

**PLANNING COMMISSION MINUTES
FEBRUARY 15, 2018**

PUBLIC HEARING

CASE NUMBER 16ZONE1031

Project Name: Circle K
Location: 12411/12415 Taylorsville Road
Owner(s): Mac's Convenience Stores LLC
Applicant: Mac's Convenience Stores LLC
Jurisdiction: Louisville Metro
Council District: 11-Kevin Kramer
Case Manager: Julia Williams, RLA, AICP, Planning Supervisor

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:

01:10:39 Julia Williams discussed the case summary, standard of review and staff analysis from the staff report.

The following spoke in favor of this request:

Nick Pregliasco, 1000 N Hurstbourne Pkwy., Louisville, KY 40223
Kevin Burns, 222 S. 1st Street, Suite 206, Louisville, KY 40202
Gregg Guy, 1709 Golden Leaf Way, Louisville, KY 40245

Summary of testimony of those in favor:

01:17:49 Nick Pregliasco summarized the applicant's proposal and showed a presentation. He responded to questions from the Commissioners.

01:43:48 Architect Kevin Burns responded to questions from the Commissioners and spoke about the rear façade of the proposed structure.

01:45:02 Circle K Real Estate Director Gregg Guy also spoke about structure's rear façade. Mr. Pregliasco and Ms. Williams further responded to questions from the Commissioners.

The following spoke in opposition to this request:

Steve Porter, 2406 Tucker Station Road, Louisville, KY 40299
Casey Witt, 12404 Tyler Woods Circle, Louisville, KY 40299
David Kaelin, 2421 Tucker Station Road, Louisville, KY 40299
Bill Moad, 12405 Tyler Woods Court, Louisville, KY 40299

**PLANNING COMMISSION MINUTES
FEBRUARY 15, 2018**

PUBLIC HEARING

CASE NUMBER 16ZONE1031

Summary of testimony of those in opposition:

01:54:35 Steve Porter spoke on behalf of several from Tyler Woods Court and the Tucker Station Neighborhood Association. He stated that they are close to reaching an agreement with the applicant, but the current proposal would violate the Tyler Rural Settlement District Neighborhood Plan. Mr. Porter summarized the opposition's concerns, noting that one of the main concerns is Circle K's desire to be open 24 hours a day.

02:09:03 Casey Witt is a neighbor who is in opposition to the proposal. She owns the property to the west of the subject site. She stated that there is a considerable wooded buffer between her home and the current gas station and she would like it to remain as is.

02:11:33 David Kaelin is also a neighbor who is opposed to the proposal. He feels this project will not be in accordance with the Tyler Town Center Form District. He is opposed to the business operating 24 hours a day.

02:14:20 Bill Moad is a neighbor who spoke in opposition to the gas station operating 24 hours per day.

Rebuttal:

02:16:16 Mr. Pregliasco and Mr. Guy spoke in rebuttal and answered questions from the Commissioners.

Deliberation:

02:27:12 The Commissioners discussed various issues with the proposal, such as the hours of operation and the potential impact of the existing neighborhood plan.

02:37:07 Mr. Pregliasco stated that the applicant would agree to limit the hours of operation to 6:00 a.m. to 11:00 p.m.

02:38:10 The Commissioners continued their deliberation and discussed binding elements with Ms. Williams.

02:45:42 Tony Kelly with MSD stated that he would not be able to make any changes to the easement without first reviewing the case at his office.

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 to C-1

**PLANNING COMMISSION MINUTES
FEBRUARY 15, 2018**

PUBLIC HEARING

CASE NUMBER 16ZONE1031

02:52:22 On a motion by Commissioner Brown, seconded by Commissioner Smith, the following resolution, based on the applicant's findings of fact and testimony heard today, was adopted:

WHEREAS, the Louisville Metro Planning Commission finds that the proposed gas and convenience store on this site is appropriate because Suburban Neighborhoods contain retail uses at appropriate locations at appropriate scale when designed to be compatible with residential neighborhoods; this proposal is to combine a new unzoned site with an already C-1 zoned site that takes into account, as noted above, Tyler Rural Settlement District design criteria as promoted by the Tucker Station Neighborhood Association; and the result is a gas and convenience store closer to the design expectations of the Suburban Neighborhood form district,

