

**PLANNING COMMISSION MINUTES**  
**April 2, 2015**

**PUBLIC HEARING**

**CASE NO. 14ZONE1055**

Request: Change in Zoning from C-1 to C-2, Detailed District Development Plan and Binding Elements, and Waivers

Project Name: Berry Auto Sales  
Location: 1504 – 1506 Berry Boulevard  
Louisville, Ky. 40215

Owner: Abdallah Badouan  
6919 Rock Hollow Drive  
Louisville, Ky. 40219

Applicant: J.L. McCoy & Co., LLC  
Jonathan L. McCoy  
426 Watt Street, Suite B  
Jeffersonville, In. 47130

Representative: J.L. McCoy & Co., LLC  
Jonathan L. McCoy  
426 Watt Street, Suite B  
Jeffersonville, In. 47130

Jurisdiction: Louisville Metro  
Council District: 15 – Marianne Butler  
**Case Manager: David B. Wagner – Planner II**

**NOTE: COMMISSIONERS KIRCHDORFER, PROFFITT AND WHITE LEFT AND DID NOT VOTE ON THIS CASE**

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:**

02:53:32 Mr. Wagner discussed the case summary, standard of review and staff analysis from the staff report.

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**The following spoke in favor of this request:**

Abdallah Badouan, 6919 Rock Hollow Drive, Louisville, Ky. 40219  
John McCoy, J.L. McCoy & Co., LLC, 426 Watt Street, Suite B, Jeffersonville, Ind.  
47130

**Summary of testimony of those in favor:**

03:04:17 Mr. McCoy said the site has historically been zoned Commercial and will continue with the auto sales facility. The site will have improvements of landscaping and repairs to the parking lot including striping. KTC will not require the entrance on Berry Blvd. to be closed. It's a deal breaker for the applicant to lose that entrance.

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

Kevin Belcher, 3516 Wheeler Avenue, Louisville, Ky. 40215  
Ann Belcher, 3516 Wheeler Avenue, Louisville, Ky. 40215

**Summary of testimony of those in opposition:**

03:07:29 Mr. Belcher said the only thing between his home and the subject site parking lot is Conn Alley. A car lot is very wanted if it's kept clean. Also, when the zoning is changed, can it be changed to a strip club or bar? That will decrease the value of the homes in the neighborhood.

03:09:14 Mrs. Belcher requests fencing the back entrance and leaving the side entrance open. It's a short distance from Conn Alley and Mrs. Belcher says she can see all the driving back and forth into the site, from her kitchen window. Also, the applicant needs to keep the property cleaned and the grass mowed.

3:13:05 Mr. Wagner explained to Mr. and Mrs. Belcher that Adult Entertainment uses aren't allowed in Commercial Zoning Districts but a bar is allowed. Also, the portion Mrs. Belcher wants closed will be screened.

**Rebuttal**

03:14:44 Mr. Badouan agrees in writing (deed) that there will be no night club, strip club or bar. Mr. Reverman suggests the binding element say no taverns, bars or saloons.

Mr. Badouan said, concerning the fence, he has to follow the city's requirements. Commissioner Brown said he doesn't support removing access from Conn because it is the desired access point.

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**Deliberation**

03:21:08        Commissioner Brown would like the Berry Blvd. entrance closed, but it's not a Land Development Code requirement for this case. Commissioners Jarboe and Blake stated they don't have a problem with the Berry Blvd. because it's already in place (not being created).

3:31:05        Mr. McCoy said the applicant has no objections to a right-in only off Berry Blvd. but if he can't have the access off Berry Blvd., he's not interested in moving forward with improving the property for a car lot. Also, the access is convenient.

**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-1 to C-2**

3:35:25        On a motion by Commissioner Jarboe, seconded by Commissioner Turner, the following resolution was adopted.

**WHEREAS**, This form is characterized by predominantly residential uses, by a grid pattern of streets with sidewalks and often including alleys. Residential lots are predominantly narrow and often deep, but the neighborhood may contain sections of larger estate lots, and also sections of lots on which appropriately integrated higher density residential uses may be located. The higher density uses are encouraged to be located in centers or near parks and open spaces having sufficient carrying capacity. There is usually a significant range of housing opportunities, including multi-family dwellings. Traditional neighborhoods often have and are encouraged to have a significant proportion of public open space such as parks or greenways, and may contain civic uses as well as appropriately located and integrated neighborhood centers with a mixture of mostly neighborhood-serving land uses such as offices, shops, restaurants and services. Although many existing traditional neighborhoods are fifty to one hundred twenty years old, it is hoped that the Traditional Neighborhood Form will be revitalized under the new Comprehensive Plan. Revitalization and reinforcement of the Traditional Neighborhood Form will require particular emphasis on (a) preservation and renovation of existing buildings in stable neighborhoods (if the building design is consistent with the predominant building design in those neighborhoods), (b) the preservation of the existing grid pattern of streets and alleys, (c) preservation of public open spaces; and

