

Land Development & Transportation
Staff Report
August 9, 2018



Case No:	18ZONE1014
Project Name:	TopGolf at Oxmoor Center
Location:	7900 Shelbyville Road
Owner(s):	WMB 2, LLC & TWB Oxmoor 2, LLC
Applicant:	TopGolf USA Louisville, LLC
Representative(s):	Dinsmore & Shohl, LLP – Clifford Ashburner
Jurisdiction:	Louisville Metro
Council District:	18 – Marilyn Parker
Case Manager:	Joel P. Dock, AICP, Planner II

REQUEST(S)

- **Change-in-Zoning** from C-1 to C-2, Commercial
- **Conditional Use Permit** for Golf Driving Range (LDC 4.2.58)
- **Revised Detailed District Development Plan** for 62,103 sq. ft. golf driving range and entertainment center
- **Variances**
 1. **Variance** from Land Development Code (LDC), section 5.3.3.C.2.a to allow the primary structure to exceed the maximum street side yard setback of 275' along Christian Way and Oxmoor Lane as shown on development plan
 2. **Variance** from LDC, section 5.3.3.C.2.d to exceed the maximum permitted height of 150' to allow a pole height of 175' for driving range netting
 3. **Variance** from LDC, section 4.8.3 to allow for parking facility encroachments into the 100' protected waterway buffer as shown on the development plan
- **Waiver** of LDC, section 10.2.10 to allow for parking facility encroachments into the required 15' Vehicle Use Area Landscape Buffer Area (VUA LBA) as shown on the development plan

CASE SUMMARY

A change in zoning from C-1 to C-2 and conditional use permit to allow for a 3-story, 62,000 sq. ft. entertainment center and golf driving range at the Oxmoor Center shopping facility is being requested. The Oxmoor Center is located in a Regional Center form district along a major arterial roadway with immediate access to interstate-264. The site of redevelopment is located south of Beargrass Creek in the area of the former Sears department store between Oxmoor Lane and Christian Way. Parking facilities in this area will be improved to include interior landscape areas and pedestrian connections from proposed public sidewalks, as well as a vehicular and pedestrian concourse from Oxmoor Lane to the primary entrance. Drive lanes along the exterior of the development site will be reconfigured to provide continued access internally from Oxmoor Lane to Christian Way.

Due to the voluntary removal of existing parking infrastructure and the scope of proposed improvements, a variance to allow encroachments into the protected waterway buffer and waiver to allow for encroachments into perimeter landscape buffers are needed. The extent of the existing footprint of impervious surfaces appears to remain unchanged. The poles supporting the driving range netting are subject to the maximum building height for structures; thus, a height variance is required.

STAFF FINDING

The application and plan are in order and ready for the next available public hearing before the Planning Commission.

TECHNICAL REVIEW

- Preliminary development plan approval has been received by MSD and Transportation Planning.
- Multiple parking waivers have been requested across the Oxmoor Center site. The last reduction in 2005 was from 4,605 to 4,330 spaces (see *Attachment 3* for case history). The current minimum requirements are 3,388 parking spaces; therefore, no parking waiver is required and the previously approved parking waivers are no longer applicable.
- With respect to existing binding element #10, Transportation Planning review staff (DPW) has reviewed the traffic impact study submitted on July 18, 2018 and finds the content covered to be acceptable. No recommendations for roadway improvements were made as a result. Air Pollution Control District staff reviewed the preliminary plan and requested the following note to be added to the proposed plan: *Mitigation measures for dust control shall be in place during construction to prevent fugitive particulate emissions from reaching existing roads and neighboring properties.* Existing binding element #10 is copied in full below:

The Planning Commission shall require a full traffic and air quality analysis, including an arterial analysis for Shelbyville Road, before considering any additional development of the general area known as Oxmoor Center/the Bullitt Farm. This binding element shall apply to any commercial, retail, residential or office development. The aforementioned analysis shall include expected traffic from all approved developments within the impact area, as defined by the Department of Public Works. It shall also include any proposed roadway improvements expected to be completed before completion of the proposed development. The goal of the traffic analysis is to recommend appropriate mitigation measures to accommodate expected traffic from the proposed development. Mitigation measures for traffic and air quality shall include, but not limited to, recommended signal timing adjustments along Shelbyville Road and construction of Bunsen/Bowling Parkway, in part or whole. The Developer should also furnish additional mitigation recommendations, as required, at impacted intersections.

