

**MINUTES OF THE MEETING
OF THE
LOUISVILLE METRO PLANNING COMMISSION MEETING
October 7, 2021**

A meeting of the Louisville Metro Planning Commission was held at 1:00 p.m. on Thursday, October 7, 2021 via Webex.

Commissioners present:

Marilyn Lewis, Chair
Lula Howard
Jeff Brown
Rich Carlson
Patricia Clare
Ruth Daniels
Jim Mims
Te'Andre Sistrunk
Rob Peterson
Patricia Seitz

Commissioners absent:

No one.

Staff members present:

Joe Reverman, Assistant Director, Planning & Design Services
Brian Davis, Planning & Design Manager
Julia Williams, Planning Supervisor
Dante St. Germain, Planner II
Joel Dock, Planner II
Jay Lockett, Planner I
Laura Ferguson, Legal Counsel
Beth Stuber, Transportation Planning
Mark Sites or Tony Kelly, MSD representatives
Chris Cestaro, Management Assistant

The following matters were considered:

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APPROVAL OF MINUTES

Approval of the minutes for the September 16, 2021 Planning Commission public hearing.

00:05:56 On a motion by Commissioner Howard, seconded by Commissioner Peterson, the following resolution was adopted:

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** the minutes of the Planning Commission public hearing conducted on September 16, 2021.

The vote was as follows:

YES: Commissioners Peterson, Clare, Howard, Carlson, Sistrunk, and Lewis.

ABSTAIN: Commissioners Mims and Brown.

NOT PRESENT: Commissioners Daniels.

(Present but not voting due to technical issues: Commissioner Seitz.)

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PUBLIC HEARING

Case No. 21-STRCLOSURE-0021

Request: **TO BE CONTINUED TO 10-21 PC MEETING** - Closure of
Public Right-of-Way
Project Name: Ewing St Alley Closure
Location: Alley ROW adjacent to 325 S Ewing Ave and 302, 304 and
308 S Peterson Ave
Owner/Applicant: Nick Naiser
Jurisdiction: Louisville Metro
Council District: 9 - Bill Hollander
Case Manager: Jay Lockett, AICP, Planner I

Notice of this public hearing appeared in The Courier-Journal, a notice was posted on the property, and notices were sent by first class mail to those adjoining property owners whose names were supplied by the applicants.

The staff report prepared for this case was incorporated into the record. The Commissioners received this report in advance of the hearing, and this report was available to any interested party prior to the public hearing. (The staff report is part of the case file maintained in Planning and Design Services offices, 444 S. 5th Street.)

Agency Testimony:

00:08:00 Jay Lockett said this case is requested to be continued to the October 21, 2021 Planning Commission public hearing due to signage not meeting presented the notification requirements (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.

00:09:24 On a motion by Commissioner Carlson, seconded by Commissioner Howard, the following resolution was adopted:

RESOLVED, the Louisville Metro Planning Commission does hereby **CONTINUE** this case to the October 21, 2021 Planning Commission public hearing.

The vote was as follows:

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YES: Commissioners Mims, Peterson, Brown, Clare, Howard, Carlson, Sistrunk, and Lewis.

ABSTAIN: Commissioner Seitz.

NOT PRESENT: Commissioner Daniels.

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PUBLIC HEARING

CASE NO. 21-ZONE-0090

Request: Change in zoning form R-6 to CR with detailed plan and waiver
Project Name: 1944 W. Jefferson Street
Location: 1944 W. Jefferson Street
Owner: Ouidab, LLC - Brigitte Owens
Applicant: Ouidab, LLC - Brigitte Owens
Representative: Ouidab, LLC - Brigitte Owens
Jurisdiction: Louisville Metro
Council District: 4 - Jecorey Arthur
Case Manager: Joel P. Dock, AICP, Planning Coordinator

Notice of this public hearing appeared in The Courier-Journal, a notice was posted on the property, and notices were sent by first class mail to those adjoining property owners whose names were supplied by the applicants.

The staff report prepared for this case was incorporated into the record. The Commissioners received this report in advance of the hearing, and this report was available to any interested party prior to the public hearing. (The staff report is part of the case file maintained in Planning and Design Services offices, 444 S. 5th Street.)

