

PLANNING COMMISSION MINUTES

May 11, 2017

PUBLIC HEARING

CASE NUMBER 16ZONE1016

Request: Change in zoning from R-4 to C-1 with a Variance and Waivers on approx. 1.27 ac.
Project Name: Curtis Center
Location: 4500 and 4506 Bardstown Road
Owner: Michael and Rebecca Curtis
Applicant: Michael and Rebecca Curtis
Representative: Milestone Design Group; Dinsmore & Shohl LLP
Jurisdiction: Louisville Metro
Council District: 2- Barbara Shanklin
Case Manager: Julia Williams, RLA, AICP, Planning Supervisor

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.)

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

Agency Testimony:

01:07:35 Julia Williams presented the case (see Staff Report and recording for detailed presentation).

The following spoke in favor of the request:

Clifford Ashburner, 101 S 5th Street, Suite 2500, Louisville, KY 40202

Mark Madison, 108 Daventry Lane, Louisville, KY 40223

Summary of testimony of those in favor:

01:13:58 Clifford Ashburner spoke on behalf of the applicant who is requesting a change in zoning from R-4 to C-1 along with a variance, a waiver, and a district development plan. He stated that they were unable to get approval from the State for an access point along Bardstown Road. A binding element was proposed to restrict uses that could potentially have a negative impact on the neighborhood. Mr. Ashburner responded to questions from the Commissioners.

PLANNING COMMISSION MINUTES

May 11, 2017

PUBLIC HEARING

CASE NUMBER 16ZONE1016

01:23:21 In response to Commissioner Brown, Mark Madison with Milestone Design Group stated that there would not be a problem with changing the orientation of the handicap ramps.

01:24:00 Mr. Ashburner and the Commissioners discussed zoning along a private road (see recording for detailed presentation).

01:31:52 Joe Reverman with Planning & Design Services stated that there is no strict requirement that would prevent them from accessing the site from the R-6 portion.

01:33:15 County Attorney John Carroll stated that the applicant has the right to use the roadway.

01:33:37 Commissioners' deliberation

01:40:55 On a motion by Commissioner Carlson, seconded by Commissioner Tomes, the following resolution was adopted:

WHEREAS, the Commission further finds that, based on the staff report and the evidence and testimony presented today, that all of the applicable guidelines of Cornerstone 2020 are being met; now, therefore be it

RESOLVED, the Louisville Metro Planning Commission does hereby **RECOMMEND** to the Louisville Metro Council that the change in zoning from R-4 to C-1 be **APPROVED**.

The vote was as follows:

Yes: Carlson, Ferguson, Lewis, Brown, Tomes, Peterson, Howard, and Jarboe

Absent: Smith

Abstain: None

No: None

01:42:15 On a motion by Commissioner Carlson, seconded by Commissioner Tomes, the following resolution was adopted:

Variance to permit an approximate 10.4' encroachment into the 30' setback as shown on the development plan

WHEREAS, the Louisville Metro Planning Commission finds that the variance will not adversely affect the public health, safety or welfare because the proposed

PLANNING COMMISSION MINUTES

May 11, 2017

PUBLIC HEARING

CASE NUMBER 16ZONE1016

encroachment is only for a couple of feet into the setback. The landscape buffer requirements will be met along those property lines, and

WHEREAS, the Commission further finds that the requested variance will not alter the essential character of the general vicinity because the encroachment is minimal and the landscape requirements within the buffer will be met, and

WHEREAS, the Commission further finds that the requested variance will not cause a hazard or nuisance to the public because the encroachment is minimal and the landscape requirements within the buffer will be met, and

WHEREAS, the Commission further finds that the requested variance will not allow an unreasonable circumvention of the zoning regulations because the building is encroaching into only a small portion of the setback, and

WHEREAS, the Commission further finds that the requested variance does not arise from any special circumstances. The applicant is building the lot so that the building is parallel to the road, and

WHEREAS, the Commission further finds that the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant because it would prevent the majority of the building from being constructed as planned, and

WHEREAS, the Commission further finds that 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

Waiver to permit the proposed building to encroach into the 25' LBA as shown on the development plan

