

# Planning Commission

## Staff Report

May 9, 2019



<b>Case No:</b>	18DEVPLAN1195
<b>Project Name:</b>	Zips Express Car Wash
<b>Location:</b>	4001 Old Outer Loop
<b>Owner(s):</b>	Kenneth & Sharon Ramage
<b>Applicant:</b>	Mark Batistta, Zips Real Estate II, LLC
<b>Jurisdiction:</b>	Louisville Metro
<b>Council District:</b>	24 – Madonna Flood
<b>Case Manager:</b>	Lacey Gabbard, AICP, Planner I

### REQUESTS:

#### Waiver:

1. **Waiver** of Land Development Code section 5.8.1.B to not provide sidewalks along Outer Loop

#### Requests:

2. **General Plan Binding Element Amendments**
3. **Revised District Development Plan**

### CASE SUMMARY/BACKGROUND

The subject property is bordered on two sides by Outer Loop to the north and Old Outer Loop to the south. Lone Oak Avenue borders the western side and the eastern border fronts an alley. There is currently what appears to be a vacant residential structure on the site, however the occupancy status has not been confirmed by staff. The site is zoned C-1 Commercial in the Neighborhood Form District, with R-4 Residential Single Family properties to the south and west, and R-6 Residential Multi- Family to the north, on the other side of Outer Loop. The R-6 zoned property to the north is being used as a telecommunication company. The applicant is proposing to construct a 3,996 square foot Zips Car Wash.

#### Previous cases:

- 9-12-06: Change in zoning from R-4 Single Family Residential to C-1 Commercial for a restaurant and ice cream parlor

### STAFF FINDINGS

After the Development Review Committee meeting on March 20, the applicant revised the plan to no longer need three out of four waivers. The currently requested Waiver and Revised District Development Plan are justified and meet the standard of review.

### TECHNICAL REVIEW

Public Works and MSD have provided preliminary approval.

Urban Design provided the following comment:

- The structure on site is over 50 years old and is potentially eligible for the National Register of Historic Places. This site will be subject to the requirements of the Wrecking Ordinance Subsection 150.110 and a potential 30-day hold on the permit.

KYTC provided the following comment:

- Once the permit application has been filed and we're nearing approval, the bond will be calculated. As stated previously, KYTC has no interest in a sidewalk on this side of Outer Loop in this area. A permit will be required for the drainage work and any associated traffic control within the KY 1065 right of way. Otherwise we have no comment.

### **INTERESTED PARTY COMMENTS**

On December 11, 2018, staff received a phone call from Councilwoman Madonna Flood indicating that she opposes this development.

On January 23, 2018, staff received a phone call from Councilwoman Madonna Flood requesting information about hours of operation, whether the car wash would have an attendant or if it would be self-service, and also she expressed concerns about the two points of ingress and egress (one off Lone Oak Avenue and one off Outer Loop).

- The applicant responded to these questions/concerns: hours of operation will be 7am to 8pm, 7 days a week, and there will be at least two people on site during hours of operation.

On January 18, 2019, staff received a phone call from a nearby property owner who had concerns about the access point on Old Outer Loop, hours of operation for the carwash and potential noise, and safety concerns in terms of traffic on Old Outer Loop.

- The applicant has since removed the access point on Old Outer Loop.

Staff also received emails voicing opposition to the development. These emails are included in the case file.

### **STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER OF SECTION 5.8.1.B TO NOT PROVIDE SIDEWALKS ALONG OUTER LOOP**

- (a) The waiver will not adversely affect adjacent property owners; and

STAFF: The waiver will not adversely affect neighboring property owners because there are no sidewalks along this side of Outer Loop in the vicinity of the subject site. Outer Loop is a state route and, per their comment, KYTC has no interest in a sidewalk on this side of Outer Loop in this area.