Agency Testimony:

00:12:33 Joel Dock presented the case and showed a Power Point presentation (see staff report and recording for detailed presentation.)

The following spoke in support of the request:

Brigitte Owens, 9462 Brownsboro Road, Louisville, KY 40241

Summary of testimony of those in support:

00:17:11 Brigitte Owens, the applicant, presented the case (see recording for detailed presentation.)

00:20:04 In response to a question from Commissioner Mims, Ms. Owens said there are two existing dwelling units in the building, which will be updated. She noted that a representative from the Urban League will be coming at the end of this month to do a walk-through.

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The following spoke in opposition:

No one spoke.

Deliberation:

00:22:17 Commissioners' deliberation.

An audio/visual recording of the Planning Commission hearing related to this case is available on the Planning & Design Services website, or you may contact the Customer Service staff to view the recording or to obtain a copy.

Zoning

00:25:19 On a motion by Commissioner Howard, seconded by Commissioner Seitz, on, the following resolution, based on the Standard of Review and Staff Analysis, and evidence and testimony heard today, was adopted:

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Community Form because the proposal does not encroach upon a residential neighborhood as the structure appears to be built as a corner-commercial use and such uses provide for neighborhood goods and services. The proposed change in zoning will enable the property to be put back to commercial use; the proposed use is located along an arterial roadway and at the corner of a residential block where demand and infrastructure are adequate; the size of the lot will limit traffic impacts and the site is along an arterial in a walkable neighborhood; and significant noise producing uses are not permitted in CR zoning district; and

WHEREAS, the Commission further finds that the proposal meets Land Use & Development Goal 2: Community Form because The proposed district is located appropriately for its intensity at the corner of an arterial roadway; the subject property is in the Traditional neighborhood form at a corner. The proposal will allow for corner commercial development in an area with sufficient population; the proposal will result in compact development as no improvements are proposed; the proposed district allows for the incorporation of a mixture of compatible land uses in a walkable and well-connected neighborhood; thus, supporting alternative modes of travel, and encouraging vitality and a sense of place; and the proposed district will allow for the rehabilitation of corner commercial development in a traditional neighborhood; and

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WHEREAS, the Commission further finds that the proposal meets Land Use & Development Goal 3: Community Form because the subject site does not appear to possess any recognizable natural features as it is a previously developed site; the subject site does not have any recognizable wet soils, steep slopes or issues that may result in erosion; and the subject site does not have any recognizable natural features and no improvements are proposed which negatively impact flood prone areas; and

WHEREAS, the Commission further finds that the proposal meets Land Use & Development Goal 4: Community Form because the proposed district will allow for the reintroduction of a distinctive cultural feature in traditional neighborhoods – corner stores; and

WHEREAS the Commission further finds that the proposal meets Land Use & Development Goal 1: Mobility because the proposed higher intensity district is located on an arterial at the corner of a residential block which supports transit- oriented development and an efficient public transportation system; and

WHEREAS, the Commission further finds that the proposal meets Land Use & Development Goal 2: Mobility because access to the site is from an arterial and access does not encroach upon residential areas; and

WHEREAS, the Commission further finds that the proposal meets Land Use & Development Goal 3: Mobility because the proposed district encourages neighborhood serving uses within proximity to residents and encourage short trips easily made by walking or bicycling; the proposed district encourages neighborhood serving uses within proximity to residents. The site appears is accessible based on pedestrian and transit network; the proposal will have a limited impact on transit while providing another destination for users; any improvements necessary of the development will be made as required; and existing transportation facilities and services are adequate in the area to serve a wide variety of densities and intensities; and

WHEREAS, the Commission further finds that the proposal meets Land Use & Development Goal 2: Community Facilities because the proposed district is in an area served by existing utilities; an adequate supply of potable water and water for fire-fighting purposes is available; and preliminary plan approval has been received by the Metropolitan Sewer District to ensure an adequate means of sewage treatment and disposal to protect public health and to protect water quality in lakes and streams; and

WHEREAS, the Commission further finds that the proposal meets Land Use & Development Goal 1: Economic Development because the proposed higher intensity district is located abutting on a corner along an arterial roadway; now, therefore be it

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RESOLVED, the Louisville Metro Planning Commission does hereby **RECOMMEND** to the Louisville Metro Council that the proposed change in zoning from R-6 multi-family residential to CR Commercial-Residential be **APPROVED**.

