

**PLANNING COMMISSION MINUTES**  
**November 18, 2021**

**PUBLIC HEARING**

**Case No. 21-ZONE-0081**

**NOTE: Commissioner Seitz left the meeting at 7:45 p.m. and did not hear or vote on this case.**

Request:	Change in zoning from R-4 to C-2, with Detailed District Development Plan and Binding Elements, Variance, Waiver and Parking Waiver
Project Name:	Thornton's
Location:	10501 & 10511 Preston Highway
Owner:	Becky Young & Ashley Hembree
Applicant:	Stern Development
Representative:	Bardenwerper Talbott & Roberts
Jurisdiction:	Louisville Metro
Council District:	23 - James Peden
<b>Case Manager:</b>	<b>Dante St. Germain, AICP, Planner I</b>

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:**

05:57:52 Dante St. Germain presented the case and showed a PowerPoint presentation (see staff report and recording for detailed presentation.) In response to questions from the Commissioners, Ms. St. Germain discussed the proposed access easement; and the access drive that comes in at the light;

**The following spoke in support of the request:**

John Talbott, Bardenwerper Talbott & Roberts PLLC, 1000 North Hurstbourne Parkway, Louisville, KY 40223

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

Brad Smith, Stern Development, 8910 Two Notch Road, Columbia, SC 29223

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Diane Zimmerman, 12803 High Meadows Pike, Louisville, KY 40059

#### **Summary of testimony those in support:**

05:49:43 John Talbott, the applicant's representative, presented the applicant's case and showed a Power Point presentation (see recording for detailed presentation.)

05:55:32 Kent Gootee, an applicant's representative, gave details about the landscaping and parking (see recording for detailed presentation.)

06:03:21 Mr. Talbott discussed the new proposed binding elements (see recording).

06:05:11 Mr. Talbott and the Commissioners discussed the elevations, particularly the side view, and the possibility of adding a parapet and landscaping. Brad Smith, an applicant's representative, said the applicant would be willing to consider adding landscaping. Commissioner Carlson and the applicant's representatives also discussed turning lanes and U-turns onto Preston. Diane Zimmerman, traffic engineer, explained that there was nothing the applicant could prohibit U-turns without eliminating drivers' ability to make a left turn. See recording for detailed conversation.

06:15:26 Commissioner Carlson and Mr. Talbott also discussed the potential economic impacts. Commissioner Carlson and Mr. Talbott discussed the possibility of adding a binding element stating that Thornton's not allow fuel deliveries during peak hours for Chick-Fil-A.

06:23:28 Commissioner Carlson, Mr. Talbott and Mr. Smith discussed the parking waiver.

06:25:41 – 06:46:43 The Commissioners, Mr. Talbott, Mr. Smith, and Beth Stuber (Metro Transportation Planning) discussed the Traffic Impact Study, how this proposal could affect a dual left-turn lane onto Mount Washington Road, and what amount of contribution the applicant could/should make to this project (see recording for detailed discussion.)

06:46:56 In response to a question from Commissioner Mims, Mr. Talbott and Mr. Gootee discussed a cross-access agreement with the property to the north as a note on the plan. Traffic at Preston and Mount Washington was discussed. In response to a question from Commissioner Peterson, Mr. Talbott and Mr. Smith discussed Commissioner Carlson's concern about the way the fuel tanks might impede the flow of traffic on the site, and the way the applicant has addressed that (see recording.)

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**The following spoke in opposition to the request:**

No one spoke.

**Rebuttal:**

06:55:11 Mr. Talbott summarized the applicant's presentation (see recording.)

**Deliberation:**

06:58:48 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.**

### Zoning

07:02:54 On a motion by Commissioner Sistrunk, 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 the proposal meets Community Form: Goal 1 because the site is located along Preston Highway, which is largely a commercial corridor in this area except at the site's immediate vicinity. This site is likely to redevelop as commercial to match the remainder of the Preston Highway corridor. The proposal would not constitute a non-residential expansion into an existing residential area as the Menard's and greenhouse flanking the site to the north and south would make this redevelopment part of an existing activity center; the site is located on Preston Highway, a commercial corridor with existing activity centers to the north and south of the site; the proposal is not for industrial zoning; the proposed zoning district would not permit hazardous uses. Uses with air, noise and light emissions must comply with LMCO and LDC restrictions; the proposed zoning district would not permit noxious odors, particulates or emissions; access to the site is via Preston Highway, a major arterial at this location; the adjacent properties are either undeveloped or used as a commercial greenhouse; and the proposed zoning district would not permit uses handling hazardous or flammable materials, or uses similar to junkyards, landfills or quarries; and

