

## PLANNING COMMISSION MINUTES

August 31, 2023

### PUBLIC HEARING

#### CASE NO. 23-ZONE-0057

Request: Change in Zoning from R-6 to C-2, a Detailed District Development Plan with Binding Elements, Variance(s) and Waiver(s)  
Project Name: Shelby Park Mixed Use Corner Store  
Location: 541 E Ormsby Avenue  
Owner/Applicant: 541 E Ormsby Avenue LLC  
Jurisdiction: Louisville Metro  
Council District: 6 – Phillip Baker  
Case Manager: Jay Lockett, 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. (The staff report is part of the case file maintained in Planning and Design Services offices, 444 S. 5th Street.)

#### Agency Testimony:

00:31:20 Jay Lockett presented the case and presented a PowerPoint presentation (see staff report and recording for detailed presentation). The applicant is proposing to renovate the existing building and are requesting to change the zoning to match the historical use and design of the building. The applicant agreed to some binding elements to restrict the uses that will be permitted on the site.

#### The following spoke in support of the proposal:

Doug Sharp, 306 Addison Avenue, Franklin, Tennessee, 37064

#### Summary of testimony of those in support:

00:36:24 Doug Sharp spoke in support of the application and presented a PowerPoint presentation discussing the request (see recording). Sharp stated they have worked closely with the Shelby Park Neighborhood Association to discuss the plan and create the proposed binding elements. The first floor will be used for office/commercial, and there will be residential units on the second floor.

Commissioner Clare asked how many residential units are proposed. Sharp stated there will be a maximum of six, with four proposed on the site at this time. The count could go to six units if the entire first floor is not leased to a commercial use.

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Commissioner Mims asked the applicant about the proposed binding elements that are binding out certain uses. Jay Luckett clarified the interpretation of “on site consumption of alcohol” to only mean no consumption in a liquor store, and that does not apply to a restaurant. Commissioner Mims asked if these would be short term or long term rental units. Sharp stated the intent is to do long term rental.

#### **Deliberation:**

00:50:45 Commissioner deliberation.

**An audio/visual recording of the Development Review Committee 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.**

#### **Zoning Change from R-6 to C-2**

00:51:20 On a motion by Commissioner Carlson, seconded by Commissioner Sistrunk, the following resolution based on the staff report, applicant testimony heard today and staff analysis, was adopted:

**WHEREAS**, the Planning Commission finds the proposal meets Plan 2040 Community Form: Goal 1 because the proposed district results in the re-establishment of a corner commercial use in a former corner commercial structure; thus, it does not encroach upon a residential area based on the historic and traditional context of the use and neighborhood. The proposal allows a variety of neighborhood serving commercial uses and housing options. The proposed district is two blocks in either direction from commercial corridors and transit service. The nearest transit route is one-block west along Jackson Street. No adverse impacts of traffic will result as the site is in a walkable urban neighborhood at a corner location between transit routes and arterial roadways,

**WHEREAS**, the proposal meets Community Form: Goal 2 because existing facilities will be repurposed. The proposed district allows for mixed residential use which would have been traditionally located on the 2<sup>nd</sup> level. The proposed district is supported by a sufficient population in the area that has convenient access to the site. The proposed district revitalizes an underused commercially viable structure in a walkable urban neighborhood that results in efficient land use and cost-effective infrastructure investment. The proposal allows for a corner commercial use to be located near the population it will serve and also within proximity to transit and other commercial services to support and enhance alternative modes of travel, and encourage vitality. The proposed zoning district permits mixed use. The proposal rehabilitates existing structures. The proposed

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district revitalizes an underused commercially viable structure in a walkable urban neighborhood which is at an appropriate scale due to its traditional context and design,

**WHEREAS**, the proposal meets Community Form: Goal 3 because the proposed district utilizes a previously developed site and does not impact natural features. The proposed district utilizes a previously developed site and does not impact wet or highly permeable soils, severe, steep or unstable slopes. The proposed district utilizes a previously developed site and does not impact flood-prone areas and other features vulnerable to natural disasters,

**WHEREAS**, the proposal meets Community Form: Goal 4 because the proposed district preserves existing structures that exhibit compatibility with the character of the area,

**WHEREAS**, the proposal meets Mobility: Goal 1 because the proposed district is appropriately located for its intensity and density at a corner location in a walkable urban neighborhood between transit and commercial corridors. Its location support transit-oriented development and an efficient public transportation system.

