

**PLANNING COMMISSION MINUTES**  
**April 4, 2019**

**PUBLIC HEARING**

**CASE NO. 18ZONE1065**

**Request:** Change in zoning from C-1 to M-2, setback variance, landscape waivers, and detailed plan  
**Project Name:** Silver Hawk Trucking  
**Location:** 5102 East Indian Trail  
**Owner:** Silver Hawk, LLC  
**Applicant:** Silver Hawk, LLC  
**Representative:** Kathy Matheny  
**Jurisdiction:** Louisville Metro  
**Council District:** 2 – Barbara Shanklin

**Case Manager:** **Joel Dock, 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:**

00:07:44 Joel Dock presented the case and showed a Power Point presentation (see staff report and recording for detailed presentation.)

00:12:15 In response to a question from Commissioner Jarboe, Mr. Dock said the improvements were made to the site sometime between 2016-2018 when the application was submitted. The property owner was cited for having barbed wire on the fence in 2017/2018.

00:12:54 In response to a question from Commissioner Lewis, Mr. Dock said the barbed wire was no longer part of the plan. Emily Liu- Director of Planning & Design Services, said she had checked on this herself and the applicant was told to remove it. She said she believes it has been removed.

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

Kathy Matheny, Cardinal Planning & Design, 9009 Preston Highway, Louisville, KY 40219

Jafar Radjapov, 3316 Autumn Way, Louisville, KY 40218 (applicant)

**PLANNING COMMISSION MINUTES**  
**April 4, 2019**

**PUBLIC HEARING**

**CASE NO. 18ZONE1065**

Kathy Linares, Mindel Scott & Associates, 5151 Jefferson Boulevard Suite 101,  
Louisville, KY 40219

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

00:13:22 Kathy Matheny, the applicant's representative, briefly presented the applicant's case and disputed the findings in the staff report (see recording for detailed presentation.) She described the processes the applicant has gone through to obtain permit/s and make sure his use meets the Land Development Code.

00:17:53 Jafar Radjapov, the applicant, presented his case (see recording for detailed presentation.) He said he bought this property in April, 2018, and had talked to PDS staff twice before purchasing the property to make sure he could park three trucks on it. He said he received Metro permission to install the fence with barbed wire after a theft occurred. He said he has talked to neighbors and has received no complaints.

00:21:45 Ms. Matheny resumed her presentation. She noted that ten first-tier property owners have signed off on a letter of support of this use, as well as the improvements the current owner has made to the site. She showed a Power Point presentation which included photos of the site and the surrounding area, and described the applicant's case, and variance and waiver requests, in more detail.

00:30:17 Ms. Matheny discussed some binding elements, including those added at LD&T. She said the applicant is willing to add a binding element stating that no more than five trucks will ever be parked on the property at the same time.

00:32:52 Travis Fiechter, legal counsel for the Planning Commission, asked how many trucks could fit onto the property. Ms. Matheny said she was not sure, but the applicant is willing to limit the number to five with a binding element. In response to a question from Commissioner Lewis, Ms. Matheny said "five trucks" means five cabs and five trailers.

00:34:11 Commissioner Brown asked if the use would be storage only, and not repair. Ms. Matheny said yes (parking the vehicles only.) Commissioner Brown also asked if C-1 and C-2 uses were allowed in an M-2 zone. Brian Davis, Planning Manager, said no, only industrial uses. The hours of operation were also discussed - Commissioner Brown said he thought 7:00 a.m. to 7:00 p.m. is appropriate (binding element #7 in the staff report.)

**PLANNING COMMISSION MINUTES**  
**April 4, 2019**

**PUBLIC HEARING**

**CASE NO. 18ZONE1065**

00:35:54 In response to a question from Commissioner Lewis, Ms. Matheny discussed the three properties, which are all owned by the applicant. She discussed the location of the fencing (both the applicant's and UPS's.)

00:37:19 In response to a question from Commissioner Peterson, Ms. Matheny discussed particulars of the corner access.

00:38:51 In response to a question from Commissioner Carlson, Ms. Matheny said the trucks will be empty on-site. No hazardous waste. A binding element has been added stating this.