The vote was as follows:

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

Waiver

00:26:31 On a motion by Commissioner Howard, seconded by Commissioner Seitz, the following resolution, based on the Standard of Review and Staff Analysis, and evidence and testimony heard today, was adopted:

WHEREAS, the Louisville Metro Planning Commission finds that the waiver will not adversely affect adjacent property owners as the existing structure encroaches upon the buffer and the proximity between structures on this parcel and the next makes the buffer impractical. The applicant will provide the required screen fence at the rear and side lines where structures aren't present; and

WHEREAS, the Commission further finds that the waiver will not violate specific policies of Plan 2040 as buffers are to be used to mitigate incompatible uses and the two uses for which the buffer is required have existed alongside each other for many decades. Screening is being provided at the rear but no development in the rear has been proposed; and

WHEREAS, the Commission further finds that the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant as the structures are existing and a screen will be provided in the rear yard; and

WHEREAS, the Commission further finds that the strict application of the regulation would deprive the applicant of the reasonable use of the land as the existing structure encroaches upon the buffer and the proximity between structures on this parcel and the next makes the buffer impractical. The applicant will provide the required screen fence at the rear and side lines where structures aren't present; now, therefore be it

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RESOLVED, the Louisville Metro Planning Commission does hereby **APPROVE** the requested Waiver of Land Development Code (LDC), section 10.2.4 to waive the required landscape buffer area and plantings between existing structures and provide a 6' screen fence at the rear and side only as shown on the development plan.

The vote was as follows:

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

Detailed District Development Plan

00:27:44 On a motion by Commissioner Howard, seconded by Commissioner Seitz, the following resolution, based on the Standard of Review and Staff Analysis, and evidence and testimony heard today, was adopted:

WHEREAS, the Louisville Metro Planning Commission finds that the proposed development does not appear to impact natural resources; and

WHEREAS, the Commission further finds that provisions for safe and efficient vehicular and pedestrian transportation both within the development and the community has been provided. The site is in a walkable and well- connected neighborhood served by transit; and

WHEREAS, the Commission further finds that no additional open space beyond the existing rear yard is necessary; and

WHEREAS, the Commission further finds that 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 Commission further finds that the overall site design and land uses are compatible with the area and no changes have been proposed; and

WHEREAS, the Commission further finds that the development plan conforms to the comprehensive plan and land development code, except where relief has been appropriately requested and justified; now, therefore be it

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RESOLVED, the Louisville Metro Planning Commission does hereby **APPROVE** the requested Detailed District Development Plan, **SUBJECT** to the following binding elements:

1. The development shall be in accordance with the approved district development plan, all applicable sections of the Land Development Code (LDC) and agreed upon binding elements unless amended pursuant to the Land Development Code. Any changes/additions/alterations of any binding element(s) shall be submitted to the Planning Commission or the Planning Commission's designee for review and approval; any changes/additions/alterations not so referred shall not be valid.
2. Before any permit (including but not limited to building, parking lot, change of use, site disturbance) is requested:
 - a. The development plan must receive full construction approval from Louisville Metro Construction Review, Louisville Metro Public Works and the Metropolitan Sewer District.
 - b. Encroachment permits must be obtained from the Kentucky Transportation Cabinet, 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.
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,

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contractors, subcontractors, and other parties engaged in development of the site, shall be responsible for compliance with these binding elements.

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

The vote was as follows:

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

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PUBLIC HEARING

CASE NO. 21-DDP-0094

***NOTE: This case was heard out of order. It was heard following Item #1, Case No. 21-STRCLOSURE-0021.**

Request:	TO BE CONTINUED TO A DATE UNCERTAIN - Major Amendment to a Planned Development District
Project Name:	Tyler Town Center Planned Development District Amendment
Location:	Various Addresses - Tyler Town Center
Owner:	Various Owners
Applicant:	Planning and Design Services for Louisville Metro Council
Representative:	N/A
Jurisdiction:	Louisville Metro
Council District:	20 - Stuart Benson
Case Manager:	Jay Lockett, AICP, Planner I

Notice of this public hearing appeared in The Courier-Journal, a notice was posted on the property, and notices were sent by first class mail to those adjoining property owners whose names were supplied by the applicants.

