

PLANNING COMMISSION MINUTES
November 21, 2019

PUBLIC HEARING

CASE NO. 19-ZONE-0049

Request: Change in zoning from R-5 to OR-1, office-residential with detailed plan and waiver(s)
Project Name: Burton Office
Location: 3700 Brownsboro Road
Owner: Steven and Betty Burton
Applicant: Steven and Betty Burton
Representative: Bardenwerper, Talbott, & Roberts, PLLC
Jurisdiction: Louisville Metro
Council District: 9 – Bill Hollander
Case Manager: Joel P. Dock, AICP, Planner II

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:

00:33:35 Mr. Dock discussed the case summary, standard of review and staff analysis from the staff report.

Mr. Dock also discussed the term 'right zoning'.

00:38:26 Commissioner Brown asked if the signage complies with the Land Development Code. Mr. Dock said the sign is not part of this application.

The following spoke in favor of this request:

John Talbott, Bardenwerper, Talbott and Roberts, 1000 North Hurstbourne Parkway, 2nd floor, Louisville, Ky. 40223

Summary of testimony of those in favor:

00:39:46 Mr. Talbott gave a power point presentation. The only person that showed up for the neighborhood meeting was the mayor. There will be no construction and one binding element was placed on the property to bind out certain uses – hair dressers/barber shop, cosmetology and manicurist.

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00:42:56 Commissioner Mims asked if there's a sign being proposed. Mr. Talbott said no, there is an existing sign and it's not in the right-of-way.

Deliberation

00:45:09 Planning Commission deliberation.

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-5 to OR-1

On a motion by Commissioner Carlson, seconded by Commissioner Howard, the following resolution based on the Plan 2040 Staff Analysis, testimony heard today and the Applicant's Statement of Compliance with the Applicable Goals, Objectives and Policies of the Comprehensive Plan as the Justification was adopted.

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Community Form because, the proposal does not encroach upon residential areas as it is an existing non-residential use and fronts an arterial roadway; the proposed low intensity district is located along an arterial level roadway adjacent existing non-residential districts. The intensity of the zoning classification is currently occurring on site and is not proposed to exceed this current intensity level; no adverse impacts of traffic are expected as the intensity is not increasing from current non-conforming use; no adverse impacts of noise are expected as the intensity is not increasing from current non-conforming use; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 2: Community Form because, the proposed district is appropriately located for its intensity within the NFD. While the density will increase with the proposed office district; the density is appropriately located along a higher classification road and does not require travel through lower density areas; the proposed district is within the NFD at an appropriate location with access that does not conflict with lower density or intensity areas; the proposal is for a "right-zoning" of existing uses; thus, resulting in an efficient land use and cost-effective infrastructure investment; the proposal allows for a mixture of compatible uses within proximity and adjacent to other non-residential uses; the proposal will allow by-right office uses in combination with residential; the proposal results in the "right-zoning" of an office use within an existing building; and

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WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 3: Community Form because, no natural features are impacted by the proposed district; no wet or highly permeable soils, severe, steep or unstable slopes are impacted by the proposed district; no changes to flood-prone areas and other features vulnerable to natural disasters are impacted by the proposed district;

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 4: Community Form because, no site construction is proposed; thus, buildings, sites, districts and landscapes that are recognized as having historic or architectural value are not impacted by the proposed district; no site construction is proposed; thus, cultural features are not impacted by the proposed district; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Mobility because, the proposed density is appropriately located along a higher classification road and does not require travel through lower density areas. TARC service is available. No improvements are being made to the subject site that proportionally necessitates public infrastructure improvements; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 2: Mobility because, the proposed district does not require travel through lower density areas; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 3: Mobility because, the proposed district allows for the continuation of complementary neighborhood serving businesses and services; no improvements are being made to the subject site that proportionally necessitates public infrastructure improvements. Any change of use that requires a higher intensity zoning district may necessitate sidewalks and other pedestrian/multi-modal facilities. Further, the zoning district request does not detract from existing public/pedestrian infrastructure that may be lacking in the area; the proposed "right-zoning" has no significant impact on the transportation network due to the lack of site construction related to existing uses; improvements will occur in accordance with long-range transportation plans and level of mobility criteria for all modes of travel; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 2: Community Facilities because, the development is located in an area served by existing utilities or capable of being served by public or private utility extensions; an adequate supply of potable water and water for fire-fighting purposes will be made available, if it is not present at this time; the development has

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adequate means of sewage treatment and disposal to protect public health and to protect water quality; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 3: Housing because, the development has adequate means of sewage treatment and disposal to protect public health and to protect water quality

COMMUNITY FORM

Goal 1 – Guide the form and design of development to respond to distinctive physical, historic and cultural qualities.