**#12. Each individual trailer shall be empty when stored on-site.**

00:43:38 In response to a question from Commissioner Lewis, Ms. Matheny said all of the trucks are flat-beds (open design, no side panels.)

00:45:26 Mr. Fiechter also asked if the north entrance will be gated. Ms. Matheny said it will be left open but cameras will be installed.

00:45:49 In response to a question from Commissioner Jarboe, Commissioner Carlson said the LD&T meeting for this case focused on technical issues, not the requested zone change.

00:46:34 In response to a question from Commissioner Peterson, Mr. Dock explained his reasons for staff's conclusions to this request (see recording for detailed discussion.)

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

No one spoke.

**Rebuttal:**

00:50:09 Ms. Matheny presented rebuttal and summarized the request.

00:53:30 Commissioner Jarboe asked if the applicant knew when he purchased the property that he would need a rezoning to park trucks. Ms. Matheny said no, that the applicant only found out that he needed a zoning change after he purchased the property. She added that the applicant did not fully understand the complexity of what needed to be done. Mr. Radjapov explained how many times he had been to Metro to make sure that he could use his property as intended before he purchased it.

**PLANNING COMMISSION MINUTES**  
**April 4, 2019**

**PUBLIC HEARING**

**CASE NO. 18ZONE1065**

00:57:16 Commissioners' deliberation (see recording for detailed deliberation.) The Commissioners also discussed binding elements and uses.

01:08:12 Ms. Liu stated that the applicant tried to do all due diligence to comply with the law and LDC regulations.

01:10:14 Binding elements were discussed limiting the number of trucks and the length of time they could be parked there (see recording for detailed discussion.)

01:14:52 Regarding a binding element about trailer storage, Mr. Dock suggested the following:

**#9. Storage of any trailer on site shall not exceed ten consecutive days. All trailers shall be empty, and cannot exceed five trailers on-site at the same time.**

**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**

01:20:39 On a motion by Commissioner Brown, seconded by Commissioner Tomes, the following resolution, based on the applicant's justification and evidence and testimony heard today, was adopted:

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets the intents of **Guideline 1-Community Form** because the Site is located on a primary collector-East Indian Trail with two minor arterial roads -Newburg Road and Shepherdsville within a block. The parcel is currently sitting in the Neighborhood Form District immediately adjacent to Suburban Workplace District. This district extends south and east and contains several warehouse complexes and the GE complex a couple of blocks to the southeast. This request is for a small tract in a developed area to come into conformance with its historical land use as a commercial parking area and is consistent with a Suburban Workplace District. The small size of the lot .41 acres will allow the site to serve as a parking area but not as a majority of the M2 uses because of its size. A binding element limiting the site to use as a truck parking only will be proposed. The hours of operation will also be specified. No one attended the neighborhood meeting or has expressed any issues or concerns with the rezoning to

**PLANNING COMMISSION MINUTES**  
**April 4, 2019**

**PUBLIC HEARING**

**CASE NO. 18ZONE1065**

date. Properly buffered, the site will be more attractive and not cause any discernible changes to the area. This use is encouraging development in a "compact" fashion and in an established commercial area. These factors make the requests compatible with the area and make the requested zoning designations appropriate under Guideline 1, Policy A. 2 a, b, and c. and B 3 and 10; and

**WHEREAS**, the Commission further finds that the proposal meets the intents of **Guideline 3 Compatibility** because of all of the location and design reasons set forth above and below and because this is the continuation of an existing commercial use which is compatible with the neighboring commercial uses. The parcel has been a graveled parking area for many years. The site by having new fencing, landscaping and a new entrance will improve its appearance. The owner operates a small trucking company and needs a location to park his trucks when they are not on the road. **The entrance will have hours of operation to be limited to 7 am to 6 pm.** No new nuisances should be created by this operation since it is only occasional truck traffic with a small number of vehicles. The parking lot is existing, so it represents no change to the area. The proposal is of low impact to the neighborhood since the warehouse uses, truck traffic and parking lots are already present. Thus, traffic and noise should not change by this addition making the proposal meet Guideline 3, Policies 1, 6 and 7. The site is currently enclosed with a fence. Minimal security lighting is present and will comply with LDC requirements. The tree canopy requirements will be met. Thus, the proposal meets the requirements of Guideline 3, Policies 8, 22 and 24; and

