

PLANNING COMMISSION MINUTES
November 6, 2014

PUBLIC HEARING

CASE NO. 14ZONE1013

Request: Re-zoning from R-5 to R-5A, Conditional Use Permit for a Daycare, Detailed District Development Plan, Binding Elements and Waivers.

Project Name: Twana Shanklin Daycare

Location: 4014 St. Francis Lane

Owner: Twana Shanklin
4014 St. Francis Lane
Louisville, KY 40218

Applicant: Same as above

Representative: Same as above

Jurisdiction: Louisville Metro

Council District: 2-Barbara Shanklin

Staff Case Manager: David B. Wagner, 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:

00:04:25 David Wagner discussed the case summary, standard of review and staff analysis from the staff report.

The following spoke in favor of this request:

Twana Shanklin, 4014 St. Francis Lane, Louisville, KY 40218
Frank Weaver, 4016 St. Francis Lane, Louisville, KY 40218

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Summary of testimony of those in favor:

00:12:03 Mr. Weaver who is a neighbor to the proposed development stated that he was in favor of Ms. Shanklin having a daycare at the proposed site.

00:13:13 Ms. Shanklin provided the Commission with pictures that show the length of the drive-way and the landscaping in the backyard. She also spoke about the addition that was built in 1964 that used to be a child care center and stated it was the only house on the block with the addition.

Deliberation

00:15:11 The Commissioners discussed the required fencing with Ms. Shanklin, she thought it was a 6ft fencing requirement and they discussed with her that it is an 8ft requirement. She stated to the Commissioners that she would put up the required height for a fence.

Commissioner Blake did not have a problem with the rezoning, however, he did feel that Ms. Shanklin was trying to put too much into a small lot, he also did not think that it was a good idea that the Landscape Waivers were being waived.

Other Commissioners also had some concerns about the traffic. Commissioner Brown also thought there should be something put up to mitigate sound.

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 to R-5A

On a motion by Commissioner Brown, seconded by Commissioner White, the following resolution was adopted.

WHEREAS, the Louisville Metro Planning Commission finds, Compliance with **Guideline 1 (Community Form)**, **Guideline 2 (Centers)** and **Guideline 3 (Compatibility)** has been found for this proposal. The proposal site lies within a residential subdivision on a local level road that is a cul-de-sac and it allows for additional density options for the surrounding neighborhood. Existing infrastructure will

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be maintained to serve the site and no changes to the existing house are proposed. Since the design and location of the building will remain the same, the proposal will continue to blend in with the surrounding neighborhood. A sidewalk is provided along the street and the existing access point will remain the same providing for pedestrian, vehicular, and bicycle access. Though the requested re-zoning does require additional landscaping, the site will remain a residential use and maintain the existing setbacks and site design. The new zoning designation allows multi-family residential to be on the site but the lot is small enough that the density requirements in the R-5A Zoning District would not permit another dwelling unit. This effectively renders the re-zoning meaningless and the proposal to change the zoning will, therefore, not adversely impact surrounding neighbors.

WHEREAS, the Louisville Metro Planning Commission further finds, The proposal complies with **Guideline 4 (Open Space)** as there are no open space requirements for this proposal and there are no natural features to integrate into the development.

WHEREAS, the Louisville Metro Planning Commission further finds, There are no natural areas or habitats to integrate on this site nor are there any historic landmarks. Therefore, the proposal complies with **Guideline 5 (Natural Areas and Scenic and Historic Resources)**.

WHEREAS, the Louisville Metro Planning Commission further finds, The proposal complies with **Guideline 7 (Circulation)**, **Guideline 8 (Transportation Facility Design)**, and **Guideline 9 (Bicycle, Pedestrian and Transit)**. The functional street grid pattern will not be affected by the proposal since no new traffic would be created by the re-zoning and the development will utilize existing parking and access facilities. Due to the sidewalk along the street, the site provides access by pedestrians, vehicles, and bicycles.

