

**MINUTES OF THE MEETING
OF THE
LOUISVILLE METRO PLANNING COMMISSION MEETING
NOVEMBER 5, 2020 – CASE NO. 20-DDP-0033 ONLY**

A regular meeting of the Louisville Metro Planning Commission was held on Thursday, November 5, 2020 at 1:00 p.m. online via Webex and at the Metro Development Center, 444 S. Fifth Street, Room 101, Louisville, KY 40202.

Commissioners present:

Vince Jarboe, Chair
Jeff Brown
Jim Mims
Lula Howard
Rich Carlson
Robert Peterson
Ruth Daniels
Te'Andre Sistrunk

Commissioners absent:

Marilyn Lewis
Pat Seitz

Staff members present:

Emily Liu, Director, Planning & Design Services
Joe Reverman, Assistant Director, Planning & Design Services
Joe Haberman, Planning Manager
Brian Davis, Planning Manager
Julia Williams, Planning Supervisor
Joel Dock, Planner II
Dante St. Germain, Planner II
Sherie Long, Landscape Architect
Laura Ferguson, Legal Counsel
Beth Stuber, Transportation Planning
Tony Kelly, MSD
Chris Cestaro, Management Assistant

The following matters were considered:

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Request:	Revised Detailed District Development Plan with Waivers
Project Name:	Durrett Lane Office/Warehouse
Location:	1231 Durrett Lane
Owner:	Durrett, LLC
Applicant:	Durrett, LLC
Representative:	Dinsmore & Shohl, LLP
Jurisdiction:	Louisville Metro
Council District:	21 – Nicole George
Case Manager:	Joel Dock, AICP, Planner II

Notices were sent by first class mail to those adjoining property owners whose names were supplied by the applicants.

The staff reports prepared for these cases were incorporated into the record. The Commissioners received these reports in advance of the hearing, and these reports were available to any interested party prior to the public hearing. (The staff reports are part of the case file maintained in Planning and Design Services offices, 444 S. 5th Street.)

Agency Testimony:

Joel Dock presented the case and showed a Power Point presentation (see recording for detailed presentation.) The applicant is requesting approval of a revised detailed district development plan to construct a 142,000 square foot office/warehouse with heavy truck loading and unloading areas. There are three waivers accompanying the request as well. The site was rezoned to PEC in May 2020, and there is a binding element that requires the development plan to be sent to Metro Council for final approval.

Commissioner Robert Peterson asked staff where the trees from the reduced landscape buffer area would be planted. Mr. Dock stated the applicant has an exhibit.

Commissioner Rich Carlson asked why Metro Council included a binding element requiring a traffic study with the development plan. Mr. Dock stated the exact use was not known at the time of the rezoning so Metro Council wanted traffic study when a use was determined.

The following spoke in support of this request:

Cliff Ashburner, Dinsmore & Shohl LLP, 101 S. Fifth Street, Suite 2500, Louisville, KY 40202

Kevin Young, Land Design & Development, 503 Washburn Avenue, Suite 101, Louisville, KY 40222

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Steve Poe, Poe Companies/Durrett, LLC, 1700 Marinas Edge Way, Louisville, KY 40206

Hank Hillebrand, Poe Companies/Durrett, LLC

Diane Zimmerman, 12803 High Meadows Pike, Prospect, KY 40059

Kyle Degiulio, 410 Terry Ave N, Seattle, WA 98109

Shannon Midgely, 1855 N Winnebago, Chicago, IL 60647

Summary of testimony of those in support:

Cliff Ashburner, the applicant's representative, presented the applicant's case and showed a Power Point presentation (see recording for detailed presentation.)

Shannon Midgely spoke in support. Ms. Midgely explained the intended operation of the proposed facility. Packages will be sorted and stored and loaded onto vans and trucks for delivery. Delivery will take place outside of peak traffic hours.

Kyle Degiulio spoke in support. Mr. Degiulio further explained where vehicles would be parked on the site.

Mr. Ashburner continued testimony. He stated there are no building design waivers. Mr. Ashburner stated there would be no heavy truck traffic on Durrett Lane, only associate vehicles and delivery vans. Heavy trucks will only utilize the proposed entrance on Preston Highway.

Diane Zimmerman spoke in support. Ms. Zimmerman prepared the traffic impact study and provided an overview of the trip generation information provided by Amazon.

