

PLANNING COMMISSION MINUTES
August 1, 2019

PUBLIC HEARING

CASE NO. 19ZONE1008

NOTE: This case was continued from the July 18, 2019 Planning Commission meeting.

Request:	Change in zoning from R-5 to OR-1, with Detailed District Development Plan and Binding Elements, with associated Waivers for landscaping
Project Name:	W Burnett Boarding and Lodging House
Location:	2630 W Burnett Avenue
Owner:	2630 Burnett LLC
Applicant:	2630 Burnett LLC
Representative:	Lawrence & Lawrence PLLC
Jurisdiction:	Louisville Metro
Council District:	1 – Jessica Green

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:

00:53:31 Dante St. Germain presented the case via Power Point slide show summary (see staff report and recording for detailed presentation). Ms. St. Germain reiterated requests from the previous meeting and detailed the modified requests to commissioners.

The following spoke in favor of this request:

Andrew Weeks, 440 South 7th Street, Suite 200, Louisville, Kentucky, 40203

Curtis Mucci, 5151 Jefferson Boulevard, Louisville, Kentucky, 40219

Brian Rios, 2630 W Burnett Avenue, Louisville, Kentucky, 40210

Summary of testimony of those in favor:

PLANNING COMMISSION MINUTES
August 1, 2019

PUBLIC HEARING

CASE NO. 19ZONE1008

00:59:24 Andrew Weeks, applicant, presented Power Point slide show (see recording for detailed presentation). Mr. Weeks spoke of the points of interest from the previous meeting. He detailed the change in zoning, two waivers, and the new binding elements via handouts presented to Commissioners.

01:07:29 Curtis Mucci, support, presented landscape plans and requested waivers via Power Point slide show (see recording for detailed presentation)

01:09:53 Brian Rios, owner of HobKnob, detailed the use of the site for the business. (see recording for detailed presentation).

Deliberation

01:12:10 Commissioner's deliberation (see recording for detailed presentation). Commissioners discussed eliminating binding element number four.

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-5 Single Family Residential to OR-1 Office Residential

01:18:17 On a motion by Commissioner Carlson, seconded by Commissioner Smith, the following resolution, based on the Plan 2040 Staff Findings, staff report, and testimony heard today, was adopted:

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the **Land Use & Development Goal 1: Community Form**, the proposed zoning district would allow medium density residential uses. The subject site is located two blocks from two separate transit corridors; and

WHEREAS, the Louisville Metro Planning Commission further finds that the proposal meets the **Land Use & Development Goal 2: Community Form**, the proposal would reuse an existing structure on the site; and

PLANNING COMMISSION MINUTES
August 1, 2019

PUBLIC HEARING

CASE NO. 19ZONE1008

WHEREAS, the Louisville Metro Planning Commission further finds that the proposal meets the **Land Use & Development Goal 3: Community Form**, there are no wet or highly permeable soils, severe, steep or unstable slopes evident on the site; and

WHEREAS, the Louisville Metro Planning Commission further finds that the proposal meets the **Land Use & Development Goal 4: Community Form**, there are no landscapes or natural elements evident on the site. The existing structure is proposed to be preserved; the existing structure is proposed to be reused. The structure is on the National Register of Historic Places; and

WHEREAS, the Louisville Metro Planning Commission further finds that the proposal meets the **Land Use & Development Goal 1: Mobility**, the proposed zoning district would allow medium-density/intensity uses; and

WHEREAS, the Louisville Metro Planning Commission further finds that the proposal meets the **Land Use & Development Goal 2: Mobility**, Wilson Avenue, a minor arterial street, is located ½ block from the subject site, providing principal access to the site, with relatively minor connections from Olive Street to W Burnett Avenue; and

WHEREAS, the Louisville Metro Planning Commission further finds that the proposal meets the **Land Use & Development Goal 3: Mobility**, the proposed zoning district would encourage a mixture of compatible land uses by allowing neighborhood serving office uses and medium density residential; no changes to the transportation network are proposed at this time. There is no anticipated significant impact to the transportation network by the proposed zoning district change; no changes to transportation facilities and services are anticipated to be made necessary by the proposed zoning district change; no improvements to transportation facilities and services are anticipated to be made necessary by the proposed zoning district change; No improvements to transportation facilities and services are anticipated to be made necessary by the proposed zoning district change; direct access to the site would be achieved from W Burnett Avenue, a local road; and

