

Development Review Committee Staff Report

April 19, 2017



| | |
|------------------------------|-----------------------------------|
| Case No: | 17MOD1003 |
| Project Name: | Roosters |
| Location: | 7405 Preston Hwy |
| Owners: | RC Landlords, LLC |
| Applicant: | RC Landlords, LLC |
| Representative: | Bardenwerper Talbot & Roberts |
| Zoning/Form District: | C-2/Suburban Marketplace Corridor |
| Jurisdiction: | Louisville Metro |
| Council District: | 24 – Madonna Flood |
| Case Manager: | Laura Mattingly, Planner II |

REQUEST

- Amendment to Binding Elements

CASE SUMMARY/BACKGROUND/SITE CONTEXT

The subject site is plan certain under Docket 16ZONE1065, approved by the Planning Commission on February 2, 2017.

The applicant requests a modification to the following binding element, associated with 16ZONE1065:

6. There shall be no outdoor music from any source, outdoor entertainment or outdoor PA system usage permitted on the site.

The applicant requests the removal of the portion stating “no outdoor music from any source”, as the recently approved patio contains speakers from which music is played at an acceptable level for patrons. The applicant has stated there will be no live entertainment or PA system.

There have been two re-zonings on this site, both of which have independent binding elements. As this is one development site, staff proposes combining the two sets of binding elements to create one cohesive set for the entirety of the site.

LAND USE/ZONING DISTRICT/FORM DISTRICT TABLE

| | Land Use | Zoning | Form District |
|-------------------------------|-----------------------------|--------|---------------|
| Subject Property | | | |
| Existing | Restaurant | C-2 | SMC |
| Proposed | Restaurant | C-2 | SMC |
| Surrounding Properties | | | |
| North | Office/Retail/Entertainment | C-1 | SMC |
| South | Retail | C-1 | SMC |
| East | Surface Parking | R-4 | N |
| West | Retail/Auto Services | C-1 | SMC |

PREVIOUS CASES ON SITE

- B-136-87: Conditional Use Permit for parking in a residential zone.
- 9-9490-07: The Planning Commission recommended approval of a zone change request for the adjoining restaurant parcel at 7405 Preston Highway from C-1 to C-2 and attached binding elements.
- 16ZONE1065: Change in zoning from C-1 to C-2 to allow an expansion of an existing restaurant to include an outdoor patio area. Approved by Planning Commission February 2, 2017.

INTERESTED PARTY COMMENTS

Staff has not received any comments from interested parties.

APPLICABLE PLANS AND POLICIES

Cornerstone 2020
Land Development Code

STANDARD OF REVIEW AND STAFF ANALYSIS FOR AN AMENDMENT TO BINDING ELEMENTS

- a. The conservation of natural resources on the property proposed for development, including: trees and other living vegetation, steep slopes, water courses, flood plains, soils, air quality, scenic views, and historic sites;

STAFF: This lot does not contain any of the above natural resources.

- b. The provisions for safe and efficient vehicular and pedestrian transportation both within the development and the community;

STAFF: Provisions for safe and efficient vehicular and pedestrian transportation within and around the development and the community will continue to be provided.

- c. The provision of sufficient open space (scenic and recreational) to meet the needs of the proposed development;

STAFF: Open space was not required for this development.

- d. 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;

STAFF: The Metropolitan Sewer District will continue to ensure the provisions of adequate drainage facilities on the subject site in order to prevent drainage problems from occurring on the subject site or within the community.

- e. The compatibility of the overall site design (location of buildings, parking lots, screening, landscaping) and land use or uses with the existing and projected future development of the area;

STAFF: The overall site design and land uses are compatible with the existing and future development of the area. The change in the binding element will not affect the overall compatibility of the site.

- f. Conformance of the development plan with the Comprehensive Plan and Land Development Code. Revised plan certain development plans shall be evaluated for conformance with the non-residential and mixed-use intent of the form districts and comprehensive plan.

STAFF: The amendment to the binding element does not affect the development plan's compliance with the Land Development Code or the Comprehensive Plan as all other requirements are being met.

TECHNICAL REVIEW

There are no technical review items.

STAFF CONCLUSIONS

The proposed amendment appears to be adequately justified based on staff analysis in the staff report.

Based upon the information in the staff report, the testimony and evidence provided at the public meeting, the Development Review Committee must determine if the proposal meets the standards established in the LDC for approving the Amendment to Binding Element.

REQUIRED ACTION

- **APPROVE** or **DENY** the Amendment to Binding Elements.