Mr. Ashburner continued testimony regarding the three proposed waivers. The staff report included findings of fact to support waivers 1 and 2, and Mr. Ashburner has provided findings of fact to support waiver 3. The total required interior landscape area is being provided on the site, it is just focused away from the van parking area. The fleet of vehicles will eventually be an all-electric fleet, so there is conduit and infrastructure in place to facilitate that. There will also be a cool roof installed on the building to help reduce the heat island effect. The proposed development is about a nine percent decrease in impervious surface on the site compared to today. The proposed tree canopy will be approximately 25 percent of the site area upon maturation.

Commissioner Carlson asked about fuel storage on the site for non-electric vehicles, and if the vans would be serviced on the site or at another facility. He also asked about an area near one of the entrances that didn't have any trees. Mr. Ashburner said there will be no fuel storage on site, and only light maintenance will be conducted on the site. Kevin Young explained there is a ten-foot wide area with a security fence so trees were not included for that area.

Commissioner Te'Andre Sistrunk asked if the applicant would use any kind of pervious pavers in the parking lot and if MSD has reviewed the drainage plan. Kevin Young

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explained how runoff would be diverted to the proposed detention basins. MSD has reviewed and preliminarily approved the site plan. They are not proposing to use any pervious pavement materials.

Commissioner Jeff Brown asked about outside activity during the overnight hours. Mr. Degiulio said all overnight activity would be contained within the facility. The only outside activity is when the vans/truck enter and leave the site.

Commissioner Jim Mims expressed concerns about the detention basins, and what water quality measures are being included. Mr. Young said the capacity is being met and there would be three water quality units associated with this development. Commissioner Mims stated this is an important area in terms of heat island and asked if there would be any off-site tree planting. Mr. Ashburner said they are meeting their tree planting requirement so that has not been entertained.

Commissioner Carlson asked if part of the building would ever be leased out. Ms. Midgely said all the materials in the building would be from an Amazon Fulfillment Center and third party sellers.

Steve Poe spoke in support. One of the justifications for the ILA waiver is because of the web of conduit under the parking area. They wanted to move around the ILA areas on the site so they could benefit the adjoining properties more.

The following spoke neither for nor against the request (“Other”):

Nicole George, District 21 Metro Council Representative, 601 W. Jefferson Street, Louisville, KY 40202

Summary of testimony of those neither for nor against:

Nicole George stated Metro Council was concerned about the potential volume of traffic on Durrett and whether heavy trucks would be utilizing it. Also, the most recent traffic counts were outdated and they wanted to see new numbers that reflected traffic patterns since the opening of the Derby City gaming facility. She has concerns about vehicles turning out from Durrett and the proposed entrance onto Preston because it is a hard pull out.

Chairman Vince Jarboe asked if there was room for additional trees on site. Kevin Young said they could possibly add 25 trees in ILA areas and maybe be agreeable to planting 25 trees off site.

The following spoke in opposition to this request:

None.

Summary of testimony of those in opposition:

None.

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Rebuttal:

Mr. Ashburner stated they believe the plan is a good one. The applicant is willing to plant additional trees on the site and possibly add a binding element that states “The applicant shall provide 25 Type A trees onsite and 25 Type A trees offsite in coordination with Planning & Design Services and the Metro Council District 21 representative.”

Commissioners’ deliberation

The Planning Commissioners discussed the proposal.

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.

Case No. 20-DDP-0033 Waiver #1 (Section 5.9.2) and Waiver #2 (Section 10.2.4)

On a motion by Commissioner Brown, seconded by Commissioner Carlson, the following resolution, based on the Standard or Review and Staff Analysis, and evidence and testimony heard today, was adopted:

WHEREAS, the waiver will not adversely affect adjacent property owners as the adjacent site is built out and the proposed development plan will maintain a secured facility; and

WHEREAS, Plan 2040 calls for a mix of complementary neighborhood serving businesses and services in neighborhood and village centers to encourage short trips easily made by walking or bicycling. It also calls for developments to promote public transit and pedestrian use. Encourage higher density mixed-use developments that reduce the need for multiple automobile trips as a means of achieving air quality standards and providing transportation and housing choices. The proposal is adjacent to a non-retail facility and the proposal provides adequate connectivity for its employees and customers, as well as the safe movement of pedestrians along the frontage of the development site; and

