Board of Zoning Adjustment

Staff Report

April 10, 2023

Case No:	22-MCUP-0001
Project Name:	River Metals Recycling
Location:	2110 Metal Ln, 2045 River Rd, 2114 Metal Ln, 2300 Metal Ln, 2255 Metal Ln, and 2601 River Green Cir.
Owner:	River Metals Recycling, Inc.
Applicant:	River Metals Recycling, Inc.
Jurisdiction:	Louisville Metro
Council District:	# 4 – Jecorey Arthur
Case Manager:	Chris French, AICP, Planning Supervisor

REQUESTS:

Modified Conditional Use Permit initiated by the Planning Director for a hearing in response to complaints related to excessive noise resulting from explosions from the River Metals scrap metal recycling and storage facility.

CASE SUMMARY/BACKGROUND

The original conditional use permit (CUP) was approved for this location October 6, 1997, under case number B-244-97. The development site includes multiple properties some of which are plan certain and the entire development site is located within the Waterfront Review Overlay. The CUP has been modified three times since the initial approval.

The most recently approved CUP plan for the site was approved by the Board of Zoning Adjustment (BOZA) on September 6, 2011. That plan is attached to the agenda item. It is clear from the public record of the CUP case that it was anticipated that explosions and noise would take place as part of development activity on this site. The most recently approved CUP plan shows a noise barrier on the property on the east side of Metal Lane where the Shredder, Eddy Current, and Rail Scale is located. On June 18, 2012, the BOZA approved a modified CUP to remove condition 5 adopted on March 7, 2011, which required the construction of the noise barrier. The June 18, 2012 approval added three new conditions, which are listed in this staff report as attachment 3.

Over the past year staff has received complaints regarding explosions and noise from the property. In accordance with condition 3 adopted on June 18, 2012, staff has received complaints that the number of explosions is excessive and a BOZA public hearing has been requested (see document attached to agenda item). In order to provide additional flexibility to the Board during its review of complaints regarding explosions the Planning Director initiated a modified CUP review in accordance with LDC Section 11.5A.1, see Planning Director memorandum dated February 2, 2022, which is attached to the agenda item. River Metals Recycling is still considered the applicant for this modified conditional use permit.

The public hearing on February 21, 2022, is an opportunity in accordance with condition of approval 3 to allow neighbors and other impacted people to express their concerns regarding the number of explosions on the property and the resultant noise levels associated therewith.

Staff has discussed the noise complaints with the manager of the River Road facility and with the attorney representing River Metals. During those discussions staff was informed that the noise barrier was constructed in 2019. However, the Board was not notified of the noise barriers construction. It is also unclear whether the noise barrier constructed was the same barrier as originally envisioned by the Board when the barrier was added as a condition of approval on March 7, 2011. In discussions with the applicant's representative is appears that the noise barrier constructed is larger than what is shown on the most recently approved CUP plan. The applicant should address the changes in the noise barrier from what was originally approved as part of the most recently approved CUP plan. The applicant should also provide testimony or documentation as to the existing noise barriers effectiveness in attenuating sound and how it mitigates adverse impacts on all surrounding properties.

The River Metals representative has provided staff with the most recent version of the Combustion Incident Reduction Plan from 2017, this plan is attached to the agenda item. Staff has also received information from impacted parties that lists the number of explosions and the severity of the noise, that information is attached to the agenda item.

Update

This case has been before the Board multiple times and at the last meeting the applicant presented the completed seismic study to the Board. The property owner agreed to conduct the seismic study at a previous meeting of the Board in which the Board suggested such a study was needed. The Board continued this case from the February meeting to allow sufficient time to review the study and to provide additional time for the applicant to prepare an overall presentation to the Board.

At the last meeting in February, there was discussion regarding the conditions of approval. Specifically, the Board discussed a potential hours of operation condition. Staff has proposed an additional condition of approval regarding hours of operation (condition 8) for the shredder that reflect the metro noise ordinance and other changes to the conditions to reflect current conditions and to further refine condition 7. The applicant's representative has stated that the hours of operation for the shredder are from 6 AM to 4:30 or 5 PM Monday through Saturday. Staff's proposed condition is in conformance with the noise ordinance which is from 7 AM to 9 PM Monday through Saturday.

STAFF FINDING / RECOMMENDATION

The Board must decide whether additional changes to the conditions of approval are warranted based on the information provided by the property owners. Staff has recommended one additional condition and some changes to the current conditions of approval.

