

**Planning Commission Minutes
March 20, 2014**

Public Hearing

CASE NO. 13ZONE1014

Commissioner Tomes left the hearing.

Project Name: Eiderdown
979/983 Goss Avenue

Owner/ Applicant: Nineeightthree LLC
2584 East Burnett Avenue
Louisville, KY 40217

Representative: James Gunnoe
2584 East Burnett Avenue
Louisville, KY 40217

Alan O. Bryant
1905 Lynn Way
Louisville, KY 40222

Jurisdiction: Louisville Metro
Council District: 10 – Jim King

Staff Case Manager: **Julia Williams, 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. (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-6 to C-2, a Variance to permit encroachments into a 5' side yard setback, and Landscape Waivers

Agency Testimony:

Julia Williams showed a PowerPoint presentation and reviewed the requests and case summary/background from the staff report. She showed zoning and aerial maps and reviewed the surrounding zoning and land uses. Ms. Williams then

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showed a series of photos of the site and surrounding areas. She showed the applicant's development plan and a waivers and variances exhibit. She reviewed the applicable policies and staff analysis and conclusions from the staff report. Ms. Williams then discussed a letter received from Debra Harlan asking that the applicant consider using pervious pavement and work with an arborist to plant one or two trees in the neighborhood. Ms. Harlan also requested that any lighting be shielded from residential. Ms. Williams also referred to a letter received from Steve Magre indicating the German/Paristown Neighborhood Association's support with some suggested restricted uses. She said the restricted uses were reflected in the proposed binding elements in the staff report.

The following spoke in favor of this request:

Alan O. Bryant, 1905 Lynn Way, Louisville, KY 40222

James Gunnoe, 2584 E. Burnett Ave, Louisville, KY 40217

Mike Morris, 947 Goss Ave, Louisville, KY 40217

Steve Magre, 1122 Rammers Ave, Louisville, KY

Summary of testimony of those in favor:

Alan Bryant, attorney representing of the applicant, explained that the primary purpose of this request is so the applicant can obtain a liquor license to serve liquor by the drink. He said the restaurant has been open over three years. He said a good restaurant is an enhancement to the neighborhood.

Mike Morris spoke about his support of the proposal and recognized the owners as excellent neighbors. He also stated that Steve Magre also submitted a letter in support.

The following spoke in opposition to this request:

No one.

The following spoke neither for nor against the request:

No one.

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Deliberation

Commissioner Kirchdorfer said that the applicant had nonconforming rights before. He spoke about the local establishments in the area and said the use is a good fit for the neighborhood.

Commissioner Peterson said it is a nice enhancement to the neighborhood.

Commissioner Brown said he is in support of the rezoning and it is a good fit for the corner. He raised some concern about outdoor dining being so close to the residents and recognized a binding element to address this concern.

Commissioner Jarboe said the zoning is appropriate and the waivers are not out of line.

Commissioner Blake spoke about the case being heard before the LD&T Committee and said there was a lot of support for the rezoning. He said it is nice to see the Goss Avenue area develop.

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 March 20, 2014 public hearing proceedings.

Zoning

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

WHEREAS, the Louisville Metro Planning Commission finds, based on the staff report and testimony provided, that the proposal complies with Comprehensive Plan Guideline 1 – Community Form because the proposal does not interfere with the current layout of streets, alleys, or sidewalks. The proposal is located in an existing commercial node that includes a mix of uses. C-2 permits other commercial uses that are currently permitted next door. The proposal is located in an existing commercial and residential area. The proposal will not affect public open space in the area. The proposal is for the preservation/renovation of an existing structure that is consistent with the overall look and history of the adjacent neighborhood; and

WHEREAS, the Louisville Metro Planning Commission further finds that the proposal complies with Comprehensive Plan Guideline 2 – Centers because the

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proposal will create a new center. The proposal includes a small portion of new construction but is mainly the reuse of an existing structure for commercial use. The proposal is located in a relatively dense area and along a minor arterial. The classification of Goss Avenue as a minor arterial indicates that there is enough traffic and population around the area to support C-2. The proposal is for a small lot within an existing commercial node. No additional infrastructure is necessary with this proposal. The proposal is creating a new center where commercial has existing for over a century. It is adjacent to compatible high density and intensity zoning. The proposal is for mixed use. The site is accessible by all types of people and forms of transportation. Transit is not available along this portion of Goss. The proposal is utilizing existing utilities for the development. On-site parking is proposed at the rear of the site where it typically would be located within the TN form district; and

