

PLANNING COMMISSION MINUTES
November 2, 2017

PUBLIC HEARING

CASE NO. 17ZONE1022

Case No: 17ZONE1022
Request: R-4 and C-2 to C-M
Neighborhood to Suburban Marketplace Corridor
Project Name: Orell Mini-Warehouse
Location: 11905 Dixie Highway

Owner: 11905 Dixie LLC
Greg Egart
P.O. Box 991064
Louisville, Ky. 40269

Applicant: 11905 Dixie LLC
Greg Egart
P.O. Box 991064
Louisville, Ky. 40269

Representative: Clifford Ashburner
Dinsmore & Shohl, LLP
101 South 5th Street, Suite 2500
Louisville, Ky. 40202

Derek Triplett
Land Design and Development
503 Washburn Avenue, Suite 101
Louisville, Ky. 40222

Jurisdiction: Louisville Metro
Council District: 14 – Cindi Fowler
Case Manager: Laura Mattingly, 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:

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02:23:02 Ms. Mattingly discussed the case summary, standard of review and staff analysis from the staff report.

The following spoke in favor of this request:

Clifford Ashburner, 101 South 5th Street, Suite 2500, Louisville, Ky. 40202
Derek Triplett, Land Design and Development, 503 Washburn Avenue, Suite 101, Louisville, Ky. 40222

Summary of testimony of those in favor:

02:31:13 Mr. Ashburner gave a power point presentation. A mini-warehouse is typically a quiet neighbor. There are currently no sidewalks but the applicant will provide partial sidewalks to access Dixie Hwy. in a safe way. There is also an additional proposed binding element.

02:38:15 Mr. Triplett stated there will be 2 entrances off Dixie Hwy. – one way in, one way out. The proposed gate will be 40 feet from the property line. There will be heavy plantings and an underground storm system into an outlet located in the Riverport Authority property.

The following spoke neither for nor against the request:

Councilwoman Fowler, 14206 Pauleys Gap Road, Louisville, Ky. 40272

Summary of testimony of those neither for nor against:

02:42:32 Councilwoman Fowler stated she has an issue with the building being on the property line on the north side. There's a MSD ditch leading up to the railroad tracks and wonders if MSD will have enough room to access it if necessary.

02:43:41 Mr. Kelly, MSD, stated there's a blueline stream in the rear and the Core of Engineers has jurisdiction and final approval.

Deliberation

02:44:40 Planning Commission deliberation. Commissioner Brown stated the sidewalk on east Orell needs to be extended to the intersection as required by the Land Development Code (~10-15 feet).

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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 C-2 and R-4 to C-M

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

WHEREAS, the proposal is consistent with the existing pattern of uses in this area, as this is a light industrial proposal within a mixed-use area; and

WHEREAS, sidewalks are provided along Dixie Hwy and E Orell Road. The applicant has requested relief from the requirement along the unimproved right-of-way to the east, which appears justified; and

WHEREAS, shared entrances are not appropriate in this instance and adequate buffering along Dixie Hwy has been proposed; and

WHEREAS, the use is compatible with the adjacent commercial uses and is within the corridor and adequately separated from lower intensity uses; and

WHEREAS, the Louisville Metro Planning Commission finds, the proposal is expanding the Suburban Marketplace Form District but is not causing a disruption of a residential area, due to the shape and location of the site; and

WHEREAS, the Louisville Metro Planning Commission further finds the proposal is utilizing existing infrastructure, therefore it is an efficient use of land; and

WHEREAS, the proposed development complies with the intent of Guideline 1. Much of the site is already located in the Suburban Marketplace Corridor Form District, and the applicant proposes to include the entire site in that District as part of this application. The subject property was formerly a motel; now it is proposed as self-storage. The use will actually be lower intensity in terms of traffic, lighting and hours when impacts on adjacent properties could be felt; and

WHEREAS, the proposed development complies with the intent and applicable policies of Guideline 2. The subject property is already located in a center around the intersection of E. Orell Road and Dixie Highway. The property to the north is an active rail line. The property to the south is a discount store. The properties north along Dixie