The staff report prepared for this case was incorporated into the record. The Commissioners received this report in advance of the hearing, and this report was available to any interested party prior to the public hearing. (The staff report is part of the case file maintained in Planning and Design Services offices, 444 S. 5th Street.)

Agency Testimony:

00:10:21 Jay Lockett said this case was initiated by the Louisville Metro Council via to consider major amendments to the Tyler Town Center Planned Development District (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.

00:11:34 On a motion by Commissioner Howard, seconded by Commissioner Carlson, the following resolution was adopted:

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PUBLIC HEARING

CASE NO. 21-DDP-0094

RESOLVED, the Louisville Metro Planning Commission does hereby **CONTINUE** this case a date uncertain.

The vote was as follows:

YES: Commissioners Mims, Peterson, Brown, Clare, Howard, Carlson, Seitz, Sistrunk, and Lewis.

NOT PRESENT: Commissioner Daniels.

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PUBLIC HEARING

CASE NO. 20-ZONE-0121

Request: Detailed District Development Plan and Binding Elements, with respect to tree canopy preservation
Project Name: Smyrna Parkway Apartments
Location: 9301-9309 Smyrna Parkway, Parcels 066202630000, 066202760000
Owner: Robert & Pauline Penrod
Applicant: GKG Investments LLC
Representative: Dinsmore & Shohl LLC
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. (The staff report is part of the case file maintained in Planning and Design Services offices, 444 S. 5th Street.)

Agency Testimony:

00:29:25 Dante St. Germain presented the case and showed a Power Point presentation (see recording for full presentation and discussion.) She noted that this case was previously heard by the Planning Commission in April 2021 and forwarded to the Louisville Metro Council. However, Metro Council has not acted on that because they decided that the Development Plan only needed some additional review. This portion is being heard today by Planning Commission for additional review.

00:36:32 In response to a question from Commissioner Carlson, Ms. St. Germain said that if the applicant presents a plan for new tree plantings, then binding element #4 C could be changed to reflect that.

00:37:18 In response to a question from Commissioner Carlson, Ms. St. Germain said she is not aware of what is feasible on this site as far as underground detention.

00:38:02 In response to a question from Commissioner Mims, Ms. St. Germain said the applicant is in compliance with the Land Development Code (LDC), although staff

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has recommended a couple of things that are not required by the LDC, like the tree inventory.

00:39:54 In response to a question from Commissioner Daniels, Ms. St. Germain said the benefit of a tree inventory would be knowing how many trees are actually being preserved, because the stems would be noted as being within the preservation area.

The following spoke in support of the request:

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

Mike Hill, Land Design & Development, 503 Washburn Ave # 101, Louisville, KY 40222

Summary of testimony of those in support:

00:41:02 Cliff Ashburner, the applicant's representative, presented the applicant's case and showed a Power Point presentation. He said that what the applicant has done is to compress the developed portion of the site and leave more tree canopy around the perimeter (see recording for detailed presentation.)

00:49:37 Mike Hill, an applicant's representative, discussed the proposed detention along Smyrna Parkway (see recording for detailed discussion.)

00:53:18 Mr. Ashburner concluded the presentation.

00:54:04 In response to a question from Commissioner Howard, Mr. Ashburner discussed the building appearance of Building #1 when viewed from Smyrna Parkway.

00:55:19 Commissioner Clare asked Mr. Hill if the applicant had considered opportunities to save mature trees in the open space areas (between the detention ponds, along Smyrna, around the playground or dog park area, etc.) Mr. Hill said the applicant did not feel confident that they would be able to commit to preserving small pockets of trees, but are willing to look for those opportunities.

00:57:24 In response to a question from Commissioner Lewis, Mr. Hill discussed the trees shown on the plan along the detention basin areas, and the parkway buffer area. Mr. Ashburner said there is not much utility connection that would go through that perimeter. See recording for detailed discussion.

