

**PLANNING COMMISSION MINUTES**  
**June 18, 2020**

**BUSINESS SESSION**

**CASE NO. 19-ZONE-0094**

Request: Change in zoning from R-5 to C-1, with Detailed District Development Plan and Binding Elements, and associated landscape Waiver

Project Name: Westport Road Retail

Location: 917 & 919 Fountain Avenue, 4700 Westport Road

Owner: Estate of Evelyn Kaelin

Applicant: 4700 Westport LLC

Representative: Dinsmore & Shohl LLC

Jurisdiction: Louisville Metro

Council District: 7 – Paula McCraney

**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:**

03:14:41 Dante St. Germain presented a Power Point Slide show (see staff report and recording for detailed presentation.) Dante noted the change to C-1 is more intensive zoning district than required for the proposed use and more intensive than appropriate for the location. The Waiver is not adequately justified.

03:22:09 Commissioner Carlson and Dante St. Germain discussed binding element number 8 (see recording for detailed presentation.)

03:23:24 Commissioner Lewis asked if the issues discussed at the previous Land Development and Transportation have been addressed. Dante St. Germain replied the ROW dedication/cross section of the have been provided to Commissioners. Planning Commission can discuss the hours of operation and lighting at today's meeting. Dante St. Germain noted opposition comments regarding traffic, access to the site, and the intensity of the zoning district.

**The following spoke in favor of this request:**

Cliff Ashburner, 101 South Fifth Street, suite 2500, Louisville, Kentucky, 40202  
Kent Gootee, Mindel Scott & Associates, 5151 Jefferson Boulevard, Louisville, KY 40219

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Paul Grisanti, 2401 Merrick Road, Louisville, Kentucky, 40207  
Steven Porter, 2406 Tucker Station Road, Louisville, Kentucky, 40299

**Summary of testimony of those in favor:**

03:25:35 Cliff Ashburner, representing the applicant, presented a Power Point slide show (see recording for detailed presentation.) Mr. Ashburner noted the voiced concerns from the adjacent property owners and the applicant is willing to provide an 8-foot vinyl fence along the adjacent properties with significant landscaping for screening. Cliff stated Kent Gotee can elaborate the proposed screening plan.)

03:36:44 Kent Gotee detailed the proposed screening plan with an 8-foot fence along the length of the property line and landscaping (see recording for detailed presentation.)

03:43:12 Paul Grisanti detailed the reduction of the building by 5 feet, the proposed fence, and landscaping (see recording for detailed presentation.)

03:46:14 Cliff Ashburner continued his Power Point slide show detailing nearby examples of commercial next to residential use properties and the proposed binding elements (see recording for detailed presentation.)

03:51:37 Commissioner Lewis asked if the proposed fence will only go between two adjacent properties. Kent Gotee replied the fence is only between the residential properties along the back of the site. The site will have screening along Fountain Avenue and the unimproved alley. Commissioner Lewis asked for the density of the proposed landscaping versus the density required. Kent Gotee replied they are over the 1.5 multiplier applied to the buffer for the site.

03:53:53 Commissioner Carlson asked for the measurements of the proposed building with respect to the previous buildings on the site. Cliff Ashburner replied he can answer this question in rebuttal. Commissioner Carlson asked how many tenants will be occupying the proposed building. Cliff Ashburner replied Paul Grisanti can answer this question. Paul Grisanti replied they anticipate multiple tenants but would prefer one. Mr. Grisanti noted they cannot allow certain tenants due to parking limits. There can be 4-5 maximum tenants in for the proposed building.

03:57:02 Commissioner Howard asked how far away the proposed fence line will be from Fountain Avenue. Kent Gotee replied the fence will be approx. 31 feet from the edge of pavement and 10 feet from the property line. Dante St.

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Germain stated fences can be 8 feet in the side yard setback.

04:02:15 Steve Porter, representing Ernest Biven and adjacent property owners, asked for clarification if there is an entrance into the rear of the building. Paul Grisanti replied the main entrance will be on Westport Road and four entrances for other tenants will be on the rear portion of the building directly from the parking lot. Cliff Ashburner noted the masonry façade will be provided along the rear of the building. Steve Porter asked if there will be any screening for the residences across from Fountain Avenue. Kent Gootee replied there is a required 3-foot screening between Fountain Avenue and the proposed parking lot (see recording for detailed presentation.)

