of the district providing a transition from the arterial to lower intensity and density to its rear; and the proposal results in the reuse of existing structures; and

WHEREAS, the Commission further finds that the proposal meets the intents of Community Form: Goal 3 because the site development will have a limited impact on natural features. All requirements of MSD will be satisfied by the proposed development plan and construction plans to minimize environmental degradation that may result from site development; no wet or highly permeable soils, severe, steep or unstable slopes appear to be present on site. MSD preliminary approval has been received; and no changes to flood-prone areas and other features vulnerable to natural disasters are impacted by the proposed district. The site is not located within the floodplain. MSD preliminary approval has been received; and

WHEREAS, the Commission further finds that the proposal meets the intents of Community Form: Goal 4 because the proposal results in the rehabilitation and reuse of existing structures; and

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WHEREAS, the Commission further finds that the proposal meets the intents of Mobility: Goal 1 because the proposed low intensity use is appropriately located for to transit-oriented development and an efficient public transportation system; and

WHEREAS, the Commission further finds that the proposal meets the intents of Mobility: Goal 2 because traffic would not appear to have a significant impact based on the roadway classification. Residential roadways are not used for access; and

WHEREAS, the Commission further finds that the proposal meets the intents of Mobility: Goal 3 because the land use introduces supportive services to the area that are supported by population and activity centers in the area; all improvements to public ways required by the LDC and Transportation Planning will be addressed or mitigated. The addition of this land use may reduce vehicle miles travel by encouraging a mix of land uses; all improvements to public ways required by the LDC and Transportation Planning will be addressed or mitigated. The district supports transit and pedestrian use by locating additional services along transit routes; and all improvements to public ways required by the LDC and Transportation Planning will be addressed or mitigated. Pedestrian connections will be made, and improvements will occur with the approval of DPW; and

WHEREAS, the Commission further finds that the proposal meets the intents of Community Facilities: Goal 2 because utilities appear to be available to serve the proposed land use; an adequate supply of potable water and water for fire-fighting purposes will be available; and adequate means of sewage treatment and disposal to protect public health and to protect water quality in lakes and streams will be provided as approved by MSD; now, therefore be it

RESOLVED, the Louisville Metro Planning Commission does hereby **RECOMMEND** to the Louisville Metro Council that the proposed change in zoning from R-5, single-family to OR Office Residential be **APPROVED**.

The vote was as follows:

YES: Commissioners Brown, Clare, Carlson, Daniels, Mims, Seitz, Peterson, and Howard.

NOT PRESENT: Commissioners Lewis and Sistrunk.

Variances from Land Development Code (LDC), section 5.3.2 to reduce the street side setback from 10' to 5' and the rear setback from 15' to 3'

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02:06:42 On a motion by Commissioner Carlson, seconded by Commissioner Daniels, the following resolution, based on the Standard of Review and Staff Analysis, and evidence and testimony heard today, was adopted:

WHEREAS, the Louisville Metro Planning Commission finds that the requested variance will not adversely affect the public health, safety or welfare as the encroachment into the required setback on Bowman Avenue and at the rear of the property does not impede the safe movement of pedestrians or vehicles, and does not encroach upon neighboring properties; and

WHEREAS, the Commission further finds that the requested variance will not alter the essential character of the general vicinity as the parking lot will be screened from rights-of-way and adjacent property; and

WHEREAS, the Commission further finds that the requested variance will not cause a hazard or nuisance to the public as the setback does not impede the safe movement of pedestrians or vehicles and does not encroach upon neighboring properties; and

WHEREAS, the Commission further finds that the requested variance will not allow an unreasonable circumvention of the zoning regulations as the parking lot with associated encroachments are the minimum necessary to provision 4 off-street parking spaces on this corner lot; 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 as the Bowman Area Neighborhood Plan supports the conversion of the existing homes along Dutchmans Lane for office purposes, and these lots are not originally intended to be used non-residentially; and

WHEREAS, the Commission further finds that the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land as the proposal complies with Plan 2040 as demonstrated in the Plan 2040 Staff Analysis for zoning change; 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 no development has occurred; now, therefore be it

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RESOLVED, the Louisville Metro Planning Commission does hereby **APPROVE** the requested Variances from Land Development Code (LDC), section 5.3.2 to reduce the street side setback from 10 feet to 5 feet and the rear setback from 15 feet to 3 feet.

The vote was as follows:

YES: Commissioners Brown, Clare, Carlson, Daniels, Mims, Seitz, Peterson, and Howard.

NOT PRESENT: Commissioners Lewis and Sistrunk.

