

CASE NO. 18ZONE1014
7900 SHELBYVILLE ROAD, LOUISVILLE, KY

TOPGOLF PROPOSAL

STATEMENT OF NON-COMPLIANCE

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OCT 15 2018
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DESIGN SERVICES

This dual application for a zoning change from C-1 to C-2, for a Conditional Use Permit to allow a golf driving range, a variance to allow twenty or more poles 175' high, taller than the allowed height of 150', and a waiver to allow sixteen field lighting fixtures which emit 58,000 lumens apiece to be installed without being fully shielded. This application fails to meet the requirements of Kentucky Revised Statutes, the Louisville Metro 2020 Comprehensive Plan and the Louisville Metro Land Development Code.

Under KRS 100.213, there are three criteria possible for a map amendment. This proposal meets none of those. It does not comply currently with the guidelines of 2020. The current classification of C-1 is appropriate. The proposed amendment tied to the Conditional Use Permit is not. And, there have been no major changes of an economic, physical, or social nature within the area. This area of Louisville Metro is as stable and unchanged as any area in Metro.

GUIDELINE 1 - COMMUNITY FORM

B.6. Integration of civic uses such as branch libraries, community centers or government offices is encouraged, and can strengthen the identity and success of the center.

The proposal does not integrate any civic uses into the plan.

B.6. Landscaping, building design and unified signs in the Regional Center give character to the development, defines and reinforces identity and provides a human scale.

The landscaping, building design and unified signs in the proposal do not give character to the development and do not provide a human scale. The multi-acre heavily lighted playing field is enclosed by a pole and netting structure reaching 175 feet in height. This would be the second tallest structure in Louisville Metro outside of downtown. This structure is totally out of character with the area surrounding it. It is not compatible either with existing structures in the Regional Center and certainly not with structures in the area. There is nothing architecturally significant about the structure. It is merely functional. Another tall structure in the area, commonly called the "Flashcube" building, is lower in height, not heavily lighted at any time of night, produces no noise, closes at 6:00 PM and on weekends and is architecturally significant in its design. There is no comparison.

GUIDELINE 2 - CENTERS

A.6. Encourage residential land uses in designated centers, Encourage residential and office uses above retail and other mixed-use multi-story retail buildings.

The proposal does not incorporate any residential or office uses or any other mixed-use features.

A.7. Encourage new developments and rehabilitation of buildings that provide commercial, office and/or residential uses.

This proposal would demolish, instead of rehabilitating, an existing building.

GUIDELINE 3 - COMPATIBILITY

A.1. Ensure compatibility of all new development and redevelopment with the scale and site design of nearby existing development and with the pattern of development within the form district

This proposed development is not compatible with the scale and site design of nearby existing development, either within the Regional Center or adjacent to it. It is not compatible with other development within the form district, all of which is far lower in height and is architecturally pleasing and/or significant.

A.2. When assessing compatibility, it is appropriate to consider the choice of building materials.

The proposed design and building materials are totally out of character with the area. 175 foot steel poles are an invasion of the viewshed of the area. It is comparable to placing 20-something cell towers (actually taller than most cell towers) in one confined area, connected by netting, but visible for miles.

A.6. Mitigate adverse impacts of traffic from proposed development on nearby existing communities.

The proposal will have an adverse impact of traffic on nearby existing communities because of the huge change in operating hours of the Regional Center. Late-night traffic from what is essentially an alcohol-driven nightclub will be a detriment to neighbors in Hurstbourne and other communities along Shelbyville Road. Currently, Oxmoor Mall does not include that kind of traffic. Most Mall uses close at 9:00 PM.

A.7. Mitigate adverse impacts of noise from proposed development on existing communities.

The proposal will have an adverse impact of noise on existing communities because of the presence of large crowds, an open-air building, 102 television sets (or more), live music

from the roof, piped music throughout, very late operating hours and automobile noise in the parking lot late at night.

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A.8. Mitigate adverse impacts of lighting from proposed development on nearby properties, and on the night sky.