WHEREAS, the Commission further finds that the proposed gas and convenience store complies with all of the applicable Intents and Policies 2, 3, 4, 5, 7, 8, 9, 11, 12, 13, 14 and 15 of Guideline 2 because the added site, adjacent to an already properly C-1 zoned site that has long been a gas station site, involves an efficient use of land similarly used next door and an investment in existing infrastructure; gas and convenience customers already visiting the existing gas station long established next door will have travel times and distances reduced when buying their gas and convenience items along a busy arterial already lined from Tucker Station Road east to the Snyder Freeway with other Planned Development District (PDD) zoned properties; since this is an expansion of an already properly C-1 zoned site with a history of gas station use located next door, this rezoning does not involve an isolated commercial use expansion; the activity center already established along this stretch of Taylorsville Road means this involves an expansion of same and not the creation of a new activity center; the small addition of land to a long-standing gas and convenience store site promises to enhance the commercial use already existing at that location; the new Circle K store to locate here and next door will be of a high-end design, much more closely compatible with Tyler Rural Settlement District design criteria; existing utilities will be utilized; and parking will be well landscaped and screening is imposed along the residential side of the property to the north where the proposed detention basin is located, and

WHEREAS, the Commission further finds that the proposed gas and convenience store complies with all of the applicable Intents and Policies 1, 2, 4, 5, 6, 7, 8, 9, 20, 21, 22, 23, 24, 28 and 29 of Guideline 3; this is because the proposed new gas and convenience store here and next door is a compatible use in an area of other PDD/commercial activities; the proposed Circle K store will replace the presently existing older store on the already C-1 zoned adjacent site which will hereinafter include an attractive building consisting of building materials and design elements selected to conform to the maximum extent possible with the Tyler Rural Settlement District design criteria; odors and air quality emissions, traffic, noise, lighting and visual impacts are addressed on this DDDP site by virtue of proposed detailed landscaping, screening, lighting, drainage facility and store designs proposed through meetings with the Tucker Station Neighborhood Association and other neighbors; and the accompanying images from the neighborhood meetings detail a lot of this, including enhanced setbacks with good screening and buffering, less intense lighting and much better building design, and

**PLANNING COMMISSION MINUTES
FEBRUARY 15, 2018**

PUBLIC HEARING

CASE NUMBER 16ZONE1031

WHEREAS, the Commission further finds that the proposed gas and convenience store complies with all of the applicable Intents and Policies 1, 2, 5 and 6 of Guideline 6; this is because this site represents a small expansion at a high-traffic location to accommodate a new gas and convenience store in an already existing activity center; and this reduces costs of land development and further promotes an existing employment center with good access to a support population that will visit this new gas and convenience store, and

WHEREAS, the Commission further finds that the proposed gas and convenience store complies with all of the applicable Intents and Policies 1, 2, 4, 10, 11, 13, 14, 15 and 18 of Guideline 7, Policies 1, 5, 7, 8, 9, 10 and 11 of Guideline 8, and Policies 1, 2, 3 and 4 of Guideline 9; this is because Taylorsville Road has adequate traffic-carrying capacity for business growth, and the applicant is mitigating any negative impact through the addition of a deceleration lane; and a updated gas and convenience store with better design does not necessarily generate more traffic than at present but rather better serves its existing customers; since roads systems are adequate, the issues to address, as addressed on the DDDP accompanying this application, involve the issues of parking adequacy, alternative transportation modes, and whether internal traffic movements, internal parking arrangements and access from Taylorsville Road are appropriately designed; the DDDP accompanying this application satisfies all of the design requirements of Metro Public Works and Transportation planning which are inherent in all three of these Guidelines; and the DDDP must receive the preliminary stamp of approval from these agencies prior to public review, and

WHEREAS, the Commission further finds that the proposed gas and convenience store complies with all of the applicable Intents and Policies 1, 3, 6, 7, 10 and 11 of Guideline 10, Policies 3 and 5 of Guideline 11, and Policies 1, 4, 7, 8 and 9 of Guideline 12; this is because MSD requires that post development peak rates of runoff do not exceed pre-development conditions and that adjacent properties are not adversely affected by the subject site's new and through drainage from storm water run-off; the detention basin shown on the DDDP accomplishes this; MSD's preliminary stamp of approval will be required on the DDDP prior to public review; MSD has also established soil erosion and sediment control as well as water quality standards which must be met with this development's construction plans; and as to all of the Policies associated with air quality, they are always addressed when commuting times and distances are reduced when new activities congregate, as here, in an existing activity center, and

WHEREAS, the Commission further finds that the proposed gas and convenience store complies with all of the applicable Intents and Policies 1, 2, 3, 4, 5 and 7 of Guideline 13; this is because, as the concept landscape plan produced at the neighborhood meetings and accompanying this application demonstrate, as will be included in the eventual landscape plan filed with DPDS post zoning approval, that this site will not just comply with, but rather exceed, LDC landscape requirements; and as mentioned above as respects stormwater management, enhanced landscaping, screening and buffering are added next door where not required, and