WHEREAS, the Louisville Metro Planning Commission further finds The proposal complies with **Guideline 10 (Flooding and Stormwater)**, **Guideline 12 (Air Quality)**, and **Guideline 14 (Infrastructure)** as MSD, the Louisville Water Company, and the Air Pollution Control District has approved the proposal and other utilities have not expressed any concerns.

WHEREAS, the Louisville Metro Planning Commission further finds that, based on the evidence and testimony presented, the staff report, and the applicant's justification and findings of fact that all of the applicable Guidelines of Cornerstone 2020 and the Comprehensive Plan are being met; now therefore be it

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RESOLVED, that the Louisville Metro Planning Commission does hereby **RECOMMEND** to the legislative body of Louisville Metro Government that the requested Change in zoning from R5 to R5A on property described in the attached legal description be **APPROVED**.

The vote was as follows:

YES: Commissioners Brown, Kirchdorfer, Turner, Tomes, Peterson, Butler and White

NO: No one.

NOT PRESENT AND NOT VOTING: Commissioners Proffitt and Jarboe

ABSTAINING: Blake

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Conditional Use Permit

On a motion by Commissioner Brown, seconded by Commissioner Butler, the following resolution was adopted.

WHEREAS, the Louisville Metro Planning Commission finds, The proposal does not completely meet the guidelines of the Comprehensive Plan in regards to **Guideline 1 (Community Form), Guideline 2 (Centers), Guideline 3 (Compatibility), Guideline 7 (Circulation), and Guideline 8 (Transportation Facility Design)**. The site design, existing buildings, and building materials do conform to the single family residential pattern in the area and no new buildings are being proposed. However, the use of the site as a daycare is a non-residential expansion into a single family residential area. Non-residential uses in the Neighborhood Form District are best located within an existing activity center close to the intersection of collector or arterial level roads. This site is located in the middle of the block along a local level street on a cul-de-sac and is surrounded by single family residential uses on all sides except to the west. Since the proposal does not create a mix of compatible land uses, there will be few reductions in vehicular trips as this location is out of the way of commercial activity within a residential subdivision. The introduction of a non-residential use on a residential street will increase traffic on a cul-de-sac. The required LBA, screening, and plantings along the north, south, and west lot lines will be difficult, if not impossible, to provide due to existing structures, pavement, and the small size of the lot. Staff has determined that adequate parking is provided for the site since the applicant has provided the number of employees that will work at the daycare.

WHEREAS, the Louisville Metro Planning Commission further finds, The proposed use is somewhat compatible with surrounding single family residential land uses since the site will continue to use the existing buildings and general layout of the site. However, adjacent properties will not be sufficiently protected from potential nuisances such as intensity, traffic, and noise since the required landscape buffers, plantings, and screening will not, or cannot be, provided on the site.

WHEREAS, the Louisville Metro Planning Commission further finds, Necessary infrastructure has been provided on site which will continue to be maintained and will adequately serve the proposed use.

WHEREAS, the Louisville Metro Planning Commission further finds, The existing structure will not be modified from its residential design as is required per the daycare request. The driveway area closest to the street frontage will serve as the child drop-off and pick-up area. Transportation Review has approved this parking lay out and stacked

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parking will be allowed since employees only will be parking on the driveway and on the street. MSD did not find any issues with drainage on the site during the agency review process. A 6' privacy fence is provided around the outdoor play area to promote safety for the children at the daycare. The existing building on site does not meet the requirements for yards and landscaping due to existing structures, pavement, and the small size of the lot. The applicant will need to explain how any additional nuisances to adjoining property owners will be mitigated in regards to screening, traffic, and noise.

WHEREAS, the Louisville Metro Planning Commission further finds that, based on the evidence and testimony presented, the staff report, and the applicant's justification and findings of fact that all of the applicable Guidelines of Cornerstone 2020 and the Comprehensive Plan are being met; now therefore be it

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** the proposed Conditional Use Permit to allow a daycare.

