

**Planning Commission**  
**Staff Report**  
September 2, 2021



<b>Case No:</b>	21-AMEND-0008
<b>Project Name:</b>	S English Station Road Multi-Family Binding Element Amendment
<b>Location:</b>	1007 S English Station Road
<b>Owner(s):</b>	Sunshine English Development LLC
<b>Applicant:</b>	Sunshine English Development LLC
<b>Jurisdiction:</b>	Louisville Metro
<b>Council District:</b>	20 – Stuart Benson
<b>Case Manager:</b>	Dante St. Germain, AICP, Planner II

**REQUEST**

- **Modification of Binding Elements**

**CASE SUMMARY/BACKGROUND**

The applicant proposes to amend the binding elements on the site in order to avoid sharing the clubhouse and pool on Tract 2 with residents of Tract 1, unless Tract 1 residents pay for use of the clubhouse and pool amenities in the future.

The binding element proposed to be revised is Binding Element #4(c) which reads:

A reciprocal access and crossover easement agreement in a form acceptable to the Planning Commission legal counsel shall be created between the adjoining property owners and recorded. 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. Said instrument shall state, in addition to other provisions, that occupants of Tract 1 shall be permitted to utilize the open space amenities of Tract 2 and vice versa.

The applicant proposes to revise the language to read:

A reciprocal access and crossover easement agreement in a form acceptable to the Planning Commission legal counsel shall be created between the adjoining property owners and recorded. 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. Said instrument shall state, in addition to other provisions, that occupants of Tract 1 shall be permitted to utilize the open space amenities of Tract 2 and vice versa, **excluding the proposed pool and clubhouse on Tract 2.**

**STAFF FINDING**

The Planning Commission must determine if the request is adequately justified and meets the standard of review and make a recommendation to Metro Council per Binding Element #10.

## **TECHNICAL REVIEW**

The site plan is unchanged and has previously been approved by MSD and Transportation Planning.

## **INTERESTED PARTY COMMENTS**

Several interested parties have requested more information regarding the proposal. No interested parties have expressed opposition or support.

## **STANDARD OF REVIEW AND STAFF ANALYSIS FOR 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: The site currently includes tree canopy, a pond and intermittent streams, which are being preserved as shown on the original site plan.

- 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 has been provided, and Metro Public Works has previously approved the site plan.

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

STAFF: Open space is being provided. The request involves removing some of the open space amenities from the requirement that both tracts share open space.

- 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 has previously 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.

- 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 site plan is unchanged from the previously approved plan.

- 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 site plan with the amended binding element would comply with the Land Development Code. The Planning Commission must determine if the revision complies with the Comprehensive Plan.

**REQUIRED ACTIONS:**

- **RECOMMEND** to Metro Council to **APPROVE** or **DENY** the Revisions to Binding Elements.