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**WHEREAS**, Compliance with **Guideline 1 (Community Form)**, **Guideline 2 (Centers)** and **Guideline 3 (Compatibility)** has been found for this proposal. The site is located at the intersection of a minor arterial and local level road and has been used and zoned commercial for some time. The proposed use for auto sales will replace the existing use of a restaurant and store. All of these uses are already in the vicinity of this site and the proposal would exchange one neighborhood-serving use for another. On the lot there is an existing building which will remain in its current location and the design of the structure will remain the same. The design of the building is similar to others in the surrounding area, maintaining a residential appearance. Since the site is bordered by right-of-way on three sides, a property perimeter LBA is only required along the western side of the site. The applicant will provide the required LBA, plantings, and 8' privacy fence which will help mitigate any adverse impacts on the adjoining residence. Since landscaping and a striped parking area will be added to the site, the proposal will allow the site to be upgraded and will decrease the amount of impervious surface area. Transportation Review has recommended the access along Berry Boulevard be removed, leaving the access points along Wheeler Avenue and Conn Street to serve the site. There are commercial and office zoning districts at this intersection, including a daycare center across the street. All of the intersections along Berry Boulevard from Taylor Boulevard to Manslick Road have some type of non-residential uses on the corner lots which have established corner lot non-residential uses as a pattern along Berry Boulevard. Since the subject site is already zoned commercially, the re-zoning to C-2 continues this corner commercial pattern along this street; and

**WHEREAS**, The proposal complies with **Guideline 4 (Open Space)** as there are no open space requirements for this proposal and there are no natural features to integrate into the development; and

**WHEREAS**, There are no natural areas or habitats to integrate on this site nor are there any historic landmarks. Therefore, the proposal complies with **Guideline 5 (Natural Areas and Scenic and Historic Resources)**; and

**WHEREAS**, Compliance with **Guideline 7 (Circulation)**, **Guideline 8 (Transportation Facility Design)**, and **Guideline 9 (Bicycle, Pedestrian and Transit)** has been found for this proposal. The site has vehicular access by a rear street that functions as an alley, existing facilities to provide pedestrian and bicycle access, and frontage along a transit route. Since the only adjoining property is a residence, cross connectivity has rightfully not been added to the site. Pedestrian connections from the sidewalks to the sidewalk abutting the building have also been provided. However, Transportation Review has recommended that the Berry Boulevard access be closed and access be maintained from the other two rights-of-way; and

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**WHEREAS**, the Louisville Metro Planning Commission finds, the site is compliant with **Guideline 10 (Flooding and Stormwater)**, **Guideline 12 (Air Quality)**, and **Guideline 14 (Infrastructure)** as the Air Pollution Control District and MSD have approved the proposal and no other utility has any issues. Existing utility infrastructure will be maintained for the development; and

**WHEREAS**, the Louisville Metro Planning Commission further finds the proposal is generally compliant with the **North Iroquois Community Plan**. This site will maintain the suggested commercial use of the property per the Community Plan even though it points out areas of “over zoning” along Berry Boulevard. The site has been zoned for commercial uses since at least 1963 and since it is changing from one commercial classification to another, there should be few adverse impacts on surrounding residential properties that won’t be mitigated through the added landscaping and screening. The hazardous traffic conditions cause by vehicles turning into and leaving the numerous curb cuts along Berry Boulevard should be lessened by the applicant closing the existing curb cut to Berry Boulevard.

**RESOLVED**, that the Louisville Metro Planning Commission does hereby **RECOMMEND**, to Metro Council, **APPROVAL** of Case No. 14ZONE1055, the zoning change from C-1 to C-2 for auto sales based on the testimony heard today and the staff report, pages 2, 3 and 4.

**The vote was as follows:**

**YES: Commissioners Blake, Brown, Jarboe, Peterson, Tomes and Turner**

**NO: No one**

**NOT PRESENT AND NOT VOTING: Commissioners Butler, Kirchdorfer, Proffitt and White**

**ABSTAINING: No one**

**WAIVER #1**

On a motion by Commissioner Jarboe, seconded by Commissioner Turner, the following resolution was adopted.

**WHEREAS**, The waiver will not adversely affect adjacent property owners because the existing building has been at its current location for many years. The required LBA, plantings, and screening will be provided along all other portions of the lot line shared with the residence to the west; and

**WHEREAS**, The waiver will not violate specific guidelines of Cornerstone 2020 for the reasons stated above in the re-zoning comprehensive plan review; and

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**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 because the existing building has been at its current location for many years and the LBA is only required because of the zoning change; and

**WHEREAS**, the Louisville Metro Planning Commission further finds the strict application of the provisions of the regulation will deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant because the existing building would need to be demolished and rebuilt in order to meet the requirement.

