

PLANNING COMMISSION MINUTES
February 29, 2024

PUBLIC HEARING

CASE NO. 22-ZONE-0165

Request:	Change in Zoning from C-1 to C-2 with Detailed District Development Plan and Binding Elements and a Waiver
Project Name:	Eagle Tires
Location:	5401, 5405 and 5411 New Cut Rd
Owner:	MAG Estate, LLC
Applicant:	MAG Estate, LLC
Representative:	Duncan, Galloway, Greenwald PLLC
Jurisdiction:	Louisville Metro
Council District:	25 – Khalil Batshon
Case Manager:	Jay Lockett, 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 Office of Planning offices, 444 S. 5th Street.)

Agency Testimony:

01:19:21 Jay Lockett provided an overview of the request and presented a PowerPoint presentation. Lockett responded to questions from Commission Members (see video for details).

The following spoke in favor of this request:

Kyle Galloway, 9625 Ormsby Station Rd, Louisville, KY 40223

Carole McCullough, 118 Old Towne Rd, Louisville, KY 40214

Mohamed Mugouh, 7202 Beechland Beach Rd, Louisville, KY 40059

James Allen, 914 Terry Rd, Louisville, KY 40258

Scott Sturgeon, 5414 Carol Way, Louisville, KY 40214

Osnar Funoore, 5320 Buckney Ave, Louisville, KY 40214

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Greg Harlow, 8114 Glimmer Way, Louisville, KY 40214

Summary of testimony of those in favor:

01:29:30 Kyle Galloway spoke in support of the application and presented a PowerPoint presentation. Galloway broke down the steps of the project and what the applicant is requesting. Galloway responded to questions from Commission Members (see recording for detailed presentation)

01:38:52 Jay Luckett responded to Commission Member questions pertaining to the parking lot consolidation (see recording for details)

01:40:03 Scott Sturgeon spoke in support of the request. Sturgeon stated the company is providing a reasonable service that is not available anywhere else in the area and provide a service to the area (see recording for details)

01:43:39 Osnar Funoore spoke in support of the request. Funoore stated he has brought his vehicles to the location multiple times and has that they have good service (see recording for details)

01:45:00 Greg Harlow spoke in support of the request. Harlow mentioned that the company is a asset to the community and provide services to the area (see recording for details)

01:49:09 James Allen spoke in support of the request. Allen stated he and his colleagues use Eagle Tires and supports the utilization of their building. Allen mentioned that having the business in the current location is beneficial for the area.

01:50:12 Mohamed Mugouh spoke in support of the request. Mugouh mentioned he was the owner of the property and has continued to improve the location over the years. (see recording for details)

01:51:45 Carole McCullough spoke in support of the request. McCullough stated she and her husband have used the company multiple times to have their vehicle serviced and have never had an issue. McCullough mentioned the company is a service for the area (see recording for details)

The following spoke in opposition:

Maureen Welch, 7101 Venetian Way, Louisville, KY 40214

Ann Ramser, 307 E Kenwood Dr, Louisville, KY 40214

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Summary of testimony of those in opposition:

01:55:11 Maureen Welch spoke in opposition to the request and provided a PowerPoint presentation. Welch mentioned the number of unused cars that are located in the parking lot of the business and the disarray of tires the company contains (see recording for detailed presentation)

02:09:22 Ann Ramser spoke in opposition to the request and provided a PowerPoint presentation. Ramser elaborated on each violation the location accrued and discussed the issues pertaining to tires, cars, and shipping containers (see recording for detailed presentation)

Rebuttal:

02:21:34 Kyle Galloway spoke in rebuttal. Galloway stated his client has worked hard to improve the site. Galloway mentioned that by changing the zoning it will help the company thrive in an area that is disadvantaged and that needs business' to survive. Galloway responded to questions from Commission Members (see recording for details)

02:24:52 Mohamed Mugouh responded to Commission Member questions pertaining to the hours of operation, outdoor repairs, and the continuous use of the third bay (see recording for details)

02:25:53 Jay Lockett responded to Commission Member questions pertaining to storage containers being placed on the property and binding element number 8 associated with outdoor tire storage (see recording for details)

Deliberation:

02:33:12 Planning Commission deliberation.

03:01:51 The Planning Commission came out of deliberation to take additional testimony.