WHEREAS, the proposed zone change and detailed district development plan (DDDP) complies with applicable Objectives a, b, c, & f and applicable Policies 1, 2.1, 3.1.8, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 17, 18, 19, 20, 23, 27 & 28 because the proposed change in zoning to OR-1 complies with Goal 1 in several ways; first, this development will take an existing legal, non-conforming office building and modify same only to the extent of allowing OR-1 uses which is consistent with the Neighborhood Form District and will continue to allow property to provide low intensity office services to serve the surrounding suburban residential areas; the subject property is located in a Neighborhood Form District which contemplates the location of “civic uses and neighborhood centers with a mixture of uses, such as offices, retail shops, restaurants and services”; the existing dentist office and future office users provide services needed nearby the thriving commercial area and adjoining a densely populated residential area which it will serve along the major arterial and state road (Brownsboro Road); this type of service for professional offices is ideally suited for the Neighborhood Form District as the type of low intensity office use commonly situated near residential areas; and the rezoning will also reduce traffic/vehicle miles travelled by providing needed services close to residential areas and most likely being used as an office for one of the many professionals in the immediate area of Brownsboro Village, St. Matthews, Rolling Fields, and Indian Hills; and

WHEREAS, the property is located near other more intensely zoned commercial property, retail and strip centers, a bank, real estate office and pharmacy along Brownsboro Road and near the Chenoweth Lane intersection; the rezoning will bring the site into compliance for future office users and remove any the property for a future potential purchaser;. The new use will continue to serve the area and position the overall property to adapt readily now and in the future to new market demands; and the property will continue to have parking along Lotis Lane with a sidewalk from its entrance to Lotis Lane consistent with the Neighborhood goal; and

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WHEREAS, the development and proposed zone change will remain compatible with the scale and site design of nearby existing developments because no physical changes are being proposed to the already developed building or site; and the property is currently used as a dental office on the first floor with the expectation that it will be sold to another professional office user; and

WHEREAS, the property will continue to allow a mixture of intensity through the rezoning with original buffers already in place and landscaping fully developed; as a result, the appropriate buffers are already in place such that this rezoning will not cause the expansion into residential areas or change or cause any impact to the residential areas; the proposed rezoning will continue to locate the higher density and intensity uses near the major arterial and primary collector of Brownsboro Road. Ultimately, this project will allow for the continued operation of the existing dentist office business or other professional office use; and

Goal 2 – Encourage sustainable growth and density around mixed-use centers and corridors.

WHEREAS, the proposed zone change and DDDP complies with applicable Objectives b & d and Policies 1, 2, 5, 6, 7, 9, 10, 12, 13, 14, 15, 16, & 17 because the proposed change in zoning from R-5 to OR-1 to officially sanction the office type use will encourage sustainable growth and will continue the long-standing intensity near a mixed-use center and along commercial corridors by placing existing intensity compatible with the Neighborhood Form and existing infrastructure; the design and intensity of this existing use are appropriate with adjacent uses that will serve the needs of the surrounding community as they will not change other than a similar office/professional use; this site is located in an established section of eastern Metro Louisville, where through a combination of design measures and the nature of the use itself, will not create any nuisances for surrounding residential properties; office and residential uses are frequently located adjacent to each other as transitional uses and encouraged to do so because of the relatively low intensity and to reduce traffic by placing services and employment close to the residential areas; and

Goal 3 – Enhance neighborhood by protecting and integrating open space, watershed and other natural resources.

WHEREAS, the proposed zone change and DDDP complies with applicable Objectives a, c & d and Policies 9, 10 & 12 because the proposed development plan will enhance the surrounding neighborhoods by not diminishing any open space or natural resources; the zoning change will not cause any impact to any flood prone areas wet or permeable soils or steep slopes; the proposal avoids any change in topography and does not cause any environmental changes or damage; the landscape buffers and setbacks will

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continue to provide the visual and spatial transitions between the site and the surrounding residential properties; moreover, the existing detention basins will continue to limit any issues with flooding or standing water with no new impervious surface proposed, while respecting the natural features of the property and protecting the health, safety and welfare of the adjacent properties and future uses of the development; and

Goal 4 – Promote and preserve the historic and archaeological resources that contribute to our authenticity.