**WHEREAS**, the Commission further finds that the proposal meets Community Form: Goal 2 because the proposal would help to connect two existing activity centers, one to

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the south and one to the north, which are located along Preston Highway, a commercial corridor; the site has appropriate access and connectivity; the site is located along Preston Highway, a commercial corridor and major arterial at this location. The site is located between two activity centers; the proposed zoning district would permit a more compact pattern of development in an activity center; the proposed zoning district would permit a mixture of compatible land uses connected through an access road; the proposed zoning district would permit residential uses above retail; the proposal would provide new development providing commercial uses; the proposal does not feature any underutilized parking lots; and the proposed zoning district would permit an appropriate design and scale of a center in the Neighborhood Form District. The site placement is on Preston Highway, a commercial corridor; and

**WHEREAS**, the Commission further finds that the proposal meets Community Form: Goal 3 because no natural features are evident on the site; no wet or highly permeable soils, or severe, steep or unstable slopes are evident on the site; the site is not located in the Ohio River Corridor; and the site is not located in the floodplain; and

**WHEREAS**, the Commission further finds that the proposal meets Community Form: Goal 4 because no historic assets are evident on the site; and no distinctive cultural features are evident on the site; and

**WHEREAS**, the Commission further finds that the proposal meets Mobility: Goal 1 because the site is located between two existing activity centers and the proposed zoning change would help to connect them; and

**WHEREAS**, the Commission further finds that the proposal meets Mobility: Goal 2 because access to the site is via Preston Highway, a major arterial at this location; and

**WHEREAS**, the Commission further finds that the proposal meets Mobility: Goal 3 because the proposal would permit a mix of complementary neighborhood-serving uses; the site is easily accessible by car. Development of the site will improve accessibility by bicycle, pedestrians and people with disabilities. Increased density in the vicinity is likely to increase accessibility by transit; the proposal would permit higher-density mixed-use developments that reduce the need for multiple automobile trips; and Transportation Planning has approved the proposal; and

**WHEREAS**, the Commission further finds that the proposal meets Community Facilities: Goal 2 because the relevant utilities have approved the proposal; Louisville Water Company has approved the proposal; and MSD has approved the proposal; and

**WHEREAS**, the Commission further finds that the proposal meets Economic Development: Goal 1 because the proposal is not for industrial zoning; the site is

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located on Preston Highway, a major arterial at this location; and the proposal is not for industrial zoning. The site is not located near the airport or the Ohio River; and

**WHEREAS**, the Commission further finds that the proposal meets Livability: Goal 1 because karst features are located on the site. Development on karst features will follow Land Development Code requirements for safe development; and the site is not located in the floodplain; and

**WHEREAS**, the Commission further finds that the proposal meets Housing: Goal 1 because the proposed zoning district would support aging in place by permitting commercial uses along a commercial corridor with residential farther from the arterial street; and

**WHEREAS**, the Commission further finds that the proposal meets Housing: Goal 2 because the proposed zoning district would permit inter-generational mixed-income and mixed- use development; and the proposal would permit housing to be in proximity to an activity center providing neighborhood goods and services; and

**WHEREAS**, the Commission further finds that the proposal meets Housing: Goal 3 because no existing residents will be displaced by the proposal; and the proposed zoning district would permit innovative methods of housing; now, therefore be it

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

**The vote was as follows:**

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

**NOT PRESENT: Commissioners Lewis, Brown, Daniels, and Seitz.**

**Variance**

07:03:49 On a motion by Commissioner Sistrunk, seconded by Commissioner Clare, the following resolution, based on the Standard of Review and Staff Analysis and evidence and testimony heard today, was adopted:

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**WHEREAS**, the Louisville Metro Planning Commission finds that the requested variance will not adversely affect public health, safety or welfare as the increase in setback will either improve or have no impact on sight lines; and

