

**MINUTES OF THE MEETING
OF THE
LOUISVILLE METRO PLANNING COMMISSION
October 31, 2019**

A meeting of the Louisville Metro Planning Commission was held on October 31, 2019 at 1:00 p.m. at the Old Jail Building, located at 514 W. Liberty Street, Louisville, Kentucky.

Commission members present:

Vince Jarboe, Chair	Ruth Daniels
Jeffery Brown	Robert Peterson
Richard Carlson	Jim Mims
Lula Howard	
David Tomes	
Jim Mims	

Commission members absent:

Marilyn Lewis, Vice Chair

Staff Members present:

Emily Liu, Director, Planning and Design Director
Joe Reverman, Planning and Design Assistant Director
Brian Davis, Planning and Design Manager
Joseph Haberman, Planning and Design Manager
Julia Williams, Planning and Design Supervisor
Christopher French, Planning and Design Supervisor
Cynthia Elmore, Planning and Design Supervisor
Steve Hendrix, Planning Coordinator
Joel Dock, Planner II
Dante St. Germain, Planner II
Ken Baker, Advanced Planning
Michael King, Advanced Planning
Rachel Casey, Economic Development
Beth Stuber, Engineering Supervisor
John Carroll, Legal Counsel
Caitlin Bowling, Communications Manager
Pamela M. Brashear, Management Assistant

Others Present:

Tony Kelly, MSD

The following matters were considered:

**SPECIAL RECOGNITION
KEN BAKER**

00:03:00 Commissioner Howard gave a farewell speech for Ken Baker's last day working for Advance Planning. "You have been a loyal, faithful and enduring member of the Planning Commission staff and we appreciate all the hard work you have done in Advance Planning."

00:05:12 Chair Jarboe presented Mr. Baker with a certificate.

00:06:13 Mr. Baker expressed his appreciation and spoke of working on the Comprehensive Plan 2020 and 2040, how special it was to be able to work on both. He has no specific plans for the near future.

PLANNING COMMISSION MINUTES
October 31, 2019

APPROVAL OF MINUTES

CORRECTION TO AUGUST 29, 2019 PLANNING COMMISSION MINUTES – CASE NO. 19ZONE1030 AND 19-DDP-0031

On a motion by Commissioner Carlson, seconded by Commissioner Howard, the following resolution was adopted.

RESOLVED, that the Planning Commission does hereby **APPROVE** the minutes of its meeting conducted on August 29, 2019, Case No. 19ZONE1030 and 19-DDP-0031, with the additional correction of adding Commissioner Howard to all the votes.

The vote was as follows:

YES: Commissioners Brown, Carlson, Daniels, Howard, Tomes and Jarboe
NOT PRESENT FOR THIS CASE: Commissioner Lewis
ABSTAINING: Commissioners Mims and Peterson

OCTOBER 17, 2019 PLANNING COMMISSION REGULAR MEETING MINUTES

On a motion by Commissioner Carlson, seconded by Commissioner Brown, the following resolution was adopted.

RESOLVED, that the Planning Commission does hereby **APPROVE** the minutes of its meeting conducted on October 17, 2019.

The vote was as follows:

YES: Commissioners Brown, Carlson, Daniels, Howard, Mims and Jarboe
NOT PRESENT FOR THIS CASE: Commissioner Lewis
ABSTAINING: Commissioners Peterson and Tomes

PLANNING COMMISSION MINUTES
October 31, 2019

BUSINESS SESSION
10.31.19 RESOLUTION

Request: Resolution to Research Land Uses that Include Tobacco Businesses and Electronic Smoking Retail Stores and Propose Amendments to the Land Development Code Related to the Zoning and Location of These Uses

Project Name: Tobacco Businesses and Electronic Smoking Retail Stores Resolution

Location: Louisville Metro

Applicant: Louisville Metro Planning Commission

Jurisdiction: Louisville Metro

Council District: All Council Districts

Case Manager: Joseph Haberman, AICP, Planning Manager

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.)

Discussion

00:13:55 Mr. Haberman stated he worked with some members of Metro Council and the Office of Public Health and Wellness to prepare this resolution. If adopted, staff will be directed to research land uses that include tobacco businesses and electronic smoking retail stores.

00:16:35 Councilman Brandon Coan (District 8) said he supports this request. There is a concern about the vaping devices, specifically the public health hazards. It will apply to vaping and smoking businesses.

00:19:50 Mr. Carroll asked if the study will include marijuana or CBD uses. Mr. Haberman said yes, if directed by the Planning Commission. CBD can be looked at but marijuana is illegal at this time.

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 Tomes, seconded by Commissioner Howard, the following resolution was adopted.

RESOLVED, that the Louisville Metro Planning Commission does hereby **ADOPT** a resolution to research land uses that include tobacco businesses and electronic smoking retail stores and propose amendments to the Land Development Code related to the zoning and location of these uses.