WHEREAS, the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant as the proposed development site will be enclosed and secured from the public; and

WHEREAS, the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant as the proposal is adjacent to a non-retail facility and the proposal provides adequate connectivity for its employees and customers, as

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well as the safe movement of pedestrians along the frontage of the development site; now; and

WHEREAS, the waiver will not adversely affect adjacent property owners as the proposed buffer is not along a property boundary separating different owners but contained within the same property; and

WHEREAS, the waiver will not violate specific guidelines of Plan 2040 as the buffer would not provide buffering from adjacent properties but instead within the same property for the same user.; and

WHEREAS, the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant as both sides of the zoning district boundary are contained within the same property; and

WHEREAS, the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant as the areas in question are within the property; now, therefore be it

RESOLVED, the Louisville Metro Planning Commission does hereby **APPROVE** the proposed waiver of Section 5.9.2 to not provide for pedestrian or vehicular connectivity between adjacent non-residential uses and Section 10.2.4 to provide the landscape buffer within the area of a lower intensity zoning district and reduce the width of the buffer from 15 feet to 10 feet.

The vote was as follows:

YES: Commissioners Howard, Carlson, Brown, Mims, Peterson, Sistrunk, Daniels, and Jarboe

NO: None.

NOT PRESENT: Commissioners Seitz and Lewis.

Case No. 20-DDP-0033 Waiver #3 (Section 10.2.12)

On a motion by Commissioner Brown, seconded by Commissioner Carlson, the following resolution, based on the findings of facts presented by the applicant, and evidence and testimony heard today, was adopted:

WHEREAS, the applicant, AirCross Logistics, LLC, proposes to construct a warehouse/logistics facility on the subject property, which will include a large field of van storage space, including electric charging stations; the Division of Planning & Design Services has determined that this area should be classified as a parking area and that Interior Landscape Areas are required; based on the presence of the charging station infrastructure and the applicant's desire to focus landscape material at the perimeter of

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the subject property, the applicant seeks to waive the required ILAs on the subject property; and

WHEREAS, in addition, a portion of the subject property is zoned C-2, and the zoning line between the PEC zoned property and the C-2 zoned portion of the property creates the need for a landscape buffer; the applicant proposes to provide this buffer on the C-2 side of the zoning line; and, were this a property line, providing the buffer on the C-2 side of the line would have sufficed as an acceptable method of compliance; and

WHEREAS, the proposed waivers will not adversely affect adjoining property owners because the subject property is surrounded by roads on three sides, including Durrett Lane, Preston Highway and the Watterson Expressway; because the applicant proposes to buffer the perimeters of the subject property in order to provide screening from the proposed development to adjoining properties; because the presence or absence of ILAs should not create any adverse impact on adjoining property owners; and because the applicant is providing required screening along the PEC/C-2 zoning line but providing it on the C-2 side of the zoning line.

WHEREAS, the proposed waivers will not violate the Comprehensive Plan because the subject property was most recently a large call center with a significant parking area and very few trees; because the proposed development will, simply by complying with the LDC's tree canopy requirements, provide many more trees than currently exist, addressing the heat island effect associated with parking areas; because the proposal includes a network of charging stations for the fleet of vehicles that will be part of the proposed operation in the future; because the proposed building will include a "cool" roof; and because the screening required along the PEC/C-2 zoning line is being provided; and

WHEREAS, the extent of the waivers is the minimum necessary to afford relief to the applicant and the proposed development will include perimeter buffers but will use the remainder of the subject property for the proposed logistics operation; and

WHEREAS, the strict application of the provisions of the regulation would deny the applicant the reasonable use of the land because the existing development on the subject property has few trees located in the existing parking areas and has little landscaping overall, making the proposed development a significant improvement in terms of total tree canopy and total landscape material provided; because the proposed redevelopment of the subject property will allow for a state of the art logistics facility *and* an increase in perimeter landscaping and overall tree canopy; and because, without the proposed waivers, the proposed logistics facility cannot operate effectively on the subject property, now, therefore be it

RESOLVED, the Louisville Metro Planning Commission does hereby **APPROVE** the proposed waiver of Section 10.2.12 to not provide interior landscape areas within the van storage area.

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The vote was as follows:

YES: Commissioners Howard, Carlson, Brown, Mims, Peterson, Sistrunk, Daniels, and Jarboe

NO: None.

