

PLANNING COMMISSION MINUTES
January 5, 2023

PUBLIC HEARING

CASE NO. 21-ZONE-0105

Request:	Change in zoning from C-1 to C-2, with Conditional Use Permit for outdoor storage, Detailed District Development Plan with Binding Elements, Variances and Waivers
Project Name:	Second Nature Lawn Care
Location:	7411 St. Andrews Church Road
Owner:	LNB Properties LLC
Applicant:	LNB Properties LLC
Representative:	Frost Brown Todd
Jurisdiction:	Louisville Metro
Council District:	25 - Amy Holton Stewart
Case Manager:	Dante St. Germain, AICP, Planner II

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:

00:27:48 Dante St. Germain presented the case, showed a Power Point presentation, and responded to questions from the Commissioners. Discussion included paving of the driveway, and striping parking spaces (see staff report and recording for detailed presentation.)

The following spoke in support of the request:

Tanner Nichols, Frost Brown Todd, 400 West Market, Louisville, KY 40207

Jeff Ruzanka, 7411 St. Andrews Church Road, Louisville, KY 40214

Summary of testimony of those in support:

00:37:08 Tanner Nichols, the applicant's representative, gave a brief history of the site and presented the applicant's case, which included a Power Point presentation (see recording for detailed presentation.)

PLANNING COMMISSION MINUTES
January 5, 2023

PUBLIC HEARING

CASE NO. 21-ZONE-0105

00:42:58 Commissioner Carlson and Mr. Nichols discussed what would be stored in the covered storage area (mulch and landscaping materials); concerns from neighbors about auto repair work, which is permitted in a C-2 zone; no power equipment will be operated between certain hours (wood chippers, etc.); Binding element #1 was discussed, which states that "The development shall be in accordance with the approved district development plan". The development plan states that this is a lawn care business. Therefore, any other use besides a lawn care business would need to come back before the Planning Commission for review.

00:47:51 Commissioner Carlson and Mr. Nichols discussed whether the applicant is licensed to apply pesticides and fertilizers (he is); and whether those substances will be stored on-site. Brian Davis, Assistant Director of Louisville Metro Planning & Design Services, listed the threshold quantities needed to be considered a commercial storage facility. Commissioner Carlson expressed concern about having fertilizers and pesticides next to residential (see recording for detailed discussions.)

01:05:58 Ms. St. Germain discussed how hazardous materials and uses are defined and regulated in the Land Development Code (See recording for detailed discussion.)

01:09:49 Jeff Ruzanka, the applicant, said the pesticides and herbicides he uses are not flammable. He said that part of his license requirement is that the Kentucky Agriculture Department visits his location bi-annually to inspect and determine how he is storing the materials, how much he is storing, and disposal. See recording for detailed discussion.

01:13:37 Laura Ferguson, legal counsel for the Planning Commission, discussed her concerns about enforcement of a binding element related to this (see recording.)

The following spoke in opposition to the request:

No one spoke.

Rebuttal

01:17:30 Mr. Nichols delivered rebuttal (see recording.)

Deliberations:

01:18:05 Commissioners' deliberation.

PLANNING COMMISSION MINUTES
January 5, 2023

PUBLIC HEARING

CASE NO. 21-ZONE-0105

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

Change in zoning from C-1 Commercial to C-2 Commercial

01:21:48 On a motion by Commissioner Mims, seconded by Commissioner Howard, the following resolution, based on the Standard of Review and Staff Analysis and evidence and testimony heard today, was adopted:

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Community Form: Goal 1 because the site is already zoned for commercial use and commercial uses are located nearby; the site is located on St. Andrews Church Road, a minor arterial at this location; the proposal is not for industrial zoning; the proposed zoning district would not permit hazardous uses. Uses with air, noise and light emissions will have to comply with LMCO and LDC restrictions; the proposed zoning district would not permit uses with noxious odors, particulates and emissions; the site is located on St. Andrews Church Road, a minor arterial at this location; the applicant will not utilize noise-generating equipment in the early hours and the proposed zoning district would not permit industries that handle hazardous or flammable materials or are similar to junkyards, landfills or quarries; and

