

PLANNING COMMISSION MINUTES
December 6, 2018

PUBLIC HEARING

CASE NO. 18ZONE1035

***NOTE: Case No. 18STREETS1016, an alley closure on the Consent portion of the Agenda, is part of this case. Case No. 18STREETS1016 was heard and voted on during this case.**

Request: Change in zoning from R-6, R-7, and C-M to R-8A with variances waivers, and a District Development Plan with binding elements

Project Name: Butchertown Apartments

Location: 1043, 1045, & 1051 East Washington & Parcel 019G02150000

Owner: Joseph Brown & Todd Roman

Applicant: Joseph Brown & Todd Roman

Representatives: Wetterer and Clare
Milestone Design Group

Jurisdiction: Louisville Metro

Council District: 4 – Barbara Sexton Smith

Case Manager: Julia Williams, 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. (The staff report is part of the case file maintained in Planning and Design Services offices, 444 S. 5th Street.)

Agency Testimony:

01:44:40 Julia Williams presented the case and showed a Power Point presentation (see staff report and recording for detailed presentation.) She noted one change to the staff report. The staff report states the change requested for the setback variance to be 7 feet; the actual request is to be 8 1/2 feet.

01:54:24 Ms. Williams stated that there is 100% approval from adjoining property owners for the alley closure.

The following spoke in support of this request:

Mark Madison, Milestone Design Group, 108 Daventry Lane, Louisville, KY 40223

Michael Marks, 2933 Bowman Avenue, Louisville, KY 40205

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Todd Roman, 2101 Elderton Court, Brentwood, TN 37027

Summary of testimony of those in support:

01:54:46 Michael Marks, the applicant's representative, presented the applicant's case and showed a Power Point presentation (see recording for detailed presentation.)

The following spoke in opposition to this request:

No one spoke.

01:59:44 Commissioners' deliberation

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.

Alley Closure – Case No. 18STREETS1016

02:02:43 On a motion by Commissioner Carlson, seconded by Commissioner Howard, 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 adequate public facilities are available to serve existing and future needs of the community. The proposed closures do not result in an increase in demand on public facilities or services as utility agencies have coordinated with the applicant and/or applicant's representative and Planning and Design Services staff to ensure that facilities are maintained or relocated through agreement with the developer. No property adjacent or abutting the rights-of-way to be closed will be left absent of public facilities or services, or be dispossessed of public access to their property; and

WHEREAS, the Commission further finds that any cost associated with the rights-of-way to be closed will be the responsibility of the applicant or developer, including the cost of improvements to those rights-of-way and adjacent rights-of-way, or the relocation of utilities and any additional agreement reached between the utility provider and the developer; and

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WHEREAS, the Commission further finds that the request to close multiple rights-of-way is in compliance the Goals, Objectives and Plan Elements of the Comprehensive Plan as Guideline 7, Policy 1 provides that those who propose new developments bear or reasonably share in the costs of the public facilities and services made necessary by development; Guideline 7, Policy 6 strives to ensure that transportation facilities of new developments are compatible with and support access to surrounding land uses, and contribute to the appropriate development of adjacent lands; Guideline 7, Policy 9 provides that the Planning Commission or legislative body may require the developer to dedicate rights-of-way for street, transit corridors, bikeway and walkway facilities within or abutting the development as set forth in the Land Development Code and/or an adopted urban mobility plan; Guideline 8, Policy 8 states that Adequate street stubs for future roadway connections that support access and contribute to appropriate development of adjacent lands should be provided by new development and redevelopment; and Guideline 14, Policy 7 provides that the design and location of utility easements provide access for maintenance and repair and to minimize negative visual impacts. Any cost associated with the rights-of-way to be closed will be the responsibility of the applicant or developer. Adequate public facilities are available to serve existing and future needs of the community. Any facility required to be placed in an easement or relocated will be done so by the developer. Transportation facilities have been provided to accommodate future access and to not dispossess property owners of public access. All adjacent lands maintain access to public infrastructure and utility services will continue to be provided to these lands; and

WHEREAS, the Commission further finds that there are no other relevant matters to be considered by the Planning Commission; now, therefore be it

RESOLVED, the Louisville Metro Planning Commission does hereby **RECOMMEND** to the Louisville Metro Council that the proposed closure of a public right-of-way on property described in the attached legal description be **APPROVED**.

The vote was as follows:

YES: Commissioners Peterson, Daniels, Brown, Lewis, Howard, Carlson, and Jarboe.

NOT PRESENT: Commissioners Smith, Robinson, and Tomes.