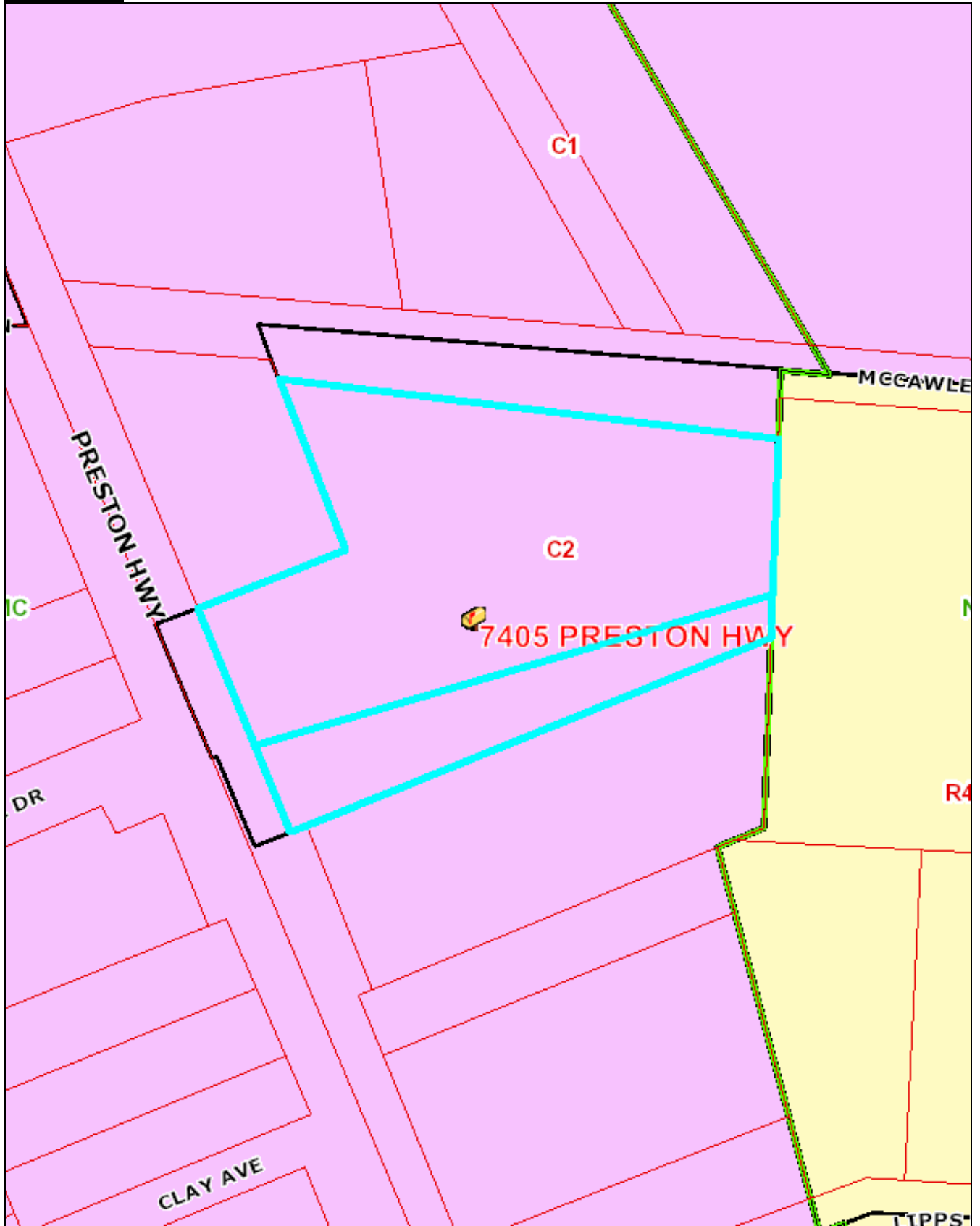
NOTIFICATION

| Date | Purpose of Notice | Recipients |
|----------|--------------------|---|
| 04/04/17 | Hearing before DRC | Registered neighborhood groups for District 22 |
| 04/06/17 | Hearing before DRC | 1 st Tier adjoining property owners, others who provided testimony on past zoning cases. |

ATTACHMENTS

1. Zoning Map
2. Aerial
3. Existing Binding Elements
4. Proposed Changes to Binding Elements

1. Zoning Map



2. Aerial



3. Existing Binding Elements

Binding Elements from 9-9490-07

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 square footage of the development shall not exceed ~~9,400~~**11,027** square foot.
3. Signs shall be in accordance with Chapter 8, or as presented at the public hearing.
4. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.
5. 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.
6. Before any permit (including but not limited to building, parking lot, change of use, site disturbance, or demolition permit) is requested:
 - a. The development plan must receive full construction approval from ~~Louisville Metro Public Works~~**Develop Louisville** and the Metropolitan Sewer District.
 - b. Encroachment permits must be obtained from the Kentucky Department of Transportation, Bureau of Highways.
 - c. A minor subdivision plat shall be recorded dedicating additional right-of-way to McCawley Road to provide a total of 40 feet from the centerline. 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.
7. If a building permit is not issued within one year of the date of approval of the plan or rezoning, whichever is later, 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.
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.