PLANNING COMMISSION MINUTES
October 31, 2019

BUSINESS SESSION
10.31.19 RESOLUTION

The vote was as follows:

**YES: Commissioners Brown, Carlson, Daniels, Howard, Mims, Peterson, Tomes
and Jarboe**

NOT PRESENT AND NOT VOTING: Commissioner Lewis

PLANNING COMMISSION MINUTES
October 31, 2019

PUBLIC HEARING

CASE NO. 19ZONE1001

Request: Change in zoning from R-4 to R-5 with associated rear yard
Waiver and Major Preliminary Subdivision
Project Name: Shepherdsville Road Subdivision
Location: 8809 Shepherdsville Road
Owner: Linda Sue Goodwin Neubeck
Applicant: Superior Builders
Representative: Bardenwerper, Talbott & Roberts
Jurisdiction: Louisville Metro
Council District: 23 – James Peden
Case Manager: Dante St. Germain, 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. (Staff report is part of the case file maintained in Planning and Design Services offices, 444 S. 5th Street.)

Agency Testimony:

00:23:27 Ms. St. Germain discussed the case summary, standard of review and staff analysis from the staff report. Commissioner Mims asked which mobility standards are not being met. Ms. St. Germain listed them.

00:33:12 Commissioner Tomes said the existing home doesn't appear to be architecturally significant. Is it strictly the age that makes it eligible for the national registry? Ms. St. Germain said yes. The Comprehensive Plan makes a distinction between sites that are of cultural significance versus sites that are eligible for the registry, but states that it should be encouraged that structures eligible for the National Registry of Historic Places, even if not on the national register at this time, should be preserved.

The following spoke in favor of this request:

Nick Pregliasco, Bardenwerper, Talbott and Roberts, 1000 North Hurstbourne Parkway, Louisville, Ky. 40223
David Mindel, 5151 Jefferson Boulevard, Suite 101, Louisville, Ky. 40219
Kathy Linares, 5151 Jefferson Boulevard, Suite 101, Louisville, Ky. 40219
Diane Zimmerman, 12803 High Meadows Pike, Prospect, Ky. 40059

PLANNING COMMISSION MINUTES
October 31, 2019

PUBLIC HEARING

CASE NO. 19ZONE1001

Summary of testimony of those in favor:

00:34:31 Mr. Pregliasco gave a power point presentation. The density will be increased from 4.84 to 4.9 (existing R-4 zoning) and the number of lots will increase from 26 to 34 (existing R-4 zoning). A turn lane would be cost-prohibitive. There are some existing utility poles that will need to be relocated and reworked. A left turn analysis was performed and deemed unwarranted. The lots are smaller with brand new construction, which is a different housing type for the area (seniors particularly).

00:46:09 Mr. Mindel stated that moving the utility poles will be very expensive. The people that attended the neighborhood meeting had no issues with the elevations of the houses. It's an infill area and compatible with the neighborhood. The improvements for the left turn lanes goes off the frontage.

00:49:57 Commissioner Mims asked if the estimate included relocation of the water line. Mr. Mindel said no.

Mr. Mindel said this site is not appropriate for assisted living.

00:51:47 Commissioner Carlson asked what other developments on Shepherdsville Rd. did not have to widen the roads. Ms. Linares said the places that did require center turn lanes were Savannah Springs and Unity Place. The developments that did not require a center turn lane were Shepherds Crossing and Mt. Vernon.

00:54:40 Chair Jarboe asked why the applicant doesn't want to provide the left turn lane if Public Works says it is warranted. Ms. Zimmerman explained her report but doesn't know where the discrepancy lies. Commissioner Brown asked if they looked at additional lots being added off the stub roads that would generate more left turn trips. Ms. Zimmerman said no. Commissioner Brown said that would move the threshold.

00:59:06 Commissioner Carlson asked if the applicant would be willing to widen the shoulder. Mr. Mindel said it would be very difficult.

01:01:44 Commissioner Mims asked Commissioner Brown if there's a possibility of some form of surety or type of funding mechanism being put in place (proportional) when the left turn lane is needed. Commissioner Brown said Public Works doesn't like to take contributions unless there's already a project in place and ready to move forward.

Deliberation

PLANNING COMMISSION MINUTES
October 31, 2019

PUBLIC HEARING

CASE NO. 19ZONE1001

01:05:42 Commissioner Tomes stated the cost is too excessive for the number of lots being developed. If other properties are developed, all can contribute to a fund.

01:08:10 Commissioner Peterson said he agrees with Commissioner Tomes. The applicant wants to provide lots that are appropriate for the market.

01:08:59 Commissioner Mims said the difference between R-4 and the proposal is not a large number of lots.

01:09:40 Commissioner Daniels said she has an issue with the mobility of this plan.

01:10:38 Commissioner Brown said he can't support the request without the turn lane requirement being fulfilled.

01:11:52 Commissioner Howard said the design is appropriate but mobility is an issue.

01:13:02 Commissioner Carlson said there's a lot of vacant land in the area and the need for the left turn lane will be great in the future. Shepherdsville Rd. is a very heavily travelled road and the emergency vehicles need to be able to get through.

01:15:57 Chair Jarboe stated safety is a major issue.

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 R-4 Single Family Residential to R-5 Single Family Residential

On a motion by Commissioner Carlson, seconded by Commissioner Brown, the following resolution based on the Plan 2040 Staff Analysis was adopted.

RESOLVED, that the Louisville Metro Planning Commission does hereby **RECOMMEND** to the Louisville Metro Council the change in zoning from R-4, Single Family Residential to R-5, Single Family Residential on property described in the attached legal description be **DENIED**.