Change in zoning

02:04:07 On a motion by Commissioner Carlson, seconded by Commissioner Howard, the following resolution based on the Cornerstone 2020, Staff Analysis and evidence and testimony heard today, was adopted:

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WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the intents of Guideline 1: Community Form because the proposal does not affect the existing grid pattern; the proposal will be consolidating four lots and an unimproved alley to create a large corner lot in order to add a higher density residential use; the proposal will not impact any existing public open space and the Big Four Bridge and Waterfront Park is an approximately 15 minute walk away; and the proposed high density zoning on this site is not located in the vicinity of any public areas nor is it located near a commercial center. It is located near what could be considered an industrial center; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 2: Centers because this is not a new activity center; the proposal is for residential only; the proposal is efficient as it is providing higher density residential and utilizing the entire site; the proposal is for multi-family where predominantly single family exists and is near a mix of uses including restaurants, retail and entertainment; the proposal is not mixed use but is near commercial retail and other commercial uses; the proposal is for higher density residential near a mix of commercial uses, as well as residential; out lot development is not appropriate in this situation; this is not a large development; the parking facilities are located behind the structure where there is one curb cut along a dead end road; utilities are existing for this site; parking is appropriately located in the rear of the site behind the apartment building; and this site is located near Transit and within a neighborhood with an existing sidewalk network; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 3: Compatibility because the proposal generally meets the infill standards within the LDC which makes the building scale and site design compatible with the adjacent residential structures and the ones across Johnson; building materials are similar to what is found in the area. The Butchertown ARC will have final approval of the building architecture; the proposal is compatible with the adjacent residential areas as the proposal is for a higher density residential structure. The density is higher than that of the adjacent residential properties but the structure complies with the infill standards that ensure compatibility with the surrounding properties; this proposal doesn't appear to have high impact on traffic due to its location and the provision of on-site parking and proximity to transit; lighting will meet LDC requirements; the proposal introduces a higher density to a predominately single family neighborhood; the proposal is located just north of E Main Street, a major transit corridors; a specific user has not been identified for the site; the proposals mass and scale is compatible with the site design of nearby housing; the setbacks are generally being complied with within the proposal. The proposal is not substantially different in scale and density than the adjacent properties in the area; the proposal is a compatible zoning district to the other zoning districts in the area. LBAs are not required between similar uses; and the site complies with the infill standards and is compatible with the nearby properties; and

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WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 4: Open Space because open space is not provided on the site however there is a pedestrian network that connects the site to Waterfront Park, which is a short walk away; there are no identifiable natural features on the site. Tree canopy requirements will be met; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 5: Natural Areas and Scenic and Historic Resources because LOJIC has not identified any streams, steep slopes or hydric soils on site; and the site is vacant with no historic value; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 7: Circulation because no roadway improvements are required with this development; transportation facilities are existing and adequate, as this is a well-established urban neighborhood; and dedication of ROW will be provided; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 8: Transportation Facility Design because the existing streets are more than adequate and will be unaffected by this development; and the site is bounded by two local streets and will be accessed from N. Johnson Rd where an alley would traditionally have given access but the alley is proposed to be closed; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 9: Bicycle, Pedestrian and Transit because the proposal does not create any new areas for pedestrians, bicyclists or transit users because these facilities are existing with the exception of a new sidewalk along Johnson. The new sidewalk provides new movement for pedestrians; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 10: Flooding and Stormwater because the proposal has received preliminary approval by MSD; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 13: Landscape Character because this is within an urban area where no natural corridors currently exist; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 14: Infrastructure because existing utility hookups will be used; Louisville Water Company has adequate infrastructure in place for this site and has no issues with the proposal; and the Health Department has no issues with the proposal; 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 R-6, R-7, & CM to R-8A on property described in the attached legal description be **APPROVED**.

The vote was as follows:

YES: Commissioners Peterson, Daniels, Brown, Lewis, Howard, Carlson, and Jarboe.

NOT PRESENT: Commissioners Smith, Robinson, and Tomes.

Variance #1 - Variance from 5.4.1.D.2 to eliminate the 30% private yard area requirement

Variance #2 - Variance from 5.1.12.A.2 to permit the setback to be 8 1/2 feet instead of the required 14'

02:05:09 On a motion by Commissioner Carlson, seconded by Commissioner Howard, the following resolution based on the Standard of Review and Staff Analysis, and evidence and testimony heard today, was adopted:

(Variance #1) WHEREAS, the Louisville Metro Planning Commission finds that the requested variance will not adversely affect public health safety or welfare since the elimination of the private yards is to accommodate a multi-family structure with no impact on the public as it is not adjacent to or related to any other residential in the area; and

WHEREAS, the Commission further finds that the requested variance will not alter the essential character of the general vicinity since the elimination of the private yards is to accommodate a multi-family structure with no impact on the public as it is not adjacent to or related to any other residential in the area; and

WHEREAS, the Commission further finds that the requested variance will not cause a hazard or nuisance to the public since the elimination of the private yards is to accommodate a multi-family structure with no impact on the public as it is not adjacent to or related to any other residential in the area; and

WHEREAS, the Commission further finds that the requested variance will not allow an unreasonable circumvention of zoning regulations since the elimination of the private yards is to accommodate a multi-family structure with no impact on the public as it is not adjacent to or related to any other residential in the area; and

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WHEREAS, the Commission further finds that the requested variance arises from special circumstances which do not generally apply to land in the general vicinity or the same zone since the elimination of the private yards is to accommodate a multi-family structure with no impact on the public as it is not adjacent to or related to any other residential in the area. The general vicinity is mainly industrial; and

