

PLANNING COMMISSION MINUTES
March 5, 2020

PUBLIC HEARING

CASE NO. 19-ZONE-0060

Request: **CONTINUED from the 02/20/20 Planning Commission hearing** – Change in zoning from R-5B to R-8A with a Detailed District Development Plan and associated Landscape Waiver

Project Name: Hepburn Avenue Rezoning
Location: 1400 Hepburn Avenue
Owner: Wilson Property Rentals, LLC
Applicant: Wilson Property Rentals, LLC
Representative: John Talbott - Bardenwerper Talbott & Roberts PLLC
Jurisdiction: Louisville Metro
Council District: 8 – Brandon Coan

Case Manager: Dante St. Germain, 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:

01:52:21 Dante St. Germain presented the case and showed a Power Point presentation (see recording for detailed presentation.)

01:58:32 She noted that there is a proposed binding element in the staff report, which reads as follows:

All multi-family units on the property, in perpetuity, shall be rented for amounts at or below the affordable rent standards established by [Program] or successor program.

She said the applicant has their preferred language for this, and requested that the chosen program be Louisville CARES. She discussed what “affordable” rent could mean and noted that “affordable housing” is not defined in the Land Development Code, although there are provisions noted in the Comprehensive Plan.

02:03:14 In response to a question from Commissioner Mims, Ms. St. Germain said the Original Highland Neighborhood Plan was done in 2006 and the areawide rezoning

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was done in 2013. He and Ms. St. Germain discussed “affordable housing” and Louisville Cares. See recording for detailed presentation.

02:05:55 Commissioner Mims asked if the owner has demonstrated that the units are safe. Ms. St. Germain said all the units have been inspected; the applicant has a plan to bring all units into compliance.

02:07:16 Commissioner Carlson asked if all units met the definition of “dwelling unit”. Ms. St. Germain said yes, that she had discussed this with the applicant (see recording for detailed discussion.) The applicant can discuss this in more detail if needed.

02:09:05 In response to a question from Commissioner Jarboe, Ms. St. Germain gave the minimum square footage per unit that meets Building Code standards.

02:11:14 In response to a question from Commissioner Carlson, Ms. St. Germain said it is staff’s position that the Planning Commission should choose which of the three programs is considered “affordable” for the purposes of this rezoning case. She reiterated that the applicant has requested Louisville CARES.

The following spoke in support of this request:

John Talbott, Bardenwerper Talbott & Roberts, 1000 North Hurstbourne Parkway, Louisville, KY 40223

Alex Wilson, 2113 Arnold Palmer Boulevard, Louisville, KY 40245

Summary of testimony of those in support:

02:12:26 John Talbott, the applicant’s representative, presented the applicant’s case and showed a Power Point presentation (see recording for detailed presentation.)

02:16:03 Mr. Talbott presented a brief summary of structural Code compliance that the applicant has met, and other work that has been done since the December 2019 LD&T Committee meeting. He discussed how proposed rents relate to the Comprehensive Plan’s support of affordable housing. .

02:22:16 Alex Wilson, the applicant, described what changes had been made to the design/proposal since the last meeting (see recording for detailed presentation.) Building and Fire Inspectors have inspected the property.

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02:24:48 Mr. Talbott read the proposed binding elements into the record, to read as follows:

- The property shall obtain a certificate of occupancy from Metro Codes and Regulations within ninety days of final approval of the rezoning by Metro Council.
- Rental rates for the units must be “affordable” as defined by Metro Louisville CARES program (“Creating Affordable Residences for Economic Success”). Subsequent rent increases shall be limited to the annual percentage increase of the Louisville CARES program.

02:25:55 In response to a question from Commissioner Carlson, Mr. Wilson said that, because the third floor’s apartment had its bedroom on the second floor, a sprinkler system was not required. There is a shared laundry facility on the first floor.

02:28:38 In response to a question from Commissioner Mims, Mr. Wilson discussed the garages and parking. He said there is no parking waiver being requested.

02:29:13 In response to a question from Commissioner Mims, Mr. Wilson said the Fire Marshal re-inspection was February 20, 2020. He said no more improvements needed to be made on the building; the only thing they are waiting on is approval to convert the third floor apartment.

02:30:38 In response to a question from Commissioner Mims, Joe Reverman, Assistant Director of Planning & Design Services, said binding elements address define how to determine what is charged for the apartments. Mr. Wilson discussed affordable housing and noted that, since he purchased the building, he has lowered rents on one of the units and have not raised rents on any of the other units.

02:31:47 In response to a question from Commissioner Jarboe, Mr. Wilson said the square footage of unit five is 212 square feet. All six units have been inspected and found to meet Code.

The following spoke in opposition to this request:

No one spoke.

02:32:33 Commissioners’ deliberation.

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02:37:41 Commissioner Howard noted that, before the 2013 areawide rezoning, this property was zoned R-6. The areawide rezoning changed it to R-5B (a downzoning). She questioned increasing the density allowance for only one structure. Commissioner Jarboe said he saw this case as an exception, and explained why.