WHEREAS, the proposed zone change and DDDP complies with applicable Objective b and Policies 1 & 2 because the site is designed to be compatible with the surrounding land uses through the continued use of the existing structure as a professional office, which consists of durable, residential style building materials, including its desirable brick exterior; the property will retain its existing parking spaces on Lotis Way, with a sidewalk to the entrance facing Brownsboro Road; noise and odors from offices is nonexistent; further, hours of operation will only be during traditional business hours; no changes in lighting will be made, but if any is added it will be in accordance with Land Development Code(directed down and away from residential uses); offices, being neighborhood serving uses, are often appropriate transitions to higher intensity uses (such as exist south of this site) and they provide a good transition, particularly as a buffer from the major arterial (Brownsboro Road) to the residences in the City of Brownsboro Village; and

MOBILITY

Goal 1 – Implement an accessible system of alternative transportation modes.

WHEREAS, the proposed zone change and DDDP complies with applicable Objectives a, b, c & e and Policies 1, 3, 4, 7 & 14 because the development plan evidences the current existing physical condition of the property which benefits from an accessible system of alternative transportation modes through connections between uses for bicycles and pedestrian traffic; the site is served by public transportation through multiple TARC bus lines adjacent to the property; the development and nearby retail/commercial uses are located on a major arterial of Brownsboro Road encouraging efficient access and minimizing distances of travel; it also continues to place higher intensity near existing commercial corridors and along the major arterial and primary collector with TARC service available; and

Goal 2 – Plan, build and maintain a safe, accessible and efficient transportation system.

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WHEREAS, the proposed zone change and DDDP complies with applicable Objectives a, b, c & d and Policies 1, 2, 4, 5, 6, 7, & 8 because the development plan complies with the objectives and policies of Goal 2 by promoting safe, accessible and efficient transportation uses by accommodating pedestrian, bicycle and vehicular access which are already part of the development; the site distances for the curb cuts will not change and are adequate for the area; the internal circulation of pedestrian and vehicular traffic is appropriate with the connected walkways and shared access, parking, etc.; the entrances are aesthetically compatible with the surrounding areas; and the office use will likely be utilized by a professional wanting to locate her or his office close to their residence in the many surrounding residential areas, thereby reducing vehicle miles travelled and traffic during peak hours across the Metro area; and

Goal 3 – Encourage land use and transportation patterns that connect Louisville Metro and support future growth.

WHEREAS, the proposed zone change and DDDP complies with applicable Objectives a, b, c, & d and Policies 1, 2, 3, 4, 5, 7, 10, 12, 14, 17, 18, 20 & 24 because the development plan complies with the objectives and policies of Goal 3 by providing walking and bicycling opportunities with the sidewalks and interconnected walkways and by providing a mix of complementary neighborhood serving businesses, services and reducing miles travelled by car by providing the activity center the tools to survive into the future; the plan will not burden the transportation network but will allow the site to continue to be consistent with the functionality of the Neighborhood; the plan is consistent with long range transportation plans of the community by placing services and areas of employment close to populated areas; the parking requirements of the site account for the intensity of the use and the character and pattern of the Form District in that it will continue to serve the community as it has for many years; and the plan also satisfies the policy of supporting biking and pedestrian travel by providing for those modes of access; and

COMMUNITY FACILITIES

Goal 2 – Plan for community facilities to improve quality of life and meet anticipated growth.

WHEREAS, the proposed zone change and DDDP complies with applicable Objective b and Policies 1, 2, & 3 because this development plan is not a community facilities plan, but it does locate development in areas currently served by existing infrastructure, it has adequate water supply and access to sewers so as to not burden existing or future community facilities; and

ECONOMIC DEVELOPMENT

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Goal 1 – Provide an economic climate that improves growth, innovation, investment and opportunity for all.