NOT PRESENT: Commissioners Seitz and Lewis.

Case No. 20-DDP-0033 Revised Detailed District Development Plan

On a motion by Commissioner Brown, seconded by Commissioner Carlson, the following resolution, based on the Standard or Review and Staff Analysis, and evidence and testimony heard today, was adopted:

WHEREAS, the site is currently developed and contains vacant structures and impervious surfaces. Required Tree canopy will be provided. There do not appear to be environmental constraints on site due to previous development; and

WHEREAS, provisions for safe and efficient vehicular and pedestrian transportation within and around the development and community will be provided as pedestrian connection to transit routes and public walks along the site frontage will be available; and

WHEREAS, the provision of sufficient open space (scenic and recreational) to meet the needs of the proposed development will be provided as buffers around the perimeter of the site will be provided; and

WHEREAS, 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; and

WHEREAS, the proposal is generally compatible within the scale and site design of nearby existing development and with the form district's pattern of development; and

WHEREAS, the proposal generally conforms to the land use and development policies of Plan 2040; now, therefore be it

RESOLVED, the Louisville Metro Planning Commission does hereby **RECOMMEND** to the Louisville Metro Council that the proposed Revised Detailed District Development Plan Elements be **APPROVED** 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

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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. Prior to the development or occupancy of the site (includes clearing and grading), the applicant, developer, or property owner shall obtain approval of a Detailed District Development Plan by the full Planning Commission. The intent of this binding element is to have the first Detailed Plan reviewed by the full Planning Commission and Metro Council. Subsequent Revised Development Plans may proceed under normal policies and procedures at the discretion of the Planning Commission. in which case this binding element should be amended.
3. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.
4. Before any permit, including but not limited to building, parking lot, change of use is requested:
 - a. The development plan must receive full construction approval from Construction Review, Louisville Metro Public Works and the Metropolitan Sewer District.
 - b. Encroachment permits must be obtained from the Kentucky Transportation Cabinet.
 - c. The property owner/developer must obtain approval of a detailed plan for screening (buffering/landscaping) as described in Chapter 10 prior to occupying the building. Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter.
 - d. 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 prior to obtaining a building permit.
 - e. A reciprocal access and crossover easement agreement in a form acceptable to the Planning Commission legal counsel shall be created between the subject site and the adjoining property owners at 1243 Durrett Lane and recorded. A copy of the recorded instrument shall be submitted to the Division of Planning and Design Services prior to obtaining a building permit.
5. 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.
6. There shall be no outdoor music (live, piped, radio or amplified) or outdoor entertainment or outdoor PA system audible beyond the property line.

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7. A legal instrument providing for the long-term use of the off-site parking spaces for property at 1243 Durrett lane as shown on the approved district development plan and in accordance with Section 9.1.5 Off-Site Parking shall be submitted and approved by the Planning Commission legal counsel and recorded in the County Clerk's office. A copy of the recorded instrument shall be submitted to the Division of Planning and Design Services prior to obtaining a certificate of occupancy.
8. Compliance with parking minimum/maximum and/or non-conformance shall be determined at time of occupancy. The approved development plan and Planning Commission record shall be updated to reflect compliance.
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. Heavy truck traffic shall be prohibited on Durrett Ln east of the development site. Developer/Owner shall install traffic control signs directing outbound truck traffic to Preston Hwy and inbound truck traffic to the development site.
11. The first Detailed District Development Plan submitted after the rezoning shall require a traffic study to determine necessary improvements to adjacent roadways and access points. The scope of the traffic study shall be determined in consultation with Metro Public Works. If the traffic study results in recommendations for improvements to Durrett Lane. Developer shall contribute up to \$100,000 toward the cost of the new improvements. This contribution shall not be requested more than 2 years after issuance of certificate of Occupancy.
12. In addition to the tree canopy shown on the development plan and landscape concept plan presented to the Planning Commission on November 5, 2020, Twenty-five additional Type 'A' trees shall be provided on-site. Twenty-five Type 'A' trees shall also be provided off-site at a location determined in coordination with Planning and Design Services and the Louisville Metro Council representative for District 21.

The vote was as follows:

YES: Commissioners Howard, Carlson, Brown, Mims, Peterson, Sistrunk, Daniels, and Jarboe

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NO: None.

NOT PRESENT: Commissioners Seitz and Lewis.

Chairman

Division Director