The proposal will have a serious adverse impact on nearby properties because of its lighting system which is in violation of the Land Development Code. Seventeen, 58,000-lumen, lighting fixtures will not be fully shielded as required (unless a waiver is approved) but will point out towards residential areas and will be visible for miles. Many, if not all, of those fixtures will be at a height higher than the allowed thirty foot limit. In addition, 102 unshielded fluorescent light fixtures at each driving bay will provide more visible glare for long distances. Glare will negatively affect drivers on Christian Way. The plan for operating hours beyond 11:00 PM is in violation of guidelines for Recreational Facilities. The presence of non-fully shielded, very bright light fixtures will have a negative effect on the night sky.

A.9. Protect the character of residential areas, roadway corridors, and public spaces from visual intrusions and mitigate when appropriate.

The visual impact of the numerous 175-foot poles and netting and the bright lights, all of which are visible for miles, does not protect the character of residential areas and roadway corridors from visual intrusion.

A.21. Ensure an appropriate transition between uses that are substantially different in scale and intensity or density of development. The transition may be achieved through methods such as landscaped buffer yards, vegetative berms, compatible building design and materials, height restrictions and setback requirements.

Because of the immense height of the structures and the amount of light produced, any appropriate transition between uses is lost. Surrounding uses are all totally different in scale and intensity.

A.22. Mitigate the impacts caused when incompatible developments unavoidably occur adjacent to one another. Buffers should be used between uses that are substantially different in intensity or density.

No amount of buffering has been proposed or is even possible to mitigate the visual, noise and lighting impacts of the proposal. No landscaping can hide the 175 foot poles and nets. The existing row of trees to the east is composed of deciduous trees which are barren for six or more months of the year. Even when fully leafed, they are insufficient to hide the height and intensity of the proposal. The poles, nets and lights will be seen for miles, just as in other locations where Topgolf has developed.

A.23. Setbacks, lot dimensions and building heights should be compatible with those of nearby developments that meet form district guidelines.

The height of the structure is not compatible with heights of nearby developments, either within the center or nearby. The others all meet form district guidelines.

A.24. parking, loading and delivery areas located adjacent to residential areas should be designed to minimize adverse impacts from noise, lights and other potential impacts. Ensure that parking...does not negatively impact nearby residents....

Because of the late operating hours of the proposal, noise and lights from the parking lot will be a disturbance to nearby residential areas, something that is not currently a problem because of the limited hours of the Oxmoor Mall.

A.28. Ensure that signs are compatible with the form district pattern and contribute to the visual quality of their surroundings.

The proposed sign which includes a Topgolf shield is larger than that allowed in the Land Development Code.

GUIDELINE 8 – TRANSPORTATION FACILITY DESIGN

A.9. Avoid access to development through areas of significantly lower intensity or density development if such access would create significant nuisances.

Currently, the residential area accessed by Christian Way (which provides ingress and egress for Oxmoor Mall) does not receive significant nuisances because the commercial uses at Oxmoor Mall are relatively quiet, enclosed and have reasonable operating hours (mostly closing at 9:00 PM). This proposal will be a significantly higher intensity use because of its outdoor nature, invasive lighting, invasive sounds, and operating hours till midnight or 2:00 AM which will bring new traffic to Christian Way and through Hurstbourne at very late hours..

LAND DEVELOPMENT CODE VIOLATIONS

In addition to the above non-compliant features of this proposal with the Cornerstone 2020 Comprehensive Plan for Louisville Metro, the following Land Development Code sections would be violated by this proposal.

LDC 1.1.5 The provisions of this Code are intended to be the minimum requirements ... to protect the character and maintain the stability of residential, business and industrial areas within the planning unit and to promote the orderly and beneficial development of such areas.

This proposal does not protect the character and maintain the stability of residential areas.

LDC 4.1.3.A. The purpose of this section is to appropriately regulate outdoor lighting in Louisville and Jefferson County to reduce the effects of light trespass and glare, provide clear guidelines for the installation of outdoor lighting to maintain and compliment the community's character, and to provide a safe nighttime environment for pedestrians, motorists and properties.

This proposal does not reduce the effects of light trespass and glare on nearby residential areas and does not compliment the community's character.

