

PLANNING COMMISSION MINUTES
May 9, 2019

PUBLIC HEARING

CASE NO. 18ZONE1091

Request: Change in zoning from C-1 to C-2 with Detailed District Development Plan
Project Name: Brough Brothers Distillery
Location: 1460-1464 Dixie Highway
Owner: Robert Berry, Sr.
Applicant: Victory Global
Representative: Victory Global
Jurisdiction: Louisville Metro
Council District: 3 – Keisha Dorsey

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:

00:10:52 Julia Williams presented the case on behalf of Joel Dock and showed a Power Point presentation (see staff report and recording for detailed presentation.)

00:15:06 In response to a question from Commissioner Howard, Ms. Williams showed photos of the existing site. Handicapped parking will be provided under the plan.

The following spoke in support of this request:

Victor Yarbrough (applicant), Victory Global, 241 Jane Briggs Avenue, Lexington, KY 40509

Virginia Clay, 3305 Mansfield Court, Louisville, KY 40218

Michael Lee Thomas Sr., 1621 Lyman Johnson Drive, Louisville, KY 40210

Howard Owens, 2120 Algonquin Parkway, Louisville, KY 40210

Edith Nelson Yarbrough, 439 North 38th Street, Louisville, KY

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Ranee Combs (sp), 5415 Reible Drive, Louisville, KY 40218

Summary of testimony of those in support:

00:15:41 Victor Yarbrough, the applicant, presented his case and showed a Power Point presentation (see recording for detailed presentation.)

00:20:15 Virginia Clay spoke in support. She said she has seen how distillery tours can bring tourists into new neighborhoods and can improve economic issues in the neighborhoods.

00:22:32 Michel Lee Thomas spoke in support and said this project could bring many positives into the community.

00:24:03 Howard Owens, a nearby resident, said he is in support of the project. He said it could provide an economic boon for the area and a positive role model for youth.

00:25:19 Edith Nelson Yarbrough spoke in strong support.

00:26:56 In response to a question from Commissioner Howard, Mr. Yarbrough said there will be 2-4 employees (short term) and up to 15-20 daily employees (long term).

00:27:35 In response to a question from Commissioner Brown, Mr. Yarbrough said there should be no odors associated with gin and vodka.

00:27:55 In response to a question from Commissioner Howard, Mr. Yarbrough discussed the size/output of the operation.

00:28:36 In response to a question from Commissioner Jarboe, Mr. Yarbrough briefly discussed the application process to become part of the Bourbon Trail.

00:40:00 Ranee Combs (sp) spoke in support (she spoke after those in opposition.)

The following spoke in opposition to this request:

Pastor Darrell Nathan, Mount Zion Baptist Church, 1472 Dixie Highway, Louisville, KY 40210

Carla Mitchell, 1466 Dixie Highway, Louisville, KY 40210

Linda West, 1814 Bolling Avenue, Louisville, KY 40210

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Jack Davis, 1836 Bolling Avenue, Louisville, KY 40210

Summary of testimony of those in opposition:

00:29:09 Pastor Darrell Nathan said he is opposed to the proposed use. He said there are already businesses in the community that sell liquor and spirits.

00:31:17 Carla Mitchell lives at the address across the street from the proposed site. She said she has a petition of opposition to this use, and reiterated that there are already businesses in the area that sell liquor (Walgreens, Thorntons, etc.) She said the access to this site is about 25-30 feet away from Dixie Highway and has no stop sign or light. She said this will cause traffic congestion.

00:35:53 Linda West also said she lives right across the street from this site and is also opposed to this use.

00:38:18 Jack Davis said he does not want any more liquor stores in the area. He is concerned about black mold, like that which came from the Brown Foreman distillery.

Rebuttal:

00:41:54 Mr. Yarbrough presented rebuttal (see recording for detailed presentation.) He explained that this would be a manufacturing distillery, not a liquor store. He said he did not foresee any traffic issues; also, this is going to be a small operation, not a major distillery.

00:43:22 Ms. Clay also said there is "a drastic difference" between a small distillery and a liquor store. She noted that there is a distillery on Fourth Street Live that would be similar in size; there is not the type of traffic or smells that those in opposition spoke about. Also, the distillery would be owner owned-and-operated.

00:45:36 In response to a question from Commissioner Carlson, Mr. Yarbrough said a small section of the facility would be a tasting room (serving size approximately 1.5 ounces, offered after a tour of the distillery.) Not offered to walk-ins. The only alcohol sales would be what is produced at the facility; not offered for on-site consumption.

Deliberation:

00:47:11 Commissioners' deliberation.

00:54:08 Alteration to binding element #7 (regarding hours of operation) were discussed. The final proposed binding element is as follows:

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7. Hours of operation shall be 8 AM – 6 PM Monday through Friday and 10 AM – 6 PM on Saturday.