WHEREAS, the proposed zone change and DDDP complies with applicable Objectives a, c, d, f & h and Policies 3, 7, & 9 because this development plan complies with Goal 1 of Economic Development as it provides economic climate that improves growth, innovation, and investment opportunity for all by making certain the site can continue to be used and reused for professional office uses, and potentially multifamily residential, which is also commonly found along this area of Brownsboro Road, all of which will serve the surrounding community; it locates these new potential uses in an area with existing infrastructure in an efficient manner increasing economic opportunities in the area; and it will also provide opportunities to small businesses thereby increasing economic opportunity to business owners and employment; and

Goal 2 – Cultivate a vibrant, unique city that attracts, retains, and develops a highly-skilled workforce.

WHEREAS, the proposed zone change and DDDP complies with applicable Objectives a, b, c, d & f and Policies 1, 3, 4, 5, & 7 because this development plan complies with Goal 2 of Economic Development as it enhances the quality of life in the area by reusing and readapting the existing structure which is very difficult to replace in the current market environment, while at the same time protecting and improving the economic value of the surrounding areas by assisting the economic viability of the activity center; it also satisfies the goal and policy of infill development to take advantage of the existing infrastructure; the existing professional office complies with these Goals and Objectives because the proposed office will also provide opportunities for employment close to the residential properties and nearby population; also, it is located on a major arterial, providing good access, where nuisances and activities will not adversely affect adjacent areas; potential users will be compatible with the area, such as families with children and seniors; and

LIVABILITY

Goal 1 – Protect and enhance the natural environment and integrate it with the built environment as development occurs.

WHEREAS, the proposed zone change and DDDP complies with applicable Objectives d & e and Policies 7, 12, 17 23, 25, 26, 27, 28, 31, 32, 35, & 39 the development plan complies with the objectives and policies of Goal 1 of Livability element in that it does not change any use or structures on the property, thereby causing no new impacts,

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other than those which have existed for decades since the building was constructed in the 1950s; and

Goal 2 – Ensure equitable health and safety outcomes for all.

WHEREAS, the proposed zone change and DDDP complies with applicable Objectives a, b, c & d and Policy 8 because the development plan complies with the objectives and policies of Goal 2 of Livability element by providing opportunities for employment at the professional office and potential future office users close to the residential properties and nearby population; and it is located on a major arterial, providing good access, where nuisances and activities will not adversely affect adjacent areas; and

Goal 3 – Ensure equitable access to land use planning and Policy-making resources.

WHEREAS, the proposed zone change and DDDP complies with applicable Objective c and Policies 1, 2, & 4 the development plan complies with the objectives and policies of Goal 3 of Livability element providing equitable access to the land use planning and policy resources by providing the surrounding residents and property owners notice of the rezoning change and explanation of the grounds for doing so, notice of all public meetings, by providing the neighborhood meeting, and by providing an opportunity for area involvement in the plan design and sought-after zoning changes; and

Goal 4 – Integrate sustainability and resilience in community planning processes.

WHEREAS, the proposed zone change and DDDP complies with applicable Objectives a, b, c, e & f and Policies 1, 2, & 8 the development plan complies with the objectives and policies of Goal 4 of Livability element by providing and enhancing choices for mobility and encouraging clean air by reducing miles driven by providing needed services to an area needing such services; and it also provides needed services in and along high capacity transit corridor of Brownsboro Road supporting public transportation with the medium and high intensity uses; and

HOUSING

WHEREAS, the proposed zone change and DDDP complies with applicable Objectives and applicable Policies of Goal 1, 2, & 3 as it creates and locates necessary services and employment opportunities in an existing building near residential areas, thereby strengthening and supporting the housing in the area; and this use will facilitate connected and mixed-use areas and ensure long term affordability and living options for all in the community; and

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WHEREAS, for all the reasons explained at LD&T and the Planning Commission public hearing and also in the public hearing exhibit books, on the approved detailed district development plan, this application also complies with all other applicable Goals of the 2040 Plan.

RESOLVED, that the Louisville Metro Planning Commission does hereby **RECOMMEND** to the Louisville Metro Council the change in zoning from R-5, Single Family Residential to OR-1, Office Residential on property described in the attached legal description be **APPROVED**.

The vote was as follows:

YES: Commissioners Brown, Carlson, Daniels, Howard, Mims, Tomes and Jarboe
NOT PRESENT AND NOT VOTING: Commissioners Lewis and Peterson

Waiver of the Land Development Code section 10.2.4 to permit existing encroachment in the 15 foot landscape buffer area

On a motion by Commissioner Carlson, seconded by Commissioner Howard, the following resolution based on the Standard of Review and Staff Analysis and testimony heard today was adopted.