LDC 4.1.3.B.2.a. All luminaires shall be aimed, directed, or focused such as to not cause direct light from the luminaire to be directed toward residential uses or protected open spaces... on adjacent or nearby parcels, or to create glare perceptible to persons operating motor vehicles on public streets and right-of-way.

The luminaires proposed will cause direct light to be directed toward residential uses, adjacent and nearby parcels and public streets.

LDC 4.1.3.B.2.b.i Within the ...Regional Center...form district... any luminaire with a lamp or lamps that emit more than 1800 lumens, and all flood or spot luminaires with a lamp or lamps rated at a total of more than 900 lumens shall be mounted at a height equal to or less than thirty (30) feet unless otherwise approved by the Planning Commission.

Many luminaires attached to the building would emit more than 1800 lumens and be at a height over 30 feet.

LDC 4.1.3.B.2.c. All fixtures in all form districts that emit more than 3,500 lumens shall be fully-shielded luminaires.

All light fixtures proposed emit more than 3500 lumens and are not fully-shielded.

LDC 4.1.3.B.5.a. All luminaires mounted on or recessed into the lower surface of canopies, pavilions, or drive-through bays shall be fully shielded and utilize flat lenses.

The light fixtures in the canopy area of the building are not fully-shielded.

LDC 4.1.3.B.6.a.i. All fixtures used for recreational facilities lighting within 500 feet of any residential use shall be fully shielded, or be designed or provided with sharp cut-off capability, so as to minimize up-light, spill-light, and glare.

Light fixtures in this recreational facility are within 500 feet of the Oxmoor home and farm, a residential use, and are not proposed to be fully-shielded.

LDC 4.1.3.B.6.a.ii. Illumination of any playing field, court, or track located within 500 feet of any residential use shall be permitted after 11:00 p.m. only to conclude an event normally expected to end before 11:00 p.m. and circumstances prevented concluding before 11:00 p.m.

The applicant's proposed operating hours past 11:00 PM for the facility would be in violation because the playing field is within 500 feet of a residential use, the Oxmoor Lodge. The driveway property to the residential dwelling unit is a residential use "associated with permanent residential occupancy".

LDC 4.2.58.B. ...Any netting used for the protection of adjacent properties shall observe yard and height requirements of the district in which it is located.

The netting and poles exceed the height requirement of the district, which is 150 feet.

LDC 4.2.58.D. Driving Directions – All golf ball driving directions shall be away from any street, highway or residential area.

The driving direction is not away from any street or residential area.

Appendix 4D Maintained Horizontal Illuminance Recommendations

4:1 Uniformity Ratio

Topgolf's lighting plan proposes an 8:1 uniformity ratio, claims that is what Oxmoor requires, and claims that is compliant with the Land Development Code. It is not. A higher uniformity ratio is more unsettling and disturbing.

Appendix 4E Recreational Facilities Standards

Golf Driving Range: Maximum of 10 footcandles

Topgolf's lighting plan shows footcandles as high as 13.5.

LDC 5.3.3 Regional Center Form District ... District standards are designed to ensure compatibility with adjacent form districts...and to promote high quality design.

This proposal in a Regional Center is not designed to ensure compatibility with adjacent form districts. The total design of the three-level building and the pole and netting structure does not provide high quality design.

LDC 5.3.3.B. The provisions of this section are intended to promote high quality design and a more visually attractive environment in the RCFD... Standards are included to promote: 1. Compatibility with adjacent form districts; ...4) High quality design of individual and integrated sites.

This proposal does not promote high quality design or a visually attractive environment. It is not compatible with adjacent form districts

LDC. 5.3.3.C.2.c. Building Height - ...the maximum permitted height is 150 feet.

This proposal exceeds the maximum height of the form district by 25 feet. No other buildings in the form district are even close to the 150 foot height limit.

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GUIDELINE 1 - COMMUNITY FORM

B.6. The proposal does not integrate any civic uses into the plan.

