

PLANNING COMMISSION MINUTES
January 19, 2017

PUBLIC HEARING

CASE NO. 16ZONE1042

Request: Change in zoning from R-4 to C-N and C-1 with variances, a waiver and Detailed District Development Plan
Project Name: Schulte Bush Farm
Location: 14801 and 15001 Bush Farm Road

Owner: Papa Oreo DS, LLC
Darryl D. Schulte, Jr.
2000 High Wickham Place, Suite 300
Louisville, Ky. 40245

Applicant: Papa Oreo DS, LLC
Darryl D. Schulte, Jr.
2000 High Wickham Place, Suite 300
Louisville, Ky. 40245

Representative: Vice Cox & Townsend PLLC
Jamie L. Cox
2303 River Road, Suite 301
Louisville, Ky. 40245

Land Design & Development, Inc.
Kevin Young
503 Washburn Avenue
Louisville, Ky. 40222

Jurisdiction: Louisville Metro
Council District: 19 - Julie Denton
Case Manager: Brian Davis, AICP, Planning Manager

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:

00:44:32 Mr. Davis discussed the case summary, standard of review and staff analysis from the staff report.

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The following spoke in favor of this request:

Jamie Cox, Vice Cox and Townsend, PLLC, 2303 River Road, Suite 301, Louisville, Ky. 40206

Kevin Young, Land Design and Development, Inc., 503 Washburn Avenue, Louisville, Ky. 40222

Summary of testimony of those in favor:

01:01:32 Ms. Cox gave a power point presentation.

Ms. Cox stated she has met with Steve Porter and they have agreed on some binding elements.

01:16:36 Mr. Young continued the power point presentation. The applicant wants to be sensitive to the neighbors on both sides. There will be one entrance that aligns with Thornton's. Also, there will be an 8 foot wall, 100 feet of greenspace and a privacy fence on top of the berm. The property was a detention basin but it's no longer needed. The lakes are now the detention basin for the site.

The following spoke in opposition to this request:

Steve Porter, 2406 Tucker Station Road, Louisville, Ky. 40299

Donna Cahill, 2505 Hamilton Springs Drive, Louisville, Ky. 40245

Jerry Hopkins, 14501 McKinley Ridge Drive, Louisville, Ky. 40245

Derrick Jackson, 2000 High Wickham, Louisville, Ky. 40242

Summary of testimony of those in opposition:

01:29:42 Mr. Porter stated he represents some homeowners, but not the Homeowners' Association.

Mr. Porter discussed some of the guidelines not being met (from staff report). If the proposal is approved, the following are requested: masonry wall; enhanced perimeter landscaping; all buildings limited to one-story; exterior lighting be aimed at the ground; and hours of operation limited to 7:00 a.m. until 10:00 p.m.

01:53:17 Ms. Cahill gave a power point presentation and expressed the following concerns: the lake causing mud to come into her basement; close view of daycare from front yard (42 yards); height of berm; noise; lights; safety; traffic; and it doesn't comply with the Comprehensive Plan.

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02:06:01 Mr. Hopkins stated the Land Development Code should be adhered to. The applicant should move this commercial development west of Bush Farm Rd. where it was intended to be from many years ago.

Rebuttal

02:14:37 Ms. Cox agrees to the following: both lots being zoned CN; lighting restriction of height to be 12 feet for both lots; and full Commission for approval of binding elements. They do not however agree to a change in the hours of operation and don't want to do masonry wall (wanted to do enhanced landscaping).

02:17:45 Mr. Young stated the detention basin was for all the properties, but as they've developed, MSD says it's no longer needed. The berm has always been there and will stay. Also, there is no mud coming from the proposed site, so it must be from another project.

02:19:09 Mr. Jackson stated Primrose gives comparable hours of operation and it's a one-story building.

Deliberation

02:31:34 Commissioner Kirchdorfer remarked that the area has changed. The developer agreeing to CN for the entire site also helps to mitigate issues with the neighbors.

02:33:02 Commissioner Carlson stated the proposal is neighbor-serving, but the Sub-Area Plan needs to be taken into account.