**WHEREAS**, the Commission further finds that the proposal meets the intents of **Guideline 4 Open Space** because the proposal is not subject to Open Space requirements nor does the secured setting promote this need or use; and

**WHEREAS**, the Commission further finds that the proposal meets the intents of **Guideline 5 Natural Area and Scenic and Historical Resources** because neither the subject property nor the area has been identified as a natural or historic resource requiring preservation. There are no 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 proposal is an investment in an which is older neighborhood, it is in area where workplace activities and trucking operations are common and is next to a workplace district consistent with the form district pattern as desired by Guideline 6, Policies 1, 3 and 5; 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. The lot is meant only for this business'

**PLANNING COMMISSION MINUTES**  
**April 4, 2019**

**PUBLIC HEARING**

**CASE NO. 18ZONE1065**

use. It is on a parcel which does not and should not connect to other uses because of security reasons. The site is currently fenced. No access is needed or given to the public. These conditions are the reason no stub connections are proposed to the adjacent lots; and

**WHEREAS**, the Commission further finds that the proposal meets the intents of **Guidelines 8 and 9 Transportation** because it provides for appropriate circulation and safe and efficient ingress to and egress into this small parking area. Overall, the business is located on a primary collector and one lot from a minor arterial road. There is a TARC stop within 200 feet. The proposal does not impact any environmentally sensitive areas, scenic corridors or streetscape issues; and

**WHEREAS**, the Commission further finds that the proposal meets the intents of **Guidelines 10 and 11 Flooding and Stormwater and Water Quality** because adequate provisions will be made for storm water management at the site. Appropriate construction practices will be employed 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 meets the intents of **Guideline 12 Air Quality** because this type project in a developed area will work to decrease vehicular miles traveled between home and trips to neighboring businesses. The proposal provides an employment location in a developed area. The site is also served by a TARC stop within 200 feet, thus encouraging the use of mass transit reducing vehicular miles traveled by employees or customers. Some sidewalks are available in this area but not in front of this site. Sidewalks are proposed in the Site Plan; and

**WHEREAS**, the Commission further finds that the proposal meets the intents of **Guideline 13 Landscape Character** because trees will be planted to meet tree canopy requirements. There is existing landscaping in the rear and to the east; and

**WHEREAS**, the Commission further finds that the proposal meets the intents of **Guideline 14 Infrastructure** because all necessary utilities are available nearby and will be connected via existing facilities; 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 C-1 Commercial to M-2 Industrial on property described in the attached legal description be **APPROVED**.

**PLANNING COMMISSION MINUTES**  
**April 4, 2019**

**PUBLIC HEARING**

**CASE NO. 18ZONE1065**

**The vote was as follows:**

**YES: Commissioners Tomes, Peterson, Brown, Lewis, and Jarboe.**

**NO: Commissioners Daniels and Carlson.**

**NOT PRESENT: Commissioners Smith, Robinson, and Howard.**

**Variance**

**01:21:29** On a motion by Commissioner Brown, seconded by Commissioner Tomes, the following resolution, based on the applicant's justification and evidence and testimony heard today, was adopted:

**WHEREAS**, the Louisville Metro Planning Commission finds that the requested variance will not adversely affect the public health, safety or welfare because the variance is to allow parking and maneuvering in the front yard setback area. There is an existing 8-foot solid metal fence and all activities occur behind it. The fence is positioned to allow safe ingress and egress onto E. Indian Trail; and

**WHEREAS**, the Commission further finds that the variance will not alter the essential character of the general vicinity because the lot has been a parking area for many years, so parking represents no changes to the area. A new solid 8-foot metal fence was constructed near the front property line under a permit issued in 2018. There is no existing uniform front yard setback on this side of E. Indian Trail; and

**WHEREAS**, the Commission further finds that no nuisance or hazard is caused by the proposed parking or maneuvering behind the fence. The fence is a safe distance from the existing street. A new sidewalk will be placed in front of it. There is a building to the west and a parking lot to the east. There are no uniform yard setbacks on either side; and