The vote was as follows:

YES: Commissioners Brown, Carlson, Daniels and Jarboe

PLANNING COMMISSION MINUTES
October 31, 2019

PUBLIC HEARING

CASE NO. 19ZONE1001

NO: Commissioners Howard, Mims, Peterson and Tomes
NOT PRESENT AND NOT VOTING: Commissioner Lewis

The motion failed.

01:28:20 Commissioner Tomes asked if there was a motion to approve and another tie vote, could it go to the Metro Council without a recommendation?

Mr. Davis said the policies state it would need to be brought back in 30 days and take another vote. After 30 days and it's still a tie vote, it can then go to Metro Council without a recommendation.

01:30:00 Chair Jarboe said the applicant requests a continuance.

On a motion by Commissioner Tomes, seconded by Commissioner Peterson, the following resolution was adopted.

RESOLVED, that the Louisville Metro Planning Commission does hereby **CONTINUE** this case to the November 21, 2019 Planning Commission meeting.

The vote was as follows:

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

NOT PRESENT AND NOT VOTING: Commissioner Lewis

PLANNING COMMISSION MINUTES
October 31, 2019

PUBLIC HEARING

CASE NO. 19-ZONE-0037

Request: Change in Zoning from R-5 to R-5A, multi-family with detailed plan, waiver and variance
Project Name: Enclave at Warwick Village
Location: 413R, 415R and 417 Washburn Avenue
Owner: Larry Foreman
Applicant: Butch Ernsperger
Representative: Duncan Galloway Egan Greenwald, PLLC
Jurisdiction: City of Lyndon
Council District: 7 – Paula McCraney
Case Manager: Joel P. Dock, AICP, Planner II

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:

01:32:36 Mr. Dock stated the Courier Journal failed to run the notification ad that was provided to them. This case needs to be continued to the November 21, 2019 public hearing.

The following spoke in favor of this request:

Jack Lowe, 4309 Glenarm Road, Crestwood, Ky. 40014

Summary of testimony of those in favor:

01:33:33 Mr. Lowe stated he owns the daycare center and would like input on the treatment of the boundary line (~400 feet).

Deliberation

01:34:40 Planning Commission 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 Carlson, seconded by Commissioner Howard, the following resolution was adopted.

PLANNING COMMISSION MINUTES
October 31, 2019

PUBLIC HEARING

CASE NO. 19-ZONE-0037

RESOLVED, that the Louisville Metro Planning Commission does hereby **CONTINUE** this case to the November 21, 2019 public hearing.

The vote was as follows:

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

NOT PRESENT AND NOT VOTING: Commissioner Lewis

PLANNING COMMISSION MINUTES
October 31, 2019

PUBLIC HEARING

CASE NO. 19CELL1001

Project Name: Bardstown Road
Location: 3738 Bardstown Road
Owner: The First Alliance Church of the Christian and Missionary Alliance, Inc.
Applicant: Vertical Bridge Development, LLC,
T-Mobile
Representative: Briggs Law Office, PSC, Todd R. Briggs
Jurisdiction: Louisville Metro
Council District: 10 – Pat Mulvihill
Case Manager: Steve Hendrix, Planning & Design Coordinator

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:

01:59:59 Mr. Hendrix discussed the case summary, standard of review and staff analysis from the staff report.

02:04:17 Commissioner Carlson asked what is meant by the time frame being extended to November 1, 2019 by the applicant. Mr. Hendrix answered, the cell tower application is filed and it has to be heard and approved in 60 days, and if not, it's automatically approved.

02:05:27 Commissioner Mims asked why this case was denied at DRC. Mr. Hendrix said the main reason was the location of the pole itself. There was opposition from the credit union. Chair Jarboe added, another point made at DRC was that since it's the church's property, why can't the tower be closer to their own property instead of the property closer to the credit union? Commissioner Mims stated if the applicant has tried to co-locate, aren't cell towers normally approved? Mr. Hendrix said that's usually the case, but there was an argument about the monopole being situated closer to the church itself.

02:07:35 Commissioner Howard asked if the trees will remain. Mr. Hendrix said yes.

PLANNING COMMISSION MINUTES
October 31, 2019

PUBLIC HEARING

CASE NO. 19CELL1001

The following spoke in favor of this request:

Todd Briggs, 10200 Forest Green Boulevard, Suite 112, Louisville, Ky. 40223

Summary of testimony of those in favor:

02:08:11 Mr. Briggs is appealing the DRC's decision. The church has provided a letter regarding their current use of the open space and their future plans. There is also a letter submitted by the Radio Frequency Engineer of T-Mobile. The eastern side of Bardstown is commercial with very small lots and not a lot of open space and most abut residential properties. The subject property has adequate space, the existing tree line will camouflage the ground equipment and the setback from Bardstown Rd. effectively removes the tower from the view shed of Bardstown. There are no adequate sites available in the search area. We are immediately adjacent to the highway, there are no existing utility towers, the site is in a commercial center, there are no government buildings adequate enough, no high-rise office structures or residential structures. This plan meets the goals of Plan 2040 and the ordinance requirements and setbacks. The tower is designed for more than one carrier (3 or 4).