WHEREAS, the Commission further finds that the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land as the elimination of the private yards is to accommodate a multi-family structure with no impact on the public as it is not adjacent to or related to any other residential in the area; 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 zoning regulation from which relief is sought. The applicant is not responsible for the mixed residential/industrial development on this block face nor its location not near any other open space; and

(Variance #2) WHEREAS, the Commission further finds that the variance will not adversely affect the public health, safety or welfare because the proposed setback is set by the adjacent industrial structure and the proposed setback is more in keeping with the residential structures along the opposite block face on the other side of Johnson Street; and

WHEREAS, the Commission further finds that the requested variance will not alter the essential character of the general vicinity because the proposed setback is set by the adjacent industrial structure and the proposed setback is more in keeping with the residential structures along the opposite block face on the other side of Johnson Street; and

WHEREAS, the Commission further finds that the requested variance will not cause a hazard or nuisance to the public because the proposed setback is set by the adjacent industrial structure and the proposed setback is more in keeping with the residential structures along the opposite block face on the other side of Johnson Street; and

WHEREAS, the Commission further finds that the requested variance will not allow an unreasonable circumvention of the zoning regulations because the proposed setback is set by the adjacent industrial structure and the proposed setback is more in keeping with the residential structures along the opposite block face on the other side of Johnson Street; and

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WHEREAS, the Commission further finds that the requested variance arises from special circumstances because the proposed setback is set by the adjacent industrial structure and the proposed setback is more in keeping with the residential structures along the opposite block face on the other side of Johnson Street; and

WHEREAS, the Commission further finds that the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant because the proposed setback is set by the adjacent industrial structure and the proposed setback is more in keeping with the residential structures along the opposite block face on the other side of Johnson Street; and

WHEREAS, the Commission further finds that the circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought. The applicant is not responsible for the existing location of the adjacent industrial building which sets the infill standards on the block face; now, therefore be it

RESOLVED, the Louisville Metro Planning Commission does hereby **APPROVE** the requested (Variance #1) Variance from 5.4.1.D.2 to eliminate the 30% private yard area requirement; and (Variance #2) Variance from 5.1.12.A.2 to permit the setback to be 8.50 feet (8 ½ feet) instead of the required 14 feet.

The vote was as follows:

YES: Commissioners Peterson, Daniels, Brown, Lewis, Howard, Carlson, and Jarboe.

NOT PRESENT: Commissioners Smith, Robinson, and Tomes.

Waiver from 5.11.9 to not provide open space

02:06:22 On a motion by Commissioner Carlson, seconded by Commissioner Howard, 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 the waiver will not adversely affect adjacent property owners since the adjacent property also is not required to provide open space; and

WHEREAS, the Commission further finds that the waiver will not violate Guideline 4, Community Form, of Cornerstone 2020, which calls for open space design to be

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consistent with the pattern of development in the Traditional Neighborhood Form District and that the proposal integrates natural features into the pattern of development. The proposal meets the comprehensive plan because the adjacent property also is not required to provide open space nor is the single family residential; and

WHEREAS, the Commission further finds that the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant since the adjacent property also is not required to provide open space and open space is located a short walk to the Waterfront Park; and

WHEREAS, the Commission further finds that 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 because the adjacent property also is not required to provide open space and open space is located a short walk to the Waterfront Park; now, therefore be it

RESOLVED, the Louisville Metro Planning Commission does hereby **APPROVE** the requested Waiver from 5.11.9 to not provide open space.

The vote was as follows:

YES: Commissioners Peterson, Daniels, Brown, Lewis, Howard, Carlson, and Jarboe.

NOT PRESENT: Commissioners Smith, Robinson, and Tomes.

District Development Plan with Binding Elements and removal of prior cases binding elements

02:07:09 On a motion by Commissioner Carlson, seconded by Commissioner Howard, 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 there do not appear to be any environmental constraints or historic resources on the subject site. Tree canopy requirements of the Land Development Code will be provided on the subject site; and

WHEREAS, the Commission further finds that 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

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WHEREAS, the Commission further finds that the proposal meets the comprehensive plan because the adjacent property also is not required to provide open space nor is the single family residential. Waterfront Park is also located a short walking distance away from the proposal; 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 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 generally meet all required setbacks; and

WHEREAS, the Commission further finds that 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, the Louisville Metro Planning Commission does hereby **APPROVE** the requested District Development Plan with Binding Elements and removal of prior cases binding elements, **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.

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4. Before any permit (including but not limited to building, parking lot, change of use 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 building permit. Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter.
 - c. A minor plat or legal instrument shall be recorded consolidating the property into one lot and to dedicate additional ROW to N. Johnson Street. A copy of the recorded instrument shall be submitted to the Division of Planning and Design Services prior to obtaining a building permit.
 - d. An alley closure approval for the unnamed alley shall be approved prior to requesting a building permit.
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. The façade elevations shall be in accordance with applicable form district standards and shall be approved by the Butchertown ARC prior to construction permit approval.

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The vote was as follows:

YES: Commissioners Peterson, Daniels, Brown, Lewis, Howard, Carlson, and Jarboe.

NOT PRESENT: Commissioners Smith, Robinson, and Tomes.