

PLANNING COMMISSION MINUTES
March 17, 2022

PUBLIC HEARING

CASE NO. 21-ZONE-0153

Request: Change in Zoning from C-1 to C-2 with a Landscape Waiver
Project Name: Breeze Bar
Location: 1247 S Shelby Street
Owner: Breitenstein Properties LLC
Applicant: Breitenstein Properties LLC
Representative: Heritage Engineering LLC
Jurisdiction: Louisville Metro
Council District: 6 – David James
Case Manager: Julia Williams, 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. (The staff report is part of the case file maintained in Planning and Design Services offices, 444 S. 5th Street.)

Agency Testimony:

01:56:08 Julia Williams presented the case and showed a Power Point presentation (see staff report and recording for detailed presentation.)

Commissioner Clare asked how large the patio and outdoor area is, and that there would be no outdoor music or PA system. Julia Williams said that was correct, and that it would be approximately 10' by 20'.

The following spoke in support of the request:

Camille Hesen, 642 S 4th Street, Louisville, KY 40202

Sarah Height, 1001 Logan Street, Louisville, KY 40204

Chelsea Moore, 1001 Logan Street, Louisville, KY 40204

John Campbell, 642 S. 4th Street, Louisville, KY 40202

Summary of testimony of those in support:

02:03:33 Camille Hesen, the applicant's representative, presented the applicant's case and showed a Power Point presentation (see recording for detailed presentation.)

Commissioner Clare asked how they envision the walk-up window working next to the residential building. Camille Hesen explained they had proposed landscaping that would

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provide screening for the residential unit and added that it provides an access point to the site for pedestrians, it was not a vehicular access.

Commissioner Clare asked about the hours of operation for use of the back patio. Camille Hesen explained that the site would have a coffee shop and bar component and there would be food served within both of these areas. The coffee shop would be in operation from 7 AM – 9 PM, and the bar would be in operation from 4 PM – 12 AM.

Commissioner Mims asked if they would be asking for the normal liquor license and not the 2 AM or 4 AM license. Sarah Height said they are planning on applying for the 2 AM license but are not planning on being open until 2 AM every night or during the weekdays but they do want the flexibility to do that on Friday and Saturday.

Commissioner Carlson asked about the hours of operation for the walk-up window. Sarah Height explained that the walk-up window is primarily for the coffee shop and would have the same hours, potentially from 7 AM to 9 PM.

In response to questions about restricting the hours of operation with a Binding Element, Sarah Height explained that the walk-up window is primarily for pedestrians in the neighborhood to access the coffee shop and will not be for cocktails or any alcohol. Ms. Height explained that the back patio would be for the coffee shop and the wine bar. They feel the coffee shop has to open at 7 AM to support their business model. She also explained that they are not planning to be open until 2 AM every night, only if the business is there. Ms. Height stated the patio will not be used for music but just for seating.

Ms. Height explained they could agree to restricting the hours of operation for the walk-up window but not restricting the hours of operation for the business.

Julia Williams explained that since they are using the same internal space for the coffee shop and Breeze Bar, it would be difficult to differentiate between those hours, and for enforcement reasons it would be easier to limit the hours of operation for the walk-up window only.

There were concerns about the patio area causing disturbance to the neighbors. Ms. Hesen explained there would not be a crowd of people back there as it is a small area, and there would be a seat wall and landscaping buffer around the patio area as well.

In response to hours of operation, Sarah Height explained that they are paying additional for the 2 AM license and do not want to agree to closing at 12 AM on the weekdays. The hours of operation for the entire property would be until 2 AM every night, excluding the walk-up window.

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Commissioner Clare asked if a fence would buffer the noise more as there are concerns for the house next door. Ms. Height explained they were planning to have a 6-foot-high wall made out of brick to mitigate the sound and create privacy for the business and the neighbors.

02:38:08 **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.