WHEREAS, the Louisville Metro Planning Commission further finds that the proposal complies with Comprehensive Plan Guideline 3 – Compatibility because No new building is proposed. No new signage is proposed. APCD has approved the proposal. Transportation Planning has determined that there would not be an adverse impact of traffic in the area. Lighting will meet LDC requirements. The proposal is for a high intensity commercial zoning district not located along a transit corridor but is located in an existing activity node where a commercial use has been present in the structure for at least a century. The proposal provides some buffering between adjacent residentially used properties. The screening requirements between the uses will be met. The proposal mitigates the impact of the existing development by providing the required screening along the perimeter as well as within the ROW for the VUA screening. The proposal is mainly utilizing an existing structure that meets form district standards. The proposal mitigates the impact of the existing development by providing the required screening along the perimeter as well as within the ROW for the VUA screening. Because the site is adjacent to existing C-2 zoning. The proposal is not a non-residential expansion into an existing residential area; and

WHEREAS, the Louisville Metro Planning Commission further finds that the proposal complies with Comprehensive Plan Guideline 4 – Open Space because open space areas are provided between the sidewalk and the existing building. The proposal is not located in an area where there are natural features evident; and

WHEREAS, the Louisville Metro Planning Commission further finds that the proposal complies with Comprehensive Plan Guideline 5 - Natural Areas and Scenic and Historic Resources because the proposal is not located in an area where there are natural features evident. Soils are not an issue with the

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proposal. The proposal is for the preservation and re-use of an existing structure; and

WHEREAS, the Louisville Metro Planning Commission further finds that the proposal complies with Comprehensive Plan Guideline 6 - Economic Growth and Sustainability because access is not an issue with the proposal. The proposed C-2 zoning will be located in an existing activity node that has been present in the neighborhood for at least a century; and

WHEREAS, the Louisville Metro Planning Commission further finds that the proposal complies with Comprehensive Plan Guideline 7 – Circulation because roadway improvements are not required with the proposal. The existing facilities around the site promote alternate transportation. No new roads are proposed. Access will be from existing streets. No additional ROW needs to be dedicated. The proposal is surrounded on two sides by residential. Cross access is not necessary. The minimum requirement for parking is being provided; and

WHEREAS, the Louisville Metro Planning Commission further finds that the proposal complies with Comprehensive Plan Guideline 8 - Transportation Facility Design because the proposal is surrounded on three sides by right of way. Cross access is not necessary. Access to the development is by public roadways. The proposal is surrounded on two sides by residential. Cross access is not necessary; and

WHEREAS, the Louisville Metro Planning Commission further finds that the proposal complies with Comprehensive Plan Guideline 9 - Bicycle, Pedestrian and Transit because the existing facilities around the site promote alternate transportation; and

WHEREAS, the Louisville Metro Planning Commission further finds that the proposal complies with Comprehensive Plan Guideline 10 - Flooding and Stormwater because MSD has preliminarily approved the proposal; and

WHEREAS, the Louisville Metro Planning Commission further finds that the proposal complies with Comprehensive Plan Guideline 12 - Air Quality because APCD has approved the proposal; and

WHEREAS, the Louisville Metro Planning Commission further finds that the proposal complies with Comprehensive Plan Guideline 13 - Landscape Character because the proposal does not have any existing natural features and is not located in an area where natural corridors are evident; and

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WHEREAS, the Louisville Metro Planning Commission further finds that the proposal complies with Comprehensive Plan Guideline 14 – Infrastructure because existing utilities will serve the site. The Health Department has not indicated any issues with the proposal. The proposal is located in an area with adequate water supply; 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 change in zoning from R-6 to C-2 be **APPROVED** on property described in the legal description.

The vote was as follows:

YES: Commissioners Jarboe, Brown, Blake, Peterson, and Kirchdorfer

NO: No one.

NOT PRESENT FOR THIS CASE: Commissioners Tomes, Proffitt, Turner, White, and Hughes

ABSTAINING: No one.