WHEREAS, the Commission further finds that for all the reasons explained at LD&T and the Planning Commission public hearing and also in the public hearing exhibit books on the approved detailed district development plan, this application also complies with all other

**PLANNING COMMISSION MINUTES
FEBRUARY 15, 2018**

PUBLIC HEARING

CASE NUMBER 16ZONE1031

applicable Guidelines and Policies of the Cornerstone 2020 Comprehensive Plan; no, therefore be it

RESOLVED, that the Louisville Metro Planning Commission does hereby **RECOMMEND** to the Louisville Metro Council that the change in zoning from R-4 to C-1 on property described in the attached legal description be **APPROVED**.

The vote was as follows:

YES: Brown, Lewis, Ferguson, Smith, and Carlson

NO: Lindsey

NOT PRESENT: Peterson, Jarboe, Howard, and Tomes

Variance

02:53:35 On a motion by Commissioner Brown, seconded by Commissioner Smith, the following resolution, based on the applicant's findings of fact and testimony heard today, was adopted:

WHEREAS, the Louisville Metro Planning Commission finds that the variance will not adversely affect the public health, safety or welfare because there is no evidence that the extra setback at this location will cause any traffic or other safety problems; indeed the opposite would occur if safe and convenient access and internal circulation were not provided; and the proposed new building will also not set back any further from Taylorsville Road than the existing gas station building currently does, and

WHEREAS, the Commission further finds that the variance will not alter the essential character of the general vicinity because the existing building is an old and unsightly cinder block building, which is proposed to be replaced with a new and improved building with the design aimed to be compatible with the Tyler Rural Settlement District neighborhood plan after meeting with representatives of the neighboring homes and association; and the additional gas canopies will also provide the appearance of being closer to Taylorsville Road, and

WHEREAS, the Commission further finds that the variance will not cause a hazard or a nuisance to the public because of the reasons set forth above, notably the fact that the existing points of access and circulation shall remain with an added improvement for a new turn lane, and

WHEREAS, the Commission further finds that the variance will not allow an unreasonable circumvention of the requirements of the zoning regulations because this design will result in an improvement of the existing building and current parking layout, and

WHEREAS, the Commission further finds that the Variance arises from special circumstances, which do not generally apply to land in the general vicinity because this is an as-built site that is

**PLANNING COMMISSION MINUTES
FEBRUARY 15, 2018**

PUBLIC HEARING

CASE NUMBER 16ZONE1031

out of Land Development Code compliance, and this proposal represents an opportunity to utilize an underperforming site and to bring investment to the area, and

WHEREAS, the Commission further finds that strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create unnecessary hardship because the expanded gas station and convenience store simply could not be accommodated on this site without this variance, and

WHEREAS, the Commission further finds that the circumstances are not the result of actions of the applicant taken subsequent to the adoption of the regulation which relief is sought but rather are a result of a constrained site based on size and location; now, therefore be it

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** the variance from 5.1.8 to exceed the maximum 80' setback by 17' on the Tucker Station Road side and by 107'+/- on the Taylorsville Road side.

The vote was as follows:

YES: Brown, Lewis, Ferguson, Smith, and Carlson

NO: Lindsey

NOT PRESENT: Peterson, Jarboe, Howard, and Tomes

Waiver

02:54:14 On a motion by Commissioner Brown, seconded by Commissioner Smith, the following resolution, based on the binding elements proposed and testimony heard today, was adopted:

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** the Waiver from 5.5.2 and 5.6.1.C to not provide animating features or clear windows and doors on the Tucker Station Road building façade.

The vote was as follows:

YES: Brown, Lewis, Ferguson, Smith, and Carlson

NO: Lindsey

NOT PRESENT: Peterson, Jarboe, Howard, and Tomes

District Development Plan

02:55:08 On a motion by Commissioner Brown, seconded by Commissioner Smith, the following resolution, based on testimony heard today, was adopted:

**PLANNING COMMISSION MINUTES
FEBRUARY 15, 2018**

PUBLIC HEARING

CASE NUMBER 16ZONE1031

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** the 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. Signs shall be monument style.
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) 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 minor plat or legal instrument shall be recorded consolidating the property into one lot. A copy of the recorded instrument shall be submitted to the Division of Planning and Design Services prior to the issuance of a building permit.
 - e. 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.