RELATED CASES

9-75-76 – Original rezone for a portion of the River Metals development site
B-244-97 – Original CUP case number
12141 – Case number associated with revisions to the plan and CUP
15314 – Case number associated with revisions to the CUP plan and changes to conditions of approval related to the noise barrier
16174 – Case number associated with revisions to the CUP plan

TECHNICAL REVIEW

INTERESTED PARTY COMMENTS

Comments received to initiate the public hearing in accordance with condition of approval number 3,

STANDARD OF REVIEW AND STAFF ANALYSIS FOR CONDITIONAL USE PERMIT

This CUP modification was initiated by the Planning Director in order to provide the Board with more flexibility in considering options to resolve the issue. However, initially and at this time the Board should focus on the conditions of approval related to excessive noise and the necessity of a noise barrier. The existing approval allows the Board to consider whether or not a noise barrier is necessary. While a noise barrier has been constructed, the Board did not approve the barrier and has not determined that it is sufficient or adequate in addressing the issue. Further, the Board may consider alternative options in lieu or in addition to the noise barrier such as an enhanced inspection process to ensure that combustible materials are better identified and do not result an explosive event. At this time without any specific proposal for changes to the approved CUP plan or to conditions of approval staff will not conduct a review of the standards of review associated with this type of CUP.

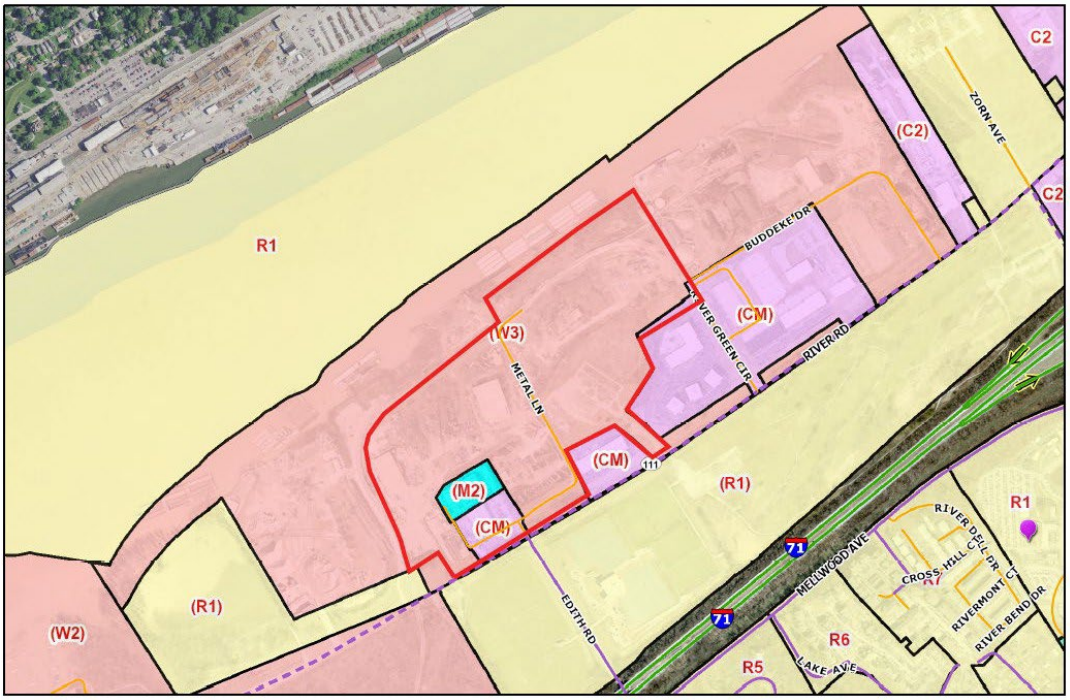
NOTIFICATION

Date	Purpose of Notice	Recipients
2/5/2022	BOZA Hearing	1st and 2nd tier property owners and current residents, those that spoke at the previous public hearing, and GovDelivery email to District 4 and 9

ATTACHMENTS

1. Zoning Map
2. Aerial Photograph
3. Conditions of Approval

1. **Zoning Map**



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0 425 850 1,275 ft

River Metals

Thursday, February 10, 2022 | 1:13:48 PM

LOJIC

LOJIC © 2022

This map is not a legal document and should only be used for general reference and identification.