WHEREAS, the Commission further finds that the proposal meets Community Form: Goal 2 because the site is located near existing commercial uses and is near an existing activity center. The design and density are compatible with the desired form, adjacent uses, and existing and planned infrastructure; the site has appropriate access and connectivity. St. Andrews Church Road is a minor arterial at this location; the site is located near an existing activity center and other commercial uses are located nearby; the proposed zoning district would encourage more compact development pattern in an existing activity center; the proposed zoning district would permit a mixture of compatible land uses in an existing activity center; the proposal would permit mixed commercial and residential uses; the proposal would permit the use of an existing house as residential and an existing pole barn as commercial; the proposal does not include any underutilized parking lots; and the placement, design and scale of development is compatible with nearby residences; and

WHEREAS, the Commission further finds that the proposal meets Community Form: Goal 3 because no natural features are evident on the site; no wet or highly permeable soils, or severe, steep or unstable slopes are evident on the site; the site is not located in the Ohio River Corridor; and the site is not located in a flood-prone area; and

PLANNING COMMISSION MINUTES
January 5, 2023

PUBLIC HEARING

CASE NO. 21-ZONE-0105

WHEREAS, the Commission further finds that the proposal meets Community Form: Goal 4 because no historic assets are evident on the site; and no distinctive cultural features are evident on the site; and

WHEREAS, the Commission further finds that the proposal meets Mobility: Goal 1 because the site is located near an existing activity center; and

WHEREAS, the Commission further finds that the proposal meets Mobility: Goal 2 because access to the site is via St. Andrews Church Road, a minor arterial at this location; and

WHEREAS, the Commission further finds that the proposal meets Mobility: Goal 3 because the proposal would permit more regional- serving uses compared with the existing C-1 district; the site is easily accessible by car. It is not accessible by bicycle, transit, pedestrians or people with disabilities; the proposed zoning district would permit higher density mixed-use developments in an existing activity center; and Transportation Planning has approved the proposal; and

WHEREAS, the Commission further finds that the proposal meets Community Facilities: Goal 2 because the relevant utilities have approved the proposal; Louisville Water Company has approved the proposal; and MSD has approved the proposal; and

WHEREAS, the Commission further finds that the proposal meets Economic Development: Goal 1 because the proposal is not for industrial zoning; the site is located on a minor arterial road; the proposal is not for industrial zoning. The site is not located near the airport or the Ohio River; and the proposal is not for industrial zoning; and

WHEREAS, the Commission further finds that the proposal meets Livability: Goal 1 because no karst terrain is evident on the site; and the site is not located in the regulatory floodplain; and

WHEREAS, the Commission further finds that the proposal meets Housing: Goal 1 because the proposed zoning district would allow more regional-serving uses compared with the current C-1 zoning district, and

WHEREAS, the Commission further finds that the proposal meets Housing: Goal 2 because the proposal would permit inter-generational mixed-income and mixed-use development; and the proposal is not for housing; and

PLANNING COMMISSION MINUTES
January 5, 2023

PUBLIC HEARING

CASE NO. 21-ZONE-0105

WHEREAS, the Commission further finds that the proposal meets Housing: Goal 3 because no existing residents will be displaced by the proposal; and the proposed zoning district would permit innovative methods of housing; 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 C-1 Commercial to C-2 Commercial on property described in the attached legal description be **APPROVED**.

The vote was as follows:

YES: Commissioners Fischer, Mims, Pennix, Brown, Howard, Cheek, and Lewis.

NO: Commissioner Carlson.

ABSENT: Commissioners Sistrunk and Clare.

Conditional Use Permit for a contractor's yard with outdoor storage in the C-2 zoning district (4.2.51) (21-CUP-0131)

01:23:14 On a motion by Commissioner Mims, seconded by Commissioner Howard, the following resolution, based on the Standard of Review and Staff Analysis and evidence and testimony heard today, was adopted:

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets all applicable policies of the Comprehensive Plan. The Comprehensive Plan requires adequate buffering and transitions between uses which are incompatible, and buffering will be provided on the site; and

WHEREAS, the Commission further finds that the proposal is compatible with surrounding land uses and the general character of the area, as the proposal is for outdoor storage in conjunction with a contractor's yard. The general character of the neighborhood is residential. The applicant will provide appropriate screening and buffering between the outdoor storage and the adjacent residential uses; and

WHEREAS, the Commission further finds that the subject property is served by existing public utilities and facilities. Transportation Planning and MSD have reviewed and approved the proposal; and

WHEREAS, the Commission further finds that:

PLANNING COMMISSION MINUTES
January 5, 2023

PUBLIC HEARING

CASE NO. 21-ZONE-0105

1. Does the proposal comply with the following specific standards required to obtain the conditional use permit requested?

