

PLANNING COMMISSION

March 30, 2023

PUBLIC HEARING

CASE NO. 22-ZONE-0140

NOTE: Commissioner Cheek recused herself from this case.

Request:	Change in Zoning from R-4 to C-2, with Associated Detailed District Development Plan with Binding Elements, and Waivers and Parking Waiver
Project Name:	7 Brew
Location:	5000, 5004 & 5010 Maple Spring Drive [should be 5100 Maple Spring Drive], Parcel ID 008500960000
Owner:	291 Harbison LLC, Barbara Johnston, Ernest & M. Louise Browning
Applicant:	Stern Development
Representative:	Bardenwerper, Talbott & Roberts
Jurisdiction:	Louisville Metro
Council District:	23 - Jeff Hudson
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:

01:43:16 Dante St. Germain noted that a consistent typographical error had been made throughout the staff report – any reference to “5010 Maple Spring Drive” should be read as “**5100 Maple Spring Drive**.” She then presented the case, showed a Power Point presentation, and responded to questions from the Commissioners (see staff report and recording for detailed presentation.)

01:50:51 Ms. St. Germain discussed binding elements #2 and #3 which were considered at LD&T (see recording.)

01:53:51 In response to a question from Commissioner Brown, Ms. St. Germain said the applicant should be able to answer questions regarding one small parcel on Maple Spring, and whether there is enough right-of-way there to widen the road.

01:53:48 In response to questions from Commissioner Mims, Ms. St. Germain used the site plan to discuss VUA/LBA requirements in areas of the site (see recording.) In

PLANNING COMMISSION

March 30, 2023

PUBLIC HEARING

CASE NO. 22-ZONE-0140

response to additional questions from Commissioner Mims, Ms. St. Germain discussed similar waiver requests from other businesses nearby or adjacent to this site.

The following spoke in support of the request:

John Talbott, Bardenwerper Talbot & Roberts PLLC, 1000 North Hurstbourne Parkway, Louisville, KY 40223

Kent Gootee, Mindel Scott & Associates, 5151 Jefferson Boulevard, Louisville, KY 40219

Brad Smith, 700 McGruder Street NE, Unit D, Atlanta GA 30312 (online)

Summary of testimony of those in support:

01:56:32 John Talbott, the applicant's representative, presented the case and showed a Power Point presentation (see recording for detailed presentation.)

02:04:12 In response to questions from Commissioner Brown, Kent Gootee, an applicant's representative, discussed the ROW on Maple Springs which can accommodate the widening being proposed (see recording for detailed discussion.)

02:06:04 In response to a question from Commissioner Mims, Ms. St. Germain said there is not a binding element regarding connections to adjoining properties because that would be encumbering an off-site parcel. There is shown on the plan that there is an easement being granted on this parcel where the pavement stubs into the KYTC parcels.

The following spoke in opposition to the request:

No one spoke.

Deliberations:

02:07:00 Commissioners' deliberation (see recording for detailed discussion.)

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.

PLANNING COMMISSION

March 30, 2023

PUBLIC HEARING

CASE NO. 22-ZONE-0140

Change in zoning from R-4 Single Family Residential to C-2 Commercial

02:07:10 On a motion by Commissioner Brown, seconded by Commissioner Howard, 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 proposal meets Community Form: Goal 1 because the site is located along Preston Highway, which is a commercial 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 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 Preston Highway, a major commercial corridor at this location, via Maple Springs Drive; required tree canopy and transitions will be provided between the site development and the adjacent residential uses; 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 Preston Highway, 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 Preston Highway, a commercial corridor; and

WHEREAS, the Commission further finds that the proposal meets Community Form: Goal 3 because tree canopy exists on the site, and will be preserved as required by the Land Development Code. New tree canopy will also be provided; 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 Mobility: Goal 1 because the site is located within an existing commercial corridor; and

PLANNING COMMISSION

March 30, 2023

PUBLIC HEARING

CASE NO. 22-ZONE-0140

WHEREAS, the Commission further finds that the proposal meets Mobility: Goal 2 because access to the site is from Preston Highway, a major arterial and transit corridor at this location, via Maple Springs Drive; 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 and car. Access via transit, and by pedestrians and people with disabilities will be improved by the proposal; and the proposal would permit higher-density mixed-use developments that reduce the need for multiple automobile trips; 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 Preston Highway, 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 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 proposed change in zoning from R-4 Single Family Residential to C-2 Commercial on property described in the attached legal description be **APPROVED**.

The vote was as follows:

PLANNING COMMISSION

March 30, 2023

PUBLIC HEARING

CASE NO. 22-ZONE-0140

YES: Commissioners Brown, Howard, Fischer, Mims, Pennix, Carlson, Clare, and Lewis.

RECUSED: Commissioner Cheek.

ABSENT: Commissioner Sistrunk.