Variance

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

WHEREAS, the Louisville Metro Planning Commission finds, based on the staff report and testimony provided, that allowing encroachments into the 5' side yard will not affect the public because the encroachments will be screened by a proposed 6' wood fence; and

WHEREAS, the Louisville Metro Planning Commission further finds that due to the screening and the 5' side yard being adjacent to another C-2 zoned property and the rear of an R-6 zoned property the character of the area will not be altered. The rear of most properties in the area is an accessory structure area and where an alley is available the rear of properties in the area are a parking area; and

WHEREAS, the Louisville Metro Planning Commission further finds that the variance will not affect the public because it does not encroach into the public realm. A portion of the variance is to allow parking to encroach into the setback which will allow visitors to the business to not have to park in what otherwise may be a parking space for an adjacent residence; and

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WHEREAS, the Louisville Metro Planning Commission further finds that because the encroachments are no more closer to the property line in which the variance is sought than the existing structure and because the encroachments will be screened by a 6' wood fence, the variance is not unreasonable; and

WHEREAS, the Louisville Metro Planning Commission further finds that the site is unique in its history of non-conforming commercial which generally doesn't apply to all the land in the area. Due to the nature and history of the building being commercial encroachments into the side yards would be evident throughout the area where a non-conforming structure is located adjacent to residential zoning; and

WHEREAS, the Louisville Metro Planning Commission further finds that the hardship on the applicant would be to not have off street parking available for the customers of the business. Parking would be utilized on street and within the neighborhood which could be seen as a hardship on the neighborhood. A parking waiver would also be necessary which could also be seen as a hardship on the applicant due to the requirements for achieving a waiver; and

WHEREAS, the Louisville Metro Planning Commission further finds that the applicant purchased a non-conforming commercial building that had no existing off street parking. The site would not have been able to meet parking regulations within the prior zoning regulations. The variance arises from the applicant wanting to relieve perceived or real parking issues that may or may not occur within the area; now, therefore be it

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** the Variance from Table 5.2.2 to permit encroachments into the 5' side yard setback on property described in the legal description.

The vote was as follows:

YES: Commissioners Jarboe, Brown, Blake, Peterson, and Kirchdorfer

NO: No one.

NOT PRESENT FOR THIS CASE: Commissioners Tomes, Proffitt, Turner, White, and Hughes

ABSTAINING: No one.

Waivers

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

Waiver #1

Chapter 10.2.4 to reduce the 15' LBA along the northeast property line to 5'.

WHEREAS, the Louisville Metro Planning Commission finds, based on the staff report and testimony provided, that the proposal will not affect adjacent property owners because the site will be screened and planted per Chapter 10. The waiver will not violate Cornerstone 2020 because the planting and screening requirements will still be met.

WHEREAS, the Louisville Metro Planning Commission further finds that the waiver is necessary so that the applicant can provide some on-site parking for the site instead of having customers compete with residences for parking; and

WHEREAS, the Louisville Metro Planning Commission further finds that an unnecessary hardship would be created on the applicant because the existing use requires a certain number of parking spaces and the applicant is attempting to achieve the minimum amount of parking required for the site on the site instead of placing the burden on existing residences with on street parking, and

Waiver #2

Chapter 10.2.4 to eliminate the 15' LBA along the northwest property line where the site is adjacent to R-6.

WHEREAS, the Louisville Metro Planning Commission further finds that the proposal will not affect adjacent property owners because the site will be screened per Chapter 10; and

WHEREAS, the Louisville Metro Planning Commission further finds that the waiver will not violate Cornerstone 2020 because the screening requirements will still be met; and

WHEREAS, the Louisville Metro Planning Commission further finds that the waiver is necessary so that the applicant can provide some on-site parking for the site instead of having customers compete with residences for parking; and

WHEREAS, the Louisville Metro Planning Commission further finds that an unnecessary hardship would be created on the applicant because the existing use requires a certain number of parking spaces and the applicant is attempting to achieve the minimum amount of parking required for the site on the site instead of placing the burden on existing residences with on street parking; and

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Waiver #3

Chapter 10.2.9 to permit encroachments into the 5' LBA where the site is adjacent to a non-residential zoned lot with 1st floor residential use.

WHEREAS, the Louisville Metro Planning Commission further finds that the proposal will not affect adjacent property owners because the site will be screened and planted per Chapter 10; and

WHEREAS, the Louisville Metro Planning Commission further finds that the waiver will not violate Cornerstone 2020 because the planting and screening requirements will still be met; and

WHEREAS, the Louisville Metro Planning Commission further finds that the waiver is necessary so that the applicant can provide some on-site parking for the site instead of having customers compete with residences for parking; and

WHEREAS, the Louisville Metro Planning Commission further finds that an unnecessary hardship would be created on the applicant because the existing use requires a certain number of parking spaces and the applicant is attempting to achieve the minimum amount of parking required for the site on the site instead of placing the burden on existing residences with on street parking; and

Waiver #4

Chapter 10.2.9 to eliminate the required 5' LBA along Krieger Street.

