

PLANNING COMMISSION MINUTES
February 20, 2020

PUBLIC HEARING

CASE NO. 19-ZONE-0071

Request: Change in zoning from R-6 to C-1 with a Detailed Plan and Waiver
Project Name: Washington House
Location: 939 East Washington Street
Owner: Nichols Ventures LLC
Applicant: Nichols Ventures LLC
Representative: Paul Whitty - Bardenwerper, Talbott & Roberts PLLC
Jurisdiction: Louisville Metro
Council District: 4 – Barbara Sexton Smith

Case Manager: Joel P. Dock, 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:

00:19:00 Joel Dock presented the case and showed a Power Point presentation (see staff report and recording for detailed presentation.)

The following spoke in support of this request:

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

Andrew Nichols, 103 North Campbell Street, Louisville, KY 40206

Summary of testimony of those in support:

00:22:27 Paul Whitty, the applicant's representative, presented the applicant's case and showed a Power Point presentation (see recording for detailed presentation.)

00:25:03 Andrew Nichols explained why he wants to do this project (see recording.) He added that he is also a resident of the neighborhood.

PLANNING COMMISSION MINUTES
February 20, 2020

PUBLIC HEARING

CASE NO. 19-ZONE-0071

00:26:50 Mr. Whitty resumed his presentation. He noted that there will be no exterior alteration, and the roof has been restored.

00:30:45 In response to a question from Commissioner Mims, Mr. Whitty said this has gone through the Butchertown Preservation District for the purpose of restoring the roof. The applicant has a Certificate of Appropriateness. There was no hearing for this entire proposal because there is no exterior alteration planned.

00:31:14 Mr. Dock referenced the Butchertown Preservation District and said that binding element #2D requires that any exterior modifications that are not already approved do require a Certificate of Appropriateness. It is required anyway, but the binding element further solidifies that requirement to make sure this is addressed prior to issuance of a building permit.

The following spoke in opposition to this request:

No one spoke.

00:31:43 Commissioners' deliberation.

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

00:33:45 On a motion by Commissioner Howard, seconded by Commissioner Lewis, the following resolution, based on the Plan 2040 Staff Analysis, the applicant's justification, and evidence and testimony heard today, was adopted:

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the intents of Land Use & Development Goal 1: Community Form because the proposed district would result in a slight expansion into an existing residential area. Despite this expansion, it would not appear that the neighborhood would experience a significant loss of housing or that traffic would be increased beyond an acceptable limit as the site is located in a walkable urban neighborhood and commercial districts are located on opposite corners and the site is one-block removed from a major arterial roadway with TARC service; the proposed district is in a walkable urban neighborhood

PLANNING COMMISSION MINUTES
February 20, 2020

PUBLIC HEARING

CASE NO. 19-ZONE-0071

one-block removed from a major arterial served by public transit; adequate infrastructure to serve the use appears to be available; the proposed district is in a walkable urban neighborhood. The site is one-block removed from a major arterial roadway with TARC service. Traffic would not appear to be increased beyond limits appropriate for the site based on neighborhood conditions; and noise would not appear to be increased beyond limits appropriate for the site based on neighborhood conditions. The proposed district provides neighborhood goods and services; and

WHEREAS, the Commission further finds that the proposal meets the intents of Land Use & Development Goal 2: Community Form because the proposed district is appropriately located and maintains consistency with the design and intensity of nearby uses and the desired pattern of development. The proposed district is in a walkable urban neighborhood. The site is one-block removed from a major arterial roadway with TARC service. The density and intensity are appropriate based on these conditions; the proposed non-residential development occurs at an appropriate location within a walkable urban neighborhood served by public transit; sufficient population is available to support a variety of land uses; the proposed district encourages a compact development pattern that results in efficient land use and cost-effective infrastructure investment of mixed-uses within an urban neighborhood; the proposed districts encourages a mixture of compatible land uses in order to reduce traffic congestion by requiring fewer trips, support and enhance alternative modes of travel, and encourage vitality and a sense of place as the proposed district is in a walkable urban neighborhood one-block removed from a major arterial served by public transit; the proposed district allows for residential and office uses above retail and other mixed-use multi-story retail buildings; and the proposal involves the rehabilitation of buildings that provide commercial, office and/or residential uses; and