The following spoke in opposition to the request:

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No one spoke.

Deliberation:

01:03:15 Commissioners' deliberation.

01:07:50 Commissioners Carlson and Brown discussed what type of notation or change to the development plan can/should be required if the applicant finds during the construction phase that more trees can be preserved than originally thought. Julia Williams, Metro Planning & Design Services Planning Supervisor, said if the applicant is preserving more on the site, that would be shown on the landscape and tree preservation plan that is approved by staff. Both of those plans are binding and are done prior to issuance of a building permit. Mr. Ashburner noted that the preservation and new tree planting would be shown on the landscape plan.

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.

01:12:54 On a motion by Commissioner Mims, seconded by Commissioner Peterson, the following resolution, based on the Standard of Review and Staff Analysis, and evidence and testimony heard today, was adopted:

WHEREAS, the Louisville Metro Planning Commission finds that tree canopy exists on the site. The applicant now proposes to preserve 20% of the existing canopy. No other natural resources or historic assets are evident on the site; and

WHEREAS, the Commission further finds that provisions for safe and efficient vehicular and pedestrian transportation within and around the development and the community has been provided, and Metro Public Works has approved the preliminary development plan; and

WHEREAS, the Commission further finds that required common and recreational open space is being provided for the future residents of the development; and

WHEREAS, the Commission further finds that the Metropolitan Sewer District has approved the preliminary development plan and will ensure the provision of adequate drainage facilities on the subject site in order to prevent drainage problems from occurring on the subject site or within the community; and

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WHEREAS, the Commission further finds that the overall site design is in compliance with the Land Development Code and is compatible with existing and projected future development in the vicinity. The site is located within an existing activity center, identified as a neighborhood node in the Highview Neighborhood Plan, providing neighborhood goods and services. The site plan provides required buffering between the development and existing adjacent single-family development; and

WHEREAS, the Commission further finds that the development plan conforms to applicable guidelines and policies of the Land Development Code with the exception of a previously-approved waiver; now, therefore be it

RESOLVED, the Louisville Metro Planning Commission does hereby **APPROVE** the requested Detailed District Development Plan with Binding Elements as relates to tree canopy preservation.

The vote was as follows:

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

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PUBLIC HEARING

CASE NO. 6 - BE Appeal 10.07.21

Request: Binding Element Appeal - 1317 Tile Factory Lane
Case Manager: **Laura Ferguson, Jefferson County Attorney's Office**

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.)

Staff Testimony:

Laura Ferguson, Assistant County Attorney
Mike Wilcher, Metro Code Enforcement
Beth Stuber, Metro Transportation Planning

Agency Testimony:

01:14:32 Laura Ferguson presented the case and showed a Power Point presentation (see recording for detailed presentation.)

01:18:27 Mike Wilcher, with Louisville Metro Code Enforcement, discussed the violations and whether any corrective action/s had been taken (see recording for detailed testimony.) He noted that, as of today, he is unaware of any permits being obtained, or of any applications having been submitted to Construction Review or Metro Transportation Planning to obtain said permits. He said MSD may have received a site disturbance permit application but he was not sure.

01:20:28 Beth Stuber, with Louisville Metro Transportation Planning, said Transportation has not received any application for construction review on this site. She said they had received a copy of a preliminary exhibit for the road widening. She said Transportation had a brief discussion with the consulting engineer regarding what was required for construction plans for the road widening.

01:21:16 In response to a question from Commissioner Clare, Ms. Ferguson said that, historically, one fine is levied per site, not per binding element.

01:21:44 In response to questions from Commissioner Mims, Mr. Wilcher discussed details of the applicant's application process (see recording.)

01:23:43 In response to a question from Commissioner Carlson, Mr. Wilcher said the first in-person inspection was May 22, 2021. The Code Enforcement officer spoke

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personally with the owner. The second inspection was July 22, 2021, with no change in the use or evidence of rectification. Mr. Wilcher listed Metro agencies and staff members who had personally spoken with the owner, including himself, regarding the violations.