The vote was as follows:

YES: Commissioners Brown, Kirchdorfer, Turner, Tomes, Peterson, Butler and White

NO: No one.

NOT PRESENT AND NOT VOTING: Commissioners Proffitt and Jarboe

ABSTAINING: Blake

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Waiver #1 of all landscaping requirements (35' LBA, plantings, 8' screen) along the north property line

On a motion by Commissioner Brown, seconded by Commissioner White, the following resolution was adopted.

WHEREAS, the Louisville Metro Planning Commission finds, The waiver will adversely affect adjacent property owners as they would not be screened from potential nuisances caused by the higher intensity use.

WHEREAS, the Louisville Metro Planning Commission further finds, The waiver will violate **Guideline 3 (Compatibility)** of Cornerstone 2020. Appropriate transitions between residential and non-residential uses will not be provided due to the absence of the required plantings and screens. The proposed use could negatively impact adjoining residential property owners due to noise commonly associated with daycares.

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 8' screen and some plantings could be provided along the boundary of the outdoor play area.

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 as the existing buildings on site takes up a large portion of the required LBA and the northern and southern LBA together are 70' in width while the lot is only 50' wide.

WHEREAS, the Louisville Metro Planning Commission further finds that, based on the evidence and testimony presented, the staff report, and the applicant's justification and findings of fact that all of the applicable Guidelines of Cornerstone 2020 and the Comprehensive Plan are being met; now, therefore be it

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** the proposed waiver from Chapter 10.2.4 of all landscaping requirements (35'LBA, plantings, 8' screen) along the north property line.

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The vote was as follows:

YES: Commissioners Brown, Kirchdorfer, Turner, Tomes, Peterson, Butler and White

NO: No one.

NOT PRESENT AND NOT VOTING: Commissioners Proffitt and Jarboe

ABSTAINING: Blake

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Waiver #2 of all landscaping requirements (35' LBA, plantings, 8' screen) along the south property line

On a motion by Commissioner Brown, seconded by Commissioner White, the following resolution was adopted.

WHEREAS, the Louisville Metro Planning Commission finds, The waiver will adversely affect adjacent property owners as they would not be screened from potential nuisances caused by the higher intensity use.

WHEREAS, the Louisville Metro Planning Commission further finds, The waiver will violate **Guideline 3 (Compatibility)** of Cornerstone 2020. Appropriate transitions between residential and non-residential uses will not be provided due to the absence of the required plantings and screens. The proposed use could negatively impact adjoining residential property owners due to noise commonly associated with daycares.

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 8' screen and some plantings could be provided along the boundary of the outdoor play area.

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 as the existing buildings on site takes up a large portion of the required LBA and the northern and southern LBA together are 70' in width while the lot is only 50' wide.

WHEREAS, the Louisville Metro Planning Commission further finds that, based on the evidence and testimony presented, the staff report, and the applicant's justification and findings of fact that all of the applicable Guidelines of Cornerstone 2020 and the Comprehensive Plan are being met; now, therefore be it

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** the proposed waiver from Chapter 10.2.4 of all landscaping requirements (35' LBA, plantings, 8' screen) along the south property line.

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The vote was as follows:

YES: Commissioners Brown, Kirchdorfer, Turner, Tomes, Peterson, Butler and White

NO: No one.

NOT PRESENT AND NOT VOTING: Commissioners Proffitt and Jarboe

ABSTAINING: Blake

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Waiver #3 of all landscaping requirements (20' LBA, plantings, 8' screen) along the west property line

On a motion by Commissioner Brown, seconded by Commissioner White, the following resolution was adopted.

WHEREAS, the Louisville Metro Planning Commission finds, The waiver will adversely affect adjacent property owners as they would not be screened from potential nuisances caused by the higher intensity use.

