

PLANNING COMMISSION MINUTES
January 7, 2016

PUBLIC HEARING

CASE NO. 15ZONE1018

Request: Change in zoning from R-4 to C-2 and a waiver
Project Name: Roe's Outdoor Services, LLC
Location: 9801 Whipps Mill
Louisville, Ky. 40223

Owner: The Whipps Mill Road Land Trust

Applicant: The Land Trust
9801 Whipps Mill Road
Louisville, Ky. 40223

Representative: Land Design & Development, Inc.
Ann Richard, RLA
503 Washburn Avenue
Louisville, Ky. 40222

Frost Brown Todd
Glenn Price
400 West Market Street, 32nd floor
Louisville, Ky. 40202

Jurisdiction: Louisville Metro
Council District: 7-Angela Leet
Case Manager: Julia Williams, RLA, 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:

00:52:58 Mrs. Williams 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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Glenn Price, Frost Brown Todd, 400 West Market Street, Suite 3200, Louisville, Ky. 40202

Kevin Young, Principle Land Design Development, 503 Washburn Avenue, Suite 101, Louisville, Ky. 40222

Evan Roe, 9801 Whippys Mill Road, Louisville, Ky. 40223

Summary of testimony of those in favor:

01:00:29 Mr. Price stated there's no CUP application because there is no category for this type of proposal. A binding element is being proposed – If one of the C-2 uses is wanted in the future, a fully noticed public hearing will first have to take place and be approved by the Planning Commission.

1:09:07 Mr. Young said the proposed site is one of the original farmhouses. The building and house are oriented away from the subdivision. There is a nursery on the property and it's very low impact. The front portion of the property will keep a residential look/feel. The applicant will add an 8 foot privacy fence (around perimeter of property), landscaping, 6 foot fence with gates, 4 foot fence in front of house.

01:15:29 Mr. Price stated the hours of operation - 7:00 a.m. until 9:00 p.m.

01:16:09 Mr. Carroll requests adding a binding element to state: No indoor/outdoor restaurants or consumption of alcoholic beverages. Mr. Price agrees.

01:17:40 Mr. Roe said he has 4 employees. The equipment is kept inside.

The following spoke neither for nor against the request:

Bill Hallerd, 1713 The Meadow Road, Louisville, Ky. 40223

Summary of testimony of those neither for nor against:

01:18:45 Mr. Hallerd wants to know how tall the building and fence will be. Mr. Young said the fence, in that particular area, will be 8 feet tall and the building will be one story, approximately 18 feet in height.

Mr. Hallerd said he lives next door and has never heard any noise from the applicant's business.

Deliberation

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01:20:50 Planning Commission deliberation. Commissioner Brown suggests an additional binding element stating that the owner, at his own expense, will dedicate right-of-way within request from Public Works to accommodate any future sidewalk construction along that frontage. Mr. Price said it could be worked out. Commissioner Kirchdorfer stated that the use is very low impact. There needs to be a better way to handle these types of cases with a conditional use. Also, take a look at the location for the proposed signage. Commissioner Tomes suggests being a little more liberal with the hours of operation.

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-4 to C-2

On a motion by Commissioner Peterson, seconded by Commissioner Lewis, the following resolution was adopted.

WHEREAS, The Neighborhood Form is characterized by predominantly residential uses that vary from low to high density and that blend compatibly into the existing landscape and neighborhood areas. High-density uses will be limited in scope to minor or major arterials and to areas that have limited impact on the low to moderate density residential areas; and

WHEREAS, The Neighborhood Form will contain diverse housing types in order to provide housing choice for differing ages and incomes. New neighborhoods are encouraged to incorporate these different housing types within a neighborhood as long as the different types are designed to be compatible with nearby land uses. These types may include, but not be limited to large lot single family developments with cul-de-sacs, neo- traditional neighborhoods with short blocks or walkways in the middle of long blocks to connect with other streets, villages and zero lot line neighborhoods with open space, and high density multi-family condominium-style or rental housing; and

WHEREAS, The Neighborhood Form may contain open space and, at appropriate locations, civic uses and neighborhood centers with a mixture of uses such as offices, retail shops, restaurants and services. These neighborhood centers should be at a scale that is appropriate for nearby neighborhoods. The Neighborhood Form should provide for accessibility and connectivity between adjacent uses and neighborhoods by automobile, pedestrian, bicycles and transit; and

