

PLANNING COMMISSION MINUTES
December 7, 2017

PUBLIC HEARING

CASE NO. 17ZONE1037

Request: Change in Zoning from R-6, Multi-Family Residential to C-M, Commercial Manufacturing

Project Name: Franklin Street Warehouse

Location: 1014 and 1016 Franklin Street

Owner: Kablooney, LLC
1201 Story Avenue, Suite 100
Louisville, Ky. 40206

Applicant: Andy Blieden, Kablooney, LLC
1201 Story Avenue, Suite 100
Louisville, Ky. 40206

Representative: Greg Ehrhard
Stites & Harbison
400 West Market Street, Suite 1800
Louisville, Ky. 40202

Kelli Jones
Sabak, Wilson & Lingo, Inc.
608 South 3rd Street
Louisville, Ky. 40202

Jurisdiction: Louisville Metro

Council District: 4 – Barbara Sexton Smith

Case Manager: **Laura Mattingly, 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:

01:14:33 Ms. Mattingly discussed the case summary, standard of review and staff analysis from the staff report.

The following spoke in favor of this request:

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Kelli Jones, 608 South 3rd Street, Louisville, Ky. 40202
Andy Blieden, 1201 Story Avenue, Louisville, Ky. 40206

Summary of testimony of those in favor:

01:20:51 Ms. Jones gave a power point presentation. "Because it was constructed as a warehouse prior to the existence of the zoning regulations, it has non-conforming rights and may continue to be used as a warehouse. But as you know, with non-conforming rights, as soon as we want to change the use to something besides a warehouse or he doesn't have a tenant and it's vacant for a period of time, it would lose its non-conforming rights. That's one of the main reasons he wants to rezone to C-M." The applicant is voluntarily excluding some uses.

01:27:05 Mr. Blieden stated the most important job a real estate developer has is to create jobs and is very proud of his track record. There are 30 tenants that lease from Mr. Blieden. Box trucks (~ 20 ft.) are using the front and back for loading and unloading.

01:34:26 Commissioner Howard asked Mr. Blieden if he would be willing to provide a hedge on the front property line. Mr. Blieden said yes.

The following spoke in opposition to this request:

No one.

Deliberation

01:35:17 Commissioner Ferguson is in favor of eliminating binding element number 9 and leaving the existing binding element 10 regarding restriction of certain uses.

Commissioner Smith is in favor of removing binding element 9 as well. The warehouse is adequately justified.

Vice Chair Lewis remarked, "In regard to binding element 9, I think it needs to be defined by the size of the truck or hours or just remove it and address it later if it becomes an issue. Restricting all deliveries to that alley which really pushes them toward the front is not a better plan."

Commissioner Brown stated the condition of the alley will dictate which trucks can use it. The list of exclusions may need to have other uses added or approve the warehouse

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but have the applicant come back before the Planning Commission if they want to do anything else.

Commissioner Howard said the warehouse is in a mixed-use area and is appropriate. Binding element 9 can be removed but agrees with Commissioner Brown regarding binding element number 10.

Commissioner Tomes agrees with removing binding element number 9 and agrees with the list of exclusions as presented.

Chair Jarboe agrees with the other commissioners.

01:41:20 Ms. Mattingly remarked, "They're o.k. with saying any change of use would have to come back, but possibly just to a sub-committee."

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-6 to C-M

On a motion by Commissioner Brown, seconded by Commissioner Howard, the following resolution based on the testimony heard today and the applicant's finding of facts was adopted.

WHEREAS, the proposal does not affect the existing street pattern; and

WHEREAS, this proposal includes no new construction and is utilizing an existing building, therefore is not impacting any open space; and

WHEREAS, the Louisville Metro Planning Commission finds, the proposal is for the preservation and reuse of an existing building for industrial purposes, which is encouraged in the Butchertown Neighborhood plan; and

WHEREAS, the Louisville Metro Planning Commission further finds the proposal will not create a new center but it involves the repurposing of an existing building.

WHEREAS, this application conforms to the Goals and Objectives of the Cornerstone 2020 Comprehensive Plan, as reflected in the Guidelines and Policies (which, per page 3 of the Plan, "are to be used for the assessment of proposed amendments to the Zoning District Map") in the following ways:

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WHEREAS, Guideline 1, Community Form – The development, in its current state and with potential future uses upon approval of the map amendment, will be compatible with the scale, rhythm, form and function of the existing neighborhood because no changes are proposed. The parcels to be rezoned are located in the Traditional Neighborhood (TN) form district, and the Butchertown neighborhood is cited in the Glossary of Cornerstone 2020 plan as an example of a “Traditional Workplace Form Area” (Guideline 1.B.9). This form area is “characterized by predominantly small to medium scale industrial and employment uses” such as the warehouse with this application. The warehouse building has a limited setback from the street, consistent with the pattern of all development in the area, and, being surrounded by residential uses, it is closely integrated with residential areas. The current warehouse use and potential future uses of this building represent a mixture of industrial, commercial and office uses within this residential area; and

