

PLANNING COMMISSION MINUTES
April 20, 2017

PUBLIC HEARING

CASE NUMBER 17ZONE1000

Project Name: Marilla Warehouse
Location: 4819 Poplar level road
Owner(s): M&C Rentals
Applicant: M&C Rentals
Representative(s): Land Design & Development, Inc.
Project Area/Size: 1.4 acres
Existing Zoning District: R-4
Existing Form District: SMC, Suburban Marketplace Corridor
Jurisdiction: Louisville Metro
Council District: 10 – Pat Mulvihill
Case Manager: Joel P. Dock, 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.)

An audio/visual recording of the Planning Commission 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:

02:47:37 Joel Dock presented the case (see Staff Report and recording for detailed presentation).

The following spoke in favor of the request:

Jamie Cox, 2303 River Road, # 301, Louisville, KY 40206
Kevin Young, 503 Washburn Avenue, Louisville, KY 40222

Summary of testimony of those in favor:

02:55:02 Jamie Cox spoke on behalf of the applicant who is requesting a change in zoning from R-4 Single Family Residential to CM Commercial-Manufacturing as well as a conditional use permit, waiver, variance, and detailed district development plan (see recording for detailed presentation).

03:00:55 Kevin Young stated that the two southern most buildings on the development plan will be combined per the request of an interested tenant who wants more square footage.

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03:01:53 Commissioners' deliberation

03:07:02 On a motion by Commissioner Brown, seconded by Commissioner Howard, the following resolution was adopted:

WHEREAS, the Louisville Metro Planning Commission finds that parking areas and drive lanes shall be a hard and durable surface; An encroachment permit and bond will be obtained for all work done in the right-of-way; A State highway encroachment permit will be obtained for entrances to Poplar Level Road; There shall be no increase in drainage run-off to State roadways; No commercial signs will be permitted in the right-of-ways; Any landscaping in the right-of-ways shall be subject to an encroachment permit; Site lighting shall not shine in the eyes of drivers and will be adjusted, shielded or darkened as required in order to accomplish this; Construction fencing shall be erected prior to any construction or grading activities preventing compaction of root systems of trees to be preserved. The fencing shall enclose the area beneath the drip line of the tree canopy and shall remain in place. No parking, material storage, or construction activities shall be permitted within the fenced area; Mitigation measures for dust control shall be in place during construction to prevent fugitive particulate emissions from reaching existing roads and neighboring properties; and A KTC permit will be required prior to construction plan approval; Upon development or redevelopment of adjacent properties, a unified access and circulation system shall be developed to eliminate pre-existing curb cuts and provide for vehicular movement throughout adjacent sites as determined appropriate by the Dept. of Public Works. A cross access agreement to run with the land and in a form acceptable to the Planning Commission legal counsel shall be recorded prior to the time of construction approval for the adjacent property to be developed; Right-of-way dedication by deed or minor plat must be recorded prior to construction approval by Transportation Planning; Off-Street loading and refuse collection areas shall be located and screened so as not to be visible from adjacent public streets and residential areas; Compatible utilities shall be placed in a common trench unless otherwise required by appropriate agencies; On-site detention will be provided. Post-development peak flows will be limited to pre-development peak flows for the 2, 10, 25 and 100-year storms or to the capacity of the downstream system, whichever is more restrictive, and

WHEREAS, the Commission further finds that the property is located within the Suburban Marketplace Form District. As permitted in the Suburban Marketplace Form District, the Property will contain warehouse/storage which is a low-intensity industrial/high-intensity commercial use and is proposed along a corridor with a wide range of intensities. Pedestrian connection will be made to a public sidewalk and the sidewalk fronting the site shall be repaired and maintained by the Owner. Appropriate buffering along the rear of the Property will be provided, taking into account the non-

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jurisdictional wetlands and the adjacent property which is zoned R-4 (although not currently used as single-family residential). Trucks will not be permitted to idle during loading and unloading and the Owner is willing to agree to a binding element to that effect. The Owner will work with adjacent owners and developers during the redevelopment of adjacent property in order to provide for unified access to Poplar Level Road, and

WHEREAS, the Commission further finds that, based on the staff report, the applicant's justification, and the evidence and testimony presented today, that all of the applicable guidelines of Cornerstone 2020 are being met; now, therefore be it

RESOLVED, the Louisville Metro Planning Commission does hereby **RECOMMEND** to the Louisville Metro Council that the change in zoning from R-4 Single-Family Residential to CM Commercial-Manufacturing be **APPROVED**.