**The following spoke in opposition to this request:**

Steven Porter, 2406 Tucker Station Road, Louisville, Kentucky, 40299  
Brennen Sneed, 826 Fountain Avenue, Louisville, Kentucky, 40222

**Summary of testimony of those in opposition:**

04:07:16 Steve Porter, representing Earnest Biven and adjacent property owners, stated there are objections to the waiver and the change to commercial zoning. Mr. Porter detailed the zoning history of the site and adjacent properties. Steve noted the removal of the existing residential house and parking locations would affect adjacent properties. He read the neighborhood form district requirements violations (see recording for detailed presentation.)

04:30:58 Brennen Sneed stated concerns with traffic on Fountain Avenue for the parking lot entrance and the historical commercial zoning of the site is no longer needed since the area is residential (see recording for detailed presentation.)

04:33:47 Commissioner Jarboe noted the applicant stated that if there are alcohol sales on the site the tenant would have to comply with CN zoning regulations which does not allow outdoor alcohol sales. Steve Porter replied the CUP in C-1 allows the use of outdoor alcohol sales. Commissioner Jarboe and Steve Porter discussed the CUP regulations for the site (see recording for detailed presentation.) Dante St. Germain read proposed binding element 9.h stating to allow conditional uses allowed in the C-1 commercial zoning district under chapter 4 part 2 that allows outdoor alcohol sales (see recording for detailed presentation.)

04:36:43 Commissioner Howard, Commissioner Jarboe, Steve Porter, Cliff

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Ashburner discussed the CUP process regarding the permission to have outdoor alcohol sales and the conditions for C-1 zoning (see recording for detailed presentation.)

**Rebuttal**

04:38:36 Cliff Ashburner stated commercial has been on this site has been allowed on this site and detailed similar neighborhood that are a mix of residential and commercial uses in the area (see recording for detailed presentation.) Mr. Ashburner noted the location of the parking is dictated by Land Development Code and Public Works.

04:43:01 Commissioner Jarboe asked Cliff Ashburner if the applicant can clarify the type of tenants would be on site. Cliff Ashburner replied the businesses that would be allowed would not be the sort to be open at night. Paul Grisanti stated realistically there would not be a tenant open past 10 p.m.

04:45:42 Commissioner Seitz asked if there was a way to constrict the site from outdoor alcohol sales onsite. Cliff Ashburner replied that would be part of a CUP but later a binding element can be amended.

04:46:43 Commissioner Carlson stated concerns with binding element 4.f, the lack of side and rear elevations, the type of glazing required, and hours of operation (see recording for detailed presentation.) Commissioner Jarboe and Cliff Ashburner discussed the entrances, façade, and glazing on the proposed building. Paul Grisanti submitted a PDF copy of the south elevations to Julia Williams. Commissioners discussed the hours of operation of 8 a.m. to 10 p.m. (see recording for detailed presentation.)

04:55:07 Commissioners discussed the rear and side elevations (see recording for detailed presentation.)

04:57:33 Commissioners discussed continuing this case based on not having the east side elevation available (see recording for detailed presentation.)

**Deliberation**

04:58:33 Planning Commission deliberation (see recording for detailed presentation.) Commissioner Peterson and Carlson stated this development would be better suited elsewhere on Westport Road. Commissioner Lewis and Howard expressed concerns with light from traffic and the zoning.

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**Zoning Change from R-5 to C-1**

05:04:53 On a motion by Commissioner Howard, seconded by Commissioner Seitz, the following resolution based on the Plan 2040 Staff Analysis and testimony heard today was adopted:

**RESOLVED**, that the Louisville Metro Planning Commission does hereby **RECOMMEND** to the Louisville Metro Council the change in zoning from R-5, Single Family Residential to C-1, Commercial on property described in the attached legal description with **NO RECOMMENDATION**.

The vote was as follows:

**YES: Commissioners Howard, Seitz, and Jarboe.**

**NO: Commissioner Peterson, Carlson, and Lewis.**

**NOT PRESENT AND NOT VOTING: Commissioners Brown, Daniels, and Mims.**

05:08:06 The motion was a tie. Travis Fiechter stated Commissioners can continue to discuss this case to come to an agreement and break the tie motion or Commissioners have the option to forward this case with no recommendation (see recording for detailed presentation.)

05:09:04 Commissioner Jarboe stated he is in support of this development with the mitigation of restricted hours of operation to prevent traffic in and out of the site at night.