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Highway are commercial as well. The property will serve the large number of residential properties in the area, as well; and

WHEREAS, the proposed development complies with the intent and applicable policies of Guideline 3. The proposed development will be compatible with the surrounding commercial and residential uses in that the buildings are single story and will be landscaped. The proposed development will also serve as a buffer between both the railroad line and Dixie Highway and the nearby residential uses. The applicant will provide on-site detention and dedicate right of way to Dixie Highway, contributing to public infrastructure in the area; and

WHEREAS, the proposed development complies with the intents of Guidelines 4 and 5 because there is neither useable open space nor any scenic or historic resources on the subject property; and

WHEREAS, the proposed development complies with the intent of Guidelines 7 and 9. The proposed development will dedicate right of way along Dixie Highway and will provide adequate circulation within the storage facility. The applicant will provide required pedestrian access and bicycle parking on the subject property; and

WHEREAS, the Louisville Metro Planning Commission finds, the proposed development complies with the intents of both Guidelines 10 and 11. The proposal, while increasing impervious surface on the subject property, will comply with all MSD regulations concerning water quantity and quality from the site; and

WHEREAS, the Louisville Metro Planning Commission further finds the proposed development complies with the intent of Guideline 13. The applicant is seeking a landscape waiver adjacent to the active rail line but will provide landscaping along E. Orell and as required along Dixie Highway.

RESOLVED, that the Louisville Metro Planning Commission does hereby **RECOMMEND**, to Metro Council, **APPROVAL** of the zoning change from R-4 and C-2 to C-M based on the staff report and testimony heard today.

The vote was as follows:

YES: Commissioners Brown, Carlson, Ferguson, Howard, Lewis, Lindsey, Peterson, Tomes and Jarboe

NOT PRESENT AND NOT VOTING: Commissioner Smith

Form District change from Neighborhood and Suburban Marketplace Corridor to Suburban Marketplace Corridor

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

RESOLVED, that the Louisville Metro Planning Commission does hereby **RECOMMEND**, to Metro Council, **APPROVAL** of the form district change from Neighborhood and Suburban Marketplace Corridor to Suburban Marketplace Corridor based on the staff report and testimony heard today.

The vote was as follows:

YES: Commissioners Brown, Carlson, Ferguson, Howard, Lewis, Lindsey, Peterson, Tomes and Jarboe

NOT PRESENT AND NOT VOTING: Commissioner Smith

Variance and Waivers

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

Variance from Table 5.3.2, Section 5.3.1 to allow a 0' setback along the northern property line

WHEREAS, the requested variance will not adversely affect public health, safety or welfare as this property line is shared with a railway which is elevated and will therefore block visibility of the proposed building from the properties on the opposite side; and

WHEREAS, the requested variance will not alter the essential character of the general vicinity as the proposed building setback will not alter views from the right-of-way and will not be visible from properties north of the railroad; and

WHEREAS, the requested variance will not cause a hazard or nuisance to the public as the building location does not affect visibility from public areas and is not open to the public; and

WHEREAS, the requested variance will not allow an unreasonable circumvention of zoning regulations as the setback requirements in this case are not appropriate since the property line is shared with a railway; and

WHEREAS, the requested variance arises from special circumstances which do not generally apply to land in the general vicinity or the same zone as the railway to the

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north is zoned R-4, requiring the non-residential to residential setback where the property to the north will not ever be used for residential purposes; and

WHEREAS, the Louisville Metro Planning Commission finds, the strict application of the provisions of the regulation would deprive the applicant of reasonable use of the land as a 30' setback would diminish the area for development to the point that two buildings would need to be removed; and

WHEREAS, the Louisville Metro Planning Commission further finds the circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought; and

WHEREAS, the variance will allow the construction of storage buildings adjacent to the railroad right of way on the north side of the subject property. The buildings should not be visible on the other side of the railroad, nor should they otherwise impact any other property; and

WHEREAS, the variance will not alter the essential character of the general vicinity but will allow for storage buildings to be built in a yard that serves no purpose adjacent to an active railroad line. The encroachment will not affect the development of any other site; and

