

**PLANNING COMMISSION MINUTES**  
**August 18, 2022**

**PUBLIC HEARING**

**CASE NO. 20-ZONE-0037**

Request:	Change in Zoning from R-5B to OR-1 with a Landscape Waiver
Project Name:	969 Barret Avenue
Location:	969 Barret Avenue
Owner:	Red Mushroom Holdings, LLC
Applicant:	Red Mushroom Holdings, LLC
Representative:	Goldberg Simpson PLLC; Land Design & Development
Jurisdiction:	Louisville Metro
Council District:	8 – Cassie Chambers Armstrong
Case Manager:	Julia Williams, AICP, Planning & Design Supervisor

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:**

00:48:36 Julia Williams presented the case, showed a Power Point presentation, and responded to questions from the Commissioners (see staff report and recording for detailed presentation).

**The following spoke in support of the request:**

Michael McClain, Goldberg Simpson, PLLC, 9301 Dayflower Street, Prospect, Ky. 40059  
Ann Richard, Land Design and Development, 503 Washburn Avenue, Louisville, Ky. 40222

**Summary of testimony of those in support:**

00:53:03 Michael McClain said the proposal complies with all the regulations. There are no changes to the existing structure or use. It's appropriate for the current and past use (see recording for detailed presentation).

00:56:34 Ann Richard discussed the waiver request and the landscaping to be provided (see recording for detailed presentation).

**The following spoke in opposition to the request:**

**PLANNING COMMISSION MINUTES**  
**August 18, 2022**

**PUBLIC HEARING**

**CASE NO. 20-ZONE-0037**

Bette Niemi, 971 Barret Avenue, Louisville, Ky. 40204

**Summary of testimony of those in opposition:**

00:59:54 Bette Niemi said her issue is the landscape waiver and curb-cut that would take a portion of the alley. The neighbors' vehicles touch the alley and there wouldn't be enough room to maneuver and turn around (see recording for detailed presentation).

**Rebuttal:**

01:06:25 Michael McClain said the reduction from 19 to 16 feet is a requirement of Metro Public Works. The 16 feet should be enough room to maneuver (see recording for detailed presentation).

**Deliberations:**

01:09:18 Commissioners' deliberation. Commissioner Brown stated binding element 2b needs to reference Transportation Planning since Barret Ave. is a Metro road and not a state road.

**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-5B to OR-1**

On a motion by Commissioner Howard, seconded by Commissioner Price, the following resolution based on the Plan 2040 Staff Analysis and testimony heard today was adopted.

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Community Form because, the proposed district would result in a slight expansion into residential zoning districts. Despite this expansion, it would not appear that the neighborhood would experience a significant loss of housing or that traffic would be increased beyond an acceptable limit as the site is located in a walkable urban neighborhood and commercial districts are located on opposite the subject site and TARC service is available. The corridor contains a wide variety of conforming and nonconforming commercial and office uses; the proposed district is a walkable urban neighborhood. Commercial districts are located on opposite the subject site and TARC service is available. Adequate infrastructure to serve the use appears to be available; the proposed district is located in a walkable urban

**PLANNING COMMISSION MINUTES**  
**August 18, 2022**

**PUBLIC HEARING**

**CASE NO. 20-ZONE-0037**

neighborhood. Commercial districts are located on opposite the subject site and TARC service is available. Traffic would not appear to be increased beyond limits appropriate for the site based on neighborhood conditions; noise would not appear to be increased beyond limits appropriate for the site based on neighborhood conditions. The proposed district provides for office and residential; and

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 2: Community Form because, the proposed district is located in a walkable urban neighborhood. Commercial districts are located on opposite the subject site and TARC service is available. The density and intensity are appropriate based on these conditions; the proposed non-residential development occurs at an appropriate location within a walkable urban neighborhood served by public transit; sufficient population is available to support a variety of land uses; the proposed district encourages a compact development pattern that results in efficient land use and cost-effective infrastructure investment of mixed-uses within an urban neighborhood; the proposed districts encourages a mixture of compatible land uses in order to reduce traffic congestion by requiring fewer trips, support and enhance alternative modes of travel, and encourage vitality and a sense of place as the proposed district is in a walkable urban neighborhood one-block removed from a major arterial served by public transit; the site contains a single-story structure but future development would allow for residential and office uses above retail and other mixed-use multi-story retail buildings; the proposal involves the rehabilitation of buildings that provide commercial, office and/or residential uses; and

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 3: Community Form because, the local regulatory floodplain is present along the roadway providing access but this area does not hinder the development of the site for commercial purposes; and

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 4: Community Form because, the subject site contains buildings, sites, or districts recognized as having historic or architectural value; and

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Mobility because, the proposed district is in a walkable urban neighborhood and TARC service is available. The density and intensity are appropriate based on these conditions; and

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 2: Mobility because, access to the subject site is through areas of mixed-intensity; and

**PLANNING COMMISSION MINUTES**  
**August 18, 2022**

**PUBLIC HEARING**

**CASE NO. 20-ZONE-0037**

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 3: Mobility because, the proposed district encourages a mix of complementary neighborhood serving businesses and services to encourage short trips easily made by walking or bicycling as the proposed district is in a walkable urban neighborhood; the proposed district improves mobility and reduces vehicle miles traveled by allowing a mix of uses within an urban neighborhood at an appropriate location; the site is located along a public transit route; thus reducing automobile trips as a means of achieving air quality standards and providing transportation and housing choices; the proposed district encourages multiple modes of travel as the neighborhood is walkable, well served by transit to employment centers and other nearby amenities, and links the site to the neighborhood via walks and bike lanes; there are no transportation issues with the proposal; there are no transportation improvements with the proposal; and

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 2: Community Facilities because, the site is served by existing utilities or capable of being served by public or private utility extensions; based on existing conditions, the site would appear to have an adequate supply of potable water and water for fire-fighting purposes; MSD has preliminarily approved the proposal; and

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Economic Development because, the proposed district is in a walkable urban neighborhood with transit service along an arterial roadway.

