

**MINUTES OF THE MEETING  
OF THE  
LOUISVILLE METRO PLANNING COMMISSION  
August 18, 2016**

A meeting of the Louisville Metro Planning Commission was held on August 18, 2016 at 1:00 p.m. at the Old Jail Building, located at 514 W. Liberty Street, Louisville, Kentucky.

**Commission members present:**

Donnie Blake, Chair  
Vince Jarboe, Vice Chair  
Jeff Brown  
Marilyn Lewis  
Rob Peterson  
David Tomes  
Lula Howard  
Emma Smith

**Commission members absent:**

Robert Kirchdorfer  
Clifford Turner

**Staff Members present:**

Emily Liu, Director, Planning and Design Services  
Brian Davis, Planning Manager  
Julia Williams, Planning Supervisor  
Tammy Markert, Transportation Planning Coordinator  
Jon Baker, Legal Counsel  
Pamela M. Brashear, Management Assistant

The following matters were considered:

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**APPROVAL OF MINUTES**

**AUGUST 4, 2016 PLANNING COMMISSION REGULAR MEETING MINUTES**

On a motion by Commissioner Jarboe, seconded by Commissioner Lewis, the following resolution was adopted.

**RESOLVED**, that the Planning Commission does hereby **APPROVE** the minutes of its meeting conducted on August 4, 2016.

**The vote was as follows:**

**YES: Commissioners Blake, Brown, Howard, Jarboe, Lewis and Peterson**  
**NOT PRESENT FOR THIS CASE: Commissioners Kirchdorfer and Turner**  
**ABSTAINING: Commissioners Smith and Tomes**

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**PUBLIC HEARING**

**CASE NO. 16ZONE1021**

Request: Change in zoning from EZ-1 to M-3 with a CUP for Outdoor Recycling

Project Name: Rusty Rooster

Location: 7310, 7400 and 7402 Grade Lane

Owner: Leeann LLC  
360 Glory Road  
Shepherdsville, Ky. 40165

Applicant: Rusty Rooster Recycling  
Tom Brooks  
7400 Grade Lane  
Louisville, Ky. 40219

Representative: Miller Wihry  
John Miller  
1387 South 4<sup>th</sup> Street  
Louisville, Ky. 40208

Bardenwerper, Talbott and Roberts, PLLC  
William B. Bardenwerper  
1000 North Hurstbourne Parkway, 2<sup>nd</sup> floor  
Louisville, Ky. 40223

Jurisdiction: Louisville Metro  
Council District: 13-Vicki Aubrey Welch

**Case Manager: Julia Williams, RLA, AICP, Planning Supervisor**

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:**

00:05:39 Mrs. Williams discussed the case summary, standard of review and staff analysis from the staff report.

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**The following spoke in favor of this request:**

Nick Pregliasco, Bardenwerper, Talbott and Roberts, 1000 North Hurstbourne Parkway, 2<sup>nd</sup> floor, Louisville, Ky. 40223  
Tom Brooks, Jr., 360 Glory Road, Shepherdsville, Ky. 40165  
Tom Brooks III., 9123 River Trail Drive,

**Summary of testimony of those in favor:**

00:17:10 Mr. Pregliasco gave a power point presentation and explained that the expansion is for an existing business. All materials are stored inside now. There's no change in the business, a new scale will be added. Any stacking will not hinder circulation because there's plenty of room for customers to move in and out. The hours of operation are 8-5 p.m. Monday through Friday and 8-2:00 p.m. on Saturday. A center lane wouldn't serve any purpose regarding the customer counts.

00:35:13 Mr. Brooks explained that there is a storage trailer near the front of the site that they use to put scrap vinyl siding in to recycle. The storage trailer is movable but very seldom moved.

00:40:26 Mr. Brooks said stacking won't be an issue. Customers still have room to maneuver in and out.

**The following spoke neither for nor against the request:**

Bill Gatti, 7301 Grade Lane, Louisville, Ky. 40219  
Todd Phillips, 7100 Grade Lane, Louisville, Ky. 40213

**Summary of testimony of those neither for nor against:**

00:41:57 Mr. Gatti is one of the owners of Grade A Allstate. Mr. Gatti stated that Rusty Rooster should have to widen the road and provide landscaping and irrigation because that is what the other scrap recycling centers had to do when they changed the zoning on their sites. He mentioned the safety hazards dealing with traffic and indicated that when the applicant starts picking up volume, the stacking will be an issue.