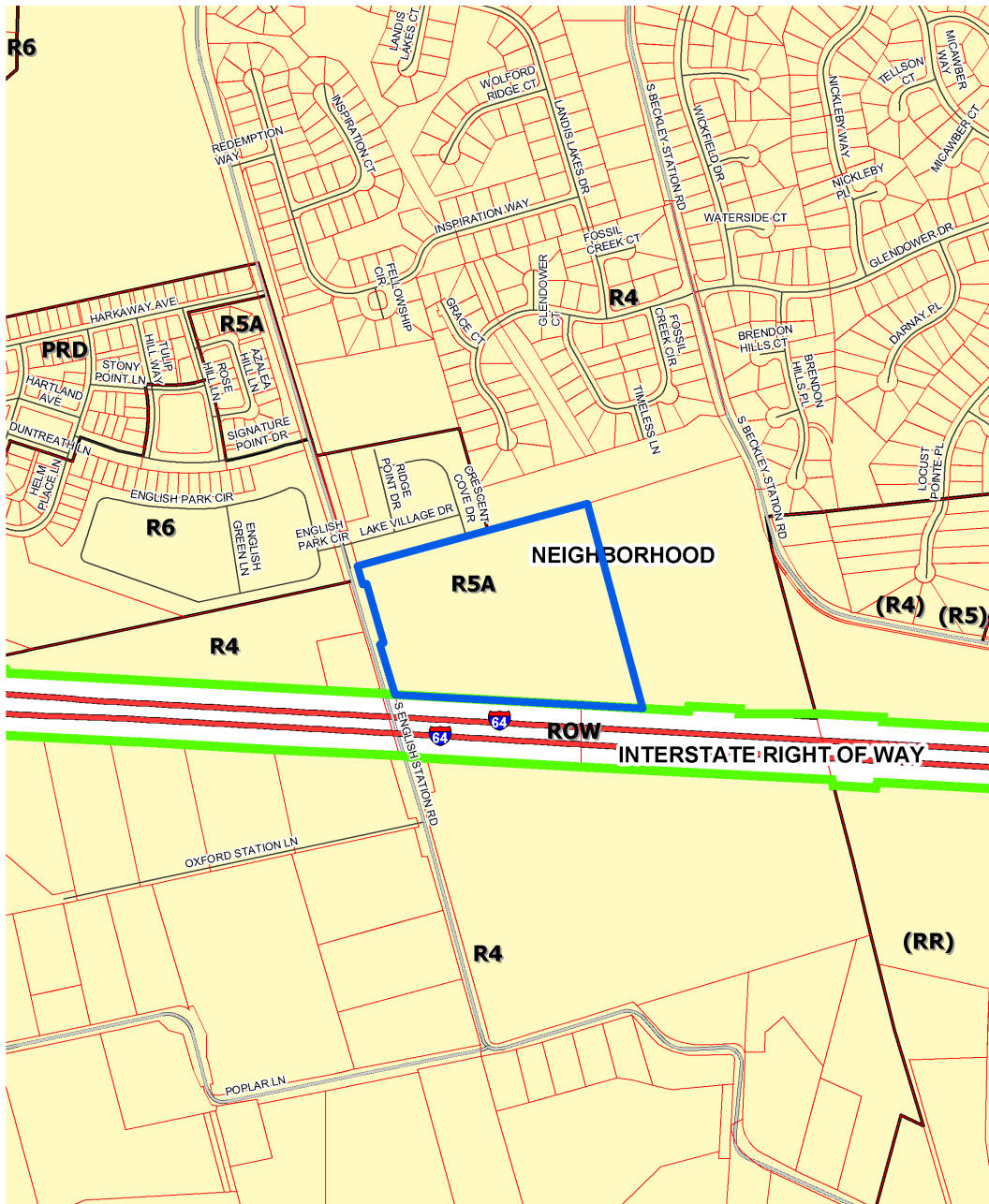
**NOTIFICATION**

Date	Purpose of Notice	Recipients
08/18/2021	Hearing before DRC	1 <sup>st</sup> tier adjoining property owners Speakers at Planning Commission public hearing Registered Neighborhood Groups in Council District 20

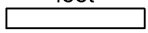
**ATTACHMENTS**

1. Zoning Map
2. Aerial Photograph
3. Existing Binding Elements with proposed changes
4. Proposed Binding Elements

1. Zoning Map



1007 S English Station Rd  
feet



625  
Map Created: 8/25/2021

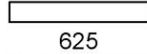


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2. Aerial Photograph



1007 S English Station Rd  
feet



Map Created: 8/25/2021



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3. **Existing Binding Elements with proposed changes**

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, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.
3. 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.
4. 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. A minor plat or legal instrument shall be recorded creating the property 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 the approved plans to the office responsible for permit issuance will occur only after receipt of said instrument.
  - c. A reciprocal access and crossover easement agreement in a form acceptable to the Planning Commission legal counsel shall be created between the adjoining property owners and recorded. 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. Said instrument shall state, in addition to other provisions, that occupants of Tract 1 shall be permitted to utilize the open space amenities of Tract 2 and vice versa **excluding the proposed pool and clubhouse on Tract 2.**
  - 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 certificate of occupancy. Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter.
  - e. A Tree Preservation Plan in accordance with Chapter 10 of the LDC shall be reviewed and approved prior to obtaining approval for site disturbance.
  - f. The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the December 17, 2020 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.
5. 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.