B.6. The landscaping, building design and unified signs in the proposal do not give character to the development and do not provide a human scale. The multi-acre heavily lighted playing field is enclosed by a pole and netting structure reaching 175 feet in height. This would be the second tallest structure in Louisville Metro outside of downtown. This structure is totally out of character with the area surrounding it. It is not compatible either with existing structures in the Regional Center and certainly not with structures in the area. There is nothing architecturally significant about the structure. It is merely functional. Another tall structure in the area, commonly called the "Flashcube" building, is lower in height, not heavily lighted late into the night, produces no noise, closes at night and is architecturally significant in its design.

GUIDELINE 2 - CENTERS

A.6. The proposal does not incorporate any residential or office uses or any other mixed-use features.

GUIDELINE 3 - COMPATIBILITY

A.1. This proposed development is not compatible with the scale and site design of nearby existing development, either within the Regional Center or adjacent to it. It is not compatible with other development within the form district, all of which is far lower in height and is architecturally pleasing and/or significant.

A.2. The proposed design and building materials are totally out of character with the area. 175 foot steel poles are an invasion of the viewshed of the area. It is comparable to placing 20-something cell towers (actually taller than most cell towers) in one confined area, but visible for miles.

A.6. The proposal will have an adverse impact of traffic on nearby existing communities because of the huge change in operating hours of the Regional Center. Late-night traffic from what is essentially an alcohol-driven nightclub will be a detriment to neighbors in Hurstbourne and other communities along Shelbyville Road. Currently, Oxmoor Mall does not include that kind of traffic.

A.7. The proposal will have an adverse impact of noise on existing communities because of the presence of large crowds, an open-air building, 102 television sets (or more), live music from the roof, piped music throughout and automobile noise in the parking lot late at night.

A.8. The proposal will have a serious adverse impact on nearby properties because of its lighting system which is in violation of the Land Development Code. Seventeen, 58,000-lumen, lighting fixtures will not be fully shielded as required but will point out towards residential areas and will be visible for miles. Many, if not all, of those fixtures will be at a height higher than the allowed thirty foot limit. In addition, 102 unshielded fluorescent light fixtures at each driving bay will provide more visible glare for long distances. Glare will negatively affect drivers on Christian Way. The plan for operating hours beyond 11:00 PM is in violation of guidelines for Recreational Facilities. The presence of non-fully shielded, very bright light fixtures will have a negative effect on the night sky.

A.9. The visual impact of the numerous 175-foot poles and netting and the bright lights, all of which are visible for miles, does not protect the character of residential areas and roadway corridors from visual intrusion.

A.21. Because of the immense height of the structures and the amount of light produced, any appropriate transition between uses is lost. Surrounding uses are all totally different in scale and intensity.

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LDC 4.1.3.A. This proposal does not reduce the effects of light trespass and glare on nearby residential areas.

LDC 4.1.3.B.2.a. The luminaires proposed will cause direct light to be directed toward residential uses, adjacent properties and public streets.

LDC 4.1.3.B.2.b.i Many luminaires in this Regional Center use would emit more than 1800 lumens and be at a height over 30 feet.

LDC 4.1.3.B.2.c. All light fixtures proposed emit more than 3500 lumens and are not fully-shielded.

LDC 4.1.3.B.5 The light fixtures in the canopy area of the building are not fully-shielded.

LDC 4.1.3.B.6.a.i. Light fixtures in this recreational facility that are within 500 feet of any residential use are not proposed to be fully-shielded.

LDC 4.1.3.B.6.a.ii. Any operating hours past 11:00 PM (as proposed by the applicant) for the facility would be in violation because the playing field is within 500 feet of a residential use.

LDC 4.2.58.B. The netting and poles exceed the height requirement of the district.

LDC 4.2.58.D. The driving direction is not away from any street or residential area.

LDC 5.3.3 This proposal in a Regional Center is not designed to ensure compatibility with adjacent form districts. The total design of the three-level building and the pole and netting structure does not provide high quality design.

LDC 5.3.3.B. This proposal does not promote high quality design or a visually attractive environment. It is not compatible with adjacent form districts

LDC. 5.3.3.C.2.c. This proposal exceeds the maximum height of the form district by 25 feet. No other buildings in the form district are even close to the 150 foot height limit.

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