Mr. Gatti also disagrees with the applicant placing the landscaping on his side of the fence and recommended that it would be better on the street side to help beautify the area. He is also concerned with the following: adequate fire lanes; residue runoff of the metals being stored outside; the proposed 8 foot fence; and the safety of Grade Ln.

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00:51:32 Mr. Phillips is the Chief Financial Officer for Industrial Services of America. He is also concerned about safety and a level playing field – he had to provide 3 lanes and sidewalks.

00:56:29 Mr. Gatti said Grade A Allstate had to pay approximately \$15,000.00 to the city for a fee in lieu of sidewalks.

01:01:06 Commissioner Lewis said there's a binding element regarding no signage on site, but does it include the lady that stands near the street soliciting customers for Rusty Rooster? Mrs. Liu, Director of Planning and Design responded that the trailer is an illegal sign and needs to be removed immediately. The person carrying a sign is exempt because it's a freedom of speech issue.

01:02:46 Chairman Blake asked Ms. Markert to address why this site wasn't required to provide a turn lane. Ms. Markert, Transportation Planning, stated she wasn't with Transportation when the other sites applied and did not research it; however, for this site there was a 2016 traffic count required but it did not meet the criteria for the addition of a turn lane (the growth rate of the business would have to quadruple). Commissioner Brown added that the road improvements associated with the other sites were related to increases in intensity.

**Rebuttal**

01:07:46 Mr. Pregliasco stated that the original violation was not having a CUP, they then obtained it and as the business has grown, there have been some outdoor storage issues. The applicant said the trailer will be moved immediately and going forward all materials will be stored in the storage areas at the rear of the property.

01:23:05 Mr. Pregliasco said his client agrees to a binding element to provide landscaping on the road side or to move the fence back.

**Deliberation**

01:24:51 Planning Commission deliberation. Commissioner Tomes said he's concerned the Planning Commission isn't looking into the future if a business grows. Mr. Baker responded that for conditions that look to the future, the Planning Commission should provide a definitive threshold that would be triggered to require a condition.

Commissioner Tomes stated he's also concerned about the number of violations.

Commissioner Brown indicated that a specific number of trips during a certain period for so many consecutive days and could say the turn lane is warranted and shall be

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provided could be set and that Public Works could come up with some numbers that are reasonable.

Commissioner Brown is concerned about the violations as well, but is in favor of the request as long as the applicant abides by the binding elements.

Commissioner Lewis stated that she has no confidence that there's going to be any compliance with this given the long list of violations and that the signage continues to be a problem.

Commissioner Smith is concerned about the past violations. There needs to be frequent monitoring as required by law.

Vice Chair Jarboe said the request is appropriate. They may be required to put center lane in later.

Commissioner Peterson stated the zoning change is appropriate and it makes sense to bring the landscaping to where it will benefit the view from the road. Also, the binding elements need to be adhered to.

Commissioner Howard has no problem with the zoning change request, but does have a problem with the conditional use permit.

Chairman Blake is concerned the applicant may not live up to the conditional use permit.

The commissioners also discussed hours of operation 8:00 a.m. – 5:00 p.m. Monday through Friday and 8:00 a.m. – 2:00 p.m. on Saturday. Ms. Markert spoke about peak volumes of traffic.

**An audio/visual recording of the Planning Commission hearing related to this case is available on the Planning & Design Services website, or you may contact the Customer Service staff to view the recording or to obtain a copy.**

**Zoning Change from EZ-1 to M-3**

01:58:04 On a motion by Commissioner Brown, seconded by Commissioner Tomes, the following resolution was adopted.