WHEREAS, Guideline 2, Centers – the proposal is an existing activity/employment center located in the middle of the block on Franklin Street, between North Johnson Street and North Wenzel Street. The map amendment will legitimize the current warehouse use and will open the door to other permitted uses in the CM district (subject to restrictions and limitations proposed by the applicant), thus repurposing and rehabilitating the activity center in this block (Guideline 2.A.7). This change will allow the location of retail commercial establishments in this activity center (Guideline 2.A.3). It is a compact development, resulting in efficient land use, with no need for infrastructure investment (Guideline 2.A.4); and

WHEREAS, Guideline 3, Compatibility – the neighborhood is a mixed-use area, and the applicant proposes a compatible mix of uses that will not constitute a further non-residential expansion into a residential area (Guideline 3.A.4). The site is near existing activity centers and near transit routes along East Main Street (Guideline 3.A.11). The proposal will allow certain CM activities (self-limited by the applicant) to locate in this workplace form district rather than in isolated commercial or industrial sites (Guideline 3.A.17); and

WHEREAS, Guideline 4, Open Space – not applicable to this type of development; and

WHEREAS, Guideline 5, Natural Areas and Scenic and Historic Resources – the parcels are located in the Butchertown Historic Preservation District. The proposal includes the preservation, rehabilitation and future adaptive reuse of an existing older structure in a manner that is compatible with the height, bulk, scale, architecture and placement of other structures in the district and immediate neighborhood (Guideline 5.A.2). There are no concerns from this development vis-a-vis the natural environment; and

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WHEREAS, Guideline 6, Economic Growth and Sustainability – this development constitutes an investment in the rehabilitation and revitalization of the Butchertown neighborhood, all in a manner that is consistent with, and sensitive to, form patterns in the district (Guideline 6.A.3). It allows an adaptive re-use of an older warehouse building located on older industrial land (Guideline 6.A.11); and

WHEREAS, Guideline 7, Circulation – it is not anticipated that a development of this size and scope will put a strain on existing transportation networks and facilities (Guideline 7.A.1). The parcels are well-situated to take full advantage of mass transit opportunities (Guideline 7.A.3,.4); and

WHEREAS, Guideline 8, Transportation Facility Design – the scope and size of this project do not implicate the safe and efficient design of transportation facilities; and

WHEREAS, Guideline 9, Bicycle, Pedestrian and Transit – this project relies upon, continues and protects, the existing pedestrian sidewalk infrastructure that fronts the parcels, and that provides easy access to mass transit options (Guideline 9.A.1 and 2). On-site bicycle parking will be provided (Guideline 9.A.4); and

WHEREAS, Guideline 10, Flooding and Stormwater – Flooding and stormwater runoff issues are not implicated by this application because no new impervious surface areas are proposed; and

WHEREAS, Guideline 11, Water Quality – it is not anticipated that this relatively small development will degrade the water quality due to water pollution or erosion; regional water resources are protected; and

WHEREAS, Guideline 12, Air Quality – it is anticipated that this relatively small development will have no negative impact on air quality; and

WHEREAS, Guideline 13, Landscape Character – the landscape area of this developed urban neighborhood will not be affected by this proposal; and

WHEREAS, Guideline 14, Infrastructure – the subject parcels are located in an area that is served by adequate existing utilities, including potable water, water for fire suppression, and sanitary sewers (Guideline 14.A.2.3, .4); and

WHEREAS, Guideline 15, Community Facilities – not applicable to this private development; and

WHEREAS, the Louisville Metro Planning Commission finds, the Franklin Street Warehouse project is within the Traditional Neighborhood Form District (TN). Per

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Section 5.2.3 of the LDC, the intent of a TN is “to promote the development and redevelopment of neighborhoods in a manner consistent and compatible with the distinct site and community design elements of a traditional neighborhood..” The Butchertown neighborhood is cited in the Cornerstone 2020 plan (at page 15 of the Glossary) as an example of a “Traditional Workplace Form Area,” which has a “pattern of development characterized by older, small to medium scale industrial and employment centers typically integrated into traditional neighborhoods. Buildings sit close to street and have mostly on-street parking”; and

WHEREAS, the Louisville Metro Planning Commission further finds the Franklin Street Warehouse is compatible with the TN because it represents the very epitome of the Butchertown neighborhood – older (circa 1964), small scale industrial/warehouse use, intimately integrated into a traditional mixed residential/industrial/commercial neighborhood, with a building as close to the street as the adjacent houses, and with mostly on-street parking.

RESOLVED, that the Louisville Metro Planning Commission does hereby **RECOMMEND** to the Louisville Metro Council the change in zoning from R-6 Multi-Family Residential to C-M Commercial Manufacturing on property described in the attached legal description be **APPROVED**.

The vote was as follows:

YES: Commissioners Brown, Ferguson, Howard, Lewis, Smith, Tomes and Jarboe

NOT PRESENT AND NOT VOTING: Commissioners Carlson, Lindsey and Peterson

Waiver of Section 10.2.4 to eliminate the required property perimeter buffer areas on both east and west property lines

On a motion by Commissioner Brown, seconded by Commissioner Howard, the following resolution was adopted.