02:39:18 Commissioner Carlson expressed concern about raising the zoning category on one piece of property to allow much higher density.

02:40:23 The Commission came out of business session to hear Mr. Talbott's response to some of their questions (see recording.) He noted that the size of the lot limits any structure there, present or future, to six units. He expressed great concern about current residents possibly losing their apartments.

02:42:11 Ms. St. Germain said that, regarding density, the lot is "fairly small". Even though an R-8A zoning classification would allow 58 units per acre, because of the size of this lot, no structure here would allow a seventh unit. There is also a proposed binding element (in the staff report) stating that, if there are any changes made to the building, the applicant must come back before the Planning Commission for approval. No one could demolish/replace/change the building without Planning Commission approval.

02:44:13 In response to a question from Commissioner Peterson, Ms. St. Germain said it was not clear to staff exactly when units were added to the structure. She described how staff's research into number of units was done. Mr. Wilson gave some history of the building, the number of units, and some of the tenants who live there. He said this has been six units for "a very long time".

02:46:03 Commissioner Carlson asked how many electrical meters are on the side of the building. Mr. Wilson said there are five – four of them are separate, and the two smallest units are on the "house" unit (he pays for their electric.) Mr. Talbott said that, at a December 2019 public meeting, the applicant agreed to limit the number of tenants and put that in the binding elements (see recording for detailed presentation.)

02:50:47 In response to a question from Commissioner Mims, Mr. Talbott said that all of the improvements/rezoning/etc have been voluntary. The applicant is not here because of a notice of violation.

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Zoning

02:54:01 On a motion by Commissioner Mims, seconded by Commissioner Peterson, a resolution was proposed to recommend this case to the Louisville Metro Council for approval. The motion failed.

The vote was as follows:

YES: Commissioners Peterson, Mims, and Jarboe.
NO: Commissioners Howard, Brown, Daniels, and Carlson,
NOT PRESENT: Commissioners Tomes and Lewis.

Zoning

02:55:45 On a motion by Commissioner Carlson, seconded by Commissioner Daniels, the following resolution, based on the Plan 2040 Staff Analysis, and evidence and testimony heard today, was adopted:

WHEREAS, the Louisville Metro Council finds that the proposal does not meet the intents of Community Form: Goal 1 because, although the subject site is ½ block from a transit route on Winter Avenue, and 1 block from another transit route on Barret Avenue, the Original Highlands Neighborhood Plan recommends lower-density residential uses in this location; and the applicant requests a waiver to encroach into the required Landscape Buffer Area, due to the existing structures already encroaching. Appropriate transitions therefore cannot be provided; and

WHEREAS, the Commission further finds that the proposal does not meet the intents of Mobility: Goal 1 because the proposed zoning district would permit higher density and intensity uses. The site is located near an existing marketplace corridor at Bardstown Road. A second activity corridor exists at Barret Avenue. However, the Original Highlands Neighborhood Plan recommends lower-density residential uses in this Location; and

WHEREAS, the Commission further finds that the proposal does not meet Mobility: Goal 2 because access to the site is through a neighborhood of mostly single-family and two-family uses; and

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WHEREAS, the Commission further finds that the proposal does not meet Mobility: Goal 3 because the density allowed by R-8A is not necessarily compatible with the surrounding land uses. R-8A allows a much higher density than the single- and two-family residential permitted by the surrounding R-5B zoning; and

WHEREAS, the Commission further finds that the proposal does not meet Housing: Goal 1 because the proposed zoning district would permit a variety of housing types. The reuse of the existing structure reflects the form district pattern. However, the Original Highlands Neighborhood Plan recommends lower-density residential uses in this location; and the proposed zoning district would permit housing options that support aging in place, by providing additional housing. However, the Original Highlands Neighborhood Plan recommends lower-density residential uses in this location; and

WHEREAS, the Commission further finds that the proposal does not meet the intents of Housing: Goal 2 because the existing zoning district would permit inter-generational mixed- income development, and the Original Highlands Neighborhood Plan recommends lower-density residential uses in this location; and

WHEREAS, the Commission further finds that the proposal does not meet the intents of Housing: Goal 3 because the proposed zoning district would increase the variety of ownership options and unit costs throughout Louisville Metro. However, the Original Highlands Neighborhood Plan recommends lower-density residential uses in this location; and the proposed zoning district would permit the use of innovative housing methods. However, the Original Highlands Neighborhood Plan recommends lower-density residential uses in this location; now, therefore be it

RESOLVED, the Louisville Metro Planning Commission does hereby **RECOMMEND** to the Louisville Metro Council that the proposed change in zoning from change in zoning from R-5B Two-Family Residential to R-8A Multi-Family Residential on property described in the attached legal description be **DENIED**.

The vote was as follows:

YES: Commissioners Howard, Brown, Daniels, and Carlson.

NO: Commissioners Peterson, Mims, and Jarboe.

NOT PRESENT: Commissioners Tomes and Lewis.