INTERESTED PARTY COMMENTS

Staff has received an immense quantity of both opposition and support for the proposed project in various formats. A petition of over 1,000 signatures in opposition to the request was received on May 14, 2018. Staff has received over 700 email correspondences concerning the project. Post cards and written letters in opposition have also been mailed to staff. These communications have been made available online throughout the process and prior to the public meeting. This record of communication is up to date online as-of August 2, 2018 at 11 AM. A comprehensive record of interested party communication is contained in the case file on record in the offices of the Louisville Metro Planning Commission.

STANDARD OF REVIEW FOR REZONING

Criteria for granting the proposed form district change/rezoning: KRS Chapter 100.213

1. The proposed form district/rezoning change complies with the applicable guidelines and policies Cornerstone 2020; OR
2. The existing form district/zoning classification is inappropriate and the proposed classification is appropriate; OR
3. There have been major changes of an economic, physical, or social nature within the area involved which were not anticipated in Cornerstone 2020 which have substantially altered the basic character of the area.

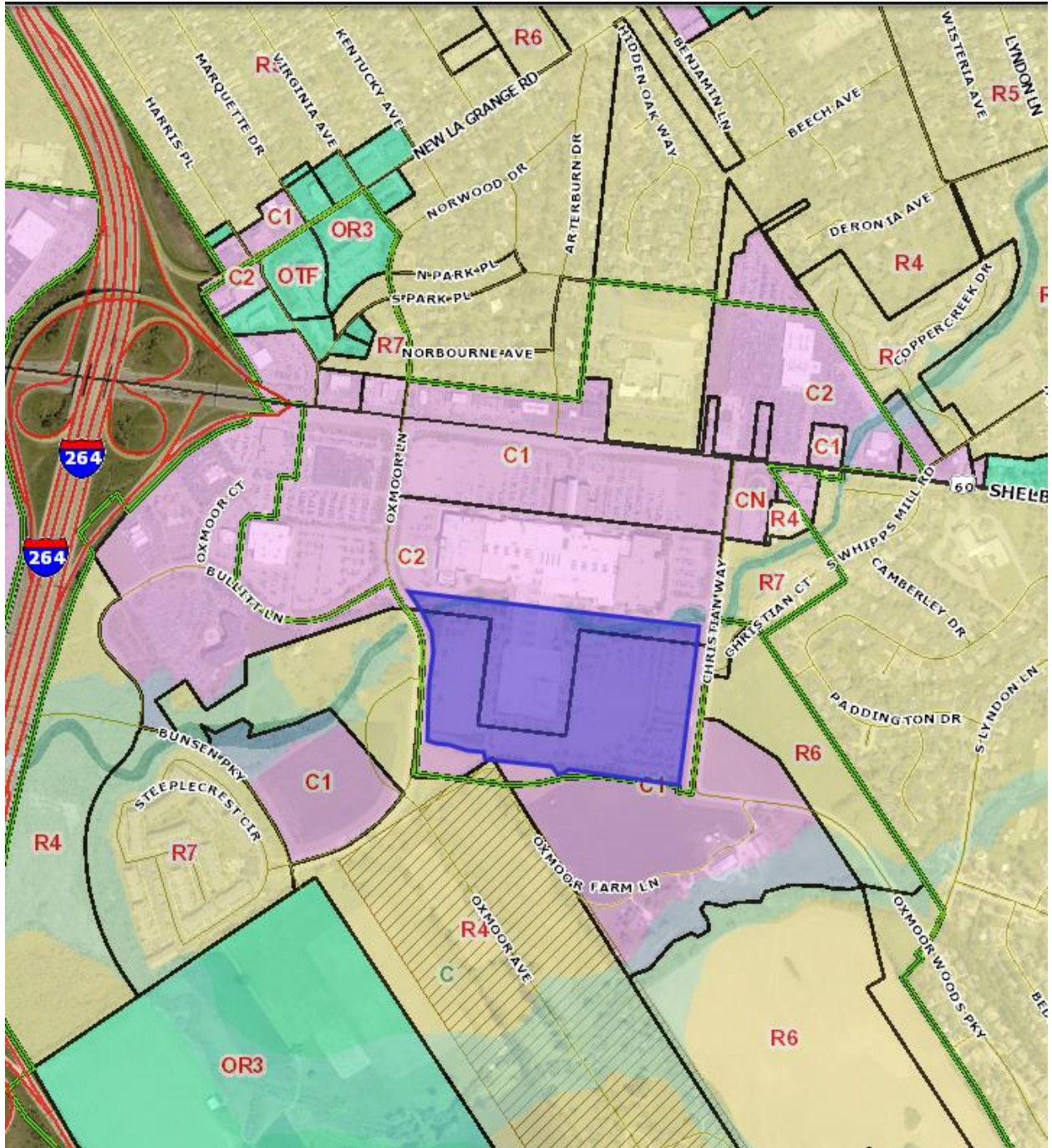
NOTIFICATION

Date	Purpose of Notice	Recipients
7/26/18	Hearing before LD&T	1 st and 2 nd tier adjoining property owners Subscribers of Council District 18 Notification of Development Proposals
	Hearing before PC	1 st and 2 nd tier adjoining property owners Subscribers of Council District 18 Notification of Development Proposals
	Hearing before PC	Sign Posting on property
	Hearing before PC	Legal Advertisement in the Courier-Journal

ATTACHMENTS

1. Zoning Map
2. Aerial Photograph
3. Development Case History (Oxmoor Center)
4. Existing Binding Elements (9-50-80/9-49-83)
5. Proposed Binding Elements (Development site only – 18ZONE1014)

1. Zoning Map



2. Aerial Photographs



3. Development Case History

- B-69-69: A parking variance to reduce parking from 3,301 to 2,939 spaces.
- B-20-76: Conditional use permit for off-street parking (note: area currently zoned C-1).
- 9-50-80: Change in zoning from R-4 to C-1 & C-2 and C-1 to C-2 for rear additions, including Sears department store (approved 11/20/1980).
- 9-49-83: Change in zoning from C-1 to C-2 to expand the perimeter of the previously approved C-2 zoning by 2.9 acres (approved 8/18/83). Binding elements carried forward from 9-50-80.
- B-7-92: attached signage variance.
- B-197-98: attached signage variance.