10. The materials and design of proposed structures shall be substantially the same as depicted at the December 20, 2007 Planning Commission meeting.
11. At the time a building permit is requested, the applicant shall submit a certification statement to the permit issuing agency, from an engineer, or other qualified professional stating that the lighting of the proposed development is in compliance with Chapter 4 Part 1.3 of the land development code and shall be maintained thereafter. No building permits shall be issued unless such certification statement is submitted. Lighting shall be maintained on the property in accordance with Chapter 4 Part 1.3 of the land development code.
12. The address number shall be displayed on a structure prior to requesting a certificate of occupancy for that structure.
13. Within 180 days of Metro Council action, the applicant shall restore the landscaping on the CUP site to the conditions shown on the approved CUP landscaping plan.
14. The following C-2 uses shall not be permitted on the subject property:
 - Auction Sales, items transported to the site of the auction
 - Automobile repair garages
 - Automobile sales agencies
 - Bingo halls and parlors
 - Boat sales and related storage
 - Dance Halls
 - Flea Market
 - Fraternities, sororities, clubs, and lodges excluding those where the chief activity of which is a service customarily carried on as a business.
 - Plasma, blood collection centers, for profit
 - Used car sales areas, provided that no repair or reconditioning of automobiles or storage of parts shall be permitted except when enclosed in a building

Binding Elements from 16ZONE1065

- ~~1. The site shall be maintained in accordance with all applicable sections of the Land Development Code (LDC) and agreed upon binding elements unless amended pursuant to the LDC. Changes/additions/alterations of any binding element(s) shall be submitted to the Planning Commission or to its designee for review and approval; any changes/additions/alterations not so referred shall not be valid.~~
2. Notice of a request to amend these binding elements shall be provided in accordance with Planning Commission policies and procedures. The Planning Commission may require a public hearing on any such request.
- ~~3. The development shall not exceed 11,027 square feet.~~
- ~~4. 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.~~
- ~~5. All signs shall be in accordance with LDC Chapter 8 sign regulations. No outdoor advertising signs, small freestanding signs, pennants, balloons or banners shall be permitted.~~
6. There shall be no outdoor music from any source, outdoor entertainment or outdoor PA system usage permitted on the site.

7. All lighting shall comply with the requirements of LDC 4.1.3.
8. ~~The applicant, developer or property owner shall provide a copy of these binding elements to tenants, purchasers, contractors, subcontractors and other parties engaged in development and/or use of this site and shall advise all parties of their content. 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. These binding elements shall run with the land and the owner(s) and occupant(s) of the property shall at all times be responsible for compliance with them.~~

4. Proposed Changes to 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 square footage of the development shall not exceed 11,027 square feet.
3. Signs shall be in accordance with Chapter 8, or as presented at the public hearing.
4. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.
5. 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.
6. Before any permit (including but not limited to building, parking lot, change of use, site disturbance, or demolition permit) is requested:
 - a. The development plan must receive full construction approval from Develop Louisville and the Metropolitan Sewer District.
 - b. Encroachment permits must be obtained from the Kentucky Department of Transportation, Bureau of Highways.
 - c. A minor subdivision plat shall be recorded dedicating additional right-of-way to McCawley Road to provide a total of 40 feet from the centerline. 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.
7. If a building permit is not issued within one year of the date of approval of the plan or rezoning, whichever is later, 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.
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.

10. The materials and design of proposed structures shall be substantially the same as depicted at the December 20, 2007 Planning Commission meeting.
11. At the time a building permit is requested, the applicant shall submit a certification statement to the permit issuing agency, from an engineer, or other qualified professional stating that the lighting of the proposed development is in compliance with Chapter 4 Part 1.3 of the land development code and shall be maintained thereafter. No building permits shall be issued unless such certification statement is submitted. Lighting shall be maintained on the property in accordance with Chapter 4 Part 1.3 of the land development code.
12. The address number shall be displayed on a structure prior to requesting a certificate of occupancy for that structure.
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 - Plasma, blood collection centers, for profit
 - Used car sales areas, provided that no repair or reconditioning of automobiles or storage of parts shall be permitted except when enclosed in a building
15. Notice of a request to amend these binding elements shall be provided in accordance with Planning Commission policies and procedures. The Planning Commission may require a public hearing on any such request.
16. **There shall be no outdoor entertainment or outdoor PA system usage permitted on the site.**
17. All lighting shall comply with the requirements of LDC 4.1.3.