

PLANNING COMMISSION MINUTES
September 19, 2019

PUBLIC HEARING

CASE NO. 19-ZONE-0013

Request: Change in zoning from R-5 to OR, with Detailed District Development Plan with Binding Elements and associated landscape waivers

Project Name: VisionFirst Rezoning

Location: 1692 Mercer Avenue

Owner: Pin Reality LLC

Applicant: VisionFirst

Representative: Prism Engineering and Design Group LLC

Jurisdiction: Louisville Metro

Council District: 10 – Pat Mulvihill

Case Manager: Dante St. Germain, 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.)

Agency Testimony:

02:38:36 Dante St. Germain discussed the case summary, standard of review and staff analysis from the staff report and Power Point presentation (see staff report and recording for detailed presentation). Ms. St. Germain noted there will be no proposed exterior changes to the structure.

The following spoke in favor of this request:

Jason Hall, 2309 Watterson Trail, Suite 200, Louisville, Kentucky, 40229

Summary of testimony of those in favor:

02:44:35 Jason Hall, of Prism Engineering, presented Power Point slide show (see recording for detailed presentation). Mr. Hall detailed the site data, site location, use of the site, and requested changed in zoning.

Deliberation

02:49:38 Planning Commission deliberation (see recording for detailed presentation).

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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.

Zoning Change from R-5 to OR

02:50:53 On a motion by Commissioner Carlson, seconded by Commissioner Peterson, the following resolution, based on Plan 2040, Standard of Review and Staff Analysis and testimony heard today, was adopted.

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Community Form Goal 1 because the proposed zoning district is relatively low impact and will serve as an appropriate transition between the commercial uses to the east and the residential uses to the west, the proposal is not for a high density or intensity zoning district. The site is located near Poplar Level Road, a major arterial street and transit corridor, No hazardous uses or uses with air, noise and light emissions are proposed, or would be permitted under the proposed zoning district, No noxious odors, particulates or emissions are likely to occur with the proposed office residential zoning district, the subject site is located near a major arterial and patients are not proposed to be seen at the site, the proposal is for office-residential zoning, which would not permit excessively noisy uses, No industrial uses would be permitted on site under the proposed zoning district; and

WHEREAS, the Commission further finds that the proposal meets Community Form Goal 2 because the proposed zoning district change would expand an existing activity center in an appropriate manner for the form district. The proposal is for a low intensity zoning district, the subject site is located near a major arterial street and transit corridor, the uses permitted under the proposed zoning district are unlikely to require more infrastructure, and would promote a compact development pattern in an activity center, the proposal would permit land uses that are compatible with the existing land uses nearby and would constitute a small expansion of an existing use, the proposal reuses an existing structure which could be converted back to residential use in the future. The proposal expands an existing center, the existing structure on the site is proposed to be repurposed for office uses, the parking area for the subject site will not be underutilized, the proposed zoning district would permit low impact uses that would be compatible with existing nearby residential development in scale. The placement and design of the structure on the site is not proposed to be changed; and

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WHEREAS, the Commission further finds that the proposal meets Community Form Goal 3 because no natural features are evident on the site, no wet or highly permeable soils, severe, steep or unstable slopes are evident on the site, the subject site is not located in the Ohio River Corridor, the area is not within the floodplain. It is located on karst geology but is fully developed and no new construction is proposed; and

WHEREAS, the Commission further finds that the proposal meets Community Form Goal 4 because the existing structure on the site is proposed to be reused and repurposed as an office, no landscapes or natural elements are evident on the site. The existing structure is proposed to be reused; and

WHEREAS, the Commission further finds that the proposal meets Mobility Goal 1 because the proposed zoning district is not for a higher density or intensity. The subject site is located near a major arterial street and transit corridor; and

WHEREAS, the Commission further finds that the proposal meets Mobility Goal 2 because access to the site is not through lower intensity or density development. Access is achieved via Mercer Avenue from Poplar Level Road, approximately 175 feet from the site; and