- B-149-00: Conditional use permit for off-street parking. This request was approved in an area to the south of the current development site. It was approved on condition that it would not be used unless an associated parking waiver was denied. It expired 1-year later.
- PW-10-00: A parking waiver & RDDDP (9-49-83 only) to reduce the required parking from 6,035 to 4,407 spaces (approved 9/7/00).
- PW-10-00/9-50-80/9-49-83: RDDDP & parking waiver to reduce parking from 4,605 to 4,330 (approved 7/21/05).

4. Existing Binding Elements (9-50-80/9-49-83)

1. The development shall be in accordance with the approved district development plan and agreed upon binding elements unless amended pursuant to the Zoning District Regulations. Any changes, additions or alterations of any binding element(s) shall be submitted to the Planning Commission for review and approval; any changes/additions/alterations not so referred shall not be valid.
2. Total building area for Oxmoor Center shall not exceed 1,171,072 square feet of gross floor area; gross leasable space shall not exceed 959,751 square feet. Additional gross building area and/or gross leasable space may be permitted if a revised district development plan is approved together with either (i) additional parking provided pursuant to LDC Article 9, or (ii) approval of an appropriate parking waiver, both of which require filing a revised development plan.
3. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.
4. Outdoor storage is not permitted on site except as permitted by LDC Sec. 4.4.8 and as designated on an approved revised development plan.
5. Before any permit (including but not limited to building, parking lot, change of use or alteration permit) is requested:
 - a. The development plan must receive full construction approval from the Department of Inspections, Permits and Licenses and Transportation and the Metropolitan Sewer District
 - b. The property owner/developer must obtain approval of a detailed plan for screening (buffering/landscaping) as described in Article 12 prior to requesting a building permit. Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter.
 - c. Crossover and parking agreements shall be obtained. A copy of the recorded instrument(s) shall be submitted to the Department of Planning and Design Services. Annual re-certification is required.
6. If a building permit is not issued within one year of the date of approval of the plan, the property shall not be used in any manner unless a revised district development plan is approved or an extension is granted by the Planning Commission.
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.

