

**Planning Commission Minutes
January 29, 2015**

Public Hearing

Case No. 14ZONE1039

***This case is CONTINUED from the January 15, 2015 Planning Commission public hearing**

Request: Change in zoning from C-1 to C-2 and a Revised Detailed District Development Plan

Project Name: OBC Lots C & D

Location: 9840 & 9850 Von Allmen Court

Owner/Applicant: McMahan Group Ventures LLC
Rory F. McMahan, Representative
3034 Hunsinger Lane
Louisville, KY 40220

Representative: Glenn A. Price, Jr.
Frost Brown Todd
400 West Market Street Floor 32
Louisville, KY 40202

Engineer/Designer: John Addington
BTM Engineering, Inc.
3001 Taylor Springs Drive
Louisville, KY 40220

Jurisdiction: Louisville Metro

Council District: 16 – Kelly Downard

Case Manager: Christopher Brown, Planner II

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.)

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Agency Testimony:

01:20:21 Commissioner Blake and Christopher Brown briefly reviewed the case. This case was continued from the January 15, 2015 Planning Commission public hearing. Compliance with Binding Element #10 is an issue.

Commissioner Peterson said that he was not as familiar with the case as most of the other Commissioners and offered to abstain from voting if necessary. Commissioner White said he has reviewed the minutes and felt comfortable with voting if necessary.

01:21:56 Mr. Brown reviewed the case and suggested continuing this case to a date uncertain to allow the applicant to apply for a General Plan binding element amendment (BE #10.)

The following spoke in favor of the proposal:

Glenn A. Price, Jr., Frost Brown Todd, 400 West Market Street Floor 32,
Louisville, KY 40202

Summary of testimony of those in favor of the proposal:

01:27:20 Glenn Price, the applicant's representative, showed a Power Point presentation and gave a history of this building and hearings held about it. He showed photos of other existing buildings currently in the Old Brownsboro Crossing development.

The following spoke in opposition to the proposal:

Steve Porter, 2406 Tucker Station Road, Louisville, KY 40299

Summary of testimony of those in opposition to the proposal:

01:42:06 Steve Porter, the representative for the Wolf Pen Preservation Association (in opposition), said he agreed with Mr. Brown's recommendation to continue this case to a date uncertain, particularly if there may be a proposed change in a binding element.

The following spoke neither for nor against the proposal:

No one spoke.

Deliberation:

The Commissioners, Mr. Brown, and the attorneys discussed continuing this case to the February 19, 2015 Planning Commission public hearing. Mr. Brown and the Commissioners discussed building materials, particularly as related to

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what is listed in Binding Element #10. Mr. Price described Alucabond; Mr. Porter said the question of the panels/building materials had come up at other meetings.

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.

01:59:32 On a motion by Commissioner White, seconded by Commissioner Proffitt, the following resolution was adopted:

RESOLVED, the Louisville Metro Planning Commission does hereby **CONTINUE** this case and any other associated cases to the **February 19, 2015** Planning Commission public hearing.

The vote was as follows:

YES: Commissioners Blake, Proffitt, Brown, Jarboe, Kirchdorfer, Turner, Peterson, White, and Tomes.

NO: No one.

NOT PRESENT: Commissioner Butler.

ABSTAINING: No one.

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Project Name: OBC Lots C & D

Location: 9840 & 9850 Von Allmen Court

Owner/Applicant: Rory F. McMahan, representative
McMahan Group Ventures LLC
3034 Hunsinger Lane
Louisville, KY 40220

Representative: Glenn A Price, Jr.
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Jurisdiction: Louisville Metro

Council District: 16 – Kelly Downard

Case Manager: Christopher Brown, Planner II

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:

01:03:43 Christopher Brown presented the case and showed a Power Point presentation (see staff report and recording for detailed presentation.) He said that the Detailed District Development Plan was approved by the DRC under

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Case No. 14DEVPLAN1051; however, there are several interested parties in the area who have raised concerns about the proposed building due to existing Binding Element #10 (building materials and design). In response to a question from Commissioner Jarboe, Mr. Brown stated that the plan being presented today has not changed from what was presented at DRC.