WHEREAS, the Commission further finds that the proposal meets Mobility Goal because the proposal would support an adjacent neighborhood-serving business, the site is easily accessible from Poplar Level Road. Housing is located nearby, a transit stop is located nearby, Transportation Planning has approved the proposal, no significant impact on the transportation network is anticipated by the proposed zoning district change; and

WHEREAS, the Commission further finds that the proposal meets Community Facilities Goal because the appropriate utilities have approved the proposal, LWC has approved the proposal, MSD has approved the proposal; and

WHEREAS, the Commission further finds that the proposal meets Economic Development Goal because the proposed zoning district is unlikely to generate high volumes of traffic. The subject site is located near a major arterial; and

WHEREAS, the Commission further finds that the proposal meets Livability Goal 1 because no changes to the footprint or envelope of the structure on the site are proposed at this time, the subject site is no located within the regulatory floodplain, the proposed zoning district change would not permit hazardous uses, and the site is not located within the floodplain; and

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WHEREAS, the Commission further finds that the proposal meets Housing Goal 1 because the current proposal is not for residential housing. However, the proposed zoning district would permit housing the future. The subject site is close to a transit route; and

WHEREAS, the Commission further finds that the proposal meets Housing Goal 2 because the current proposal is not for residential housing. However, the proposed zoning district would permit housing the future. The site is connected to the neighborhood and surrounding area, and the proposed zoning district would permit a mix of uses, the current proposal is not for residential housing. However, the proposed zoning district would permit housing the future. The site is located near a transit corridor and major arterial street; and

WHEREAS, the Commission further finds that the proposal meets Housing Goal 3 because existing residents will not be displaced as the proposed zoning district permits relatively low impact uses which are unlikely to negatively impact the desirability of the neighborhood, the current proposal is not for residential housing. However, the proposed zoning district would permit housing the future. The existing residence is proposed to be used as office space, but could be converted back to a residential use similar to past residential use ; now, therefore be it

RESOLVED, that the Louisville Metro Planning Commission does hereby **RECOMMEND** to the Louisville Metro Council to **APPROVE** the Change in zoning from R-5 to OR.

The vote was as follows:

YES: Commissioners Peterson, Brown, Lewis, Howard, Carlson, and Jarboe
NOT PRESENT AND NOT VOTING: Commissioners Tomes, Daniels and Smith

Waivers #1 and #2

02:51:34 On a motion by Commissioner Carlson, seconded by Commissioner Peterson, the following resolution, based on the Standard of Review and Staff Analysis, testimony heard today and Staff Analysis as justification for the waiver, was adopted.

(Waiver #1) WHEREAS, the Louisville Metro Planning Commission finds, the waiver will not adversely affect adjacent property owners as the existing tree canopy and landscaping are proposed to be retained, and the proposed use is relatively low impact; and

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WHEREAS, the Louisville Metro Planning Commission further finds the waiver will not violate specific guidelines of Plan 2040 as Plan 2040 encourages the re-use of existing structures. To reduce or eliminate the encroachment, the existing structure would have to be removed and reconstructed on a new footprint; and

WHEREAS, the Louisville Metro Planning Commission further finds the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant as the encroaching structure already exists and no additional encroachment is proposed; and

WHEREAS, the Louisville Metro Planning Commission further finds 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 by requiring the applicant to move the existing structure, which is infeasible; and

(Waiver #2) WHEREAS, the Louisville Metro Planning Commission further finds the waiver will not adversely affect adjacent property owners as the existing tree canopy and landscaping are proposed to be retained, and the proposed use is relatively low impact; and

WHEREAS, the Louisville Metro Planning Commission further finds the waiver will not violate specific guidelines of Plan 2040 as the existing tree canopy and landscaping are proposed to be preserved. Plan 2040 encourages appropriate transitions between uses that are significantly different in density or intensity, but the proposed use is not significantly different in intensity compared with a residential use; and

WHEREAS, the Louisville Metro Planning Commission further finds the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant as installing additional landscaping or tree canopy is infeasible given the fully developed nature of the lot and the fact that the existing structure encroaches into the required landscape buffer area; and