05:10:29 Commissioner Lewis expressed concerns with traffic lights in and out of the parking lot and would like to hear testimony from other adjacent property owners regarding car traffic lights at night.

05:11:14 Commissioner Howard noted there will be landscaping to help mitigate the amount of light from cars entering and leaving the parking lot.

05:11:51 Commissioner Peterson stated this parcel would work if it was already

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adjacent to a commercial lot and stated concerns with setting a precedent of allowing commercial on this portion of Westport Road.

05:12:58 Commissioner Carlson stated he would prefer this site to be rezoned C-N and to continue this case to explain landscaping mitigation, side elevations, and hours of operation.

05:14:13 Brian Davis read KRS 100.2112G "A tie vote shall be subject to further consideration by the Planning Commission for a period not to exceed 30 days at the end of which if the tie has not been broken the application shall be forwarded to the fiscal court or legislative body without a recommendation of approval or disapproval." Commissioner Jarboe, Brian Davis, and Travis Fiechter discussed bringing this case back to Planning Commission when more information is available or forwarding this case to Louisville Metro Council with no recommendation (see recording for detailed presentation.)

05:16:19 Commissioner Seitz and Peterson discussed the expansion of commercial uses in this area and the difference between C-N and C-1 on this site (see recording for detailed presentation.)

05:18:32 Commissioners and Dante St. Germain discussed the available landscaping on homes across from the development to help mitigate traffic lights (see recording for detailed presentation.)

05:21:15 Commissioners discussed continuing this case or send this case as a tie to Metro Council for a final decision with no recommendation (see recording for detailed presentation.) Commissioners concluded to send this case to Metro Council for final decision and asked the applicant to decide.

05:23:06 Cliff Ashburner stated the applicant would like to forward this case to Metro Council with no recommendation.

**PLANNING COMMISSION MINUTES**  
**May 21, 2020**

**PUBLIC HEARING**

**CASE NO. 19-ZONE-0094**

**Request:** This case will be continued to the June 18, 2020 Planning Commission meeting - Change in zoning from R-5 to C-1, with Detailed District Development Plan and Binding Elements, and associated landscape Waiver

**Project Name:** Westport Road Retail

**Location:** 917 & 919 Fountain Avenue, 4700 Westport Road

**Owner:** Estate of Evelyn Kaelin

**Applicant:** 4700 Westport LLC

**Representative:** Dinsmore & Shohl LLC

**Jurisdiction:** Louisville Metro

**Council District:** 7 – Paula McCraney

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

**Agency Testimony:**  
No one spoke.

**The following spoke in support of this request:**  
No one spoke.

**The following spoke in opposition to this request:**  
No one spoke.

**Commissioner Deliberation:**  
Commissioners' deliberation (see recording for detailed presentation.)

**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.**

**PLANNING COMMISSION MINUTES  
May 21, 2020**

**PUBLIC HEARING**

**CASE NO. 19-ZONE-0094**

01:32:51 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:

**RESOLVED**, the Louisville Metro Planning Commission does hereby **CONTINUE** this case to the Planning Commission Meeting on **June 18, 2020**.

**The vote was as follows:**

**YES: Commissioners Lewis, Brown, Mims, Howard, Seitz, Carlson, Peterson, Daniels, and Jarboe.**

**No: None**

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**March 5, 2020**

**PUBLIC HEARING**

**19-ZONE-0094**

Request: Change in zoning from R-5B to C-1 with a Detailed District Development Plan and binding elements, and associated Landscape Waiver  
Project Name: Westport Road Retail  
Location: 917 & 919 Fountain Avenue; 4700 Westport Road  
Owner: Estate of Evelyn Kaelin  
Applicant: 4700 Westport LLC  
Representative: Dinsmore & Shohl, LLC  
Jurisdiction: Louisville Metro  
Council District: 7 – Paula McCraney

**Case Manager: Dante St. Germain, AICP, Planner II**

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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:**

02:56:48 Dante St. Germain presented the case and showed a Power Point presentation (see recording for detailed presentation.)