PLANNING COMMISSION MINUTES
February 20, 2020

PUBLIC HEARING

CASE NO. 19-ZONE-0060

Request: Change in zoning from R-5B to R-8A with a Detailed District Development Plan and associated landscape waiver -
REQUESTING CONTINUANCE TO MARCH 5, 2020 PC

Project Name: Hepburn Avenue Rezoning
Location: 1400 Hepburn Avenue
Owner: Wilson Property Rentals LLC
Applicant: Wilson Property Rentals LLC
Representatives: Paul Whitty - Bardenwerper Talbott & Roberts PLLC
Jurisdiction: Louisville Metro
Council District: 8 – Brandon Coan

Case Manager: Dante St. Germain, 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:

00:12:01 Dante St. Germain said the applicant is still addressing questions and concerns from the Planning Commission regarding whether the property can be brought into compliance with Code Enforcement. The applicant is confident that they will be ready to have their case heard on March 5, 2020.

The following spoke in support of this request:

Paul Whitty, Bardenwerper Talbott & Roberts, 1000 North Hurstbourne Parkway, Louisville, KY 40223

Summary of testimony of those in support:

00:13:00 Paul Whitty, the applicant's representative, said the applicant is still working on the reconfiguration of one of the units to make it larger and also the issue of affordable rent that was discussed at the Planning Commission.

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The following spoke in opposition to this request:

No one spoke.

00:13:48 Commissioners' discussion.

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00:18:24 On a motion by Commissioner Carlson, seconded by Commissioner Peterson, the following resolution was adopted:

RESOLVED, the Louisville Metro Planning Commission does hereby **CONTINUE** this case to the **March 5, 2020 Planning Commission public hearing**.

The vote was as follows:

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

NOT PRESENT: Commissioner Tomes.

PLANNING COMMISSION MINUTES
January 23, 2020

PUBLIC HEARING

CASE NO. 19-ZONE-0060

Request: Change in zoning from R-5B to R-8A with a Detailed District Development Plan and associated landscape waiver –
REQUESTING CONTINUANCE TO 02/20/2020

Project Name: Hepburn Avenue Rezoning
Location: 1400 Hepburn Avenue
Owner: Wilson Property Rentals, LLC
Applicant: Wilson Property Rentals, LLC
Representative: Bardenwerper Talbott & Roberts PLLC
Jurisdiction: Louisville Metro
Council District: 8 – Brandon Coan

Case Manager: Dante St. Germain, AICP, Planner II

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Agency Testimony:

00:06:44 Dante St. Germain presented the case and noted that the applicant is requesting a Continuance to **February 20, 2020** to allow time to have the property inspected (see recording for detailed presentation.)

The following spoke in support of this request:

John Talbott, Bardenwerper Talbott & Roberts PLLC, 1000 North Hurstbourne Parkway, Louisville, KY 40223

Councilperson Brandon Coan, 601 West Jefferson Street, Louisville, KY 40204 (signed in but declined to speak because the case will be continued)

Summary of testimony of those in support:

00:07:52 John Talbott, the applicant's representative, confirmed that the applicant has requested more time (see recording for statement.)

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The following spoke in opposition to this request:
No one spoke.

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00:08:36 On a motion by Commissioner Howard, seconded by Commissioner Peterson, the following resolution was adopted:

RESOLVED, the Louisville Metro Planning Commission does hereby **CONTINUE** this case to the **February 20, 2020 Planning Commission public hearing**.

The vote was as follows:

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

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December 19, 2019

PUBLIC HEARING

CASE NO. 19-ZONE-0060

Request: Change in zoning from R-5B to R-8A with Detailed District Development Plan and associated Landscape Waiver
Project Name: Hepburn Avenue Rezoning
Location: 1400 Hepburn Avenue
Owner: Wilson Property Rentals LLC
Applicant: Wilson Property Rentals LLC
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Jurisdiction: Louisville Metro
Council District: 8 – Brandon Coan
Case Manager: Dante St. Germain, AICP, Planner II

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Agency Testimony:

00:38:31 Ms. St. Germain discussed the case summary, standard of review and staff analysis from the staff report.

00:48:20 Commissioner Mims asked if the applicant/owner received a Certificate of Occupancy for the units. The 3 additional units would have required the issuance of building permits or the Certificate of Occupancy. Ms. St. Germain said the records only go back so far and she was not able to find any building permits for the additional units.

Commissioner Mims asked, what is the size of the units? Ms. St. Germain said between 168 square feet and 1152 square feet.

Commissioner Mims asked if the property was once a neighborhood grocery store. Ms. St. Germain said there was a grocery store being operated out of the building, but without approval. A Certificate of Occupancy was requested and denied (never issued). It appears to have been operated anyway because in 1991 a change of use was filed - from a grocery store to 3 residential units.

Commissioner Mims asked if they have room for the additional parking space. Ms. St. Germain said in order to count this as a parking space for this property, it has to be at

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least 80% on the frontage of the property and it's only a little over 50%. They don't need it because they're eligible for a parking reduction.

