

PLANNING COMMISSION MINUTES
October 1, 2020

PUBLIC HEARING

19-ZONE-0094

Request: Change in zoning from R-5 to C-1, with Detailed District Development Plan and Binding Elements and associated landscape Waiver

Project Name: Westport Road Retail

Location: 917 and 919 Fountain Avenue, 4700 Westport Road

Owner: Estate of Evelyn Kaelin

Applicant: 4700 Westport LLC

Representative: Dinsmore & Shohl LLC

Jurisdiction: Louisville Metro

Council District: 7 – Paula McCraney

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. (Staff report is part of the case file maintained in Planning and Design Services offices, 444 S. 5th Street.)

Agency Testimony:

00:43:32 Ms. St. Germain stated this case was previously heard at the September 17, 2020 PC meeting and all the public testimony was taken at that time. It was continued today for deliberation only.

00:44:58 Commissioner Brown asked if the staff report reflects the proposed binding elements discussed at the last meeting. The applicant didn't agree to 1 of those proposed by staff. Ms. St. Germain said it was proposed binding element 9. The applicant proposed to exclude restaurants with outdoor alcohol sales from the conditional use permits that would be permitted on the site.

00:45:56 Ms. Ferguson asked for clarification of that binding element. Mr. Ashburner said they want to have the opportunity for other conditional uses, but we will forego the opportunity to have the one conditional use permit outdoor dining with alcohol sales or entertainment.

Deliberation

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00:47:43 Commissioner Mims said he agrees with the staff report.

00:48:36 Commissioner Seitz stated she's in favor of the entire request. Washburn Ave. is the cut-through, not Fountain Ave. There was commercial in that location in the past.

00:49:28 Commissioner Howard stated she agrees with the staff report as well.

00:50:15 Commissioner Carlson said he's not convinced that the change in zoning is appropriate. It constitutes a non-residential expansion into an existing residential area. All 4 sides are residential. The applicant is not binding out very many uses. The proposal is not compatible.

00:54:38 Commissioner Daniels stated she has the same concerns as Commissioner Carlson and Mims. There should be a better location for this proposal.

00:55:27 Commissioner Brown said R-5 is not the best zoning for that location and nothing over OR-1 would be appropriate. That corner is not commercial because of the Fountain Ave. re-classification.

00:56:14 Commissioner Peterson said he's not in support of the zoning change. Office Residential would be best for this location.

00:56:53 Commissioner Lewis said she agrees with the staff report for the zoning change. The applicant has accommodated the closest neighbor that shares the property line. Also, there was concern for the neighbor across the street and the intrusion of headlights, but that neighbor is in support of the request.

00:58:11 Chair Jarboe said this is a tricky case. It's out of place because it's surrounded by residential but there has been commercial there in the past. The applicant has provided some mitigation.

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 R-5 to C-1

On a motion by Commissioner Mims, seconded by Commissioner Howard, the following resolution based on the Plan 2040 Staff Analysis and testimony was adopted.

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WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Community Form because, the proposal would constitute a non-residential expansion into an existing residential area. The site is located along a minor arterial (Westport Road) and most traffic to the site will come via Westport Road; the site is located adjacent to Westport Road, a transit corridor; The proposed zoning district would not permit hazardous uses. Disadvantaged populations are not disproportionately impacted by the proposal; the proposed zoning district would not permit uses which create noxious odors, particulates or emissions; the site is located on Westport Road and most traffic to the site will be routed along Westport Road; noise impacts would be addressed by the addition of the proposed Binding Element #9; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 2: Community Form because, C-N would be an appropriate zoning district for a small activity center in the proposed location, with appropriate design and density. With the addition of the proposed Binding Element #9, C-1 is an appropriate zoning district; the site has appropriate access and connectivity, as it is located on Westport Road and most of the traffic to the site will be routed along Westport Road; the site is not located in an existing activity center. Low-intensity commercial previously existed on a portion of the site and was supported by nearby populations; the proposal would create a new activity center. C-N zoning would support neighborhood-serving commercial, which encourages a more compact development pattern and cost-effective infrastructure investment. C-1 zoning is appropriate with the addition of proposed Binding Element #9; the proposal would permit a mixture of compatible land uses in a new activity center; the proposal would permit residential uses in a new activity center; the proposal would not include any underutilized parking lots; the placement of the structure would be compatible with nearby residences; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 3: Community Form because, no natural systems are evident on the subject site; no wet or highly permeable soils, or severe, steep or unstable slopes are evident on the site; the site is not located in a flood-prone area. No karst features were evident on the site; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 4: Community Form because, the existing structures on the site are not proposed to be preserved. They do not appear to have historic or architectural value; the existing structures on the site are not proposed to be preserved. They do not appear to constitute distinctive cultural features; and