Waiver #1: from 10.2.4.B.1 to permit encroachment into the required property perimeter Landscape Buffer Area (LBA) on the south property line and waive required plantings (22-WAIVER- 0202)

Waiver #2: from 10.2.11 to permit a drive aisle to encroach into a required Vehicular Use Area Landscape Buffer Area (VUA LBA) along the west property line (22-WAIVER-0201)

Waiver #3: from 8.3.3.A.1 to permit more than three signs on one façade of a non-residential building (23-WAIVER-0009)

02:07:10 On a motion by Commissioner Brown, seconded by Commissioner Howard, 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 most affected property is owned by the Commonwealth, and may redevelop in the future as another commercial use; 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 is vacant; 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 area on the site where the proposed coffee shop is to be located is an irregular shape and fairly small. The encroachment is needed in order to provide adequate parking on site; 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 provision of the required landscape buffer area would be prohibitive of the requested use on the lot; and

PLANNING COMMISSION
March 30, 2023

PUBLIC HEARING

CASE NO. 22-ZONE-0140

(Waiver #2) WHEREAS, the Commission further finds that the waiver will not adversely affect adjacent property owners as the encroachment is relatively small and unlikely to be noticed from Preston Highway. The needed plantings will still be provided; and

WHEREAS, the Commission further finds that the waiver will not violate specific guidelines of Plan 2040 as Preston Highway is not a scenic corridor or parkway at this location, and Plan 2040 encourages the preservation of scenic vistas mainly along parkways and scenic corridors. The required plantings will still be provided; 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 subject site is irregularly shaped and eliminating the required VUA LBA encroachment along the Preston Highway frontage would shift the encroachment to the rear of the site and affect Maple Spring Drive; 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 provision of the required landscape buffer area would be prohibitive of the requested use on the lot; and

Waiver #3) 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

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.1 to permit encroachment into the required property perimeter Landscape Buffer Area (LBA) on the south property line and waive required

PLANNING COMMISSION

March 30, 2023

PUBLIC HEARING

CASE NO. 22-ZONE-0140

plantings (22-WAIVER- 0202); **AND** the requested Waiver #2 from 10.2.11 to permit a drive aisle to encroach into a required Vehicular Use Area Landscape Buffer Area (VUA LBA) along the west property line (22-WAIVER-0201); **AND** the requested Waiver #3 from 8.3.3.A.1 to permit more than three signs on one façade of a non-residential building (23-WAIVER-0009).

The vote was as follows:

YES: Commissioners Brown, Howard, Fischer, Mims, Pennix, Carlson, Clare, and Lewis.

RECUSED: Commissioner Cheek.

ABSENT: Commissioner Sistrunk.

Parking Waiver to exceed the maximum allowable parking (22-PARKWAIVER-0011)

02:08:55 On a motion by Commissioner Brown, seconded by Commissioner Howard, 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

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

PLANNING COMMISSION

March 30, 2023

PUBLIC HEARING

CASE NO. 22-ZONE-0140

RESOLVED, the Louisville Metro Planning Commission does hereby **APPROVE** the requested Parking Waiver to exceed the maximum allowable parking (22-PARKWAIVER-0011)

The vote was as follows:

YES: Commissioners Brown, Howard, Fischer, Mims, Pennix, Carlson, Clare, and Lewis.

RECUSED: Commissioner Cheek.

ABSENT: Commissioner Sistrunk.

Detailed District Development Plan

02:09:26 On a motion by Commissioner Brown, seconded by Commissioner Howard, 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 tree canopy exists on the site, and required preservation will be provided; 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 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

PLANNING COMMISSION

March 30, 2023

PUBLIC HEARING

CASE NO. 22-ZONE-0140

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 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 (commonly referred to as billboards or off-premises signs pursuant to Louisville Metro Code of Ordinances section 155.08), small freestanding signs, pennants, balloons, or banners shall be permitted on the site. Signs in compliance with Chapter 8 of the Land Development Code shall be permitted.
3. Prior to development (includes clearing and grading) of any portion of the remaining areas of the site, the applicant, developer, or property owner shall obtain approval of a detailed district development plan in accordance with Chapter 11, Part 6. Each plan shall be in adequate detail and subject to additional binding elements. Notwithstanding this binding element, removal of the existing structures on the site and any commercially necessary tree removal for the purpose of structure removal shall be permitted, as allowed by MSD. In no event shall clear-cutting of the site be permitted without prior approval of a detailed district development plan.
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

PLANNING COMMISSION
March 30, 2023

PUBLIC HEARING

CASE NO. 22-ZONE-0140

- Sewer District.
- b. Encroachment permits must be obtained from the Kentucky Transportation Cabinet for any work in the Preston Highway 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. The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the March 30, 2023 Planning Commission meeting. A copy of the approved rendering is available in the case file on record in the offices of the Louisville Metro Planning Commission.
6. There shall be no outdoor music (live, piped, radio or amplified) or outdoor entertainment or outdoor PA system audible beyond the property line.
7. No idling of trucks shall take place within 200 feet of residential structures. No overnight idling of trucks shall be permitted on-site.
8. 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.
9. 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: Commissioners Brown, Howard, Fischer, Mims, Pennix, Carlson, Clare, and Lewis.

RECUSED: Commissioner Cheek.

PLANNING COMMISSION
March 30, 2023

PUBLIC HEARING

CASE NO. 22-ZONE-0140

ABSENT: Commissioner Sistrunk.