The following spoke in favor of the proposal:

Glenn A Price, Jr., Frost, Brown Todd, 400 West Market Street, Floor 32,
Louisville, KY 40202

John Addington, BTM Engineering, Inc., 3001 Taylor Springs Drive, Louisville,
KY 40220

Summary of testimony of those in favor of the proposal:

01:09:33 Glenn Price Jr. presented the applicant's case and showed a Power Point presentation. He primarily spoke about the proposed tavern use and the proposed building design.

01:12:49 Mr. Price discussed the DRC Committee's decision and why he thinks it is an appropriate decision under the existing Binding Element #10. He added that the DRC decision was not appealed.

01:21:57 Commissioner Proffitt asked Mr. Price again about the binding elements regarding building material requirements. Mr. Price argued that the binding element does not clearly define some of the materials; also, since the DRC approved the proposal, he assumed that there was no issue with the building materials.

01:27:13 In response to a question from Commissioner Jarboe, Mr. Price clarified why the applicant felt they had some leeway in building materials (re. Binding Element #10).

The following spoke in opposition to the proposal:

Barbara Kelly, 6009 Mint Spring Branch Rd., Prospect, KY 40059

Mary Dennis Kannapel, 3200 Cherry Valley Rd., Prospect, KY 40059

Summary of testimony of those in opposition to the proposal:

01:30:03 Barbara Kelly spoke in opposition. She said that binding element #10 was not brought to the attention of the DRC Committee; since they did not

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have complete and/or accurate information, their decision could not be valid. She discussed compatibility, and how other developments in Brownsboro Crossings have abided by the binding elements and the design elements of the General Plan.

01:38:01 Mary Dennis Kannapel spoke in opposition and discussed the importance of binding elements.

The following spoke neither for nor against the proposal:

No one spoke.

Rebuttal:

01:38:12 Mr. Price said this development is not in the Wolf Pen Neighborhood; this is part of the KY-22 commercial sector, which is a commercial and suburban area. He submitted a proposed binding element, as follows:

“The building shall have a substantial brick component, to be determined by the DRC Committee following notice to Ms. Kelly. The applicant agrees to meet with Ms. Kelly in advance of the DRC Committee meeting.”

01:48:11 Commissioner Proffitt asked Mr. Price if it was his preference to continue this case to the January 29, 2014 Planning Commission public hearing for the purpose of looking at the possibility of incorporating alternative materials to more closely relate to the binding element as it is written. Mr. Price said yes.

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.

01:51:23 On a motion by Commissioner Jarboe, seconded by Commissioner Tomes, the following resolution was adopted:

RESOLVED, the Louisville Metro Planning Commission does hereby **CONTINUE** this case to the January 29, 2015 Planning Commission public hearing for the purpose of looking at the possibility of incorporating alternative materials to more closely relate to the binding element as it is written.

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The vote was as follows:

**YES: Commissioners Proffitt, Brown, Jarboe, Kirchdorfer, Turner, and
Tomes**

NO: No one.

NOT PRESENT: Commissioners Blake, Peterson, White, and Butler

ABSTAINING: No one.

**MINUTES OF THE MEETING
OF THE
LAND DEVELOPMENT AND TRANSPORTATION COMMITTEE**

November 13, 2014

New Cases

CASE NO. 14ZONE1039

Request: Change in zoning from C-1 to C-2 and a Revised Detailed District Development Plan.

Project Name: OBC Lots C & D
Location: 9840 & 9850 Von Allmen Court
Owner: McMahan Group Ventures LLC
Applicant: Rory F. McMahan
Representative: Glenn Price – Frost Brown Todd
Jurisdiction: Louisville Metro
Council District: 16 – Kelly Downard

Case Manager: Christopher Brown, Planner II

The staff report prepared for this case was incorporated into the record. This report was available to any interested party prior to the LD&T meeting. (Staff report is part of the case file maintained in Planning and Design Services offices, 444 S. 5th Street.)