- (b) The waiver does not violate the Comprehensive Plan; and

STAFF: Guideline 7, Policy 1 states that developments should be evaluated for their impact on the street and roadway system and to ensure that those who propose new developments bear or reasonably share in the costs of the public facilities and services made necessary by development. Guideline 9, Policy 1 states that new development should provide for the movement of pedestrians, bicyclists and transit users with sidewalks along the streets of all developments where appropriate.

Since the proposed development is a car wash, the majority of the traffic to and from the subject site will most likely be automobile traffic and not pedestrian traffic. Additionally, there are no sidewalks in the vicinity of the subject site along this side of Outer Loop.

- (c) The extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant; and

STAFF: The extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant, as sidewalks do not currently exist in the vicinity of the subject site and KYTC has no interest in sidewalks along this side of Outer Loop.

- (d) Either:  
(i) The applicant has incorporated other design measures that exceed the minimums of the district and compensate for non-compliance with the requirements to be waived (net beneficial effect); OR  
(ii) 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.

STAFF: 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 the applicant to build sidewalks with no foreseeable future connection to other sidewalks.

#### **STANDARD OF REVIEW AND STAFF ANALYSIS FOR RDDDP and 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: There do not appear to be any environmental constraints on the subject site. Tree canopy requirements of the Land Development Code will be provided on the subject site. Urban Design's comment states that the site will be subject to the requirements of the Wrecking Ordinance Subsection 150.110 and a potential 30-day hold on the permit due to the structure on site being over 50 years old and potentially eligible for the National Register of Historic Places.

- (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. Public Works and MSD have provided preliminary approval.

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

STAFF: There are no open space requirements pertinent to the current proposal.

- (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 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 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.

- (f) Conformance of the development plan with Plan 2040 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 development plan conforms to applicable guidelines and policies of Plan 2040 and to requirements of the Land Development Code.

**REQUIRED ACTIONS:**

- **APPROVE** or **DENY** the **Waiver**
- **APPROVE** or **DENY** the **Revised Development Plan** and **Binding Element Amendments**