On a motion by Commissioner Mims, seconded by Commissioner Clare, the following resolution, based on the Standard of Review and Staff Analysis and evidence and testimony heard at today's hearing, was adopted:

Change in Zoning:

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Community Form because the proposed C-1 to C-2 zoning is not a non-residential expansion into a residential area; and S Shelby Street is a transit corridor and the structure is located in an existing commercial corridor that has a mix of residential and non-residential uses; and the proposed zone change from C-1 to C-2 will not affect air and water quality; and the driveway off of S Shelby Street will be removed to improve the impacts of traffic from the site with pedestrians along the sidewalk of S Shelby Street. Driveways along this block are not common; and the proposal introduces a higher density commercial into a commercial area where much of the adjacent properties while zoned commercial are residential uses. The existing structure will buffer noise form adjacent properties; and

WHEREAS, the Commission further finds that the proposal meets Land Use & Development Goal 2: Community Form because the zone change from C-1 to C-2 is located along a commercially zoned corridor. Changes to the site will be internal to the building and to rear of the site; and the proposal is located in the TNFD where there is appropriate access to the site off the Chester Avenue alley; and the proposal is located along an activity corridor where there is density in the area to support C-2 land uses; and the proposal is located along an existing activity corridor where the site is an existing commercial use and proposed for another more intense commercial zone. Infrastructure exists in the area to serve commercial uses; and the proposal is located along an existing activity corridor where there is a mix of commercial, industrial, and residential uses; and there are commercially zoned residential uses adjacent to the site. The proposal is for C-2 zoning which allows for residential development and mixed use;

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and the proposal is for the renovation of an existing structure for a mixed use; and the proposal is located along an existing activity corridor where there is a mix of commercial, industrial, and residential uses. Changes to the site will be internal to the building and to rear of the site; and

WHEREAS, the Commission further finds that the proposal meets Land Use & Development Goal 3: Community Form because soils are not an issue with the proposal; and

WHEREAS, the Commission further finds that the proposal meets Land Use & Development Goal 4: Community Form because the proposal is for the renovation of an existing structure; and

WHEREAS, the Commission further finds that the proposal meets Land Use & Development Goal 1: Mobility because the site is located along transit corridor and along an existing activity corridor. A mix of land uses are nearby; and

WHEREAS, the Commission further finds that the proposal meets Land Use & Development Goal 2: Mobility because access to the site is from public rights of way in a mixed use area; and

WHEREAS, the Commission further finds that the proposal meets Land Use & Development Goal 3: Mobility because the proposal is located in a mixed use commercially zoned area; and the site is located along transit corridor and along an existing activity corridor. A mix of land uses are nearby. Accessibility is improved with the removal of the driveway out to Shelby St; and S Shelby Street is a transit corridor. Pedestrian use is promoted with the removal of the driveway to S Shelby St. as access is available through the alley; and Roadway improvements are not necessary with the proposal; and

WHEREAS, the Commission further finds that the proposal meets Land Use & Development Goal 2: Community Facilities because Existing utilities serve the site; and an adequate water supply is available; and MSD has preliminarily approved the proposal; and

WHEREAS, the Commission further finds that the proposal meets Land Use & Development Goal 1: Economic Development because the proposal is not in an area where it will generate high volumes of traffic; and

WHEREAS, the Commission further finds that the proposal meets Land Use & Development Goal 1: Livability because erosion will not be an issue with the proposal; and

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WHEREAS, the Commission further finds that the proposal meets Land Use & Development Goal 1: Housing because C-2 zoning allows for residential development; and

WHEREAS, the Commission further finds that the proposal meets Land Use & Development Goal 2: Housing because C-2 zoning allows for residential development. The proposal is located in a well-connected neighborhood; and

WHEREAS, the Commission further finds that the proposal meets Land Use & Development Goal 3: Housing because C-2 zoning allows for residential development. No existing residences will be displaced.

RESOLVED, that the Louisville Metro Planning Commission does hereby **RECOMMEND** that the Louisville Metro Council **APPROVE** the change in zoning, for case 21-ZONE-0153, from C-1 to C-2, for the property at 1247 S Shelby Street described in the staff report.

