

**Planning Commission Minutes
July 20, 2017**

Public Hearing

Case No. 14ZONE1058

Request: Change in zoning from R-4 to OR-1 with a Waiver on approximately 0.97 acres.
Project Name: EK Offices
Location: 4011 Fern Valley Road
Owner: Esther Baldeon and Krlos Hidalgo
Applicant: Esther Baldeon and Krlos Hidalgo
Representative: Kathy Matheny - Cardinal Planning & Design, Inc.
Jurisdiction: Louisville Metro
Council District: 2 – Barbara Shanklin
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.)

An audio/visual recording of the Planning Commission public 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.

Agency Testimony:

01:49:26 Laura Mattingly presented the case on behalf of Julia Williams and showed a Power Point presentation (see staff report and recording for detailed presentation.)

The following spoke in favor of the request:

Kathryn Matheny, Cardinal Planning & Design Inc., 9009 Preston Highway, Louisville, KY 40219

Esther Baldeon, 6417 Saddleview Court, Louisville, KY 40228

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Summary of testimony of those in favor of the request:

01:54:23 Kathy Matheny, the applicant's representative, presented the applicant's case and showed a Power Point presentation (see recording for detailed presentation.)

The following spoke in opposition to the request:

Jared Dearing, Councilwoman Barbara Shanklin's office

Sharra Hannon, 4014 Dellafay Drive, Louisville, KY 40219

Charlene Welch, 4504 Norene Lane, Louisville, KY 40219

Clarinda Carruthers (sp), 5618 Reflection Drive, Louisville, KY 40218

Summary of testimony of those in opposition to the request:

02:01:40 Jared Dearing, a spokesperson for Councilwoman Barbara Shanklin, expressed concerns about designating this property as Commercial, since there is much traditional residential here. There are concerns that this development is not a compatible or neighborhood-serving use.

02:04:29 Sharra Hannon, who lives directly behind this property, first said she is concerned because a large tree on the property is growing into her garage and is moving it off its foundation. She now has to replace the garage. She is opposed to a Commercial use in a Single-Family Residential neighborhood. She is concerned about increased traffic.

The following spoke neither for nor against the request ("Other"):

No one spoke.

Rebuttal

02:07:10 Ms. Matheny said today was the first time the applicant had heard any opposition, and presented the rebuttal (see recording for detailed presentation.)

02:08:52 Esther Baldeon, the applicant, discussed the purchase of, and the history of, the property. It will be used for her office.

02:11:10 In response to a question from Commissioner Jarboe, Ms. Matheny discussed what would be done about buffering the parking lot from the neighbors.

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02:13:09 In response to a question from Commissioner Carlson, Ms. Baldeon answered questions about business hours, how many clients, etc.

02:14:54 Ms. Baldeon answered questions from Commissioner Lindsey about whether she had plans to expand her business or rent to other commercial tenants.

02:16:50 Mr. Dearing asked about the property deterioration. Ms. Matheny said the applicant purchased the property in a poor state, she did not let it deteriorate. It has been vacant for the last two years.

02:18:20 Ms. Hannon asked how long the applicant planned to use it for her business, before the property gets sold to someone else.

Ms. Matheny addressed zoning-based use and hours of operation. (Activated at 02:20:07)

02:20:30 Clarinda Carruthers (sp) asked what will be done to take care of the safety of the children in the neighborhood. She was also concerned about impact on the neighbors. Ms. Matheny said this is not going to be a busy use. There are no traffic issues.

Deliberation:

02:23:30 Commissioners' deliberation.

Zoning

02:30:42 On a motion by Commissioner Brown, seconded by Commissioner Tomes, the following resolution was adopted:

WHEREAS, the Louisville Metro Planning Commission finds, based upon a review of the Planning Commission Record, public hearing testimony and exhibits submitted, the application to rezone the subject property at 4011 Fern Valley Road from R-4 to OR-1, is appropriate and conforms with the intent and policies of Guidelines 1 and 2 because the site's use is a reuse of an existing structure on a large lot with proper buffering and the use is compatible with the changing area and major arterial road on which the property sits; and