02:13:35 Commissioner Carlson asked if there were any satisfactory commercial buildings to use. Mr. Briggs said they're too small with very little open space. Commissioner Carlson asked if they approached other locations and were turned down. Mr. Briggs said no, but other properties in the search area were evaluated. The proposed site had a willing landlord. Commissioner Carlson asked if a low model profile monopole was considered. Mr. Briggs said no, you can't install more than 3 antennae.

The following spoke in opposition to this request:

Michael Marks, 2933 Bowman Avenue, Louisville, Ky. 40205

Summary of testimony of those in opposition:

02:18:18 Mr. Marks, attorney representing Transcend Credit Union, asked what other options were explored and if this is the only one, why does it have to be closer to the credit union instead of the church. The church is receiving the economic benefit. The applicant has not minimized the likely effects of the installation on nearby land uses and values (Plan 2040). There are many studies that indicate that cell towers reduce property values.

02:22:44 Commissioner Peterson asked Mr. Marks to explain how the credit union utilizes the different portions (buildings) of the property. Mr. Marks explained – main credit union, customer parking lot, utility shed and employee parking.

PLANNING COMMISSION MINUTES
October 31, 2019

PUBLIC HEARING

CASE NO. 19CELL1001

02:23:19 Chair Jarboe asked why do you feel the cell tower is lowering the property value of the credit union parking lot? Mr. Marks said it hurts the re-sell value.

02:25:25 Commissioner Howard asked Mr. Marks if he was shown the plan, for the cell tower area, with additional plantings as well as what is currently there. Mr. Marks said yes, but 15 ft. trees will hardly mitigate a 110 ft. cell tower.

Rebuttal

02:27:00 Mr. Briggs stated that the credit union is not the closest structure to the proposed cell tower. The studies referenced by Mr. Marks are mainly residential studies and based on opinions, not empirical data.

Cell towers are very important to 911 usage – in 2017 there were 240 million 911 calls were made nationwide and 80% of those were by a hand-held device. The wireless coverage and gaps we're trying to fill with this tower will only add to the benefit and adequacy of the 911 system.

Deliberation

02:29:13 Commissioner Tomes stated the people that benefit from the towers seem to want to locate it as far away from their building as possible, sometimes to the detriment of other properties. There may have been a more suitable location.

02:30:34 Commissioner Peterson said the proposed location appears to be the best choice and has very little impact on the credit union.

02:31:54 Commissioner Mims said the location would be better served near the church.

02:32:21 Commissioner Daniels stated she thinks the church could still develop their property even if they move the tower closer to their building.

02:33:03 Commissioner Brown stated 19.2 and 19.3 are applicable. They didn't go through the hierarchy of preferred locations. If it's being placed on an R-4 lot, then it needs to be moved away from the abutting property.

02:33:33 Commissioner Howard said she doesn't have an issue with the site location since it's adjacent to a parking lot and utility building. There are evergreen trees to minimize the impact. Also, the site has a soccer field and they need that space to move around.

PLANNING COMMISSION MINUTES
October 31, 2019

PUBLIC HEARING

CASE NO. 19CELL1001

02:35:29 Commissioner Carlson said he doesn't think the applicant has fully explored other preferable sites found in the Comprehensive Plan before arriving at the site chosen. Also, the site is R-4.

02:38:06 Chair Jarboe stated both sides could be argued.

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.

This is an application for a proposed 105 foot monopole tower with a five foot lightning arrestor for a total structural height of 110 feet within an approximate 2,500 square foot compound area. An eight foot wooden privacy fence with 13 evergreen trees will buffer the compound area.

On a motion by Commissioner Howard, seconded by Commissioner Peterson, the following resolution was adopted.

RESOLVED, that the motion to **APPROVE** the application for a proposed 105 foot monopole tower with a five foot lightning arrestor for a total structural height of 110 feet within an approximate 2,500 square foot compound area failed.

The vote was as follows:

YES: Commissioners Howard and Peterson

NO: Commissioners Brown, Carlson, Daniels, Mims, Tomes and Jarboe

NOT PRESENT AND NOT VOTING: Commissioner Lewis

On a motion by Commissioner Carlson, seconded by Commissioner Brown, the following resolution based on not meeting 19.2 and 19.3 of the 2040 Plan, not meeting siting hierarchy and did not minimize the likely effects of installation on nearby land uses and values was adopted.

RESOLVED, that the Louisville Metro Planning Commission does hereby **DENY** the application for a proposed 105 foot monopole tower with a five foot lightning arrestor for a total structural height of 110 feet within an approximate 2,500 square foot compound area.

The vote was as follows:

PLANNING COMMISSION MINUTES
October 31, 2019

PUBLIC HEARING

CASE NO. 19CELL1001

YES: Commissioners Brown, Carlson, Daniels, Mims, Tomes and Jarboe

NO: Commissioners Howard and Peterson

NOT PRESENT AND NOT VOTING: Commissioner Lewis

PLANNING COMMISSION MINUTES
October 31, 2019

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 3:49 p.m.

Chair

Planning Director

PLANNING COMMISSION MINUTES
October 31, 2019

PUBLIC HEARING

CASE NO. 18ZONE1063 ONLY

Request: Change in Zoning from R-4 to C-2 with conditional use permit for mini-warehouse, variance and waiver
Project Name: Freys Hill Commercial
Location: 3331 Freys Hill Road
Owner: Freys DevCo, LLC
Applicant: Freys DevCo, LLC
Representative: Bluestone Engineers, PLLC
Jurisdiction: Louisville Metro
Council District: 17 – Markus Winkler
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. (Staff report is part of the case file maintained in Planning and Design Services offices, 444 S. 5th Street.)