WHEREAS, the Louisville Metro Planning Commission further finds that the proposal meets the **Land Use & Development Goal 2: Community Facilities**, the site is currently developed and is served by utilities; LWC has approved the proposal; MSD has approved the proposal; and

PLANNING COMMISSION MINUTES
August 1, 2019

PUBLIC HEARING

CASE NO. 19ZONE1008

WHEREAS, the Louisville Metro Planning Commission further finds that the proposal meets the **Land Use & Development Goal 1: Livability**, No clearing of vegetation is proposed; the subject site is not located in a karst area. The site is not susceptible to erosion; the subject site is not located in the regulatory floodplain; and

WHEREAS, the Louisville Metro Planning Commission further finds that the proposal meets the **Land Use & Development Goal 1: Housing**, the proposed zoning district change would introduce a new housing density. The proposed use would introduce a new housing type to the neighborhood; the proposal would support aging in place by allowing for a mixture of housing options in the neighborhood, or neighborhood-serving office uses; and

WHEREAS, the Louisville Metro Planning Commission further finds that the proposal meets the **Land Use & Development Goal 2: Housing**, the proposal would support intergenerational, mixed-income and mixed-use development by allowing for a mixture of housing options in the neighborhood, or neighborhood serving office uses; the proposed zoning district would allow medium-density housing. The site is not located along a transit corridor but is relatively close to two corridors; and

WHEREAS, the Louisville Metro Planning Commission further finds that the proposal meets the **Land Use & Development Goal 3: Housing**, the proposed zoning district would encourage the provision of fair and affordable housing by increasing the variety of unit costs in Louisville Metro, and would encourage affordable and accessible housing in dispersed locations; existing residents will not be displaced because the structure is currently vacant and in a state of relative disrepair; the proposed zoning district would allow the use of innovative methods of development to increase the production of fair and affordable housing, as the requested district is relatively flexible; now, therefore be it

RESOLVED, that the Louisville Metro Planning Commission does hereby **RECOMMEND** to the Louisville Metro Council to **APPROVE** the change in zoning from R-5, Single Family Residential, to OR-1, Office Residential.

The vote was as follows:

YES: Commissioners Daniels, Smith, Carlson, and Jarboe

NOT PRESENT AND NOT VOTING: Commissioners Tomes, Robinson, Peterson, and Howard

ABSTAINING: Commissioner Brown, Lewis

PLANNING COMMISSION MINUTES
August 1, 2019

PUBLIC HEARING

CASE NO. 19ZONE1008

Waivers

1. **from Land Development Code table 10.2.4 to reduce the required plantings within the property perimeter landscape buffer area (LBA)**
2. **from Land Development Code section 10.2.4.B.1 to allow a driveway to encroach into the required property perimeter LBA**

01:19:53 On a motion by Commissioner Carlson, seconded by Commissioner Smith, the following resolution, based on the staff report as updated during today's staff presentation, testimony heard today and at the July 18, 2019 meeting, was adopted:

(WAIVER #1) WHEREAS, the Louisville Metro Planning Commission finds, the waiver may adversely affect adjacent property owners by omitting much of the buffering between the subject site and adjacent properties. The applicant proposes to construct an 8' screening fence instead of the plantings. A 6' fence is already required by the Land Development Code in addition to the plantings; and

WHEREAS, the Louisville Metro Planning Commission further finds the waiver will violate specific guidelines of Plan 2040 as Plan 2040 advises to ensure an appropriate transition between uses that are substantially different in scale and intensity or density of development. The transition may be achieved through methods such as landscaped buffer yards, vegetative berms, compatible building design and materials, height restrictions and setback requirements.

The Land Development Code emphasizes landscaped buffer yards to ensure appropriate transitions. To eliminate the landscaping in the buffer yard would reduce the effectiveness of the transition; and

WHEREAS, the Louisville Metro Planning Commission further finds the extent of the waiver of the regulation is not the minimum necessary to afford relief to the applicant as the buffering vegetation could be reduced if it is onerous to the applicant rather than eliminated entirely; and

WHEREAS, the Louisville Metro Planning Commission further finds the applicant has incorporated other designs measure that exceed the minimums of the district to compensate for non-compliance with the requirements to be waived by proposing an 8' screening fence instead of the 6' fence that would have otherwise been required; and

(WAIVER#2) WHEREAS, the Louisville Metro Planning Commission further finds the waiver will not adversely affect adjacent property owners because the driveway already exists and has existed for some time with no known adverse effect;

