

**PLANNING COMMISSION MINUTES
MAY 10, 2018**

PUBLIC HEARING

CASE NO. 18ZONE1005

Request: Change in zoning from U-N to C-R and a Detailed District
Development Plan with a Landscape Waiver
Project Name: 3200 Rudd Avenue
Location: 3200 Rudd Avenue
Owner: Bruce Cohen
Applicant: Bruce Cohen
Representative: Bruce Cohen
Jurisdiction: Louisville Metro
Council District: 5 – Cheri Bryant Hamilton

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

Agency Testimony:

02:44:50 Laura Mattingly presented the case and showed a Power Point presentation (see staff report and recording for detailed presentation.)

The following spoke in favor of this request:

Bruce Cohen, 619 Floral Terrace, Louisville, KY

Summary of testimony of those in favor:

02:48:43 Bruce Cohen, the applicant, presented his case and showed a Power Point presentation. His presentation included a brief history of the site and its connection to the Portland neighborhood.

The following spoke in opposition to this request:

No one spoke.

Deliberation:

02:52:35 The Commissioners concur that the proposal is justified.

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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

02:55;36 On a motion by Commissioner Carlson, seconded by Commissioner Smith, the following resolution, based on the Standard of Review and Staff Analysis, evidence and testimony heard today, was adopted:

WHEREAS, the Louisville Metro Planning Commission finds that that the proposal meets the intents of Guideline 1: Community Form because the proposal does not affect the existing street pattern; while the proposal is not a new neighborhood center, it is introducing an additional neighborhood serving use; this proposal includes no new construction and is utilizing and restoring an existing building, therefore is not impacting any open space. It is also located along the entry path to the Portland Wharf Park; and the proposal is for the reuse of an existing building for commercial and residential purposes; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 2: Centers because the proposal will not create a new center but it involves the repurposing of an existing building; the Portland neighborhood is a historic urban neighborhood with more than sufficient population to support a small commercial use; the proposal is efficient and cost effective because it is utilizing an existing building; this proposal is not a center but does provide a service which will serve the neighborhood. It is also a mixed-use proposal; this proposal includes residential above commercial; the proposal is not a larger development within a center; the proposal does not include any additional curb cuts; utilities for the site are existing; the site has sidewalks and transit located in close proximity; and TARC routes run along Portland Ave and Bank Street, blocks away from the proposal; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 3: Compatibility because no new construction is proposed; the existing building was historically non- residential and is being returned to a corner commercial use therefore it is not a non-residential expansion into a residential area; APCD has no issues with the proposal; traffic impacts for this proposal will be minimal and the applicant has provided all requirements regarding transportation; all lighting will comply with Land Development Code standards; the proposal is located on a corner in an urban residential neighborhood with local streets. There are nearby mixed uses and a transit route; the proposal will not be able to provide the required 15' landscape buffer area along the western property line but screening is in place that provides an appropriate transition to the neighboring use; the proposal will not be able to provide the required 15' landscape buffer area along the western property line but screening is in place that provides an appropriate transition to the neighboring use; the building is existing with no new construction proposed and is compatible with nearby development; there is no parking or loading areas proposed on site; street parking will be used; a parking garage is not proposed; and any proposed attached signage will be in compliance with LDC standards; and

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WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 4: Open Space because the provision of open space for this proposal is not required by the LDC and is not appropriate for this site; open space is not required; and as there is no new construction, any natural features of the site are being left intact; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 5: Natural Areas and Scenic and Historic Resources because as there is no new construction, any natural features of the site are being left intact; the proposal is for the adaptive reuse of an existing structure; and soils are not an issue for the site; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 6: Economic Growth and Sustainability because this site is within an established neighborhood with existing vehicular, pedestrian and transit infrastructure; the proposal is not located in a downtown; the proposal is not for industrial; this proposal is a commercial and residential use and is located near other non-residential uses, as well as approximately two blocks from Portland Ave/ Northwestern Pkwy, a minor arterial; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 7: Circulation because Transportation staff has reviewed the plan and determined that no roadway improvements are warranted; there is an existing sidewalk network and nearby transit stops; this proposal does not constitute additional transportation facilities, as it is a small site; no dedication of right of way is required for this proposal; parking requirements have been met with street parking along N 32nd Street; and cross access is not appropriate in this situation; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 8: Transportation Facility Design because a stub street is not necessary because the site is within an existing developed neighborhood; access to the development is through public rights of way; while the existing roadways are not connected at the corner due to the berm for the railway that cut through the neighborhood, this has been in place for many years and the site can be accessed from both Rudd Ave and N 32nd Street; and

WHEREAS, the proposal meets the intents of Guideline 9: Bicycle, Pedestrian and Transit because sidewalks are provided for transit users and pedestrians. Existing sidewalks are located along the street frontage and the structure is set close to the road; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 10: Flooding and Stormwater because MSD has reviewed the plan to ensure adequate drainage. No new impervious area is proposed and no streams are impacted by the proposal; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 12: Air Quality because APCD has no issues with the proposal; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 13: Landscape Character because Natural corridors are not evident in or around the proposal; and

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WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 14: Infrastructure because existing utilities serve the site and water is available to the site; also, Health department has no issues with the proposal and has determined adequate means of sewage treatment is in place; now, therefore be it

RESOLVED, the Louisville Metro Planning Commission does hereby **RECOMMEND** to the Louisville Metro Council that the requested Change in Zoning from U-N, Urban Neighborhood to C-R, Commercial Residential on 0.09 acres be **APPROVED**.