Agency Testimony:

01:35:29 Mr. Dock discussed the case summary, standard of review and staff analysis from the staff report.

01:40:24 Commissioner Brown asked if there are any R-4, Single Family Residential uses on the property currently. Mr. Dock said yes, it's one single vacant R-4 property. There is an existing non-residential use on the property as well.

01:41:00 Commissioner Mims asked if the amount of tree canopy removal qualifies for the provision of the new Tree Ordinance. Mr. Dock said this case was filed in 2018 and exempt from the new ordinance. Commissioner Mims asked if the strip to Freys Hill will be a secondary access. Mr. Dock stated it's a secondary exit only and read binding element 10. Commissioner Mims asked how people will access the property. Commissioner Brown said other access is still open and available. Mr. Dock added, one activity center is disconnected and the other provides access to the site. Commissioner Mims asked if the applicant has submitted a joint access agreement. Mr. Dock said yes, they're required to provide cross-access. Mini-warehouse facilities are low interaction and low traffic generators.

01:45:20 Commissioner Howard asked why all the buildings are encroaching 30 feet into the side property line (CUP item B). Mr. Dock said relief is being requested

PLANNING COMMISSION MINUTES
October 31, 2019

PUBLIC HEARING

CASE NO. 18ZONE1063 ONLY

from item B in conjunction with a 50 foot non-residential to residential variance as well as the 35 foot landscape buffer area.

The following spoke in favor of this request:

Chris Crumpton, Bluestone Engineers, 3703 Taylorsville Road, Suite 205, Louisville, Ky. 40220

Summary of testimony of those in favor:

01:46:51 Mr. Crumpton gave a power point presentation. Almost half the rear of the site is being preserved in tree canopy. The stream buffer is being preserved as well. There's no problem providing additional screening for the AT&T Service Center but they are a commercial use as well.

01:49:41 Commissioner Howard asked Mr. Crumpton to explain why all the buildings encroach into the 30 foot property line areas. Mr. Crumpton said he doesn't think the setback should be required at 50 feet. Also, the existing access drive is in that location and it's difficult to design a storage facility that requires maneuvering of vehicles around the buildings. The access drive is in the same location (along the property line).

Deliberation

01:51:27 The commissioners agree that the zoning change, new and more appropriate use, CUP, variance, waiver and development plan are all in compliance. Commissioner Howard, however does not agree with the conditional use permit relief item B. All the buildings did not have to encroach into the required areas. There are too many buildings.

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 R-4, Single-family Residential to C-2, Commercial

On a motion by Commissioner Carlson, seconded by Commissioner Mims, the following resolution based on the Plan 2040 Staff Analysis and testimony heard today was adopted.

PLANNING COMMISSION MINUTES
October 31, 2019

PUBLIC HEARING

CASE NO. 18ZONE1063 ONLY

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Community Form because, the proposed district results in a minimal expansion into a residential area. However, the district boundaries are relatively similar and consistent with the extent of the C-2 zoning district locating to the north and west of the proposed district that is located in the Regional Center form district. No residential uses are present to the immediate south of the subject property and large majority of the district, which abuts a vacant residential parcel, provide secondary access only to the primary use within the district; The proposed higher intensity district is located immediately adjacent to near major transportation facilities and transit corridors, employment centers, in or near activity centers and other areas where demand and adequate infrastructure exists or is planned as the site adjoins an activity center providing access and a major arterial roadway providing access to the interstate, retailers, services, offices, and nearby industries; Primary access to the district is through an activity center having similar intensities and access to a major arterial roadway; thus, traffic impacts will be consistent with the use of the major arterial; the proposed district allows for certain uses that may produce noise, but the location of the site reduces those impacts as the site does not adjoin, at this time, residential uses and immediately abuts similar intensities within the Regional Center form district; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 2: Community Form because, the district is appropriately located and slightly expands an existing activity center. Infrastructure is sufficient to support the use; the proposed non-residential use is located in the NFD at a location where impacts are minimized due to its location immediately adjoining a regional center. Access and connectivity is obtained via major roadway; The proposed district allows for retail development where sufficient population exists or is anticipated to support it; the development pattern is compact and integrated into an existing activity center; The proposed district is compatible with those districts present in the activity center; the proposed district does not eliminate the ability to provision mixed-uses including residential or office components; the proposed district will allow for commercial uses; the placement of the district is consistent with the abutting center. No residential uses are present abutting the site; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 3: Community Form because, the development will respect natural features as no relief from the protected waterway buffer has been requested and the streambank will be maintained; MSD has preliminarily approved the proposal in order to prevent the potential for severe erosion problems. The developable area of the subject site does not appear to interfere with environmental features; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 4: Community Form because, the subject site does not