**WHEREAS**, the Commission further finds that the requested variance will not alter the essential character of the general vicinity as the essential character of the general vicinity is undeveloped at this time and will be established with the new development; and

**WHEREAS**, the Commission further finds that the requested variance will not cause a hazard or nuisance to the public as the increase in setback will not present a hazard or nuisance; and

**WHEREAS**, the Commission further finds that the requested variance will not allow an unreasonable circumvention of zoning regulations as the requested variance is needed in order to situate the fueling canopy in front of the convenience store, which is the usual configuration of a gas station; and

**WHEREAS**, the Commission further finds that the requested variance does not arise from special circumstances which do not generally apply to land in the general vicinity or the same zone because the site is proposed to be cleared of structures and will be subdivided as the applicant wishes; and

**WHEREAS**, the Commission further finds that the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or create an unnecessary hardship on the applicant because the variance is needed in order to rezone the property for the desired use; and

**WHEREAS**, the Commission further finds that 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 construction has yet taken place and the variance is being sought at this time; now, therefore be it

**RESOLVED**, that the Louisville Metro Planning Commission does hereby **APPROVE** the requested Variance from Table 5.3.2 to permit a non-residential structure to exceed the maximum front yard setback (required 80', requested 143', variance of 63') (21-VARIANCE-0124)

**The vote was as follows:**

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

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**NOT PRESENT: Commissioners Lewis, Brown, Daniels, and Seitz.**

### Landscape Waiver

07:04:45 On a motion by Commissioner Sistrunk, 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 the waiver will not adversely affect adjacent property owners as the most affected property is undeveloped and owned by the state; and

**WHEREAS**, the Commission further finds that the waiver will not violate specific guidelines of Plan 2040 as Plan 2040 encourages appropriate buffering and transitions between uses that are significantly different in density or intensity. The adjacent property is likely to be redeveloped at some point at a similar density and intensity as the proposed use; 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 site is irregular in shape and the required plantings will be provided as a fee-in-lieu; and

**WHEREAS**, the Commission further finds that strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant because the drive-through would have to be moved significantly back to buffer an undeveloped parcel which is likely to be redeveloped in the future at a similar intensity as the proposed use; now, therefore be it

**RESOLVED**, that the Louisville Metro Planning Commission does hereby **APPROVE** the requested **Waiver** from 10.2.4.B.1 to permit encroachment into the required property perimeter Landscape Buffer Area (LBA) on the north property line (21-WAIVER-0115)

**The vote was as follows:**

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

**NOT PRESENT: Commissioners Lewis, Brown, Daniels, and Seitz.**

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**Parking Waiver**

07:05:56      On a motion by Commissioner Sistrunk, 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 Mobility Goal 3 Policy 14 states that parking requirements should take into account the density and relative proximity of residences to businesses in the market area, the availability and use of alternative modes of transportation, and the character and pattern of the form district. Additional considerations including hours of operation and opportunities for shared parking may be factored on a site by site basis. On-site parking standards should reflect the availability of on- street and public parking; and

**WHEREAS**, the Commission further finds that the applicant made a good faith effort to provide as many parking spaces as possible on the site, on other property under the same ownership, or through joint use provisions by arranging the parking on the site to maximize the provided parking; and

**WHEREAS**, the Commission further finds that the parking studies provided for the Thorntons sites and the Chick-fil-a sites studied demonstrate that the needed parking cannot be provided within the LDC limitations; and

**WHEREAS**, the Commission further finds that the requested parking will provide the minimum required to supply parking necessary for employee and customer parking for Thorntons and Chick-fil-a as per the parking studies performed. Additionally the applicant has agreed to provide four additional trees to shade the Chick-fil-a drive-through in addition to the required tree canopy on the site; now, therefore be it

**RESOLVED**, that the Louisville Metro Planning Commission does hereby **APPROVE** the requested **Parking Waiver** to exceed the maximum allowable parking on Tract 1 (Chick-Fil-A) to allow a proposed 71 parking spaces and Tract 3 (Thorntons) to allow a proposed 27 parking spaces (21- PARKWAIVER-0011) **ON CONDITION** that 4 additional trees are planted as mitigation.

