

PLANNING COMMISSION MINUTES
September 15, 2016

PUBLIC HEARING

CASE NO. 15ZONE1039

Case No: 15zone1039
Request: R-4 to OR and C-1
Project Name: Osa Medical Office Park
Location: 4524-4528 Cane Run Road

Owner: Nustreams LLC
Osa Omoruyi
4200 Gardinerview Avenue, Suite 101
Louisville, Ky. 40213

Applicant: Nustreams LLC
Osa Omoruyi
4200 Gardinerview Avenue, Suite 101
Louisville, Ky. 40213

Representative: Milestone Design Group
Mark Madison
108 Daventry Lane, Suite 300
Louisville, Ky. 40223

Dinsmore and Shohl LLP
Clifford H. Ashburner, Esq.
101 South 5th Street, Suite 2500
Louisville, Ky. 40202

Jurisdiction: Louisville Metro
Council District: 1-Jessica Green
Case Manager: **Julia Williams, RLA, AICP, Planning Supervisor**

NOTE: COMMISSIONER TOMES ARRIVED AT 1:46 AND VOTED ON THIS CASE

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 Planning and Design Services offices, 444 S. 5th Street.)

Agency Testimony:

PLANNING COMMISSION MINUTES
September 15, 2016

PUBLIC HEARING

CASE NO. 15ZONE1039

00:36:11 Ms. Williams discussed the case summary, standard of review and staff analysis from the staff report.

The following spoke in favor of this request:

Cliff Ashburner, Dinsmore and Shohl, LLP, 101 South 5th Street, Suite 2500, Louisville, Ky. 40202

Charles Stone, 4407 Oboe Drive, Louisville, Ky. 40216

Mark Madison, Milestone Design Group, 108 Daventry Lane, Louisville, Ky. 40223

Summary of testimony of those in favor:

00:42:55 Mr. Ashburner gave a power point presentation. The area is underserved. The owner/developer will stay out of the 50 foot setback area and there is a right-in right-out lane, hopefully to be a full entrance in the future. The renderings are code compliant and the offices will look residential. The project will be done in phases.

Also, Mr. Ashburner read binding element number 12 and submitted the justification statement into the record.

00:49:40 Mr. Stone wants to know the location of the 6% of trees to be kept. He also has pictures of dead trees he wants MSD to clean up.

00:54:10 Mr. Madison said there are no plans to do the entire length of the ditch. MSD will require that the applicant provide a viable public outlet.

Deliberation

00:58:27 The commissioners are in agreement that the plan, variance and waivers are appropriate.

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.

Zoning Change from R-4 to OR and C-1

On a motion by Commissioner Lewis, seconded by Commissioner Howard, the following resolution was adopted.

PLANNING COMMISSION MINUTES
September 15, 2016

PUBLIC HEARING

CASE NO. 15ZONE1039

WHEREAS, The Neighborhood Form is characterized by predominantly residential uses that vary from low to high density and that blend compatibly into the existing landscape and neighborhood areas. High-density uses will be limited in scope to minor or major arterials and to areas that have limited impact on the low to moderate density residential areas; and

WHEREAS, The Neighborhood Form will contain diverse housing types in order to provide housing choice for differing ages and incomes. New neighborhoods are encouraged to incorporate these different housing types within a neighborhood as long as the different types are designed to be compatible with nearby land uses. These types may include, but not be limited to large lot single family developments with cul-de-sacs, neo-traditional neighborhoods with short blocks or walkways in the middle of long blocks to connect with other streets, villages and zero lot line neighborhoods with open space, and high density multi-family condominium-style or rental housing; and

WHEREAS, The Neighborhood Form may contain open space and, at appropriate locations, civic uses and neighborhood centers with a mixture of uses such as offices, retail shops, restaurants and services. These neighborhood centers should be at a scale that is appropriate for nearby neighborhoods. The Neighborhood Form should provide for accessibility and connectivity between adjacent uses and neighborhoods by automobile, pedestrian, bicycles and transit; and

WHEREAS, Neighborhood streets may be either curvilinear, rectilinear or in a grid pattern and should be designed to invite human interaction. Streets are connected and easily accessible to each other, using design elements such as short blocks or bike/walkways in the middle of long blocks to connect with other streets. Examples of design elements that encourage this interaction include narrow street widths, street trees, sidewalks, shaded seating/gathering areas and bus stops. Placement of utilities should permit the planting of shade trees along both sides of the streets; and

