

**PLANNING COMMISSION MINUTES
MAY 24, 2018**

PUBLIC HEARING

CASE NO. 17ZONE1063

Request: Change in zoning from R-4 to C-N and a Detailed District
Development Plan
Project Name: 9212 Mouser Property
Location: 9212 Preston Highway
Owner: Mouser Properties, LLC
Applicant: Kathryn Matheny – Cardinal Planning & Design, Inc.
Representative: Kathryn Matheny – Cardinal Planning & Design, Inc.
Jurisdiction: Louisville Metro
Council District: 24 – Madonna Flood

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

Agency Testimony:

00:12:50 Laura Mattingly presented the case and showed a Power Point presentation (see staff report and recording for detailed presentation.)

The following spoke in favor of this request:

David Mindel and Kent Gootee, Mindel Scott & Associates, 5151 Jefferson Boulevard, Louisville, KY 40219

Kathryn Matheny, Cardinal Planning & Design, Inc., 9009 Preston Hwy, Louisville, KY 40219

Summary of testimony of those in favor:

00:16:07 David Mindel, the applicant's representative, presented the applicant's case (see recording for detailed presentation.) Since there are no planned exterior changes, he asked that binding element #9 (regarding the submittal of exterior elevation/s prior to receiving construction permit approval) be eliminated. He also asked that binding element #6 be eliminated (regarding a Certificate of Occupancy) since the structure is already occupied.

00:19:22 Commissioner Carlson asked for clarification about the Certificate of Occupancy binding element (binding element #6.) He said that the building may be occupied now, but the use was going to be changing from residential to commercial. Mr. Mindel said he had no problem leaving that binding element in place.

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00:20:22 Kathryn Matheny asked that her Power Point presentation be entered into the record.

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

Deliberation:

00:20:58 The Commissioners concur that the proposal is justified. They agreed to strike existing Binding Element #9, since it is not needed.

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.

Change in zoning from R-4, Single Family Residential, to C-N, Commercial-Neighborhood on 0.53 acres

00:23:05 On a motion by Commissioner Howard, seconded by Commissioner Peterson, the following resolution, based on the Staff Analysis, Cornerstone 2020 Staff Checklist, the applicant's justification and evidence and testimony heard today, was adopted:

WHEREAS, the Louisville Metro Planning Commission finds that that the proposal meets the intents of Guideline 1 – Community Form because the proposal requests a rezoning for an existing structure. The structure will be used as a small commercial or office business. The only improvements would be to the entrance way and for a few parking spots in the rear. This type of reuse of an existing structure makes a change of use easily compatible with a neighborhood. The streetscape is not altered. The neighborhood benefits from a new service in a convenient location, thus making the requested zoning designation appropriate under Guideline 1, Policy B.3; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 3 Compatibility because this proposal complies with the intent and the policies of Guideline 3 for all the location reasons set forth above and below and because this is an existing home and proposed business use which is compatible with the neighboring uses. Further, the use is of low impact and is a service to the neighborhood. The requested rezoning designation is compatible because no discernible changes to the appearance of the neighborhood will occur by this project. The issue of appropriate size and shape of the structure, setbacks, transitions and visual impact to the neighborhood are basically non-existent because this home is existing and the streetscape will remain the same. For these reasons, the proposal is consistent with Guideline 3, Policies 1, 4, 9, 22 and 23. The proposal is of low impact to the neighborhood. The current zoning is R-4 with commercial zoning on either side. The proposed use should not

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generate any nuisances or create any new traffic issues for the area. The business or office will operate during normal business hours, thus causing no noise or disturbance to the neighborhood to the rear in the evenings. The house will have minimal outside lighting consistent with lighting on residential buildings. Therefore, the proposal meets, Guideline 3, Policies 4, 6, 7, 8 and 24; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 5 Natural Area and Scenic and Historical Resources because this proposal complies with the intent and the policies of Guideline 5, Policy 2 because there are no historic features in the area. There are no other special districts or soil and slope issues facing this proposal; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 6 Economic Growth and Sustainability because the project is an investment in an older neighborhood using existing infrastructure; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 7 Circulation because its site plan provides adequate parking and connections for the size and location of the lot. Further, the site is in an area with access to mass transit and in an area served by sidewalks; and

WHEREAS, the Commission further finds that the proposal complies with Guidelines 8 and 9 – Transportation because it provides for appropriate circulation and safe and efficient ingress to and egress in rear parking area. The site's parking meets the LDC requirements. The proposal is also located near a TARC stop consistent with Guideline 9. The proposal does not impact any environmentally sensitive areas, scenic corridors or streetscape issues; and

WHEREAS, the Commission further finds that the proposal complies with the intent and the policies of Guidelines 10 and 11 Flooding and Storm water and Water Quality because it uses an existing structure so land disturbance is minimized. The only new construction is the addition of a parking area. Appropriate construction practices will be employed in constructing the building to protect water quality by the use of effective sediment and erosion practices in accordance with applicable regulations and best management practices. Further, no portion of the property to be developed is designated as floodplain or a blue line stream; and

WHEREAS, the Commission further finds that the proposal complies with the intent and the policies Guideline 12 Air Quality because this type of infill project will work to decrease vehicular miles traveled between home and trips to neighboring businesses. The site is also served by a TARC stop in the area, thus encouraging the use of mass transit reducing vehicular miles traveled by residents. Sidewalks are available in this area; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 13 Landscape Character because the intent of this guideline is to protect and enhance landscape character. This proposal has minimal site disturbance. Additional landscaping will be provided in the rear to buffer the homes behind the site. The proposed plan maintains the existing residential look of the area and is compatible with the lot pattern of the block; and