03:02:09 Kyle Galloway responded to Commission Member questions pertaining to an 8ft fence with evergreens and painting parking stripes in the concrete area for cars (see recording for details)

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03:03:02 Jay Luckett responded to Commission Member questions pertaining to the keeping the current development plan or providing a new drawing of the site (see recording for details)

03:04:06 Mohamed Mugouh responded to Commission Member questions pertaining to the number of cars on the lot and the type of storage that is used for the tires (see recording for details)

03:05:35 Planning Commission deliberation

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

Change in Zoning from C-1 Commercial to C-2 Commercial

03:15:08 On a motion by Commissioner Carlson, seconded by Commissioner Fischer, the following resolution, based on the staff analysis contained in the standard of review in the staff report and evidence and testimony heard today, was adopted:

WHEREAS, the Planning Commission finds the proposal meets Plan 2040 Community Form: Goal 1 because the proposal does not represent an expansion of non-residential uses into residential areas. The site is already zoned for commercial use, and a wide variety of commercial activity exists within the town center area along New Cut Rd, and

WHEREAS, the proposal meets Community Form: Goal 2 because the site is within an established commercial activity center in the Town Center form district, and transit service is available directly to the site along New Cut Rd, and

WHEREAS, the proposal meets Community Form: Goal 3 because the development site is previously developed and does not contain natural resources or environmental constraints, and

WHEREAS, the proposal meets Community Form: Goal 4 because the site does not have any distinctive historic or cultural value. Existing structures are proposed to be utilized for continued commercial activity, and

WHEREAS, the proposal meets Mobility: Goal 1 because the proposal is in a Town Center form at the intersection of two arterial roadways in an area with a variety of office, residential and commercial uses, and

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WHEREAS, the proposal meets Mobility: Goal 2 because the proposed zoning district would permit a variety of neighborhood serving uses and utilize existing infrastructure, and

WHEREAS, the proposal meets Mobility: Goal 3 because the proposal would close excess curb cuts and extend sidewalks along Palatka Rd, improving pedestrian access around the site consistent with the goals of the New Cut Rd/Taylor Blvd corridor study. Transit is available along New Cut Rd serving the site, and

WHEREAS, the proposal meets Community Facilities: Goal 2 because utility service is available and will be coordinated with relevant agencies, and

WHEREAS, the proposal meets Economic Development: Goal 1 because the site is within an established commercial activity center in the Town Center form district, and transit service is available directly to the site along New Cut Rd, and

WHEREAS, the proposal meets Livability: Goal 1 because the site is previously developed and does not have any karst features or other environmentally sensitive areas, and

WHEREAS, the proposal meets Housing: Goal 1 because the proposed zoning district would permit a variety of housing options and a variety of office and commercial uses that support aging in place. The site is served by transit and within an existing activity center with a variety of commercial and office uses, and

WHEREAS, the proposal meets Housing: Goal 2 because the proposed zoning would permit a variety of housing options. The site is served by transit and within an existing activity center with a variety of commercial and office uses, and

WHEREAS, the proposal meets Housing: Goal 3 because no residents would be displaced by the current proposal; therefore, be it

RESOLVED, RESOLVED, that the Louisville Metro Planning Commission does hereby **RECOMMEND** that the Louisville Metro Council **APPROVE** the change in zoning from C-1 Commercial to C-2 Commercial.

The vote was as follows:

YES: Commissioners Carlson, Cheek, Kern, Sistrunk, Fischer, and Howard

NO: Commissioner Pennix

ABSENT: Commissioner Mims

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Waiver (23-WAIVER-0199) of Land Development Code section 5.5.1.A.3.a to permit parking and circulation in front of the buildings.