9. If work is required within the easements causing removal or damage of landscape materials, the property owner shall be responsible for replacement of materials according to the approved landscape plan.
10. The Planning Commission shall require a full traffic and air quality analysis, including an arterial analysis for Shelbyville Road, before considering any additional development of the general area known as Oxmoor Center/the Bullitt Farm. This binding element shall apply to any commercial, retail, residential or office development. The aforementioned analysis shall include expected traffic from all approved developments within the impact area, as defined by the Department of Public Works. It shall also include any proposed roadway improvements expected to be completed before completion of the proposed development. The goal of the traffic analysis is to recommend appropriate mitigation measures to accommodate expected traffic from the proposed development. Mitigation measures for traffic and air quality shall include, but not limited to, recommended signal timing adjustments along Shelbyville Road and construction of Bunsen/Bowling Parkway, in part or whole. The Developer should also furnish additional mitigation recommendations, as required, at impacted intersections.
11. No parking of vehicles in the Star Ford inventory shall take place at the parking areas subject to the Parking Waiver, unless a joint parking agreement is approved by the Planning Commission. The applicant of PW-10-00 shall provide Star Ford with the above conditions of approval and binding elements.

5. **Proposed Binding Elements (Development Site only – 18ZONE1014)**

1. The development shall be in accordance with the approved district development plan and agreed upon binding elements unless amended pursuant to the Zoning District Regulations. Any changes, additions or alterations of any binding element(s) shall be submitted to the Planning Commission for review and approval; any changes/additions/alterations not so referred shall not be valid.
2. ~~Total building area for Oxmoor Center shall not exceed 1,171,072 square feet of gross floor area; gross leasable space shall not exceed 959,751 square feet. Additional gross building area and/or gross leasable space may be permitted if a revised district development plan is approved together with either (i) additional parking provided pursuant to LDC Article 9, or (ii) approval of an appropriate parking waiver, both of which require filing a revised development plan.~~
2. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.
4. ~~Outdoor storage is not permitted on site except as permitted by LDC Sec. 4.4.8 and as designated on an approved revised development plan.~~
3. Before any permit (including but not limited to building, parking lot, change of use or alteration permit) is requested:
 - a. ~~The development plan must receive full construction approval from the Department of Inspections, Permits and Licenses and Transportation and the Metropolitan Sewer District.~~
 - b. ~~The property owner/developer must obtain approval of a detailed plan for screening (buffering/landscaping) as described in Article 12 prior to requesting a building permit. Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter.~~
 - c. ~~Crossover and parking agreements shall be obtained. A copy of the recorded instrument(s) shall be submitted to the Department of Planning and Design Services. Annual re-certification is required.~~
 - a. **The development plan must receive full construction approval from Louisville Metro Department of Codes and Regulations Construction Permits and Transportation Planning Review 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**
6. ~~If a building permit is not issued within one year of the date of approval of the plan, the property shall not be used in any manner unless a revised district development plan is approved or an extension is granted by the 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. If work is required within the easements causing removal or damage of landscape materials, the property owner shall be responsible for replacement of materials according to the approved landscape plan.
7. The Planning Commission shall require a full traffic and air quality analysis, including an arterial analysis for Shelbyville Road, before considering any additional development of the general area known as Oxmoor Center/the Bullitt Farm. This binding element shall apply to any commercial, retail, residential or office development. The aforementioned analysis shall include expected traffic from all approved developments within the impact area, as defined by the Department of Public Works. It shall also include any proposed roadway improvements expected to be completed before completion of the proposed development. The goal of the traffic analysis is to recommend appropriate mitigation measures to accommodate expected traffic from the proposed development. Mitigation measures for traffic and air quality shall include, but not limited to, recommended signal timing adjustments along Shelbyville Road and construction of Bunsen/Bowling Parkway, in part or whole. The Developer should also furnish additional mitigation recommendations, as required, at impacted intersections.
8. ~~No parking of vehicles in the Star Ford inventory shall take place at the parking areas subject to the Parking Waiver, unless a joint parking agreement is approved by the Planning Commission. The applicant of PW-10-00 shall provide Star Ford with the above conditions of approval and binding elements.~~ **Parking facilities as shown on the approved development plan shall be restricted for the parking of vehicles for guests, employees, and customers of the Oxmoor Center only.**
9. **The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the _____ Planning Commission meeting**