

## PLANNING COMMISSION

March 30, 2023

### PUBLIC HEARING

CASE NO. 22-ZONE-0148

Request:	THIS CASE WAS CONTINUED FROM THE MARCH 16, 2023 PC HEARING - Change in zoning from R-5 to C-1, with associated Detailed District Development Plan with Binding Elements, and Waivers, Variances and Parking Waiver
Project Name:	7 Brew
Location:	7700 - 7706 Laurel Ridge Road
Owner:	Estate of William C Ridge Jr.
Applicant:	Hogan Real Estate
Representative:	Bardenwerper, Talbott & Roberts
Jurisdiction:	Louisville Metro
Council District:	24 - Madonna Flood
Case Manager:	Dante St. Germain, AICP, Planner II

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:

02:10:01 Dante St. Germain presented the case, showed a Power Point presentation, and responded to questions from the Commissioners. She noted that additional language has been added to the original binding element #4C in the staff report (see staff report and recording for detailed presentation.) That binding element shall now read as follows:

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. **This landscape plan shall include, at a minimum, native Kentucky grasses or groundcover located within the area where the Landscape Buffer Area overlaps the Southern Ditch stream buffer. Grasses or groundcover shall be chosen so as to minimize or eliminate mowing, and this area shall not be mowed by the property owner or tenant. Native Kentucky shrubs shall be included where the stream buffer does not overlap a utility easement.**

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**Shrubs shall not be counted toward required tree canopy, but shall be maintained by the property owner or tenant as part of the landscape plan.**

02:19:22 In response to a question from Commissioner Mims, Ms. St. Germain explained that whatever runoff would be going directly into Southern Ditch would be mitigated by the native plants that would be going in. Specific species would be determined by the applicant at the Landscape stage.

02:20:24 In response to questions from Commissioner Clare, Ms. St. Germain said the floodway does not appear to go outside of the Southern Ditch, and the floodplain does not reach this property (see recording for detailed discussion.) She said there is mitigation being provided for runoff per MSD's requirements.

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

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

Mike Hill, Land Design & Development, 503 Washburn Avenue, Louisville, KY 40222

Mike Leonard, 9300 Shelbyville Road Suite 1300, Louisville, KY 40222

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

02:21:34 Nick Pregliasco, the applicant's representative, presented the applicant's case and showed a Power Point presentation (see recording for detailed presentation.)

02:29:50 In response to questions from Commissioner Mims, Mr. Pregliasco used the site plan to point out the driving route that customers would use to order and exit the property. He said that almost all business would be drive-through; there is a walk-up window; and there is no indoor seating. Mr. Pregliasco and Mike Hill, an applicant's representative, also explained the detention basin, plants, and design used to mitigate water runoff (see recording for detailed discussion.)

02:34:45 In response to questions from Commissioner Cheek, Mr. Pregliasco explained more about customer vehicle circulation and stacking (see recording.)

02:36:40 In response to questions from Commissioner Cheek, Mr. Hill said the specific species of native plants and grasses has not yet been determined. The applicant will work with the landscape architect regarding "No Mow" signage. The area to be preserved will be identified on the landscape plan (see recording.)

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02:38:56 In response to questions from Commissioner Clare, Mr. Hill confirmed that runoff from all hard surfaces will drain into the detention basin. All other surfaces will naturally drain toward Southern Ditch or the detention basin. They discussed the area marked as a flood plain on the site, and MSD's requirements to mitigate that.

02:40:56 Commissioner Brown and Mr. Hill discussed the location of the pedestrian crosswalk. Commissioner Brown said it looked like the sidewalk was located on top of "an old drainage structure". Mr. Hill said construction details would determine the location of the sidewalk.

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

No one spoke.

**Deliberation:**

02:42:35 Commissioners' deliberation.

**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.**

**Change in zoning from R-5 Single Family Residential to C-1 Commercial**

02:43:21 On a motion by Commissioner Brown, seconded by Commissioner Cheek, the following resolution, based on the Staff Analysis and Standard of Review 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 Outer Loop, which is a commercial and transit corridor. The proposal would not constitute a non-residential expansion into an existing residential area as the site has frontage along a major commercial corridor; the site is located on Outer Loop, a commercial and transit corridor; 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 from Outer Loop, a major arterial and transit corridor at this location, via Laurel Ridge Road; adequate buffering will be

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provided between the site and the adjacent residential property to mitigate noise impacts; 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 site is located along an existing commercial corridor; the site has appropriate access and connectivity; the site is located along Outer Loop, a commercial corridor and major arterial at this location; the proposed zoning district would permit a more compact pattern of development in an existing commercial corridor; the proposed zoning district would permit a mixture of compatible land uses in an existing commercial corridor; the proposed zoning district would permit residential uses above retail. The proposal would provide new development providing commercial uses; no underutilized parking lots are proposed; 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 Outer Loop, 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 within an existing commercial corridor; and