02:34:31 Commissioner Gazaway stated that applicant has agreed to quite a few of the opposition's requests.

02:35:36 Commissioner Brown stated the waiver and variance are appropriate but still has an issue with not following the Sub-area Plan.

02:36:06 Vice Chair Lewis stated the applicant and opposition have worked out some issues. "I don't have a problem with the CN or the daycare."

02:37:08 Commissioner Howard stated she worked on the Old Henry Sub-area Plan and they looked toward the future of Bush Farm Rd. (east side). "It should remain a residential site."

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02:39:46 Chair Jarboe applauds the compromises made today but it still may not be viable for residential.

An audio/visual recording of the Planning Commission hearing related to this case is available on the Planning & Design Services website, or you may contact the Customer Service staff to view the recording or to obtain a copy.

Zoning Change from R-4 to C-N

03:01:13

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

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

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

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

WHEREAS, Neighborhood streets may be either curvilinear, rectilinear or in a grid pattern and should be designed to invite human interaction. Streets are connected and easily accessible to each other, using design elements such as short blocks or bike/walkways in the middle of long blocks to connect with other streets. Examples of design elements that encourage this interaction include narrow street widths, street

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trees, sidewalks, shaded seating/gathering areas and bus stops. Placement of utilities should permit the planting of shade trees along both sides of the streets; and

WHEREAS, the Louisville Metro Planning Commission finds, the proposal appears to provide a scaled transition between the large office development on the northwest corner of Bush Farm/Old Henry intersection and the Hamilton Gardens development. The applicant should consider additional buffering along Hamilton Springs Drive and McKinley Ridge Drive. The development plan proposes a sidewalk along Bush Farm Road and shows the proposed walking path along the proposed Old Henry Road realignment. The proposed building elevations are in compliance with the design requirements for the Neighborhood Form District; and

WHEREAS, the Louisville Metro Planning Commission further finds the Louisville Metro Planning Commission is charged with making a recommendation to the Louisville Metro Council regarding the appropriateness of this zoning map amendment. The Louisville Metro Council has zoning authority over the property in question.

RESOLVED, that the Louisville Metro Planning Commission does hereby **RECOMMEND**, to Metro Council, **APPROVAL** of the change in zoning from R-4 to C-N based on the staff report and testimony heard today.

The vote was as follows:

YES: Commissioners Brown, Carlson, Gazaway, Kirchdorfer, Lewis and Jarboe

NO: Commissioner Howard

NOT PRESENT AND NOT VOTING: Commissioners Peterson, Smith and Tomes

Waiver

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

WHEREAS, the adjacent property owners will not be adversely affected. The landscape buffer will be maintained, regardless of the additional overlap of utility easements. In the event that work required to service utilities destroys the landscape buffer, it will be promptly replaced. All utilities will be located underground and will not be visible within the landscape buffer; and

WHEREAS, the waiver is consistent with the Comprehensive Plan, as the purpose of the landscape buffer is preserved and utility service is provided as required for development and operation of the neighborhood center; and

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WHEREAS, the Louisville Metro Planning Commission finds, there is no additional corridor in which utilities may be located in order to service the subject property as required for development and operation of a neighborhood center; and

WHEREAS, the Louisville Metro Planning Commission further finds the 30 foot parkway buffer area is required to be adjacent to the Old Henry Road right-of-way. The utilities are existing and have been installed within 30 feet of the Old Henry Road right-of-way. To relocate the utilities outside of the 30 foot buffer area would be an unnecessary hardship on the applicant. To locate the 30 foot parkway buffer area beyond the 30 feet of existing utility easements would result in 60 feet swath along the Old Henry Road frontage which cannot be developed. This is a significant reduction in developable land resulting in an unnecessary hardship.

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** the waiver of section 10.2.4.B of the Land Development Code to allow a greater than 50% overlap of a utility easement over a landscape buffer based on the staff report and testimony heard today.

