

PLANNING COMMISSION MINUTES
May 21, 2020

PUBLIC HEARING

CASE NO. 19-ZONE-0094

Request: **This case will be continued to the June 18, 2020 Planning Commission meeting** - Change in zoning from R-5 to C-1, with Detailed District Development Plan and Binding Elements, and associated landscape Waiver

Project Name: Westport Road Retail

Location: 917 & 919 Fountain Avenue, 4700 Westport Road

Owner: Estate of Evelyn Kaelin

Applicant: 4700 Westport LLC

Representative: Dinsmore & Shohl LLC

Jurisdiction: Louisville Metro

Council District: 7 – Paula McCraney

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. (The staff report is part of the case file maintained in Planning and Design Services offices, 444 S. 5th Street.)

Agency Testimony:

No one spoke.

The following spoke in support of this request:

No one spoke.

The following spoke in opposition to this request:

No one spoke.

Commissioner Deliberation:

Commissioners' deliberation (see recording for detailed presentation.)

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.

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01:32:51 On a motion by Commissioner Carlson, seconded by Commissioner Peterson, the following resolution, based on the Standard of Review and Staff Analysis, and testimony heard today was adopted:

RESOLVED, the Louisville Metro Planning Commission does hereby **CONTINUE** this case to the Planning Commission Meeting on **June 18, 2020**.

The vote was as follows:

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

No: None

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Request: Change in zoning from R-5B to C-1 with a Detailed District Development Plan and binding elements, and associated Landscape Waiver
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Location: 917 & 919 Fountain Avenue; 4700 Westport Road
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Applicant: 4700 Westport LLC
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Jurisdiction: Louisville Metro
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Agency Testimony:

02:56:48 Dante St. Germain presented the case and showed a Power Point presentation (see recording for detailed presentation.)

The following spoke in support of this request:

Cliff Ashburner, Dinsmore & Shohl LLP, 101 S 5th St #2500, Louisville, KY 40202

Kent Gootee, Mindel Scott & Associates, 5151 Jefferson Blvd, Louisville, KY 40219

Polly Kaelin Mackie, 13221 Eastgate Village Drive, Louisville, KY 40223

Ellen Kaelin Venhoff, 802 Huttersfield Court, Louisville, KY 40222

Summary of testimony of those in support:

03:03:11 Cliff Ashburner, the applicant's representative, presented the applicant's case and showed a Power Point presentation (see recording for detailed presentation.)

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03:10:49 Polly Kaelin Mackie and Ellen Kaelin Venhoff, children of the former owners, provided testimony about the history of the property and why this is an appropriate location for Commercial use (see recording for detailed presentation.) Ms. Mackie and Ms. Venhoff both stated that this site has been used for commercial uses for generations.

03:17:06 Mr. Ashburner resumed the presentation (see recording for details.)

03:19:25 Kent Gootee discussed the proposed screening for the adjacent property (see recording.) The applicant is proposing an 8-foot fence, six deciduous trees (only five are required), and four additional evergreen trees. Also, evergreen shrubs will be provided between the sidewalk and the end of the fence.

03:21:21 Mr. Ashburner resumed the presentation and provided examples of co-existing commercial and residential in the Metro community.

03:22:48 Mr. Ashburner discussed the differences between C-N and C-1 zoning, and why the applicant thought C-1 was a more appropriate category for this proposal.

03:26:19 Mr. Ashburner read an applicant's proposed binding element into the record, as follows:

The following permitted C-1 uses will not be allowed on the subject property without approval from the Planning Commission or one of its Committees, after a public meeting of the Committee or Commission. All those that received notice of the March 5, 2020 Planning Commission public hearing shall be provided written notice of the meeting, by mail, postmarked at least 14 days in advance of the date of the meeting. The Committee or Commission shall base any decision on whether to allow such uses on the criteria applicable to the modification of a binding element:

- Automobile rental agencies (with no more than 25 rental passenger vehicles stored on-site; no more than two service bays for cleaning or maintenance, and having no repair or storage dispensing of fuel)
- Automobile parking areas, public and private
- Automobile service stations with service bays for repair of no more than two vehicles (see definition of "Automobile Service Station" for types of repairs permitted)
- Bowling alleys

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- Car washes having prior approval by the agencies responsible for transportation planning
- Catering kitchens
- Bakery preparing food and meals for sale or consumption elsewhere
- Dwelling (multiple family)
- Hotels and motels including ancillary restaurants and lounges enclosed in the structure, in which dancing and other entertainment not including other adult entertainment activities as defined in Section 4.4.1 may be provided.
- Ice storage houses of not more than five-ton capacity
- Laundries or laundrettes (self-service)
- Medical laboratories
- Pawn shops

03:29:57 In response to a question from Commissioner Brown, Mr. Ashburner said it was too soon to estimate any hours of operation since there is not yet a tenant for the property. He said he did not anticipate any business that would be open past 10:00 p.m.