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WHEREAS, the Commissions further finds that in Cornerstone 2020 Comprehensive Land Use Plan, the property is in the Neighborhood Form District, a designation given to it in the core graphics adopted in June of 2000, however the property is located on a major arterial and is adjacent to Suburban Workplace across the street, the Preston Highway Suburban Marketplace Corridor Form District is a block and the half to the west, and the Jefferson Boulevard connector has been constructed since 2000 and is located two major intersections to the east, thus making this section of Fern Valley Road located between several centers of activities which is appropriate and compatible with this low intensity office use; and

WHEREAS, the Commissions further finds that the application allows the existing structure to remain on a large lot and operate as an office which will serve the area, capture passing by traffic, is buffered with the existing mature trees and proposed new privacy fences thus minimizing nuisances to the existing neighbors, and that the use should have minimal effect on the area, thus making the requested zoning change appropriate under KRS 100.213 and consistent with the Guidelines and Policies of the current Comprehensive Plan; and

WHEREAS, the Commissions further finds that the proposed use complies with the intent of Cornerstone 2020 Guideline 2, Policy 2 which states that mixed uses in the Neighborhood section are appropriate in "Older or redeveloping areas where non-residential use does not create nuisance and is compatible with the surroundings" in that this is an older area and an older structure in a large lot neighborhood pattern and the proposed office use in an existing residential structure is compatible with this mixed use area and will not create any nuisances in that it is a daytime use. Further the Commission finds it is an appropriate neighborhood use because it provides services in a convenient location which reduces commuting time and related air pollution, it is in an area served by sidewalks and although not directly on a TARC transit route, it is a well travelled and easily accessible street, thus making the use consistent with Guideline 2, Policies 2, 4, 7, 8 and 16; and

WHEREAS, the Commission further finds that the application to rezone this tract to OR-1 is compatible with the area because the proposal uses an existing structure on a large lot compatible with the other lots on the block and there will no discernible changes to the appearance of the neighborhood. The Commission further finds the issue of appropriate size and shape of the structure, setbacks, transitions and visual impact to the neighborhood are basically non-existent because this home is existing and the streetscape will remain the same, the office use will create minimal additional traffic in the area, an office use creates no odors or other offensive nuisances, and the parking is

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configured in such a manner to prevent light intrusion into the few neighboring homeowner's yards as well as being screened by existing landscaping and proposed rear and side fencing and that existing vegetation and a new privacy fence provides the necessary buffering of this use from the neighboring homes thus protecting neighboring landowners' privacy. For all these reasons, the Commission finds the proposal is consistent with Guideline 3, Policies 1, 2, 4, 5, 6, 7, 8, 9, 22 and 23; and

WHEREAS, the Commission further finds that the application to rezone this tract to OR-1 Zoning complies with the Open Space requirements because no Open Space is required, however the site has large open green areas because of its size relative to the developed area making the use compliant with the intent of Guideline 4; and

WHEREAS, the Commission further finds that the application to rezone this tract to OR-1 zoning complies with the intent and the policies of Guideline 5 because neither the subject property nor the area has been identified as a natural or historic resource requiring preservation. Additionally, there are no special districts or soil and slope issues facing this proposal; and

WHEREAS, the Commission further finds that the application to rezone a this tract to OR-1 zoning promotes and is consistent with the policies of Guideline 6 because the proposal is an investment in an older neighborhood and is located in an area served by existing public infrastructure and utility connections of water, and electric services thus reducing the cost of land development and preventing sprawl as desired by Guideline 6, Policy 10; and

WHEREAS, the Commission further finds that the application to rezone this Tract OR-1 provides adequate parking and connections and the site is in an area with access to mass transit a few blocks away which promotes pedestrian and bike travel all being factors in compliance Guideline 7, Policy 10; and

WHEREAS, the Commission further finds that the application to rezone this tract to OR-1 zoning complies with the intent and the policies of Guidelines 8 and 9 because the Development Plan is consistent with the requirements of the Kentucky Department of Transportation and one existing entrance is being closed per their request. Further, the Commission finds the proposal does not impact any environmentally sensitive areas, scenic corridors or streetscape issues; and

WHEREAS, the Commission further finds that the application to rezone this tract to OR-1 zoning complies with the intent and the policies of Guidelines 10 and 11