**The vote was as follows:**

**YES: Commissioners Mims, Peterson, Clare, Howard, Carlson, and Sistrunk.**  
**NOT PRESENT: Commissioners Lewis, Brown, Daniels, and Seitz.**



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**Detailed District Development Plan with Binding Elements**

07:10:11 On a motion by Commissioner Sistrunk, 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 the site is mostly cleared and few natural resources exist on the site currently. Required tree canopy will be provided; 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 no open space provisions are pertinent to the request; 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

**WHEREAS**, the Commission further finds that the overall site design is in compliance with existing and planned future development in the area. The proposal would provide commercial development in a commercial corridor in a location anticipated for future commercial development; and

**WHEREAS**, the Commission further finds that the development plan conforms to applicable requirements of the Land Development Code and Plan 2040 with the exception of the requested variance, waiver and parking waiver. The site plan generally complies with the policies and guidelines of the Comprehensive Plan; now, therefore be it

**RESOLVED**, that 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

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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 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 Construction Review, Louisville Metro Public Works and the Metropolitan Sewer District.
  - b. 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. Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter.
  - c. A Tree Preservation Plan in accordance with Chapter 10 of the LDC shall be reviewed and approved prior to obtaining approval for site disturbance.
  - d. A minor subdivision plat or legal instrument shall be recorded creating the lot lines as shown on the development plan. A copy of the recorded instrument shall be submitted to the Division of Planning and Design Services; transmittal of the approved plans to the officer responsible for permit issuance will occur only after receipt of said instrument.
  - e. A defined reciprocal access easement agreement in a form acceptable to the Planning Commission legal counsel shall be created between the subject property and the two Mercer properties to the east and recorded. A copy of the recorded instrument shall be submitted to the Division of Planning and Design Services; a copy of the recorded

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instrument shall be submitted to the Division of Planning and Design Services prior to obtaining a building permit.

- f. A reciprocal access and crossover easement agreement in a form acceptable to the Planning Commission legal counsel shall be created between the three subject property lots and recorded. A copy of the recorded instrument shall be submitted to the Division of Planning and Design Services; a copy of the recorded instrument shall be submitted to the Division of Planning and Design Services prior to obtaining a building permit.
  - g. The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the November 18, 2021 Planning Commission meeting. A copy of the approved rendering is available in the case file on record in the offices of the Louisville Metro Planning Commission.
5. There shall be no outdoor music (live, piped, radio or amplified) or outdoor entertainment or outdoor PA system audible beyond the property line.
  6. No idling of trucks shall take place within 200 feet of residential structures. No overnight idling of trucks shall be permitted on-site.
  7. 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.
  8. The applicant, developer, or property owner shall provide copies of these binding elements to tenants, purchasers, contractors, subcontractors and other parties engaged in development of this site and shall advise them of the content of these binding elements. These binding elements shall run with the land and the owner of the property and occupant of the property shall at all times be responsible for compliance with these binding elements. At all times during development of the site, the applicant and developer, their heirs, successors; and assignees, contractors, subcontractors, and other

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

9. Should Kentucky Transportation Cabinet approval of the right-in-right-out on Preston Highway not be provided, the applicant shall revise the plan and return to the Development Review Committee for approval of a revised plan.
10. The applicant shall reimburse the Okolona Fire Protection District, Station 2 (the "Fire Station"), located at 10508 Old Preston Highway (the "Site") up to \$10,000 for an intersection control device, provided the Fire Station still remains at the Site and has not made plans to relocate from Site once the certificates of occupancy are issued for Chick-Fil-A and Thorntons.
11. The applicant shall complete off-site right-of-way improvements once construction permits are issued and they must be complete before any certificates of occupancy are issued for Chick-Fil-A and Thorntons, provided same are required by KYTC (pursuant to KYTC standards), for (1) the southbound left turn lane at the intersection of Preston Hwy. and Interchange Drive, (2) the right deceleration lane on the northbound right-in/right-out on Preston Hwy., and (3) the northbound right-turn lane at the intersection of Preston Hwy. and Interchange Drive.
12. Fuel tanker trucks shall enter and exit the site, and fill the underground tanks, as demonstrated at the 11/18/21 Planning Commission public hearing.

#### **The vote was as follows:**

**YES: Commissioners Mims, Peterson, Clare, Howard, and Sistrunk.**

**NO: Commissioner Carlson.**

**NOT PRESENT: Commissioners Lewis, Brown, Daniels and Seitz.**