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WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 2: Mobility because, access to the site will be via Westport Road, a minor arterial and transit corridor at this location; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 3: Mobility because, C-1 zoning would permit a mix of complementary neighborhood serving businesses, but also allows uses that would not be appropriate for this location. Proposed Binding Element #9 addresses this; the proposal would permit a mixture of compatible land uses that are easily accessible by bicycle, car, transit, pedestrians and people with disabilities; the site is located on an existing transit corridor and the proposal would encourage higher density mixed-use developments; Transportation Planning has approved the proposal; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 2: Community Facilities because, the relevant utilities have approved the proposal; Louisville Water Company has approved the proposal; MSD has approved the proposal; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Economic Development because, the site is located on a minor arterial street and does not have adequate access to a major arterial. With the addition of proposed Binding Element #9, the potential intensity of the proposed zoning district is addressed; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Livability because, no karst features are evident on the subject site; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Housing because, the proposal would support aging in place by permitting higher density housing options on the site, or neighborhood-serving commercial uses in proximity to existing residential development; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 2: Housing because, the proposal would permit inter-generational mixed-income and mixed-use development. The site is connected to the neighborhood and surrounding area; the proposal would permit housing in proximity to Westport Road, a multi-modal transportation corridor; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 3: Housing because, Commercial uses adjacent to residential do not necessarily displace existing residents from their community.

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However, the intensity of uses allowed in C-1 but not allowed in C-N may create nuisances to adjoining residential uses, such as noise, noxious odors and emissions, light impacts, etc. The addition of proposed Binding Element #9 addresses this; the proposal would permit innovative methods of housing.

RESOLVED, that the Louisville Metro Planning Commission does hereby **RECOMMEND** to the Louisville Metro Council the change in zoning from R-5 Single Family Residential to C-1 Commercial on property described in the legal description be **APPROVED**.

The vote was as follows:

YES: Commissioners Howard, Lewis, Mims, Seitz and Jarboe

NO: Commissioners Brown, Carlson, Daniels and Peterson

Waiver from Table 10.2.3 to allow a reduction in required property perimeter Landscape Buffer Area (LBA) from 25' to 20' (19-WAIVER-0107)

On a motion by Commissioner Mims, seconded by Commissioner Howard, the following resolution based on the Standard of Review and Staff Analysis and testimony was adopted.

WHEREAS, the waiver will not adversely affect adjacent property owners as the required screening is proposed to be provided in the reduced landscape buffer area; and

WHEREAS, the waiver will not violate specific guidelines of Plan 2040 as Plan 2040 encourages adequate buffering between uses which are of substantially different intensity or density. The required screening and planting material are proposed to be provided; and

WHEREAS, the Louisville Metro Planning Commission finds, the extent of the waiver of the regulation is not the minimum necessary to afford relief to the applicant as the building could be reduced in size to eliminate the required encroachment; and

WHEREAS, the Louisville Metro Planning Commission further finds the applicant has not incorporated other design measures that exceed the minimums of the district and compensate for non-compliance with the requirements to be waived, and strict application of the provisions of the regulation would not deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant

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because the applicant could reduce the depth of the proposed structure by 5 feet to accommodate the required landscape buffer area without the encroachment.

RESOLVED, that the Louisville Metro Planning Commission does hereby **DENY** a Waiver from Table 10.2.3 to allow a reduction in required property perimeter Landscape Buffer Area (LBA) from 25' to 20' (19-WAIVER-0107)

The vote was as follows:

YES: Commissioners Brown, Carlson, Daniels, Howard, Mims, Peterson and Jarboe

NO: Commissioners Lewis and Seitz

Detailed District Development Plan and Binding Elements

On a motion by Commissioner Mims, seconded by Commissioner Howard, the following resolution based on the Standard of Review and Staff Analysis and testimony was adopted.

Came out of Deliberation

01:05:05 Commissioner Carlson stated the plan will now change because the waiver was denied. Those changes need to be reviewed.

01:06:00 Ms. St. Germain said the detailed district development plan will have to be adjusted. They may have to reduce the size of the building or parking lot in order to fit the entire landscape buffer area that's required.

01:07:05 Commissioner Howard said the applicant would automatically have to submit a revised detailed district development plan based on the waiver being denied.

01:09:09 Mr. Reverman said without a development plan there won't be any binding elements, which is unusual and confusing. You may consider this plan as being a general plan and adding a binding element indicating this is a general district development plan and before any construction takes place on the property, a detailed district development plan shall be reviewed by the Planning Commission. Also, Ms. St. Germain may want to eliminate some binding elements that were specific to the detailed district development plan.