01:26:29 In response to questions from Commissioner Carlson, Mr. Wilcher listed the types of violations that have occurred (unauthorized removal of tree canopy; no parking lot permit; no paving; no landscape plan or installation of landscaping; roadway improvements in the public ROW, etc.) Ms. Stuber discussed the roadway in front of the site. See recording for detailed discussion.

The following spoke in support of the appeal:

Stuart Alexander, 2010 Edgeland Avenue, Louisville, KY 40204

Aaron Arnold, Arnold Consulting Engineering Services, 1136 South Park Drive Suite 201, Bowling Green, KY 42103

Summary of testimony of those in support of the appeal:

01:31:13 Stuart Alexander, the appellant's representative, introduced the appellant's case (see recording for detailed presentation.)

01:33:50 Aaron Arnold described the events, what's been done, what still needs to be done, and when and how the required applications have been made (see recording for detailed presentation.)

01:43:45 Mr. Alexander concluded by suggesting that this matter be continued for 30 days to permit Mr. Arnold to continue his discussions regarding the tree canopy and what if anything may need to be adjusted there. He said his client is willing to do whatever needs to be done. He said Mr Arnold had had "numerous" contacts with Metro staff regarding these issues.

The following spoke neither for nor against the request ("Other"):

Rachel Roarx, representing Councilwoman Nicole George (Council District 21), 601 West Jefferson Street, Louisville, KY 40202

Summary of testimony of those neither for nor against:

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01:46:02 Rachel Roarx, representing Councilwoman Nicole George, shared some concerns and comments from citizens, specifically from an abutting neighborhood that has been adversely impacted by the operation/s on this site. Heavy trucks were a particular concern as they cut through the neighborhood despite prohibitive signage; also the current status of the roadway. See recording for detailed statement.

Discussion:

01:49:05 In response to a question from Commissioner Brown, Mr. Arnold said the appellant has been using this parking lot for heavy truck parking and storage since the May notice was issued.

01:49:35 Commissioner Peterson asked the appellant's representatives to address why the appellant began and continued operations in opposition to the binding elements and without permits. He and Mr. Alexander discussed the issue (see recording for detailed discussion.) Mr. Alexander asked that his client be given additional time to demonstrate complete compliance and for the completion of the widening of the road.

01:52:20 Commissioner Brown asked if the appellant is going to remove the heavy trucks/ cease operations while they go through the rest of the permit and approval process? Mr. Alexander said no.

01:53:03 Commissioner Clare asked if all of the trees were gone from the perimeter of the property, and what is the proposed mitigation for that. Mr. Alexander said not all of the trees have been removed – a line of trees has been preserved, and fencing has been put up installed inside the perimeter. He discussed the 35-foot buffer. He said mitigation would be to ensure the 35-foot boundary. He said work of the company that removed the trees was observed by "inspectors" and no one told them to stop.

01:55:00 In response to a question from Commissioner Lewis, the appellant confirmed that a site photo showed a residence next to the perimeter fence. Commissioner Lewis said the appellant testified that the nearest residence was a block away. Mr. Alexander said there are one or two houses in this industrial stretch of the road.

01:56:00 In response to a question from Commissioner Peterson, Mr. Alexander said the site was not disturbed until after the appellant received the MSD permit release document. Commissioner Peterson referred to binding element #4, which discusses site disturbance. Mr. Arnold said the Tree Preservation Plan was approved in August

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2019; the MSD approval was obtained in May, 2020. Ms. Ferguson clarified where the violations were in binding element #4.

01:58:27 In response to questions from Commissioner Howard, Mr. Arnold said that the approvals that the applicant received from MSD were not filed with the Metro Planning & Design Services because the applicant was unaware that this needed to be done. Since then, the appellant has provided this information to Mr. Mullarkey. Commissioner Howard asked if Mr. Mullarkey was the person who was supposed to receive the approvals. Ms. Stuber explained the typical construction procedure (see recording.) Commissioner Howard, Ms. Stuber, and Mr. Alexander discussed who was supposed to receive what during the process.

02:05:15 Mr. Wilcher said the approvals that are needed are from Metro Codes and Regulations Construction Review; a Landscape Plan from Planning & Design Services; and from Public Works/Transportation Planning for the road widening. The appellant stated that they have already received MSD approvals. Mr. Wilcher described in detail what is still needed from the appellant.