2. Aerial Photograph

3. Existing Conditions of Approval

March 7, 2011 Conditions of Approval

The conditions are as follows in addition to the previously approved conditions of approval:

1. Screening along River Road.
    - (a) Landscaping materials shall be planted along the River Road frontage of the site in accordance with the Article 12/Tree Compliance Plan (the "Landscape Plan") marked approved August 3, 1998, by Jonathan D. Henney.
    - (b) To the extent landscaping does not presently conform to the Landscaping Plan, installation of new, conforming landscaping is required. Applicant agrees to substitute any plant materials shown on the Landscape Plan with plant materials recommended by River Fields, Inc. provided that the Planning Commission Landscape Architect concurs. All new plantings shall conform to the Land Development Code Chapter 10.

(c) Weather permitting, all live landscaping materials shall be installed no later than June 12, 2011, although the DPDS landscape architect may extend the time for installation for reasonable cause.

(d) Applicant agrees to maintain all landscape materials shown on the Landscape Plan in healthy condition, including all trees. Maintenance includes, but is not limited to; appropriate watering for plant and tree success, trimming of dead limbs, mulching and removal of invasive species and vines. Applicant shall replace any dead trees within three (3) months of a tree's demise, weather permitting, but in no event more than five (5) months.

2. Cleaning of Metal Lane. Applicant agrees, on an as-needed-basis, to clean dust and debris (1) from Metal Lane at its intersection with River Road, and (2) on Metal Lane within 180 feet of the River Road right-of-way line.
3. The site shall be developed in strict compliance with the approved development plan (including all notes thereon). No further development shall occur on the site without prior review and approval by the Board.
4. The Dust Control Plan submitted by the applicant shall be implemented (under Tab 4 of the applicant's booklet dated March 2, 2011).
5. The lime of construction of the proposed sound barrier wall and building shall commence within 120 days from the approval date.

June 18, 2012 Conditions of Approval

NOW, THEREFORE, BE IT RESOLVED, that the Modified Conditional Use Permit is hereby APPROVED with the previously approved conditions of approval (COAs) with the exception of COA #5 from the March 7, 2011 public hearing and with the additional COAs submitted today by the applicant with a change made by Member Grisanti.

The conditions are as follows:

1. The Applicant/Owner shall implement the Combustion Incident Reduction Plan ("CIRP") last revised on 8/31/10.
2. The requirement to build a sound barrier wall at this time shall be suspended indefinitely as long as the explosions are kept to a minimum level satisfactory to the Louisville Metro Board of Zoning Adjustment ("BOZA").
3. If adjacent property owners or lessees of property owners or any other persons affected by the explosions in the area believes the number of explosions to be excessive, they can request BOZA to hold a public hearing; a public hearing shall then be scheduled, and the Board shall determine from the evidence whether the sound barrier wall must be constructed.

4. Proposed Conditions of Approval

1. Applicant agrees to maintain all landscape materials shown on the Landscape Plan in healthy condition, including all trees. Maintenance includes but is not limited to; appropriate watering for plant and tree success, trimming of dead limbs, mulching and removal of invasive species and vines. Applicant shall replace any dead trees within three (3) months of a tree's demise, weather permitting, but in no event more than five (5) months.

2. Cleaning of Metal Lane. Applicant agrees, on an as-needed-basis, to clean dust and debris (1) from Metal Lane at its intersection with River Road, and (2) on Metal Lane within 180 feet of the River Road right-of-way line.
3. The site shall be developed in strict compliance with the approved development plan (including all notes thereon). No further development shall occur on the site without prior review and approval by the Board.
4. The Dust Control Plan submitted by the applicant shall be implemented (under Tab 4 of the applicant's booklet dated March 2, 2011) and shall continue to be used for the duration of the

conditional use permit.

5. The constructed sound barrier wall shall be maintained. Any changes (other than cosmetic changes) to the wall shall be reviewed and approved by the Board.
6. The Applicant/Owner shall implement the Combustion Incident Reduction Plan ("CIRP") last revised on 8/31/10 and shall continue to be used for the duration of the conditional use permit.
7. The Planning Director based on verified complaints submitted by property owners or lessees of property negatively affected by the explosions from the subject property may request BOZA to hold a public hearing; a public hearing shall then be scheduled, and the Board shall determine from the evidence whether additional measures may be required to mitigate the negative impacts of explosions.
8. The shredder shall only operate on Monday through Saturday from 7 AM to 9 PM.