**RESOLVED**, that the Louisville Metro Planning Commission does hereby **RECOMMEND** to the Louisville Metro Council the change in zoning from R-5B, Multi-Family Residential to OR-1, Office Residential on property described in the attached legal description be **APPROVED**.

**The vote was as follows:**

**YES: Commissioners Brown, Cheek, Daniels, Howard, Mims, Price, Sistrunk and Lewis**

**NOT PRESENT AND NOT VOTING: Commissioners Carlson and Clare**

**Waiver of Land Development Code, section 10.2.4 to omit the landscape buffer area adjacent to R-5B district (20-WAIVER -0120)**

**PLANNING COMMISSION MINUTES**  
**August 18, 2022**

**PUBLIC HEARING**

**CASE NO. 20-ZONE-0037**

On a motion by Commissioner Howard, seconded by Commissioner Mims, the following resolution based on the Standard of Review and Staff Analysis, evidence and testimony heard today was adopted.

**WHEREAS**, the waiver will not adversely affect adjacent property owners since the condition of the structure and parking is existing; and

**WHEREAS**, Community Form Goal 1, Policy 4 calls for the proposal to ensure new development and redevelopment are compatible with the scale and site design of nearby existing development and with the desired pattern of development within the Form District. Quality design and building materials should be promoted to enhance compatibility of development and redevelopment projects. Community Form Goal 1, Policy 6 calls to discourage non-residential expansion into existing residential areas unless applicant can demonstrate that any adverse impact on residential uses will be mitigated. Evaluation of impacts may include, but not be limited to, displacement of residents, loss of affordable housing units, traffic, parking, signs, lighting, noise, odor, and stormwater. Appropriate transitions from non-residential to residential uses should depend on the pattern of development of the Form District and may include natural vegetative buffers, landscaping or the use of higher density residential between lower density residential and/or non-residential. Community Form Goal 1, Policy 9 calls to ensure an appropriate transition between uses that are substantially different in scale and intensity or density of development. The transition may be achieved through methods such as landscaped buffer yards, vegetative berms, compatible building design and materials, height restrictions and setback requirements. Community Form Goal 1, Policy 10 calls to mitigate the impacts caused when incompatible developments unavoidably occur adjacent to one another. Buffers should be used between uses that are substantially different in intensity or density. Buffers should be variable in design and may include landscaping, vegetative berms and/or walls and should address issues such as outdoor lighting, lights from automobiles, illuminated signs, loud noise, odors, smoke, automobile exhaust or other noxious smells, dust and dirt, litter, junk, outdoor storage, and visual nuisances. Residential uses that develop adjacent to agricultural land uses may be required to provide screening and buffering to protect both the farmer and homeowners. The proposal does not violate Plan 2030 since the proposal is not for new development or construction. The condition is existing; and

**WHEREAS**, the Louisville Metro Planning Commission finds, the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant since the condition of the structure and parking is existing; and

**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

**PLANNING COMMISSION MINUTES**  
**August 18, 2022**

**PUBLIC HEARING**

**CASE NO. 20-ZONE-0037**

the land or would create an unnecessary hardship on the applicant since the condition of the structure and parking is existing.

**RESOLVED**, that the Louisville Metro Planning Commission does hereby **APPROVE** the Waiver of Land Development Code, section 10.2.4 to omit the landscape buffer area adjacent to R-5B district (20-WAIVER -0120).

**The vote was as follows:**

**YES: Commissioners Brown, Cheek, Daniels, Howard, Mims, Price, Sistrunk and Lewis**

**NOT PRESENT AND NOT VOTING: Commissioners Carlson and Clare**

**Detailed District Development Plan**

On a motion by Commissioner Brown, seconded by Commissioner Price, the following resolution based on the Standard of Review and Staff Analysis and testimony heard today was adopted:

**WHEREAS**, 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**, 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

**WHEREAS**, there are no open space requirements pertinent to the current proposal; and

**WHEREAS**, 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 Louisville Metro Planning Commission finds, the overall site design and land uses are compatible with the existing and future development of the area. No new construction is proposed; and

**PLANNING COMMISSION MINUTES**  
**August 18, 2022**

**PUBLIC HEARING**

**CASE NO. 20-ZONE-0037**

**WHEREAS**, the Louisville Metro Planning Commission further finds the development plan conforms to applicable guidelines and policies of the Comprehensive Plan and to requirements of the Land Development Code.

**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. 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 Louisville Metro Construction Review, Louisville Metro Public Works and the Metropolitan Sewer District.
  - b. Encroachment permits must be obtained from the Transportation Planning and Metro Planning and Design.
  - 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.
3. 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.
4. 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.

**PLANNING COMMISSION MINUTES**  
**August 18, 2022**

**PUBLIC HEARING**

**CASE NO. 20-ZONE-0037**

5. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.

**The vote was as follows:**

**YES: Commissioners Brown, Cheek, Daniels, Howard, Mims, Price, Sistrunk and Lewis**

**NOT PRESENT AND NOT VOTING: Commissioners Carlson and Clare**