WHEREAS, the Commission further finds that the proposal meets the intents of Land Use & Development Goal 3: Community Form because the subject site does not appear to be in a flood prone area as it is outside the 100-yr floodplain and existing development is present; and

WHEREAS, the Commission further finds that the proposal meets the intents of Land Use & Development Goal 4: Community Form because the subject site contains buildings, sites, or districts recognized as having historic or architectural value. A Certificate of Appropriateness is required for all exterior changes; and the subject site contains built features that contribute to the historic preservation district. A Certificate of Appropriateness is required for all exterior changes; and

WHEREAS, the Commission further finds that the proposal meets the intents of Land Use & Development Goal 1: Mobility because the proposed district is near employment

PLANNING COMMISSION MINUTES
February 20, 2020

PUBLIC HEARING

CASE NO. 19-ZONE-0071

and activity centers to support transit-oriented development. The proposed district is in a walkable urban neighborhood one-block removed from a major arterial served by public transit. The density and intensity are appropriate based on these conditions; and

WHEREAS, the Commission further finds that the proposal meets the intents of Land Use & Development Goal 2: Mobility because access to the subject site is through areas of mixed intensity; and

WHEREAS, the Commission further finds that the proposal meets the intents of Land Use & Development Goal 3: Mobility because The proposed district encourages a mix of complementary neighborhood serving businesses and services to encourage short trips easily made by walking or bicycling as the proposed district is in a walkable urban neighborhood one-block removed from a major arterial served by public transit; the proposed district improves mobility and reduces vehicle miles traveled by allowing a mix of uses within an urban neighborhood at an appropriate location; the site is located on within close proximity to public transit; thus, reducing automobile trips as a means of achieving air quality standards and providing transportation and housing choices; the proposed district encourages multiple modes of travel as the neighborhood is walkable, well served by transit to employment centers and other nearby amenities and links the site to the neighborhood via walks and bike lanes; and all transportation facilities made necessary by the development will be provided. Preliminary approval of the development plan has been received by the Transportation Planning division of Develop Louisville; and

WHEREAS, the Commission further finds that the proposal meets the intents of Land Use & Development Goal 2: Community Facilities because the site is served by existing utilities or capable of being served by public or private utility extensions; based on existing conditions, the site would appear to have an adequate supply of potable water and water for fire-fighting purposes; and MSD preliminary approval has been received. MSD will ensure that all developments have adequate means of sewage treatment and disposal to protect public health and to protect water quality; and

WHEREAS, the Commission further finds that the proposal meets the intents of Land Use & Development Goal 1: Economic Development because the proposed district is in a walkable urban neighborhood one-block removed from a major arterial served by public transit. Traffic would not be increased beyond an acceptable limit; and

WHEREAS, the Commission further finds that the proposal meets the intents of Land Use & Development Goal 1: Livability because MSD preliminary approval has been received. MSD will ensure that all developments Mitigate negative development impacts to the integrity of the regulatory floodplain; and

PLANNING COMMISSION MINUTES
February 20, 2020

PUBLIC HEARING

CASE NO. 19-ZONE-0071

WHEREAS, the Commission further finds that the proposal meets the intents of Land Use & Development Goal 2: Housing because the proposed zoning district allows for provisioning mixed use development which may include a residential component. The subject property is located at an appropriate location in a walkable urban neighborhood connected to multi-modal corridors; and

WHEREAS, the Commission further finds that the proposal meets the intents of Land Use & Development Goal 3: Housing because the proposed zoning district allows for provisioning mixed use development which may include a residential component. The proposal will result in the conversion of a single-family home to a supportive commercial district to create mixed-use communities; and

WHEREAS, the Commission further finds that the proposal meets the intents of Community Form – Goal 1 because this proposed zone change complies with all of the applicable goals, objectives and policies 7 and 9 which require higher density and intensity uses near major transportation facilities and transit corridors, employment centers, in or near activity centers and other areas where demand and adequate infrastructure exists because the site is accessible, has multiple transit routes, is near the central business district, as well as shopping and entertainment in the NULU corridor; there is a smooth transition between uses as the original purpose built commercial structure use will return and the area has a diversity of zoning classifications and uses including C-2, CN, CM and R-6; the exterior of the premises will remain unchanged and in its historical relationship to adjacent properties; a waiver is requested from the 5 foot landscape buffer area required by LDC 10.2.4 on the eastern boundary line because of the long term, pre-existing construction of the building since the turn of the century and well buffered parking in the rear; and