WHEREAS, the variance will not cause a hazard or nuisance to the public, as it will be in part of the site that is not open to the public nor visible from any public spaces; and

WHEREAS, the variance is appropriate in this case because the buffering function of the required yard is not necessary next to a railroad line; and

WHEREAS, the special circumstance present in this case is the presence of a railroad line that is zoned R-4, creating a yard requirement where one is not needed; and

WHEREAS, the Louisville Metro Planning Commission finds, the strict application of the provisions of the regulation would require the applicant to keep open a yard adjacent to railroad right of way that serves no purpose; and

WHEREAS, the Louisville Metro Planning Commission finds, the circumstances are the result of the railroad line being higher than the land surrounding it and being zoned R-4, which creates the setback; and

WAIVER of Section 5.8.1.B to not provide a sidewalk along the eastern road frontage

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WHEREAS, the waiver not will adversely affect adjacent property owners as the right-of-way in question is unimproved and dead ends into the railway; and

WHEREAS, Guideline 7, Policy 1 states that developments should be evaluated for their impact on the street and roadway system and to ensure that those who propose new developments bear or reasonably share in the costs of the public facilities and services made necessary by development. Guideline 9, Policy 1 states that new development should provide for the movement of pedestrians, bicyclists and transit users with sidewalks along the streets of all developments where appropriate. These guidelines are not violated, as this is an unused, unimproved right-of-way that is not connected on its north side; and

WHEREAS, the Louisville Metro Planning Commission finds, the extent of waiver of the regulation is the minimum necessary to afford relief to the applicant as sidewalks along Dixie Hwy and East Orell Road are provided; and

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 building sidewalks in this location would not serve the public or the proposed use.

WAIVER of section 10.2.4 to not provide the 35' Landscape Buffer Area along the north/northeast property line

WHEREAS, the waiver will not adversely affect adjacent property owners as this property line is shared with a railway which is elevated and will therefore block visibility of the proposed building from the properties on the opposite side; 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 3, Policies 21 and 22 calls for appropriate transitions between uses that are substantially different in scale and intensity or density, and to mitigate the impact caused when incompatible developments occur adjacent to one another through the use of landscaped buffer yards, vegetative berms and setback requirements to 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. Guideline 3, Policy 24 states that parking, loading and delivery areas located adjacent to residential areas should be designed to minimize the impacts from noise, lights and other potential impacts, and that parking and circulation areas adjacent to streets should

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be screened or buffered. Guideline 13, Policy 4 calls for ensuring appropriate landscape design standards for different land uses within urbanized, suburban, and rural areas. Guideline 13, Policy 7 calls for protection of the character of parkways and scenic byways and corridors through standards for buffers, landscape treatment, lighting and signs. The intent of parkway development standards is to protect existing scenic and aesthetic qualities, to ensure a quality visual experience on developing corridors and to protect and improve the visual experience on established corridors. These guidelines are not violated, as there is an existing buffer around the railroad and no need to provide mitigation for this use adjacent to a railroad; 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 requirement exists because the railroad is zoned R-4, single family residential and buffering the proposed use from a railroad is not essential; and

WHEREAS, the Louisville Metro Planning Commission further finds the strict application of the provisions of the regulation would deprive the applicant of reasonable use of the land as a 35' buffer would diminish the area for development to the point that two buildings would need to be removed; and

WHEREAS, the waiver will not adversely affect adjacent property owners. The applicant has located the buildings adjacent to the railroad right of way and unimproved street right of way, both of which will provide the buffering function that the required LBA is intended to provide; and

WHEREAS, the requested waivers will not violate the Comprehensive Plan. The landscape buffer areas typically apply to sites that are directly adjacent to one another. Here, the residential properties being buffered are either an active railroad line or across unimproved, wooded right of way. In addition to these specific characteristics, the proposed use (self-storage) is one that is quiet and unobtrusive; and

WHEREAS, the Louisville Metro Planning Commission finds the extent of the waiver is the minimum necessary to grant the applicant relief. The proposed use of the subject property, together with the surrounding uses/conditions render these buffers unnecessary. The areas purportedly being buffered do not need any buffering, rendering the relief sought reasonable; and

WHEREAS, the Louisville Metro Planning Commission further finds the strict application of the regulation would require the applicant to buffer an active rail line and unimproved right of way from single story storage buildings, which would deprive the applicant of the reasonable use of its land.