03:30:32 Commissioner Mims asked if the property had ever been zoned Commercial. Mr. Ashburner said no, it is non-conforming, and there is no formal "Non-Conforming Use" certificate for it. Commissioner Mims asked if the State bought right-of-way based on commercial or residential use? Mr. Ashburner said the State purchased the ROW based on Commercial value.

03:32:40 Commissioner Mims asked Ms. St. Germain if the staff recommendation would change if this was a C-N zoning request. Ms. St. Germain said yes, because C-1 is a more intensive use than C-N. Commissioner Mims also asked if there was a Westport Road Corridor study available. Commissioner Brown said that study is still in draft form.

03:33:52 Commissioner Carlson asked if the applicant had a tenant, or specific type of tenant, in mind for this site. Mr. Ashburner said there were no specific tenants, but the types of anticipated uses could be small retailers. In response to a question from Commissioner Carlson, Mr. Ashburner explained why the applicant had chosen to request C-1 instead of C-N (see recording.) Commissioner Carlson expressed concern that a future tenant could build something that looks very different from the proposed structures being presented today. Mr. Ashburner said that would require the applicant to come back before the Planning Commission (or Committee) for review. He said that, if this project goes forward with C-1 zoning, the applicant intends to build the building as it is presented today, and will expect any tenant to operate with no changes.

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03:37:20 Commissioner Brown asked about restaurants, outdoor dining, etc. that is permitted in C-1, and how that could affect parking. Kent Gootee explained his parking calculations (see recording). He noted that this project would also get a 10% parking reduction from TARC. Mr. Ashburner added that, if a portion of the building were occupied by an office use, that parking ratio would decrease.

03:38:28 Travis Fiechter, legal counsel for the Planning Commission, asked if there was any consideration about closing the undeveloped alley. Mr. Ashburner said there were objections from the State, and the residents who live across the alley.

The following spoke in opposition to this request:
Ernest Bevin, 913 Fountain Avenue, Louisville, KY

Barbara Beck, 2924 Nepperhan Road, Louisville, KY 40218

Michael Hines, 927 Fenley Avenue, Louisville, KY 40222

Summary of testimony of those in opposition:

03:39:03 Ernest Bivin, the adjoining property owner, said he bought his house in 1956 and lived there when the site was used for a market & liquor store. He said the store/s were right up to Westport Road, and the access was from Westport Road, thus minimizing impact on neighbors. He said this proposal shows all traffic using Fountain Avenue for access. No traffic can come off of Westport Road; the alley is still there, but it can't be used. He noted that this area already has a great amount of retail – why add more? He said the Kaelins have used this property for single-family residential rental for years. He said that this is not a neighborhood-serving use, and it is right up against a neighborhood.

03:45:34 Barbara Beck said Westport Road is four lanes now. It is extremely difficult, if not impossible, to turn left onto Westport Road from Fountain Avenue; also, there are no sidewalks on Fountain Avenue. She asked who is going to maintain the proposed privacy fence. She is concerned about noise, trash, traffic, exhaust fumes, people outside until 10:00 at night, and alcohol consumption from people sitting outside.

03:49:41 Michael Hines said he also spoke for many others in the neighborhood who are opposed to the rezoning. He said no outreach was made to any other neighbors except those directly adjoining the affected sites. He said a 6600 square foot building is not appropriate for a single-family residential neighborhood. He said he has not seen a “business plan” for this development. He asked how long will it be between construction of the building, and occupancy? Also, what do the developers

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consider to be “full occupancy”? He asked how long the developers plan to retain ownership of this property. He said that Westport Village, about ½ mile away, has vacant storefronts; despite this, there are a wide variety of retailers there. He also noted that making a left turn from Fountain Avenue onto Westport Road is almost impossible; customers will try to use Fountain Avenue to find an alternate route onto Westport, probably through Washburn Avenue..

03:56:56 Ms. Beck added that changing the zoning here would alter the character of the neighborhood and cause safety issues.

03:58:10 Mr. Bivin added that the distance from his property line to the parking area should be 25 feet. He said the applicant is asking that the distance be changed to 20 feet. He objects to any diminishing of this distance.

Rebuttal:

04:00:13 Mr. Ashburner said traffic has been evaluated for this proposal; the applicant is anticipating at least some customers would be people who live nearby. (See recording for detailed rebuttal.)

04:04:06 Commissioner Mims asked if the Transportation Cabinet tore down the commercial buildings when they bought the ROW. Mr. Ashburner said he believed so, and that the property owner/s were compensated.

04:04:42 Mr. Fiechter corrected the applicant’s waiver justification – it reads “35 feet” required, but should read “25 feet” required. Mr. Ashburner confirmed that 25 feet is correct.