**WHEREAS**, the proposal meets Mobility: Goal 2 because access to the site is from public ways and the use does not present a scale that would create a nuisance on these roadways.

**WHEREAS**, the proposal meets Mobility: Goal 3 because proposed district increases the availability of neighborhood goods and services in a walkable urban neighborhood at a site of previous commercial activities. The proposed district does not negatively impact mobility or accessibility to transit, pedestrians and people with disabilities. It allows for commercial activities closer to the populations they serve. The proposed district increases the availability of neighborhood goods and services in a walkable urban neighborhood at a site of previous commercial activities to promote public transit and pedestrian use. Transportation planning has approved the preliminary development plan,

**WHEREAS**, the proposal meets Community Facilities: Goal 2 because the proposed district will be served by existing utilities. An adequate supply of potable water and water for fire-fighting purposes is available. Adequate means of sewage treatment and disposal to protect public health and to protect water quality in lakes and streams as determined by the Metropolitan Sewer District is provided,

**WHEREAS**, the proposal meets Economic Development: Goal 1 because proposed district allows for neighborhood uses not intended to attract regionally. Its location will not create a nuisance from traffic,

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**WHEREAS**, the proposal meets Livability: Goal 1 because the proposed district utilizes a previously developed site and is not located within the floodplain,

**WHEREAS**, the proposal meets Housing: Goal 1 because the proposal allows for mixed use which may include housing for the elderly or disabled,

**WHEREAS**, the proposal meets Housing: Goal 2 because the proposal allows for mixed use. Traditionally residential would have been provided on the 2<sup>nd</sup> level of the structure. The proposal allows for a variety of housing options and types and is within close proximity to transit, services, amenities and employment opportunities, and

**WHEREAS**, the proposal meets Housing: Goal 3 because the proposal allows for a variety of housing options and types that can help provide additional affordable housing options; now, therefore be it

**RESOLVED**, the Louisville Metro Planning Commission does hereby **RECOMMEND** the Louisville Metro Council **APPROVE** the proposed zoning change from R-6 to C-2 on the property described in the legal description.

**The vote was as follows:**

**YES: Commissioners Sistrunk, Pennix, Fischer, Mims, Kern, Clare, Carlson and Lewis**

**NOT PRESENT FOR THIS CASE: Commissioners Howard and Cheek**

### VARIANCE

00:52:16 On a motion by Commissioner Carlson, seconded by Commissioner Sistrunk, the following resolution based on the staff report, applicant's testimony today, and Staff Analysis, was adopted:

**WHEREAS**, the Planning Commission finds the requested variance will not adversely affect public health safety or welfare as the site will be constructed according to all applicable building codes and safety requirements.

**WHEREAS**, the requested variance will not alter the essential character of the general vicinity. The proposed expansion will follow the existing line of the building on site,

**WHEREAS**, the requested variance will not cause a hazard or nuisance to the public since the building will be constructed according to the building code, including all safety and health related provisions,

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**WHEREAS**, requested variance will not allow an unreasonable circumvention of zoning regulations since it will allow for renovation of an existing site in a manner consistent with the development pattern of the area,

**WHEREAS**, the requested variance does not arise from special circumstances which do not generally apply to land in the general vicinity

**WHEREAS**, the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant, as the building already exists mostly at the proposed setback, and the addition is relatively minor

**WHEREAS**, 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 applicant is requesting approval prior to construction, now; therefore be it

**RESOLVED**, that the Louisville Metro Planning Commission does hereby **APPROVE** the variance.

**The vote was as follows:**

**YES: Commissioners Sistrunk, Pennix, Fischer, Mims, Kern, Clare, Carlson and Lewis**

**NOT PRESENT FOR THIS CASE: Commissioners Howard and Cheek**

#### **Waiver of LDC Section 10.2.4**

00:53:04 On a motion by Commissioner Carlson, seconded by Commissioner Sistrunk, the following resolution based on the staff report, applicant's testimony today, and Staff Analysis, was adopted:

**WHEREAS**, the Planning Commission finds the waiver will not adversely affect adjacent property owners,

**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. Quality design and building materials should be promoted to enhance compatibility of development and redevelopment projects. Community Form Goal 1, Policy 9 calls to ensure an appropriate transition between uses that are substantially different in scale and intensity or density of development. The transition may be achieved

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through methods such as landscaped buffer yards, vegetative berms, compatible building design and materials, height restrictions and setback requirements. Community Form Goal 1, Policy 10 calls to mitigate the impacts caused when incompatible developments unavoidably occur adjacent to one another. Buffers should be used between uses that are substantially different in intensity or density. Buffers should be variable in design and may include landscaping, vegetative berms and/or walls and should address issues 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. The waiver will not violate the Comprehensive Plan, as all required screening will be provided around the subject site. A mix of residential uses near mixed use or corner commercial development is consistent with the general character of the Traditional Neighborhood form district,

**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 deprive the applicant of reasonable use of the land, as the buffer cannot be complied with due to the narrow site and existing structure to remain, now; therefore be it

**RESOLVED**, that the Louisville Metro Planning Commission does hereby **APPROVE** the waiver.

**The vote was as follows:**

**YES: Commissioners Sistrunk, Pennix, Fischer, Mims, Kern, Clare, Carlson and Lewis**

**NOT PRESENT FOR THIS CASE: Commissioners Howard and Cheek**

#### **Detailed District Development Plan**

00:53:48 On a motion by Commissioner Carlson, seconded by Commissioner Sistrunk, the following resolution based on the staff report and applicant's testimony heard today, was adopted:

**WHEREAS**, the Planning Commission finds there are no significant natural or historic resources on the subject site,

**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,

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**WHEREAS**, there are no open space requirements associated with this request,

**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,

**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 relief is requested; therefore be it

**RESOLVED**, that the Louisville Metro Planning Commission does hereby **APPROVE** the 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. 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

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- requesting a building permit. Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter.
- c. Final elevations/renderings shall be submitted for review and approval by Planning Commission staff and shall be substantially similar to the elevations/renderings presented at the Planning Commission public hearing. A copy of the approved rendering shall be available in the case file on record in the offices of the Louisville Metro Planning Commission.
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 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.
6. The following uses, while ordinarily permitted within the C-1 zoning district shall not be permitted on the subject site:
- 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 having prior approval by the agency responsible for transportation planning
  - On site dry cleaning, dyeing, pressing, and laundry
  - Funeral homes
  - Package liquor stores (no on-site alcohol consumption allowed)
  - Pawn Shop
  - Temporary buildings, the uses of which are incidental to construction operations being conducted on the same or adjoining lot or tract, and which shall be removed upon completion or abandonment of such construction, or upon the



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expiration of a period of two years from the time of erection of such temporary buildings, whichever is sooner

7. The following uses, while ordinarily permitted within the C-2 zoning district shall not be permitted on the subject site:

Automobile rental agencies  
Automobile repair garages  
Automobile sales agencies  
Boat Sales and related storage  
Building materials, storage and sales  
Exposition building or center  
Fraternities, sororities, clubs and lodges excluding those where the chief activity of which is a service customarily carried on as a business.  
Laser Tag  
Micro-breweries and micro-distilleries (where production activities occur indoors in a space 5,000 square feet or less)  
Monument sales  
Package liquor stores (no on-site alcohol consumption allowed)  
Public transportation passenger terminals  
Public utility buildings and facilities  
Rubber stamp manufacturing, where products are sold on premises  
Skating rinks (ice or roller)  
Tavern, bar, saloon  
Telephone exchanges  
Used car sales areas

8. Any business with a by the drink liquor license shall not serve after 12:00 am. Outdoor music or entertainment shall not be permitted after 10:00 pm.

#### The vote was as follows:

**YES: Commissioners Sistrunk, Pennix, Fischer, Mims, Kern, Clare, Carlson and Lewis**

**NOT PRESENT FOR THIS CASE: Commissioners Howard and Cheek**