**RESOLVED**, that the Louisville Metro Planning Commission does hereby **APPROVE** Waiver #1 from the Land Development Code 10.2 to encroach into the 15 foot LBA along the west lot line based on the staff report, page 4, testimony heard today and the applicant's justification.

**The vote was as follows:**

**YES: Commissioners Blake, Brown, Jarboe, Peterson, Tomes and Turner**

**NO: No one**

**NOT PRESENT AND NOT VOTING: Commissioners Butler, Kirchdorfer, Proffitt and White**

**ABSTAINING: No one**

**Waiver #2**

On a motion by Commissioner Jarboe, seconded by Commissioner Turner, the following resolution was adopted.

**WHEREAS**, The waiver will not adversely affect adjacent property owners because the pavement has been in place for years and Berry Boulevard lies between the subject site and any adjoining property owners; and

**WHEREAS**, The waiver will not violate specific guidelines of Cornerstone 2020 for the reasons stated above in the re-zoning comprehensive plan review; and

**WHEREAS**, the Louisville Metro Planning Commission finds, the extent of waiver of the regulation the minimum is necessary to afford relief to the applicant because it will allow the internal site circulation to be maintained as it is currently; and

**WHEREAS**, the Louisville Metro Planning Commission further finds the strict application of the provisions of the regulation will deprive the applicant of the reasonable use of the

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land or would create an unnecessary hardship on the applicant because the pavement has been in existence for some time and allows for a wider driving aisle on the site.

**RESOLVED**, that the Louisville Metro Planning Commission does hereby **APPROVE** Waiver #2 from the LDC 10.2 to encroach into the 5 foot VUA LBA along Berry Blvd. based on the staff report, pages 4 and 5 and the testimony heard today.

**The vote was as follows:**

**YES: Commissioners Blake, Brown, Jarboe, Peterson, Tomes and Turner**

**NO: No one**

**NOT PRESENT AND NOT VOTING: Commissioners Butler, Kirchdorfer, Proffitt and White**

**ABSTAINING: No one**

**DDDP AND BINDING ELEMENTS**

On a motion by Commissioner Jarboe, seconded by Commissioner Turner, the following resolution was adopted.

**WHEREAS**, The site is already built out and there are no natural resources on the site to conserve; and

**WHEREAS**, Transportation Review has recommended the Berry Boulevard access be removed to lessen the amount of vehicles turning on and off the street. Otherwise, the site lies along a transit route has multiple access points, and provides for all modes of transportation; and

**WHEREAS**, No open space is required on this site; and

**WHEREAS**, MSD has approved the drainage facilities for the site; and

**WHEREAS**, the Louisville Metro Planning Commission finds, the site design is compatible with existing corner lot commercial site pattern along Berry Boulevard. The existing building and parking lots will remain with additional landscaping and screening to be provided where reasonable. No changes will be made to the building design which will continue to be consistent with non-residential buildings in the vicinity; and

**WHEREAS**, the Louisville Metro Planning Commission further finds the proposal complies with the guidelines of the Comprehensive Plan as explained in the review for the re-zoning request.

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**RESOLVED**, that the Louisville Metro Planning Commission does hereby **APPROVE** the Detailed District Development Plan and binding elements based on the staff report, pages 5, 6 and 10 including the change to binding element number 7 to read as follows: There shall be no automobile repair, taverns, saloons or bars permitted on the site; also based on the testimony heard today and **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. 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.
3. 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 Codes and Regulations Construction Permits, Transportation Planning Review 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 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.
4. A certificate of occupancy must be received from the appropriate code enforcement department prior to occupancy of the structure or land for the



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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.

5. The applicant, developer, or property owner shall provide copies of these binding elements to tenants, purchasers, contractors, subcontractors and other parties engaged in development of this site and shall advise them of the content of these binding elements. These binding elements shall run with the land and the owner of the property and occupant of the property shall at all times be responsible for compliance with these binding elements. At all times during development of the site, the applicant and developer, their heirs, successors; and assignees, contractors, subcontractors, and other parties engaged in development of the site, shall be responsible for compliance with these binding elements.
6. The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the April 2, 2015 Planning Commission meeting.
7. There shall be no automobile repair, taverns, saloons or bars permitted on the site.

**The vote was as follows:**

**YES: Commissioners Blake, Brown, Jarboe, Peterson, Tomes and Turner**

**NO: No one**

**NOT PRESENT AND NOT VOTING: Commissioners Butler, Kirchdorfer, Proffitt and White**

**ABSTAINING: No one**