04:04:57 Commissioner Jarboe said that, due to the higher zoning category being requested and the fact that a neighborhood is right next to the property, the Planning Commission would need some idea about hours of operation for any business here. Mr. Ashburner suggested, 8:00 a.m. to 10:00 p.m.

04:06:01 Commissioners’ deliberation.

04:14:34 The Commissioners came out of Business Session. Ms. St. Germain said the applicant would like to request a continuance for two weeks. Mr. Ashburner said the applicant would like to consider modifying their application and possibly come back with a C-N request. Commissioner Howard said that her reason for not really wanting C-1 here is because the list of prohibited uses, submitted by Mr. Ashburner, was too long.

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She said she was not comfortable with the idea of prohibiting uses that are permitted for any zoning category, and is concerned that future applicants could come back and request an amendment to this binding element.

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04:16:22 On a motion by Commissioner Carlson, seconded by Commissioner Peterson, the following resolution was adopted:

RESOLVED, the Louisville Metro Planning Commission does hereby **CONTINUE** this case to the March 19, 2020 Planning Commission public hearing.

The vote was as follows:

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

NOT PRESENT: Commissioners Tomes and Lewis.

LAND DEVELOPMENT AND TRANSPORTATION COMMITTEE MINUTES
February 13, 2020

NEW BUSINESS

19-ZONE-0094

Request: Change in zoning from R-5 to C-1, with Detailed District Development Plan and Binding Elements, and associated landscape waiver

Project Name: Westport Road Retail

Location: 917 and 919 Fountain Avenue, 4700 Westport Road

Owner: Estate of Evelyn Kaelin

Applicant: 4700 Westport LLC

Representative: Dinsmore & Shohl LLC

Jurisdiction: Louisville Metro

Council District: 7 – Paula McCraney

Case Manager: Dante St. Germain, AICP, Planner II

The staff report prepared for this case was incorporated into the record. This report was available to any interested party prior to the LD&T meeting. (Staff report is part of the case file maintained in Planning and Design Services offices, 444 S. 5th Street.)

Agency Testimony:

00:06:14 Ms. St. Germain discussed the case summary, standard of review and staff analysis from the staff report.

The following spoke in favor of this request:

Cliff Ashburner, Dinsmore and Shohl, LLC, 101 South 5th Street, Suite 2500, Louisville, Ky. 40202

Kent Gootee, Mindel, Scott and Associates, 5151 Jefferson Boulevard, Louisville, Ky. 40219

Summary of testimony of those in favor:

00:11:07 Mr. Ashburner gave a power point presentation. The required planting will be provided within the 20 ft. and the buffer area will be reduced from 35 ft. to 25 ft., which can be done under the code by providing 1.5 times the required plantings. The waiver is to reduce the 25 ft. to 20 ft. while also providing 1.5 times the normal buffering that would be in that area.

Mr. Ashburner gave the history of the property. The glazing question will be answered in more detail at the public hearing.

Mr. Ashburner said he hasn't seen the email from the opposition (received 1.5 hrs. ago). Also, more information regarding landscaping between the site and residents to the south will be provided at the public hearing.

LAND DEVELOPMENT AND TRANSPORTATION COMMITTEE MINUTES
February 13, 2020

NEW BUSINESS

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00:15:03 Commissioner Carlson asked the applicant/representative what they think about a zoning change to C-N as recommended by staff. Mr. Ashburner said it is restrictive and could be problematic.

00:18:05 Commissioner Brown asked Mr. Ashburner if he will be able to discuss hours of operation and lighting at the public hearing. Mr. Ashburner said he will be able to discuss lighting but will need to consult with his client regarding hours of operation.

Commissioner Brown asked about a direct pedestrian connection between the parking lot and the main access. Mr. Ashburner said the plan shows a proposed sidewalk on the south side of the building to the public side and around. There's a pedestrian access to the proposed 4 ft. walk just off the property up to the 5 ft. sidewalk along Westport.

00:19:39 Commissioner Brown stated for rezoning we can require right-of-way dedication on a local road without a curb and gutter that's typically 30 ft. from centerline. The plan shows 25 feet and a typical cross section (bottom left). Mr. Gootee said because there's no gutter or curb on Fountain Ave., we worked it out with MSD to put it on the adjacent property on lot 30 to receive water coming off south of the entrance on Fountain Ave. A ditch north of the entrance shouldn't be needed. Commissioner Brown said the problem is the fact that there is no recoverable shoulder – need 4 ft. between the edge of pavement. Mr. Gootee said it will be resolved with Transportation Planning.

Deliberation

00:22:56 Planning Commission deliberation.

An audio/visual recording of the Land Development & Transportation Committee meeting 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.

The Committee by general consensus placed this case on the March 5, 2020 public hearing at the Old Jail Building.