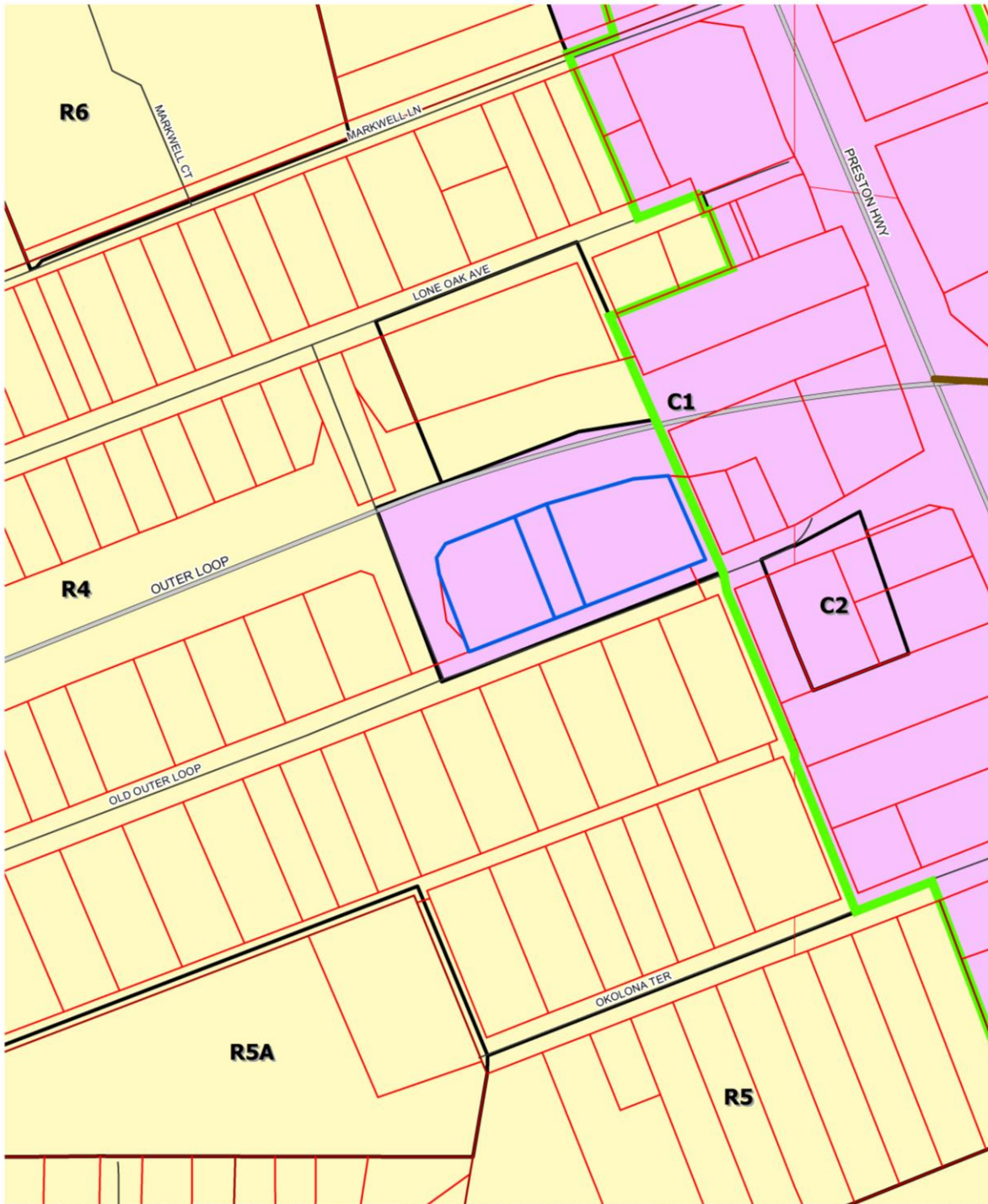
**NOTIFICATION**

Date	Purpose of Notice	Recipients
3-20-19	Hearing before DRC	1 <sup>st</sup> tier adjoining property owners Speakers at Planning Commission public hearing Registered Neighborhood Groups in Council District 24
5-9-19	Hearing before Planning Commission	1 <sup>st</sup> tier adjoining property owners Speakers at Planning Commission public hearing Registered Neighborhood Groups in Council District 24

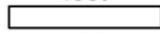
**ATTACHMENTS**

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

1. **Zoning Map**



**4001 OLD OUTER LOOP**  
feet



190  
Map Created: 4/29/2019



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2. Aerial Photograph



4001 OLD OUTER LOOP

feet



190

Map Created: 4/29/2019



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### **3. Existing 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. Development shall not exceed 7,400sf gross floor area.~~

3. The only permitted freestanding sign shall be a monument style sign, located as shown on the approved development plan/sign plan. No portion of the sign, including the leading edge of the sign frame, shall be closer than 30 feet to front property line. The sign shall not exceed 60 square feet in area per side and 6 feet in height. No sign shall have more than two sides.

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:

- 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. 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 or legal instrument shall be recorded consolidating the property into one lot. A copy of the recorded instrument shall be submitted to the Division of Planning and Design Services; transmittal of the approved plans to the office responsible for permit issuance will occur only after receipt of said instrument.
- ~~d. A reciprocal access and crossover and parking 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.~~
- 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.

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. There shall be no outdoor music (live, piped, radio or amplified) or outdoor entertainment or outdoor PA system audible beyond the property line.

9. The applicant, developer, or property owner shall provide copies of these binding elements to tenants, purchasers, contractors, subcontractors and other parties engaged in development of this site and shall advise them of the content of these binding elements. These binding elements shall run with the land and the owner of the property and occupant of the property shall at all times be responsible for compliance with these binding elements. At all times during development of the site, the applicant and developer, their heirs, successors, and assignees, contractors, subcontractors, and other parties engaged in development of the site, shall be responsible for compliance with these binding elements.