Storage Yard and Contractor's Yard may be allowed in the C-2, M-1 and C-M Districts upon the granting of a Conditional Use Permit and compliance with the listed requirements, except that a C.U.P. shall not be permitted within the Traditional Neighborhood and Traditional Marketplace Corridor Form Districts.

- A. Outdoor storage areas prohibited within form district transition zone.

STAFF: No form district transition zones are located on the site.

- B. Stacked materials and equipment shall not exceed a height of five feet.

STAFF: The applicant shall comply with this requirement.

- C. Outdoor storage areas shall be screened from adjacent streets and properties.

STAFF: The applicant proposes a solid 8' privacy fence to screen the outdoor storage.

- D. Storage of combustible materials shall conform to the requirements of NFPA Pamphlet 30 (information on NFPA pamphlet 30 may be obtained from local fire department).

STAFF: The applicant shall comply with this requirement.

Now, therefore be it

RESOLVED, the Louisville Metro Planning Commission does hereby **APPROVE** the requested Conditional Use Permit for a contractor's yard with outdoor storage in the C-2 zoning district (4.2.51) (21-CUP-0131), **SUBJECT** to the following Conditions of Approval:

Condition of Approval:

1. The storage of pesticides, herbicides and other items regulated by the Kentucky Department of Agriculture shall comply with the Kentucky Department of Agriculture requirements and that inspections be maintained on file.

PLANNING COMMISSION MINUTES
January 5, 2023

PUBLIC HEARING

CASE NO. 21-ZONE-0105

The vote was as follows:

YES: Commissioners Fischer, Mims, Pennix, Cheek, Brown, Howard, Carlson, and Lewis.

ABSENT: Commissioners Sistrunk and Clare.

Variance from Table 5.3.2 to permit structures and VUA to encroach into the required side and rear yard setbacks (non-loading) (east property line required 30', requested 4.5', variance of 25.5') (south property line required 30', requested 0', variance of 30') (21-VARIANCE-0118)

01:26:27 On a motion by Commissioner Mims, seconded by Commissioner Howard, the following resolution, based on the Standard of Review and Staff Analysis and evidence and testimony heard today, was adopted:

WHEREAS, the Louisville Metro Planning Commission finds that the requested variance will not adversely affect public health, safety or welfare as the necessary buffering and transitions will be provided; and

WHEREAS, the Commission further finds that the requested variance will not alter the essential character of the general vicinity as the structure encroaching into the eastern setback was already constructed as a storage unit for seasonal vehicles and already exists. The concrete pad already exists in the rear. The storage canopy will help to screen the concrete pad; and

WHEREAS, the Commission further finds that the requested variance will not cause a hazard or nuisance to the public as the affected structures will have to comply with all building codes, including fire codes; and

WHEREAS, the Commission further finds that the requested variance will not allow an unreasonable circumvention of zoning regulations as the necessary buffers and transitions will be provided; now, therefore be it

RESOLVED, the Louisville Metro Planning Commission does hereby **APPROVE** the requested Variance from Table 5.3.2 to permit structures and VUA to encroach into the required side and rear yard setbacks (non-loading) (east property line required 30',

PLANNING COMMISSION MINUTES
January 5, 2023

PUBLIC HEARING

CASE NO. 21-ZONE-0105

requested 4.5', variance of 25.5') (south property line required 30', requested 0', variance of 30') (21-VARIANCE-0118).

The vote was as follows:

YES: Commissioners Fischer, Mims, Pennix, Cheek, Brown, Howard, Carlson, and Lewis.

ABSENT: Commissioners Sistrunk and Clare.