Agency Testimony:

00:22:51 Christopher Brown presented the case and showed a Power Point presentation (see staff report and recording for detailed presentation.)

00:26:04 Mr. Brown discussed the "interested party"/public comments received regarding the project, notably concerns about building materials and compatibility with the Brownsboro Road/US-22 corridor. He read related binding elements into the record.

00:29:35 In response to a question from Commissioner Blake, Mr. Brown discussed why a rezoning was being requested, rather than a CUP for the tavern.

00:30:31 Building materials, and the role of the Architectural Review Committee, were discussed.

The following spoke in favor of the request:

Tim Martin, Frost Brown Todd, 400 West Market Street Suite 3200, Louisville, KY 40202

**MINUTES OF THE MEETING
OF THE
LAND DEVELOPMENT AND TRANSPORTATION COMMITTEE**

November 13, 2014

New Cases

CASE NO. 14ZONE1039

Summary of testimony of those in favor:

00:33:44 Timothy Martin, substituting for his partner Glenn Price (the applicant's representative), presented the proposal and showed a Power Point presentation. Mr. Martin discussed why a rezoning was requested instead of a CUP for the tavern use. He added that this design has already gone through the Architectural Review process.

The following spoke in opposition to the request:

No one spoke.

The following spoke neither for nor against:

Barbara Kelly, 6009 Mint Spring Branch Road, prospect, KY 40059

Summary of testimony of those neither for nor against:

00:38:36 Barbara Kelly said the design and building materials are a concern (binding element #10). She discussed her comments, which had been submitted to staff before this meeting, and added that neighbors had much difficulty meeting with the developer to address their concerns. She added that neighbors feel the development is not compatible with US-22's Parkway designation.

00:45:12 Mr. Martin discussed compatibility.

The Committee by general consensus scheduled this case to be heard at the December 4, 2014 Planning Commission public hearing.

DEVELOPMENT REVIEW COMMITTEE

July 16, 2014

NEW BUSINESS

CASE NO. 14DEVPLAN1051&14MOD1006

Case No: 14DEVPLAN1051/14MOD1006
Request: Revised Detailed District Development Plan with
Landscape Waivers and Amendment to General
Plan Binding Element
Project Name: OBC Lots C and D
Location: 9840 and 9850 Von Allmen Court
Owner: McMahan Group Ventures
Applicant: McMahan Group
Representative: Glenn Price, Frost, Brown, Todd
BTM Engineering
Jurisdiction: Louisville Metro
Council District: 16 – Kelly Downard
Case Manager: Christopher Brown, Planner II

The staff report prepared for this case was incorporated into the record. This report was available to any interested party prior to the DRC meeting. (Staff report is part of the case file maintained in Planning and Design Services offices, 444 S. 5th Street.)

Agency Testimony:

2:4:44 Mr. Brown discussed the case summary, standard of review and staff analysis from the staff report.

The following spoke in favor of this request:

Glenn Price, Frost, Brown and Todd, 400 West Market Street, Louisville, Ky. 40202
Ernie Dreer, Jeffersonville, In.

Summary of testimony of those in favor:

2:11:57 Mr. Price said the proposal is a Detailed District Development Plan for lots C and D of the general plan. Also, he doesn't know why the binding element was not updated as the development has been built out.

2:16:51 Mr. Dreer, the architect, spoke about the materials; 2 colors of panels (gray and white), brick, glass, balconies, patios, screens for signs, etc.

The following spoke in opposition to this request:

Barbara Kelly, 6009 Mint Spring Branch Road, Prospect, Ky. 40059
Bob McCullough, 10607 Sleepy Hollow Road, Prospect, Ky. 40059

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NEW BUSINESS

CASE NO. 14DEVPLAN1051&14MOD1006

Summary of testimony of those in opposition:

2:21:10 Ms. Kelly remarked, "I'd like to applaud the developer for agreeing to incorporate some low impact development measures (bio-swales)."

Ms. Kelly objects to the following: scale of the lots; it's out of character with the other businesses; there's very little green space; the appearance of the building; and the signs. She requests continuing this case to a later date.