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01:13:15 Mr. Ashburner said the changes to the plan will be minimal. Staff could then determine compliance. Mr. Reverman said the size of the building will need to be reduced.

01:24:34 Mr. Reverman read the new proposed binding element as follows: No construction shall occur on the property until a revised detailed district development plan is approved by Planning and Design Services staff. The revised detailed district development plan shall provide a 25-foot landscape buffer area along the south property line and in compliance with the Land Development Code.

Back to Deliberation

On a motion by Commissioner Mims, seconded by Commissioner Seitz, the following resolution based on the Standard of Review and Staff Analysis and testimony was adopted.

WHEREAS, no natural resources appear to exist on the site. The existing building is not proposed to be retained. However, the existing building does not appear to be a historic site; and

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

WHEREAS, there are no open space requirements pertinent to the current proposal; and

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

WHEREAS, the Louisville Metro Planning Commission finds, the overall site design is compatible with the existing and future development of the area, with the exception of the requested waiver; and

WHEREAS, the Louisville Metro Planning Commission further finds the development plan conforms to applicable guidelines and policies of the Land Development Code with the exception of the requested waiver.

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** the Detailed District Development Plan **SUBJECT** to the following Binding Elements:

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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 construction shall occur on the property until a revised detailed district development plan is approved by Planning and Design Services staff. The revised detailed district development plan shall provide a 25-foot landscape buffer area along the south property line and in compliance with the Land Development Code
3. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.
4. 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.
5. 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. Encroachment permits must be obtained from the Kentucky Transportation Cabinet for any work in the Westport Road right-of-way.
 - 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 certificate of occupancy. Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter.
 - d. A Tree Preservation Plan in accordance with Chapter 10 of the LDC shall be reviewed and approved prior to obtaining approval for site disturbance.
 - e. 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

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approved plans to the office responsible for permit issuance will occur only after receipt of said instrument.

f. The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the June 18, 2020 Planning Commission hearing. A copy of the approved rendering is available in the case file on record in the offices of the Louisville Metro Planning Commission. Windows and doors facing Westport Road and Fountain Avenue shall be constructed of clear glass and offer a view into the building. Measures to control sunlight are specifically authorized. The tops of windows shall be at least eight feet high measured from the sidewalk. The bottom of the windows shall be no more than two feet above the sidewalk.

6. A certificate of occupancy must be received from the appropriate code enforcement department prior to occupancy of the structure or land for the proposed use. All binding elements requiring action and approval must be implemented prior to requesting issuance of the certificate of occupancy, unless specifically waived by the Planning Commission.
7. There shall be no outdoor music (live, piped, radio or amplified) or outdoor entertainment or outdoor PA system permitted on the site.
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 parties engaged in development of the site, shall be responsible for compliance with these binding elements.
9. Any request to modify or amend these Binding Elements shall be noticed to first and second tier adjoining property owners, and to all persons who spoke on this case at the March 5, 2020, June 18, 2020 or September 17, 2020 Planning Commission hearing, as well as to any other parties required by Kentucky Revised Statutes, the Land Development Code, and/or the Planning Commission bylaws for zoning changes, no less than 14 days prior to the meeting at which such modification or amendment shall be heard.

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10. The subject property shall only be used for uses allowed in the C-N Commercial Neighborhood zoning district and the following uses allowed in the C-1 Commercial zoning district:
 1. Pet shop
 2. Paint Store
 3. Music Store
 4. Pet grooming, obedience training and related pet activities, provided the operation is conducted within a soundproofed building, no animals are boarded, and there are no runs or pens outside of the building.
 5. Package liquor stores (no on-site alcohol consumption allowed)
 6. Furniture Stores
 7. Computer sales (hardware and software) and programming services
 8. Conditional uses allowed in the C-1 Commercial zoning district under Chapter 4, Part 2, except for "Outdoor Alcohol Sales and Consumption/Entertainment Activity for Restaurants in the C-1 zoning district" under Chapter 4, Part 2.41

11. The applicant shall screen any mechanical equipment on the east side of the proposed building through the use of a fence, landscaping, or combination thereof, as approved by the Louisville Metro Planning Staff as part of the required landscape plan.

12. The applicant shall provide, at its expense, a planting screen in the front yard of the property located at 916 Fountain Avenue if so requested by the owner of said property.

The vote was as follows:

YES: Commissioners Howard, Lewis, Mims, Seitz and Jarboe

NO: Commissioners Brown, Carlson, Daniels and Peterson