Waiver from 10.2.4.B.1 to permit encroachment into the required property perimeter Landscape Buffer Area (LBA) on the east and south property lines, and to allow a drive aisle to encroach into the required LBA on the west property line and waive plantings along the west property line where the encroachment occurs (21-WAIVER-0111)

01:27:34 On a motion by Commissioner Mims, seconded by Commissioner Howard, the following resolution, based on the Standard of Review and Staff Analysis and evidence and testimony heard today, was adopted:

WHEREAS, the Louisville Metro Planning Commission finds that the waiver would not adversely affect adjacent property owners, as landscape buffer areas will be provided between the non-residential use on the site and the residential uses on adjacent sites; and

WHEREAS, the Commission further finds that the waiver will not violate the Comprehensive Plan as the Comprehensive Plan encourages mitigation of impacts using buffers. Buffers can consist of screening, and should address issues such as outdoor lighting, lights from automobiles, illuminated signs, loud noise, odors, smoke, automobile exhaust or other noxious smells, dust and dirt, litter, junk, outdoor storage, and visual nuisances. Buffers are now proposed to protect adjoining properties; 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. The pole barn on the site already exists and was originally proposed to be used to store seasonal vehicles; now, therefore be it

RESOLVED, the Louisville Metro Planning Commission does hereby **APPROVE** the requested Waiver from 10.2.4.B.1 to permit encroachment into the required property

PLANNING COMMISSION MINUTES
January 5, 2023

PUBLIC HEARING

CASE NO. 21-ZONE-0105

perimeter Landscape Buffer Area (LBA) on the east and south property lines, and to allow a drive aisle to encroach into the required LBA on the west property line and waive plantings along the west property line where the encroachment occurs (21-WAIVER-0111).

The vote was as follows:

YES: Commissioners Fischer, Mims, Pennix, Cheek, Brown, Howard, Carlson, and Lewis.

ABSENT: Commissioners Sistrunk and Clare.

Detailed District Development Plan with Binding Elements

01:28:57 On a motion by Commissioner Mims, seconded by Commissioner Howard, the following resolution, based on the Standard of Review and Staff Analysis and evidence and testimony heard today, was adopted:

WHEREAS, the Louisville Metro Planning Commission finds that no natural resources appear to exist on the site. Tree canopy has already been removed. New tree canopy will be provided; 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 no open space requirements are pertinent to the request; 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 is in compliance with existing and planned future development in the area. The proposal would permit a contractor's yard in a largely residential neighborhood. Appropriate buffers and transitions will be provided; and

PLANNING COMMISSION MINUTES
January 5, 2023

PUBLIC HEARING

CASE NO. 21-ZONE-0105

WHEREAS the Commission further finds that the development plan conforms to applicable requirements of the Land Development Code and Plan 2040; now, therefore be it

RESOLVED, the Louisville Metro Planning Commission does hereby **APPROVE** the requested Detailed District Development Plan, **SUBJECT** to the following binding elements:

1. The development shall be in accordance with the approved district development plan, all applicable sections of the Land Development Code (LDC) and agreed upon binding elements unless amended pursuant to the Land Development Code. Any changes/additions/alterations of any binding element(s) shall be submitted to the Planning Commission or the Planning Commission's designee for review and approval; any changes/additions/alterations not so referred shall not be valid.
2. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.
3. Construction fencing shall be erected when off-site trees or tree canopy exists within 3' of a common property line. Fencing shall be in place prior to any grading or construction to protect the existing root systems from compaction. The fencing shall enclose the entire area beneath the tree canopy and shall remain in place until all construction is completed. No parking, material storage or construction activities are permitted within the protected area.
4. Before any permit (including but not limited to building, parking lot, change of use, site disturbance, alteration permit or demolition permit) is requested:
 - a. The development plan must receive full construction approval from Construction Review, 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 certificate of occupancy. Such plan shall be implemented prior to occupancy of the site and shall

PLANNING COMMISSION MINUTES
January 5, 2023

PUBLIC HEARING

CASE NO. 21-ZONE-0105

be maintained thereafter. The plan shall include, at a minimum, the landscaping shown at the Planning Commission public hearing on January 5, 2023 and located in the case file as Exhibit 1.

- c. 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. There shall be no outdoor music (live, piped, radio or amplified) or outdoor entertainment or outdoor PA system audible beyond the property line.
6. No idling of trucks shall take place within 200 feet of residential structures. No overnight idling of trucks shall be permitted on-site.
7. All outdoor storage must be screened from adjoining properties and from the right-of-way.
8. 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.
9. 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.
10. No power equipment that will cause a noise disturbance will be run between the hours of 10 p.m. and 6 a.m.

The vote was as follows:

PLANNING COMMISSION MINUTES
January 5, 2023

PUBLIC HEARING

CASE NO. 21-ZONE-0105

YES: Commissioners Fischer, Mims, Pennix, Cheek, Brown, Howard, Carlson, and Lewis.

ABSENT: Commissioners Sistrunk and Clare.