02:07:51 In response to a question from Commissioner Lewis, Mr. Wilcher stated that all pertinent information has been personally conveyed to the appellant. He said he and several staff members have personally spoken to the applicant in person and on the phone, including during site visits. Commissioner Lewis asked if the appellant has been using this site for the trucking business in advance of obtaining permits. Mr. Wilcher said yes, that Code Enforcement said they started receiving complaints about one year ago, and are continuing to do so. See recording for detailed conversation.

02:09:47 Commissioner Mims and Mr. Arnold discussed in detail his communications with Louisville Metro staff during the construction process. Mr. Arnold noted that the majority of the construction is already done, minus the landscaping (see recording.)

02:14:52 In response to questions from Commissioner Mims, Mr. Arnold and Mr. Alexander said that the approved Tree Preservation Plan was given to the company that cleared the site.

02:16:12 In response to a question from Commissioner Mims, Mr. Alexander said the approved hours of operation were to be from 6:00 a.m through 9:00 p.m.

02:17:15 In response to a question from Commissioner Clare, Mr. Arnold said the current pavement does not follow the approved development plan, because MSD

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recommended that the applicant keep it as loose gravel to reduce stormwater runoff. There is now a centralized basin that would allow water to drain into the ground.

02:19:13 Commissioner Mims asked if there was a central location or database where all building and permitting information goes (Accela database). Mr. Wilcher said that, prior to today's meeting he had checked with all involved agencies. Mr. Arnold maintained that he has an email from MSD approving the request and the appellant has the stamped plans from MSD. Julia Williams, Planning Supervisor with Planning & Design Services, clarified how information gets into the Accela database, and said it appears that the applicant worked with MSD only, not any other agencies.

02:24:30 In response to questions from Commissioner Peterson, Mr. Wilcher gave clarification of the extent of the violation of the tree removal work.

02:26:10 In response to a question from Commissioner Carlson, Ms. Williams said that, when the applicant started construction, that extends the expiration date of the plan.

02:27:38 In response to a question from Commissioner Carlson, Ms. Ferguson said the site was a storage facility before it became a trucking parking lot. In 2019, a Revised District Development Plan was heard for this property, with a proposed use as a mini-storage warehouse facility that was never developed. A revised plan was submitted to change to a heavy truck storage facility.

02:29:18 Commissioner Carlson and Mr. Arnold discussed what sort of surfacing had been done on the parking lot.

02:3:41 In response to a question from Commissioner Carlson, Mr. Alexander said a contractor has been contacted to do the road widening work, although there is no signed contract yet.

02:33:54 In response to a question from Commissioner Howard, Commissioner Brown and Ms. Stuber said 30 days would not give Metro Transportation enough time to review plans or allow for revisions. In response to a question from Commissioner Peterson, Ms. Williams said the appellant still has to do a landscape plan with mitigation (see recording for discussion.)

02:38:04 In response to questions from Commissioner Carlson, Ms. Ferguson discussed possible procedures within the Planning Commission's purview.

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02:40:16 In response to a question from Commissioner Howard, Ms. Ferguson discussed procedures for tree mitigation.

02:42:00 In response to a question from Commissioner Clare, Ms. Ferguson reiterated that the ongoing operation of the business is a separate issue from the binding element violation (see recording for detailed discussion.)

Deliberation

02:44:48 Commissioners' deliberation.

An audio/visual recording of the Planning Commission hearing related to this case is available on the Planning & Design Services website, or you may contact the Customer Service staff to view the recording or to obtain a copy.

03:06:38 On a motion by Commissioner Howard, seconded by Commissioner Seitz, the following resolution, based on evidence and testimony provided today, was adopted:

RESOLVED, the Louisville Metro Planning Commission does hereby **UPHOLD** the citation, and that the property owner shall be fined \$3,000 in total, based upon three visits by Code Enforcement to the property on May 22, 2021; July 22, 2021; and October 6, 2021; and that the County Attorney shall draft a final order reflecting this resolution.

The vote was as follows:

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

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ADJOURNMENT

The meeting adjourned at approximately 4:10 p.m.

Chairman

Division Director