2:29:44 Mr. McCullough is concerned about the size and mass of the project.

The following spoke neither for nor against the request:

No one

Summary of testimony of those neither for nor against:

None

Rebuttal:

2:44:31 Mr. Price remarked, "I'm disappointed with Wolf Pen's opposition to this." Over the course of time things do change (such as population). The height is not out of character for the area.

Deliberation

3:7:22 Acting Chairman stated that the Architectural Review Committee, ARC, will look at the issues brought up by the opposition regarding size, scope, materials, etc.

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.

3:12:22 On a motion by Commissioner Brown, seconded by Commissioner Peterson, the following resolution was adopted.

WHEREAS, the Louisville Metro Development Review Committee finds the waiver will not adversely affect adjacent property owners since the required planting and screening materials will be provided within the required buffers; and

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CASE NO. 14DEVPLAN1051&14MOD1006

WHEREAS, Guideline 3, policy 9 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. 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. The intent of the buffer will be met with the proposed planting and screening meeting the requirements of the Land Development Code; and

WHEREAS, The extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant to allow the buffer to be provided with the required plantings while maintaining the location of the existing utility easements and providing needed parking; and

WHEREAS, 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 by requiring extension of the buffer into areas needed for parking for the proposed use.

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** Waivers 1 and 2 from chapter 10.2.4.B of the Land Development Code to allow utility easements to overlap required landscape buffers by more than 50% and chapter 10.2.10 of the Land Development Code to allow the proposed parking to encroach into a required 15 foot VUA LBA based on the staff report, evidence and testimony heard today.

The vote was as follows:

YES: Commissioners Brown, Kirchdorfer, Peterson and White

NO: No one

NOT PRESENT AND NOT VOTING: Commissioner Tomes

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ABSTAINING: No one

3:13:07 On a motion by Commissioner Brown, seconded by Commissioner Peterson, the following resolution was adopted.

WHEREAS, There does not appear to be any environmental constraints or historic resources on the subject site. 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 and the Kentucky Transportation Cabinet have approved the preliminary development plan. The existing infrastructure can accommodate the proposed increase in commercial square footage; and

WHEREAS, The open space requirements are met with the current proposal; and

WHEREAS, The Metropolitan Sewer District has approved the preliminary development plan and will 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; and

WHEREAS, the Louisville Metro Development Review Committee further 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.

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** the amendment to the General Plan binding element to revise the square footage as submitted by the applicant's attorney.

General:

2. The commercial and retail development shall not exceed ~~469,300~~ **501,567** square feet of gross floor area. The office development shall not exceed 420,000 square feet of gross floor area and 5,000 square feet of gross floor area for the preservation of the historic residence. ~~The hotel development shall not exceed a total of 44,000 square feet. The medical diagnostic clinic~~ **hospital and medical office buildings** shall not exceed a total of ~~80,000~~ **298,000** square feet. Outlet structures shall be generally oriented toward the internal roadways as shown on the General District Development Plan.

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NEW BUSINESS

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The vote was as follows:

YES: Commissioners Brown, Kirchdorfer, Peterson and White

NO: No one

NOT PRESENT AND NOT VOTING: Commissioner Tomes

ABSTAINING: No one

3:14:03 On a motion by Commissioner Brown, seconded by Commissioner Peterson, the following resolution was adopted.

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** the Detailed District Development Plan based on the staff report and the testimony heard today **SUBJECT** to the following Binding Elements:

Detailed:

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 40, 724 square feet of gross floor area.
3. Signs shall be in accordance with the Old Brownsboro Crossing Master Sign Plan.
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, alteration permit or demolition permit) is requested:

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- a. The development plan must receive full construction approval from Construction Permits Review 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.
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. The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the July 16, 2014 DRC meeting.
 10. 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.
 11. The address number shall be displayed on a structure prior to requesting a certificate of occupancy for that structure.

The vote was as follows:

YES: Commissioners Brown, Kirchdorfer, Peterson and White

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NO: No one

NOT PRESENT AND NOT VOTING: Commissioner Tomes

ABSTAINING: No one