The vote was as follows:

YES: Commissioners Brown, Howard, Smith, Carlson, Peterson, Ferguson, Jarboe, Tomes.

NOT PRESENT: Commissioner Lewis.

Detailed District Development Plan and Landscape Waiver

02:56:09 On a motion by Commissioner Carlson, seconded by Commissioner Smith, the following resolution, based on the Standard of Review and Staff Analysis, evidence and testimony heard today, and the applicant's Waiver justification, was adopted:

(Waiver) WHEREAS, the Louisville Metro Planning Commission finds that the waiver will not adversely affect adjacent property owners as the building is existing with no proposed exterior changes that will negatively impact the property to the west. Additionally, there is an existing privacy fence in place that screens the rear yard from the adjacent property; and

WHEREAS, the Commission further finds that the waiver will not violate specific guidelines of Cornerstone 2020. Guideline 3, Policy 9 of Cornerstone 2020 calls for protection of the character of residential areas, roadway corridors and public spaces from visual intrusions and mitigation when appropriate. Guideline 3, Policies 21 and 22 call for appropriate transitions between uses that are substantially different in scale and intensity or density, and mitigation of the impact caused when incompatible developments occur adjacent to one another through the use of landscaped buffer yards, vegetative berms and setback requirements to 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. Guideline 3, Policy 24 states that parking, loading and delivery areas located adjacent to residential areas should be designed to minimize impacts from noise, lights and other potential impacts, and that parking and circulation areas adjacent to streets should be screened or buffered. Guideline 13, Policy 4 calls for ensuring appropriate landscape design standards for different land uses within urbanized, suburban, and rural areas. Guideline 13, Policy 6 calls for screening and buffering to mitigate adjacent incompatible uses. The intent of landscape buffer area is to create suitable transitions where varying forms of development adjoin, to minimize the negative impacts resulting from adjoining incompatible land uses, to

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decrease storm water runoff volumes and velocities associated with impervious surfaces, and to filter airborne and waterborne pollutants. These guidelines are not violated as there is existing screening in the rear yard that prevents visual intrusions on the residential use to the west and no further changes are proposed to the site that would negatively impact adjacent property owners or cause a negative impact on the public right of way; 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 as the conditions are existing and no other relief is being requested; 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 and would create an unnecessary hardship on the applicant as providing the required landscape buffer area would require the demolition of the existing structure; and

WHEREAS, the Commission further finds that the requested Waiver will not adversely affect adjacent property owners because the change will not increase foot or vehicular traffic on the west side of the property. The waiver and zoning change will allow the building, which has been vacant and deteriorating for years, to be restored and re-inhabited. This is a benefit to the adjacent property owners and neighborhood; and

WHEREAS, the Commission further finds that the waiver will not violate the Comprehensive Plan because the proposed zoning change will restore the building to its historical, original use (commercial on the first floor and residential on the second), which is in line with the goals of the form district; 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 because the building is existing; and

WHEREAS, the Commission further finds that a strict application of the regulation/s would cause an extreme hardship, since buildings are existing; and

(DDDP) WHEREAS, the Commission further finds that LOJIC has not identified any natural resources on site and the applicant will be making no changes to the site to affect tree canopy, soils or any other natural resources; and

WHEREAS, the Commission further finds that provisions for safe and efficient vehicular and pedestrian transportation within and around the development and the community have been provided through the existing street network and sidewalks; and

WHEREAS, the Commission further finds that this development does not require open space, as it does not meet the threshold for open space or outdoor amenity requirements; and

WHEREAS, the Commission further finds that the Metropolitan Sewer District has approved the preliminary development plan and will ensure the provisions of adequate drainage facilities on

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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, as the character of the existing structure will remain the same. The contribution of the building to the character of the area will be improved with this development, as the building will be renovated; and

WHEREAS, the Commission further finds that this development generally conforms to the Comprehensive Plan and Land Development Code with only one waiver requested due to existing conditions; Now, therefore be it

RESOLVED, the Louisville Metro Planning Commission does hereby **APPROVE** the requested Waiver from Section 10.2.4 to eliminate the required property perimeter landscape buffer area on the western property line AND the requested 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. 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.
4. 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 Develop Louisville, Louisville Metro Public Works and the Metropolitan Sewer District.
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.

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6. There shall be no outdoor music (live, piped, radio or amplified) or outdoor entertainment or outdoor PA system permitted on the site.
7. 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, Howard, Smith, Carlson, Peterson, Ferguson, Jarboe, Tomes.

NOT PRESENT: Commissioner Lewis.