**The following spoke in support of this request:**

Cliff Ashburner, Dinsmore & Shohl LLP, 101 S 5th St #2500, Louisville, KY 40202

Kent Gootee, Mindel Scott & Associates, 5151 Jefferson Blvd, Louisville, KY 40219

Polly Kaelin Mackie, 13221 Eastgate Village Drive, Louisville, KY 40223

Ellen Kaelin Venhoff, 802 Huttersfield Court, Louisville, KY 40222

**Summary of testimony of those in support:**

03:03:11 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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03:10:49 Polly Kaelin Mackie and Ellen Kaelin Venhoff, children of the former owners, provided testimony about the history of the property and why this is an appropriate location for Commercial use (see recording for detailed presentation.) Ms. Mackie and Ms. Venhoff both stated that this site has been used for commercial uses for generations.

03:17:06 Mr. Ashburner resumed the presentation (see recording for details.)

03:19:25 Kent Gootee discussed the proposed screening for the adjacent property (see recording.) The applicant is proposing an 8-foot fence, six deciduous trees (only five are required), and four additional evergreen trees. Also, evergreen shrubs will be provided between the sidewalk and the end of the fence.

03:21:21 Mr. Ashburner resumed the presentation and provided examples of co-existing commercial and residential in the Metro community.

03:22:48 Mr. Ashburner discussed the differences between C-N and C-1 zoning, and why the applicant thought C-1 was a more appropriate category for this proposal.

03:26:19 Mr. Ashburner read an applicant's proposed binding element into the record, as follows:

The following permitted C-1 uses will not be allowed on the subject property without approval from the Planning Commission or one of its Committees, after a public meeting of the Committee or Commission. All those that received notice of the March 5, 2020 Planning Commission public hearing shall be provided written notice of the meeting, by mail, postmarked at least 14 days in advance of the date of the meeting. The Committee or Commission shall base any decision on whether to allow such uses on the criteria applicable to the modification of a binding element:

- Automobile rental agencies (with no more than 25 rental passenger vehicles stored on-site; no more than two service bays for cleaning or maintenance, and having no repair or storage dispensing of fuel)
- Automobile parking areas, public and private
- Automobile service stations with service bays for repair of no more than two vehicles (see definition of "Automobile Service Station" for types of repairs permitted)
- Bowling alleys

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- Car washes having prior approval by the agencies responsible for transportation planning
- Catering kitchens
- Bakery preparing food and meals for sale or consumption elsewhere
- Dwelling (multiple family)
- Hotels and motels including ancillary restaurants and lounges enclosed in the structure, in which dancing and other entertainment not including other adult entertainment activities as defined in Section 4.4.1 may be provided.
- Ice storage houses of not more than five-ton capacity
- Laundries or laundrettes (self-service)
- Medical laboratories
- Pawn shops

03:29:57 In response to a question from Commissioner Brown, Mr. Ashburner said it was too soon to estimate any hours of operation since there is not yet a tenant for the property. He said he did not anticipate any business that would be open past 10:00 p.m.

03:30:32 Commissioner Mims asked if the property had ever been zoned Commercial. Mr. Ashburner said no, it is non-conforming, and there is no formal "Non-Conforming Use" certificate for it. Commissioner Mims asked if the State bought right-of-way based on commercial or residential use? Mr. Ashburner said the State purchased the ROW based on Commercial value.

03:32:40 Commissioner Mims asked Ms. St. Germain if the staff recommendation would change if this was a C-N zoning request. Ms. St. Germain said yes, because C-1 is a more intensive use than C-N. Commissioner Mims also asked if there was a Westport Road Corridor study available. Commissioner Brown said that study is still in draft form.

03:33:52 Commissioner Carlson asked if the applicant had a tenant, or specific type of tenant, in mind for this site. Mr. Ashburner said there were no specific tenants, but the types of anticipated uses could be small retailers. In response to a question from Commissioner Carlson, Mr. Ashburner explained why the applicant had chosen to request C-1 instead of C-N (see recording.) Commissioner Carlson expressed concern that a future tenant could build something that looks very different from the proposed structures being presented today. Mr. Ashburner said that would require the applicant to come back before the Planning Commission (or Committee) for review. He said that, if this project goes forward with C-1 zoning, the applicant intends to build the building as it is presented today, and will expect any tenant to operate with no changes.

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03:37:20 Commissioner Brown asked about restaurants, outdoor dining, etc. that is permitted in C-1, and how that could affect parking. Kent Gootee explained his parking calculations (see recording). He noted that this project would also get a 10% parking reduction from TARC. Mr. Ashburner added that, if a portion of the building were occupied by an office use, that parking ratio would decrease.