The vote was as follows:

Yes: Ferguson, Peterson, Smith, Tomes, Howard, Carlson, Brown, and Jarboe

Absent: Lewis

Abstain: None

No: None

03:07:47 On a motion by Commissioner Brown, seconded by Commissioner Howard, the following resolution was adopted:

Waiver to reduce the thirty-five foot landscape buffer area along the Northwestern property line abutting an R-4 zoning district:

WHEREAS, the Louisville Metro Planning Commission finds that the waiver will not adversely affect adjacent property owners as the waiver is being requested as a result of the existing zoning district of the abutting property. The use of the property is not single-family residential and would not appear to be developed for single-family residential uses in the future. Appropriate screening is provided, however, in the form of a six foot privacy fence and a ten foot LBA is also 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 abutting property is not used residentially and is surrounded by industrial development. The use proposed appears to

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appropriately address any possible visual intrusions of outdoor storage onto the residentially zoned property and mitigates by providing a six foot privacy fence and a ten foot LBA, 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 constrained by its width and a thirty-five LBA would significantly reduce the usable space of the lot, 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 or would create an unnecessary hardship on the applicant as the narrow width of the lot constrains the usable space of the lot and mitigation has been provided to prevent visual intrusions of the use onto the residential property which is not currently used for residential purposes and it would not appear that it will be used residentially in the future, and

Variance to encroach upon the twenty-five foot setback required for non-residential uses abutting residential zoning districts:

WHEREAS, the Louisville Metro Planning Commission finds that the requested variance will not adversely affect public health safety or welfare as the variance is being requested as a result of the existing zoning district of the abutting property. The use of the property is not single-family residential and would not appear to be developed for single-family residential uses in the future. Appropriate screening is provided, however, in the form of a six foot privacy fence and a ten foot LBA is also provided. The encroachment does not impact the accessibility of the lot in the event of an emergency, and

WHEREAS, the Commission further finds that the requested variance will not alter the essential character of the general vicinity as the area is primarily mixed commercial and industrial uses. The width of the lot constrains the usable space of the lot and the proposed development is consistent with the pattern of development along the Poplar level road corridor, and

WHEREAS, the Commission further finds that the requested variance will not cause a hazard or nuisance to the public as the abutting property, while zoned residentially, is not being used for residential purposes and would not appear to be used for residentially purposes in the future. The encroachment does not restrict the movement of people within the community and provides for the safe movement of people within the development, and

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WHEREAS, the Commission further finds that the requested variance will not allow an unreasonable circumvention of zoning regulations as the setback is required when abutting residential zoning district, but would not otherwise be required if the property was zoned for non-residential uses. The property is not used residentially, 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 property abutting the site triggering the need for the setback variance is not compatible with the zoning and use of surrounding properties, and

WHEREAS, the Commission further finds that the strict application of the provisions of the regulation would deprive the applicant of reasonable use of the land as the usable area of the lot would be constrained as the result of incompatible zoning on the abutting property, 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, and

Detailed District Development Plan:

WHEREAS, the Louisville Metro Planning Commission finds that natural features on the site have been appropriately addressed. The non-jurisdictional wetland to the rear of the property is being preserved and the Metropolitan Sewer District has given preliminary approval for the development. The buffer of a protected waterway towards the frontage of the property does not impact development on the property as it would only impact a small corner of the Northwest frontage. There are no features of historical significance on the property, 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 as a sidewalk will provided along the frontage and pedestrian connection from this sidewalk into the development has been provided. Sufficient access to the property is provided by a twenty foot wide drive lane serving all buildings and storage areas, and

WHEREAS, the Commission further finds that open space is not required for this application. A detention basin along the frontage allows for an open area between the roadway and the parking area. A thirty-five foot LBA is provided at the rear of the site, and

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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 overall site design and land uses are compatible with the surrounding area as the area surrounding the development contains a mixture of commercial and industrial uses at a variety of sizes providing a variety of services, and

WHEREAS, the Commission further finds that the development plan conforms to applicable guidelines and policies of the Comprehensive Plan as demonstrated in the *Cornerstone 2020 Staff Review Checklist* for the change in zoning request contained in *Attachment 3* of the staff report, and

Conditional Use Permit for Contractor's Yard:

WHEREAS, the Louisville Metro Planning Commission finds that the owner will include this requirement in all leases with third parties for use of the property and shall regularly monitor the property to insure compliance,

WHEREAS, the Commission further finds that the owner's plans previously submitted provide fencing enclosing each storage courtyard, and also provide for a six (6) foot privacy fence along a portion of the boundary line between the property and adjacent R-4 zoned properties. The storage courtyards will be hidden from view of the adjacent street by the proposed contractors' warehouses. The property located immediately to the southeast of the property is improved with structures in such close proximity to the property line that there will be little, if any, visibility of the property from such tract, and