WHEREAS, the Commission further finds that the proposal meets the intents of Community Form – Goal 2 because this proposal complies with Policy 9 which encourages new developments and rehabilitation of buildings that provide commercial, office and/or residential uses because it will allow the rehabilitation of a beautiful and historic existing mixed-use building to be consistent with the residential use of the immediate area with easy access to mixed use corridors; forty thousand dollars has already been spent replacing the original metal roof with a new metal roof of the same style; and

WHEREAS, the Commission further finds that the proposal meets the intents of Community Form – Goal 2 because Policy 2 encourages preservation of cultural features including landscapes, natural elements, and built features as it enables the preservation and rehabilitation of a beautiful brick multi-use building built at the turn of

PLANNING COMMISSION MINUTES
February 20, 2020

PUBLIC HEARING

CASE NO. 19-ZONE-0071

the century; and its historic character and the associated yards will be maintained in its current form; and

WHEREAS, the Commission further finds that similarly this proposal complies with Policy 3 which encourages preservation and/or adaptive re-use of historic sites listed on or eligible for the National Register of Historic Places and/or recognized by the Louisville Metro Landmarks Commission or other national, state or local government historic preservation agencies as it is an adaptive reuse of a classic live/work building characteristic of the older neighborhoods of Louisville and located in a historic preservation district; and

WHEREAS, the Commission further finds that the proposal meets the intents of Mobility – Guideline 1 because Policy 4 encourages higher intensities within or near existing marketplace corridors and existing and future employment centers to support transit-oriented development and an efficient public transportation system which this proposal meets because it is within one block of bus lines and cyclists; and pedestrians can easily access the central business district as well as the Baxter Avenue corridor; and

WHEREAS, the Commission further finds that the proposal meets the intents of Goal 2 because Policy 4 requires avoidance of access to development through areas of significantly lower intensity or density development if such access would create significant nuisances, however the proposed use is not significantly more intense than the surrounding area with commercial zones, all of which traverse the grid system of streets in the area such that it will not cause a nuisance; and

WHEREAS, the Commission further finds that the proposal meets the intents of Goal 3 because, to improve mobility, and reduce vehicle miles traveled and congestion, Policy 2 encourages a mixture of compatible land uses that are easily accessible by bicycle, car, transit, pedestrian and people with disabilities; this proposal easily meets this policy with its location near to transit lines, within a walkable neighborhood with sidewalks; and

WHEREAS, the Commission further finds that Policy 5 requires evaluation of developments for their impact on the transportation network (including the street, pedestrian, transit, freight movement and bike facilities and services) and air quality and this proposal would have no negligible impact on these facilities; and

WHEREAS, the Commission further finds that the proposal meets the intents of Policy 6 which requires assurance that those who propose new developments bear or share in rough proportionality the costs of transportation facilities and services made necessary by development; this proposal will have NO impact on these facilities or

PLANNING COMMISSION MINUTES
February 20, 2020

PUBLIC HEARING

CASE NO. 19-ZONE-0071

services and therefore is also consistent with Policies 9 and 10 because there is no impact that would require additional transportation improvements; and

WHEREAS, the Commission further finds that the proposal meets the intents of Community Facilities – Goal 2 because this proposal meets Policies 1, 2 and 3 all relevant utilities are and long have been available to the site and there are no native plant communities on the site; and

WHEREAS, the Commission further finds that the proposal meets the intents of Livability – Goal 1 because this proposal satisfies Policies 5, 17 and 21 since it is in a long-established built environment with no native plant species or karst features with no impact of groundwater resources or surface drainage and is not located in a regulatory floodplain; 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 R-6, Multi-family Residential to C-1, Commercial be **APPROVED**.

The vote was as follows:

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

NOT PRESENT: Commissioner Tomes.