PLANNING COMMISSION MINUTES
August 1, 2019

PUBLIC HEARING

CASE NO. 19ZONE1008

WHEREAS, the Louisville Metro Planning Commission further finds the waiver will not violate specific guidelines of Plan 2040 as the encroachment is relatively minor and would not impact the ability of the applicant to provide appropriate transitions between the subject property and adjacent properties; and

WHEREAS, the Louisville Metro Planning Commission further finds the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant as the driveway exists and relocating it would be impractical given the existence of a curb cut and the location of the existing basement garage; 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 by requiring the applicant to move a curb cut and adversely impact the use of the existing basement garage; now, therefore be it

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** the waivers from Land Development Code table 10.2.4 to reduce the required plantings within the property perimeter landscape buffer area (LBA) **AND** from Land Development Code section 10.2.4.B.1 to allow a driveway to encroach into the required property perimeter LBA.

The vote was as follows:

YES: Commissioners Daniels, Smith, Carlson, and Jarboe

NOT PRESENT AND NOT VOTING: Commissioners Tomes, Robinson, Peterson, and Howard

ABSTAINING: Commissioner Brown, Lewis

Detailed District Development Plan

01:21:03 On a motion by Commissioner Carlson, seconded by Commissioner Smith, the following resolution based on the staff report and testimony heard today was adopted.

WHEREAS, the Louisville Metro Planning Commission finds, there do not appear to be any environmental constraints on the subject site. The historic structure is proposed to be retained. Tree canopy requirements of the Land Development Code will be provided on the subject site; and

PLANNING COMMISSION MINUTES
August 1, 2019

PUBLIC HEARING

CASE NO. 19ZONE1008

WHEREAS, the Louisville Metro Planning Commission further finds, 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 Louisville Metro Planning Commission further finds there are no open space requirements pertinent to the current proposal; and

WHEREAS, the Louisville Metro Planning Commission further finds 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 Louisville Metro Planning Commission further finds the overall site design and land uses are compatible with the existing and future development of the area. The proposed site plan reuses an existing vacant building for a boarding and lodging house; 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; now, therefore be it

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** the Detailed District Development Plan **SUBJECT** to the following Binding Elements shown in the staff report and to add language to binding element number 4, 8, 9:

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.

PLANNING COMMISSION MINUTES
August 1, 2019

PUBLIC HEARING

CASE NO. 19ZONE1008

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. The residential character of the structure shall be maintained. Changes to the following items shall not be made without prior approval of the Planning Commission or its designee:
 - a. Roof line
 - b. Building material
 - c. Porch
 - d. Windows
 - e. Exterior Paint

A grey color provided by the applicant is approved by the Planning Commission.

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 Construction Review, 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 certificate of occupancy. Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter.
6. There shall be no outdoor music (live, piped, radio or amplified) or outdoor entertainment or outdoor PA system audible beyond the property line.
7. 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

PLANNING COMMISSION MINUTES
August 1, 2019

PUBLIC HEARING

CASE NO. 19ZONE1008

compliance with these binding elements. At all times during development of the site, the applicant and developer, their heirs, successors; and assignees, contractors, subcontractors, and other parties engaged in development of the site, shall be responsible for compliance with these binding elements.

8. A type-A tree of a species on the Preferred Plant List shall be provided within the LBA at the south-western corner of the property in the event that the existing off-site tree shown on the development plan is ever removed from the adjacent property.
9. Property owner and its successors in title, its tenants, assigns, or anyone else acting as a landlord for this property agree to follow all terms within this binding element (hereinafter referred to collectively as "property owner").
 - a. Property owner shall subject all applicants for tenancy to a criminal background check.
 - b. Property owner shall not rent to any person who has been convicted by any court of competent jurisdiction of the illegal manufacture or distribution of a controlled substance as defined in Section 102 of the Controlled Substances Act (21 U.S.C. 802) or KRS Chapter 218A.
 - c. Property owner shall not rent to any person who has been convicted by any court of competent jurisdiction of a felony of the following nature: violent crimes or sex offenses. Property owner shall not rent to any tenant who is a registered sex offender.

The vote was as follows:

YES: Commissioners Daniels, Smith, Carlson, and Jarboe

NOT PRESENT AND NOT VOTING: Commissioners Tomes, Robinson, Peterson, and Howard

ABSTAINING: Commissioner Brown, Lewis