WHEREAS, the Louisville Metro Planning Commission further finds 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 by requiring the applicant to move the existing structure to make room for additional landscaping; now, therefore be it

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** the Waivers from LDC section 10.2.4.A to allow existing structures to encroach into the required property perimeter Landscape Buffer Areas on the southern and western

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property lines (19-WAIVER-0004) and from LDC table 10.2.4 to allow LBA planting requirements to be fulfilled by existing vegetation (19-WAIVER-0004)

The vote was as follows:

YES: Commissioners Peterson, Brown, Lewis, Howard, Carlson, and Jarboe

NOT PRESENT AND NOT VOTING: Commissioners Tomes, Daniels, and Smith

Development Plan and Binding Elements

02:52:30 On a motion by Commissioner Carlson, seconded by Commissioner Peterson, the following resolution, based on the Standard of Review and Staff Analysis and testimony heard today, was adopted.

WHEREAS, the Louisville Metro Planning Commission finds, there do not appear to be any historic resources or natural resources on the subject site. Existing tree canopy is to be preserved; and

WHEREAS, the Louisville Metro Planning Commission further finds Provisions for safe and efficient vehicular and pedestrian transportation within and around the development and the community has been provided, and Metro Public Works has approved the preliminary development plan; and

WHEREAS, the Louisville Metro Planning Commission further finds there are no open space requirements pertinent to the current proposal; and

WHEREAS, the Louisville Metro Planning Commission further finds the Metropolitan Sewer District has approved the preliminary development plan and will ensure the provision of adequate drainage facilities on the subject site in order to prevent drainage problems from occurring on the subject site or within the community; and

WHEREAS, the Louisville Metro Planning Commission further finds the overall site design and land uses are compatible with the existing and future development of the area. The proposal will provide an appropriate transition between the commercial uses to the east and the residential uses to the west. No exterior changes to the structure are proposed; and

WHEREAS, the Louisville Metro Planning Commission further finds the development plan conforms to applicable guidelines and policies of the Comprehensive Plan and to

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requirements of the Land Development Code with the exception of the requested waivers; now, therefore be it

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** the 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. 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 Construction Review, 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 certificate of occupancy. Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter.
 - c. A reciprocal access and crossover easement agreement in a form acceptable to the Planning Commission legal counsel shall be created between the adjoining property owners and recorded. A copy of the recorded instrument shall be submitted to the Division of Planning and Design Services; transmittal of approved plans to the office responsible for permit issuance will occur only after receipt of said instrument.

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- d. A legal instrument providing for the long-term use of the off-site parking spaces, as shown on the approved detailed district development plan and in accordance with Section 9.1.5 Off-Site Parking, shall be submitted and approved by the Planning Commission legal counsel and recorded in the County Clerk's office. A copy of the recorded instrument shall be submitted to the Division of Planning and Design Services; transmittal of approved plans to the office responsible for permit issuance will occur only after receipt of said instrument.
 - e. A minor plat or legal instrument shall be recorded consolidating the property into one lot. A copy of the recorded instrument shall be submitted to the Division of Planning and Design Services; transmittal of approved plans to the office responsible for permit issuance will occur only after receipt of said instrument.
 - f. 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. The residential character of the structure shall be maintained. Changes to the following items shall not be made without prior approval of the Planning Commission or its designee:
 - a. roof line
 - b. building material
 - c. porch
 - d. windows
6. A certificate of occupancy must be received from the appropriate code enforcement department prior to occupancy of the structure or land for the proposed use. All binding elements requiring action and approval must be implemented prior to requesting issuance of the certificate of occupancy, unless specifically waived by the Planning Commission.
7. 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

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development of the site, shall be responsible for compliance with these binding elements.

The vote was as follows:

YES: Commissioners Peterson, Brown, Lewis, Howard, Carlson, and Jarboe

NOT PRESENT AND NOT VOTING: Commissioners Tomes, Daniels, and Smith