**WHEREAS**, A Suburban Workplace is a form characterized by predominately industrial and office uses where the buildings are set back from the street in a landscaped

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setting. Suburban workplaces often contain a single large-scale use or a cluster of uses within a master planned development. New larger proposed industrial uses are encouraged to apply for a planned development district; and

**WHEREAS**, In order to provide adequate transportation access in suburban workplaces connected roads, public transportation and pedestrian facilities should be encouraged. Walkways to workplace-serving uses are encouraged for workplace employees. Development within suburban workplace form districts may need significant buffering from abutting uses; and

**WHEREAS**, Pedestrian and vehicle interconnectivity needs to be provided. Sidewalks are not provided along all roadway frontages; and

**WHEREAS**, the Louisville Metro Planning Commission finds, Industrial zone proposed which is consistent with the SWFD. The proposal is for industrial with a CUP which is related to other zoning districts within the form district. The zoning change and CUP would not be considered an expansion into an existing residential area. This site does not affect any known residences in the area; and

**WHEREAS**, the Louisville Metro Planning Commission further finds all other agency comments should be addressed to demonstrate compliance with the remaining Guidelines and Policies of Cornerstone 2020.

**RESOLVED**, that the Louisville Metro Planning Commission does hereby **RECOMMEND** to Metro Council, **APPROVAL** of Case No. 16ZONE1021 a zoning change from EZ-1 to M-3 based on the staff report, testimony heard today and the finding of facts found in the applicant's booklet, tab 9.

**The vote was as follows:**

**YES: Commissioners Blake, Brown, Howard, Jarboe, Lewis, Peterson, Smith and Tomes**

**NOT PRESENT AND NOT VOTING: Commissioners Kirchdorfer and Turner**

**Conditional Use Permit**

01:59:23 On a motion by Commissioner Brown, seconded by Commissioner Peterson, the following resolution was adopted.

**WHEREAS**, Industrial zone proposed which is consistent with the SWFD. The proposal is for industrial with a CUP which is related to other zoning districts within the form

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district. The zoning change and CUP would not be considered an expansion into an existing residential area. This site does not affect any known residences in the area.

**WHEREAS**, the adjacent properties are similar in scale and intensity as the proposal; and

**WHEREAS**, the Louisville Metro Planning Commission finds, the specific standards to obtain a conditional use permit have been met. Those standards are that this facility is required to have a license to operate from the Jefferson County Waste Management District (SWR 20.0), that a specific written or site plan for vehicle cleaning facilities to prevent the tracking of mud, dirt or other debris onto any public roadway was reviewed and approved by the Director of Works before public hearing, a continuous fence a minimum of 6 feet high shall be placed along the boundaries of all work and storage areas and provided with gates of the same construction as the fence which shall remain locked at all times when active operations are not taking place and shall be properly maintained until all operations are completed, when adjoining any residential zoning district, the facility may not be operated on Sunday or earlier than 7:00 a.m. or later than 6:00 p.m. on any other day, and in addition to these conditions, the following conditions apply to Outdoor Recycling Facilities (not constituting Scrap Metal Processing Facilities or Junkyards as defined in the Jefferson County Code of Ordinances) may be allowed in the M-3 Districts: Outdoor recycling facilities located within one-half mile of residentially used or zoned property shall provide information on sound levels and hours of operation. The Board of Zoning Adjustment may establish conditions necessary to protect nearby residents and the operation shall be conducted so as not to create a nuisance or cause undue noise, vibration, dust, odor, or light to adjacent properties. The premises shall be kept in a neat and clean condition at all times. No loose paper or debris shall be allowed on the site. Any smoldering flame or spontaneous combustion shall be immediately extinguished.

**WHEREAS**, the Louisville Metro Planning Commission finds, 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**, the Louisville Metro Planning Commission further finds vehicles will be cleaned in an area near the office portion of the existing building. The applicant is providing an 8' solid fence to screen the site from the adjacent property. Due to the size of the parcel the applicant is requesting relief from the requirement indicating recycling work and storage be 100' from the exterior property lines and that landscaping be placed in those similar areas.



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**RESOLVED**, that the Louisville Metro Planning Commission does hereby **APPROVE** Case No. 16ZONE1021, a conditional use permit for a solid waste management facility for outdoor recycling including full relief from Sections E.B and E.C of the Conditional Use Permit Regulations for sites related to this type of use based on the staff report and the testimony heard today.