WHEREAS, the waiver will not adversely affect adjacent property owners as the encroachments with the buffer are present at this time; 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 13, Policy 4 calls for ensuring appropriate landscape design standards for different land uses within urbanized, suburban, and rural areas. The character of residential areas are preserved as the exiting accessory structure is residential in character and is consistent with the character of accessory structures in the area; and

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 as the structure is existing, does not affect the character of the area, and complies with Plan 2040; and

WHEREAS, the Louisville Metro Planning Commission further finds the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant as the structure is existing, does not affect the character of the area, and complies with Plan 2040.

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WHEREAS, the waiver will not adversely affect adjacent property owners because this home has been used as a dental office since it was constructed in the 1950s, which is a preexisting condition prior to the adoption of this regulation. The requested waiver is in addition to a zone change request to bring the property into compliance with the Land Development Code. The exterior of the building and the parking will remain unchanged; and

WHEREAS, the waiver will not violate the Comprehensive Plan for all the reasons set forth in the Detailed Statement of Compliance with all applicable Guidelines and Policies of the Cornerstone 2020 Comprehensive Plan filed with the original rezoning application; and

WHEREAS, the extent of waiver of the regulation is the minimum necessary to afford relief to the applicant because this is an as-built issue. The garage abuts the adjoining property owner's garage so there will be no adverse impacts; and

WHEREAS, strict application of the provisions of the regulation would deprive the applicant of a reasonable use of the land or would create an unnecessary hardship on the applicant because this is an as-built issue and if it weren't for the associated zone change, this waiver would not be an issue. Denial of the waiver would require the demolition and reconstruction of a functioning building which has existed without nuisance or complaint since its construction.

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** a waiver of the Land Development Code section 10.2.4 to permit existing encroachment in the 15 foot landscape buffer area.

The vote was as follows:

YES: Commissioners Brown, Carlson, Daniels, Howard, Mims, Tomes and Jarboe
NOT PRESENT AND NOT VOTING: Commissioners Lewis and Peterson

Detailed District Development Plan with Binding Elements

On a motion by Commissioner Carlson, seconded by Commissioner Howard, the following resolution based on the Standard of Review and Staff Analysis and testimony heard today was adopted.

WHEREAS, the conservation of natural resources on the property proposed for development, including: trees and other living vegetation, steep slopes, water courses,

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flood plains, soils, air quality, scenic views, and historic sites will be provided. No site construction is proposed which impacts existing features; and

WHEREAS, provisions for safe and efficient vehicular and pedestrian transportation within and around the development and the community are provided as no site construction is proposed which affects the community network; and

WHEREAS, open space is not required of the proposed development and no site construction is proposed which may affect existing open areas on the lot; 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 Planning Commission finds, the development is compatible with existing land uses and the future growth of the area as no site construction is proposed that will alter the character of the area of the form; and

WHEREAS, the Louisville Metro Planning Commission further finds the proposed development plan conforms to the Comprehensive Plan. No improvements are being made to the subject site that proportionally necessitates public infrastructure improvements. Any change of use that requires a higher intensity zoning district may necessitate sidewalks and other pedestrian/multi-modal facilities. Further, the zoning district request does not detract from existing public/pedestrian infrastructure that may be lacking in the area. Further, the development is compatible with existing land uses and the future growth of the area as no site construction is proposed that will alter the character of the area of the form.

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** the Detailed District Development Plan **SUBJECT** to the following 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. Before any permit (including but not limited to building, parking lot, change of use, site disturbance) is requested:

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- a. The development plan must receive full construction approval from Louisville Metro Department of Inspections, Permits and Licenses, Louisville Metro Public Works and the Metropolitan Sewer District.
 - b. Encroachment permits must be obtained from the Kentucky Department of Transportation, Bureau of Highways.
3. 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.
 4. 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.
 5. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.
 6. The property may not be used for a barber shop, cosmetologist, hairdresser or manicurist.

The vote was as follows:

YES: Commissioners Brown, Carlson, Daniels, Howard, Mims, Tomes and Jarboe
NOT PRESENT AND NOT VOTING: Commissioners Lewis and Peterson