03:16:07 On a motion by Commissioner Carlson, seconded by Commissioner Fischer, the following resolution, based on the staff analysis contained in the standard of review in the staff report and evidence and testimony heard today, was adopted:

WHEREAS, the waiver will not adversely affect adjacent property owners. A masonry wall is proposed along the frontage to screen the parking and establish a pedestrian edge more consistent with the Town Center form district standards, and

WHEREAS, Community Form Goal 1, Policy 4 calls for the proposal to ensure new development and redevelopment are compatible with the scale and site design of nearby existing development and with the desired pattern of development within the Form District. Community Form Goal 1, Policy 12 calls for the proposal to Design parking, loading and delivery areas located adjacent to residential areas to minimize adverse impacts from noise, lights, and other potential impacts. Ensure that parking, loading, and delivery is adequate and convenient for motorists and does not negatively impact nearby residents or pedestrians. Parking and circulation areas adjacent to the street shall be screened or buffered. Community Form Goal 2, Policy 15 calls for parking in activity centers should reflect the area's associated Form District standards to balance safety, traffic, transit, pedestrian, environmental and aesthetic considerations. The waiver would permit a reorganization of existing nonconforming parking to install additional planting and screening, including a masonry screening wall, and

WHEREAS, the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant, and

WHEREAS, the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant, as the structure and parking area is existing and would have to be wholly demolished and redeveloped to comply with the requirement; now, therefore be it

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** the waiver of Land Development Code section 5.5.1.A.3.a to permit parking and circulation in front of the building.

The vote was as follows:

YES: Commissioners Carlson, Cheek, Kern, Sistrunk, Fischer, and Howard
NO: Commissioner Pennix

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ABSENT: Commissioner Mims

District Development Plan with Binding Elements

03:17:18 On a motion by Commissioner Carlson, seconded by Commissioner Fischer, the following resolution, based on the staff analysis contained in the standard of review in the staff report and evidence and testimony heard today, was adopted:

WHEREAS, the site is previously developed does not contain any natural resources. The structures are to be maintained and renovated on the site, and

WHEREAS, Provisions for safe and efficient vehicular and pedestrian transportation within and around the development and the community has been provided, and Transportation Planning has approved the preliminary development plan. Excess curb cuts are to be eliminated and sidewalk extended along Palatka Rd, 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 overall site design and land uses are compatible with the existing and future development of the area. Appropriate screening will be provided to screen adjacent properties and roadways, and

WHEREAS, the development plan conforms to applicable guidelines and policies of the Comprehensive Plan and to requirements of the Land Development Code, except where the waiver is requested; now, therefore be it

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** the District Development Plan with Binding Elements on condition that the development plan is revised to show a 5ft buffer adjacent to the Glen Hollow Apartments and 832 Palatka Rd 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.

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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 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 building permit. Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter. All required plantings and screening including the masonry wall shall be installed within one year of the zoning change approval.
4. 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.
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 or use 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 or use 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. Within one year of final approval of the zoning change, all sidewalks shall be constructed, and curb cuts removed and restored to curb and verge as shown on the approved development plan.

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7. No more than 4 inoperable vehicles may be present on the site at any time. Inoperable vehicles on site are permitted only while awaiting service to be performed on the site.
8. Outdoor storage of tires on the subject site shall be stored strictly in compliance with Land Development Code section 4.4.8.C.2.e. No more than 300SF on the subject site may be used for outdoor tire storage. Tires shall be neatly stacked no higher than 8'. No outdoor storage of cars, tires or other materials associated with these sites shall be stored on the property at 836 Palatka Rd.
9. Any outstanding fines owed for zoning enforcement actions on the site shall be paid in full within 60 days of final approval of the zoning change.
10. The following uses, while ordinarily permitted in the C-1 or C-2 zoning districts shall not be permitted on the subject site:
 - a) Auto body work, painting, major overhauls, grinding and milling of auto parts normally permitted in association with an Automobile Repair Garage
 - b) Automobile sales
 - c) Contractor Shop
 - d) Banks, Credit Unions, check cashing services and similar financial institutions
 - e) Package Liquor Stores
 - f) Smoking Retail Stores
 - g) Game Rooms
 - h) Tattoo, Body Art, and Piercing parlors
11. The hours of operation shall be from 8:00AM to 6:00PM Monday thru Saturday.
12. There shall be no outdoor repairs performed on site.
13. There shall be no use of storage containers on site.
14. The applicant shall provide an 8ft fence and continual row of columnar trees adjacent to the Glen Hollow Apartment building and 832 Palatka Rd. Final location and tree type to be shown on the approved landscape plan.

The vote was as follows:

YES: Commissioners Carlson, Cheek, Kern, Sistrunk, Fischer, and Howard

NO: Commissioner Pennix

ABSENT: Commissioner Mims