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WHEREAS, Neighborhood streets may be either curvilinear, rectilinear or in a grid pattern and should be designed to invite human interaction. Streets are connected and easily accessible to each other, using design elements such as short blocks or bike/walkways in the middle of long blocks to connect with other streets. Examples of design elements that encourage this interaction include narrow street widths, street trees, sidewalks, shaded seating/gathering areas and bus stops. Placement of utilities should permit the planting of shade trees along both sides of the streets; and

WHEREAS, the Louisville Metro Planning Commission finds, the change in zoning is not located in a center nor does it create a new center with a mix of uses. However there is similar zoning located in the area and the sites appearance will remain residential in character along Whipps Mill. The proposal is a high intensity zoning district that is not located on an arterial. The proposal is located along a local level road with impact on the low density single family residential uses located adjacent to the site. The proposal is compact. Commercial zoning is evident along the nearby LaGrange Road. The proposal is cost effective for infrastructure because it is in an area with mixed uses nearby. Mixed use is part of the proposal as there is a residential component. A sidewalk will be constructed along Whipps Mill as part of another agencies project in the area. The proposal is not for retail but does incorporate residential; and

WHEREAS, the Louisville Metro Planning Commission further finds the proposal does not create a new center in the NFD nor is it related to the existing commercial that is located along LaGrange Road. The proposal does include the reuse of existing structures for commercial use. The proposal is a non-residential expansion into a low density single family residential area. The proposal is a high intensity zoning district that is not located along a transit route. An activity center is located between La Grange Road and Whipps Mill.

RESOLVED, that the Louisville Metro Planning Commission does hereby **RECOMMEND**, to Metro Council, **APPROVAL** for Case No. 15ZONE1018, zoning change from R-4 to C-2 based on the applicant's presentation, the staff report and the testimony heard today.

The vote was as follows:

YES: Commissioners Brown, Jarboe, Kirchdorfer, Lewis, Peterson, Proffitt, Tomes and Turner

NOT PRESENT AND NOT VOTING: Commissioners Blake and White

Waiver

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On a motion by Commissioner Peterson, seconded by Commissioner Tomes, the following resolution was adopted.

WHEREAS, The waiver will not adversely affect adjacent property owners since the sidewalk will be constructed by others; and

WHEREAS, Guideline 7, Policy 1 states that developments should be evaluated for their impact on the street and roadway system and to ensure that those who propose new developments bear or reasonably share in the costs of the public facilities and services made necessary by development. Guideline 9, Policy 1 states that new development should provide, where appropriate, for the movement of pedestrians, bicyclists and transit users with sidewalks along the streets of all developments where appropriate. The sidewalk will be provided by others; and

WHEREAS, the Louisville Metro Planning Commission finds, the extent of waiver of the regulation is the minimum necessary to afford relief to the applicant since the sidewalk will be provided by others; and

WHEREAS, the Louisville Metro Planning Commission further finds the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant since the sidewalk will be provided by others.

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** Case No. 15ZONE1018, waiver from chapter 5.8.1 to not build the required sidewalks along Whipps Mill Road **ON CONDITION** that the applicant work with Public Works to maintain further additional right-of-way to connect to the existing sidewalk along Whipps Mill Road.

The vote was as follows:

YES: Commissioners Brown, Jarboe, Kirchdorfer, Lewis, Peterson, Proffitt, Tomes and Turner

NOT PRESENT AND NOT VOTING: Commissioners Blake and White

Development Plan and Binding Elements

On a motion by Commissioner Peterson, seconded by Commissioner Lewis, the following resolution was adopted.

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WHEREAS, Tree canopy requirements of the Land Development Code will be provided on the subject site; and

WHEREAS, 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, There are no open space requirements with the current proposal; 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. Appropriate landscape buffering and screening will be provided to screen adjacent properties and roadways. Buildings and parking lots will meet all required setbacks; and

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

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** Case No. 15ZONE1018, the Detailed District Development Plan, the binding elements on pages 14 and 15 of the staff report and the proposed binding elements submitted by the applicant based on the testimony heard today and the staff report; also, additional binding elements to include: Indoor and outdoor restaurant, alcohol sales and consumption of beverages to be restricted. The hours of operation will be from 7:00 a.m. to 10:00 p.m. **SUBJECT** to the following Binding Elements:

Proposed Binding Elements

1. The development shall be in accordance with the approved district development plan, all applicable sections of the Land Development Code (LDC) and agreed upon binding elements unless amended pursuant to the Land Development Code. Any changes/additions/alterations of any binding element(s) shall be submitted to the Planning Commission or the Planning Commission's designee for review and approval; any changes/additions/alterations not so referred shall not be valid.
2. The development shall not exceed 7,500 square feet of gross floor area.