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because appropriate construction practices will be employed in constructing the buildings and driving areas to protect water quality by the use of effective sediment and erosion practices in accordance with applicable regulations and by using best management practices. Additionally, the Commission finds no portion of the property to be developed is designated as floodplain or a blue line stream; and

WHEREAS, the Commission further finds that the application to rezone this tract to OR-1 zoning complies with the intent and the policies of Guideline 12 because the proposal is in a developed area which works to decrease vehicular miles traveled between home and trips to neighboring businesses; and

WHEREAS, the Commission further finds that the application to rezone this tract to OR-1 zoning complies with the intent of Guideline 13 by maintaining the existing residential look of the area and complying with the required landscaping buffers; and

WHEREAS, the Commission further finds that the application to rezone this tract to OR-1 zoning complies with the intent and the policies of Guideline 14 because all necessary utilities are available; and

WHEREAS, based on all of the foregoing, the Commission finds that the proposal to rezone this tract to OR-1 zoning is compatible with this Neighborhood Form District and in conformance with all applicable guidelines of the Cornerstone 2020 Comprehensive Plan and is consistent with KRS Chapter 100; 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 R-4 to OR-1 on property described in the attached legal description be **APPROVED**.

The vote was as follows:

YES: Commissioners Brown, Lindsey, Ferguson, Tomes, Carlson, and Jarboe.

NO: No one.

NOT PRESENT: Commissioners Lewis, Smith, Peterson, and Howard.

ABSTAINING: No one.

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Waiver from Chapter 10.2.4 to permit the encroachment of an existing building into an LBA along the west property line, AND a District Development Plan

02:21:22 On a motion by Commissioner Brown, seconded by Commissioner Tomes, the following resolution was adopted:

(Waiver) WHEREAS, the Louisville Metro Planning Commission finds that the waiver will not adversely affect adjacent property owners since the encroachments into the LBA are existing and landscape requirements will still be met; 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 areas is to create suitable transitions where varying forms of development adjoin, to minimize the negative impacts resulting from adjoining incompatible land uses, to decrease storm water runoff volumes and velocities associated with impervious surfaces, and to filter airborne and waterborne pollutants. Encroachments into the LBA are existing and landscape requirements will still be met; 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 since encroachments into the LBA are existing and landscape requirements will still be met; and

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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 or would create an unnecessary hardship on the applicant since encroachments into the LBA are existing and landscape requirements will still be met; and

(District Development Plan) WHEREAS, the Commission further finds that there do not appear to be any environmental constraints or historic resources on the subject site. The site has been identified to have hydric soils which will not impact the development. Tree canopy requirements of the Land Development Code will be provided on the subject site. 40% of the existing trees on the site are being preserved in TCPA; and

WHEREAS, the Commission further finds that 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 Commission further finds that there are no open space requirements pertinent to the current proposal; and

WHEREAS, the Commission further finds that 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 Commission further finds that 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 Commission further finds that, based on the staff report, the applicant's findings of fact, and the evidence and testimony presented today, that all of the applicable guidelines of Cornerstone 2020 and the Land Development Code are being met; now, therefore be it

RESOLVED, the Louisville Metro Planning Commission does hereby **APPROVE** the requested Waiver from Chapter 10.2.4 to permit the encroachment of an existing building into an LBA along the west property line **AND** the requested District Development Plan, **SUBJECT** to the following binding elements:

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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) is requested:
 - a. The development plan must receive full construction approval from Develop Louisville, Louisville Metro Public Works and the Metropolitan Sewer District.
 - b. Encroachment permits must be obtained from the Kentucky Department of Transportation, Bureau of Highways.
 - 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.
 - d. A Tree Preservation Plan in accordance with Chapter 10 of the LDC shall be reviewed and approved prior to obtaining approval for site disturbance.
5. A certificate of occupancy must be received from the appropriate code enforcement department prior to occupancy of the structure or land for the

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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.

6. 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.

7. The property owner shall provide a cross over access easement if the property to the east and west are ever developed for a nonresidential use. A copy of the signed easement agreement shall be provided to Planning Commission staff upon request.

The vote was as follows:

YES: Commissioners Brown, Lindsey, Ferguson, Tomes, Carlson, and Jarboe.

NO: No one.

NOT PRESENT: Commissioners Lewis, Smith, Peterson, and Howard.

ABSTAINING: No one.