Waivers:

Waiver #1 of LDC, section 10.2.4 to reduce the Landscape Buffer Area (LBA) where existing structures are present and to omit the screening requirement in areas of encroachment only

Waiver#2 of LDC, section 10.2.4 to reduce the LBA along the rear property line

02:07:46 On a motion by Commissioner Carlson, seconded by Commissioner Daniels, the following resolution, based on the Standard of Review and Staff Analysis, and evidence and testimony heard today, was adopted:

(Waiver #1) WHEREAS, the Louisville Metro Planning Commission finds that the waiver will not adversely affect adjacent property owners as all required plantings and screening will be provided, except in areas where structures provide adequate screening; and

WHEREAS, the Commission further finds that Guideline 3, Policy 9 of Cornerstone 2020 calls for the protection of the character of residential areas, roadway corridors and public spaces from visual intrusions and mitigate when appropriate. Guideline 13, Policy 4 calls for ensuring appropriate landscape design standards for different land uses within urbanized, suburban, and rural areas. The proposed development will provide all required planting materials to protect the residences from visual intrusions, except that no planting will be provided where existing structures currently provide screening; 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 as existing structures are present; and

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WHEREAS, the Commission further finds that the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant as the development potential is substantially restricted with the full application of the buffer on each property line and structures are present; and

(Waiver #2) WHEREAS, the Commission further finds that the waiver will not adversely affect adjacent property owners as all required plantings and screening will be provided; and

WHEREAS, the Commission further finds that Guideline 3, Policy 9 of Cornerstone 2020 calls for the protection of the character of residential areas, roadway corridors and public spaces from visual intrusions and mitigate when appropriate. Guideline 13, Policy 4 calls for ensuring appropriate landscape design standards for different land uses within urbanized, suburban, and rural areas. The proposed development will provide all required planting materials to protect the residences from visual intrusions. The area of encroachment is adjacent to a driveway leading to the rear yard of the adjacent home; 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 as the site is recommended for office conversion and was not intended for non- residential use; and

WHEREAS, the Commission further finds that the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant as the encroachment allows for the provisioning of walks and ADA access, as well as a small parking lot; now, therefore be it

RESOLVED, the Louisville Metro Planning Commission does hereby **APPROVE** the requested Waiver #1 of LDC, section 10.2.4 to reduce the Landscape Buffer Area (LBA) where existing structures are present and to omit the screening requirement in areas of encroachment only; and Waiver#2 of LDC, section 10.2.4 to reduce the LBA along the rear property line.

The vote was as follows:

YES: Commissioners Brown, Clare, Carlson, Daniels, Mims, Seitz, Peterson, and Howard.

NOT PRESENT: Commissioners Lewis and Sistrunk.

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Detailed District Development Plan

02:09:14 Before a motion was made, In response to a question from Commissioner Carlson regarding a binding element, Mr. Dock said a proposed binding element would read:

Freestanding signage on-site shall not exceed six feet in height, 60 square feet in area.

02:10:41 On a motion by Commissioner Carlson, seconded by Commissioner Seitz, the following resolution, based on the Standard of Review and Staff Analysis, and evidence and testimony heard today, was adopted:

WHEREAS, the Louisville Metro Planning Commission finds that the conservation of natural resources on the property proposed for development, including: trees and other living vegetation, steep slopes, water courses, flood plains, soils, air quality, scenic views, and historic sites will be provided. All tree canopy required by the Land development code will be provided, no karst features were noted on the plan, and MSD preliminary plan approval has been received to reduce degradation that may be caused by storm events and run-off; and

WHEREAS, the Commission further finds that provisions for safe and efficient vehicular and pedestrian transportation within and around the development and the community will be provided. The site is along Transit in an area with public sidewalks; and

WHEREAS, the Commission further finds that the proposal is not required to provide open space. All tree canopy and detention will be provided as required; and

WHEREAS, the Commission further finds that the Metropolitan Sewer District has approved the preliminary development plan and will ensure the provisions 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 proposal does not significantly impact the character of the area as the existing home will be reused and parking areas screened from roads and homes. The Bowman Area Neighborhood Plan calls for proposal such as the one proposed; and

WHEREAS, the Commission further finds that the proposed development plan conforms to the Comprehensive Plan and all relief requested from the Land Development Code appears to be adequately justified; now, therefore be it

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RESOLVED, the Louisville Metro Planning Commission does hereby **APPROVE** the requested Detailed District Development Plan, **SUBJECT** to the following 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. 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 Louisville Metro Construction Review, Louisville Metro Public Works and the Metropolitan Sewer District.
 - b. Encroachment permits must be obtained from the Kentucky Transportation Cabinet, 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.
3. 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.
4. 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,

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contractors, subcontractors, and other parties engaged in development of the site, shall be responsible for compliance with these binding elements.

5. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.
6. Signage shall be limited to monument or columnar style not to exceed 60 square feet and 6 feet in height.

The vote was as follows:

YES: Commissioners Brown, Clare, Carlson, Daniels, Mims, Seitz, Peterson, and Howard.

NOT PRESENT: Commissioners Lewis and Sistrunk.