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 C-1 to C-2, Commercial

00:54:24 On a motion by Commissioner Carlson, seconded by Commissioner Howard, the following resolution, based on the Plan 2040 Staff Analysis and evidence and testimony heard today, was adopted:

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the intents of **Land Use & Development Goal 1: Community Form** because the proposed district does not result in a non-residential expansion into existing residential area; the proposed higher intensity district is located in a walkable urban neighborhood readily served by public transit. Adequate infrastructure is present to serve a wide variety of commercial uses; the primary street is classified sufficiently to handle large volumes of traffic and direct that traffic to activity centers and nearby neighborhoods; and the proposed district is consistent with adjoining districts which pose the same potential for noise as the proposed district; and

WHEREAS, the Commission further finds that the proposal meets the intents of **Land Use & Development Goal 2: Community Form** because the proposed district is appropriately located along an activity corridor containing similar districts which are compatible with the current form district and infrastructure; the proposed district is supported by a sufficient population in the area that has convenient access to the corridor; the proposed district encourages a concentration of commercial uses along the corridor resulting in an efficient land use and cost-effective infrastructure investment; the proposed district allows for a concentration of commercial activities of varying intensities to be located along a commercial and transit corridor resulting in fewer trips, the support and enhancement of alternative modes of travel, and vitality and a sense of place; and the proposed district does not require the demolition of existing structures; and

WHEREAS, the Commission further finds that the proposal meets the intents of **Land Use & Development Goal 3: Community Form** because the proposed district does not impact potential natural features as the site is previously development and does not appear to contain any natural features with the exception of a large tree that will remain

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under the current proposal; the proposed district utilizes a previously developed site and does not impact floodplain or soils; and the proposed district utilizes a previously developed site and does not impact floodplain or soils; and

WHEREAS, the Commission further finds that the proposal meets the intents of **Land Use & Development Goal 4: Community Form** because the proposed district preserves existing structures that exhibit compatibility with the character of the area; and the proposed district does not contemplate the removal of a single large tree on the subject site; and

WHEREAS, the Commission further finds that the proposal meets the intents of **Land Use & Development Goal 1: Mobility** because the proposed district is a higher intensity district which is located amongst higher densities and intensities within or near existing marketplace corridors, existing and future activity centers, and employment centers to support transit-oriented development and an efficient public transportation system; and

WHEREAS, the Commission further finds that the proposal meets the intents of **Land Use & Development Goal 3: Mobility** because the proposed district increases the availability of commercial activities without encroachment into the neighborhood and located along a transit corridor in a walkable urban neighborhood; the proposed district does not negatively impact mobility or accessibility to transit, pedestrians and people with disabilities; the proposed district is located along a major transit corridor that is readily accessible to pedestrians; improvements necessitated by the proposed district will be made, such as sidewalk repair; and existing transportation facilities and services are adequate; and

WHEREAS, the Commission further finds that the proposal meets the intents of **Land Use & Development Goal 2: Community Facilities** because the proposed district will be served by existing utilities; an adequate supply of potable water and water for fire-fighting purposes is available; and adequate means of sewage treatment and disposal to protect public health and to protect water quality in lakes and streams as determined by the Metropolitan Sewer District is provided; and

WHEREAS, the Commission further finds that the proposal meets the intents of **Land Use & Development Goal 1: Economic Development** because the proposed district is located along an arterial roadway with multi-modal options that do not impact adjacent areas; and

WHEREAS, the Commission further finds that the proposal meets the intents of **Land Use & Development Goal 1: Livability** because the proposed district utilizes a previously developed site and is not located within the floodplain; now, therefore be it

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RESOLVED, the Louisville Metro Planning Commission does hereby **RECOMMEND** to the Louisville Metro Council that the proposed Change-in-Zoning from C-1 to C-2, Commercial on property described in the attached legal description be **APPROVED**.

The vote was as follows:

YES: Commissioners Robinson, Brown, Howard, Carlson, and Jarboe.

NO: Commissioner Daniels.

NOT PRESENT: Commissioners Lewis, Smith, Peterson, and Tomes.

Detailed District Development Plan

00:55:22 On a motion by Commissioner Carlson, seconded by Commissioner Robinson, the following resolution, based on the Standard of Review and Staff Analysis, and evidence and testimony heard today, was adopted:

WHEREAS, the Louisville Metro Planning Commission finds that no development is proposed on site which negatively impacts the conservation of natural resources as the single large tree on site is to remain as shown on this development plan. The existing structure which is consistent with the character of the area with the form district will remain; and

WHEREAS, the Commission further finds that the subject property is located in a walkable urban neighborhood which is well connected to employment and activity center via public transit service. The primary road is intended to serve larger volumes of traffic based on its classification as an arterial roadway; and

WHEREAS, the Commission further finds that open space is not required for the proposed development; however, much of the site will remain undeveloped as demonstrated on the development plan; 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 is compatible with the existing and future development of the area as the site is appropriately located along a commercial corridor in a walkable urban neighborhood served by public transit. Surrounding land uses are compatible with the proposed land use as they consist of

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commercial and industrial districts. The proposal preserves existing buildings consistent with predominate neighborhood building design; and

WHEREAS, the Commission further finds that the development plan conforms to applicable guidelines and policies of the Comprehensive Plan as multi-modal transportation options are provided, the character of the building is being preserved, natural features are being retained, and the site design is consistent with the current pattern of development and intent of the marketplace corridor form district; 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.
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 Louisville Metro Department of Codes and Regulations Construction Permits and Transportation Planning Review and the Metropolitan Sewer District.
 - b. Encroachment permits must be obtained from the Kentucky Department of Transportation, Bureau of Highways or the Department of Public Works for all work within the right-of-way

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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 compliance with these binding elements.
7. Hours of operation shall be 9 AM – 5 PM Monday through Friday and 10 AM – 2 PM on Saturday.

The vote was as follows:

YES: Commissioners Robinson, Brown, Howard, Carlson, and Jarboe.

NO: Commissioner Daniels.

NOT PRESENT: Commissioners Lewis, Smith, Peterson, and Tomes.