**WHEREAS**, the Commission further finds that the proposal meets Mobility: Goal 2 because access to the site is from Outer Loop, a major arterial and transit corridor at this location, via Laurel Ridge Road; 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 bicycle, car, transit and pedestrians. Access by people with disabilities will be improved by the proposal; 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

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**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 located on Outer Loop, a major arterial at this location; and 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 no karst features are evident on the site; 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; 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**, the Louisville Metro Planning Commission does hereby **RECOMMEND** to the Louisville Metro Council that the requested change in zoning from R-5 Single Family Residential to C-1 Commercial as described in the attached legal description be **APPROVED**.

**The vote was as follows:**

**YES: Commissioner Brown, Cheek, Howard, Fischer, Mims, Pennix, Carlson, Clare, and Lewis.**

**ABSENT: Commissioner Sistrunk.**



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**Variance #1: from 4.8.3.C to permit encroachment into the required outer and middle zones of a protected waterway buffer (22-VARIANCE-0145)**

02:44:20 On a motion by Commissioner Brown, seconded by Commissioner Cheek, the following resolution, based on the evidence and testimony heard today, and with the mitigation that has been added to binding element #4C regarding native vegetation, was adopted:

**RESOLVED**, the Louisville Metro Planning Commission does hereby **APPROVE** the requested Variance #1: from 4.8.3.C to permit encroachment into the required outer and middle zones of a protected waterway buffer (22-VARIANCE-0145).

**The vote was as follows:**

**YES: Commissioner Brown, Cheek, Howard, Fischer, Mims, Pennix, Carlson, Clare, and Lewis.**

**ABSENT: Commissioner Sistrunk.**

**Variance #2: from 5.1.12.B.2.e to exceed the allowed infill maximum setback (Outer Loop frontage: required 40', requested 91', variance of 51'; Laurel Ridge Road frontage: required 25', requested 60', variance of 35') (22-VARIANCE-0146)**

02:45:15 On a motion by Commissioner Brown, seconded by Commissioner Cheek, 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 requested variance will not adversely affect the public health, safety or welfare, because the structure must be constructed to comply with all building codes, including fire codes. The proposed structure will not impact sight lines or obstruct vision clearance; and

**WHEREAS**, the Commission further finds that the requested variance will not alter the essential character of the general vicinity as the neighborhood of the site transitions from residential to non-residential from south to north, with non-residential located east and west, with differing setbacks for the non-residential areas; and

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**WHEREAS**, the Commission further finds that the requested variance will not cause a hazard or nuisance to the public because the structure must be constructed to comply with all building codes. The proposed building will not obstruct vision clearance; and

**WHEREAS**, the Commission further finds that the requested variance will not allow an unreasonable circumvention of the zoning regulations as the site is separated from the adjacent non-residential by Southern Ditch, and the adjacent residential to the south is farther from the structure such that the difference in setback should be less noticeable; and

**WHEREAS**, the Commission further finds that the requested variance does not arise from special circumstances which do generally apply to land in the general vicinity or the same zone as the property is similar in size and shape to other properties in the subdivision; and

**WHEREAS**, the Commission further finds that the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant as the design of the proposed development constitutes a drive- through wrapping around a small building. Putting the building closer to the two roads would prevent the drive-through from functioning, and would additionally place more impervious surface into the protected waterway buffer zones; 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 the structure has not been constructed and the applicant is requesting the variance, now, therefore be it

**RESOLVED**, the Louisville Metro Planning Commission does hereby **APPROVE** the requested Variance #2: from 5.1.12.B.2.e to exceed the allowed infill maximum setback (Outer Loop frontage: required 40', requested 91', variance of 51'; Laurel Ridge Road frontage: required 25', requested 60', variance of 35') (22-VARIANCE-0146)

**The vote was as follows:**

**YES: Commissioner Brown, Cheek, Howard, Fischer, Mims, Pennix, Carlson, Clare, and Lewis.**

**ABSENT: Commissioner Sistrunk.**

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**Waiver #1: from 10.2.4.B.3 to permit an easement to overlap a required Landscape Buffer Area (LBA) by more than 50% (22-WAIVER-0196)**

**Waiver #2: from 8.3.3.A.1 to permit more than three signs on one façade of a non-residential building (23-WAIVER-0007)**

02:46:02 On a motion by Commissioner Brown, seconded by Commissioner Cheek, the following resolution, based on the Standard of Review and Staff Analysis and evidence and testimony heard today, was adopted:

**(Waiver #1) WHEREAS**, the Louisville Metro Planning Commission finds that the waiver will not adversely affect adjacent property owners as the required plantings will still be provided outside the overlap area; 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 will be adequately buffered; 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 easement is required and the LBA cannot be moved to eliminate the overlap; 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 removing the overlap would seriously impact the development; and

**(Waiver #2) WHEREAS**, the Commission further finds that the waiver will not adversely affect adjacent property owners as the signage is relatively small and no variance is being requested for the total allowed square footage; and

**WHEREAS**, the Commission further finds that the waiver will not violate specific guidelines of Plan 2040 as Plan 2040 does not address attached signage; 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 each of the proposed signs serves a different, distinct purpose and removing any of them would impact the functionality of the site; and



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**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 as the removal of any of the proposed signs would negatively impact the functioning of the site; now, therefore be it

**RESOLVED**, the Louisville Metro Planning Commission does hereby **APPROVE** the requested Waiver #1: from 10.2.4.B.3 to permit an easement to overlap a required Landscape Buffer Area (LBA) by more than 50% (22-WAIVER-0196) **AND** the requested Waiver #2: from 8.3.3.A.1 to permit more than three signs on one façade of a non-residential building (23-WAIVER-0007)

**The vote was as follows:**

**YES: Commissioner Brown, Cheek, Howard, Fischer, Mims, Pennix, Carlson, Clare, and Lewis.**

**ABSENT: Commissioner Sistrunk.**

**Parking Waiver to exceed the maximum allowable parking (22-PARKWAIVER-0007)**

02:46:47 On a motion by Commissioner Brown, seconded by Commissioner Cheek, 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 parking waiver is in compliance with the Comprehensive plan since the proposed coffee shop operates differently from most drive-through restaurants, as it will have many more employees than a building of this size would normally be expected to have, and those employees will need parking. Additionally, walk-up traffic is accommodated by the building design, and must be accommodated in the parking as well; and

**WHEREAS**, the Commission further finds that the applicant conducted a parking study using existing 7 Brew branded facilities in other locations; and

**WHEREAS** the Commission further finds that the requirements found in Table 9.1.3B do not allow for the provision of parking needed to accommodate the parking spaces needs of the proposed use. A parking study was performed for similar facilities that demonstrated a higher parking need than allowed by the Land Development Code; and

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**WHEREAS**, the Commission further finds that the requested increase is the minimum needed to do so because the parking study done on other 7 Brew branded coffee shops shows that more spaces are needed than would be permitted by the Land Development Code; now, therefore be it

**RESOLVED**, the Louisville Metro Planning Commission does hereby **APPROVE** the requested Parking Waiver to exceed the maximum allowable parking (22-PARKWAIVER-0007).

**The vote was as follows:**

**YES: Commissioner Brown, Cheek, Howard, Fischer, Mims, Pennix, Carlson, Clare, and Lewis.**

**ABSENT: Commissioner Sistrunk.**

**Detailed District Development Plan with Binding Elements**

02:46:47 On a motion by Commissioner Brown, seconded by Commissioner Cheek, 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 no natural resources are evident on the site aside from a small number of trees and the waterway buffer around Southern Ditch. The site is currently undeveloped. Required tree canopy will be provided. The scenic views along Outer Loop will be preserved by the provision of a parkway buffer. The encroachment into the Southern Ditch waterway buffer zones is addressed in Variance #1; 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 requirements 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

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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 compatible with existing and projected future development of the area. The site will be developed at an appropriate intensity and scale for the form district and the area; and

**WHEREAS**, the Commission further finds that the development plan conforms to applicable guidelines and policies of the Land Development Code, with the exception of the requested variances and waivers, and conforms with the Comprehensive Plan; now, therefore be it

**RESOLVED**, 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 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:

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- a. The development plan must receive full construction approval from Construction Review, Louisville Metro Public Works and the Metropolitan Sewer District. Encroachment permits must be obtained from the Kentucky Transportation Cabinet for any work in the Outer Loop right-of-way.
- 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. 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. This plan shall include, at a minimum, native Kentucky grasses or groundcover located within the area where the Landscape Buffer Area overlaps the Southern Ditch stream buffer. Grasses or groundcover shall be chosen so as to minimize or eliminate mowing, and this area shall not be mowed by the property owner or tenant. Native Kentucky shrubs shall be included where the stream buffer does not overlap a utility easement. Shrubs shall not be counted toward required tree canopy, but shall be maintained by the property owner or tenant as part of the landscape plan.
- 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 prior to obtaining a building permit.
- f. The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the March 16, 2023 Planning Commission meeting. A copy of the approved rendering is available in

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

**The vote was as follows:**

**YES: Commissioner Brown, Cheek, Howard, Fischer, Mims, Pennix, Carlson, Clare, and Lewis.**

**ABSENT: Commissioner Sistrunk.**