6. 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.
7. Prior to developer requesting a Certificate of Occupancy (“CO”) on the first patio home units, developer shall request Metro Public Works (“Public Works”) to inspect the the road infrastructure to the access roads leading to the patio homes to determine what amount of bond, if any, the developer shall be required to post prior to CO issuance. The stub road to the property line to the east shall be built to the east property line prior to release of said bond, if applicable. The developer can request a bond release and Public Works to inspect the road infrastructure to the patio homes for same whenever the road infrastructure construction is complete.
8. The roadway connections on the patio home Tract 1 to the east shall remain open and available to thru traffic. No connection to the condominium development to the north shall be made, with the developer filing an amended detailed district development plan showing the connection to the condominium development to the north removed.
9. The proposed roadway improvements to S. English Station Rd. shall be substantially similar to the exhibits presented at the 12/17/20 Planning Commission hearing. Detailed design to be coordinated with Public Works and Transportation Planning during construction plan process. The proposed roadway improvements shall be completed prior to issuance of the certificate of occupancy for the fourth apartment building on the site.
10. Any significant changes or alterations to the proposed structures (e.g. building height, number of units, number of buildings), any increase in density on the property, any changes in use on the property, and/or any amendments to the binding elements shall be reviewed before the Planning Commission with final action to be determined by Metro Council.

#### **4. Proposed Binding Elements**

7. 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.
8. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.
9. 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.

10. 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. A minor plat or legal instrument shall be recorded creating the property 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 the approved plans to the office responsible for permit issuance will occur only after receipt of said instrument.
  - c. A reciprocal access and crossover easement agreement in a form acceptable to the Planning Commission legal counsel shall be created between the adjoining property owners and recorded. 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. Said instrument shall state, in addition to other provisions, that occupants of Tract 1 shall be permitted to utilize the open space amenities of Tract 2 and vice versa excluding the proposed pool and clubhouse on Tract 2.
  - 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 certificate of occupancy. Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter.
  - e. A Tree Preservation Plan in accordance with Chapter 10 of the LDC shall be reviewed and approved prior to obtaining approval for site disturbance.
  - f. The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the December 17, 2020 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.
11. 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.
12. 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.
7. Prior to developer requesting a Certificate of Occupancy (“CO”) on the first patio home units, developer shall request Metro Public Works (“Public Works”) to inspect the the road infrastructure to the access roads leading to the patio homes to determine what amount of bond, if any, the developer shall be required to post prior to CO issuance. The stub road to the property line to the east shall be built to the east property line prior to release of said bond, if applicable. The developer can request a bond release and Public Works to inspect the road infrastructure to the patio homes for same whenever the road infrastructure construction is complete.



8. The roadway connections on the patio home Tract 1 to the east shall remain open and available to thru traffic. No connection to the condominium development to the north shall be made, with the developer filing an amended detailed district development plan showing the connection to the condominium development to the north removed.
9. The proposed roadway improvements to S. English Station Rd. shall be substantially similar to the exhibits presented at the 12/17/20 Planning Commission hearing. Detailed design to be coordinated with Public Works and Transportation Planning during construction plan process. The proposed roadway improvements shall be completed prior to issuance of the certificate of occupancy for the fourth apartment building on the site.
10. Any significant changes or alterations to the proposed structures (e.g. building height, number of units, number of buildings), any increase in density on the property, any changes in use on the property, and/or any amendments to the binding elements shall be reviewed before the Planning Commission with final action to be determined by Metro Council.