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3. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.
4. 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.
5. 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. 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 Tree Preservation Plan in accordance with Chapter 10 of the LDC shall be reviewed and approved prior to obtaining approval for site disturbance.
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 permitted on the site.
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.

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- 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.
9. The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the January 7, 2016 Planning Commission meeting.
 10. No idling of trucks shall take place within 200 feet of single-family residences. No overnight idling of trucks shall be permitted on-site.
 11. When sidewalks are constructed along the portion of Whipps Mill Road adjacent to this property, a clearly defined, safe pedestrian access will be provided by the owner of the property from the public sidewalk through off street parking to building entrances.
 12. No indoor/outdoor restaurants or consumption of alcoholic beverages.
 13. The owner, at his own expense, will dedicate right-of-way as requested from Public Works to accommodate connection to the existing sidewalk along Whipps Mill Road.
 14. The hours of operation will be from 7:00 a.m. to 10:00 p.m.

Applicant's Proposed Binding Element

15. The following uses shall not be permitted on site without a duly noticed public hearing and approval by the planning commission: auction sales, automobile rental agencies, automobile repair garages, automobile sales agencies, billiard parlors and game rooms, bingo halls and parlors, boat sales, book binding, cleaning, pressing and drying establishments, dance halls, fraternities and sororities, exposition building or center, flea market, indoor paint ball ranges, laser tag, tattoo, body art and piercing parlors, package liquor stores, restaurants where dancing or entertainment is allowed, rubber stamp manufacture, skating rinks, taverns, bars and saloons, theaters, used car sales areas, automobile service stations, car washes, boarding and lodging houses and tourist homes.

The vote was as follows:

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**YES: Commissioners Brown, Jarboe, Kirchdorfer, Lewis, Peterson, Proffitt,
Tomes and Turner**

NOT PRESENT AND NOT VOTING: Commissioners Blake and White

**MINUTES OF THE MEETING
OF THE
LAND DEVELOPMENT AND TRANSPORTATION COMMITTEE**

December 10, 2015

New Cases

CASE NO. 15ZONE1018

Request: Change in zoning from R-4 to C-2 and a Waiver
Project Name: 9801 Whipps Mill
Location: 9801 Whipps Mill
Owner: The Whipps Mill Road Land Trust
Applicant: The Land Trust
Representative: Land Design & Development, Inc.
Frost Brown Todd
Jurisdiction: Louisville Metro
Council District: 7 – Angela Leet

Case Manager: **Julia Williams, RLA, AICP, Planner II**

The staff report prepared for this case was incorporated into the record. This report was available to any interested party prior to the LD&T meeting. (Staff report is part of the case file maintained in Planning and Design Services offices, 444 S. 5th Street.)

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.

Agency Testimony:

01:44:13 Julia Williams presented the case and showed the site plan (see staff report and recording for detailed presentation.)

The following spoke in favor of the request:

Glenn Price, Frost Brown Todd, 400 West Market Street Suite 3200, Louisville, KY 40202

Kevin Young, Land Design & Development, 503 Washburn Ave, Louisville, KY 40222

Summary of testimony of those in favor:

01:46:45 Glenn Price, the applicant's representative, presented the applicant's request and showed a Power Point presentation (see recording for

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detailed presentation.) He added that some neighbors were concerned about limiting some C-2 uses, and the applicant has a proposal for that which will be presented at the public hearing. He said that the existing house on the property will remain as-is.

01:53:03 Kevin Young discussed the site plan, landscaping, and buffering. He said the applicant has agreed to install an 8-foot wood privacy fence along the perimeter of his property. He also discussed the existing house on the site, which will be lived in by the applicant; the existing barn will be removed. He discussed the sidewalk waiver, which has been requested due to a Metro roadway improvement project (any installed sidewalk would have to be immediately removed due to the road work.)

01:55:53 Commissioner Brown said the construction funding for the Metro roadway project has not yet been finalized. Also, there are existing sidewalks to the east of the site and Metro may need an additional right-of-way to extend those sidewalks.

01:57:07 Tammy Markert, with Metro Transportation Planning, said she had confirmed with KIPDA that the funding for the sidewalk project does include construction.

The following spoke in opposition to the request:

No one spoke.

The following spoke neither for nor against:

No one spoke.

01:57:55 The Committee by general consensus scheduled this case to be heard at the January 7, 2016 Planning Commission public hearing.