WHEREAS, the Commission further finds that the owner will work with the local fire department to undertake all measure necessary to comply with applicable laws, rules, ordinances, statutes and regulations, including but not limited to the requirements of NFPA Pamphlet 30. The owner will include this requirement in all leases with third parties for use of the property and shall regularly monitor the property to insure compliance, and

WHEREAS, the Commission further finds that although a portion of the rear of the property, including one of the proposed storage courtyards, is within the form district transition zone, the transition zone is bounded by R-4 property which is not currently used for residential purposes (religious use to the northeast and parking lot to the northwest) and is adjacent to a CM zoned tract to the southeast. All storage courtyards, including the rear courtyard within the transition zone, will be enclosed by fencing, and

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the only property having a relatively clear view of the rear courtyard is the CM zoned property to the southeast of the property. The portion of such CM property having a view of the property's rear storage courtyard is a relatively undeveloped rear portion of such CM property, and

WHEREAS, the Commission further finds that the proposal is consistent with applicable policies of the Comprehensive Plan as demonstrated in the Cornerstone 2020 Staff Review Checklist contained in *Attachment 3* of the staff report, and

WHEREAS, the Commission further finds that the proposal is consistent with surrounding land uses and the general character of the area as the property is located in an area of mixed commercial and industrial uses that intensifies gradually moving North along Poplar level Road from the subject site, and

WHEREAS, the Commission further finds that preliminary approvals have been received by the Metropolitan Sewer District and Transportation Planning. No objections from agency reviewers have been expressed, and

WHEREAS, the Commission further finds that Storage Yard and Contractor's Yard may be allowed in the C-2, M-1 and C-M Districts upon the granting of a Conditional Use Permit and compliance with the listed requirements, except that a C.U.P. shall not be permitted within the Traditional Neighborhood and Traditional Marketplace Corridor Form Districts.

- A. Outdoor storage areas prohibited within form district transition zone. (**Relief requested**)
- B. Stacked materials and equipment shall not exceed a height of five feet.
- C. Outdoor storage areas shall be screened from adjacent streets and properties.
- D. Storage of combustible materials shall conform to the requirements of NFPA Pamphlet 30 (information on NFPA pamphlet 30 may be obtained from local fire department).

The proposal complies with the standards contained in LDC 4.2.51, with the exception of the item 'A' from which relief is being requested. The rear two-hundred feet of the subject site is located within a form district transition zone. The properties to the rear are used for religious grounds and not single-family residential uses. Outdoor storage will be confined in courtyards, secured from the public, and screened from view of residentially zoned properties by a proposed 5,600 square foot structure, gate and fencing, as well as a six foot privacy fence along the Northwest Boundary. Outdoor storage appears to be appropriately mitigated by the features contained on the proposed development plan,

WHEREAS, the Commission further finds that, based on the staff report and the evidence and testimony presented today, that all of the applicable guidelines of Cornerstone 2020 are being met; now, therefore be it

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RESOLVED, the Louisville Metro Planning Commission does hereby **APPROVE (1)** the Waiver of LDC, section 10.2.4.A to reduce the thirty-five foot landscape buffer area along the Northwestern property line abutting an R-4 zoning district, **(2)** the Variance from LDC, section 5.3.2.C.2.B to encroach upon the twenty-five foot setback required for non-residential uses abutting residential zoning districts, **(3)** the Detailed District Development Plan, and **(4)** the Conditional Use Permit for Contractor's Yard, Land Development Code (LDC) 4.2.5, with relief from subsection A on page three of the Staff Report that states that outdoor storage areas are prohibited within a form district transition zone, **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. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.
3. 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.
4. 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 Codes and Regulations Construction Permits and Transportation Planning Review and the Metropolitan Sewer District.
 - b. Encroachment permits must be obtained from the Kentucky Department of Transportation, Bureau of Highways for any work within the state right-of-way.
 - 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

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

- d. A Tree Preservation Plan in accordance with Chapter 10 of the LDC shall be reviewed and approved prior to obtaining approval for site disturbance.
- 5. 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.
- 6. No overnight idling or idling of trucks while loading or unloading equipment shall be permitted on-site.
- 7. Elevations in compliance with applicable sections of the LDC shall be submitted to Planning and Design Services staff for review and approval prior to final transmittal of the plan.

The vote was as follows:

Yes: Ferguson, Peterson, Smith, Tomes, Howard, Carlson, Brown, and Jarboe

Absent: Lewis

Abstain: None

No: None