WHEREAS, A compensation basin is proposed to deal with any floodplain issues. 6% of the existing tree canopy will remain, where more than 76% of the site is in existing canopy; and

WHEREAS, the Louisville Metro Planning Commission finds, the proposal is within a mixed use corridor that has been created along Cane Run Road. The proposal is for high intensity zoning but is located along a major arterial and will have little impact on adjacent residential uses. The proposal will be a part of an existing center that has been established along the Cane Run Road corridor. The proposal is for new construction. The proposal is compact and located adjacent to other similar and more intense uses making the proposal a cost effective investment. The proposal is part of a non-residential corridor that has been established along Cane Run Road. The zoning is

PLANNING COMMISSION MINUTES
September 15, 2016

PUBLIC HEARING

CASE NO. 15ZONE1039

similar to other zoning in the area, which encourages a sense of place. The proposal is for the construction of office and commercial uses. The proposal is mixed use and is located in a mixed use area. The development is multi-purpose. The proposal could be made more compact with the construction of a larger multi-story medical building; and

WHEREAS, the Louisville Metro Planning Commission further finds all other agency comments should be addressed to demonstrate compliance with the remaining Guidelines and Policies of Cornerstone 2020.

RESOLVED, that the Louisville Metro Planning Commission does hereby **RECOMMEND**, to Metro Council, **APPROVAL** of Case No. 15ZONE1039, the change in zoning from R-4 to OR and C-1 based on the staff report, testimony heard today and the applicant's justification.

The vote was as follows:

YES: Commissioners Brown, Carlson, Howard, Jarboe, Kirchdorfer, Lewis, Peterson, Smith and Turner

ABSTAINING: Commissioner Tomes

Variance

WHEREAS, The requested variance will not adversely affect the public health, safety or welfare since the encroachment is adjacent to property that is zoned both residential and commercial where the residential use on the site is located in the commercial portion of the site; and

WHEREAS, The requested variance will not alter the essential character of the general vicinity since the encroachment is adjacent to property that is zoned both residential and commercial where the residential use on the site is located in the commercial portion of the site; and

WHEREAS, The requested variance will not cause a hazard or nuisance to the public since the encroachment is adjacent to property that is zoned both residential and commercial where the residential use on the site is located in the commercial portion of the site; and

WHEREAS, The requested variance will not allow an unreasonable circumvention of the zoning regulations since the encroachment is adjacent to property that is zoned both residential and commercial where the residential use on the site is located in the commercial portion of the site; and

PLANNING COMMISSION MINUTES
September 15, 2016

PUBLIC HEARING

CASE NO. 15ZONE1039

WHEREAS, The encroachment is adjacent to property that is zoned both residential and commercial where the residential use on the site is located in the commercial portion of the site; and

WHEREAS, the Louisville Metro Planning Commission finds, the strict application of the provision would deprive the applicant of reasonable use of the land since the encroachment is adjacent to property that is zoned both residential and commercial where the residential use on the site is located in the commercial portion of the site; and

WHEREAS, the Louisville Metro Planning Commission further finds the circumstances are the result of action of the applicant taken subsequent to the adoption of the zoning regulations from which relief is sought.

Waiver

WHEREAS, The waiver will not adversely affect adjacent property owners since buffer is internal to the site and between two non-residential uses; and

WHEREAS, Guideline 3, policy 9 of Cornerstone 2020 calls for the protection of the character of residential areas, roadway corridors and public spaces from visual intrusions and mitigate when appropriate. Guideline 3, policies 21 and 22 calls for appropriate transitions between uses that are substantially different in scale and intensity or density, and to mitigate the impact caused when incompatible developments occur adjacent to one another through the use of landscaped buffer yards, vegetative berms and setback requirements to 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. Guideline 3, policy 24 states that parking, loading and delivery areas located adjacent to residential areas should be designed to minimize the impacts from noise, lights and other potential impacts, and that parking and circulation areas adjacent to streets should be screened or buffered. Guideline 13, policy 4 calls for ensuring appropriate landscape design standards for different land uses within urbanized, suburban, and rural areas. Guideline 13, Policy 6 calls for screening and buffering to mitigate adjacent incompatible uses. The intent of landscape buffer areas is to create suitable transitions where varying forms of development adjoin, to minimize the negative impacts resulting from adjoining incompatible land uses, to decrease storm water runoff volumes and velocities associated with impervious surfaces, and to filter air borne and water borne pollutants. Not providing an LBA and landscaping where the waiver is being requested won't violate the comprehensive plan because the location of the buffer is internal to the site and between two non-residential uses; and