WHEREAS, the Louisville Metro Planning Commission further finds, The waiver will violate **Guideline 3 (Compatibility)** of Cornerstone 2020. Appropriate transitions between residential and non-residential uses will not be provided due to the absence of the required plantings and screens. The proposed use could negatively impact adjoining residential property owners due to noise commonly associated with daycares.

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 8' screen and some plantings could be provided along the boundary of the outdoor play area.

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 as the existing buildings on site takes up a large portion of the required LBA and the northern and southern LBA together are 70' in width while the lot is only 50' wide.

WHEREAS, the Louisville Metro Planning Commission further finds that, based on the evidence and testimony presented, the staff report, and the applicant's justification and findings of fact that all of the applicable Guidelines of Cornerstone 2020 and the Comprehensive Plan are being met; now, therefore be it

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** the proposed waiver from Chapter 10.2.4 of all landscaping requirements (20' LBA, plantings, 8' screen) along the west property line.

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The vote was as follows:

YES: Commissioners Brown, Kirchdorfer, Turner, Tomes, Peterson, Butler and White

NO: No one.

NOT PRESENT AND NOT VOTING: Commissioners Proffitt and Jarboe

ABSTAINING: Blake

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Development Plan and Binding Elements

On a motion by Commissioner Brown, seconded by Commissioner White, the following resolution was adopted.

WHEREAS, the Louisville Metro Planning Commission finds, The site is already built out and there are no natural resources on the site to conserve.

WHEREAS, the Louisville Metro Planning Commission further finds, Transportation Review has approved the proposal's transportation facilities.

WHEREAS, the Louisville Metro Planning Commission further finds, No open space is required on this site.

WHEREAS, the Louisville Metro Planning Commission further finds, MSD has approved the drainage facilities for the site.

WHEREAS, the Louisville Metro Planning Commission further finds The site design is partially compatible with existing area development. It utilizes the existing buildings and infrastructure on the site. However, since the landscaping, screening, and plantings requirements will not be met on the site, the Planning Commission will need to consider whether the proposed use of the site is compatible with surrounding single family residences in view of the factors proposed by the applicant.

WHEREAS, the Louisville Metro Planning Commission further finds, The proposal does not completely meet the guidelines of the Comprehensive Plan in regards to **Guideline 1 (Community Form), Guideline 2 (Centers), Guideline 3 (Compatibility), Guideline 7 (Circulation), and Guideline 8 (Transportation Facility Design)**. The site design, existing buildings, and building materials do conform to the single family residential pattern in the area and no new buildings are being proposed. However, the use of the site as a daycare is a non-residential expansion into a single family residential area. Non-residential uses in the Neighborhood Form District are best located within an existing activity center close to the intersection of collector or arterial level roads. This site is located in the middle of the block along a local level street on a cul-de-sac and is surrounded by single family residential uses on all sides except to the west. Since the proposal does not create a mix of compatible land uses, there will be few reductions in vehicular trips as this location is out of the way of commercial activity within a residential subdivision. The introduction of a non-residential use on a residential street will increase traffic on a cul-de-sac. The required LBA, screening, and plantings along the north, south, and west lot lines will be difficult, if not impossible, to provide due to existing structures, pavement, and the small size of the lot. Staff has determined that adequate

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parking is provided for the site since the applicant has provided the number of employees that will work at the daycare.

WHEREAS, the Louisville Metro Planning Commission further finds that, based on the evidence and testimony presented, the staff report, and the applicant's justification and findings of fact that all of the applicable Guidelines of Cornerstone 2020 and the Comprehensive Plan are being met; 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:

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. 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.
3. 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.
 - 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.
4. 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

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issuance of the certificate of occupancy, unless specifically waived by the Planning Commission.

5. 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.

The vote was as follows:

YES: Commissioners Brown, Kirchdorfer, Turner, Tomes, Peterson, Butler and White

NO: No one.

NOT PRESENT AND NOT VOTING: Commissioners Proffitt and Jarboe

ABSTAINING: Blake

00:45:57 Planning Commission meeting went into recess