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WHEREAS, the Commission further finds that the proposal complies with the intent and the policies Guideline 14 Infrastructure because all necessary utilities are available nearby and will be connected via existing facilities; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 1: Community Form because the proposal is located within a small group of commercial uses and just north of a larger commercial center; the commercial properties that adjoin are of a similar scale to what is proposed; and Preston Hwy is a major arterial road; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 2: Centers because the proposal is near an activity center and is re-using an existing single family home that is adjoined on the north and south by commercial uses; the area has sufficient permanent population and transit to support the use. Residential neighborhoods surround the proposed use and existing activity center; the existing structure and site design is being re-used as is, making the proposal efficient and cost effective; the proposal adds a neighborhood serving use to an area with a mix of non-residential uses along Preston Highway; while the use itself is not mixed, it is in an area with a mix of non-residential and residential uses along the Preston Hwy corridor with established residential subdivisions surrounding the corridor; this is a small development; the curb cut for this use is existing and cross connection is not required as there is no new construction; utilities are existing; pedestrian access to the site is provided along with vehicular access; public sidewalk provides for access to transit. The nearest TARC stop is located approximately 500 feet north at the intersection of South Park Road and Preston Highway; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 3 – Compatibility because the proposal is completing a small corridor of commercial uses and has provided the required buffering and mitigation for this expansion by providing the 35' buffer adjacent to the residential property to the west; the western property line to the rear of the tract has adequate buffering to mitigate any potential odors or emissions from vehicles; this is a small development and does not appear to generate large amounts of traffic; lighting should be no more than is necessary to provide safety/security, and not be directed towards residential property; Preston Hwy is a transit corridor served by TARC route 45X; landscape areas appear to be provided as required; landscape buffering and screening is being provided as required along the rear property line; the existing building has a similar setback as the two properties to the north and south and is of a similar design and height; there is no parking or loading adjacent to residential; landscaping appears to be appropriate for the development and abutting uses; there is no parking garage included with this proposal; signs will be in conformance with Chapter 8 of the LDC; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 4: Open Space because designated open space is not required by the LDC; and the proposal preserves the existing trees on site; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 5: Natural Areas and Scenic and Historic Resources because the proposal preserves the existing

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trees on site; the applicant is preserving the existing structures; and the site does not appear to contain wetlands, floodplain or other hydric features; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 6 - Economic Growth and Sustainability because the site is not located downtown; the proposal is not industrial; and the site abuts other commercially zoned parcels and is located near an activity center, along a major arterial; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 7: Circulation because Transportation has reviewed the plan and determined that no roadway improvements are required in conjunction with this proposal; the site is located on a transit route where sidewalks exist and has proposed a pedestrian connection to the entrance of the office; the proposal is using an existing roadway and access is acceptable; pedestrian facilities are provided to accommodate walkers and transit riders; sufficient parking is being provided; a pedestrian connection to adjacent sites is not required; and as this is a small site, utilization of the public sidewalk to access adjacent sites is acceptable; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 8: Transportation Facility Design because the site is served by the existing street network and does not constitute the addition of any new public ROW; access is provided from an arterial roadway intersecting an interstate south of the site and an activity center; the proposal is using the existing roadway network; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 9: Bicycle, Pedestrian and Transit because pedestrian facilities are provided to accommodate walkers and transit riders; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 10: Flooding and Stormwater because MSD has given preliminary approvals; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 12: Air Quality because APCD has no comments on the proposal; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 13: Landscape Character because no natural corridors are present; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 14: Infrastructure because existing utilities would appear to be available, LWC has adequate infrastructure in place to supply the development as proposed; and the Health department has no comment at this time; now, therefore be it

RESOLVED, the Louisville Metro Planning Commission does hereby **RECOMMEND** to the Louisville Metro Council that the requested Change in zoning from R-4, Single Family Residential, to C-N, Commercial-Neighborhood on 0.53 acres on property described in the attached legal description be **APPROVED**.

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The vote was as follows:

YES: Commissioners Brown, Howard, Carlson, Peterson, Ferguson, and Jarboe.

NOT PRESENT: Commissioners Lewis, Tomes, and Smith.

Detailed District Development Plan and Binding Elements

00:24:33 On a motion by Commissioner Howard, seconded by Commissioner Peterson, the following resolution, based on conformance with Cornerstone 2020, the Standard of Review and Staff Analysis, evidence and testimony heard today, was adopted:

WHEREAS, the Louisville Metro Planning Commission finds that, as there is no new construction with this proposal, all existing tree canopy will be preserved. LOJIC has not identified any other natural resources on site; 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, and Metro Public Works has approved the preliminary development plan; and

WHEREAS, the Commission further finds that there is no open space requirement for this site; and

WHEREAS, the Commission further finds that 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 Commission further finds that the overall site design and land uses are compatible with the existing and future development of the area. Appropriate landscape buffering and screening will be provided to screen adjacent properties and roadways; and

WHEREAS, the Commission further finds that the development plan generally conforms to applicable guidelines and policies of the Comprehensive Plan and to requirements of the Land Development Code; now, therefore be it

RESOLVED, the Louisville Metro Planning Commission does hereby **APPROVE** the requested 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.

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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, Louisville Metro Public Works and the Metropolitan Sewer District.
 - b. Encroachment permits must be obtained from the Kentucky Department of Transportation, Bureau of Highways.
 - 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 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. 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.
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

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other parties engaged in development of the site, shall be responsible for compliance with these binding elements.

The vote was as follows:

YES: Commissioners Brown, Howard, Carlson, Peterson, Ferguson, and Jarboe.

NOT PRESENT: Commissioners Lewis, Tomes, and Smith.