**PLANNING COMMISSION MINUTES
FEBRUARY 15, 2018**

PUBLIC HEARING

CASE NUMBER 16ZONE1031

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 other parties engaged in development of the site, shall be responsible for compliance with these binding elements.
9. The property owner shall provide a cross over access easement if the property to the west is ever developed for a nonresidential use. A copy of the signed easement agreement shall be provided to Planning Commission staff upon request.
10. The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the February 15, 2018 Planning Commission meeting.
11. No idling of trucks shall take place within 200 feet of single-family residences. No overnight idling of trucks shall be permitted on-site.
12. Any uses other than a gas station or convenient store shall require approval by the Louisville Metro Council.
13. Landscaping shall be provided as depicted at the February 15, 2018 Planning Commission meeting.
14. Lighting:
 - a. All exterior lighting, whether freestanding or attached to any structure, including parking lot pole lights and lighting for any signage, shall be fully shielded, shall utilize flat or hidden lenses, and shall be pointed directly to the ground. In addition to the Land Development Code requirements, lighting shall be designed to avoid any glare from adjoining property or street. All lighting shall respect the "Dark Sky".
 - b. No LED or metal halide lighting shall have a correlated color temperature (CCT) exceeding 4000 Kelvins.
 - c. The lighting on the site shall be in accordance with the lighting plan presented at the February 15, 2018 Planning Commission public hearing with two changes:
 - i. Pole # 3 along Tucker Station Road shall be moved to the north side of the entrance and directed south;
 - ii. There shall be no lighting on the north side of the building (the rear); and

**PLANNING COMMISSION MINUTES
FEBRUARY 15, 2018**

PUBLIC HEARING

CASE NUMBER 16ZONE1031

- iii. The canopy lights shall have flat lenses.
15. Windows: The east façade of the building shall have real or faux windows consistent with the appearance of the south façade.
16. Signage: One freestanding commercial sign, substantially similar to the monument style sign presented at the February 15, 2018 Planning Commission meeting, shall be allowed, made of materials similar to the building construction and no higher than eight feet off the ground. Signage shall be lighted by down-lighting mounted from above.
17. Fuel Sales: No diesel fuel pumps designed for semi-trucks shall be allowed. Car and small diesel fuel sale shall be allowed.
18. Woodland Protection:
- a. The site shall be developed in accordance with the woodland protection areas delineated on the site plan, tree preservation plan and related notes. Any modification of the woodland protection area requires notification of adjoining property owners and LD&T action.
 - b. The applicant shall provide deeds of restriction ensuring that WPAs will be permanently protected in a manner consistent with these binding elements and the approved plan. The form of the deed restrictions shall be approved by Planning Commission counsel. Deed Restrictions must be recorded prior to tree preservation approval. All plans setting out woodland protection areas must contain the following notes:
 - c. Woodland Protection Areas (WPAs) identified on this plan represent portions of the site on which all existing vegetation shall be permanently preserved. All clearing, grading, and fill activity in these areas must be in keeping with restrictions established at the time of development plan approval. No further clearing, grading, construction or other land disturbing activity shall take place within designated WPAs beyond pruning to improve the general health of the tree or to remove dead or declining trees that may pose a public health and safety threat. As trees are lost thru natural causes new trees shall be planted in order to maintain minimum tree canopy as specified in Chapter 10, Part 1 of the LDC and as shown on the approved Tree Canopy/Landscape Plan. Except that MSD shall be able to enter in and do required work within their easements as shown on the approved development plan.
19. Noise and Operations: No construction activities, trash removal, deliveries, or parking lot cleaning (except snow and ice) shall occur between the hours of 10:00 p.m. and 6:00 a.m. The hours of operation for the business shall be from 6:00 a.m. to 11:00 p.m.
20. Fence: An eight foot tall solid fence, substantially similar to the fence presented at the February 15, 2018 Planning Commission meeting, being constructed of brick or stone (real or faux) or of wood, or of durable materials copying the appearance of wood, brick or stone, such as vinyl, shall be constructed and maintained in the area shown on the Detailed District

**PLANNING COMMISSION MINUTES
FEBRUARY 15, 2018**

PUBLIC HEARING

CASE NUMBER 16ZONE1031

Development Plan. Then fence shall be located in such a manner to protect and preserve as much vegetation and tree canopy as possible along the western and northern boundaries of the property.

21. Historic Marker: The Tyler Settlement historic marker shall be retained.

The vote was as follows:

YES: Brown, Lewis, Ferguson, Smith, and Carlson

NO: Lindsey

NOT PRESENT: Peterson, Jarboe, Howard, and Tomes