00:51:38 Commissioner Brown asked if the applicant's smallest unit size is adequate? Is there something in the Land Development or Building Code that makes that determination? Ms. St. Germain said it's in the Ky. Building Code, which states an efficiency dwelling unit must have a living room of not less than 220 square feet and an addition of 100 square feet shall be provided for each occupant in such unit in excess of 2. Other requirements include: has to have a closet, kitchen sink, cooking appliance and refrigeration facilities with some dimensional requirements and a separate bathroom containing a water closet, lavatory, bathtub or shower. Chair Jarboe asked if they could be shared. Ms. St. Germain said in order to be considered a dwelling unit, it has to have an independent bathroom and kitchen facilities for all 6 units.

00:53:20 Chair Jarboe asked if R-7 would be more appropriate to have 4 units in this building. Ms. St. Germain said the Neighborhood Plan specifically states R-5B with a maximum of 2 units. The Comprehensive Plan with the adopted amendment of the Neighborhood Plan wouldn't support anything above 2 units. This property was included in the area wide at the recommendation of the Neighborhood Plan.

The following spoke in favor of this request:

John Talbott, Bardenwerper, Talbott and Roberts, 1000 North Hurstbourne Parkway, Louisville, Ky. 40223

Alexander Wilson, 2113 Arnold Palmer Boulevard, Louisville, Ky. 40245

Melinda Carr, 1280 Deerwood Drive, Frankfort, Ky. 40601

Victoria M. Carr, 1400 Hepburn Avenue #1, Louisville, Ky. 40204

Watson Harding, 1400 Hepburn Avenue #3, Louisville, Ky. 40204

Seth Fischer, 1400 Hepburn Avenue #2, Louisville, Ky. 40204

Summary of testimony of those in favor:

00:54:36 Mr. Talbott gave a power point presentation. This building has been around a long time and was originally a grocery store on the 1st floor and residential on the 2nd floor (1930's). The proposal needs flexibility and density. The present owner is not the one with past violations. This property has had a lot of units for a long period of time (maybe a decade) and in all that time, there have been no complaints or police reports.

Mr. Talbott gave history of the building. There were some instances of having higher residential zoning in the neighborhood. The original Highlands Neighborhood Plan puts

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emphasis on single family homes and duplexes, but it states 'primarily', not 'exclusively' and doesn't say higher density is not allowed.

Mr. Talbott said this property provides affordable housing. All of the units have bathrooms and kitchens. If all the units are not in compliance, we would ask for a reasonable amount of time to bring it in compliance so no one has to be evicted. There are no changes proposed to the structure or use unless it needs to be brought into compliance. The applicant is willing to bind out any uses other than the ability to keep 6 apartments.

01:16:27 Mr. Wilson stated he bought the property and discovered there were some zoning issues. The residents have lived there a long time and it's affordable for them.

Mr. Wilson said he has gotten to know the residents personally and doesn't want to evict anyone.

01:19:41 Ms. Melinda Carr is speaking on behalf of her brother David Manning, a tenant of the 1400 Hepburn Ave. apartments. Mr. Manning is mentally disabled and because of the stigma, finding a place for him to live was a challenge. He enjoys the neighborhood – it's safe and he can walk to almost every service he needs and he has a support system of friends. His apartment is small but that's all he can handle.

01:23:37 Ms. Victoria Carr stated she doesn't want to be kicked out. The apartment is wheelchair accessible.

01:24:31 Mr. Harding said Alex is a great landlord. There are no issues with parking.

01:25:52 Mr. Fischer stated this is the best apartment he's lived in. There are no problems with the neighbors and is a peaceful place to live.

01:27:00 Commissioner Mims asked if there was a notice of violation that prompted the owner to rezone the property. Mr. Talbott said Mr. Wilson became aware of the zoning issues before he closed on purchasing the property and just wanted to bring it into compliance. Mr. Wilson said it was the right thing to do.

01:28:37 Commissioner Mims asked if the tenants have to go through one unit to get to another unit. Mr. Wilson said they are separate units and all have separate entrances.

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01:30:32 Commissioner Peterson asked if there was any thought given to a lower zoning category with a CUP. Mr. Wilson said neighbors at the neighborhood meeting were worried about Airbnb, so no.

01:31:47 Commissioner Lewis said there are 6 units, but how many people living there? Mr. Wilson said 9. Also, how are those numbers controlled? Commissioner Mims said it would be a Building Code matter.

01:33:33 Commissioner Mims asked if the applicant would object to Code Enforcement inspecting the units. Mr. Wilson said no.

01:35:30 Commissioner Mims asked, how can you assure this committee that the apartments will remain affordable? Mr. Wilson said he's unsure of the correct language, but is willing to put in that approval is contingent upon being a percentage below market value.

01:36:35 Commissioner Carlson asked if there is a Certificate of Occupancy for 6 dwelling units in this building. Mr. Wilson said no. What is the footprint for the 1st floor? Mr. Wilson said the total building is almost 5,000 square feet, with most of the units being 700-1100 square feet. Is there a unit that's only 168 square feet? Mr. Wilson said he hasn't measured the units but an appraisal was done. Do all the units have sloped ceilings? Mr. Wilson said no, the pictures reflect the attic unit on the front side of the building. Does the attic unit have all sloped ceilings? Mr. Wilson said no, but the walls are sloped.