Waiver

00:34:58 On a motion by Commissioner Howard, seconded by Commissioner Lewis, the following resolution, based on the Standard of Review and Staff Analysis, the applicant's justification, and evidence and testimony heard today, was adopted:

WHEREAS, the Louisville Metro Planning Commission finds that the waiver will not adversely affect adjacent property owners as all planting and screening will be provided as required; and

WHEREAS, the Commission further finds that Guideline 3, Policy 9 of Cornerstone 2020 calls for the protection of the character of residential areas, roadway corridors and public spaces from visual intrusions and mitigate when appropriate. Guideline 13, Policy 4 calls for ensuring appropriate landscape design standards for different land uses within urbanized, suburban, and rural areas. The character of the area is being

PLANNING COMMISSION MINUTES
February 20, 2020

PUBLIC HEARING

CASE NO. 19-ZONE-0071

maintained as compatible development exists at the intersection and the residential property to the west is being adequately screened; only the width is being reduced; and

WHEREAS, the Commission further finds that the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant as parking facilities require the dimensions as provided on the plan which encroach upon the LBA; and

WHEREAS, the Commission further finds that the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant as the required screening is provided and the development is compatible with the character of the area; and

WHEREAS, the Commission further finds that the waiver will not adversely affect adjacent property owners because it is a pre-existing condition as the lot and structure were created and built at the turn of the century and the side yard has been established without any problems for the adjacent neighbor for many years. Its construction of brick will mitigate the fire safety issues of the close proximity of the structures; and

WHEREAS, the Commission further finds that the waiver will not violate the Comprehensive Plan for all the reasons set forth in the Detailed Statement of Compliance with all applicable Guidelines and Policies of the 2040 Comprehensive Plan filed with the original rezoning application filed on September 23, 2019; and

WHEREAS, the Commission further finds that the extent of waiver of the regulation is the minimum necessary to afford relief to the applicant because it is a long-standing pre-existing condition; and

WHEREAS, the Commission further finds that strict application of the provisions of the regulation would deprive the applicant of a reasonable use of the land or would create an unnecessary hardship on the applicant because it is a longstanding pre-existing condition and to satisfy the subsequently adopted side yard requirement would require demolition and rebuilding of the entire structure; now therefore be it

RESOLVED, the Louisville Metro Planning Commission does hereby **APPROVE** the requested Waiver of Land Development Code, section 10.2 to reduce the landscape buffer along the west property line as shown on the development plan.

The vote was as follows:

PLANNING COMMISSION MINUTES
February 20, 2020

PUBLIC HEARING

CASE NO. 19-ZONE-0071

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

NOT PRESENT: Commissioner Tomes.

Detailed District Development Plan

00:35:43 On a motion by Commissioner Howard, seconded by Commissioner Lewis, 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 conservation of natural resources on the property proposed for development, including: trees and other living vegetation, steep slopes, water courses, flood plains, soils, air quality, scenic views, and historic sites will be conserved as existing tree canopy is being preserved and the property contributes to the historic preservation district; 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 as the subject property is located at an appropriate location in a walkable urban neighborhood connected to multi-modal corridors; and

WHEREAS, the Commission further finds that the provision of sufficient open space (scenic and recreational) to meet the needs of the proposed development will be provided. The development does not require the provision of open space. The front yard consistent with adjacent development will remain; 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 proposal is generally compatible within the scale and site design of nearby existing development and with the form district's pattern of development as the development meets the requirements for non-residential development in the traditional neighborhood form district. The existing structure contributes to the character of the preservation district; and

WHEREAS, the Commission further finds that the proposed development plan conforms to Plan 2040. The improvements on site meet the non-residential design guidelines contained in the LDC. The subject property is located at an appropriate

PLANNING COMMISSION MINUTES
February 20, 2020

PUBLIC HEARING

CASE NO. 19-ZONE-0071

location in a walkable urban neighborhood connected to multi-modal corridors; 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. 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. 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
 - 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.
 - d. The site is located in the Butchertown Historic Preservation district. A Certificate of Appropriateness must be reviewed and approved for exterior modifications. A copy of this approval shall be on file in the offices of the Planning Commission.
3. 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.

PLANNING COMMISSION MINUTES
February 20, 2020

PUBLIC HEARING

CASE NO. 19-ZONE-0071

4. 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.

5. 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.

The vote was as follows:

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

NOT PRESENT: Commissioner Tomes.