PLANNING COMMISSION MINUTES
October 31, 2019

PUBLIC HEARING

CASE NO. 18ZONE1063 ONLY

contain buildings, sites, districts or landscapes that are recognized as having historic or architectural value; the developable area of the subject site does not include a protected waterway that will be left largely undisturbed; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 2: Mobility because, access to the site is through areas of similar intensity and would not create a nuisance; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 3: Mobility because, the district is consistent with adjoining development and the connectivity of this development allows for an integration of uses to encourage short trips easily made by walking or bicycling; the district is consistent with adjoining development and the connectivity of this development allows for an integration of uses to be accessible by bicycle, car, transit, pedestrians and people with disabilities; the district is consistent with adjoining development and the connectivity of this development allows for an integration of uses to promote public transit and pedestrian use; the district is consistent with adjoining development and the connectivity of this development allows for an integration of uses to create walkable centers and centers with convenient access to multi-modal transportation; the development will have a limited impact of the transportation network as it is appropriately located and connected to the adjoining regional center; the development will bear or share in rough proportionality the costs of transportation facilities and services made necessary by development; the development will provide improvements in accordance with long-range transportation plans and level of mobility criteria for all modes of travel, if any; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 2: Community Facilities because, the development will provide improvements in accordance with long-range transportation plans and level of mobility criteria for all modes of travel, if any; the subject property appears to have an adequate supply of potable water and water for fire-fighting purposes; the Metropolitan Sewer District (MSD) has preliminarily approved the development of the subject property; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Economic Development because, the proposed commercial district along a major arterial street where nuisances and activities of the proposed use will not adversely affect adjacent areas; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Livability because, a karst survey has been performed and no features were identified; the Metropolitan Sewer District (MSD) has

PLANNING COMMISSION MINUTES
October 31, 2019

PUBLIC HEARING

CASE NO. 18ZONE1063 ONLY

preliminarily approved the development of the subject property to mitigate negative development impacts to the integrity of the regulatory floodplain.

RESOLVED, that the Louisville Metro Planning Commission does hereby **RECOMMEND** to the Louisville Metro Council the change in zoning from R-4, Single Family Residential to C-2, Commercial on property described in the attached legal description be **APPROVED**.

The vote was as follows:

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

NOT PRESENT AND NOT VOTING: Commissioner Lewis

Conditional Use Permit for mini-warehouse (LDC 4.2.35) with relief from item 'B'

On a motion by Commissioner Carlson, seconded by Commissioner Mims, the following resolution based on the Standard of Review and Staff Analysis to include the justification for the relief from item 'B' as well as the mitigation of the fence was adopted.

WHEREAS, the proposal is consistent with the Comprehensive Plan as the proposed use is located immediately adjacent to or near major transportation facilities and transit corridors, employment centers, in or near activity centers and other areas where demand and adequate infrastructure exists or is planned as the site adjoins an activity center providing access and a major arterial roadway providing access to the interstate, retailers, services, offices, and nearby industries. The use is consistent with adjoining development and the connectivity of this development allows for an integration of uses to be accessible by bicycle, car, transit, pedestrians and people with disabilities. The use is a limited traffic generator and is located to the rear of an activity center; thus, it does not occupy viable street frontage more appropriate for higher interaction uses; and

WHEREAS, the proposal is compatible with surrounding uses and the general character of the form district as the proposal is integrated into the adjoining regional activity center. The subject property will be screened from adjacent vacant residential land; and

WHEREAS, the Louisville Metro Planning Commission finds, necessary public facilities (both on-site and off-site), such as transportation, sanitation, water, sewer, drainage, emergency services, education, recreation, etc. adequate to serve the proposed use will be provided; and

PLANNING COMMISSION MINUTES
October 31, 2019

PUBLIC HEARING

CASE NO. 18ZONE1063 ONLY

WHEREAS, the Louisville Metro Planning Commission further finds mini-warehouses may be allowed in the C-2 District where the premises abut on a roadway classified as a collector or major or minor arterial as designated on Comprehensive Plan Core Graphic 11, Roadway Classification, or by the Director of Works, upon the granting of a Conditional Use Permit and compliance with the listed requirements.

A. The property shall be landscaped so as to blend in with the surrounding area and shall be screened and buffered from adjacent uses of a non-industrial nature.

B. No building, structure or pavement shall be located closer than 30 feet to side property lines or property lines abutting residential areas. This area is reserved as a landscape buffer area.

C. No outside storage shall be allowed on the property.

D. No storage of toxic or hazardous materials shall be allowed on the property.

E. There shall be no retail or wholesale sales or distributing activities on site.

F. Loading doors and vehicle maneuvering areas shall be located away from the exterior of the property.

G. No structure on the site shall be taller than one story and shall not exceed 15 feet in height (except for one freestanding sign as allowed in H below).

H. Signs - Only one freestanding sign shall be allowed and shall conform to limits established for the form district in which the sign is located.

The applicant is requesting relief from item 'B' to allow structures and pavement to be closer than 30' to side property lines. The relief is appropriate but also avoidable with a reduction in the area of disturbance. The relief, however, has a limited impact on adjoining properties as the site abuts vacant residential land and a non-residential use in the residential zone. The use is limited in its interaction and activity, and potential nuisances created at 30' as opposed to 21' would be unremarkable.

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** the conditional use permit for mini-warehouse pursuant to the Land Development Code section 4.2.35 with relief from item 'B'.