PLANNING COMMISSION MINUTES
September 15, 2016

PUBLIC HEARING

CASE NO. 15ZONE1039

WHEREAS, the Louisville Metro Planning Commission finds, the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant since the location of the buffer is internal to the site and between two non-residential uses; and

WHEREAS, the Louisville Metro Planning Commission further finds 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 since the location of the buffer is internal to the site and between two non-residential uses.

Detailed District Development Plan

WHEREAS, A compensation basin is proposed to deal with any floodplain issues. 6% of the existing tree canopy will remain, where more than 76% of the site is in existing canopy. Minimum tree canopy requirements of the Land Development Code will be provided on the subject site; and

WHEREAS, 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, There are no open space requirements pertinent to the current proposal. Open space is provided in buffers and the detention area shown on the plan; 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 Louisville Metro Planning Commission finds, the overall site design and land uses are compatible with the existing and future development of the area. Appropriate landscape buffering and screening will be provided to screen adjacent properties and roadways. Buildings and parking lots will meet all required setbacks adjacent to single family uses; and

WHEREAS, the Louisville Metro Planning Commission further finds the development plan conforms to applicable guidelines and policies of the Comprehensive Plan and to requirements of the Land Development Code.

On a motion by Commissioner Lewis, seconded by Commissioner Howard, the following resolution was adopted.

PLANNING COMMISSION MINUTES
September 15, 2016

PUBLIC HEARING

CASE NO. 15ZONE1039

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** the following for Case No. 15ZONE1039: the variance from table 5.3.2 to permit parking to encroach 35 feet into the 50 foot and 15 foot setbacks along the north property line; a waiver from chapter 10.2.4 to eliminate the required 5 foot landscape buffer area where the proposed C-1 is adjacent to the proposed OR on the site; and the Detailed District Development Plan and binding elements based on the staff report, testimony heard today and the applicant's justification, **SUBJECT** to the following Binding Elements:

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. The development shall not exceed 11,500 square feet of gross floor area for Lot 1.
The development shall not exceed 45,630 square feet of gross floor area for Lot 2.
3. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.
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) is requested:
 - a. The development plan must receive full construction approval from Develop Louisville, Louisville Metro Public Works and the Metropolitan Sewer District.
 - b. Encroachment permits must be obtained from the Kentucky Department of Transportation, Bureau of Highways.

PLANNING COMMISSION MINUTES
September 15, 2016

PUBLIC HEARING

CASE NO. 15ZONE1039

- c. A minor subdivision plat or legal instrument shall be recorded creating the lot lines as shown on the development plan. A copy of the recorded instrument shall be submitted to the Division of Planning and Design Services; transmittal of approved plans to the office responsible for permit issuance will occur only after receipt of said instrument.
 - d. 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.
 - 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; transmittal of the approved plans to the office responsible for permit issuance will occur only after receipt of said instrument.
 - f. A Tree Preservation Plan in accordance with Chapter 10 of the LDC shall be reviewed and approved prior to obtaining approval for site disturbance.
6. 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.
7. There shall be no outdoor music (live, piped, radio or amplified) or outdoor entertainment or outdoor PA system audible beyond the property line.
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. The property owner shall provide a cross over access easement if the property to the north is ever developed for a nonresidential use and to the south if the property is ever redeveloped. A copy of the signed easement agreement shall be provided to Planning Commission staff upon request.

PLANNING COMMISSION MINUTES
September 15, 2016

PUBLIC HEARING

CASE NO. 15ZONE1039

10. The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the September 15, 2016 Planning Commission meeting.
11. No idling of trucks shall take place within 200 feet of single-family residences. No overnight idling of trucks shall be permitted on-site.
12. The applicant shall not be issued a building permit for Building D until it has conducted an abbreviated traffic study with a scope satisfactory to KYTC, submitted same to KYTC and has reached an agreement with KYTC on any improvements to Cane Run Road.

The vote was as follows:

YES: Commissioners Brown, Carlson, Howard, Jarboe, Kirchdorfer, Lewis, Peterson, Smith and Turner

ABSTAINING: Commissioner Tomes