01:41:03 Chair Jarboe asked of the 6 units, how many means of egress are there (by door)? Mr. Wilson said everyone on the top floors have to come down the main stairwell, and there are several doors to exit on the 1st floor.

01:44:44 Mr. Carroll, legal counsel, asked Mr. Talbott to explain the Neighborhood Plan for this property. Mr. Talbott said it's a lengthy document but there is no language that says a higher level of residential is prohibited.

01:45:59 Ms. St. Germain stated the building footprint is 2,369 square feet. Mr. Talbott said the building appears to be larger than that.

The following spoke in opposition to this request:

Jim Scorch, 1503 East Breckenridge Street, Louisville, Ky. 40204
Rick Sweeney, 1328 Hepburn Avenue #2, Louisville, Ky. 40204

Summary of testimony of those in opposition:

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01:46:33 Mr. Scorch, President of the Original Highlands Neighborhood Association, stated the association is opposed to the zoning change. Commercial encroachment is a problem in the neighborhood and if this exclusion was made, it would invite future exclusions and possibly sacrifice the residential integrity. Hopefully the residents can stay in their apartments because there is no wish to evict anyone.

01:50:00 Mr. Sweeney stated he has lived there 22 years and was on the board to create the neighborhood plan. The concerns are as follows: try to encourage single family moving back in; the only evidence of 6 units has been this year; and the possibility of flipping the property.

Mr. Sweeney stated, a vision was established as to how the neighborhood would be developed and encourage use. Hopefully the time, money and effort will not have been wasted.

02:02:10 Chair Jarboe asked, if you wanted only duplexes, then why wasn't the language more forceful? The plan doesn't prohibit more units. Mr. Sweeney said he doesn't think the neighborhood plan was designed to say 'only duplexes', but the direction was very well expressed. We also knew the existing units would be grandfathered in. Mr. Reverman added, it's fairly typical for neighborhood plans to not be very specific, but is more of a comprehensive plan with broad goals and objectives.

Rebuttal

02:05:05 Mr. Talbott stated the only thing that is relevant today is the fact that there are no complaints or problems. The Small Area Plan allows it and is supported by Plan 2040 in terms of diversity of housing types, socioeconomic levels and intergenerational diversity. There's no evidence of any adverse impacts. A binding element will be added for code compliance if any changes need to be made.

02:07:55 Commissioner Lewis asked if R-8A allows a maximum of 6 units. Mr. Talbott said after calculating the density, it will be a maximum of 6, but is willing to have a binding element to that effect. Commissioner Peterson asked if there is a non-conforming use approach that could be taken and not raising it to the R-8A. Mr. Talbott said he's not aware of any. Commissioner Howard asked if there was any record of the non-conforming use for the 3 units. Mr. Talbott said he has not reviewed that in detail because we're requesting the rezoning.

Deliberation

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02:09:56 Commissioner Mims stated the availability of safe and affordable housing will continue to be an issue as we move into the next decade and can support it as long as inspections deem the apartments to be safe (need binding element).

02:10:59 Commissioner Peterson stated he would hate to see the tenants lose their homes. Also, we don't want to set a precedent.

02:11:54 Commissioner Brown stated this board/body is not the final decision. R-8A is appropriate for the entire area, unfortunately there is the Small Area Plan that strongly opposes the higher density. Plan 2040 would support this density and diversity in housing.

02:13:16 Commissioner Lewis stated the proposal provides affordable housing, diversity of housing and doesn't appear the neighbors have had any issues, but the zoning change belongs to the land and not the owner. Although this owner is doing what's right, it doesn't mean the next owner will. There needs to be a binding element limiting the number of people living in the units.

02:14:28 Commissioner Howard stated this is a corner lot and was built as a mom/pop commercial/residential structure and has not always been completely residential.

02:17:26 Commissioner Carlson said his concerns are: respecting and following the neighborhood plan; and making sure it is a code compliant/safe structure.

02:20:16 Chair Jarboe stated binding element 6 says a Certificate of Occupancy must be received from the appropriate Code Enforcement Dept. prior to occupancy of the structure. If approved, isn't that when inspections would occur and make sure the applicant is compliant? Commissioner Carlson said that's a standard binding element. The trigger for a Certificate of Occupancy is a building permit and there won't be any building permits for this request.

02:21:40 Commissioner Daniels stated she's concerned about the apartments being in compliance and is reluctant to approve it before having that information.

02:22:47 Commissioner Howard stated neighborhood plans are attached to the comprehensive plan and are to be used as a guide. The comprehensive plan takes precedence over the neighborhood plan but is used to help make decisions with the study area plan.

02:23:40 Chair Jarboe stated this case is an exception. It would be best to delay the case to allow an overview of the units.

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02:25:25 Commissioner Peterson stated the wording will need to be in such a way as not to hold the building accountable to today's standard (more stringent) because it's a very old structure and some aspects need to be grandfathered. As long as it's safe for the tenants.