03:38:28 Travis Fiechter, legal counsel for the Planning Commission, asked if there was any consideration about closing the undeveloped alley. Mr. Ashburner said there were objections from the State, and the residents who live across the alley.

**The following spoke in opposition to this request:**  
Ernest Bevin, 913 Fountain Avenue, Louisville, KY

Barbara Beck, 2924 Nepperhan Road, Louisville, KY 40218

Michael Hines, 927 Fenley Avenue, Louisville, KY 40222

**Summary of testimony of those in opposition:**

03:39:03 Ernest Bivin, the adjoining property owner, said he bought his house in 1956 and lived there when the site was used for a market & liquor store. He said the store/s were right up to Westport Road, and the access was from Westport Road, thus minimizing impact on neighbors. He said this proposal shows all traffic using Fountain Avenue for access. No traffic can come off of Westport Road; the alley is still there, but it can't be used. He noted that this area already has a great amount of retail – why add more? He said the Kaelins have used this property for single-family residential rental for years. He said that this is not a neighborhood-serving use, and it is right up against a neighborhood.

03:45:34 Barbara Beck said Westport Road is four lanes now. It is extremely difficult, if not impossible, to turn left onto Westport Road from Fountain Avenue; also, there are no sidewalks on Fountain Avenue. She asked who is going to maintain the proposed privacy fence. She is concerned about noise, trash, traffic, exhaust fumes, people outside until 10:00 at night, and alcohol consumption from people sitting outside.

03:49:41 Michael Hines said he also spoke for many others in the neighborhood who are opposed to the rezoning. He said no outreach was made to any other neighbors except those directly adjoining the affected sites. He said a 6600 square foot building is not appropriate for a single-family residential neighborhood. He said he has not seen a “business plan” for this development. He asked how long will it be between construction of the building, and occupancy? Also, what do the developers

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consider to be "full occupancy"? He asked how long the developers plan to retain ownership of this property. He said that Westport Village, about ½ mile away, has vacant storefronts; despite this, there are a wide variety of retailers there. He also noted that making a left turn from Fountain Avenue onto Westport Road is almost impossible; customers will try to use Fountain Avenue to find an alternate route onto Westport, probably through Washburn Avenue..

03:56:56 Ms. Beck added that changing the zoning here would alter the character of the neighborhood and cause safety issues.

03:58:10 Mr. Bivin added that the distance from his property line to the parking area should be 25 feet. He said the applicant is asking that the distance be changed to 20 feet. He objects to any diminishing of this distance.

**Rebuttal:**

04:00:13 Mr. Ashburner said traffic has been evaluated for this proposal; the applicant is anticipating at least some customers would be people who live nearby. (See recording for detailed rebuttal.)

04:04:06 Commissioner Mims asked if the Transportation Cabinet tore down the commercial buildings when they bought the ROW. Mr. Ashburner said he believed so, and that the property owner/s were compensated.

04:04:42 Mr. Fiechter corrected the applicant's waiver justification – it reads "35 feet" required, but should read "25 feet" required. Mr. Ashburner confirmed that 25 feet is correct.

04:04:57 Commissioner Jarboe said that, due to the higher zoning category being requested and the fact that a neighborhood is right next to the property, the Planning Commission would need some idea about hours of operation for any business here. Mr. Ashburner suggested, 8:00 a.m. to 10:00 p.m.

04:06:01 Commissioners' deliberation.

04:14:34 The Commissioners came out of Business Session. Ms. St. Germain said the applicant would like to request a continuance for two weeks. Mr. Ashburner said the applicant would like to consider modifying their application and possibly come back with a C-N request. Commissioner Howard said that her reason for not really wanting C-1 here is because the list of prohibited uses, submitted by Mr. Ashburner, was too long.

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She said she was not comfortable with the idea of prohibiting uses that are permitted for any zoning category, and is concerned that future applicants could come back and request an amendment to this binding element.

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04:16:22 On a motion by Commissioner Carlson, seconded by Commissioner Peterson, the following resolution was adopted:

**RESOLVED**, the Louisville Metro Planning Commission does hereby **CONTINUE** this case to the March 19, 2020 Planning Commission public hearing.

**The vote was as follows:**

**YES: Commissioners Howard, Peterson, Brown, Daniels, Carlson, Mims, and Jarboe.**

**NOT PRESENT: Commissioners Tomes and Lewis.**