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Waiver of Section 10.2.10 to not provide the Vehicular Use Area Landscape Buffer Area along the east property line

WHEREAS, the waiver will not adversely affect adjacent property owners as this property line is shared with the railroad right-of-way that is heavily wooded; and

WHEREAS, the waiver will not violate Guideline 3, Compatibility, of Cornerstone 2020, which calls for the protection of roadway corridors and public areas from visual intrusions, for mitigation of parking areas so as not to negatively impact nearby residents and pedestrians, and for screening and buffering of parking areas adjacent to streets. The waiver will not violate Guideline 13, Landscape Character, which calls for the protection of parkways through standards for buffers, landscape treatment, lighting and signs. The purpose of vehicle use area landscape buffer areas is to improve the appearance of vehicular use areas and property abutting public rights-of way. These guidelines are not violated as the proposed vehicle use area encroachment is adjacent to the railroad right-of-way and will not impact nearby residents; 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 only a small portion of the vehicle use area encroaches into the buffer and it is adjacent to the railroad; and

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 needed vehicle use area would have to be removed for a buffer that is adjacent to the railroad and not necessary.

WHEREAS, the waiver will not adversely affect adjacent property owners. The drive lanes around the buildings are adjacent to the unimproved street right of way which will provide the buffering function that the LBA would create; and

WHEREAS, the requested waiver will not violate the Comprehensive Plan. The transition standards typically apply to sites that are directly adjacent to one another. Here, the residential properties are either an active railroad line or across unimproved right of way. In addition to these specific characteristics, the proposed use (self-storage) is one that is quiet and unobtrusive; and

WHEREAS, the extent of the waiver will grant the applicant relief from a buffer that is completely unnecessary on this particular property. The areas purportedly being buffered do not need any buffering, rendering the relief sought reasonable; and

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WHEREAS, the strict application of the regulation would require the applicant to buffer an unimproved right of way from single story storage buildings, which would deprive the applicant of the reasonable use of its land.

Waiver of section 5.9.2 to not provide a crossover access to adjacent commercial property

WHEREAS, the waiver will not adversely affect adjacent property owners as the adjacent property has its own existing access; and

WHEREAS, Guideline 2, Policy 13 encourages adjacent development sites to share entrance and parking facilities in order to reduce the number of curb cuts and the amount of surface parking. Guideline 7, Policy 13 requires joint and cross access easements according to standards set forth in the Land Development Code to reduce traffic on major thoroughfares and to reduce safety hazards. Guideline 7, Policy 16 calls for the promotion of joint access and circulation systems for development sites comprised of more than one building site or lot. The purpose of the requirements to be waived are to allow similar, compatible non-residential and multi-family uses to access adjacent sites without use of the main road to reduce curb cuts, the amount of surface parking, and traffic on the main thoroughfare. These guidelines are not violated as safe access is provided and cross access is not appropriate for the proposed use due to security purposes; 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 cross connectivity would create security issues for the applicant; and

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 providing cross access creates security issues for the proposed use; and

WHEREAS, the waiver will not adversely affect the adjacent non-residential property. The adjacent property has access to both E. Orel I Road and Dixie Highway, which access will remain. Because of the nature of the storage use, there should be no need for circulation between the two properties; and

WHEREAS, the waiver will not violate the comprehensive plan. Unlike general commercial uses, storage uses require controlled entry points, which the applicant proposes on Dixie Highway. Allowing circulation between the two properties could create security issues for the storage use; and

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WHEREAS, the extent of the waiver is the minimum necessary to grant the applicant relief. The proposed use of the subject property, together with the surrounding uses/conditions render access between the adjoining properties unnecessary; and

WHEREAS, the strict application of the regulation would require the applicant to provide circulation with a property that already enjoys roadway access. Further, allowing circulation between the two properties would create a security issue for the proposed storage use.