02:27:53 Mr. Fiechter, legal counsel, stated zoning is permanent and the structures are relatively temporary. I don't think we've ever placed the primary concern of zoning on the condition of the current existing building.

02:28:54 Ms. St. Germain stated the applicant agrees to continue this case to allow a building inspector a chance to look at the property for compliance.

02:29:14 Mr. Talbott stated we would like to get this approved today but also want it to be safe. A binding element could be drafted and Bardenwerper, Taobott and Roberts could send a certified letter to Codes and Regulations to come and inspect the property. If the zoning is approved and they're not satisfied, it will be shut down. Another option is to go to a lower zoning standard. Also, the limit for people in the building is 12 and we will follow that.

02:31:18 Mr. Fiechter, legal counsel, stated the issue with immediately requesting Codes and Regulations to inspect the building prior to Metro Council approval is that Metro Council would have to reopen the record to accept new evidence. That puts the burden on them to have potentially another full public hearing, which they don't normally do on zoning matters.

02:32:16 Mr. Talbott requests that if the case is continued, do not open it back up for additional testimony.

02:32:42 Commissioner Mims read 2 binding elements into the record.

02:34:20 Chair Jarboe said he agrees that there should not be additional testimony if this case is continued.

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.

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

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RESOLVED, that the Louisville Metro Planning Commission does hereby **CONTINUE** this case to the January 23, 2020 Planning Commission meeting to discuss the results of the inspection by Codes and Regulations and for the affordable housing binding element.

The vote was as follows:

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

NOT PRESENT AND NOT VOTING: Commissioner Tomes

PLANNING COMMISSION MINUTES
December 19, 2019

PUBLIC HEARING

CASE NO. 19-ZONE-0060

Request: Change in zoning from R-5B to R-8A with Detailed District Development Plan and associated Landscape Waiver
Project Name: Hepburn Avenue Rezoning
Location: 1400 Hepburn Avenue
Owner: Wilson Property Rentals LLC
Applicant: Wilson Property Rentals LLC
Representative: Bardenwerper, Talbott & Roberts
Jurisdiction: Louisville Metro
Council District: 8 – Brandon Coan
Case Manager: Dante St. Germain, 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. (Staff report is part of the case file maintained in Planning and Design Services offices, 444 S. 5th Street.)

Agency Testimony:

00:38:31 Ms. St. Germain discussed the case summary, standard of review and staff analysis from the staff report.

00:48:20 Commissioner Mims asked if the applicant/owner received a Certificate of Occupancy for the units. The 3 additional units would have required the issuance of building permits or the Certificate of Occupancy. Ms. St. Germain said the records only go back so far and she was not able to find any building permits for the additional units.

Commissioner Mims asked, what is the size of the units? Ms. St. Germain said between 168 square feet and 1152 square feet.

Commissioner Mims asked if the property was once a neighborhood grocery store. Ms. St. Germain said there was a grocery store being operated out of the building, but without approval. A Certificate of Occupancy was requested and denied (never issued). It appears to have been operated anyway because in 1991 a change of use was filed - from a grocery store to 3 residential units.

Commissioner Mims asked if they have room for the additional parking space. Ms. St. Germain said in order to count this as a parking space for this property, it has to be at

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least 80% on the frontage of the property and it's only a little over 50%. They don't need it because they're eligible for a parking reduction.

00:51:38 Commissioner Brown asked if the applicant's smallest unit size is adequate? Is there something in the Land Development or Building Code that makes that determination? Ms. St. Germain said it's in the Ky. Building Code, which states an efficiency dwelling unit must have a living room of not less than 220 square feet and an addition of 100 square feet shall be provided for each occupant in such unit in excess of 2. Other requirements include: has to have a closet, kitchen sink, cooking appliance and refrigeration facilities with some dimensional requirements and a separate bathroom containing a water closet, lavatory, bathtub or shower. Chair Jarboe asked if they could be shared. Ms. St. Germain said in order to be considered a dwelling unit, it has to have an independent bathroom and kitchen facilities for all 6 units.

00:53:20 Chair Jarboe asked if R-7 would be more appropriate to have 4 units in this building. Ms. St. Germain said the Neighborhood Plan specifically states R-5B with a maximum of 2 units. The Comprehensive Plan with the adopted amendment of the Neighborhood Plan wouldn't support anything above 2 units. This property was included in the area wide at the recommendation of the Neighborhood Plan.

The following spoke in favor of this request:

John Talbott, Bardenwerper, Talbott and Roberts, 1000 North Hurstbourne Parkway, Louisville, Ky. 40223

Alexander Wilson, 2113 Arnold Palmer Boulevard, Louisville, Ky. 40245

Melinda Carr, 1280 Deerwood Drive, Frankfort, Ky. 40601

Victoria M. Carr, 1400 Hepburn Avenue #1, Louisville, Ky. 40204

Watson Harding, 1400 Hepburn Avenue #3, Louisville, Ky. 40204

Seth Fischer, 1400 Hepburn Avenue #2, Louisville, Ky. 40204

Summary of testimony of those in favor:

00:54:36 Mr. Talbott gave a power point presentation. This building has been around a long time and was originally a grocery store on the 1st floor and residential on the 2nd floor (1930's). The proposal needs flexibility and density. The present owner is not the one with past violations. This property has had a lot of units for a long period of time (maybe a decade) and in all that time, there have been no complaints or police reports.