~~10. The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the July 20, 2006 Planning Commission meeting. The façade elevations shall be in accordance with applicable form district standards and shall be approved by PDS staff prior to transmittal of the plan to the appropriate agencies.~~

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11. No idling of trucks shall take place within 200 feet of single-family residences. No overnight idling of trucks shall be permitted on-site.

12. 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 there after. 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.

~~13. The site shall be developed in accordance with the tree preservation areas delineated on the site plan and related notes. Any modification of the tree preservation plan requested by the applicant may be approved by the designated DPDS staff if the changes are in keeping with the intent of the approved tree preservation plan.~~

~~All plans setting out tree preservation areas must contain the following notes:~~

- ~~1. Tree preservation areas (TPAs) identified on this plan represent portions of the site the developer has designated to be left undisturbed during the development of roadways, utilities and similar infrastructure. These are not permanent preservation areas. Trees in these areas may be removed during construction of homes or buildings on individual lots.~~
- ~~2. Dimension lines have been used on this plan to establish the general location of TPAs and represent minimum distances. The final boundary for each TPA shall be established in the field by the applicant, developer, or property owner to include canopy area of all trees at or within the dimension line.~~
- ~~3. Tree protection fencing shall be erected around all TPAs prior to site disturbance (except as provided in these notes) to protect the existing tree stands and their root systems. The fencing shall be located at least 3 feet beyond the edge of the tree canopy and shall remain in place until all construction is completed. When trees must be removed in a TPA, the fence shall be relocated to protect all remaining trees within that TPA. When a tree mass contains both WPAs and TPAs, fencing shall only be required at the outer most perimeter of that tree mass.~~



- ~~4. No parking, material storage, or construction activities are permitted within the TPAs beyond that allowed for preliminary site investigation work.~~
- ~~5. Clearing necessary to provide access for survey work, rock soundings or other usual and customary site investigations shall be permitted prior to Site Disturbance Approval. Preliminary site investigations shall be carefully planned to minimize the amount of clearing required. Clearing should follow proposed roadway centerlines and should not result in a clear access way of more than twenty (20) feet in width. Cleared access ways beyond proposed roadways to assess individual lots shall not exceed 12 feet in width or encroach into any proposed open space lots. No trees exceeding eight (8) inches in diameter measured at a height of four and one-half feet above ground level shall be removed without prior approval by DPDS.~~

~~14. The hours of operation shall be no earlier than 10:00am and not later than 10:00pm.~~

~~15. The parking lots for both uses on site will be cleaned daily.~~

~~16. This site will be used for no other use than the approval without a public review meeting.~~

#### **4. Proposed 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 only permitted freestanding sign shall be a monument style sign, located as shown on the approved development plan/sign plan. No portion of the sign, including the leading edge of the sign frame, shall be closer than 30 feet to front property line. The sign shall not exceed 60 square feet in area per side and 6 feet in height. No sign shall have more than two sides.
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.
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 Louisville Metro Department of Inspections, Permits and Licenses, 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 or legal instrument shall be recorded consolidating the property into one lot. A copy of the recorded instrument shall be submitted to the Division of Planning and Design

Services; transmittal of the approved plans to the office responsible for permit issuance will occur only after receipt of said instrument.

- d. A Tree Preservation Plan in accordance with Chapter 10 of the LDC shall be reviewed and approved prior to obtaining approval for site disturbance.
- e. Final elevations/renderings shall be submitted for review and approval by Planning Commission staff. A copy of the approved renderings shall be available in the case file on record in the offices

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. There shall be no outdoor music (live, piped, radio or amplified) or outdoor entertainment or outdoor PA system audible beyond the property line.

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. No idling of trucks shall take place within 200 feet of single-family residences. No overnight idling of trucks shall be permitted on-site.

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 there after. 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. Prior to development (includes clearing and grading) of each site or phase of this project, the applicant, developer, or property owner shall obtain approval of a detailed district development plan in accordance with Chapter 11, Part 6. Each plan shall be in adequate detail and subject to additional binding elements.