**The vote was as follows:**

**YES: Commissioners Blake, Brown, Howard, Jarboe, Lewis, Peterson, Smith and Tomes**

**NOT PRESENT AND NOT VOTING: Commissioners Kirchdorfer and Turner**

**Development Plan**

On a motion by Commissioner Brown, seconded by Commissioner Tomes, the following resolution 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 are not required; 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. Appropriate landscape buffering and screening will be provided to screen adjacent properties and roadways. Buildings and parking lots will meet all required setbacks; and

**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.

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**RESOLVED**, that the Louisville Metro Planning Commission does hereby **APPROVE** Case No. 16ZONE1021, the development plan and binding elements found on pages 13 and 14 of the staff report, as well as binding element number 10 to read: A center turn lane shall be provided by the applicant if the site generates at least 33 trips within a one hour period between the hours of 4:00 p.m. and 6:00 p.m. Any vehicles entering or exiting the site shall constitute one trip and shall be counted by Metro staff or a certified traffic counter. Construction plans, bond and permit shall be required if a turn lane is warranted and plans shall be submitted to Public Works for review within 60 days' notice from Public Works. Road improvements shall be complete within 240 days of written notice. Additional binding element number 11 will read as follows: The hours of operation shall be between 8:00 a.m. and 5:00 p.m. Monday through Friday and 8:00 a.m. to 2:00 p.m. on Saturday. A condition will be added on the development plan for the applicant to revise the location of the fence and the landscape buffer area along the Grade Lane frontage of the site so the landscaping will be provided between the right-of-way line and the 8 foot high solid metal fence based on the staff report and testimony heard today.

**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. The development shall not exceed 23,840 square feet of gross floor area.
3. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.
4. 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.
5. Before any permit (including but not limited to building, parking lot, change of use, site disturbance, alteration permit or demolition permit) is requested:

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- a. The development plan must receive full construction approval from Develop Louisville, Louisville Metro Public Works and the Metropolitan Sewer District.
  - b. 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. Since there is no new construction, landscaping along the site frontage of Grade Lane shall be installed no later than December 15, 2016.
  - c. A minor plat or legal instrument shall be recorded consolidating the property into one lot. A copy of the recorded instrument shall be submitted to the Division of Planning and Design Services; transmittal of the approved plans to the office responsible for permit issuance will occur only after receipt of said instrument.
6. 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.
  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.
  8. 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 of Zoning Adjustment and/or a committee of the Planning Commission.
  9. The Conditional Use Permit shall be "exercised" as described in KRS 100.237 within two years of the Planning Commissions' vote on this case. If the Conditional Use Permit is not so exercised, the site shall not be used

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for an Outdoor Recycling facility without further review and approval by the Board of Zoning Adjustment.

10. A center turn lane shall be provided by the applicant if the site generates at least 33 trips within a one hour period between the hours of 4:00 p.m. and 6:00 p.m. Any vehicles entering or exiting the site shall constitute one trip and shall be counted by Metro staff or a certified traffic counter. Construction plans, bond and permit shall be required if a turn lane is warranted and plans shall be submitted to Public Works for review within 60 days' notice from Public Works. Road improvements shall be complete within 240 days of written notice.
  
11. The hours of operation shall be between 8:00 a.m. and 5:00 p.m. Monday through Friday and 8:00 a.m. to 2:00 p.m. on Saturday. A condition will be added on the development plan for the applicant to revise the location of the fence and the landscape buffer area along the Grade Lane frontage of the site so the landscaping will be provided between the right-of-way line and the 8 foot high solid metal fence.

**The vote was as follows:**

**YES: Commissioners Blake, Brown, Howard, Jarboe, Lewis, Peterson, Smith and Tomes**

**NOT PRESENT AND NOT VOTING: Commissioners Kirchdorfer and Turner**

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**STANDING COMMITTEE REPORTS**

**Land Development and Transportation Committee**

No report given.

**Site Inspection Committee**

No report given.

**Planning Committee**

No report given.

**Development Review Committee**

No report given.

**Policy and Procedures Committee**

No report given.

**CHAIRPERSON/DIRECTOR'S REPORT**

No report given.

**ADJOURNMENT**

The meeting adjourned at approximately 3:25 p.m.

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**Chair**

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**Planning Director**