Mr. Talbott gave history of the building. There were some instances of having higher residential zoning in the neighborhood. The original Highlands Neighborhood Plan puts

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emphasis on single family homes and duplexes, but it states 'primarily', not 'exclusively' and doesn't say higher density is not allowed.

Mr. Talbott said this property provides affordable housing. All of the units have bathrooms and kitchens. If all the units are not in compliance, we would ask for a reasonable amount of time to bring it in compliance so no one has to be evicted. There are no changes proposed to the structure or use unless it needs to be brought into compliance. The applicant is willing to bind out any uses other than the ability to keep 6 apartments.

01:16:27 Mr. Wilson stated he bought the property and discovered there were some zoning issues. The residents have lived there a long time and it's affordable for them.

Mr. Wilson said he has gotten to know the residents personally and doesn't want to evict anyone.

01:19:41 Ms. Melinda Carr is speaking on behalf of her brother David Manning, a tenant of the 1400 Hepburn Ave. apartments. Mr. Manning is mentally disabled and because of the stigma, finding a place for him to live was a challenge. He enjoys the neighborhood – it's safe and he can walk to almost every service he needs and he has a support system of friends. His apartment is small but that's all he can handle.

01:23:37 Ms. Victoria Carr stated she doesn't want to be kicked out. The apartment is wheelchair accessible.

01:24:31 Mr. Harding said Alex is a great landlord. There are no issues with parking.

01:25:52 Mr. Fischer stated this is the best apartment he's lived in. There are no problems with the neighbors and is a peaceful place to live.

01:27:00 Commissioner Mims asked if there was a notice of violation that prompted the owner to rezone the property. Mr. Talbott said Mr. Wilson became aware of the zoning issues before he closed on purchasing the property and just wanted to bring it into compliance. Mr. Wilson said it was the right thing to do.

01:28:37 Commissioner Mims asked if the tenants have to go through one unit to get to another unit. Mr. Wilson said they are separate units and all have separate entrances.

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01:30:32 Commissioner Peterson asked if there was any thought given to a lower zoning category with a CUP. Mr. Wilson said neighbors at the neighborhood meeting were worried about Airbnb, so no.

01:31:47 Commissioner Lewis said there are 6 units, but how many people living there? Mr. Wilson said 9. Also, how are those numbers controlled? Commissioner Mims said it would be a Building Code matter.

01:33:33 Commissioner Mims asked if the applicant would object to Code Enforcement inspecting the units. Mr. Wilson said no.

01:35:30 Commissioner Mims asked, how can you assure this committee that the apartments will remain affordable? Mr. Wilson said he's unsure of the correct language, but is willing to put in that approval is contingent upon being a percentage below market value.

01:36:35 Commissioner Carlson asked if there is a Certificate of Occupancy for 6 dwelling units in this building. Mr. Wilson said no. What is the footprint for the 1st floor? Mr. Wilson said the total building is almost 5,000 square feet, with most of the units being 700-1100 square feet. Is there a unit that's only 168 square feet? Mr. Wilson said he hasn't measured the units but an appraisal was done. Do all the units have sloped ceilings? Mr. Wilson said no, the pictures reflect the attic unit on the front side of the building. Does the attic unit have all sloped ceilings? Mr. Wilson said no, but the walls are sloped.

01:41:03 Chair Jarboe asked of the 6 units, how many means of egress are there (by door)? Mr. Wilson said everyone on the top floors have to come down the main stairwell, and there are several doors to exit on the 1st floor.

01:44:44 Mr. Carroll, legal counsel, asked Mr. Talbott to explain the Neighborhood Plan for this property. Mr. Talbott said it's a lengthy document but there is no language that says a higher level of residential is prohibited.

01:45:59 Ms. St. Germain stated the building footprint is 2,369 square feet. Mr. Talbott said the building appears to be larger than that.

The following spoke in opposition to this request:

Jim Scorch, 1503 East Breckenridge Street, Louisville, Ky. 40204
Rick Sweeney, 1328 Hepburn Avenue #2, Louisville, Ky. 40204

Summary of testimony of those in opposition:

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01:46:33 Mr. Scorch, President of the Original Highlands Neighborhood Association, stated the association is opposed to the zoning change. Commercial encroachment is a problem in the neighborhood and if this exclusion was made, it would invite future exclusions and possibly sacrifice the residential integrity. Hopefully the residents can stay in their apartments because there is no wish to evict anyone.

01:50:00 Mr. Sweeney stated he has lived there 22 years and was on the board to create the neighborhood plan. The concerns are as follows: try to encourage single family moving back in; the only evidence of 6 units has been this year; and the possibility of flipping the property.