**WHEREAS**, the Commission further finds that the variance will not allow for an unreasonable circumvention of the zoning regulations because the request is to accommodate an existing solid fence, the parking behind it will not show, and there are no residential uses on either side of this use or close by on this side of the street with a 10-foot setback; and

**WHEREAS**, the Commission further finds that the variance arises from special circumstances which do not generally apply to land in the vicinity because the land area is limited for the proposed use and the fence is existing which limits the options and makes the setback unnecessary; and

**PLANNING COMMISSION MINUTES**  
**April 4, 2019**

**PUBLIC HEARING**

**CASE NO. 18ZONE1065**

**WHEREAS**, the Commission further finds that the strict application would require the applicant to move a new fence or have a ten foot green space behind it serving no purpose. The 10 foot setback is not needed for this specific site and use. The lack of setback has no hazards or adverse impacts on the adjacent properties; and

**WHEREAS**, the Commission further finds that the applicant, a new owner, obtained a permit in 2018 from Metro Government for constructing the fence. He was securing the lot which had always been used for parking but had some vagrancy issues. There was no intent to disregard any regulation. (See permit on file); now, therefore be it

**RESOLVED** the Louisville Metro Planning Commission does hereby **APPROVE** the requested **Variance** from Land Development Code (LDC), section 5.3.1.C.5 to reduce the front yard setback.

**The vote was as follows:**

**YES: Commissioners Tomes, Peterson, Daniels, Brown, Lewis, and Jarboe.**

**NO: Commissioner Carlson.**

**NOT PRESENT: Commissioners Smith, Robinson, and Howard.**

**Waiver #1 - Waiver of LDC, section 10.2 to omit the vehicle use area landscape buffer along the East Indian Trail frontage.**

**Waiver #2 - Waiver of LDC, section 10.2 to omit the property perimeter landscape buffer along the east and west property lines.**

01:22:17 On a motion by Commissioner Brown, seconded by Commissioner Peterson, the following resolution, based on the applicant's justification and evidence and testimony heard today, was adopted:

**(Waiver #1) WHEREAS**, the Louisville Metro Planning Commission finds that the requested waiver will not adversely affect adjacent property owners and compliance is not practical with existing conditions. There is a solid metal fence in good condition along the front property line. This will provide a visual screen. A new sidewalk will be built directly in front of it. There is a ditch and utility poles which prevent safe placement of the new sidewalk in another location. The adjacent property owner to the west is car repair shop and to the east is a liquor store. There are no uniform or existing VUA bushes on these two sites. The residences across the street will have a buffer from the truck parking from the screening provided by the existing new 8-foot solid metal fence. Bushes behind this fence serve no visual or screening purpose. The site has been



**PLANNING COMMISSION MINUTES**  
**April 4, 2019**

**PUBLIC HEARING**

**CASE NO. 18ZONE1065**

used as a car and truck parking lot for many years and prior to this it had a poorly maintain fence further back on the site. The needed trees to meet the tree canopy requirements will be placed along the rear or west property line so that tree canopy requirements are met; and

**WHEREAS**, the Commission further finds that the requested waiver will not violate the Comprehensive Plan because the intent of the requirements for VUA buffers trees and scrubs are to provide visual screening. In this instance, the solid metal fence will do that. The placement of the fence and the required sidewalk does not allow for the plantings in front of the fence. The height of the fence makes landscaping unnecessary for visual screening if placed behind the fence; and

**WHEREAS**, the Commission further finds that the requested waiver of the regulation the minimum necessary to afford relief to the applicant because the existing new fence which was constructed with the approval of a permit from Metro Government makes the placement of VUA bushes and behind it serve no screening purpose; and

**WHEREAS**, the Commission further finds that strict application would deny the use of the existing new fence which is an attractive and effective screen and in good condition; and

**(Waiver #2) WHEREAS**, the Commission further finds that the requested waiver will not adversely affect adjacent property owners. The lot to the west is the rear wall of an auto repair business owned by the same entity. There is an 8-foot fence near the property line. The buffering would not provide a visual enhancement to the site, neighboring business, or the streetscape. The property to the west is a liquor store. Again, there is an existing 8-foot fence on the property line. The landscaping would be on the inside of the fence which does not provide any visual enhancement or buffering function. Additionally, on the east side, there is a proposed swale and drainage control features which will provide a green area but for functionally does not need bushes or trees. No adjoining property owners will see any landscaping place inside this fenced in yard. There is landscaping in the rear of lot placed by that landowner and neighboring use. A few trees to meet tree canopy requirements will be planted along the west and south (rear) year to meet the tree canopy requirements; and