WHEREAS, the Louisville Metro Planning Commission further finds that the proposal will not affect adjacent property owners because the site will be screened and planted within the right of way per chapter 10; and

WHEREAS, the Louisville Metro Planning Commission further finds that the proposal will not affect adjacent property owners because the site will be screened and planted within the right of way per chapter 10; and

WHEREAS, the Louisville Metro Planning Commission further finds that the waiver is necessary so that the applicant can provide some on-site parking for the site instead of having customers compete with residences for parking; and

WHEREAS, the Louisville Metro Planning Commission further finds that an unnecessary hardship would be created on the applicant because the existing use requires a certain number of parking spaces and the applicant is attempting to achieve the minimum amount of parking required for the site on the site

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instead of placing the burden on existing residences with on street parking; now, therefore be it

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** the following Landscape Waivers on property described in the legal description.

1. Chapter 10.2.4 to reduce the 15' LBA along the northeast property line to 5'.
2. Chapter 10.2.4 to eliminate the 15' LBA along the northwest property line where the site is adjacent to R-6.
3. Chapter 10.2.9 to permit encroachments into the 5' LBA where the site is adjacent to a non-residential zoned lot with 1st floor residential use.
4. Chapter 10.2.9 to eliminate the required 5' LBA along Krieger Street.

The vote was as follows:

YES: Commissioners Jarboe, Brown, Blake, Peterson, and Kirchdorfer

NO: No one.

NOT PRESENT FOR THIS CASE: Commissioners Tomes, Proffitt, Turner, White, and Hughes

ABSTAINING: No one.

Development Plan

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

WHEREAS, the Louisville Metro Planning Commission finds, based on the staff report and testimony provided, that the proposal preserves a century-plus old commercial structure and adjacent house that have historical context within the National Register eligible district; and

WHEREAS, the Louisville Metro Planning Commission further finds that off street parking is being provided to avoid competition with adjacent residences and the existing sidewalk is being used for pedestrian connectivity in the area; and

WHEREAS, the Louisville Metro Planning Commission finds that the buffer yards indicated on the plan will be used for the planting and screening of the site from the adjacent residential zone and used properties; and

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WHEREAS, the Louisville Metro Planning Commission finds that MSD has preliminarily approved the proposal; and

WHEREAS, the Louisville Metro Planning Commission finds that the existing commercial structure and preservation of the adjacent existing home are compatible with the area because the screening requirements are being met. The site would not otherwise have to provide the screening without the expansion of parking in the rear of the property. Parking being provided in the rear of the property is consistent with the traditional form and is evident at the rear of properties throughout the area but mainly where an alley is present; and

WHEREAS, the Louisville Metro Planning Commission finds that the development plan complies with both the Comprehensive Plan and LDC because the applicant is providing the screening materials required for the LBAs which ensure the compatibility of the site with the adjacent residentially used and zoned properties; now, therefore be it

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** the District Development Plan on property described in the legal description **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. The development shall not exceed 9,694 square feet of gross floor area.
3. The following uses shall not be permitted on site: boarding and lodging houses, community residences, community service facility, day care centers, nurseries, kindergartens, extended stay lodging, pawn shop, residential care facilities, transitional housing, homeless shelter, and fraternities and sororities. Notice of a request to amend this binding element shall be given in accordance with the Planning Commission's policies and procedures. A committee of the Planning Commission may require a public hearing on the request to amend this binding element.

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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 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 10 prior to requesting a parking lot or building permit. Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter.
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. 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.
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. No outdoor consumption of alcohol on the site past midnight on weeknights (Sunday-Thursday) and no outdoor consumption on the site past 1am on weekends (Friday and Saturday).

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The vote was as follows:

YES: Commissioners Jarboe, Brown, Blake, Peterson, and Kirchdorfer

NO: No one.

**NOT PRESENT FOR THIS CASE: Commissioners Tomes, Proffitt, Turner,
White, and Hughes**

ABSTAINING: No one.