Mr. Sweeney stated, a vision was established as to how the neighborhood would be developed and encourage use. Hopefully the time, money and effort will not have been wasted.

02:02:10 Chair Jarboe asked, if you wanted only duplexes, then why wasn't the language more forceful? The plan doesn't prohibit more units. Mr. Sweeney said he doesn't think the neighborhood plan was designed to say 'only duplexes', but the direction was very well expressed. We also knew the existing units would be grandfathered in. Mr. Reverman added, it's fairly typical for neighborhood plans to not be very specific, but is more of a comprehensive plan with broad goals and objectives.

Rebuttal

02:05:05 Mr. Talbott stated the only thing that is relevant today is the fact that there are no complaints or problems. The Small Area Plan allows it and is supported by Plan 2040 in terms of diversity of housing types, socioeconomic levels and intergenerational diversity. There's no evidence of any adverse impacts. A binding element will be added for code compliance if any changes need to be made.

02:07:55 Commissioner Lewis asked if R-8A allows a maximum of 6 units. Mr. Talbott said after calculating the density, it will be a maximum of 6, but is willing to have a binding element to that effect. Commissioner Peterson asked if there is a non-conforming use approach that could be taken and not raising it to the R-8A. Mr. Talbott said he's not aware of any. Commissioner Howard asked if there was any record of the non-conforming use for the 3 units. Mr. Talbott said he has not reviewed that in detail because we're requesting the rezoning.

Deliberation

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02:09:56 Commissioner Mims stated the availability of safe and affordable housing will continue to be an issue as we move into the next decade and can support it as long as inspections deem the apartments to be safe (need binding element).

02:10:59 Commissioner Peterson stated he would hate to see the tenants lose their homes. Also, we don't want to set a precedent.

02:11:54 Commissioner Brown stated this board/body is not the final decision. R-8A is appropriate for the entire area, unfortunately there is the Small Area Plan that strongly opposes the higher density. Plan 2040 would support this density and diversity in housing.

02:13:16 Commissioner Lewis stated the proposal provides affordable housing, diversity of housing and doesn't appear the neighbors have had any issues, but the zoning change belongs to the land and not the owner. Although this owner is doing what's right, it doesn't mean the next owner will. There needs to be a binding element limiting the number of people living in the units.

02:14:28 Commissioner Howard stated this is a corner lot and was built as a mom/pop commercial/residential structure and has not always been completely residential.

02:17:26 Commissioner Carlson said his concerns are: respecting and following the neighborhood plan; and making sure it is a code compliant/safe structure.

02:20:16 Chair Jarboe stated binding element 6 says a Certificate of Occupancy must be received from the appropriate Code Enforcement Dept. prior to occupancy of the structure. If approved, isn't that when inspections would occur and make sure the applicant is compliant? Commissioner Carlson said that's a standard binding element. The trigger for a Certificate of Occupancy is a building permit and there won't be any building permits for this request.

02:21:40 Commissioner Daniels stated she's concerned about the apartments being in compliance and is reluctant to approve it before having that information.

02:22:47 Commissioner Howard stated neighborhood plans are attached to the comprehensive plan and are to be used as a guide. The comprehensive plan takes precedence over the neighborhood plan but is used to help make decisions with the study area plan.

02:23:40 Chair Jarboe stated this case is an exception. It would be best to delay the case to allow an overview of the units.

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02:25:25 Commissioner Peterson stated the wording will need to be in such a way as not to hold the building accountable to today's standard (more stringent) because it's a very old structure and some aspects need to be grandfathered. As long as it's safe for the tenants.

02:27:53 Mr. Fiechter, legal counsel, stated zoning is permanent and the structures are relatively temporary. I don't think we've ever placed the primary concern of zoning on the condition of the current existing building.

02:28:54 Ms. St. Germain stated the applicant agrees to continue this case to allow a building inspector a chance to look at the property for compliance.

02:29:14 Mr. Talbott stated we would like to get this approved today but also want it to be safe. A binding element could be drafted and Bardenwerper, Taobott and Roberts could send a certified letter to Codes and Regulations to come and inspect the property. If the zoning is approved and they're not satisfied, it will be shut down. Another option is to go to a lower zoning standard. Also, the limit for people in the building is 12 and we will follow that.

02:31:18 Mr. Fiechter, legal counsel, stated the issue with immediately requesting Codes and Regulations to inspect the building prior to Metro Council approval is that Metro Council would have to reopen the record to accept new evidence. That puts the burden on them to have potentially another full public hearing, which they don't normally do on zoning matters.

02:32:16 Mr. Talbott requests that if the case is continued, do not open it back up for additional testimony.

02:32:42 Commissioner Mims read 2 binding elements into the record.

02:34:20 Chair Jarboe said he agrees that there should not be additional testimony if this case is continued.

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.

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

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RESOLVED, that the Louisville Metro Planning Commission does hereby **CONTINUE** this case to the January 23, 2020 Planning Commission meeting to discuss the results of the inspection by Codes and Regulations and for the affordable housing binding element.

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