WHEREAS, the Louisville Metro Planning Commission finds that the waiver will not adversely affect adjacent property owners since all the landscape requirements will be met in the buffer, and

WHEREAS, the Commission further finds that Guideline 3, Policy 9 of Cornerstone 2020 calls for protection of the character of residential areas, roadway corridors and public spaces from visual intrusions and mitigation when appropriate. Guideline 3, Policies 21 and 22 call for appropriate transitions between uses that are substantially different in scale and intensity or density, and mitigation of 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

PLANNING COMMISSION MINUTES

May 11, 2017

PUBLIC HEARING

CASE NUMBER 16ZONE1016

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 impacts from noise, lights and other potential impacts, and that parking and circulation areas adjacent to streets should 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 6 calls for screening and buffering to mitigate adjacent incompatible uses. The intent of landscape buffer areas is to create suitable transitions where varying forms of development adjoin, to minimize the negative impacts resulting from adjoining incompatible land uses, to decrease storm water runoff volumes and velocities associated with impervious surfaces, and to filter airborne and waterborne pollutants. The comprehensive plan is met since all the landscape requirements will be met in the buffer, 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 since all the landscape requirements will be met in the buffer, 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 would create an unnecessary hardship on the applicant since all the landscape requirements will be met in the buffer, and

District Development Plan

WHEREAS, the Louisville Metro Planning Commission finds that there do not appear to be any environmental constraints on the subject site. Tree canopy requirements of the Land Development Code will be provided on the subject site. The historic resources are potentially eligible historic resources, the context is not fully known at this time, 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 and the Kentucky Transportation Cabinet have approved the preliminary development plan, and

WHEREAS, the Commission further finds that there are no open space requirements pertinent to the current proposal, and

WHEREAS, the Commission further finds that the Metropolitan Sewer District has approved the preliminary development plan and will ensure the provision of adequate

PLANNING COMMISSION MINUTES

May 11, 2017

PUBLIC HEARING

CASE NUMBER 16ZONE1016

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 existing and future development of the area. Appropriate landscape buffering and screening will be provided to screen adjacent properties and roadways. Buildings and parking lots will generally meet all required setbacks, and

WHEREAS, the Commission further finds that the development plan conforms to applicable guidelines and policies of the Comprehensive Plan and to requirements of the Land Development Code, and

WHEREAS, the Commission further finds that, based on the staff report and the evidence and testimony presented today, that all of the applicable guidelines of Cornerstone 2020 are being met; now, therefore be it

RESOLVED, the Louisville Metro Planning Commission does hereby **APPROVE (1)** the variance from Chapter 5.3.1.C.5 Table 5.3.2 to permit an approximate 10.4' encroachment into the 30' setback as shown on the development plan, **(2)** the waiver from Chapter 10.2.4.A to permit the proposed building to encroach into the 25' LBA as shown on the development plan, and **(3)** the detailed district development plan, **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 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.

PLANNING COMMISSION MINUTES

May 11, 2017

PUBLIC HEARING

CASE NUMBER 16ZONE1016

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 Develop Louisville, 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.
5. 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.
6. There shall be no outdoor music (live, piped, radio or amplified) or outdoor entertainment or outdoor PA system permitted on the site.
7. 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.
8. The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the May 11, 2017 Planning Commission meeting.

PLANNING COMMISSION MINUTES

May 11, 2017

PUBLIC HEARING

CASE NUMBER 16ZONE1016

9. No idling of trucks shall take place within 200 feet of single-family residences. No overnight idling of trucks shall be permitted on-site.
10. The site shall not be used for the following, unless such use is approved by the Planning Commission after a public hearing with notice given to all parties who received notice of the public hearing:
 - Automobile rental agencies with no more than 25 rental passenger vehicles stored on site, and no more than two service bays for cleaning or maintenance, and having no repair or storage/dispensing of fuel
 - Automobile parking areas, public and private
 - Automobile service stations with service bays for repair of no more than two vehicles
 - Car washes
 - Package liquor stores
 - Pawn shops

The vote was as follows:

Yes: Carlson, Ferguson, Lewis, Brown, Tomes, Peterson, Howard, and Jarboe

Absent: Smith

Abstain: None

No: None