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** the following: a variance from Table 5.3.2, Section 5.3.1 to allow a 0 foot setback along the northern property line; a waiver of 5.8.1.B to not provide a sidewalk along the eastern road frontage; a waiver of 10.2.4 to not provide the 35 foot landscape buffer area along the north/northeast property line; 10.2.10 to not provide the vehicular use area landscape buffer area along the east property line; and a waiver of 5.9.2 to not provide a crossover access to adjacent commercial property based on the staff report, testimony heard today and the applicant's justification.

The vote was as follows:

YES: Commissioners Brown, Carlson, Ferguson, Howard, Lewis, Lindsey, Peterson, Tomes and Jarboe

NOT PRESENT AND NOT VOTING: Commissioner Smith

Development Plan and Binding Elements

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

WHEREAS, hydric soils were found on site. The applicant will coordinate with Army Corps of Engineers to ensure any required mitigation. Tree canopy requirements of the Land Development Code will be provided on the subject site; and

WHEREAS, 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. The applicant has also proposed a one-way in one-way out access plan in order to satisfy Transportation requirements; and

WHEREAS, there is no open space requirement for this site; and

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WHEREAS, 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 Louisville Metro Planning Commission finds, 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 and roadways; and

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

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** the Detailed District Development Plan and the proposed binding elements with the addition of binding element number 10 to read as follows: The subject property shall only be used for those uses allowed in the C-M zoning district that are otherwise allowed in the C-2 zoning district and for "Warehouse, storage" but for no other use permitted in the M-1 zoning district. Any amendment to this binding element shall require approval from the Louisville Metro Planning Commission and from the Louisville Metro Council. Also, add a Condition of Approval to the plan as follows: The sidewalks along E. Orell Rd. shall be extended to the Orell Rd. intersection, based on the staff report and testimony heard today, **SUBJECT** to the following Binding Elements:

Binding Elements

1. The development shall be in accordance with the approved district development plan, all applicable sections of the Land Development Code (LDC) and agreed upon binding elements unless amended pursuant to the Land Development Code. Any changes/additions/alterations of any binding element(s) shall be submitted to the Planning Commission or the Planning Commission's designee for review and approval; any changes/additions/alterations not so referred shall not be valid.
2. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.
3. Construction fencing shall be erected when off-site trees or tree canopy exists within 3' of a common property line. Fencing shall be in place prior to any grading or construction to protect the existing root systems from compaction. The fencing

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shall enclose the entire area beneath the tree canopy and shall remain in place until all construction is completed. No parking, material storage or construction activities are permitted within the protected area.

4. Before any permit (including but not limited to building, parking lot, change of use, site disturbance, alteration permit or demolition permit) is requested:
 - a. The development plan must receive full construction approval from 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 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; transmittal of the approved plans to the office responsible for permit issuance will occur only after receipt of said instrument.
 - e. A Tree Preservation Plan in accordance with Chapter 10 of the LDC shall be reviewed and approved prior to obtaining approval for site disturbance.
5. Prior to any site disturbance permit being issued and prior to any clearing, grading or issuance of a site disturbance permit, a site inspection shall be conducted by PDS staff to ensure proper placement of required tree protection fencing in accordance with the approved Tree Preservation Plan.
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 audible beyond the property line.
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

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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. The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the November 2, 2017 Planning Commission hearing.
10. The subject property shall only be used for those uses allowed in the C-M zoning district that are otherwise allowed in the C-2 zoning district and for "Warehouse, storage" but for no other use permitted in the M-1 zoning district. Any amendment to this binding element shall require approval from the Louisville Metro Planning Commission and from the Louisville Metro Council.

Condition of Approval

1. The sidewalks along E. Orell Rd. shall be extended to the Orell Rd. intersection.

The vote was as follows:

YES: Commissioners Brown, Carlson, Ferguson, Howard, Lewis, Lindsey, Peterson, Tomes and Jarboe

NOT PRESENT AND NOT VOTING: Commissioner Smith