WHEREAS, the waiver will not adversely affect adjacent property owners as the building is existing and there are no proposed changes to the site that would impact adjacent property owners; and

WHEREAS, Guideline 3, Policy 9 of Cornerstone 2020 calls for protection of the character of residential areas, roadway corridors and public spaces from visual intrusions and mitigation when appropriate. Guideline 3, Policies 21 and 22 call for appropriate transitions between uses that are substantially different in scale and

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intensity or density, and mitigation of the impact caused when incompatible developments occur adjacent to one another through the use of landscaped buffer yards, vegetative berms and setback requirements to address issues such as outdoor lighting, lights from automobiles, illuminated signs, loud noise, odors, smoke, automobile exhaust or other noxious smells, dust and dirt, litter, junk, outdoor storage, and visual nuisances. Guideline 3, Policy 24 states that parking, loading and delivery areas located adjacent to residential areas should be designed to minimize impacts from noise, lights and other potential impacts, and that parking and circulation areas adjacent to streets should be screened or buffered. Guideline 13, Policy 4 calls for ensuring appropriate landscape design standards for different land uses within urbanized, suburban, and rural areas. Guideline 13, Policy 6 calls for screening and buffering to mitigate adjacent incompatible uses. The intent of landscape buffer areas is to create suitable transitions where varying forms of development adjoin, to minimize the negative impacts resulting from adjoining incompatible land uses, to decrease storm water runoff volumes and velocities associated with impervious surfaces, and to filter airborne and waterborne pollutants. These guidelines are not violated, as there will be no changes to the site to increase noise, runoff, lighting or other impacts that would require mitigation; and

WHEREAS, the Louisville Metro Planning Commission finds, the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant as the conditions are existing and no other relief is being requested; 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 and would create an unnecessary hardship on the applicant as providing the Landscape Buffer Area would require the demolition of much of the building and mitigation is difficult due to the size of the site and the location of the existing structure.

WHEREAS, this waiver will allow an existing building to remain. Not site improvements are planned so there will be no impact on adjoining property owners; and

WHEREAS, according to the Comprehensive Plan, the Traditional Neighborhood Form District is intended to support the redevelopment, enhancement and preservation of existing neighborhoods. It also promotes the re-use of existing structures and the integration of neighborhood-serving land uses. This waiver is the direct result of a rezoning to bring an existing warehouse building into compliance. Although it can continue to operate as a warehouse due to non-conforming rights, it can never be anything else. This rezoning will allow the future use of this property to be something that benefits the neighborhood. Therefore, this waiver will not violate the Comprehensive Plan; and

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WHEREAS, the Louisville Metro Planning Commission finds, the applicant is asking for this waiver to allow an existing building to remain. There is not enough room between the building on the subject site and the adjacent buildings to plant the required material or build a fence and have room to maintain it; therefore it is the minimum necessary to provide relief to the applicant; and

WHEREAS, the Louisville Metro Planning Commission further finds the strict application of the provisions of the regulation would mean that either (1) the applicant would have to tear down the building, or (2) the building would have to remain a non-compliant warehouse for the remainder of its life. This eliminates the flexibility of bringing in a neighborhood serving use in the future and would create an unnecessary hardship on the owner and the neighborhood.

Detailed District Development Plan and Binding Elements

WHEREAS, LOJIC has not identified any natural resources on site and the applicant will be making no changes to the site to affect tree canopy, soils or any other natural resource; and

WHEREAS, provisions for safe and efficient vehicular and pedestrian transportation within and around the development and the community have been provided through the existing street network and sidewalks; and

WHEREAS, this development does not require open space, as it does not meet the threshold for open space or outdoor amenity requirements; and

WHEREAS, 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 Louisville Metro Planning Commission finds, the overall site design and land uses are compatible with the existing and future development of the area, as the character of the existing structure will remain the same; and

WHEREAS, the Louisville Metro Planning Commission further finds his development generally conforms to the Comprehensive Plan and Land Development Code due to the sites' existing conditions and the proposed site improvements.

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** the waiver of Section 10.2.4 to eliminate the required property perimeter buffer areas on both east and west property lines and the Detailed District Development Plan **SUBJECT**

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to the following Binding Elements, eliminating 9 and 10 and revising number 1: Also, an additional Condition of Approval that landscaping be provided comparable to the landscaping on the abutting properties in the area.

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 to the use or 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 Develop Louisville 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 building permit. Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter.
 - c. 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 the approved plans to the office responsible for permit issuance will occur only after receipt of said instrument.
5. Prior to any site disturbance permit being issued and prior to any clearing, grading or issuance of a site disturbance permit, a site inspection shall be conducted by PDS staff to ensure proper placement of required tree protection fencing in accordance with the approved Tree Preservation Plan.

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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. There shall be no outdoor music (live, piped, radio or amplified) or outdoor entertainment or outdoor PA system audible beyond the property line.
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.

CONDITION OF APPROVAL

1. Landscaping shall be provided comparable to the landscaping on the abutting properties in the area.

The vote was as follows:

YES: Commissioners Brown, Ferguson, Howard, Lewis, Smith, Tomes and Jarboe

NOT PRESENT AND NOT VOTING: Commissioners Carlson, Lindsey and Peterson