The vote was as follows:

YES: Commissioners Brown, Carlson, Daniels, Mims, Peterson, Tomes and Jarboe

NO: Commissioner Howard

NOT PRESENT AND NOT VOTING: Commissioner Lewis

Variance from Land Development Code, section 5.3.1 to omit the 50' non-residential to residential setback along the southeastern property line

PLANNING COMMISSION MINUTES
October 31, 2019

PUBLIC HEARING

CASE NO. 18ZONE1063 ONLY

WHEREAS, the requested variance will not adversely affect the public health, safety or welfare as the movement of pedestrian and vehicles would not be affected, and it would not encroach upon residential property; and

WHEREAS, the requested variance will not alter the essential character of the general vicinity, as the development is located adjacent to a regional activity center having a collection of uses and designs; and

WHEREAS, the requested variance will not cause a hazard or nuisance to the public as sight lines for the movement of pedestrians and motorists are not impacted and the proposal calls integration of uses with an adjoining regional activity center; and

WHEREAS, the requested variance will not allow an unreasonable circumvention of the zoning regulations as the proposal will not adversely affect the public health, safety or welfare or alter the essential character of the general vicinity; and

WHEREAS, the requested variance does not arise from special circumstances which do not generally apply to land in the general vicinity or the same zone as the site is adjacent to a residential zone which is common for the rear or side of development along commercial or major arterial corridors; and

WHEREAS, the Louisville Metro Planning Commission finds, the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant as the proposal will not adversely affect the public health, safety or welfare or alter the essential character of the general vicinity; and

WHEREAS, the Louisville Metro Planning Commission further finds the circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought as no development has occurred and relief has been appropriately requested.

WHEREAS, the variance will not adversely affect the public health, safety or welfare because the south property line abuts an existing ATT maintenance facility and a vacant piece of property; and

WHEREAS, the variance will allow the storage buildings to be constructed adjacent to the access drive and not set back an additional 20 feet from the drive. There is currently an existing drive in place; and

WHEREAS, the variance will not cause a hazard or nuisance since the existing ATT facility operates like an industrial maintenance center, and the other adjoining property is vacant; and

PLANNING COMMISSION MINUTES
October 31, 2019

PUBLIC HEARING

CASE NO. 18ZONE1063 ONLY

WHEREAS, the variance will not allow an unreasonable circumvention of the requirements since the access drive is already in place and cannot be relocated; and

WHEREAS, the Louisville Metro Planning Commission finds, this variance arises since the property is a "flag lot" and the access drive runs along the south side of the property; and

WHEREAS, the Louisville Metro Planning Commission further finds no buildings are being proposed, however the access drive is currently existing and runs along the south property line where the setback is required.

Waiver from LDC, section 10.2.4 to eliminate 35' LBA along the southeastern property line and adjacent to residentially zoned LWC property

On a motion by Commissioner Carlson, seconded by Commissioner Mims, the following resolution based on the Standard of Review and Staff Analysis and testimony heard today was adopted.

WHEREAS, the waiver will not adversely affect adjacent property owners as the majority of the abutting properties are vacant and another property contains a non-residential use. A large portion of this property line associated buffer contains an existing gravel driveway encroachment that will be improved for secondary access only; and

WHEREAS, 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 developer will provide a solid, 8' privacy-style fence the property line, except where adequate screening by tree masses is currently provided. If those tree masses are lost, the fence will be extended to fill in the gaps; and

WHEREAS, the Louisville Metro Planning Commission finds, the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant as the majority of the land subject to waiver has a width that is less than the buffer requirement and the area is being used for secondary accessed. The mini-warehouse and secondary access will be screened by a privacy fence; and

PLANNING COMMISSION MINUTES
October 31, 2019

PUBLIC HEARING

CASE NO. 18ZONE1063 ONLY

WHEREAS, the Louisville Metro Planning Commission further finds the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant as screening will be provided and adjacent property owner will not be affected.

WHEREAS, the waiver will not adversely affect adjacent property owners because the buffer is along the existing access drive, as well as the neighboring property is currently being operated as an AT&T service center; and

WHEREAS, the waiver will not violate the Comprehensive Code because there is no other location to put the access drive, and this access drive has been in place since the property was created; and

WHEREAS, the Louisville Metro Planning Commission finds, the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant to allow the access drive to the property to remain in place; and

WHEREAS, the Louisville Metro Planning Commission further finds the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land and create unnecessary hardship on the applicant, since no access would be able to be provided to the property.

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** a variance from the LDC, Land Development Code, section 5.3.1 to omit the 50 foot non-residential to residential setback along the southeastern property line and a waiver from the LDC, section 10.2.4 to eliminate 35 foot landscape buffer area along the southeastern property line and adjacent to residentially zoned Louisville Water Company property.

The vote was as follows:

YES: Commissioners Brown, Carlson, Daniels, Mims, Peterson, Tomes and Jarboe

NO: Commissioner Howard

NOT PRESENT AND NOT VOTING: Commissioner Lewis

Detailed District Development Plan and Binding Elements

On a motion by Commissioner Carlson, seconded by Commissioner Mims, the following resolution based on the Standard of Review and Staff Analysis was adopted.