The vote was as follows:

YES: Commissioners Brown, Carlson, Gazaway, Kirchdorfer, Lewis and Jarboe

NO: Commissioner Howard

NOT PRESENT AND NOT VOTING: Commissioners Peterson, Smith and Tomes

Variance

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

WHEREAS, the variance requested with respect to the building to be constructed on proposed Tract A is to provide for a 163 foot setback from Hamilton Springs Drive, 101 foot setback from Old Henry Road and 93 foot setback from Bush Farm Road property lines. The variance requested with respect to the building on proposed Tract B is to provide for a 142 foot setback from the Bush Farm Road property line. Proposed Tract A and proposed Tract B are each large tracts and the proposed buildings are configured in such a manner that not all maximum setback requirements can be satisfied. The maximum setback requirements are for aesthetic uniformity, rather than for purposes of health, safety or public welfare. If anything, keeping moving vehicles on the adjacent roadways further away from pedestrian areas and sidewalks, as well as the children's playground area of the proposed daycare seems beneficial to public health, safety and welfare; and

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WHEREAS, the variance is not inconsistent with the commercial character of the general vicinity. The new Thornton's headquarters is under development across Bush Farm Road from the subject development. The Thornton's headquarters is set back from Bush Farm Road by several hundred feet due to the presence of a detention basin. Most of the remaining commercially zoned tracts across Old Henry Road from the subject property are vacant; and

WHEREAS, as mentioned in #1 above, keeping moving vehicles on the adjacent roadways further away from pedestrian areas and sidewalks, as well as the children's playground area of the proposed daycare should reduce hazards to the public. At previously held neighborhood meetings, many neighbors voiced concerns about looking at the backs or sides of buildings from Old Henry Road and Hamilton Springs Drive. Increasing the setbacks, along with additional buffering, helps reduce any perceived light, noise, or aesthetic nuisance to the public; and

WHEREAS, the variance requested arises from the need to appropriately locate commercial buildings on spacious tracts of land, while allowing for adequate parking and pedestrian areas, while protecting children's play areas and responding to the concerns voiced by residential neighbors during the two previously held neighborhood meetings. Although the required maximum setbacks are intended to create uniformity and add to aesthetic consistency, the expanded setbacks will not be inconsistent with the current commercial character of the area, as described in #2 above; and

WHEREAS, the subject tracts are sandwiched between the Thornton's headquarters, which is located hundreds of feet away from Bush Farm Road (beyond a large detention basin area), and a residential neighborhood, many of whose residents have voiced concerns about noise and light from the development interfering with the residents along Hamilton Springs Drive, and that the development could convert Old Henry Road to a "Dixie Hwy."-type corridor if the buildings are too close to Old Henry Road. Due to the relatively slow pace of commercial development in this area, there is currently no uniformity among commercial property in the vicinity which will be interrupted by the requested variance; and

WHEREAS, the Louisville Metro Planning Commission finds, proposed Tract A is a corner lot bounded by Bush Farm Road, Old Henry Road and Hamilton Springs Road. In order to satisfy the front and side street setback requirements, the building proposed for Tract A would need to be reconfigured and located much closer to the southwest corner of that lot. This would create additional concern for residential neighbors as noted above and would likely require an increase in building square footage which would be costly for the Owner. With respect to proposed Tract B, locating the building closer to Bush Farm Road would also require reconfiguration of the parking areas,

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moving them closer to the children's play area and closer to the residential neighborhood along Hamilton Springs Road. This creates safety concerns for the daycare operator, and noise and light concerns for the residential neighbors; and

WHEREAS, the Louisville Metro Planning Commission further finds any commercial development of this area will face these issues or similar ones in order to satisfy residential neighbors and provide needed retail and services of a Class A nature in this area.

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** the variance from table 5.3.2 of the Land Development Code to exceed the 80 foot maximum front and street side yard setback along Bush Farm Road, Old Henry Road and Hamilton Springs Drive based on the staff report and testimony heard today.