The vote was as follows:

YES: Commissioners Brown, Carlson, Clare, Daniels, Howard, Mims, Price, and Lewis

NO: None

ABSTAIN: None

ABSENT: Commissioner Seitz and Sistrunk

On a motion by Commissioner Mims, seconded by Commissioner Clare, the following resolution, based on the Standard of Review and Staff Analysis and evidence and testimony heard at today's hearing, was adopted:

22-WAIVER-0013:

WHEREAS, the Louisville Metro Planning Commission finds the waiver will not adversely affect adjacent property owners since the encroachment involves an existing structure where there are no proposed changes to the exterior of the structure; and

WHEREAS, the Commission further finds that Community Form Goal 1, Policy 9 calls to ensure an appropriate transition between uses that are substantially different in scale and intensity or density of development. The transition may be achieved through methods such as landscaped buffer yards, vegetative berms, compatible building design and materials, height restrictions and setback requirements. Community Form Goal 1, Policy 10 calls to mitigate the impacts caused when incompatible developments

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unavoidably occur adjacent to one another. Buffers should be used between uses that are substantially different in intensity or density. Buffers should be variable in design and may include landscaping, vegetative berms and/or walls 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. Residential uses that develop adjacent to agricultural land uses may be required to provide screening and buffering to protect both the farmer and homeowners. The proposal meets the guideline of the Comprehensive Plan since the encroachment involves an existing structure where there are no proposed changes to the exterior of the structure. A buffer and plantings are provided where parking is adjacent to the residential lot; 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 the encroachment involves an existing structure where there are no proposed changes to the exterior of the structure; and

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 the encroachment involves an existing structure where there are no proposed changes to the exterior of the structure.

RESOLVED, the Louisville Metro Planning Commission does hereby **APPROVE** the Waiver (22-WAIVER-0013) from Land Development Code section 10.2.10 to eliminate the 5' Landscape Buffer Area and requirements along the south property line.

The vote was as follows:

YES: Commissioners Brown, Carlson, Clare, Daniels, Howard, Mims, Price, and Lewis

NO: None

ABSTAIN: None

ABSENT: Commissioners Seitz and Sistrunk

On a motion by Commissioner Mims, seconded by Commissioner Clare, the following resolution was adopted:

Detailed District Development Plan:

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WHEREAS, the Louisville Metro Planning Commission finds that there do not appear to be any environmental constraints or historic resources on the subject site. Trees will be planted on site to fulfill street tree and buffer requirements; 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 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. The proposed parking lot will meet all required setbacks; and

WHEREAS, the Commission further finds that the development plan conforms to applicable guidelines and policies of the Comprehensive Plan and to requirements of the Land Development Code.

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. The existing vehicle access point Shelby Street is to be closed and the curb and sidewalk restored.
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

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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) is requested:
 - a. The development plan must receive full construction approval from Construction Review, Louisville Metro Public Works and the Metropolitan Sewer District.
 - b. Encroachment permits must be obtained from the Kentucky Transportation Cabinet.
 - 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 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 prior to obtaining a building permit.
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. There shall be no outdoor music (live, piped, radio or amplified) or outdoor entertainment or outdoor PA system permitted on the site.
8. 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.
9. There will be a masonry wall constructed and attached to the seat wall, extending 6-feet above the seat wall.
10. The walk-up window shall have hours of operation from 7 AM – 9 PM.

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** the Detailed District Development Plan for case 21-ZONE-0153 along with the Binding Elements found on pages 15 and 16 of the staff report, to include the addition of Binding Element #9 and #10, read into the record, based on the staff report and testimony heard today.

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YES: Commissioners Brown, Clare, Daniels, Howard, Mims, Price, and Lewis

NO: Commissioner Carlson

ABSTAIN: None

ABSENT: Commissioner Seitz and Sistrunk