PLANNING COMMISSION MINUTES
October 31, 2019

PUBLIC HEARING

CASE NO. 18ZONE1063 ONLY

WHEREAS, 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 provided. The developable area of the subject site does not appear to interfere with environmental features. The subject site does not contain buildings, sites, districts or landscapes that are recognized as having historic or architectural value. The Metropolitan Sewer District (MSD) has preliminarily approved the development of the subject property to mitigate negative development impacts to the integrity of the regulatory floodplain; and

WHEREAS, provisions for safe and efficient vehicular and pedestrian transportation within and around the development and the community are provided as cross connectivity for pedestrians and vehicles to access the subject site will be provided through an abutting regional center; and

WHEREAS, the protected waterway buffer at the rear of the site will be preserved; and

WHEREAS, the Metropolitan Sewer District has approved the preliminary development plan and will ensure the provisions 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 proposal is compatible with surrounding uses and the general character of the form district as the proposal is integrated into the adjoining regional activity center. The subject property will be screened from adjacent vacant residential land; and

WHEREAS, the Louisville Metro Planning Commission further finds the proposed development plan conforms to the Comprehensive Plan. No residential uses are present to the immediate south of the subject property and large majority of the district, which abuts a vacant residential parcel, provide secondary access only to the primary use within the district. The proposed non-residential use is located in the NFD at a location where impacts are minimized due to its location immediately adjoining a regional center. Access and connectivity is obtained via major roadway. The Metropolitan Sewer District (MSD) has preliminarily approved the development of the subject property to mitigate negative development impacts to the integrity of the regulatory floodplain. The developable area of the subject site does not appear to interfere with environmental features. The subject site does not contain buildings, sites, districts or landscapes that are recognized as having historic or architectural value.

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** the Detailed District Development Plan **SUBJECT** to the following Binding Elements:

PLANNING COMMISSION MINUTES

October 31, 2019

PUBLIC HEARING

CASE NO. 18ZONE1063 ONLY

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 Louisville Metro Department of Inspections, Permits and Licenses, 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 certificate of occupancy or 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
 - e. A reciprocal access and crossover easement agreement in a form acceptable to the Planning Commission legal counsel shall be created between the development site and the adjoining property at 10500-10520 Westport Road. A copy of the recorded instrument shall be submitted to the Division of Planning and Design Services.
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.
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.

PLANNING COMMISSION MINUTES
October 31, 2019

PUBLIC HEARING

CASE NO. 18ZONE1063 ONLY

5. The developer and/or property owner shall be responsible for restoration of the streambank within the protected waterway as follows:
 - a. Riparian vegetation shall be planted, as necessary, to stabilize the banks of a protected waterway within a Buffer Area. Where a bank is denuded of its vegetation due to erosion, slope failure or similar occurrence, appropriate vegetation shall be planted to quickly establish a vegetative cover, and then replanted with riparian vegetation to ensure the long-term stabilization of the bank. Restoration plantings shall be selected from the MSD native species restoration specifications.
 - b. Where stream bank erosion has occurred as a result of on-site development activities, riparian vegetation shall be planted to stabilize the stream bank unless the County determines such vegetation would be inadequate to re-stabilize the bank. In instances where the County determines that planting of riparian vegetation is inadequate to stabilize the stream bank alternate methods of stabilization, approved by the County shall be utilized.
 - c. Stream, stream bank, and vegetation restoration projects are allowed where the goal is to restore the protected waterway, wetlands, or Buffer Area to an ecologically healthy state, as approved by MSD.

6. Tree and Vegetation Removal within the protected waterway shall be subject to the following:
 - a. Existing, healthy trees and vegetation within the Buffer Area shall be preserved, except for those areas designated by the Limits of Disturbance on the approved district development plan. Trees and vegetation shall be restored in accordance with Binding Element #5 for all areas within the buffer that lie between impervious surfaces and the Limits of Disturbance.
 - b. This provision shall not prohibit any of the following: Removal of dead or diseased trees/vegetation (provided a live root system stays intact); removal of noxious weeds; Removal of non-native trees/vegetation that threaten native species growth or reintroduction; removal of fallen trees, tree limbs, brush and similar debris that accumulate naturally in river/stream beds and that impede river/stream flow, or removal of any other tree/vegetation that is a threat to the public health or safety; Removal of trees as part of an approved plan for stream side recreation or access (e.g. pedestrian trail) or as part of an approved utility or road construction project

7. No idling of trucks shall take place within 200 feet of single-family residences. No overnight idling of trucks shall be permitted on-site.

8. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.

PLANNING COMMISSION MINUTES
October 31, 2019

PUBLIC HEARING

CASE NO. 18ZONE1063 ONLY

9. An 8' privacy-style fence shall be provided along the south property line and extend from the eastern-most building of the mini-warehouse facility to a point 30' from the right-of-way of Freys Hill Road. The fence will be intermittent where tree masses on adjacent property provide greater screening. At such time as those tree masses may be lost, the fence shall be continued to leave no gaps in screening.
10. Access to Freys Hill Road shall be an exit only. The gate shall be 30' from the right-of-way of Freys Hill Road and be clearly marked as an 'exit only'.

The vote was as follows:

YES: Commissioners Brown, Carlson, Daniels, Mims, Peterson, Tomes and Jarboe

NO: Commissioner Howard

NOT PRESENT AND NOT VOTING: Commissioner Lewis

PLANNING COMMISSION MINUTES
October 31, 2019

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 3:50 p.m.

Chair

Planning Director