The vote was as follows:

YES: Commissioners Brown, Carlson, Gazaway, Kirchdorfer, Lewis and Jarboe

NO: Commissioner Howard

NOT PRESENT AND NOT VOTING: Commissioners Peterson, Smith and Tomes

Development Plan and Binding Elements

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

WHEREAS, There are no natural resources on the site; and

WHEREAS, Provisions for safe and efficient vehicular and pedestrian transportation within and around the development and the community have been provided, and Metro Public Works has approved the preliminary development plan; and

WHEREAS, There are no open space requirements 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 Planning Commission finds, the overall site design and land uses are compatible with the existing and future development of the area; and

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

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** the Detailed District Development Plan and binding elements on page 16 of the staff report, the applicant's binding elements presented today – numbers 2, 3, 5 and 6 and the opposition's binding element number 1, but it will be an 8 foot high wooden wall and strike any references to the examples provided. This binding element will be reviewed and approved at a sub-committee of the Planning Commission; binding elements 2 and 6, (excluding the daycare use) 7 and 9. Also, **ON CONDITION** that they resolve the off-site sign that identifies the PRD Subdivision or signature entrance prior to the issuance of a building permit for either of these lots based on the staff report and testimony heard today **SUBJECT** to the following Binding Elements:

3:08:00 Mr. Davis added, the applicant's binding element 2, improvements on Tract B will be restricted to 1-story.

Binding Elements

1. The development shall be in accordance with the approved district development plan, all applicable sections of the Land Development Code (LDC) and agreed upon binding elements unless amended pursuant to the Land Development Code. Any changes/additions/alterations of any binding element(s) shall be submitted to the Planning Commission or the Planning Commission's designee for review and approval; any changes/additions/alterations not so referred shall not be valid.
2. The development shall not exceed 20,600 square feet on Tract A and 11,000 square feet on Tract B.
3. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.
4. Construction fencing shall be erected when off-site trees or tree canopy exists within 3' of a common property line. Fencing shall be in place prior to any grading or construction to protect the existing root systems from compaction. The fencing shall enclose the entire area beneath the tree canopy and shall remain in place until all construction is completed. No parking, material storage or construction activities are permitted within the protected area.

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5. 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 Develop Louisville, Louisville Metro Public Works 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.
 - c. A minor plat shall be recorded. 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.
6. A certificate of occupancy must be received from the appropriate code enforcement department prior to occupancy of the structure or land for the proposed use. All binding elements requiring action and approval must be implemented prior to requesting issuance of the certificate of occupancy, unless specifically waived by the Planning Commission.
7. 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.
8. The site shall be developed in strict compliance with the approved development plan (including all notes thereon). No further development shall occur on the site without prior review and approval by a committee of the Planning Commission.
9. An 8-foot tall wood wall shall be built along the top of the berm along the side of the property adjoining Hamilton Springs Drive and McKinley Ridge Drive and extending all the way to Bush Farm Road. The wall and landscape plans shall be submitted to Development Review Committee or Land Development & Transportation Committee for review and approval.

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10. Enhanced perimeter landscaping beyond normal LDC requirements shall be planted on the side of the wall facing Hamilton Springs Drive and McKinley Ridge Drive.
11. Operating hours for any building, excluding the proposed daycare on Tract B, shall be limited to the hours between 7:00 a.m. and 10:00 p.m.
12. No deliveries, garbage collection, exterior site work or construction, or parking lot cleaning (except for ice or snow) shall occur between the hours of 9:00 p.m. and 7:00 a.m.
13. No changes to any binding elements in this case shall be made unless approved by the full Planning Commission after a public hearing.
14. Improvements on the proposed Tract B shall be restricted to one story.
15. The materials and design of proposed structures shall be substantially the same as depicted in renderings presented at the time of detailed district development plan approval for each parcel. The building materials (excluding glass for windows) for the exterior structures shall be predominantly (at least 75%) composed of brick, stone, stucco or wood.
16. All exterior lighting, whether freestanding or attached, including accent lighting, shall be fully shielded, shall utilize flat or hidden lenses, and shall be pointed directly to the ground. Pole lighting for the parking areas on the proposed C-N lots shall be limited to 12 feet in height from ground level.

The vote was as follows:

YES: Commissioners Brown, Carlson, Gazaway, Kirchdorfer, Lewis and Jarboe

NO: Commissioner Howard

NOT PRESENT AND NOT VOTING: Commissioners Peterson, Smith and Tomes