**WHEREAS**, the Commission further finds that the requested waiver will not violate the intent of the Comprehensive Plan. The adjoining neighbors have sufficient buffering. Existing and long-term conditions at the site make new buffering unnecessary; and

**WHEREAS**, the Commission further finds that the extent of waiver of the regulation the minimum necessary to afford relief to the applicant. This is the minimum relief given the available space and the current location of the fence; and

**PLANNING COMMISSION MINUTES**  
**April 4, 2019**

**PUBLIC HEARING**

**CASE NO. 18ZONE1065**

**WHEREAS**, the Commission further finds that strict application would deny the use of the existing new fence which is attractive, and effective screen, and in good condition; now, therefore be it

**RESOLVED**, the Louisville Metro Planning Commission does hereby **APPROVE** the requested Waiver of LDC, section 10.2 to omit the vehicle use area landscape buffer along the East Indian Trail frontage; and does hereby **APPROVE** the requested Waiver of LDC, section 10.2 to omit the property perimeter landscape buffer along the east and west property lines.

**The vote was as follows:**

**YES: Commissioners Tomes, Peterson, Brown, Lewis, and Jarboe.**

**NO: Commissioners Daniels and Carlson.**

**NOT PRESENT: Commissioners Smith, Robinson, and Howard.**

\*NOTE: Before any motion was proposed on the Detailed District Development Plan Commissioner Carlson and the other Commissioners discussed binding elements about trailer storage and use. Commissioner Carlson asked that, if the use should change to anything other than tractor trailer storage, the case should come back to the full Planning Commission or Metro Council for a public hearing. Mr. Dock suggested adding another binding element, to read as follows:

**12. Any modifications to these binding elements or revisions to the District Development Plan shall require the review and approval by the full body of the Louisville Metro Planning Commission.**

**Detailed District Development Plan and binding elements**

01:24:40 On a motion by Commissioner Brown, seconded by Commissioner Tomes, the following resolution, based on the evidence and testimony heard today, was adopted:

**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

**PLANNING COMMISSION MINUTES**  
**April 4, 2019**

**PUBLIC HEARING**

**CASE NO. 18ZONE1065**

(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) is requested:
  - a. The development plan must receive full construction approval from Develop Louisville, 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 building permit. Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter.
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. 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

**PLANNING COMMISSION MINUTES**  
**April 4, 2019**

**PUBLIC HEARING**

**CASE NO. 18ZONE1065**

compliance with these binding elements.

7. The hours of operation of the site will be from 7 am to 7 pm. No trucks will enter or exit property outside of these hours.
8. No overnight idling of trucks permitted on site.
9. Storage of any trailer on site shall not exceed ten consecutive days. All trailers shall be empty, and cannot exceed five trailers on-site at the same time.
10. No hazardous materials will be hauled or stored in the tractor trailer or on site.
11. The use shall be limited to tractor trailer parking and storage as proposed at the April 4, 2019 Planning Commission meeting.
12. Any modifications to these binding elements or revisions to the District Development Plan shall require the review and approval by the full body of the Louisville Metro Planning Commission.

**The vote was as follows:**

**YES: Commissioners Tomes, Peterson, Brown, Lewis, and Jarboe.**

**NO: Commissioners Daniels and Carlson.**

**NOT PRESENT: Commissioners Smith, Robinson, and Howard.**

**PLANNING COMMISSION MINUTES**  
**April 4, 2019**

**STANDING COMMITTEE REPORTS**

**Land Development & Transportation Committee**

No report given.

**Site Inspection Committee**

No report given.

**Planning Committee**

No report given.

**Development Review Committee**

No report given.

**Policy & Procedures Committee**

No report given.

**CHAIRPERSON/DIRECTOR'S REPORT**

No report given

**ADJOURNMENT**

The meeting adjourned at approximately 2:27 p.m.

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Chairman

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Division Director